

**DRAKES BAY LAND COMPANY, A CORPORATION v. THE UNITED STATES**

**UNITED STATES COURT OF CLAIMS (App Div)**

✓ 191 Ct. Cl. 389, 424 F.2d 574 (Ct. Cl. App. Div. 1970), *supplemental proceedings*, 198 Ct. Cl. 506, 459 F.2d 504 (Ct. Cl. App. Div. 1972)

April 17, 1970, Decided

**COUNSEL:** Benjamin P. Bonelli, attorney of record, for plaintiff. Herbert Pittle, with whom was Assistant Attorney General Shiro Kashiwa, for defendant.

**JUDGES:** Cowen, Chief Judge, Laramore, Durfee, Davis, Collins, Skelton and Nichols, Judges. Nichols, Judge, delivered the opinion of the court.\*

**OPINION: NICHOLS**

**[\*391] [\*\*575]** This is an action for just compensation pursuant to the Fifth Amendment. Seeking to recover the difference between land valued at its highest and best use and its reduced current value, plaintiff claims that the diminution was caused by a Government taking. Although we agree that a taking has occurred, we believe that it was a taking of the entire property.

The subject land is a 468-acre tract located within the boundaries of the 53,000-acre Point Reyes National Seashore area (hereinafter Seashore) as authorized in 16 U.S.C. §459c-1 (1964), Pub. L. 87-657, approved September 13, 1962, 76 Stat. 538.

The Seashore is located on the 60,000-acre Point Reyes peninsula in western Marin County, California, with only [\*392] the easterly central part (a relatively small portion) of such peninsula being outside the Seashore boundaries. In the excluded area are located the towns of Inverness and Inverness Ridge. Subject land is adjacent to part of the excluded area, and is about halfway between the two towns. It is 35 miles north of San Francisco, 20 miles west of San Rafael, and within 50 miles of three million people in the San Francisco Bay area.

The overall central part of the Point Reyes peninsula is a relatively large area of land which narrows southwesterly into a substantial projection into the Pacific Ocean, with its broad terminal called Point Reyes. The southerly coast of this projection is the shore of Drakes Bay, where substantial inlet bays and a large sand spit exist. Northerly from Point Reyes, bounded by the Pacific Ocean, the peninsula gradually narrows until it becomes an elongated, finger-like extension of land, bounded on its easterly side by Tomales Bay, a long and narrow body of water which extends from the Pacific Ocean and separates the northern half of the

peninsula from the mainland. The southerly part of the peninsula, narrower than the central part, is basically coastal mainland bounded on the west by the Pacific Ocean.

The pertinent Seashore was the third of the national seashore recreational areas authorized by acts of Congress, following Cape Hatteras National Seashore in 1937 and Cape Cod National Seashore in 1961. Supplementing studies conducted in the 1930's under the Civilian Conservation Corps program, and having obtained donated funds of \$1,250,000 from the Avalon and Old Dominion Foundations, the National Park Service, Department of the Interior, hereinafter Park Service, completed in the 1950's a study of all shore lines of the United States, Atlantic, Pacific, Gulf and Great Lakes, for creation of National seashore recreational areas.

As part of its Pacific Coast seashore survey, the Park Service published on June 30, 1957, its Preliminary Report, Point Reyes Peninsula, California, Seashore Area. The survey for that report was commenced in 1955, and the first publicity on such report was disseminated in 1958. The report [\*393] proposed a 28,000-acre national seashore area, not including subject land.

Bills authorizing the Point Reyes National Seashore were introduced in Congress in 1959, 1960, 1961, and 1962. The 1959 and 1960 bills proposed a 35,000-acre seashore area, not including subject land. As hereinafter related, plaintiff acquired its land in early 1960, prior to the first legislative proposal in 1961, that the Seashore encompass such land. Of course, the bills introduced in 1959 through 1961 were not enacted.

Plaintiff, a California corporation, was organized on February 24, 1960, by Benjamin P. Bonelli, an attorney at law and land subdivider, resident of San Rafael, California, and David S. Adams, a subdivider, resident of San Anselmo, [\*\*576] California. The two organizers had obtained in December 1959 an option to purchase from Millard E. Ottinger, a 1,000-acre tract of land, all located within the Seashore area as later authorized in 1962, but no part of which was included in the proposed bills prior to 1961.

After a law suit was filed to compel specific performance of the option agreement, plaintiff acquired the 1,000-acre tract by deed on March 30, 1960. In late 1960, Bonelli and Adams agreed to a division of the land into two tracts, and Adams took title to one tract and withdrew from plaintiff corporation. The tract retained by plaintiff included a

\* We acknowledge the help afforded by the able opinion and findings of fact submitted by Commissioner Roald A. Hogenon, though we reach a contrary result. We omit some findings which are irrelevant in view of the opinion.

28.8-acre parcel sold by plaintiff on January 24, 1962, and also the 468 acres comprising the subject land, which has been owned by plaintiff ever since March 30, 1960.

**Subject land is located on the western slope of the Inverness Ridge on Point Reyes peninsula, with its easterly border extending along the skyline of the ridge for about 1 1/2 miles, and with the view from the skyline being Tomales Bay to the east and the Pacific Ocean and Drakes Bay to the west.** It is generally covered with bishop pines, pepper trees, alder and buckeye trees, has two year-round streams, and a lake and grassy valley area in its westerly part.

Commencing in 1955, the property adjacent easterly to subject land had been successfully subdivided and sold in small lots as Paradise Ranch Estates by the same Adams who was [\*394] later an organizer with Bonelli of plaintiff corporation. Such subdivision is on the eastern slope of Inverness Ridge outside of but immediately adjacent to the Seashore.

Prior to 1960, there had been no subdivision or development of land on the Point Reyes peninsula within the Seashore area as authorized in 1962. The holdings were large dairies or beef ranches owned by wealthy families. **Most of the peninsula, including the area of subject land, had been closed to the public by locked gates.**

Commencing in 1960, Drakes Beach Estates, Inc., a corporation owned by Bonelli and others, engaged in subdividing, developing and sales of lots on land located at and near Drakes Bay, thereafter included in the Seashore area.

**Plaintiff acquired the subject land for the purpose of subdividing and selling it in small lots or parcels.** In 1961, Bonelli brought three new stockholders into plaintiff corporation to assist in financing subdivisions on subject land. They were experienced and active in the field of financing such projects by issuance and sale of property improvement bonds. Each was made an equal stockholder in plaintiff corporation with Bonelli, by his purchase of stock holdings in plaintiff corporation.

**At all pertinent times, Marin County zoning ordinances permitted subdivision of subject land into single family residential units of not less than 7,500 square feet each, subject to official approval of any planned subdivision.**

**On February 3, 1961, plaintiff filed its Drakes Bay Pines subdivision map on subject land with the Marin County Planning Commission,** requesting variances from road improvement standards previously allowed by the County of Marin in other subdivisions in the nearby area and the western part of the county generally.

In late 1961 and early 1962, Bonelli had several conferences with employees of the Park Service, one of whom was James E. Cole, regarding the subdivision of subject

land. Cole was regional chief of planning for the Park Service, and his major work concerned the proposed Seashore. **Bonelli was advised that the Park Service believed that the pending Seashore bill would be enacted; that subject land [\*395] would be within the boundaries prescribed therein; that subdivision of subject land would increase land values and make acquisition of land for the Seashore more difficult for the United States; that subdivision would scar the hills and partially destroy the [\*577] scenic value of the area;** that the United States could exchange federal land for subject land under Section 8 of the Taylor Grazing Act; that defendant was currently negotiating land exchanges with other property owners on the Point Reyes peninsula; and that **the Park Service urgently desired to make such an exchange with plaintiff and would fully cooperate if plaintiff would work on an exchange of its land for federal land.**

**In reliance on such statements, plaintiff withdrew its tentative subdivision map from the Marin County Planning Commission, and Bonelli went to various offices of the Bureau of Land Management, Department of the Interior, determined what federal lands were available for exchange, and traveled to a number of areas in California, Nevada and Arizona, viewing available federal lands.**

On March 13, 1962, plaintiff again filed a subdivision map, called Drakes Bay Pines, and a petition with Marin County, proposing to subdivide 168 acres of subject land into 76 lots. Plaintiff was experiencing financial difficulties in meeting its accrued tax and mortgage liabilities, and was concerned that it would not be prepared to sell lots if the Seashore bill was not enacted in 1962.

**In not requesting variances from county road standards, plaintiff reasonably believed that such a request would be futile because of pressure being exerted on the Marin County Board of Supervisors (which had to approve any variances) to prevent subdivision of land within the proposed Seashore area. Such pressure was variously being exerted by employees of the Park Service, Secretary of the Interior Stewart L. Udall, Undersecretary of the Interior James K. Carr, U.S. Representative Clement W. Miller of the congressional district covering the Point Reyes peninsula, Senator Clair Engle of California, Senator Thomas H. Kuchel of California, the Point Reyes National Seashore Foundation, the Sierra Club, numerous other conservation groups, many private citizens, [\*396] and virtually every San Francisco Bay area newspaper, all advocates of the establishment of the Seashore.**

When the establishment of the Seashore was first proposed, it was advocated that it should include only about 20,000 acres, which would not have included subject land. Until January 17, 1962, the Marin County Board of Supervisors did not favor a national seashore in excess of that acreage. In 1961, they voted 4 to 1 against enlargement.

Congressman Miller of that congressional district then advised the board that the Seashore bill could not be enacted unless the board passed a resolution in favor of the proposed 53,000-acre area.

George H. Ludy, Vice Chairman of the Marin County Board of Supervisors from 1960 to 1964, and previously a member of its Planning Commission, consistently opposed a national seashore larger than 20,000 acres. **He was contacted by Governor Edmund G. Brown of California, the Secretary of the Interior, the Director of the National Park Service, Senator Bible of Nevada, and a number of other persons to enlist his support for enlargement of the Seashore area.** He was one of the four supervisors who in 1961 voted against enlargement of the area, as was Supervisor J. Walter Blair. **Public reaction to the defeat of the resolution of enlargement was so violent that Supervisor Blair was defeated in a recall election by Peter Behr, an ardent conservationist, who was a member of the advisory committee of the Point Reyes National Seashore Foundation.** On January 17, 1962, Supervisor Behr voted with a majority of the board to urge approval of a 53,000-acre Seashore.

The Point Reyes National Seashore Foundation was a private conservation organization established in 1959, with a membership of 500 persons, mostly residents of Marin County. Dr. Joel Gustafson, an ardent conservationist, was its president. The Foundation, as well as the large Sierra Club of San Francisco, actively opposed subdivision and development of the Point Reyes peninsula. The Foundation by its representatives [\*\*578] appeared before the Marin County Board of Supervisors and submitted a petition signed by 132 local residents, opposing the granting of variances for plaintiff's proposed subdivision.

[\*397] **Mary R. Summers, Planning Director of Marin County, an ardent conservationist, and Margaret Azevedo, a member of the Marin County Planning Commission, were active in the founding and operation of the Point Reyes National Seashore Foundation, as was Walter Castro, Chairman of the Board of Supervisors of Marin County, and James E. Cole and George S. Collins, employees of the regional office of the Park Service.** Mr. Cole was secretary and a member of the board of directors of the Foundation, and participated in the preparation of promotional material regarding the Seashore, distributed by the organization, and of petitions presented to the Board of Supervisors, seeking passage of resolutions in favor of the Seashore. The regional director of the Park Service knew of Mr. Cole's participation in the activities of the Foundation, and that Mr. Collins had helped to found the organization.

In March and April 1962, plaintiff submitted applications to the Bureau of Land Management, offering to exchange subject land in two parcels for two tracts of federal land located at Barstow and at Eureka, California. These

and later applications by plaintiff never resulted in disposal of any part of subject land.

On April 2, 1962, a public hearing was held by the Marin County Planning Commission on plaintiff's pending petition and proposed subdivision map. Dr. Joel Gustafson appeared and protested approval of the map on behalf of the Point Reyes National Seashore Foundation. James E. Cole of the Park Service appeared under the direction and authorization of his Regional Director, and read the written protest of the Park Service, previously reviewed by the Regional Director, in which it was stated that the Park Service viewed with concern any activity within the proposed Seashore which would detract from the scenic character of the area or would make its acquisition by defendant more difficult, and that the Park Service believed that approval of plaintiff's subdivision would not be in the public interest.

Representatives of the Park Service actively endeavored to create favorable local opinion and influence various officials of Marin County to support the establishment of the [\*398] Seashore, and to prevent subdivision and sale of land on the Point Reyes peninsula, as did some 53 civic and conservation organizations in the San Francisco Bay area and Marin County.

**Between January 1, 1960, and January 31, 1963, over 700 news items regarding the Seashore and the Point Reyes peninsula were published in the San Francisco Chronicle, the San Francisco Examiner, the San Francisco News-Call Bulletin, and the San Rafael Independent Journal.**

Beginning in 1962, as a result of the publicity concerning the proposed Seashore, and after receiving requests from various United States Senators and the Secretary of the Interior, the California Division of Real Estate adopted a policy of inserting language in its public reports for subdivisions, a copy of which had to be furnished to any prospective purchaser of subdivided land, that the lots to be sold were within the area of a national recreational or park area, and might be subject to condemnation by the United States. In its amended report on the previously mentioned Drakes Bay Estates subdivision, dated July 25, 1962, the California Division inserted such language in relation to the proposed Seashore. However, **sales of lots in that subdivision had practically ceased by February 1962 on account of publicity that the Seashore bill would be enacted that year.** There is no evidence that any such report was ever issued on plaintiff's proposed subdivision. Other than Drakes Beach Estates, two other active subdivisions on Point Reyes peninsula had California Division reports [\*\*579] issued prior to September 13, 1962, containing such language.

In March 1962, representatives of the California Division of Real Estate and the Marin County Planning Commission exchanged correspondence, in which it was stated

that it might be considered **fraudulent or immoral** to sell a parcel within plaintiff's proposed subdivision on account of the pending Seashore bill. On March 30, 1962, the San Francisco Examiner and the San Rafael Independent Journal carried news articles quoting such statements. Although requested by Bonelli, the regional planning officer of the **Park Service declined to issue a statement to the press that the mere sale of land within a proposed national park was not fraud.**

[\*399] During 1962, plaintiff took steps to obtain domestic water service to its planned subdivision. Inverness Water Company, a public utility, owning and operating the water system at Inverness, 1/2 mile easterly of subject land, was willing to incorporate subject land in its service area, and filed its application on March 8, 1962, with the California Public Utilities Commission, requesting that a certificate of convenience and necessity be issued, authorizing such utility company to provide water service to plaintiff's land.

At a hearing held by the Utilities Commission on May 1, 1962, Mr. Cole appeared and testified under oath for the Park Service as protestant, stating that he was testifying with the approval of the Director of the Park Service; that **plaintiff's subdivisions were wholly within the boundaries of the proposed Seashore**; that they were within a critical area for seashore public use; that the pending Seashore bill had alerted the public to such an extent that it was extremely doubtful that development of the subdivisions would materialize; that publicity had alerted cautious buyers that the prospect of continuing ownership within the Seashore area was poor, and that few home sites would be sold while the Seashore legislation was pending; and that **the Park Service did not believe public convenience and necessity would be served by granting the pending application**, and that the position of the Park Service should be considered by the Utilities Commission.

On September 4, 1962, the California Public Utilities Commission denied the application of Inverness Water Company. Upon the enactment of the Seashore bill on September 13, 1962, that company was unwilling to consider serving water to any additional land, including subject land. However, sufficient water sources existed on subject land to supply a subdivision thereon.

The Marin County subdivision ordinance, enacted pursuant to the requirements of California statutory law, sets forth the minimum access road improvement standards deemed necessary to protect the public health, safety and welfare. It vests authority in the Planning Commission to make recommendations to the Board of Supervisors concerning proposed [\*400] variances. Such board is vested with authority to approve variances or to require full compliance with the ordinance requirements, including construction of an access road to full county road standards from the edge of a proposed subdivision to the next inter-

secting paved county road. Marin County Counsel so advised the Board of Supervisors at the hearing held before the board on April 30, 1962, on plaintiff's pending petition and proposed subdivision map.

Sir Francis Drake Highway was the only county road in the pertinent area of the Point Reyes peninsula, to which a full standard county road could be constructed from subject land. There existed and still exist access roads from subject land to such highway, but such access roads are and were insufficient in width and otherwise deficient from full county road standards. Two possible routes existed for a full standard access road. One was easterly down the steep eastern slope of the Inverness Ridge. The other was westerly approximately 26,000 feet, following the course of an existing narrow dirt road, to and over **[\*\*580]** the ranch then owned by Edward H. and Hildegard Heims. Plaintiff and other adjacent landowners had and now have the right by prescription to the use of such existing road.

On May 29, 1962, the Board of Supervisors denied approval of plaintiff's subdivision map on the basis of its determination that construction of a county standard road down the eastern face of Inverness Ridge was not economically feasible. The reasonableness of this determination was thereafter confirmed by an independent professional civil engineer, retained by plaintiff, who advised that the grades were too steep, the radii of the turns would be too sharp, and a roadway bench of sufficient width could not be constructed.

Thereafter the Board of Supervisors, after consulting with the Marin County Engineer, advised plaintiff that the westerly route to and across the Heims ranch was the only route over which a county standard access road could be constructed to allow plaintiff to subdivide subject land.

On July 31, 1962, pursuant to California statutory law, and upon the petition of plaintiff and other interested landowners, the Board of Supervisors created an assessment district, **[\*401]** named the Balboa Avenue and Extension Road Improvement Project, for improvement to county standards of the existing road to and through the Heims ranch, to be financed by special assessments against lands within the assessment district, and issuance and sale of improvement bonds. The board appointed an attorney and also an engineer for the district. The road was to be constructed under contracts let by the board, after acquisition or condemnation of a right-of-way of sufficient width.

Dr. and Mrs. Heims, owners of the Heims ranch, were ardent conservationists, and had previously refused to sell a right-of-way to a neighboring landowner who desired to subdivide his land. They were advocates of the establishment of the Seashore, and had consulted with an employee of the Park Service before refusing the sale to their neighbor. On May 24, 1962, Dr. Heims sent his neighbor a letter, after such neighbor had filed two subdivision maps

with the County of Marin, repeating his refusal to allow subdivision access across his land. This letter was first shown to the Park Service.

The assessment district included several thousand acres along both sides of the contemplated road. All of the large landowners, except Dr. and Mrs. Heims, and most of the small landowners had signed the petition upon which the Board of Supervisors had acted to create the assessment district. Of course, plaintiff was a signer. The assessment district included the Heims ranch, thus made subject to special assessments, despite refusal of Dr. and Mrs. Heims to sign the petition.

The Heims ranch is located along Sir Francis Drake Highway, and it is undisputed that conveyance to defendant of a strip of such land along the entire highway, if accepted by defendant, would have foreclosed acquisition in eminent domain proceedings by the assessment district of a right-of-way necessary for construction of the proposed new road. After a consultation with employees of the Park Service, Dr. Heims on September 24, 1962, eleven days after enactment of the Seashore bill, wrote to Senator Kuchel of California, offering to deed such a strip of his land to the [\*402] defendant, to prevent construction of the proposed road, which letter was shortly provided by the Senator to the director of the Park Service, with the comment by the Senator that he was interested in the matter.

About September 28, 1962, Dr. Heims delivered to and left in the possession of James E. Cole, regional planning chief of the Park Service, his executed quitclaim deed to the United States of a 50-foot strip of the Heims ranch along its entire border with Sir Francis Drake Highway. Mr. Cole had no authority to accept or reject the conveyance on behalf of defendant. The deed was not recorded, nor was any consideration requested [\*\*581] or paid. Mr. Cole's purpose in taking possession of the deed was to frustrate construction of the proposed county road by the assessment district.

On September 28, 1962, the Regional Director of the Park Service by telegram advised the Director of the Park Service that Dr. Heims desired to donate a strip of his land to prevent condemnation by the assessment district of a roadway for proposed subdivisions in the district; that the taking of the roadway by the district appeared imminent, that such a county road across the Heims ranch would accelerate expensive development and raise materially acquisition costs of the United States, and requested consultation with the Solicitor of the Department of the Interior as to whether defendant could and would accept donation of the strip of land by Dr. Heims. No action was taken by the Director on the matter. He was the person authorized to accept or reject the deed. By telegram dated November 25, 1962, Dr. Heims requested the Park Service to return the deed to him.

In the meantime, the engineer for the assessment district had surveyed the first portion of the right-of-way, and its attorney had proceeded with necessary legal work including preparation of a resolution for the Board of Supervisors preparatory to filing eminent domain proceedings on the section of the road through the Heims ranch.

On November 9, 1962, Mr. Cole telephoned the attorney for the assessment district, advised that the Park Service had in its possession a quitclaim deed from Heims to the United States, and stated that by recording the deed, if necessary, he [\*403] intended to stop the acquisition by eminent domain proceedings of a right-of-way over the Heims ranch by the assessment district.

On November 11, 1962, Bonelli met with Cole in the latter's office. Cole showed Bonelli the quitclaim deed from Heims to the United States, and threatened to record the deed if anything further was done to construct the proposed county road. Cole stated that the assessment district could not condemn federal land, and that plaintiff was wasting its time and money on the road project.

On November 15, 1962, Bonelli conferred with the attorney for the assessment district, discussed the Heims quitclaim deed to the United States, and agreed that further expenditures by the assessment district would be a waste of money. Apparently, the assessment district activities ceased at that time.

On July 23, 1963, defendant acquired the Heims ranch paying \$850,000 for 1,135 acres. This was the first tract of land purchased by defendant out of the first funds appropriated by Congress for land acquisition within the Seashore area. Donald E. Lee, Chief, Division of Land and Water Rights, National Park Service, was defendant's authorized agent to acquire land. During June 1963, Mrs. Heims, was told by Mr. Cole, regional planning officer, that she would have to talk to Mr. Lee about purchase by the Park Service of the Heims ranch. She telephoned Mr. Lee at Washington, D.C., explained that she and her husband were elderly people, that her husband was in ill health, that they would be willing to give the Park Service a favorable price for a prompt purchase of their land, and that otherwise they might have to sell to people who had indicated an interest in developing the property. She named a price, and Mr. Lee countered with a somewhat lesser amount, which was accepted by Mrs. Heims in a telephone call about a day later. An option to purchase was signed in the San Francisco regional office of the Park Service on July 3, 1963, with Mr. Lee in attendance, and the deed of the ranch from Dr. and Mrs. Heims to defendant was executed on July 23 and recorded on July 25, 1963.

[\*404] Thereafter, as additional funds became available, the Park Service acquired further tracts of land within the Seashore area. Altogether, the Park Service has acquired 64 or 65 tracts by direct purchase, by condemnation or by

[\*\*582] exchange for public lands, classified by the Bureau of Land Management and the Secretary of the Interior as being suitable for exchange pursuant to the Act of September 13, 1962, 16 U.S.C. §459c-2, and the Taylor Grazing Act, 43 U.S.C. §315.

In addition to extensive tracts in the southerly half of the Seashore area, defendant acquired two large tracts fronting on the Pacific Ocean, north of Point Reyes, and several tracts within the boundaries of the assessment district which had been created for the road improvement project over the Heims ranch. In 1967, substantial areas within the central and northerly parts of the Seashore area had not been acquired by defendant. By that time, however, subject land was surrounded on three sides by federal land, the remaining side being the steep easterly slope of Inverness Ridge, outside the Seashore area.

It is clear from the language of the “Point Reyes National Seashore Act” (hereinafter the Act), as set in the context of its legislative history, that Congress enacted it requiring and expecting that an equitable acquisition program would be effected with reasonable promptness. It is also important to note that the “Seashore” was declared in Section 2(a) to include an area set forth by metes and bounds, within which lay the land here involved. The exceptions are not here pertinent.

Before its enactment, the Point Reyes National Seashore bill (S. 476) was reshaped by several amendments directed at clarifying the status of private landowners who claimed that their interests were being unduly subordinated. Two such amendments which are pertinent to this case appear in Sec. 3(a) and are italicized below:

*Sec. 3. (a) Except as provided in section 4, the Secretary [of the Interior] is authorized to acquire, and it is the intent of Congress that he shall acquire as rapidly as appropriated funds become available for this purpose or as such acquisition can be accomplished by donation or with donated funds or by transfer, exchange, or otherwise the lands, waters and other property, and improvements [\*\*405] thereon and any interest therein, within the areas described in section 2 of this Act or which lie within the boundaries of the seashore as established under section 5 of this Act \* \* \*. Any property, or interest therein, owned by a State or political subdivision thereof may be acquired only with the concurrence of such owner. Notwithstanding any other provision of law, any Federal property located within such area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the provisions of this Act. In exercising his authority to acquire property in accordance with the provisions of this subsection, the Secretary may enter into contracts requiring the expenditure, when appropriated, of funds authorized by sec-*

tion 8 of this Act [then only \$14 million], but the liability of the United States under any such contract shall be contingent on the appropriation of funds sufficient to fulfill the obligations thereby incurred.

With reference to the first amendment italicized above, this was added by the House “in order to give the property owners in the area such assurance as can practically be given at this time that there will not be undue delay when they wish to sell their lands and in order to minimize the risks of price rises that may throw present cost estimates out of line”, H.R. Rep. No. 1628, 87th Cong., 2d Sess. 8 (1962). Although such an amendment did not emerge from the initial hearing on S. 476, it should be mentioned nevertheless that the Senate Subcommittee on Public Lands, which conducted 3 days of hearings on S. 476, evidenced a similarly sympathetic concern [\*\*583] for the landowners and their future prospects. *See generally* HEARINGS ON S. 476 BEFORE THE SUBCOMM. ON PUBLIC LANDS OF THE SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, 87TH CONG., 1ST SESS. (1961). (Hereinafter cited as Hearings on S. 476).

With reference to the second amendment italicized above – the contract authorization amendment, this was added as a floor amendment by Representative Kyl of Iowa. Commenting on the merits of S. 476, Representative Kyl directed his colleagues’ attention to a plight created by prior seashore legislation, 108 Cong. Rec. 14411 (1962):

\* \* \* we might turn to the experience in the Cape Cod area where there are people who own property who [\*\*406] are ready to sell the property. The Government [however] is not ready to buy. The property owner must continue to pay local taxes on the property, but he cannot use his own property and he cannot sell his own property. I suggest that this kind of arrangement, if it does not violate traditional American property rights, is at least grossly unfair to the property owners in these areas.

In offering his amendment for a vote, Representative Kyl had this to say, 108 Cong. Rec. 14423 (1962):

\* \* \* I have offered [this amendment] \* \* \* to amplify the authority of the Secretary of the Interior to acquire inholdings within the Point Reyes National Seashore and to give to owners of such inholdings all the assurance that we can give them that the Government will be ready to buy whenever they [the inholders] are ready to sell at a just and reasonable price.

In any situation like this one, \* \* \*, one of the real problems that we run into is the inability of any Government officer to commit the United States to buy in advance of appropriations. Landowners who wish to sell – perhaps because of death in the family, perhaps for business reasons, perhaps because of age, or for any number of other good reasons – can neither be assured

that the Government will buy nor find other ready buyers because of the overhanging possibility of condemnation.

\* \* \*

\* \* \* moreover \* \* \* my amendment will result in savings to the Government. We all know that real estate prices are advancing. If the Secretary is authorized to enter into purchase contracts in advance of appropriations, he may well be able to acquire land at a better price than if he has to wait 2, 3, or 4 years. The amendment, in other words, will be a protection both to landowners and to the Government. \* \* \*

In response to Representative Roosevelt's question whether the above amendment "really reinforces \* \* \* the statement that it is the intent of the Congress that the Secretary shall acquire the lands as rapidly as appropriated funds become available." 108 Cong. Rec. 14423 (1962), Representative Kyl answered thusly: "I think that intent was explicit in each of the seashore bills that we have considered \* \* \* and it is certainly stated in this one." 108 Cong. Rec. 14423 (1962).

[\*407] Although the record contains no discussion of the Kyl amendment by the Senate, the Senate Subcommittee Hearings on S. 476 are replete with testimony of witnesses espousing the contract authorization. Hearings on S. 476 at 8-9 (remarks of former Secretary of the Interior Udall); at 35 (remarks of Senator Engle, co-sponsor with Senator Kuchel of S. 476); at 73 (remarks of Representative Miller, sponsor of H.R. 2775, the House counterpart bill to S. 476); at 175-76 (remarks of Representative Cohelan, sponsor of H.R. 3244, identical companion bill to H.R. 2775); at 190 (remarks of W. Kenneth Davis, representing Point Reyes National Seashore Foundation); at 230 (remarks of Conrad Wirth, former Director of the National [\*584] Park Service). Senator Engle, of all the witnesses, best articulated the dual interests which would be served by the authorization:

\* \* \* *I think we should move in just as rapidly as we can to freeze the situation. These subdividers are acting within their legal rights, and until Congress acts they have a perfect right to go out there and buy up the land and put subdivisions on it.* There is no way to stop them. The only way we can stop them is for us to move as rapidly as we can.

As soon as we can provide the authority for the Secretary of the Interior to go in and freeze the situation, the better it will be. There is always the idea that maybe it [condemnation] will not happen and even if it does, they can get reimbursement, \* \* \* from the Federal Government.

I am not criticizing them. They have a perfectly legal right to do what they are doing. But we ought to move

as rapidly as we can and freeze the situation as soon as we can, in order not to add to the Government cost and certainly not to add to their [subdividers'] frustration when later on they find that this area is going to be actually taken over. (Emphasis supplied.)

In the later Redwood National Park Act, P.L. 90-545 §3(b) (1), 82 Stat. 931 (1968), title to the entire designated area vested immediately, just compensation being left for subsequent settlement. Here the Congress took steps in that direction, but did not go all the way. It contemplated that title would normally vest, not on enactment of the law, but on later acquisition by purchase, condemnation, or exchange. [\*408] But it would seem, and we hold, from the language and legislative history, that it acquired an inchoate interest at once, to be perfected later. Important legal consequences follow when, as here, the Congress flatly declares that it is going to acquire land.

One of these is that subsequent enhancement or diminution in value, resulting from the project itself, is excluded from Constitutional "just compensation." *United States v. Reynolds*, 397 U.S. 14, 16 (1970); *United States v. Miller*, 317 U.S. 369 (1943). Congress must also be deemed presumptively aware that the activities of its agents implementing its programs can effect takings without recourse to the usual machinery of land acquisition, that is, purchase or condemnation. 28 U.S.C. §1491; *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U.S. 327 (1922). We have looked for an element of actual physical invasion in such cases, as in *Eyherabide v. United States*, 170 Ct. Cl. 598, 345 F. 2d 565 (1965), but this is because there was "no official intention to acquire any property interest," *Eyherabide, supra*, 170 Ct. Cl. 601, 345 F. 2d 567. We think that the activities of officials can be found to be takings much more readily when there is no official question whether the land is to be acquired, only when, and the activities involved are all directed to that ultimate end. This is a hybrid situation, not the pure legislative taking, as in the Redwoods Act, and not the pure physical invasion of land apparently unwanted as Government property, as in *Eyherabide*. The Congress was well aware of the economic harm that would result to persons who intended subdivision and others, if the inchoate taking were left unperfected. It authorized officials to employ promptly certain unusual steps to keep this from happening, notably exchanges, and contracts in excess of appropriations available for obligation. If officials ignore these means placed in their hands, but take other positive and effectual steps to prevent such exploitation, we think that a taking has occurred. Such a taking is an acquisition "otherwise" within the language of Sec. 3(a), quot. supra.

[\*585] It is unnecessary to reach a question implicit in plaintiff's case, which is to what extent the acts of state and local officials can be imputed to the United States Government which urged [\*409] them, and which were taken to further establishment of the desired Na-

**tional Seashore, and frustrate subdivision of Seashore land.** Cf. *United States v. Meadow Brook Club*, 259 F. 2d 41 (2d Cir.), cert. denied, 358 U.S. 921 (1958). **Here, against the background of state law, defendant's own acts are enough.**

After the Act was passed on September 13, 1962, plaintiff asked defendant to buy its land. **In December 1962, James E. Cole, Project Manager of the National Park Service, advised Benjamin P. Bonelli that defendant did intend to acquire plaintiff's land. Communications between Bonelli and defendant, both oral and written, regarding the appraisal of plaintiff's land culminated in Bonelli being advised that the land was being appraised.**

In April 1963, Bonelli and another San Rafael attorney, had a conference at Point Reyes National Seashore headquarters, with James E. Cole, and a staff member. There they were shown a list of lands defendant proposed to acquire with the first \$7 million appropriated by Congress. Plaintiff was designated as receiving \$800,000 as partial payment for its 468 acres. Mr. Cole stated at this time that many landowners were being asked to take a partial payment out of the first appropriation.

Unfortunately, however, these representations made to plaintiff were not to be fulfilled. **In the fall of 1963, after defendant had already acquired the Heims ranch – an acquisition, the commissioner found, primarily calculated to permanently defeat condemnation by the assessment district of the right-of-way access to plaintiff's land, necessary for the planned subdivision – the Park Service advised Bonelli that it no longer intended to purchase plaintiff's land** as per the prediscussed scheme or, for that matter, any currently defined scheme.

In 1964 and 1965, plaintiff, exploring another avenue, again sought to exchange its land for Federal land. Defendant, however, refused to complete an exchange involving any of the lands selected by plaintiff even though such lands were designated as “high priority” for exchange by the Bureau of Land Management. The explanation given Bonelli was that the United States Department of the Interior in Washington, [\*410] D.C., refused to go ahead with the exchange. It is notable, however, that during this same 2-year period defendant did complete exchanges of Federal land with other landowners in the Point Reyes National Seashore.

On March 23, 1966, plaintiff, exploring still another avenue, asked defendant to at least contract to acquire its land as authorized under Sec. 3(a) of the Act. On May 6, 1966, however, defendant refused giving three reasons: (1) All the funds available and allowed by law -- \$14 million -- had been expended or obligated. (2) The appraisal of plaintiff's land was outdated, and it would be a waste of funds to spend money for an appraisal when there was no money to consummate the transaction. (3) If funds should become

available, they probably would be insufficient to purchase the *higher priority* land and plaintiff's land. Subsequently, Congress amended the Seashore Act, raising authorized funds to \$19,135,000. As predicted by the Park Service, part of this extra \$5.135 million was used to exercise a 1965 option contract on higher priority land. Currently, the Service is offering option contracts to other landowners within the Seashore, including plaintiff's neighbors. To date, however, plaintiff has yet to be approached with such an offer.

**The explanation behind the Park Service's consistent refusals to plaintiff's offers is simple. Plaintiff was a subdivider with fervent intent to subdivide its Point Reyes property. Despite any acquisition priorities published by the National Park Service, it is clear from the record that the Service viewed [\*\*586] subdividers as the primary threat to the Point Reyes Seashore both in terms of economics and aesthetics.** In fact, in March 1963, Conrad Wirth, Director of the National Park Service, appeared before the Subcommittee on Deficiencies, Committee on Appropriations of the House of Representatives, requesting a supplemental appropriation of \$5,000,000 to start land acquisition at Point Reyes. He testified that the funds were needed immediately primarily to buy the lands being subdivided or which were threatened by a subdivision. Hearings on Supplemental Appropriation Bill, 1963, Before the Subcomm. of the House Comm. on Appropriations, 88th Cong. 1st Sess., 470, 477 (1963). Also [\*411] scheduled for purchase, however, were lands listed as “key properties and significant properties”. Our commissioner found that the Heims ranch was the only large tract listed for purchase in this latter category. **Once having purchased the Heims ranch, the Service obviously perceived that plaintiff's hopes for subdivision were dashed and that therefore it was no longer immediately important to negotiate with plaintiff for sale or exchange of its land.**

**The commissioner found that with the purchase of the first tract of land, the Heims ranch, the private sale of real property within the boundaries of the Seashore almost completely ceased.** In the period from July 23, 1963, to August 1, 1967, there were only 93 deeds recorded in the Marin County Recorder's Office representing transfers of real property within the Seashore. Of these 93 transactions, 67 recordings represented the transfer of real property to the United States. The other recordings represented the sale of real property to private purchasers who were acquiring it for the express purpose of negotiating land exchanges with the defendant. The quiescent state of land transfers within the Seashore contrasts with the rate of turnover outside its perimeters. Within a 5-mile radius of its exterior boundary, during the 4-year period after July 23, 1963, there have been approximately 2,500 deeds recorded representing transfers of real property. Plaintiff has attempted to sell its land to private purchasers but to no avail. The land is listed with two West Marin County real estate

agencies but plaintiff has received no offers as a result of these listings.

**Thus plaintiff remains without a market for its land. The private sector is not interested, understandably, because of the well publicized threat of eventual condemnation of Seashore realty. The public sector, namely the National Park Service, is not interested because after having successfully thwarted plaintiff's subdivision plans, it realizes that plaintiff is a party who can be deferred interminably, and dealt with at pleasure.** We believe that such an attitude exemplifies exactly the kind of arbitrary and unreasonable treatment Congress sought to proscribe in Sec. 3(a) of the Act. We hold therefore that it was intended for the Park Service in this case [\*412] to deal with plaintiff from the outset in one of the designated fashions -- purchase, exchange or option contract. In this connection, **we note that so long as defendant did not file a Declaration of Taking vesting immediate title in itself, it could have started a condemnation suit without having funds to pay an award already appropriated.** 40 U.S.C. §257 as construed *e.g.*, in *Barnidge v. United States*, 101 F. 2d 295 (8th Cir. 1939). Failure to do any of these and at the same time to deal with plaintiff as the opinion and findings describe was a taking, an acquisition "otherwise".

**Plaintiff cites *Foster v. City of Detroit, Mich.*, 254 F. Supp. 655 (E.D. Mich. 1966), *aff'd.* 405 F. 2d 138 (6th Cir. 1968), which we agree fully supports its and our position.** The owner of city property there held it for 10 years under threat of imminent condemnation. It had been designated as part of the site for a housing project, but the Federal funds to finance the project never became [\*\*587] available. Meanwhile, other neighboring property was condemned, plaintiff could not obtain tenants or insurance, vandals broke in, and finally the buildings became unsafe and had to be torn down. Then the city was allotted funds for an urban renewal project, condemned plaintiff's property and obtained an award in the state court as for vacant land only. **The District Judge, in an exhaustive and scholarly opinion holds that the buildings were taken at some earlier date, and that the fourteenth amendment to the Federal Constitution requires the city to pay for them.** He cites a number of state cases making like holdings on parallel facts. The City in the Court of Appeals, indeed, urged that jurisdiction be yielded because the Michigan courts had now embraced the District Court's view of the Constitutional requirements.

Defendant cites *Halpert v. Udall*, 231 F. Supp. 574 (S.D. Fla. 1964), *aff'd. per curiam*, 379 U.S. 645 (1965), which has superficial similarities to the case at bar which disappear on analysis. It involves the "hole in the doughnut" in Everglades National Park, 16 U.S.C. §410, 410a. It is interesting to note that during hearings on the instant legislation the Director of the National Park Service referred to

the Everglades legislation as a precedent for the exclusion, as proposed, of ranch [\*413] and dairy property so long as it was so used. Hearings on H.R. 2775 and H.R. 3244 Before the Subcomm. on National Parks of the House Comm. on Interior and Insular Affairs, 87th Cong. 1st Sess. 140 (1961). Plaintiff Halpert owned agricultural land thus excluded. His position appeared to be that the mere inclusion of his land as an enclave within the outer boundaries of a National Park constituted *per se* a taking. We, of course, do not so hold. As an added grievance he offered only the closing of a road which did not cut off all access. He wanted an injunction requiring reopening. Halpert was not subjected to anything like the campaign that our plaintiff was. Apparently, the Park Service had no wish to disturb his use and enjoyment and desired him to stay where he was. The court holds, we think wholly in harmony with our position, that a statutory tenure of land within the outer boundaries of a park, terminable by condemnation if agricultural use ceases, is not a taking while the agricultural use continues.

**It may be thought that our holding frustrates the intent of Congress because that body obviously intended that payment for land acquired for the National Seashore should be made out of funds budgeted and appropriated by it in modest amounts annually. The trouble is, it intended other things too. It intended that further economic development of land, especially by subdivision, should be halted. It intended that land be acquired before further price inflation could occur.** It intended that owners with pending development plans and others concerned should be settled with promptly and not kept in unfair and damaging suspense. Hindsight shows that these objects were irreconcilable but we think the intent to do justice to the landowners had priority. **The Point Reyes project has, indeed, performed valuable service as an example of what to avoid, and the Redwoods legislation shows the lesson has been learned.** As to Point Reyes, the Congress must be presumed to have been aware that it had previously enacted a Tucker Act, which was available in case the convergent pressures on any landowner became great beyond its expectation, as it has saved the day in many another sticky situation.

[\*414] **In this type of case the fixing of the exact date of taking must be a jury verdict sort of thing.** Compare, *United States v. Northern Paiute Indians*, 183 Ct. Cl. 321, 393 F. 2d 786 (1968), in which the date of taking was fixed as 1863 but could just as well have been two years earlier or later. **We think a better date than any other is that of the [\*\*588] refusal by defendant to purchase that followed its success in thwarting the subdivision by acquiring the Heims ranch which lay across the only feasible access. It was then that defendant effectively used its available funds to thwart plaintiff, not to compensate it.**

**We hold that the interest taken is the fee, not a scenic easement as plaintiff suggests. When a taking is**

**wholly or partly legislative, as here, the interest taken is the interest the legislation contemplates. That obviously is the fee. The Act makes no mention of scenic easements.**

The amount of just compensation, *i.e.*, the value of the fee, unless the parties stipulate, must be established in another trial, since our commissioner made no finding with respect thereto. We note that the plaintiff's expert testimony on just compensation apparently fails to take the rule of *United States v. Reynolds, supra*, into account. **Much of the record reflects that interest in subdivision property in the area that was to become the National Seashore was at a low level until the Seashore was close to being a reality, so that subdividers could offer home sites within a region that would otherwise be unspoiled, not within the usual suburban sprawl. To be competent, testimony will have to exclude enhancement of this type. If in any way the project detracted from the value of the property that must be disregarded too. The interruption of access by the Heims purchase must clearly be disregarded.**

Plaintiff is entitled to recover judgment. Unless the amount is stipulated the case will be ordered returned to the commissioner for determination of the amount of recovery pursuant to the court's opinion and to Rule 131(c) (2). The final judgment will provide that plaintiff may obtain payment of the amount awarded only upon tender of a deed to the property taken, in such form as the Attorney General may deem necessary to assure the United States a valid fee simple title.

#### **[\*415] FINDINGS OF FACT**

The court having considered the evidence, the report of Trial Commissioner Roald A. Hogenson, and the briefs and argument of counsel, makes findings of fact as follows:

1. Plaintiff is a California corporation organized on February 24, 1960, by Benjamin P. Bonelli, an attorney at law and subdivider from San Rafael, California, and David S. Adams, a subdivider from San Anselmo, California. Its principal place of business is San Rafael, Marin County, California.

2. Plaintiff's organizers obtained an option to purchase at \$350 per acre approximately 1,000 acres of land, including the land described in the petition herein, from Millard E. Ottinger in December 1959. Plaintiff acquired the 1,000 acres by deed on March 30, 1960, after a legal action was filed to compel specific performance. In late 1960 or early 1961, Bonelli and David S. Adams agreed to a division of the 1,000 acres into two tracts, and Adams took title to one tract and relinquished his interest in plaintiff corporation. The tract retained by plaintiff included the parcel sold by plaintiff on January 24, 1962, as related in finding 100, and that parcel is not included in the land which is the subject matter of this suit.

3. The remaining tract of land is described in the petition and contains 468 acres. Plaintiff has owned such land continuously since March 30, 1960. All of such tract of land (as well as the tract taken by Adams) is within the boundaries of the 53,000-acre Point Reyes National Seashore as designated in 16 U.S.C. 459c-1 (1964), Pub. L. 87-657, approved September 13, 1962, 76 Stat. 538.

4. This National Seashore occupies most of the Point Reyes peninsula which is a conspicuous promontory on the coast of Marin County, California, with Drakes Bay and the Pacific Ocean to the west and Tomales Bay to the east. The highway entrance to the peninsula is 30 miles northwest of the city of San Francisco. The overall peninsula includes in excess of 60,000 acres of land, as well as bays, inland lakes and tidal and submerged lands extending about 1/4 mile to seaward from high tide. The varied character of the shoreline, [\*416] with its wide sandy beaches, wave-swept caves, offshore rocks and steep coastal bluffs, combines with sand dunes, grasslands, chaparral, scenic fir and pine forest to make the area one of the most outstanding segments of unspoiled seashore remaining along the Pacific Coast.

The Point Reyes area is very close to one of the major metropolitan centers of the United States and within easy reach of a number of others. Extending along Drakes Bay north to Tomales Bay, there are many miles of varied shoreline and a 3-mile long sandspit. Inland the dunes and grasslands rise to open, parklike hills and wooded areas at highest elevations. In addition, there are fresh water lakes, salt water marshes, and many varieties of birds and mammals and species of vegetation.

5. Plaintiff's land is located on the western slope of the Inverness Ridge on the Point Reyes peninsula, approximately halfway between the towns of Inverness and Inverness Park, located outside but close to the National Seashore area. Plaintiff's land is about 35 miles north of San Francisco, 20 miles west of San Rafael, and within 50 miles of three million people in the San Francisco Bay area.

6. The easterly border of plaintiff's land extends for about 1 1/2 miles along the skyline of the Inverness Ridge. Such land is generally covered with bishop pines, pepper trees, alder trees and buckeye trees. It also has a lake and two year-around streams on it. The view from the skyline is of Tomales Bay to the east and Drakes Bay and the Pacific Ocean to the west.

7. Prior to 1960, there had been no subdivision or development of land on the Point Reyes peninsula within what is now the Point Reyes National Seashore. The holdings were large dairies or were beef ranches owned by wealthy families. Most of the Point Reyes peninsula, including the area of plaintiff's land, had been kept closed to the public by locked gates.

Commencing in 1960, Drakes Beach Estates, Inc., a corporation owned by Bonelli and others, engaged in sub-

dividing, developing and sales of lots on land located at and near the shore of Drakes Bay and thereafter included in the National Seashore.

[\*417] 8. Commencing in 1955, the property adjacent easterly to plaintiff's land had been successfully subdivided and sold in small lots as Paradise Ranch Estates by the same David S. Adams who was later an organizer with Bonelli of plaintiff corporation. That area is on the eastern slope of Inverness Ridge, adjacent to the National Seashore.

9. Plaintiff acquired the subject land for the purpose of subdividing and selling it in small lots or parcels. In the spring of 1961, three new shareholders acquired stock in plaintiff corporation. They were L. H. Easterling, manager of the Improvement Bond Department of Birr-Wilson & Company; Odus C. Horney, Jr., head of the Bond Department of First California Company; and Ernest A. Wilson, partner in Wilson, Jones, Morton & Lynch, a legal firm specializing in assessment district financing. Bonelli brought them into the corporation as stockholders to assist in making arrangements for the financing for subdivisions on plaintiff's land. The four stockholders held equal interests in plaintiff corporation.

10. At all times since March 31, 1960, the applicable Marin County Zoning Ordinances, Marin County Ordinances 217 and 235, and Title 22, Marin County Code, have allowed the subdivision of plaintiff's land into single family residential lots not less than 7,500 square feet in size, subject to official approval of any planned subdivision, as related in finding 32.

11. Point Reyes National Seashore was the third of the national seashore recreational areas authorized by acts of Congress. In 1937, Cape Hatteras National Seashore was authorized, *16 U.S.C. §459* (1964), 50 Stat. 669, following studies of Atlantic, Pacific and other seashore areas, conducted by the National Park Service under the Civilian Conservation Corps program. Having obtained donated funds of \$1,250,000 from the Avalon and Old Dominion Foundations for the purpose, the Park Service completed in the 1950's a study of all shore lines of the United States, Atlantic, Pacific, Gulf and Great Lakes, for creation of other national seashore recreational areas. In 1961, the Cape Cod [\*418] National Seashore was next authorized by Congress, *16 U.S.C. §459b* (1964), 75 Stat. 284.

As part of its Pacific Coast seashore survey, the Park Service published on June 30, 1957, its Preliminary Report, Point Reyes Peninsula, California, Seashore Area. The survey for that report was commenced in 1955. The first publicity concerning this report was disseminated in 1958. The report proposed a 28,000-acre national seashore area, not including subject land.

12. Bills authorizing the Point Reyes National Seashore were proposed in Congress in 1959, 1960, 1961, and 1962. The bills proposed in 1959, prior to the date on which plain-

tiff acquired its land, and those introduced in 1960, only proposed a 35,000-acre National Seashore, and did not include plaintiff's land within the described National Seashore boundaries. The bills introduced in 1959, 1960, and 1961, were not enacted.

13. On February 3, 1961, plaintiff filed a subdivision map on subject land entitled "Drakes Bay Pines" and a verified petition with the Marin County Planning Commission. The petition requested variances from road improvement standards commensurate with the improvements required by the County of Marin in other subdivisions in the nearby area and in western Marin County up until that time.

Engineering and legal work on subdivision maps was commenced by plaintiff in 1960 and continued through 1961 and 1962.

14. In February 1961, the Park Service published its Land Use Survey & Economic Feasibility Report on the proposed Point Reyes National Seashore, based upon a survey conducted by the Park Service in collaboration with Professor John W. Dyckman, City and Regional Planning Department, University of California; Professor Julius Margolis, School of Business Administration, University of California; Marin County Assessor Bert Bromwell; and Kenneth Davis, Executive Vice President, Point Reyes National Seashore Foundation.

The effect on the economy of the area involved in the proposed creation of a national seashore is one of the factors [\*419] taken into consideration, important in the view of the Park Service.

15. The Public Lands Subcommittee of the Senate Committee on Interior and Insular Affairs held hearings at Kentfield, California, in April 1960, and at Washington, D.C., on March 28, 30, and 31, 1961, on pending legislation for establishment of the Point Reyes National Seashore.

On March 24, July 6, and August 11, 1961, the National Parks Subcommittee of the House Committee on Interior and Insular Affairs held hearings at Washington, D.C., on two House bills proposing the same legislation.

Numerous oral and written statements were submitted as shown in the reports of such hearings in evidence as plaintiff's exhibits 204 and 205, including those by various Senators, Congressmen, representatives of the Park Service, other public officials, and private citizens and organizations. Economic and various other factors were presented at length. Secretary of the Interior Udall mentioned that the proposed legislation was in a race with the activities of subdividers, and W. Kenneth Davis, executive vice president of the Point Reyes National Seashore Foundation, organized 2 years previously by mainly Marin County residents as a California nonprofit organization, stated that his association would work diligently to obtain passage of local zoning

ordinances to protect the entrances to the park from unattractive developments.

16. In late 1961 and early 1962, Bonelli had several conferences with employees of the National Park Service, including James E. Cole, regarding the subdivision of plaintiff's land. Cole was regional chief of planning for the Park Service, and his major work concerned the proposed Point Reyes National Seashore. The Park Service believed that the Point Reyes National Seashore bill would be passed and that (a) plaintiff's land would be within the boundaries of the final bill; (b) subdivision of plaintiff's land would increase land values and make acquisition of the land for the proposed National Seashore more difficult for the United States; (c) subdivision of plaintiff's land would scar the hills and partially destroy the scenic value of the area; (d) the United [\*420] States could exchange federal land for plaintiff's land under Section 8 of the Taylor Grazing Act; (e) the United States was currently negotiating land exchanges with other property owners on the Point Reyes peninsula; and (f) the Park Service urgently desired to make such an exchange with plaintiff and would fully cooperate if plaintiff would work on an exchange of its land for federal land.

17. In reliance on the good faith of the defendant in proposing exchanges, plaintiff withdrew its tentative subdivision map from the Marin County Planning Commission. Bonelli, as attorney for plaintiff, then went to the offices of the Bureau of Land Management, Department of the Interior, in Sacramento, Reno, Phoenix, Riverside, and Bakersfield to determine what federal land could be selected for exchange and traveled to numerous areas in California, Nevada, and Arizona viewing federal land which was available for exchange. Approximately \$6,600 was expended by plaintiff in time and money in these investigations.

18. Because of the failure of Congress to enact the Point Reyes National Seashore legislation in 1961, and because of financial difficulties in meeting its accrued tax and mortgage liabilities, plaintiff again filed a subdivision map entitled "Drakes Bay Pines" and a verified petition with the County of Marin on March 13, 1962. The map proposed to subdivide 168 acres into 76 lots. A filing fee of \$840 was paid to the County of Marin. The petition requested variances from access road improvement standards commensurate with variances granted by the County of Marin for all other subdivisions nearby or in western Marin County up until that time. Approximately 2 years are required for a subdivider to be ready to sell land after the initial engineering work has been done. Plaintiff was concerned that it would not be in a position to sell lots if the Point Reyes National Seashore bill was not passed in 1962.

19. Plaintiff did not request variances from the road standards required by Title 21, Marin County Code (Marin County Ord. 640) for roads within the "Drakes Bay Pines" subdivision. Plaintiff reasonably believed that such a re-

quest would have been futile in view of the pressure being exerted [\*421] on the Marin County Board of Supervisors to prevent the subdivision of land within the area of the proposed Point Reyes National Seashore. This pressure was being variously exerted by employees of the National Park Service, Secretary of the Interior Stewart L. Udall, Undersecretary of the Interior James K. Carr, U.S. Representative Clement W. Miller, Senator Clair Engle, Senator Thomas Kuchel, the Point Reyes National Seashore Foundation, the Sierra Club, numerous other conservation groups, many private citizens, and virtually every San Francisco Bay area newspaper, all advocates of the establishment of Point Reyes National Seashore.

20. In 1962, concurrently with the filing of the second Drakes Bay Pines subdivision map, plaintiff began the construction of dirt roads within the proposed subdivision.

21. On March 16, 1962, plaintiff submitted an application to the Bureau of Land Management Office in Sacramento, California, offering to exchange part of its land on the Point Reyes peninsula for federal land at Barstow, California. On April 9, 1962, plaintiff submitted an application to the same office, offering to exchange the balance of its land for federal land at Eureka, California. On April 25, 1962, the Land Management Office wrote plaintiff requesting that plaintiff correct by letter some errors in the latter application.

22. On April 2, 1962, a public hearing was held on the proposed Drakes Bay Pines subdivision by the Marin County Planning Commission. James E. Cole of the National Park Service appeared and read the following written protest by the National Park Service:

The National Park Service views with concern any activity within the proposed Point Reyes National Seashore which would detract from the scenic character of the area or would make its acquisition by the Federal Government more difficult.

While establishment of the proposed National Seashore is not assured, recent Congressional actions and Presidential interest strongly suggest that the Point Reyes National Seashore may be authorized in a very few months.

[\*422] In these circumstances, the National Park Service believes that approval of the Drakes Bay Pines subdivision within the proposed National Seashore, would not be in the public interest.

The appearance of James E. Cole at the Marin County Planning Commission meeting and his presentation of the National Park Service protest was under the direction and authorization of his superior, Lawrence C. Merriam, Regional Director, Western Region, National Park Service. The statement had been reviewed by Mr. Merriam.

Dr. Joel Gustafson, President of the Point Reyes National Seashore Foundation, also appeared and protested approval of the map.

23. Before introduction of the bill which ultimately became the Act of September 13, 1962, the National Park Service prepared a document containing questions and answers as to the nature and possible effect of the proposed Point Reyes National Seashore. That document was published and distributed commencing in 1960, and provided to persons making inquiry concerning the proposed national seashore. Fifty copies were supplied to the Marin County Board of Supervisors.

24. Conrad L. Wirth, who was Director of the National Park Service from 1955 to 1964, was in charge of the entire program. It is the function of the National Park Service to make recommendations to Congress on proposed legislation affecting the national park system. The questions and answers document was prepared and published for purposes of public relations and public information. The need for developing an adequate national park system has been considered by the Park Service to be urgent because of rapid loss of available areas. The National Park Service has a responsibility to inform the Congress of its recommendations for carrying out programs in the most prudent manner.

25. Representatives of the National Park Service actively endeavored to create favorable local opinion and influence local governing bodies to support the establishment of a Point Reyes National Seashore. Representatives of the National Park Service worked closely with various officials of Marin [\*423] County and others, to create public opinion in favor of the Point Reyes National Seashore proposal and to prevent private subdivision and sale of land on the Point Reyes peninsula.

Over a period of several years prior to the acquisition by defendant of the Heims ranch on July 23, 1963, as related in finding 55, various officials of the National Park Service and the Department of the Interior and members of Congress made or issued public statements, extensively reported in the San Francisco Bay area newspapers, advocating establishment of the Point Reyes National Seashore, denouncing subdivision activities and efforts to make private sales of land on the peninsula, and otherwise discouraging real estate transactions by assertions that such area would be acquired by defendant by purchase or condemnation. These activities became intense in the years 1961, 1962, and 1963.

Among those persons making or issuing such statements were Secretary of the Interior Stewart L. Udall, Undersecretary of the Interior James K. Carr, Senator Clair Engle of California, Senator Thomas H. Kuchel of California, Representative Clement W. Miller of the congressional district in which the peninsula was located, Senator Alan Bible of Nevada, Chairman J. T. Rutherford of the National

Park Subcommittee of the House of Representatives, and Conrad Wirth, Director of the National Park Service.

26. The following civic and conservation organizations supported the establishment of Point Reyes National Seashore and vigorously opposed further subdivision and sale of land in the area:

- American Forestry Association
- American Institute of Planners, California Chapter
- American Nature Association
- Associated Students, College of Marin
- Belvedere City Recreation Commission
- Berkeley City Council
- California Academy of Sciences
- California Roadside Council
- California State Park Commission
- California Wildlife Federation
- [\*424] Castro Valley Chamber of Commerce
- Central California Council of Diving Clubs
- Citizens for Regional Recreation and Parks in the San Francisco Bay Area
- Conservation Associates
- Contra Costa Hills Club
- East Bay Regional Park District, Oakland, California
- Federation of Western Outdoor Clubs
- Girl Scouts of San Francisco
- Hayward Chamber of Commerce
- Inverness Improvement Association
- Isaak Walton League, Marin County Chapter
- Izaak Walton League of America
- Izaak Walton League, Redwood Empire Chapter
- Lagunitas Parent-Teachers Association
- Marin and Sonoma Counties 14th District Parent-Teachers Association
- Marin Audubon Society
- Marin Conservation League
- Marin County Labor Council
- Marin County Parks and Recreation Commission
- Marin Rod and Gun Club
- Mill Valley City Parks and Recreation Commission

National Audubon Society  
 National Parks Advisory Board  
 National Parks Association  
 National Wildlife Federation  
 Nature Conservancy  
 Novato Community Club  
 Oakland Chamber of Commerce Sports and Recreation Committee  
 Point Reyes National Seashore Foundation  
 Regional Parks Association (Berkeley, California)  
 Ross Valley Council of Parents and Teachers  
 San Francisco [\*\*\*67] Bay Area Planning Directors Committee  
 San Francisco City and County Board of Supervisors  
 San Francisco Garden Club  
 San Francisco Junior Chamber of Commerce  
 San Francisco Zoological Society  
 [\*425] Sierra Club  
 Society of American Landscape Architects, Northern California  
 Sport Fishing Institute  
 Tamalpais Conservation Club  
 Trustees for Conservation  
 Wildlife Management Institute  
 Wilderness Society

27. The Point Reyes National Seashore Foundation is a private conservation organization established in 1959 with a membership of 500 persons, mainly residents of Marin County. Dr. Joel Gustafson, a vigorous conservationist, was its president. That organization and the large Sierra Club of San Francisco were very active in supporting the proposal for establishment of the Point Reyes National Seashore and in opposing subdivision and development of the peninsula. The Point Reyes National Seashore Foundation appeared through representatives before the Board of Supervisors of Marin County and submitted one or more petitions with as many as 132 signatures of local residents, opposing the granting of variances for subdivision by the plaintiff.

28. Mary R. Summers, at that time Planning Director of Marin County, an ardent conservationist, and Margaret Azevedo, a member of the Marin County Planning Commission, were active in the founding and operation of the Point Reyes National Seashore Foundation, as was Walter Castro, Chairman of the Board of Supervisors, and James E.

Cole and George S. Collins, employees of the regional office of the National Park Service in San Francisco.

Mr. Cole was secretary and a member of the board of directors of the foundation, and participated in the preparation of promotional material regarding the national seashore, distributed by the organization, and of petitions presented to the Marin County Board of Supervisors, seeking passage of resolutions in favor of the national seashore. The regional director of the National Park Service knew of Mr. Cole's participation in the activities of the foundation, and that Mr. Collins had helped to found the organization.

29. When the establishment of a national seashore on Point Reyes was first proposed, it was originally to include [\*426] only about 20,000 acres, not including subject land. Until January 17, 1962, the Board of Supervisors of Marin County, the governing body of the county, did not favor a national seashore in excess of 20,000 acres. In 1961, they voted 4 to 1 against enlargement of the seashore area. Congressman Miller of that congressional district informed the board that a national seashore bill could not be enacted unless the board adopted a resolution in favor of the 53,000-acre area.

George H. Ludy has lived in Marin County for 60 years and was a member of the Marin County Planning Commission from 1953 to 1960 and was Vice Chairman of the Marin County Board of Supervisors from 1960 to 1964. As a board member, he consistently opposed a national seashore larger than 20,000 acres. He lived in the town of Inverness. Governor Edmund G. Brown of California, the Secretary of the Interior, the Director of the National Park Service, United States Senator Bible of Nevada, and a number of other persons contacted Vice Chairman Ludy personally to enlist his support for the establishment of a national seashore. Vice Chairman Ludy was one of the four supervisors who in 1961 voted against a resolution favoring enlargement of the proposed national seashore from 20,000 acres to 53,000 acres, as was Supervisor J. Walter Blair. Public reaction to the defeat of the resolution was so violent that Supervisor Blair was defeated in a recall election by Peter Behr, an ardent conservationist, who was a member of the advisory committee of the Point Reyes National Seashore Foundation. On January 17, 1962, Supervisor Behr voted with a majority of the Board of Supervisors to urge the approval of a 53,000-acre national seashore.

30. Between January 1, 1960, and January 31, 1963, over 700 news items regarding the Point Reyes National Seashore and the Point Reyes peninsula were published in four San Francisco Bay area newspapers: the San Francisco Chronicle, the San Francisco Examiner, the San Francisco News-Call Bulletin, and the San Rafael Independent Journal.

31. Beginning in 1962, as a result of the publicity surrounding the proposed establishment of the Point Reyes

National Seashore, and after receiving requests from various [\*427] Senators and the Secretary of the Interior, the California Division of Real Estate adopted a policy of inserting language in its public reports for subdivisions that the lots to be sold were within the area of a proposed national recreational or park area, and might be subject to condemnation by the United States.

As required by California statutory law, the California Division of Real Estate issues a subdivision public report on any approved subdivision, which report must be provided to any prospective purchaser before he executes a contract to buy any part of the subdivided land. Prior to the enactment of the Point Reyes National Seashore bill on September 13, 1962, such reports had been issued on three active subdivisions on the Point Reyes peninsula. There is no evidence that any such report was ever issued on plaintiff's proposed subdivision.

On July 25, 1962, the California Division of Real Estate issued its amended subdivision report on the Drakes Bay Estates, Inc. subdivision, previously mentioned in finding 7, and inserted therein a special note that the property in such subdivision was located within the proposed Point Reyes National Seashore and might be subject to condemnation and purchase by the United States Government.

Following the filing of plaintiff's second subdivision map and petition with the Marin County Planning Commission, as related in finding 18, Mr. Saxon A. Lewis of the California Division of Real Estate, wrote a letter to such commission on March 23, 1962, acknowledging receipt of plaintiff's proposed subdivision map, and stated that he understood from newspaper accounts that the United States Government was discouraging any new subdivisions within the proposed Point Reyes National Seashore area, and that it might be construed as fraud on the public to sell a parcel within plaintiff's proposed subdivision, located within such area. On March 28, 1962, Mr. David Van Pelt of the planning commission responded by letter, and stated to Mr. Saxon that it might be considered immoral to sell land in such subdivision.

On March 30, 1962, the San Francisco Examiner and the San Rafael Independent Journal carried news articles quoting [\*428] the statements of Mr. Van Pelt and Mr. Saxon regarding the possible immorality and fraud which would be involved in sales of land within the proposed subdivision.

On April 2, 1962, Bonelli wrote to Gaylord K. Nye, Assistant Commissioner, California Division of Real Estate, and protested Mr. Saxon's statement about fraud. On April 5, 1962, Mr. Nye replied that his commission was not investigating any fraud matters in connection with the proposed sale of plaintiff's land, but that fraud might occur if a full disclosure was not made to prospective purchasers of

the fact that the subdivision in question was within the area of the proposed national seashore.

Bonelli and the real estate broker handling sales of lots in the Drakes Bay Estates, Inc. subdivision then had a conference with James E. Cole of the National Park Service, and William J. Costello, Field Solicitor, Department of the Interior, at which Cole and Costello declined to take any action on Bonelli's request that the National Park Service issue a statement to the press that the mere sale of land within a proposed national park was not fraud.

32. The Marin County Subdivision Ordinance, Title 21, Marin County Code, was enacted pursuant to the requirements of the California Subdivision Map Act, *California Bus. & Prof. C. §11,526*. The ordinance sets forth the minimum access road improvements standards necessary to protect the public health, safety and welfare. It vests authority in the Marin County Planning Commission to review all proposed subdivision maps and to make recommendations to the Marin County Board of Supervisors if a subdivider requests variances from requirements of the ordinance. Final authority is vested in the Board of Supervisors to grant or deny variances from the ordinance, and the Board of Supervisors has legal authority to require full compliance with the ordinance as to improvement of an access road to a subdivision. Section 21.36.010 of the ordinance requires full county standard improvements from the edge of a proposed subdivision to the next intersecting paved county road.

33. On April 30, 1962, in conjunction with the hearing before the Board of Supervisors on the Drakes Bay Pines [\*429] subdivision, E. Warren McGuire, Marin County Counsel, rendered a legal opinion to the Board of Supervisors advising the board that it could legally require improvement of an access road extending from the edge of a proposed subdivision to an intersection with a county-owned and county-maintained road to county standards as a condition to the approval of a subdivision map.

34. The county road, called Sir Francis Drake Highway, is the only county road in the area to which the Drakes Bay Pines subdivision could be connected by an access road. There are two routes which could be used for this purpose. One route would be easterly down the steep eastern face of the Inverness Ridge; the other would be westerly approximately 26,000 feet over rolling hills through the ranch then owned by Edward H. and Hildegard Heims.

35. After holding public hearings, the Marin County Planning Commission and the Marin County Board of Supervisors determined that the possible access routes down the eastern face of the Inverness Ridge were too narrow, steep and dangerous, could not be improved to safe standards under Title 21, Marin County Code (Marin County Ordinance 640) and were unacceptable as an access road to the Drakes Bay Pines subdivision. On May 29, 1962, the

Marin County Board of Supervisors denied approval of plaintiff's Drakes Bay Pines subdivision map on that basis.

36. The Marin County Board of Supervisors, after consulting with the Marin County Engineer, then advised plaintiff that a westerly route approximately 26,000 feet long, going through the ranch owned by Edward H. and Hildegard Heims, was the only route over which an access road from a county-maintained road to plaintiff's land could be improved which would meet the minimum requirements of Title 21, Marin County Code (Marin County Ordinance 640), and allow plaintiff to subdivide its land pursuant to that ordinance.

37. Roy H. Hoffman, a licensed civil and structural engineer, was retained by plaintiff to make an independent study of the possibility of constructing a county standard road down the eastern face of the Inverness Ridge. His opinion [\*430] confirmed the finding of the Marin County Board of Supervisors that it was physically impossible within the limits of economic feasibility. His reasons were that the grades were too steep, the radii of turns would be too sharp, and a roadway bench of sufficient width could not be constructed.

38. Roy H. Hoffman estimated that plaintiff's share of the cost of constructing a new county road westerly over the Heims Ranch would vary from a minimum of \$7,000 to a maximum of \$36,700, depending on the quality of road construction.

39. Under California law, with the consent of the local governing body, property owners can form assessment districts pursuant to which their property is assessed to pay the cost of construction of public roads serving their property, which roads are then constructed under contracts let by the local governing body.

40. On July 31, 1962, as the result of a petition filed by plaintiff and other interested landowners, the Marin County Board of Supervisors passed four resolutions forming an assessment district, pursuant to California Str. & H.C., named the Balboa Avenue and Extension Road Improvement Project: (1) Resolution No. 7281, a Resolution Determining to Undertake Proceedings Pursuant to Special Assessment and Assessment Bond Acts for the Construction of Improvements without Proceedings under Division 4, of the Streets and Highways Code, Balboa Avenue and Extension Road Improvement Project; (2) Resolution No. 7281A, a Resolution Appointing Engineer and Attorney, Balboa Avenue and Extension Road Improvement Project, with the legal firm of Wilson, Harzfeld, Jones & Morton of San Mateo, California, appointed legal representative of the district, and with the engineering firm of Oglesby, Jacobs & Wickham of San Rafael, California, appointed as engineer for the district; (3) Resolution No. 7281B, a Resolution of Intention to Acquire and Construct Improvements, Balboa Avenue and Extension Road Improvement Project; and (4)

Resolution No. 7281C, a Resolution Amending Resolution No. 7281B, Adopted by the Board of Supervisors on July 31, 1962, Balboa Avenue and Extension Road Improvement Project.

[\*431] 41. The new county road to be constructed would have passed over the route designated in finding 36. Plaintiff's land was included in the assessment district, and plaintiff's access to the new county road was over an existing 50-foot wide easement, acquired by plaintiff over the land it conveyed to David S. Adams when he withdrew from plaintiff as related in finding 2.

42. The proposed county road would have passed through the Heims ranch owned by Edward H. and Hildegard Heims. Edward H. and Hildegard Heims had previously refused to allow the unimproved road through their land to be improved by a neighbor wishing to subdivide, even though offered compensation. The refusal was made after a discussion with an employee of the National Park Service. Plaintiff and other landowners in the area had by prescription an easement right-of-way over the Heims ranch, insufficient in width to satisfy county road standards.

43. Dr. Edward H. Heims was and had been an ardent advocate of the proposed Point Reyes National Seashore. He had cooperated with the National Park Service and refused to join his neighbors objecting to the Point Reyes National Seashore. On May 24, 1962, after his neighbor filed two subdivision maps with the County of Marin, Edward H. Heims sent the neighbor a letter repeating his refusal to allow subdivision access across his land. This letter was first shown to the National Park Service.

44. Except for Dr. and Mrs. Heims, every other large landowner whose land was included within the boundaries of the assessment district, including plaintiff, signed the petition requesting formation of the district. Numerous other smaller parcel owners also signed the petition presented to the Board of Supervisors. The assessment district as formed by the Board of Supervisors included the Heims ranch as a part of the land over which improvements would be constructed and assessments levied, even though the Heimses had refused to sign the petition.

45. On August 13, 1962, immediately after the assessment district was formed, James E. Cole of the National Park Service called Bonelli and requested that the National Park Service [\*432] be given copies of the four resolutions approved by the Board of Supervisors on July 31, 1962.

46. On September 24, 1962, after consultations with employees of the National Park Service, Edward H. Heims wrote to Senator Thomas Kuchel offering to deed the United States a strip of his land which would prevent the construction of the new county road by foreclosing eminent domain proceedings by the assessment district. The offer by Edward H. Heims to donate the strip of land was conditioned on receiving assurance that any lower valuation of

his neighbor's land caused by the donation to the United States would not be used against him.

47. On or about September 28, 1962, Edward H. Heims delivered to the National Park Service a quitclaim deed from Edward H. Heims to the United States of a 50-foot strip of the Heims Ranch along its entire border with the Sir Francis Drake Highway. With the knowledge and consent of Lawrence C. Merriam, his superior, this deed was left in the possession and in the office of James E. Cole, regional chief of planning for the Park Service and project manager of the Point Reyes National Seashore. Mr. Cole had no authority to accept or reject such deed on behalf of defendant. The deed was not recorded. Mr. Cole's purpose in taking possession of the deed was to frustrate construction of the proposed county road by the assessment district.

48. On September 28, 1962, Lawrence C. Merriam, Regional Director, Western Region National Park Service, sent the following telegram to Conrad L. Wirth, Director, National Park Service, Washington, D.C.:

Doctor Heims owner of sizable Point Reyes ranch within boundaries of authorized seashore, and who expects eventually to sell his property to Government when funds available, desires immediately to donate thin strip of property along ranch boundary to Government by quitclaim deed subject to reversion in event entire ranch not purchased for seashore. Heims property abuts extensive Murphy acreage on which Murphy and other owners plan subdivision developments as soon as access road can be obtained via Heims property. Heims has consistently refused to permit improvement and use of roadway for this purpose, so majority of property owners [\*433] have combined to form assessment district which has legal power of condemnation. Heims thus powerless to prevent new road and believes Murphy group may take roadway very soon. Please consult Solicitor at earliest opportunity to ascertain whether Government can and will accept donation of strip by quitclaim deed subject to reversion clause mentioned so Heims can be advised as to whether his proposed gift will be acceptable. Field solicitor has consulted lands attorneys of United States Attorneys Office here but they suggest clearance by Solicitor and Justice Department. County road across Heims property will accelerate expensive development and thus raise United States acquisition costs materially.

No action was taken by Director Wirth regarding such deed. He was the person vested with authority to accept or reject it. By telegram dated November 25, 1962, Dr. Heims requested the Park Service to return the deed to him.

49. On October 1, 1962, Senator Thomas H. Kuchel wrote Conrad L. Wirth, Director of the National Park Service, enclosing a copy of Edward H. Heims' letter of Sep-

tember 24, 1962, and stated that he was interested in the matter.

50. On October 8, 1962, Donald E. Lee, Acting Assistant Director of the National Park Service, Washington, D.C., advised Senator Kuchel by letter that the National Park Service had written Edward H. Heims about the acquisition of his land.

51. Subsequent to July 31, 1962, the legal firm of Wilson, Harzfeld, Jones & Morton proceeded with the work necessary to commence construction of the new county road. Oglesby, Jacobs & Wickham, engineer for the district, surveyed the first portion of the right-of-way. Wilson, Harzfeld, Jones & Morton then prepared a resolution for the Board of Supervisors preparatory to filing eminent domain proceedings on the section of the road through the Heims ranch.

52. On November 9, 1962, James E. Cole called Ernest A. Wilson, the attorney for the assessment district, at his office. Mr. Cole advised Mr. Wilson that the National Park Service had in its possession a quitclaim deed from the Heimses to the United States and that he intended to stop the use of eminent domain proceedings by the assessment district to obtain a [\*434] right-of-way over the Heims ranch by recording the deed if necessary.

53. On November 11, 1962, Bonelli had a conference with James E. Cole in the National Park Service Office, 180 New Montgomery, San Francisco, California. Mr. Cole took a deed out of his desk and showed it to Mr. Bonelli. The deed was from Edward H. Heims to the United States of a 50-foot strip of the Heims ranch extending along its entire border with Sir Frances Drake Highway. Mr. Cole threatened to record the deed if the Point Reyes property owners did anything further to construct the Balboa Avenue and Extension Road Improvement Project. Mr. Cole told Mr. Bonelli that the assessment district could not condemn federal land and that plaintiff was wasting its time and money on the project.

When asked whether James E. Cole would have the authority to show Mr. Bonelli a deed and threaten to record it unless the landowners abandoned the Balboa Avenue Assessment District Project, Lawrence C. Merriam testified that Mr. Cole had quite wide authority "to carry on that same type of thing" as the representative of the National Park Service at Point Reyes.

Conrad L. Wirth, Director of the National Park Service at that time, testified that in his opinion it was within the authority of James E. Cole to have in his possession the quitclaim deed from Edward H. Heims to the United States and that it would be within Mr. Cole's authority to show that deed to a third party.

54. On or about November 15, 1962, Bonelli and Ernest A. Wilson held a conference to decide whether to

proceed with eminent domain proceedings on the Heims ranch for the assessment district project. Mr. Wilson and Mr. Bonelli agreed that the assessment district could not condemn federal land and that the effect would be the same whether the National Park Service recorded the Heims deed before or after eminent domain proceedings were commenced by the district. They also agreed that the legal fees and engineers' fees were expensive, and it would have been a waste of money to continue the project.

55. On July 23, 1963, defendant acquired the entire Heims ranch. The Heims ranch was the first tract of land purchased [\*435] by defendant out of the first funds appropriated by Congress for land acquisition at the Point Reyes National Seashore.

The Heims ranch consists of 1,135 acres and was purchased by defendant for \$850,000.

56. The acquisition of the Heims ranch was within the discretion of Donald E. Lee who, from 1956 through 1966, was Chief of the Division of Land and Water Rights, National Park Service. As Chief of that division, Mr. Lee was authorized, among other things, to acquire properties for inclusion in the national park system.

57. During June 1963, Mrs. Heims was told by Mr. Cole that she would have to talk to Mr. Lee about purchase by the Park Service of the Heims ranch. She telephoned Mr. Lee at Washington, D.C., explained that she and her husband were elderly people, that her husband was in ill health, that they would be willing to give the Park Service a favorable price for a prompt purchase of their land, and that otherwise they might have to sell to people who had indicated an interest in developing the property. Mrs. Heims mentioned the price to Mr. Lee, who felt that such price was slightly high, and he made a counteroffer. About a day later, Mrs. Heims telephoned Mr. Lee again and accepted his price.

58. Shortly after the agreement on price was reached by telephone, Mr. Lee flew to San Francisco to be personally present when the 60-day Heims option was signed in the office of the Regional Director of the National Park Service in San Francisco. The option was signed on July 3, 1963, and the deed recorded on July 25, 1963. Thomas E. Kornelis, now Chief of Land Office of Land and Water Rights of the National Park Service, came from Washington, D.C., to assume the position as Realty Officer at the Point Reyes National Seashore on July 1, 1963. Mr. Kornelis testified that no agreement had been made with the Heimses prior to June 4, 1963, and that he "quickly" prepared the Heims option after assuming his duties.

59. At the time of the telephone conversations between Mrs. Heims and Mr. Lee, Congress had made the initial authorization of \$14,000,000 for acquisition of land within the Point Reyes National Seashore. The initial authorization was inadequate to purchase all lands in the seashore area.

[\*436] As of March 30, 1961, the Director of the National Park Service advised Congress that the cost of the 53,000 acres would amount to \$20,000,000 and suggested that even that amount might be insufficient.

60. Thereafter, as additional funds became available, the National Park Service acquired further tracts of land within the Point Reyes National Seashore area. These tracts consisted of the lands, among others, of the Bear Valley Ranch, the Tom Gallagher Ranch, the Ed Gallagher Ranch, the Point Reyes Land & Development Company, and the Church of the Golden Rule. Altogether, the National Park Service has acquired 64 or 65 tracts by direct purchase, by condemnation or by exchange for public lands in other states which may be classified by the Bureau of Land Management and the Secretary of the Interior as being suitable for exchange pursuant to the Act of September 13, 1962, 16 U.S.C. §459c-2, and the Taylor Grazing Act, 43 U.S.C. §315.

61. After the Point Reyes National Seashore was authorized to be established, Mr. Donald E. Lee was directly responsible until 1966 for the acquisition of properties. Mr. Thomas E. Kornelis, Chief of the Land Office of Land and Water Rights, Western Region, National Park Service, San Francisco, was authorized sometime after July 1, 1963, to acquire properties in that area with a \$200,000 limit on price.

62. The procedure for acquisition of property in the Point Reyes National Seashore is governed by regulations promulgated by the National Park Service, some of which are published in the Federal Register.

63. In determining which properties to acquire first, the National Park Service gives number one priority to land that it believes is necessary for park development so that construction of improvements and rights-of-way will not be delayed. The next priority is land needed for immediate public use. Thereafter, the next two orders of priority are accorded to individuals who own land in the area and who are in financial straits and have to sell out and to owners who offer their land and desire to sell out.

64. The 33-page Masterplan for Preservation and Use of the Point Reyes National Seashore, prepared by the National Park Service in June of 1963, just prior to the Heims [\*437] ranch acquisition, did not show any public use or development for the Heims ranch. Drawing No. 3019 did not include the Heims ranch as a "Current Need Land Acquisition Requirement." Drawing No. 3021 designated all of the areas within the Point Reyes National Seashore which will have primary and secondary public uses. The Heims ranch was not designated for any development or public use.

65. In March of 1963, Conrad Wirth, Director of the National Park Service, testified before the Subcommittee of Deficiencies, Committee on Appropriations of the House of

Representatives, requesting a supplemental appropriation of \$5,000,000 to start land acquisition at Point Reyes National Seashore. he testified that funds were needed immediately, primarily to buy the lands being subdivided or which were threatened by subdivision. His testimony indicated that over nine subdivisions were involved. Also included were funds for "key properties and significant properties available for purchase". The \$5,000,000 supplemental appropriation was made in May 1963.

66. On July 2, 1963, Donald E. Lee supplied George P. Herzog with a National Park Service list of properties intended to be acquired by defendant with the \$5,000,000 supplemental appropriation. This was the list used by Conrad Wirth in his testimony before the Subcommittee on Deficiencies in March 1963. George P. Herzog incorporated this list in a letter on United States Senate Interior and Insular Affairs Committee stationery on July 2, 1963. Donald E. Lee confirmed that the list was supplied by him, and used in the Herzog letter, and was accurate. The Heims ranch was the only large tract listed as a property of "key significance."

67. Donald E. Lee and his staff prepared the testimony for Conrad Wirth to give before the Subcommittee on Deficiencies. This material was prepared before the hearing date in March 1963. It is concluded that National Park Service had determined to purchase the Heims ranch out of the requested supplemental appropriation as a property of key significance prior to March 1963.

68. The Heims ranch had not been subdivided and no subdivision was contemplated. As ardent conservationists, the Heimses had repeatedly assured defendant of their complete [\*438] cooperation with defendant's plans for a Point Reyes National Seashore.

69. From all of the evidence of record in this case, it is concluded that the primary purpose of the National Park Service in the early acquisition of the Heims ranch was to prevent the condemnation by the assessment district of a right-of-way access to plaintiff's land, necessary for the planned subdivision and sale by lots of such land.

70. Subsequent to July 25, 1963, defendant acquired the Drakes Beach Estates, Inc., David S. Adams, Page Land & Cattle Co., and Seashore Lands, Ltd. properties. Combined with the Heims ranch, the total acreage so acquired is approximately 3,935 acres, all of which were within the proposed assessment district. Plaintiff's land is now surrounded on three sides by federal land. The one remaining side on which private ownership still exists is the steep easterly face of the Inverness Ridge, down which a subdivision access road constructed to Marin County requirements cannot be built.

71. Prior to 1963, plaintiff took steps to obtain domestic water service from a public utility to supply subdivisions of its land. The Inverness Water Company, a public utility,

owns and operates the water system at the town of Inverness, approximately 1/2 mile from plaintiff's land. The Inverness water system is the nearest public utility to plaintiff's land. The Inverness Water Company was willing to incorporate plaintiff's land into its tariff area and to supply domestic water to it.

72. On March 8, 1962, the Inverness Water Company filed Application No. 44251 with the California Public Utilities Commission in which it requested that a certificate of convenience and necessity be granted authorizing it to provide public utility water service to plaintiff's land. On May 1, 1962, a hearing was held on such application by the California Public Utilities Commission. James E. Cole, Regional Chief, National Park Service Planning; James M. Siler, Regional Chief of Lands, National Park Service; and William J. Costello, Field Solicitor of the United States Department of the Interior, appeared at the hearing for the National Park Service as Protestant. Mr. Cole testified under oath [\*439] that: (1) he was testifying with the approval of the Director of the National Park Service; (2) that the subdivisions involved in Application No. 44251 were wholly within the boundaries of the proposed Point Reyes National Seashore; (3) that the subdivisions involved in Application No. 44251 were within a critical area for seashore public use; (4) that he believed the pending Point Reyes National Seashore legislation before Congress had alerted the public to such an extent that it was extremely doubtful that development of the subdivisions would materialize; (5) that such publicity had been given to the Seashore program that cautious buyers were alerted to the fact that the prospect of continuing ownership within the Seashore was poor and that few homesites could be sold until the National Seashore legislation was decided one way or the other; and (6) that the National Park Service did not believe public convenience and necessity would be served by granting the application and its position should be considered by the Commission.

73. Douglas J. Maloney appeared as a Protestant for the Inverness Public Utility District. Resolution W-1 of the district was read into the record. One of the bases of its protest was that the area might become a national park.

74. At the hearing before the Public Utilities Commission on May 1, 1962, James E. Cole advanced as a reason for denial of the water service application that plaintiff had submitted applications to exchange lands with defendant. Field Solicitor Costello then introduced copies of the two exchange applications mentioned in finding 21. Because of this conduct, plaintiff withdrew both of the land exchange applications on May 2, 1962.

75. On September 4, 1962, Decision No. 62409 was issued by the California Public Utilities Commission denying the Inverness Water Company a certificate of convenience and necessity to supply domestic water service to plaintiff's land.

Upon the enactment of the Point Reyes National Seashore bill on September 13, 1962, the Inverness Water Company was unwilling to consider serving water to any additional land, including plaintiff's land.

[\*440] 76. Conrad Wirth, Director of the National Park Service, testified in this case that even before the authorizing legislation was enacted it would be within the general policy of the National Park Service to attempt to prevent the subdivision or sale of land within the proposed Point Reyes National Seashore by informing the public about the legislation, even though the National Park Service had no official way of stopping such activities.

77. Lawrence C. Merriam, Regional Director, testified that the National Park Service was anxious to stop the development of property or subdivisions on the Point Reyes Peninsula that would impair the physical condition of the land or increase the acquisition cost to the United States and that anything within reason to stop subdivision and sale of land was desirable from the standpoint of the National Seashore.

78. The usual methods of financing subdivision improvements in California was through banks or savings and loan associations, or by formation of special assessment districts and sale of bonds by the district.

California assessment district laws provide for financing by issuance of bonds of subdivision improvements, such as streets, water systems, sewer systems and electric power lines. The method of financing by formation of assessment districts and sale of bonds was employed on two subdivisions of Drakes Beach Estates, Inc., mentioned in finding 7, and the bonds issued by the pertinent assessment districts were purchased in 1960 and 1961 by Mr. L. H. Easterling for a firm, the municipal bond department of which was managed by him. Mr. Easterling became a stockholder in plaintiff corporation, as related in finding 9.

The uncontradicted expert testimony in this case is that upon the enactment of the Point Reyes National Seashore bill on September 13, 1962, the assessment district method of financing was no longer available, because such district bonds are unsaleable when they are secured by property subject to condemnation.

Upon the enactment of the Point Reyes National Seashore bill on September 13, 1962, banks and savings and loan associations adopted the policy of refusing to issue loans [\*441] for subdivision improvements or home construction on lands located within the Point Reyes National Seashore.

79. After the enactment of the Point Reyes National Seashore legislation in September 1962, the San Rafael Independent Journal, the only county-wide newspaper in Marin County, refused to take any more ads for lots for sale within the proposed Point Reyes National Seashore.

80. Since the first tract of land within the proposed boundaries of the Point Reyes National Seashore was purchased by defendant on July 23, 1963, the sale of real property to private individuals has almost completely ceased. In the period from July 23, 1963, to August 1, 1967, there were only 93 deeds recorded in the office of the Marin County Recorder representing transfers of real property within the National Seashore. Of these 93 transactions, 67 recordings represented the transfer of real property to the United States according to the testimony of Thomas Kornelis. Other recordings represented the sale of real property to purchasers who were acquiring it for the express purpose of negotiating land exchanges with defendant.

81. Millard E. Ottinger, the owner of a large tract of land within the boundaries of the Point Reyes National Seashore, was able to continue selling small parcels of land within the Point Reyes National Seashore after the Point Reyes legislation was enacted. Dr. Ottinger was negotiating with the National Park Service in an attempt to have the National Seashore boundaries changed and part of his land left outside of the National Seashore. Dr. Ottinger and National Park Service employees were both advising buyers that the parcels they were acquiring would probably be outside of the eventual boundaries.

82. Since the first tract of land was purchased by defendant on July 23, 1963, subdivision building and commercial activity within the boundaries of the 53,000-acre National Seashore has virtually ceased while similar activity on the perimeter but outside of the boundaries has continued at a normal pace with the following types of applications being filed regularly with the Marin County Planning Commission: applications for use permits, applications for lot splits, applications [\*442] for approval of tentative subdivision maps, and applications for building permits.

83. Within a 5-mile radius of the exterior boundary of Point Reyes National Seashore, during the 4-year period after July 23, 1963, there have been approximately 2,500 deeds recorded representing transfers of real property.

84. Land within the Point Reyes National Seashore is virtually unsaleable today, and plaintiff is unable to sell its land although the land has been listed with two real estate brokers in Western Marin County. Plaintiff has not had any offers to purchase any of its land as a result of these listings.

85. In the 4 1/2 years since enactment of the Point Reyes National Seashore bill on September 13, 1962, defendant has acquired only 37 percent of the 53,000 acres within the National Seashore boundaries. Some of the land has been purchased by contract, some has been condemned, and some has been acquired by exchange for federal land. San Francisco Bay Area newspapers carry news articles each time a tract of land is acquired by defendant. This gradual acquisition of land, with attendant publicity when

each tract is acquired, keeps the public advised that defendant intends to acquire the land within the Point Reyes National Seashore.

86. After the Point Reyes National Seashore bill was passed on September 13, 1962, plaintiff asked defendant to buy its land. In December 1962, James E. Cole of the National Park Service advised Bonelli that defendant did intend to acquire plaintiff's land. There were communications between Bonelli and defendant, both orally and in writing, regarding the appraisal of plaintiff's land. Benjamin P. Bonelli was advised that the land was being appraised.

87. In April 1963, Bonelli and another attorney from San Rafael, Roderick P. Martinelli, had a conference at the Point Reyes National Seashore headquarters with James E. Cole, Project Manager, and Gordon Patterson, one of the staff, and were shown a list of lands defendant intended to acquire with the first \$7 million appropriated by Congress. Plaintiff was designated as receiving \$800,000 as a partial payment for its 468 acres. Mr. Cole stated that many land [\*443] owners were going to be asked to take a partial payment out of the first appropriation.

88. In the fall of 1963, the National Park Service advised Bonelli that it did not intend to purchase plaintiff's lands at that time and did not know when it would do so.

89. In 1964 and 1965, plaintiff again attempted to exchange its land for federal land elsewhere. Bonelli made numerous trips to Phoenix, Arizona; Palm Springs, California; Las Vegas, Nevada; and Eureka, California, examining federal land. Plaintiff attempted to exchange its land for federal land near Phoenix, Arizona, and also attempted to negotiate an exchange involving federal land near Eureka, California. Defendant refused to complete an exchange involving any of the lands selected by plaintiff, even though a list of lands selected by Benjamin P. Bonelli was designated as "high priority" for exchange by the Bureau of Land Management. The explanation given Bonelli was that the United States Department of the Interior in Washington, D.C., refused to go ahead with the exchange.

Over the 2-year period, Bonelli, as attorney for plaintiff, expanded approximately \$40,000 in legal time working

on these proposed land exchanges, and approximately \$10,000 in cash expenses.

During this same period of time, defendant did complete exchanges of federal land for private land involving other landowners within the Point Reyes National Seashore.

It was the intent of Congress that a portion of the land within the Point Reyes National Seashore would be acquired through federal land exchanges, and the authorization of \$14 million was based on that assumption.

90. On March 23, 1966, plaintiff asked defendant to contract to acquire its land. On May 6, 1966, defendant replied, refusing to contract to purchase plaintiff's land, giving three reasons: (1) All the funds available and allowed by law had been expended or obligated. (2) The appraisal of plaintiff's land was outdated, and it would be a waste of funds to spend money for an appraisal when there was no money to consummate the transaction. (3) If funds should become available, they probably would be insufficient to purchase the higher priority land and plaintiff's land.

[\*444] 91. In fact, defendant did execute an option-contract to acquire land within the Point Reyes National Seashore other than plaintiff's land during 1966. On October 15, 1966, *16 U.S.C. 459c-7* was amended, raising the authorization to \$19,135,000. The option-contract executed in 1966 was thereafter exercised by defendant and the land acquired. Defendant is currently offering option-contracts to other landowners within the Point Reyes National Seashore, including plaintiff's neighbors.

#### CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is entitled to recover, and judgment is entered to that effect. The amount of recovery will be determined pursuant to the court's opinion and to Rule 131(c) (2). The terms of the judgment shall be in accord with the court's opinion also.