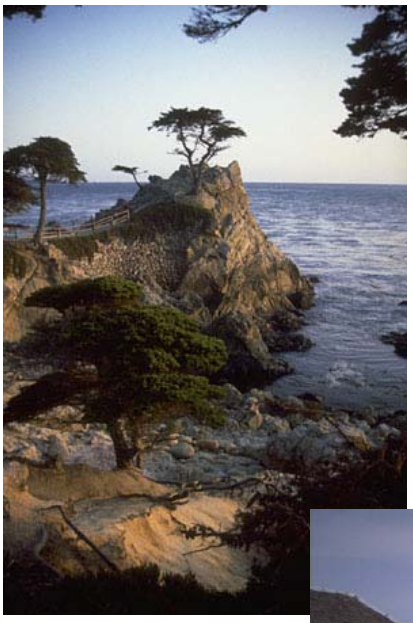

Waterfront Titles in The State of Washington

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This material also appears as Chapter 13, "Waterfront Titles" of the
Washington State Bar Association Real Property Deskbook.

This article is based upon material compiled by Vern L. Arnold and first published by Chicago Title Insurance Company in 1981, later revised in 1985. Additional revisions have been made over the years. The author has used much of the original text and wishes to acknowledge Mr. Arnold's contribution and research. The author also wishes to especially thank Steven B. Ivey, PLS, Aquatic Land Surveyor, State of Washington Department of Natural Resources, for his suggestions. The material expresses the author's opinion. Nothing contained herein should be construed as the opinion of Chicago Title Insurance Company or any entity other than the author.

WATERFRONT TITLES IN THE STATE OF WASHINGTON

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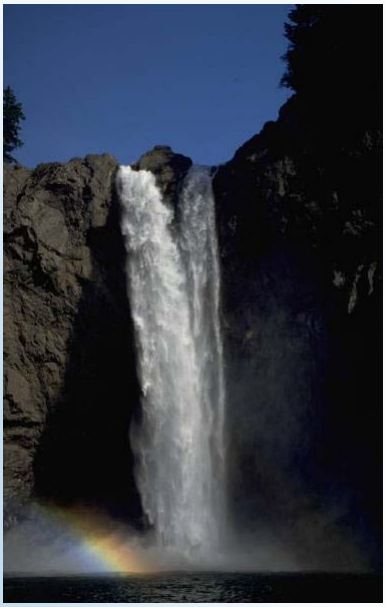


Waterfront Titles in
The State of Washington

WATERFRONT TITLES IN THE STATE OF WASHINGTON

By George N. Peters Jr.

A brief overview of the principles affecting the ownership of waterfront property as they relate to title insurance.

NOTE: Entries in ***bold*** and ***italics*** are included in the list of definitions at the end of the material.

Those of us living in the Puget Sound area have a tendency to take our waterfront for granted. Actually, we should recognize that it is a most precious, irreplaceable asset. Water itself is not owned by individuals. It is a natural resource owned and managed by the State of Washington. This article (1) discusses the nature of title to ***submerged lands*** (that is land that is under water, whether permanently or only part of the time) and the boundaries between that land and the abutting ***uplands*** and (2) provides a brief overview of the principles affecting the ownership of waterfront property as they relate to title insurance.

There are four categories of submerged lands in the State of Washington. The first two are ***tidelands*** and ***shorelands*** which are the beds of ***navigable*** waters. Title to these submerged lands were vested in the State on November 11, 1889, the date Washington was admitted to the Union.[1] Some of these were then conveyed by the State to private owners. Such ***tidelands*** or ***shorelands*** involve a separate chain of title from that of adjoining uplands. Even when they are in common ownership with the abutting uplands they must be specifically included in the legal description of the land.

The third category, submerged lands that are beyond the outer limits of ***tidelands*** and ***shorelands***, cannot be in private fee ownership, although portions, including ***harbor areas*** and ***oyster lands***, can be leased from the State.

The fourth type of submerged land is under the bed of ***non-navigable*** bodies of water such as small lakes and streams. The title to this land was not owned by the State, and is not separate from the title to the abutting upland property.

A legal description may or may not specifically refer to a body of water. Even when it does it is sometimes ambiguous. Water boundaries as a rule are not susceptible to specific location or survey definition. Caution should be exercised whenever a legal description refers to a surveyed course and distance along a water line as being the boundary between uplands and submerged lands or the outer limits of upland property.

GOVERNMENT SURVEY

For an understanding of the nature of waterfront titles it is helpful to start with a review of some of the features of the U. S. Rectangular System of Survey. This is the system devised by Congress for subdividing land into Sections, Townships and Ranges in relation to *base lines* and *principal meridians* (the Willamette Meridian, usually referred to in a legal description merely as "W.M.," is the meridian running north-to-south through Washington State).

Federal surveyors were required to identify important bodies of water on the surveys. This was done

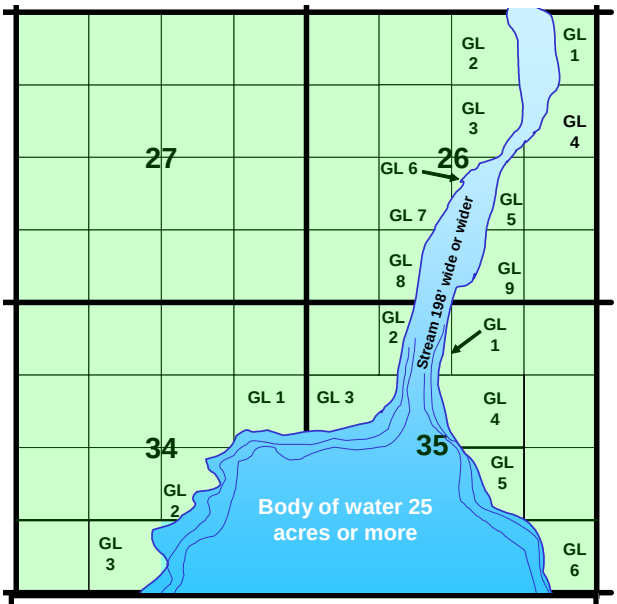


Diagram No. 1
Showing Government Lots in Sections 26, 34 and 35 created by the presence of a large body of water and a wide stream.

by laying out ***meander lines***. Meander lines were intended to approximate the shoreline (partly to be able to compute the area for valuation purposes) not only for all ***navigable*** bodies of water but also for smaller lakes (25 acres or larger) and streams (198 feet or more in width) even if not navigable. A parcel number, called a ***government lot***, was then assigned to each of the fractional subdivisions of a section created by the body of water.[2] See DIAGRAM NO. 1 for a typical group of sections where bodies of water required the creation of government lots.

GOVERNMENT LOT BOUNDARIES

The location of the outer boundary of a government lot varies according to the date on which the ***patent*** (the conveyance document from the United States for Federally owned lands) issued by the Federal Government was earned. Prior to statehood the Federal Government claimed title to the uplands and held title to the beds of navigable bodies of water in trust for the future State. It had the power to define the outer limits of the government lot. The Constitution of the State of Washington disclaimed title to submerged lands that were patented prior to statehood.[3]

PATENTS BEFORE STATEHOOD

A ***government lot*** which borders on Puget Sound or on a ***navigable*** lake and which was ***patented*** prior to statehood extended to **either** the water line **or** to the ***meander line***, **whichever was further out**.[4] This rule does **not** apply to properties on the Pacific Ocean nor to properties bounded by ***navigable*** rivers.[5]

Thus it is possible for an upland owner (who did not receive any separate conveyance of ***tidelands*** or ***shorelands*** from the State of Washington) to own some portion of the abutting submerged land **if** the patent to a government lot was earned prior to statehood **and also** if the meander line was further out than the water line. As can be observed from DIAGRAM NO. 2, it is possible for properties originating from ***patents*** earned prior to statehood to run well out into the water.

Note that the meander line is never the outer boundary of a government lot if it is located on the ***upland*** portion of the government lot. In fact, our Supreme Court has held that even where a legal description uses a meander line in a metes and bounds type of description and the meander line is located in the upland portion of the government

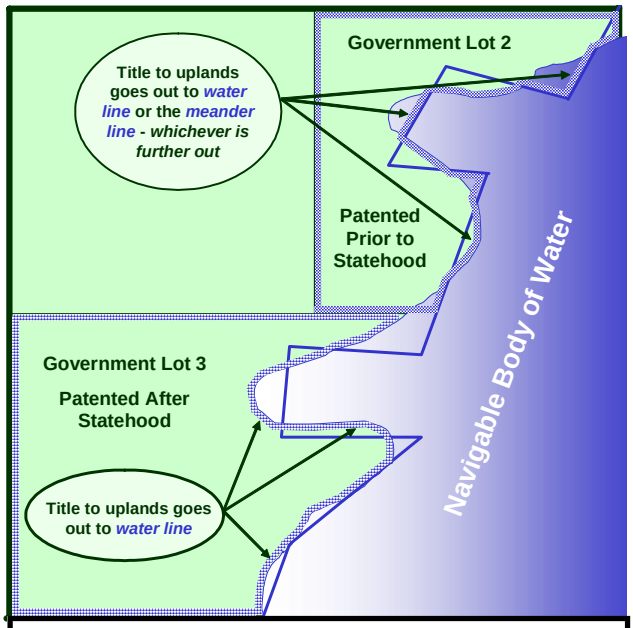


Diagram No. 2
Enlarged detail of Government Lots 2 and 3, Section 34, from Diagram 1 showing differences in the outer limits of Government Lots patented before and those patented after statehood.

lot, it will be construed against the grantor. The description in such cases is therefore interpreted to run to the water line, unless there is a very clear intent to the contrary.[6]

PATENTS AFTER STATEHOOD

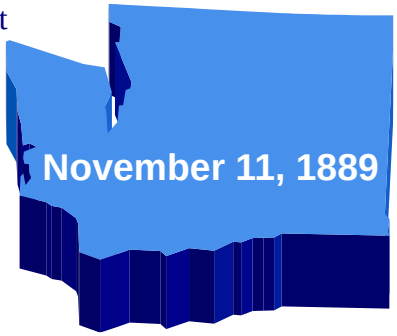
Government lots abutting ***navigable*** waters ***patented*** after statehood run only to the line of ***ordinary high tide*** (where abutting on tidelands) or to the line of ***ordinary high water*** (where abutting on shorelands). The reason lies in the fact that under the Federal Enabling Act and our State Constitution, the beds and shores of all navigable bodies of water within the State were granted to the State in trust (this trust is commonly referred to as the ***Public Trust Doctrine***) for navigation and commerce. Therefore, after the date of statehood the Federal Government no longer held in trust those portions of the beds of navigable water within the State which fell below either the line of ***ordinary high water*** or the line of ***ordinary high tide***. Consequently, federal patents to government lots earned and issued after that date carry title only to the water's edge.[7] See DIAGRAM NO. 2.

Determining the date of the federal patent relative to the date of statehood becomes significant when ***upland*** property and the adjoining tidelands or shorelands are not in common ownership. Also the key date is the date the patent was **earned** relative to the date of statehood not the date the patent was issued or recorded, either of which might have been much later than the date it was earned.

CONVEYANCE BY THE STATE

After statehood the State was free to sell ***tidelands*** and ***shorelands***. Private ownership of either tidelands or shorelands is limited to those parcels which have been sold by the State of Washington prior to 1971, after which the Legislature prohibited all further sales of such property except to public entities.

Private parties can now secure leases for up to 55 years, and it is still possible to acquire title to tidelands or shorelands by exchange for other tidelands or shorelands.[8] This 1971 statute also permits the sale of formerly ***submerged lands*** that, based on permanent shifting of the water, now have the characteristics of ***uplands***. This Act also prohibited the sale of shorelands; however, the State Legislature in 1979 removed the prohibition as to the sale of shorelands on ***navigable*** lakes, which "would not be contrary to the public interest."[9] Generally, tidelands or shorelands have been conveyed by the State to the owner of the abutting uplands, but could have been conveyed to someone else.



State-owned submerged lands, including ***harbor areas***, are leased from the State's Department of Natural Resources;[10] however, if the land is within a port district[11] the Department and the port may enter into a management agreement giving the port certain authority and jurisdiction over the property.[12] Rents will be paid to the municipality if the lands lie within a town.[13] Preference is given to the abutting upland owner when leasing ***first class tidelands*** or ***shorelands*** and ***second class shorelands*** (but not ***second class tidelands***).[14]

While ***submerged lands*** can be leased from the State, under certain circumstances an abutting residential upland owner may install and maintain, without charge, a dock and moorage buoy for private recreational purposes on State-owned submerged lands.[15]

Owners of shorelands or tidelands own such land in fee. However, their interest, and that of lessees of State owned submerged lands, is subject to the limitations embodied in the ***Public Trust Doctrine***, including the provisions of the ***Shoreline Management Act***, and to statutory reservations appearing in the deeds from the State.

RESERVATIONS

Prior to 1907 the State made no reservations in its deeds. Beginning June 11, 1907, the deeds began reserving oil, gas, coal and minerals.[16] After June 7, 1911, the State deeds were also required to reserve rights-of-way for private railroads, skid

roads, flumes, canals, water courses and other easements.[17] To the extent ***submerged lands*** may still be conveyed, the deed from the State will contain reservations.[18]

OYSTER LANDS

By contrast with the fee title acquired from the State for ***tidelands*** or ***shorelands***, one who acquired a deed to ***oyster lands*** under any of the Acts regulating the sale of such lands[19] acquired only a qualified fee. Title in some cases is subject to reversion to the State in the event that the lands cease to be used for the cultivation of oysters or other shellfish.

For many years tidelands could be leased for the cultivation of oysters, but only since July 1, 1983 it has been possible to lease the beds of all ***navigable*** tidal waters for the cultivation of oysters or other shellfish. As of 1993, the leases cannot exceed 30 years and the lands must lie below ***extreme low tide***.[20] Leases of ***first*** and ***second class tidelands*** must be not less than five years or more than ten years.[21] First and second class tidelands set aside as State oyster reserves can also be leased.[22]

Title insurance is usually available for such lands, subject to exception for these statutory provisions.

HARBOR AREAS

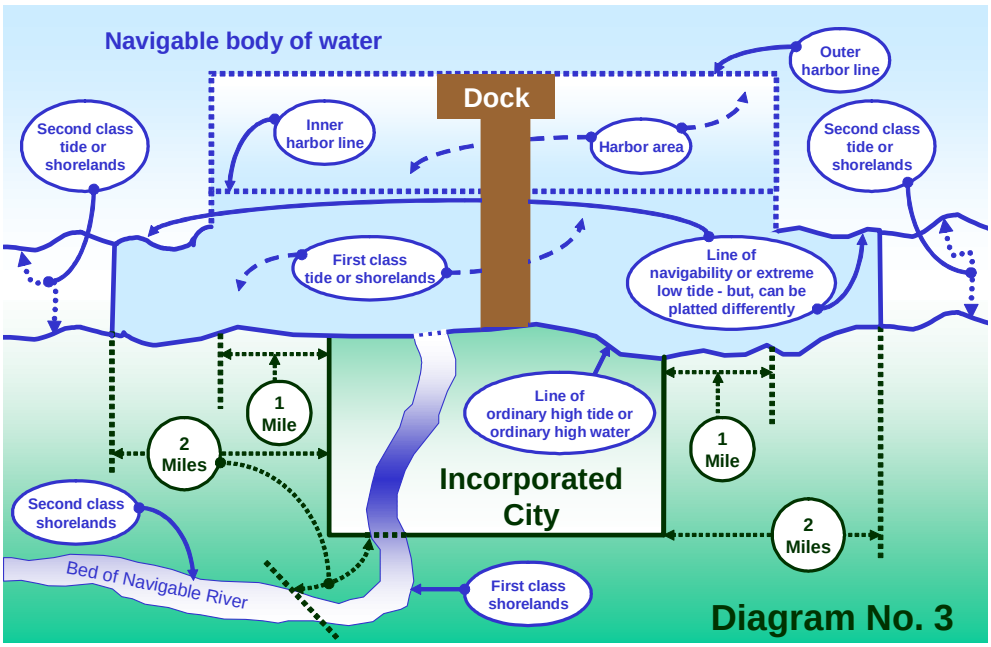
Harbor areas were established by the Harbor Line Commission pursuant to the State's Constitution.[23] This authority is now vested in the State of Washington Board of Natural Resources.[24]

The State was required to establish ***inner harbor lines*** and ***outer harbor lines*** as far as the first mile beyond the city limits.[25] The area between the inner harbor line (set beyond the line of ***low tide***) and the outer harbor line is known as the ***harbor area***. See DIAGRAM NO. 3. The harbor area cannot be given or sold, but may be leased. Unlike tidelands or shorelands which can be leased for up to 55 years, harbor area leases are limited to 30 years.[26] Army Corps of Engineer maps refer to the Federal ***pierhead line*** and the ***bulkhead line*** as the outer and inner harbor lines, but the State and Federal lines have two separate and distinct purposes.

TIDELANDS

The lands abutting the Pacific Ocean, Puget Sound and those portions of rivers feeding into the Ocean or Sound which are affected by the ebb and flow of tides have ***tidelands***. Tidelands extend out into the water varying distances depending upon (1) their classification as either ***first class tidelands*** or ***second class tidelands*** (depending on their location) and (2) the date on which they were sold by the State.

The boundary between ***uplands*** and all tidelands, whether first class or second class, is the line of ***ordinary high tide***. The line of ordinary high tide has been defined in a federal case as being "…the average elevation of all high tides as observed at a location through a complete cycle of tides of 18.6 years."[27] See DIAGRAM NO. 4.



First Class Tidelands

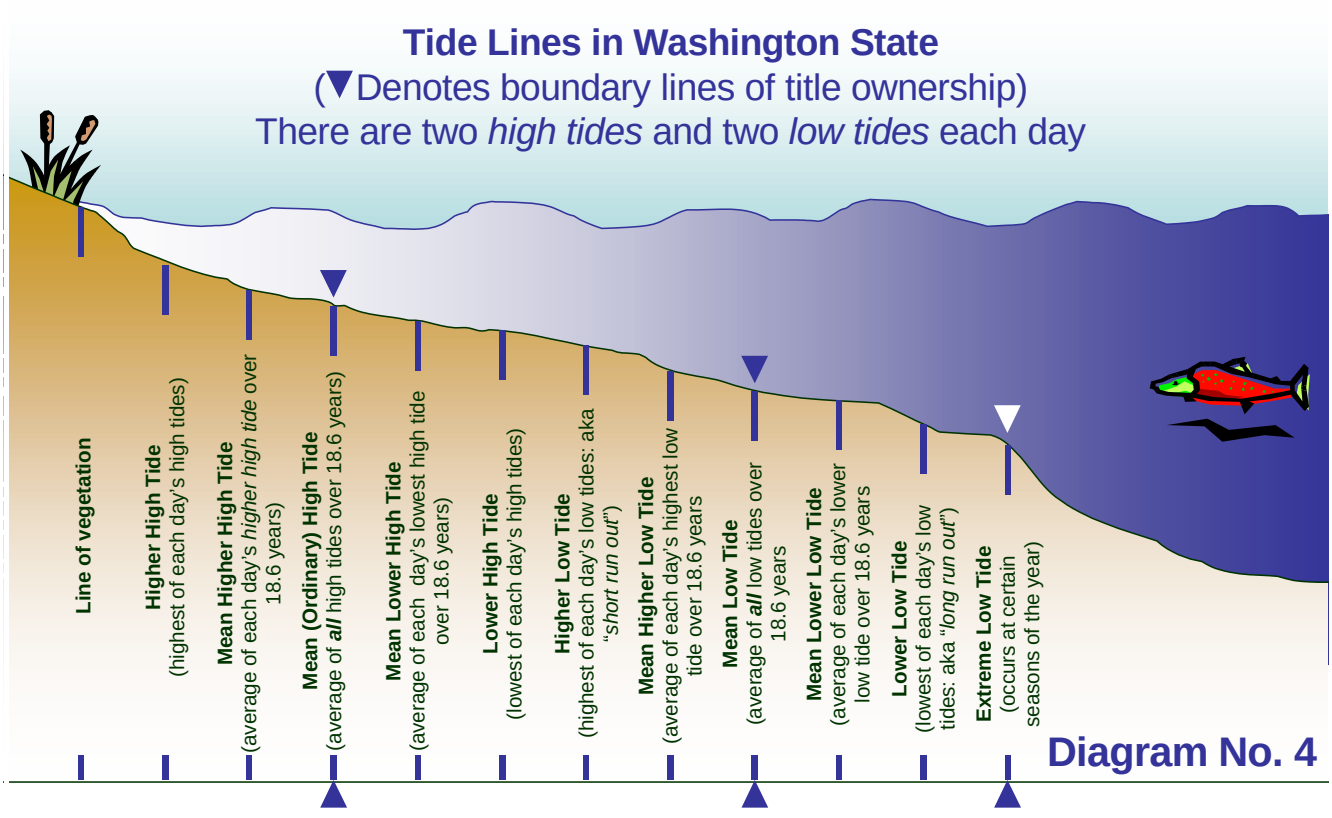
First class tidelands are those located within the limits of an incorporated city and within two miles on either side of the city limits.[28] The ***inner harbor line*** becomes the outer limit of these tidelands within the boundaries of the city and to the first mile beyond the city limits. The outer limit of those ***first class tidelands*** between the first and second mile beyond the city limits is ***extreme low tide*** (see DIAGRAM NO. 3) but can be fixed differently when the tidelands are platted. The State was required to plat all first class tidelands prior to sale into private ownership.

The inner harbor line can be moved in or out. If moved out it would create new first class tidelands owned by the State, available for lease up to 55 years. However, moving the inner harbor line closer to the ***uplands***, while creating in some cases new ***harbor area***, would not affect title to or the boundaries of any first class tidelands already conveyed by the State. Such a new inner harbor line would "jog" around private tidelands.

Second Class Tidelands

Second class tidelands are simply all tidelands other than those defined as first class,[29] as shown in DIAGRAM NO. 3.

The outer limits of second class tidelands is governed by the language of the statute which was in effect on the date on which the State made the conveyance of the tidelands. Until March 8, 1911 the legislature defined second class tidelands as extending only to ***mean low tide***.[30] Conveyance of second class tidelands after that date extended all the way out to ***extreme low tide***. See DIAGRAM NO. 4. Waterfront owners owning only to mean low tide were permitted to apply for purchase of the additional depth for their tidelands and a great many did so.



SHORELANDS

Shorelands are the ***submerged lands*** bordering the shores of ***navigable*** lakes and streams which are not subject to tidal flow.

The classification of shorelands as either first class or second class is similar to that of tidelands, with ***harbor areas*** in front of cities. See DIAGRAM NO. 3. However, there being no lines established by the movement of tides, the outer limit of ***second class shorelands*** and of ***first class shorelands*** between the first mile and second mile beyond the city limits is the ***line of navigability***.[31]

The line of navigability is usually defined as being a line along which the water is deep enough for ordinary navigability. It is to be established by the State Department of Natural Resources, but this has not yet been done for many bodies of water. Until such time as it is located for a particular area, the outer limits of those shorelands would be undetermined.

The boundary between uplands and both first and second class shorelands is the line of ***ordinary high water***,[32] although the term "***line of vegetation***" is sometimes incorrectly used.

CLASSIFICATION AT TIME OF SALE

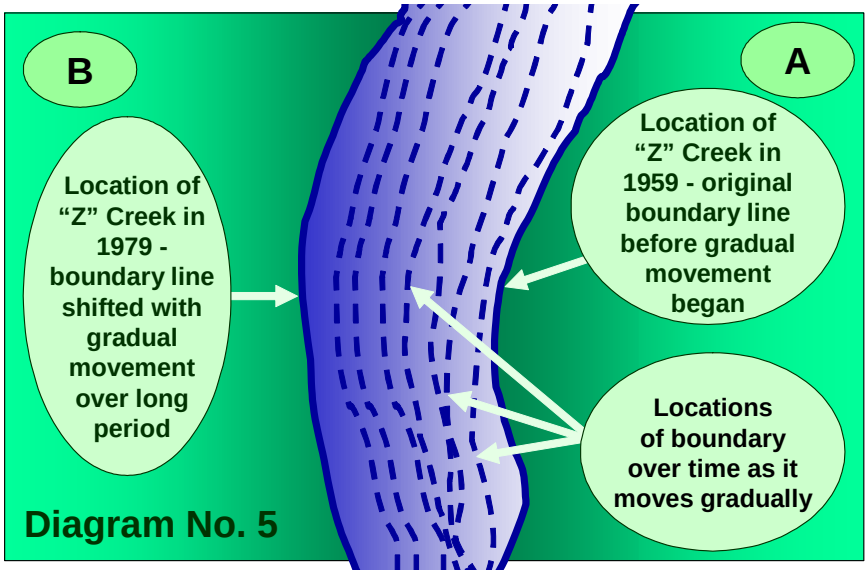
The State of Washington Department of Natural Resources takes the position that ***tidelands*** and ***shorelands*** are classified as of the date of their sale by the State. Consequently, ***submerged lands*** conveyed by a deed of ***second class tidelands*** located just outside the two mile point beyond the city limits would retain that classification even if the city later annexed the property. In some cases such an event would also result in the extension of ***inner harbor lines*** in front of the ***upland*** parcel, which would typically be further out than the line of low tide that marks the outer limit of the tidelands owner. This would create new ***first class tidelands*** (lying between the second class tidelands and the new inner harbor line) which would be owned by the State.

CHANGES IN HIGH WATER LINES

The boundary between ***uplands*** and ***submerged lands*** normally moves if the line of high water or high tide moves gradually and by natural means (***accretion*** or ***reliction***). Sudden (***avulsive***) movement of the water line can create problems, however.

ACCRETION, RELICTION AND EROSION

Where property is bounded by a river or stream, whether navigable or non-navigable, a title insurer would not be able to insure that such a boundary will not *shift its location* nor be able to determine whether it has or has not, in fact, already shifted from some prior location. There are numerous cases holding that if a stream is the boundary between two parcels and shifts gradually over a period of time the boundary between the two parcels shifts with the change in location of the ***thread*** of the stream.[33] See DIAGRAM NO. 5.



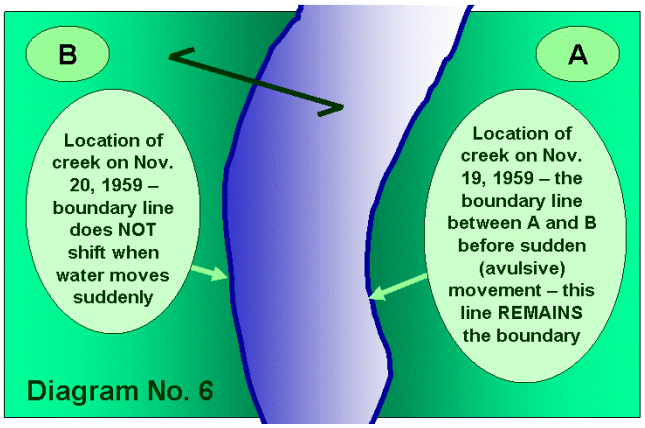
This action might be created by ***accretion*** (where the build-up of soil deposited on one bank, called ***alluvion***, forces the water to move, or shift, its location) or ***reliction*** (where the gradual movement of water exposes formerly ***submerged land***) or ***erosion*** (the gradual eating away of soil by water action).

The same natural processes apply to tidelands on the Ocean, Puget Sound or rivers emptying into them, and to shorelands on a lake. The general rule is that accretion, reliction or erosion shifts the boundary between the ***upland*** parcel and the ***submerged land***. This may mean that the newly added or exposed land becomes part of the upland parcel. However, accretions, including those abutting previously sold submerged lands, are claimed by the State, with provisions for sale under certain circumstances to the abutting private owner.[34]

Thus, title insurers will typically not affirmatively insure the location of the boundary between uplands and submerged lands. Nor will they insure with respect to title to newly exposed land. Even if the newly created or exposed lands are no longer submerged, and thus considered uplands, title to them might be claimed by the State on the theory that since the title of the underlying land was originally vested in the State, accretion or reliction does not divest that title.

AVULSION

In contrast to the gradual processes of ***accretion*** and ***reliction***, if a stream changes or shifts its location suddenly, whether by a natural event (such as an earthquake or landslide) or by some man-made activity (such as the construction of a dam or the re-channeling of a river) the property lines normally do not shift. This type of water action is called ***avulsion*** or inundation. Each owner continues to own to the original location of his or her property boundaries.[35] See DIAGRAM NO. 6.



For example, land inundated after construction of a dam must be conveyed by the owner (either in fee or an easement) or the land would need to be taken by condemnation.

However, a landowner cannot effect such a change in the course of a river or stream and then claim title to land on his or her side of the thread as a result of the change.[36]

Again, a title insurer cannot insure with respect to the boundaries between ***uplands*** and ***submerged lands*** (or formerly submerged lands) nor as to the title to the exposed land, whether the movement was avulsive or gradual.

THE LAKE WASHINGTON CASE

Ownership of ***shorelands*** abutting the waterfront ***upland*** property became extremely important after the level of Lake Washington dropped about 10 feet when the Government Locks, the Ship Canal and the Montlake cut were completed. One possible result was that the permanently exposed (***relicted***) lands were considered uplands and, if so, could be claimed by the abutting upland owner, as an extension of the uplands, or by the State. Alternatively, they could be considered either an extension of the existing shorelands, owned by the upland owner if those had earlier been conveyed by the State, or newly created shorelands owned by the State.

Ultimately, the upland owner whose title included the abutting shorelands prior to the lowering of the lake was held to be a true ***riparian*** owner and, as such, was automatically entitled to the ownership of the new shorelands created by the lowering of water level.[37]

On the other hand, if the upland owner did not also own the abutting shorelands, that owner was limited to the original line of high water, as it existed prior to the lowering of the lake, and the relicted lands were held to be owned by the State of Washington.

THE DUWAMISH CASE

Similar issues arose when the Duwamish River was re-channeled into the Duwamish Waterway (Commercial Waterway No. 1). Many property owners who had access to the river prior to the construction of the new channel were left with no access to ***navigable*** waters. Those owners whose titles did not include the abutting ***tidelands*** or ***shorelands*** were not compensated for this loss.[38]

ISLANDS

Islands, especially those in rivers and sloughs, present special problems. They may be shown on the original Government Survey and described by reference to ***government lots***. Boundaries can be elusive due to constant ***accretion*** and ***reliction*** action. In some cases islands may have actually been created after the government survey. Title insurers will probably presume that title to such islands are vested in the State of Washington (since the bed of the river would be considered ***navigable***), assuming they are even willing to try to describe the land. Resulting land which has the characteristics of uplands may be available for sale by the State after certain survey requirements are met.[39]

NAVIGABILITY

Whether a body of water is ***navigable*** depends on its navigability on November 11, 1889, the date Washington became a State. In other words, the current appearance of a stream or lake (even if it has long since dried up) does not determine its status. If it was navigable at the date of statehood, the bed would be owned by the State.

There is a great deal of misunderstanding as to the definition of the word "***navigable***" and the term warrants further discussion.

Common misconceptions include:

1. If a body of water is meandered, it must be navigable. NOT SO! The presence of ***meander lines*** means only that the particular body of water is a lake of more than 25 acres or a stream of over 198 feet in width. The body of water may or may not be navigable, but the meander lines themselves were laid out solely to comply with the requirements of the U. S. Rectangular Survey Act.
2. If the State of Washington has issued deeds for ***shorelands*** on a particular lake, that lake must be navigable. NOT SO! The Department of Natural Resources has long taken the position that until a Supreme Court determination has been made on a particular body of water, they will assume that it is navigable and, for many years has issued deeds for shorelands on small lakes and rivers.
3. If a stream will float logs, it is navigable. NOT SO! While there is a case which provides that a stream which will float logs is navigable **for that purpose**, it does not automatically follow that the stream is capable of commercial navigation and the bed of such a stream does **not necessarily** belong to the State of Washington.[40] Of course, the stream would still be presumed navigable by a title insurance company (and the bed therefore owned by the State) unless a court determines otherwise.

Since navigability is always a question of fact,[41] title companies generally take the position that the question of navigability of a particular body of water is one that can only be settled by a decision from our State Supreme Court.[42] The Court has quite uniformly held that for a particular body of water to be navigable, it must be capable of being used practically for the carriage of commerce.

Lateral Lines

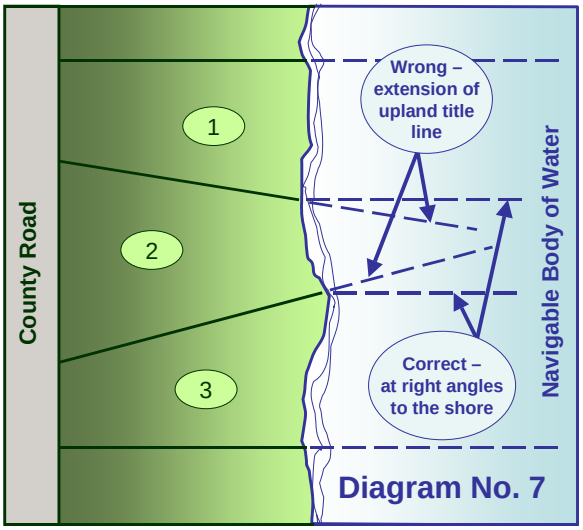
Another area where misconceptions abound is in the question of how property lines extend out into the ***tidelands*** or ***shorelands***, assuming they have been conveyed by the State. These boundary lines are commonly termed "***lateral lines***."

Note that tidelands or shorelands are usually conveyed to the abutting ***upland*** owner, and the lateral lines in such cases would normally extend out over the submerged lands from a point on the shoreline where the upland boundary intersected. However, such submerged lands can be owned by someone other than the abutting upland owner, and the lateral lines between adjoining owners of such ***submerged lands*** may have no relationship to the boundaries of the upland parcel.

A waterfront owner is not allowed to unilaterally project the upland boundaries out into the tidelands or shorelands. To do so might deprive either that owner or a neighbor of tidelands or shorelands to which one would be entitled under our Supreme Court decisions.[43]

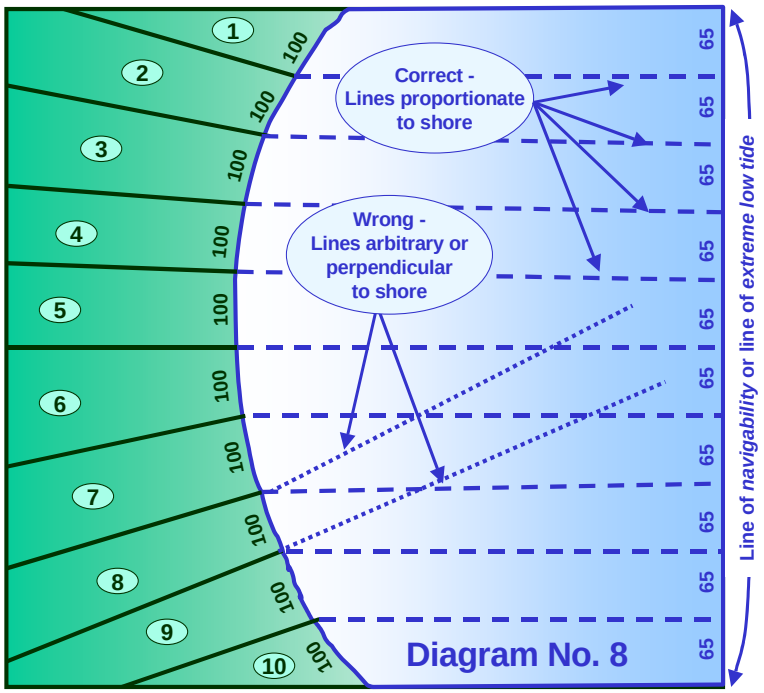
There are no statutes defining the direction of these lateral lines through tidelands or shorelands. Neither is there any helpful language in the original deeds of these lands from the State of Washington. The deeds simply convey all tidelands or shorelands, for example: "…all tidelands of the second class lying in front of and abutting Government Lot 3, Section [ ], Township [ ] North, Range [ ] East, W.M."

To find what rules might apply, we turn to decisions by our State Supreme Court for interpretation of the word "abutting." The basic rule, where the beach is a relatively

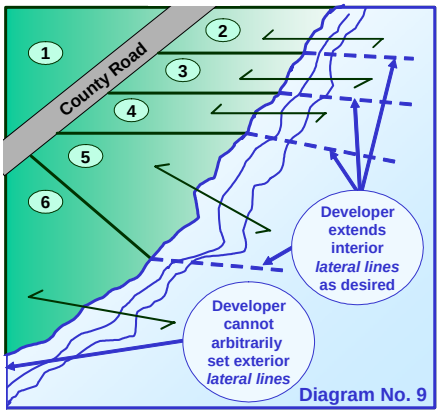


straight line, would be that the lateral lines are projected into the water at right angles to the line of ***ordinary high tide*** (in the case of tidelands) or to the line of ***ordinary high water*** (in the case of shorelands). See Diagram No. 7.

The Supreme Court has applied a different rule where the properties are on a cove. In such a situation, the right angle rule does not usually provide an equitable division of the submerged lands to the abutting waterfront owners. In one case[44] the court set out a method for projecting the lateral lines on a cove which makes a much fairer distribution of submerged lands. The technique involves connecting the property line at the shore line to proportionate lengths of frontage at the line of extreme



low tide (for tidelands conveyed after 1911; mean low tide for tidelands conveyed earlier) or the line of ***navigability*** (for shorelands). See DIAGRAM NO. 8.



Of course, an owner of upland property which includes the abutting submerged lands and which is large enough to be divided into smaller parcels is free to subdivide the property, including submerged lands, and delineate the specific locations of the interior lateral lines. In DIAGRAM NO. 9 a developer has laid out such a waterfront plat, in which the direction of the lateral lines of the interior lots have been fixed without applying the usual rules from our court decisions. Note, however, that the exterior boundary lines (that is, on either end of the entire submerged lands parcel) cannot be fixed without agreement and conveyance with the adjoining submerged land owners.

A title insurer generally cannot insure an owner of any waterfront property, no matter what the configuration of the shoreline, as to the location of the lateral lines unless

1. there has been a court decree establishing the location of such lines (which decree would also presumably confirm the title of each owner in the respective portions on either side of the lines), or
2. a plat created by a common owner, or
3. an agreement has been entered into by the adjoining owners establishing the mutual lateral boundaries.

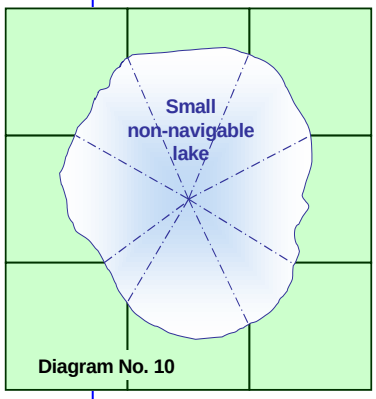
Such an agreement must also, of course, include mutual conveyance between the owners to actually confirm title according to the agreed upon boundaries.

NON-NAVIGABLE LAKES

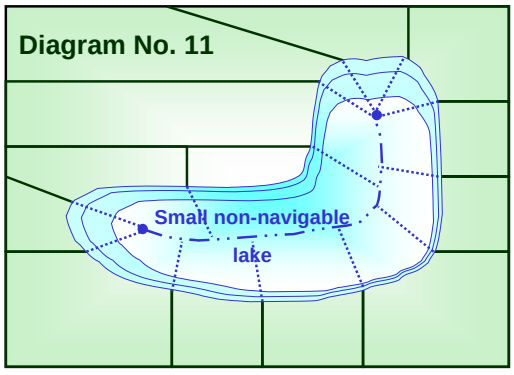
All bodies of water are assumed to be ***navigable*** unless a court has determined otherwise. This would be true even if the water was not shown on the Government Survey and/or no ***meander lines*** were shown on that survey, and/or the adjoining ***uplands*** are not described as ***government lots***.

With respect to the beds of known non-navigable lakes, they are ***submerged lands*** but are not ***shorelands***, and the State of Washington has no interest in them. Such beds are owned by the adjoining property owners.

Where all of the land surrounding a small, non-navigable lake is owned by one person, that person also owns the bed of the lake. However, when there are multiple owners around the lake, the rules for ***lateral lines*** are not as clearly drawn by court decisions as they have been for tidelands and shorelands. Property owners on such lakes may agree to each own an undivided interest in the entire lake. In some cases they have divided the bed of round lakes by making pie-shaped connections to the center of the lake. Each owner, then, would have fee title to the pie-shaped parcel of the bed of the lake that adjoined the upland parcel. See DIAGRAM NO. 10.



On non-navigable lakes that are not round, abutting waterfront owners have generally developed common sense allocations of the beds using center lines along the long lengths of the lake. See DIAGRAM NO. 11.



Litigation to determine lateral lines may be necessary and would require the joinder of all owners around the lake.[45]

Nonetheless, title insurers will again not insure as to the location of the ***lateral lines***.

Non-Navigable Streams

On a non-***navigable*** stream which forms a boundary between two ownerships, the true boundary line between the two (unless the descriptions clearly recite otherwise) is the ***thread*** of that stream. The thread is the center of the main channel of a stream or river. This might be a median line or a line following the deepest or lowest points of the bed. Cases have held that even where apparently limiting terms such as "…to the east bank of Crystal Creek…" are present, the description will be construed against the seller and presumed to run to the thread of the stream.[46]

The bed of such a stream is owned by the abutting ***uplands*** owners (whether or not it also constitutes a boundary between separate ownerships) and is not vested in the State of Washington. However, until a court determines the navigability of a stream, it will be presumed navigable for title insurance purposes, and exception would normally be raised by a title insurer for the rights of the State in the bed.

Public Trust Doctrine

The ***Public Trust Doctrine***, typically excepted from title coverages when the insured land is submerged or abuts water, is essentially the theory

that vests the government with the authority to protect the public interest, to regulate (including development, commerce, navigation and environmental protection – essentially, zoning) shorelands, tidelands and ***wetlands***, and uplands within 200 feet of these lands. While the term is not necessarily expressly used in our statutes or case law, it is embodied constitutionally in the harbor line system and statutorily in the ***Shoreline Management Act***.[47] State agencies involved in different aspects of this include the Departments of Ecology, Fish and Wildlife, and Natural Resources. In addition, the U. S. Army Corps of Engineers must usually issue a permit to place improvements in ***navigable*** waters.

Private Riparian Rights

Technically, ***riparian*** rights pertain to a river or stream, while ***littoral*** land borders the ocean, sound or a lake. However, the term riparian is now commonly used for both littoral and riparian land.

In addition to ownership of the bed of a non-***navigable*** lake, the abutting ***upland*** owner is a ***riparian*** owner. That person has been held to have the right, along with all other owners fronting on the lake, to the reasonable use of the surface of the lake.[48] These riparian rights of abutters are owned in common.[49] In other words, each upland owner has the right to use the entire surface of the lake, not just the area over that portion of the bed of the lake owned by the riparian abutter.

A developer attempted to erect an apartment building over the bed of Bitter Lake in North Seattle. Even though there was no question as to the developer's title to that portion of the bed of the lake, it being non-navigable, the court required that the building be removed because of its interference with the rights of the other riparian owners on Bitter Lake to make reasonable use of the surface of the lake.[50]

Rights of the Public

A similar case concerning the use of water and the beds under the water arose in Eastern Washington on Lake Chelan wherein the court ordered the removal of landfill from the bed of Lake Chelan[51] because it interfered with the rights of the general public to use the surface of the lake for recreational purposes.

Obviously, in light of these decisions, title companies are extremely reluctant to insure titles which involve improvements located over water, whether ***navigable*** or non-navigable, and particularly if there is new construction, without taking exception to such rights.

It is true that the ***Shoreline Management Act*** enacted in 1971 was subsequent to both the Bitter Lake and Lake Chelan cases and we may now see the courts confirming the validity of waterfront projects which have been authorized under its provisions. In fact, there has already been one such decision[52] on property located in Pierce County confirming a landowner's right to fill in and construct on ***tidelands***. The decision was apparently influenced by the fact that the tidelands involved were ***first class tidelands*** and the Legislature intended such lands to be "…reclaimed, filled and developed…".

TRIBAL RIGHTS

Certain Indian tribes have asserted claims to portions of ***submerged lands*** that were conveyed by the State of Washington. One case involved the location of the boundaries of the Puyallup Indian reservation.[53] The State of Washington had assumed ownership of portions of the former bed of the Puyallup River, and had conveyed them. The tribe asserted ownership on the basis that the land was within the boundaries of the reservation, which position was eventually upheld.

Another case addresses the right to harvest shellfish from ***tidelands***, including the right to cross privately owned land to access the beach.[54]

TITLE EXCEPTIONS

Many people discover title issues relating to water when they buy or sell waterfront property. Following are examples of common exceptions found in title policies, when they apply, and the reasons for showing them. The language may vary somewhat among title companies, but all insurers will generally take exception for such matters.

Item 1 below deals with ***TITLE*** to submerged land that may be included within a particular legal description. This is contrasted with ***BOUNDARY*** questions raised by Items 2, 3, and 4 and the ***USE*** questions raised by Items 5 and 6. (Item 10 deals with both ***TITLE*** and ***USE*** questions.)

1. STATE OF WASHINGTON OWNERSHIP

> Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of the *[insert the name of the body of water]*, if it is navigable.

This paragraph would be added as a special exception where the land is ***riparian*** (but only where ***navigable*** water flows through, covers, or adjoins the insured property). Title insurers will always assume a body of water is navigable, unless it has previously been adjudicated non-navigable. If it has been adjudicated non-navigable, this exception can be deleted.

Reference to a river or stream as a boundary will usually run to the center (thread) of the stream, even if the bank is mentioned or the thread is not specifically so described. Thus, part of the river bed would be included in the legal description of the insured land, whether the bed of the river is actually owned by the upland owner (e.g., the river is non-navigable) or the State of Washington (for a navigable river).

The State of Washington owns the bed of a ***navigable*** body of water, whether it is a lake, river, stream or creek, etc. This is true whether water forms a boundary of the property or whether the body of water covers or flows through the property. If the location of the water (whether or not it also constitutes a boundary) has shifted, the State may claim ownership to both the old bed and the new bed.

A legal description often ties to water as a boundary, but may not mention water specifically. However, if the description references a ***government lot***, that fact would indicate possible water boundaries. Assessor's maps or surveys may also

disclose water on or adjoining the land, particularly small creeks or lakes.

2. *RIVER, STREAM OR SLOUGH BOUNDARY*

Any question that may arise due to shifting or change in the course of the *[insert the name of the body of water]* or due to the *[insert the name of the same body of water]* having shifted or changed its course.

This is a ***BOUNDARY*** exception, which means that it is similar to the *general exception* for *survey matters* which appears in *standard coverage* title policies. However, even though it is similar to such an exception, it is not deleted based on the submission of a survey for an *extended coverage* title policy.

It applies when the legal description ties to either the bank or the thread of a river, stream, brook, creek, slough, etc. It doesn't make any difference whether the body of water is navigable or non-navigable. The exception usually does not apply where the body of water merely crosses the land and is not a boundary.

If two parcels of land are separated by a river (the legal descriptions of the two adjoining parcels of land would each be bounded by the river) and the location of the river changes, the boundaries of those parcels may or may not change, depending on the nature and suddenness of the movement of the water.

If the change in the location of the river is ***avulsive*** (sudden) and/or man-made, the original location of the water may continue to also be the property boundary. See DIAGRAM NO. 6. In that case the insured land might no longer touch the water. The water itself could be either farther away from the property, or entirely within the property lines. (See Item 1 above for the possible effect of such movement of water lines on the ***TITLE*** to the insured land.) However, if the change is gradual, then the boundaries of the parcels on either side of the river may shift with the movement of the river. See DIAGRAM NO. 5.

In either event, the exception means that the title policy does not insure the location of the boundaries of the insured land. The title insurer will **not** insure with respect to the exact location of the water, nor whether it has moved or might move in the future, nor finally, if it might have moved, the nature of the change.

3. *LAKE, SOUND, BAY OR OCEAN BOUNDARY*

Any questions that may arise due to shifting or change of the line of high water of the *[insert the name of the body of water]* or due to the *[insert the name of the same body of water]* having shifted or changed its line of high water.

This is also a ***BOUNDARY*** (e.g., survey) exception. This exception also is not removed even for *extended coverage* title policies. It is similar to the "shifting" exception for rivers (see Item 2 above) except that it deals with ***accretion*** and ***reliction*** issues on other types of bodies of water.

It would be shown whenever the land is bounded by the Pacific Ocean, Puget Sound, a lake, or similar body of water. It applies when the title company is insuring title to

- ***uplands*** only, or
- ***uplands*** with ***submerged*** lands (including either ***tidelands*** or ***shorelands***), or
- ***submerged*** lands only.

Again, the legal description may not mention a body of water, but a reference in the legal description to a ***government lot*** would indicate that there may be water boundaries.

4. *LATERAL BOUNDARIES OF SUBMERGED LANDS*

Any question that may arise as to the location of the lateral boundaries of the tidelands [shorelands] described herein.

This is another ***BOUNDARY*** (e.g., survey) exception. It would be added as a special exception in all

policies where ***tidelands*** or ***shorelands*** are included in the description, for example: "…together with the tidelands of the second class adjoining." Also, a description for a ***government lot*** may include submerged lands, even though not specifically mentioned, if the ***federal patent*** was issued prior to statehood.

In most cases adjoining owners will not have established the location of the ***lateral lines*** (e.g., the common boundary) between their adjoining submerged lands. Assessor's maps or surveys will sometimes show upland lot lines projected into the water and thus apparently include a particularly delineated portion of tidelands or shorelands where the chain of title does not support it. However, a survey, assessor's map or similar information is not sufficient to establish these boundaries.

If the adjoining owners have mutually established the exact location of the boundary between their submerged lands (by written agreement and conveyance), the exception could be deleted. Also a plat (formal subdivision) might establish such boundaries.

The plattor must, of course, have had title to the ***tidelands*** or ***shorelands***. If the developer does own them (and this must be separately confirmed independent of any recitals on the face of the plat), then the plat can divide those ***submerged lands*** among the lots within the plat. See DIAGRAM NO. 9. The plattor cannot, however, arbitrarily determine the outside lateral lines of the larger ownership area. This affects those lots on either end of the plat (unless, of course, the plattor had earlier established such exterior lines by agreement and conveyance with the owner of those adjoining ***submerged lands***).

One exception to this rule usually is where the State has platted ***tidelands*** or ***shorelands***. The State plat can be relied upon for sufficiency of title and all boundaries for lots on either end as well as for interior lots.

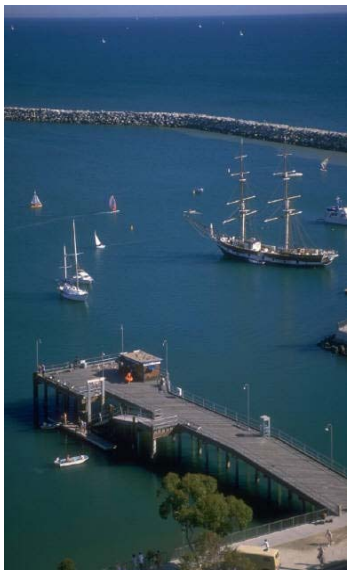
Of course, it is possible that a plattor will have owned the submerged lands and not included them in the plat, creating a severance of the ownership of the uplands from the abutting submerged lands. It is also possible that if they are included in the plat they might not be included within any of the lots, but rather reserved or dedicated to the lot owners or conveyed to an association of lot owners.

Care should be taken, especially with older plats, when ***submerged lands*** are apparently included within the delineated boundaries of a platted lot as shown on the original plat drawing. In such cases submerged lands would be included with uplands even though not specifically mentioned in the legal description of the lots created by the plat. Prior to platting the description would probably be acreage followed by "…together with tidelands [or shorelands, as applicable] adjoining." However, after platting the legal description used for individual lots fronting on the water normally don't make such reference. Nonetheless, the recital of "Lot 1" in a legal description would include everything within the lot lines delineated on the face of the plat. Other water related exceptions might also then apply.

5. PUBLIC AND PRIVATE RIPARIAN RIGHTS

Any prohibition or limitation on the use, occupancy, or improvements of the land resulting from the rights of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

Unlike the exception for State ownership discussed in Item 1 above, which relates to ***TITLE*** to ***submerged land***, this exception relates to the ***USE*** of submerged (or formerly submerged) land described in the commitment or policy. It also applies where the insured ***uplands*** adjoin such land. It covers issues related to the ***Public Trust Doctrine***. It applies to:



- ***tidelands***
- ***shorelands***
- land between ***high tide*** and seaward ***meander line*** if ***patented*** before statehood
- current or former lake beds, whether ***navigable*** or not
- current or former beds of rivers, streams or sloughs, whether ***navigable*** or not
- ***harbor areas***
- ***uplands*** abutting such lands
- ***oyster lands***

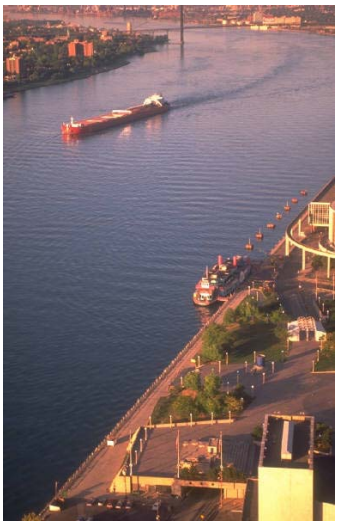
This is a very broad and important exception. It covers, among other things the right of down-stream owners to the water that crosses upstream ***riparian*** land, and the right of the State to regulate uses of ***tidelands***, ***shorelands*** and adjoining ***uplands*** under the ***Shoreline Management Act***, the Growth Management Act, and the Coastal Zone Management Program. (Note that the these programs address ***wetlands*** but these lands are not identified or dealt with in connection with title insurance.)

This will be added as a special exception in all policies covering the above-mentioned types of property (but not necessarily ***wetlands*** unless one of the above categories applies). It doesn't make any difference whether the policy is issued with *standard coverage* or *extended coverage*.

6. *Navigation Rights*

The right of use, control, or regulation by the United States of America in exercise of power over commerce and navigation.

This exception also deals with the ***USE*** of the land. Even where the State of Washington owns the beds of ***submerged lands***, the United States may retain powers over ***navigation***. For example, the U. S. Army Corps of Engineers must approve dredging or improvements in tidal waters.



This exception can be deleted only if the body of water has been adjudicated ***non-navigable***. The question of ***navigability*** is one of fact, determined on November 11, 1889, the date Washington was admitted to the Union. It is not based on current appearances of navigability or non-navigability.

Again, the wording of the legal description may not refer to water, especially if a stream passes through the property, or where all or a portion of a lake is within the property but does not constitute a boundary.

7. *Reservations and Reversions*

There are various rights (minerals, railways, flumes, waterways, etc.) reserved by the State of Washington in many conveyances of ***tidelands*** or ***shorelands***. They are provided for by statute and vary depending on the date of the conveyance. There is also the determinable fee title of certain ***oyster lands*** conveyed by the State of Washington, which revert to the State if not used for the intended purposes.

Exceptions to these matters are included in title evidences written on property where title is derived from the State of Washington.

8. *Water and Water Rights*

Water rights, claims or title to water.

This exception relates to the ownership of water, e.g., the substance itself. Unless excepted from coverage, water would be included in a title policy definition of land. Since, in Washington, water belongs to the public[55] and its use is regulated by the State, it must be excepted from coverage. Title insurers cannot rely on available records to determine rights to use water.

This exception usually appears as a *general exception* in title insurance policies. It should also be added as a special exception in an extended coverage policy when it applies. However, it is not related to *standard coverage* or *extended coverage*.

It applies to:

- agricultural, farm, orchard or similar land.
- unimproved land.
- ***riparian*** land (e.g., ***uplands*** covered by or adjoining water).
- land served by a well or an impounded water facility.
- land supplied by a water source other than domestic water service.

Some insureds will request that the exception be deleted for extended coverage policies, or they might ask for endorsement coverage (identified by the California Land Title Association as the CLTA Form 103.5). This provides the following coverage:

> The Company hereby insures against loss which said insured shall sustain by reason of damage to existing improvements, including lawns, shrubbery or trees, resulting from the exercise of any right to use the surface of said land for the extraction or development of water excepted from the description of said land or shown as a reservation in Schedule B.

Inspection may be necessary to determine if any of the above situations apply. A title insurer would normally not delete the exception or provide the affirmative coverage endorsement unless it can be certain that they don't apply.

9. Certificates of Water Rights

As noted in Item 8 above, title insurers do not affirmatively insure ownership of water rights. Water rights certificates issued by the State of Washington to individuals may have been recorded over the years, but are usually not shown as exceptions in policies covering either the property benefited or the property at the point of diversion (source of the water). HOWEVER, these certificates may indicate easement rights in favor of the holder of the certificate, and an exception for such possible easement rights, as disclosed by the recorded certificate, may be shown for that reason, particularly on the property at the point of diversion.

10. Indian Rights

> Indian tribal codes or regulations, Indian treaty or aboriginal rights, including easements or equitable servitudes.

Most insurers include this exception in commitments and policies. The exception applies to any lands in the State of Washington, whether water covers or abuts the land or not.

DEFINITIONS

ACCRETION – The natural build up of dry land (such as silt or sediment, called ***alluvion*** or alluvium) by gradual and imperceptible action of water forces. See DIAGRAM NO. 5.

ALLUVION – Also alluvium; clay, silt, sand, gravel or similar material added by ***accretion***

AQUATIC LANDS – in Washington, State owned tidelands, shorelands, harbor areas, and the beds of navigable waters.[56]

AVULSION – A sudden change in the course of a river or stream or the sudden inundation of land which may result from natural causes, such as a flood or earthquake, or artificial (man-made) causes, such as dam construction, dredging or filling. See DIAGRAM NO. 6.

BULKHEAD LINE – Under federal law, the seaward limit where a person can fill without an Army Corps of Engineers permit. It is often located at the same place as the ***inner harbor line*** established under State law. See DIAGRAM NO 3.

EROSION – The wearing away of dry land by the gradual action of water from natural causes. See DIAGRAM NO. 5.

EXTREME LOW TIDE – The line below which it might reasonably be expected that the tide will not ebb, which is lower than either ***mean lower low tide*** (the average of all daily lower low tides) or daily lower low tide. It occurs only during certain seasons of the year. Outer boundary of ***tidelands*** conveyed by the State between 1911 and 1971. See DIAGRAM NO. 4.

FEDERAL PATENT – See ***Patent***.

FIRST CLASS SHORELANDS – Non-tidal lands in front of the corporate limits of any city between the line of ***ordinary high water*** and either (1) the ***inner harbor line*** within one mile on either side of the city limits or (2) the ***line of navigability*** within two miles and outside one mile on either side of the city limits. See DIAGRAM NO. 3.

FIRST CLASS TIDELANDS – Tidal lands in front of the corporate limits of any city between the line of ***ordinary high tide*** and either (1) the ***inner harbor line*** within one mile on either side of the city limits or (2) the line of ***extreme low tide*** (or ***mean low tide*** for properties conveyed by the State prior to 1911) within two miles and outside one mile on either side of the city limits. See DIAGRAM NOS. 3 AND 4.

GOVERNMENT LOT – Fractional sections in government surveys, often, but not always, based on large bodies of water. See DIAGRAM NOS. 1 AND 2.

HARBOR AREA – The area between the ***inner*** and ***outer harbor lines*** within city limits. It may be leased by the State for navigation and commerce purposes but never sold. See DIAGRAM NO. 3.

INNER HARBOR LINE – The line established by the State marking the seaward limit of ***first class tidelands*** or ***first class shorelands*** within city limits and within one mile on either side of those city limits. See DIAGRAM NO. 3.

LATERAL LINES – Boundary lines between adjoining parcels of ***submerged lands***, extending from a point on the line of ordinary high tide or line of ordinary high water to a point on the outer limit of the submerged lands. Must be apportioned by common owner(s) of the submerged lands by plat or conveyance. See DIAGRAM NOS. 7, 8 AND 9.

LINE OF NAVIGABILITY – A line beyond which the water is deep enough for commercial navigation. Outer boundary of ***shorelands*** conveyed by the State. Exact location undetermined unless and until fixed by the Department of Natural Resources. It is the same as the ***inner harbor line*** if that line has been fixed by the State. See DIAGRAM NO. 3.

LINE OF VEGETATION – Sometimes, though not technically correct, referred to as the boundary between ***uplands*** and ***shorelands*** or (less commonly) between ***uplands*** and ***tidelands***. See also ***ordinary high water*** and ***ordinary high tide***. See DIAGRAM NO. 4.

LITTORAL – Belonging or pertaining to shore. ***Littoral*** land is land bordering an ocean, sea, or lake, contrasted with ***riparian*** land bordering a river or stream, although ***riparian*** is often now commonly used for both types of land.

MEANDER LINE – A line run by the government for the purpose of defining the sinuosities of the shore or bank of a body of water and as a means of ascertaining the quantity in adjoining fractional sections (***government lots***). It is not an indication of ***navigability***. It is not a boundary unless (1) it is seaward of ***uplands patented*** by the federal government prior to statehood or (2), rarely, when specifically intended as such by description. See DIAGRAM NO. 2.

MEAN HIGH TIDE – See ***ordinary high tide***.

MEAN LOW TIDE – The average of all daily low tides over a period of 18.6 years. Outer boundary of ***tidelands*** conveyed by the State between 1895 and 1911. See DIAGRAM NO. 4.

NAVIGABLE/NAVIGABILITY – Used, or susceptible of being used in its ordinary condition, as a highway for commerce, over which trade and travel are or can be conducted in the customary modes of trade and travel on water. All water is presumed by title insurers to be ***navigable*** unless adjudicated otherwise.

ORDINARY HIGH TIDE – Also known as ***mean high tide***. The average elevation of all high tides over a period of 18.6 years. Boundary between ***uplands*** and ***tidelands*** on ***navigable*** waters. Sometimes referred to as the ***line of vegetation***, although the latter term is not technically the same. See DIAGRAM NOS. 3 AND 4.

ORDINARY HIGH WATER – The visible line of the bank along non-tidal waters. Sometimes referred to as the ***line of vegetation***, although the latter term is not technically the same. Boundary between ***uplands*** and ***shorelands*** on ***navigable*** waters. See DIAGRAM NO. 3.

OUTER HARBOR LINE – The outer boundary of the ***harbor area*** within city limits as established by the State. The area beyond cannot be given, sold, or leased by the State. See DIAGRAM NO. 3.

OYSTER LANDS – Submerged land, usually between ***mean high tide*** and ***mean low tide***, leased or conditionally deeded for the cultivation of oysters or other shellfish, pursuant to statute. Deep water clam harvesting can be below ***extreme low tide***.

PATENT – The instrument by which the United States conveys title to public lands.

PIERHEAD LINE – Under federal law, the seaward limit where private open-pile structures can be placed with a permit from the Army Corps of Engineers. It is often located at the same place as the ***outer harbor line*** established under State law. See DIAGRAM NO. 3.

PUBLIC TRUST DOCTRINE – The theory under which the government, for the benefit of the public good, controls and regulates water, ***submerged lands***, ***wetlands*** and lands covered by or abutting water.

RELICTION – The permanent uncovering or exposure of lands formerly covered by waters. See DIAGRAM NO. 5.

RIPARIAN – Belonging or pertaining to lands abutting a stream or river (and generally used also with respect to lands abutting all water, e.g. even ***littoral*** lands).

SECOND CLASS SHORELANDS – All ***shorelands*** not classified as ***first class shorelands***, e.g., those lying beyond two miles outside city limits. See DIAGRAM NO. 3.

SECOND CLASS TIDELANDS – All ***tidelands*** not classified as ***first class tidelands***, e.g., those lying beyond two miles outside city limits. See DIAGRAM NO. 3.

SHORELANDS (see also **FIRST CLASS** and **SECOND CLASS**) **–** Public lands, bordering on shores of a ***navigable*** lake or river covered by water, not subject to tidal ebb and flow. Available for sale by the State until 1971, available for lease after 1971. After 1983 some shorelands on navigable lakes having “minimal public value” may be sold to the abutting ***upland*** owner.

SHORELINE MANAGEMENT ACT – An act regulating land use of ***submerged lands*** (including ***shorelands*** or ***tidelands***) and ***uplands*** 200 feet inland from these areas, as well as ***wetlands***. Most development in such areas requires a substantial development permit.

SUBMERGED LANDS – Land that is covered by water some or all of the time. On ***navigable*** bodies of water, ***tidelands*** or ***shorelands*** are public lands, some of which have been conveyed by the State between 1895 and 1971, or leased after 1971. Submerged lands under ***non-navigable*** rivers or streams are owned by the ***upland*** owner to the ***thread***; under non-navigable lakes by upland owners. ***Lateral lines*** (boundaries) are determined by mutually agreed apportionment. See DIAGRAM NOS. 7 and 8.

THREAD – The center of the main channel of a stream or river. This might be a median line or a line following the deepest or lowest points of the bed. The usual boundary between parcels abutting ***non-navigable*** streams or rivers.

TIDELANDS (see also **FIRST CLASS** and **SECOND CLASS**) **–** Public lands over which tidal water ebbs and flows. Available for sale by the State until 1971, available for lease after 1971 (except on Pacific Ocean). See DIAGRAM NO. 4.

UPLANDS – The dry lands bordering a body of water, the outer boundary of which is either the line of ***ordinary high tide*** or ***ordinary high water***.

WETLANDS – Lands inundated or saturated with surface or ground water to support vegetation adapted to saturated soil conditions, which may or may not include ***submerged lands***, as defined under State law. See also ***Shoreline Management Act***.

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FOOTNOTES:

1. STATE CONSTITUTION, Article XVII §1
2. MANUAL OF INSTRUCTIONS FOR THE SURVEY OF PUBLIC LANDS, U.S. Department of Interior, B.L.M.
3. STATE CONSTITUTION, Article XVII, §2
4. *Brace & Hergert Mill Co. v. State of Washington*, 49 Wash. 326, 95 P.2d 278 (1908)
5. *Hughes v. State of Washington*, 389 US 290 (1967); *Smith Tug & Barge Co. v. Columbia-Pac. Towing Corp.*, 78 Wn.2nd 975, 482 P.2d 769, *cert. denied*, 404 U.S. 829 (1971)
6. *Harris v. Swart Mortgage Co.*, 41 Wn.2nd 354 249 P.2d 403 (1952); *Smith Tug & Barge Co.*, supra; *Thomas v. Nelson*, 35 Wn. App. 868, 670 P.2d 682 (1983)
7. *Scurry v. Jones*, 4 Wash. 468, 30 P. 826 (1892); *Cogswell v. Forest*, 14 Wash. 1, 43 P. 1098 (1896); *Narrows Realty Company, Inc. v. State of Washington*, 52 Wn.2nd 843, 329 P.2d 836 (1958)
8. RCW 79.94.150
9. RCW 79.94.210
10. RCW 79.90.460
11. See RCW 53, *et seq.*
12. RCW 79.90.475
13. RCW 79.92.110
14. RCW 79.94.070 (as to first class tidelands and shorelands) and RCW 79.94.260 (as to second class shorelands)
15. RCW 79.90.105
16. Chapter 256, Laws of 1907
17. Chapter 109, Laws of 1911
18. RCW 79.90.270 and RCW 79.11.210
19. "Bush Act", Chapter 24, Laws of 1895 (repealed 1935); "Callow Act", Chapter 25, Laws of 1895 (repealed 1935); see also Chapter 165, page 486, Laws of 1919 (repealed 1935) and Chapter 255, § 138, Laws of 1927 (repealed 1983)
20. RCW 79.96.010
21. RCW 79.96.030(1)
22. RCW 79.96.090
23. State Constitution, Article XV, § 1
24. RCW 79.92.010
25. State Constitution, Article XV, § 1
26. State Constitution, Article XV, § 2 (harbor areas); RCW 79.94.150(3) (tidelands and shorelands)
27. *Hughes*, supra, applying *Borax Consolidated Ltd. v. City of Los Angeles*, 296 U.S. 10, 56 S.Ct 23, 80 L.Ed. 9 (1935)
28. RCW 79.90.030
29. RCW 79.90.035
30. Chapter 36, Laws of 1911
31. RCW 79.90.040 and .045
32. *Kalin v. Lister*, 27 Wn.2d 785, 180 P.2d 86 (1947)
33. *Harper v. Holston*, 119 Wash. 436, 205 P. 1062 (1922); *Smith & Tug Barge*, supra; *Ghione v. State of Washington*, 26 Wn.2nd 635, 175 P.2d 955 (1946)
34. RCW 79.94.310
35. *Parker v. Farrell*, 74 Wn.2nd 553, 445 P,2d 620 (1968); *Commercial Waterway Dist. v. State*, 50 Wn.2nd 335, 311 P.2d 690 (1957); *Hirt v. Entus*, 37 Wn.2d 418, P.2d 620 (1950); *Hill v. Newell*, 86 Wash. 227, 149 P.2d 951 (1915)
36. *Strom v. Sheldon*, 12 Wn. App. 66, 527 P.2d 1382, *review denied*, 85 Wn.2d 1001 (1974)
37. *State of Washington v. Sturtevant*, 76 Wash. 158, 135 P. 1035 (1913)
38. *Newell v. Loeb*, 77 Wash. 182 , 137 P. 811 (1913)
39. RCW 79.94.270 and .150
40. *Watkins v. Dorris*, 24 Wash. 636 636; 64 P. 840 (1901); see also *Proctor v. Sim*, 134 Wash. 606, 236 P. 114 (1925)
41. *Kemp v. Putnam*, 47 Wn.2nd 530, 288 P.2d 837 (1955)
42. *United States v. Holt State Bank*, 270 U.S. 49 (1926)
43. *Spath v. Larsen*, 20 Wn.2nd 500, 148 P.2d 834 (1944); *Kalin v. Lister*, 27 Wn.2nd 785, 180 P.2d 86 (1947)
44. *Seattle Factory Sites Co. v. Saulsberry*, 131 Wash. 95, 229 P. 10 (1924)
45. *Snively v. Jaber*, 48 Wn.2d 815, 296 P.2d 1015 (1956; *Spath v. Larsen*, 20 Wn.2d 500, 148 P.2d 834 (1944); *Seattle Factory Sites Co. v. Saulsberry*, 131 Wn.2d 95, 229 P. 10 (1924)
46. *Knutson v. Reichel*, 10 Wn. App. 293, 518 P.2d 233 (1973); *Bernhard v. Reischman*, 33 Wn. App. 569, 658 P.2d 2 (1983)
47. RCW 90.58, *et seq.*
48. *Bach v. Sarich*, 74 Wn.2nd 575, 445 P.2d 648 (1968)
49. *Snively v. Jaber*, 48 Wn.2nd 815, 296 P.2d 1015 (1956); *Hefferline v. Langkow*, 15 Wn. App. 896, 552 P.2d 1079 (1976)
50. *Bach*, supra

51. *Wilbour v. Gallagher*, 77 Wn.2nd 306, 462 P.2d 232 (1969)

52. *Harris v. Hylebos Industries, Inc.*, 81 Wn.2nd 770 (1973)

53. *Puyallup Indian Tribe v. Port of Tacoma*, 717 f.2d 1251 (9th Cir. 1983), *cert. denied*, 465 U.S. 1049, *reh'g denied*, 466 U.S. 954 (1984)

54. *United States v. Washington*, 873 F. Supp. 1422 (W.W. Wash. 1994), *aff'd in part, rev'd in part*, 135 F.3d 618 (9th Cir.), *amended*, 157 F.3d 630 (9th Cir. 1998), *cer. Denied*, 526 U.S. 1060 (1999)

55. RCW 90.03.010

56. RCW 79.90.010

Waterfront Titles in
The State of Washington