

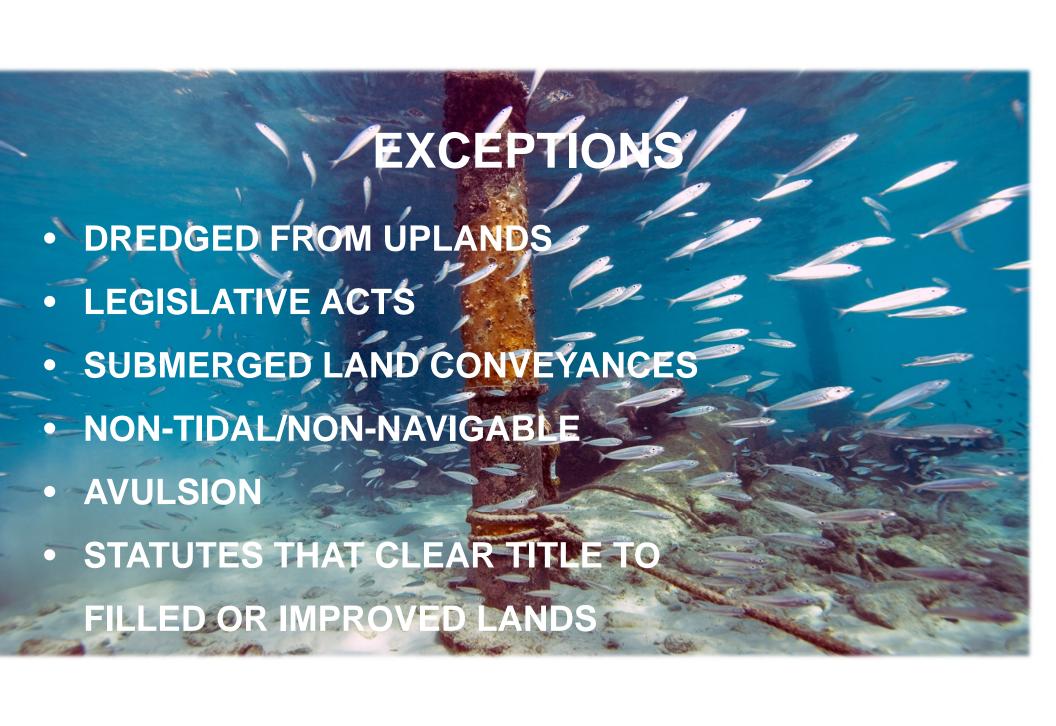
Sovereign Submerged Lands Considerations

ARTICLE X THE FLORIDA CONSTITUTION

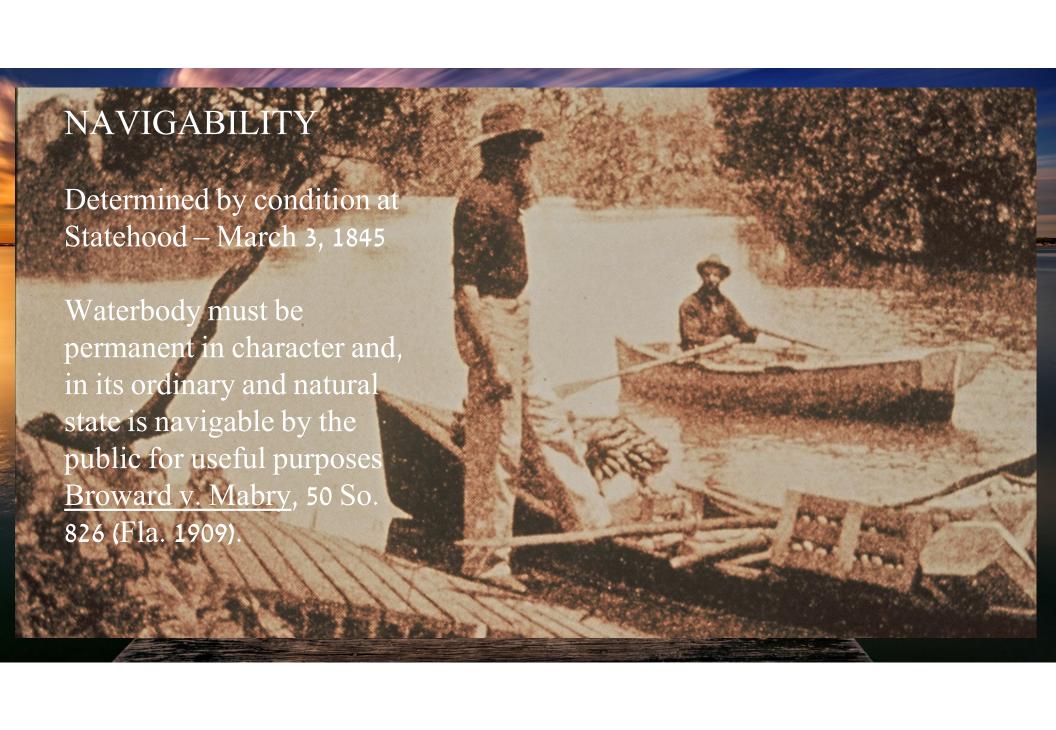
SECTION 11. Sovereignty lands.—The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

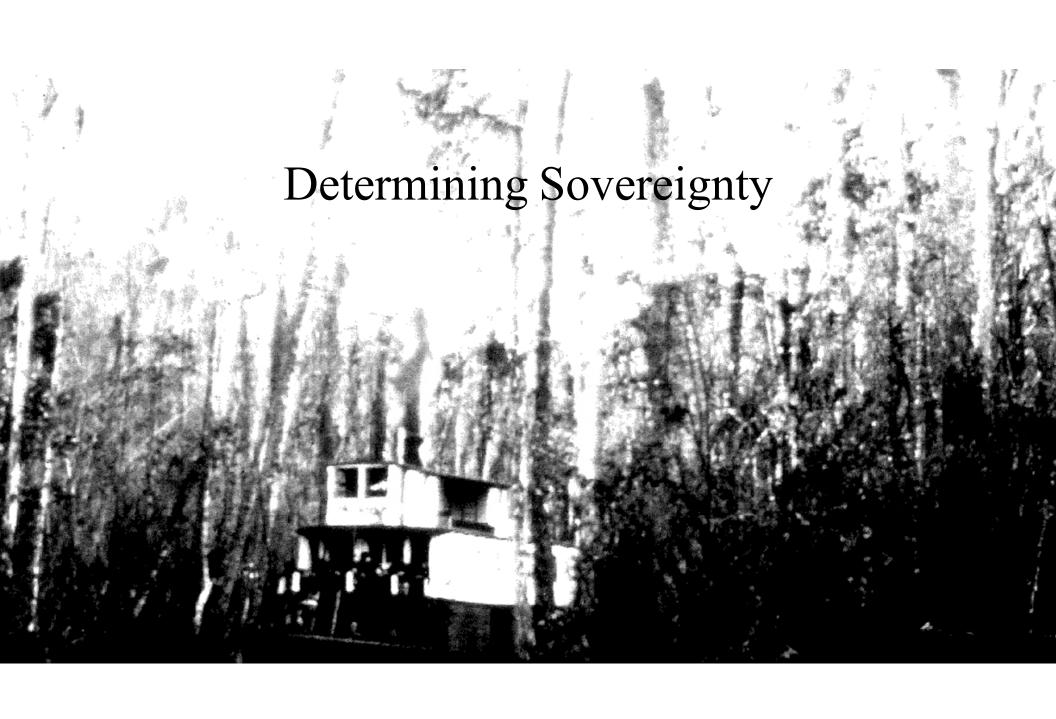
History.--Am. H.J.R. 792, 1970; adopted 1970.

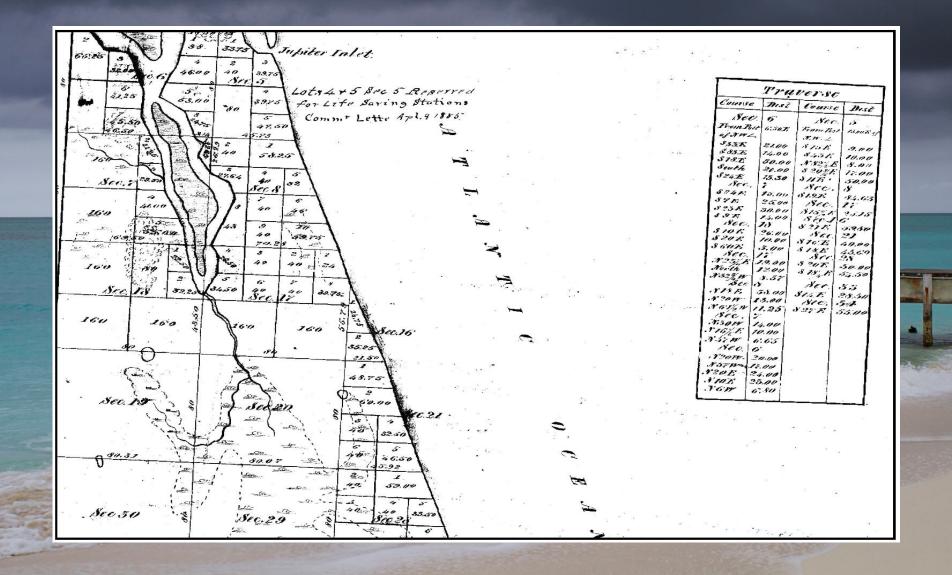


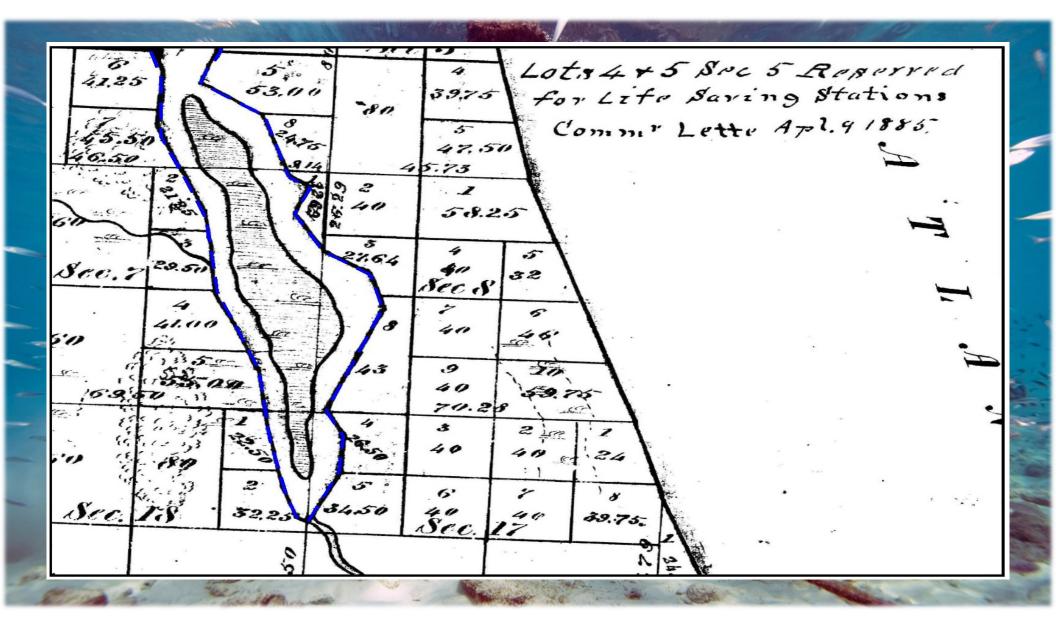




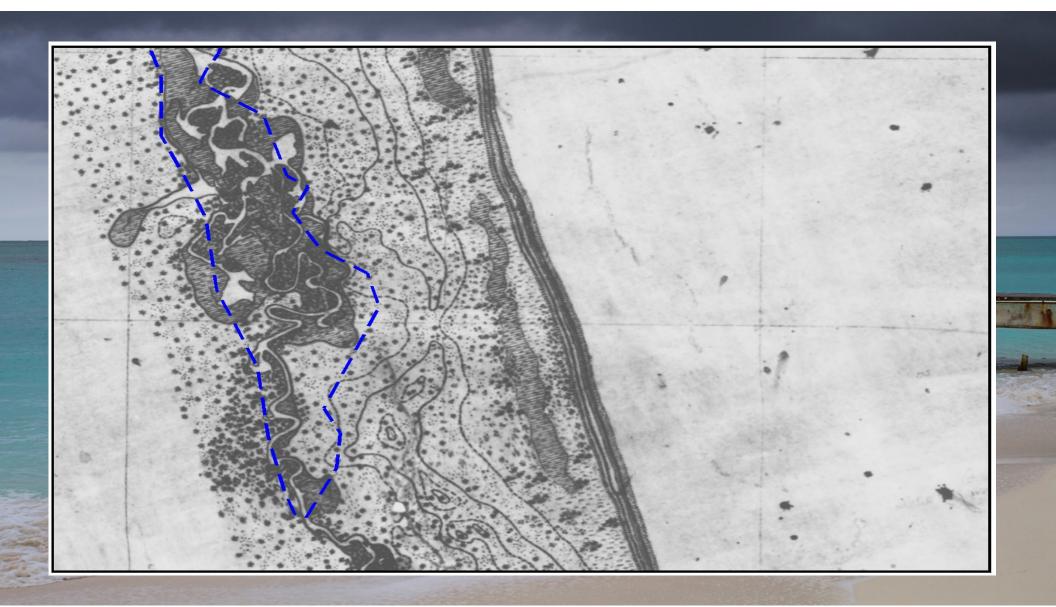


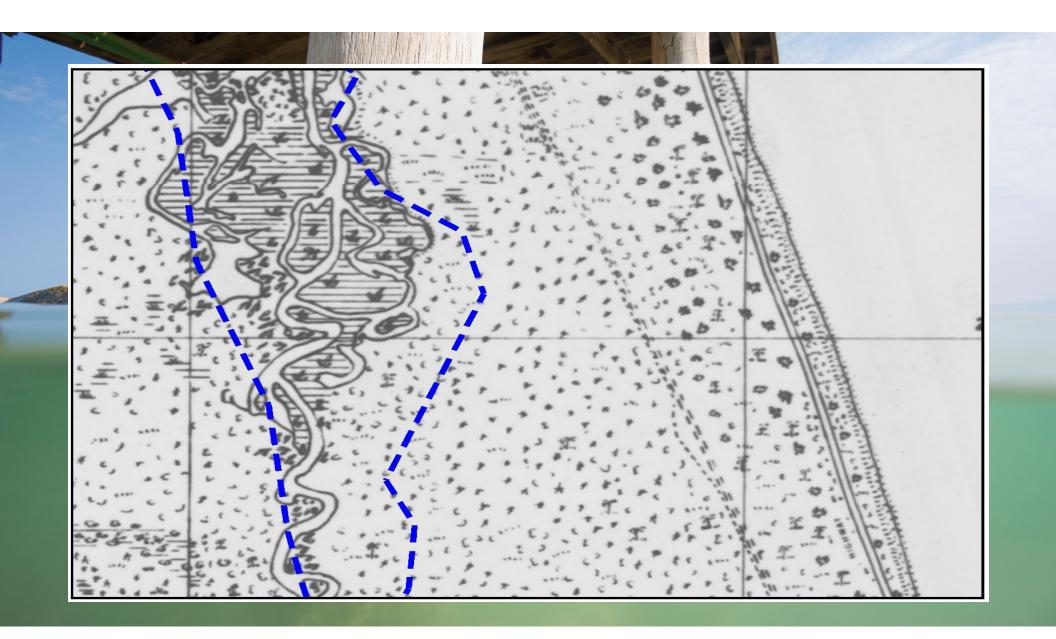


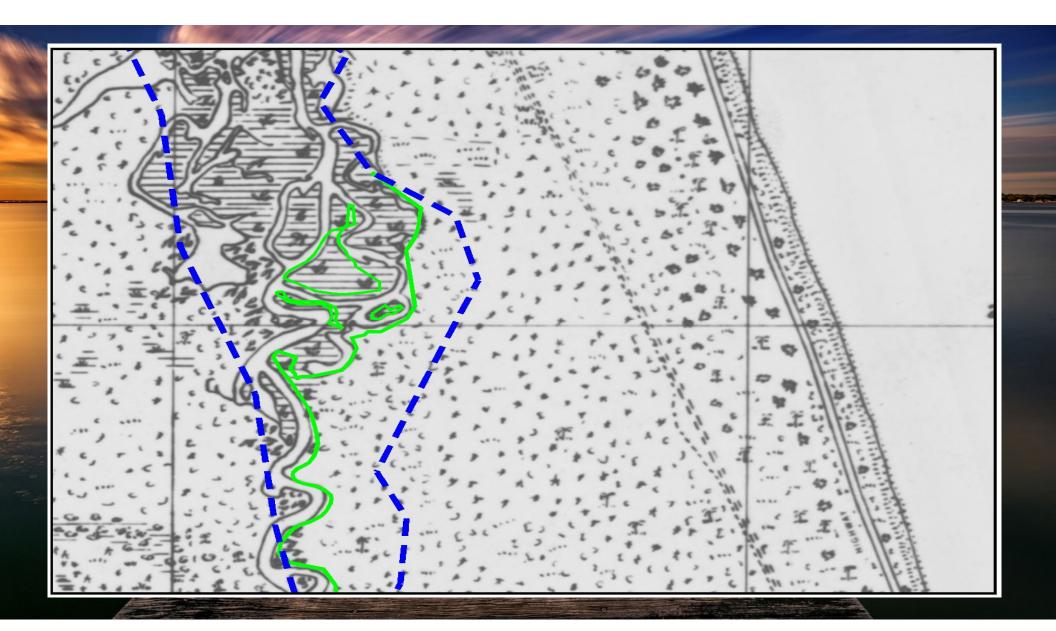


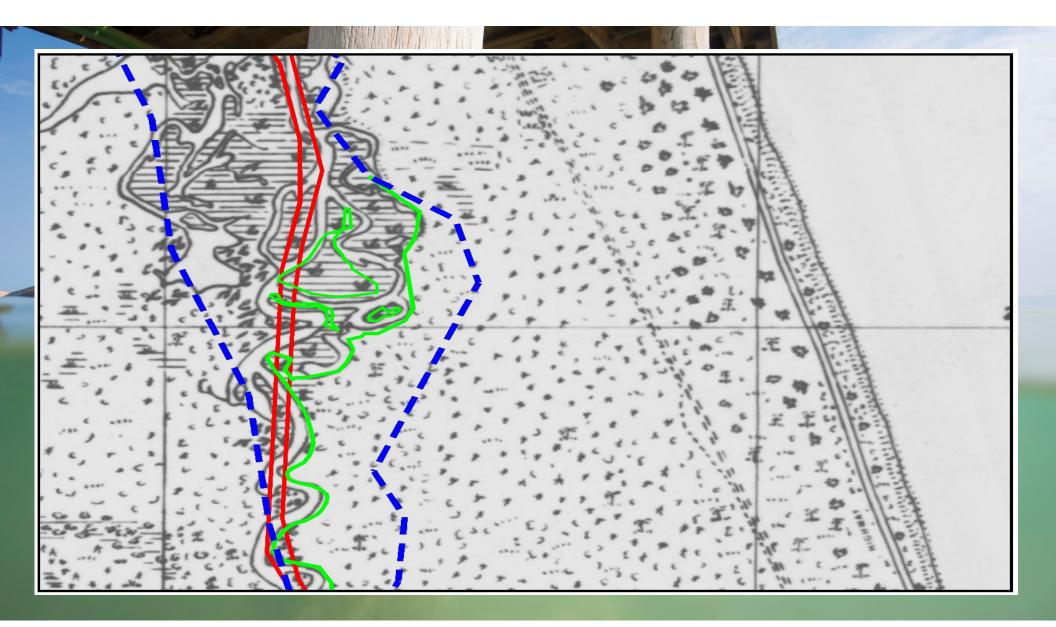


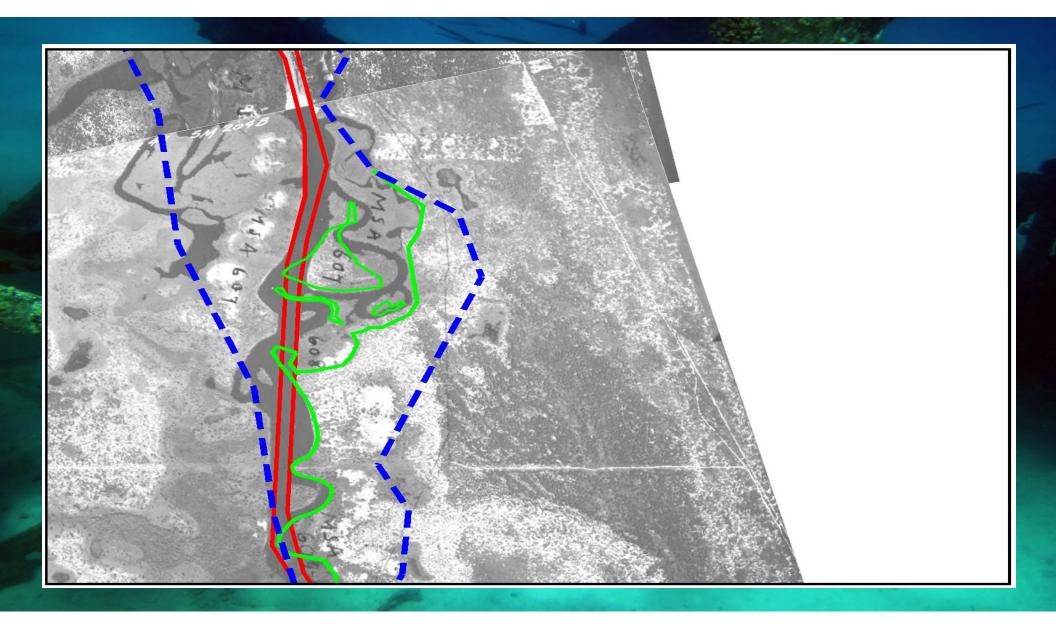




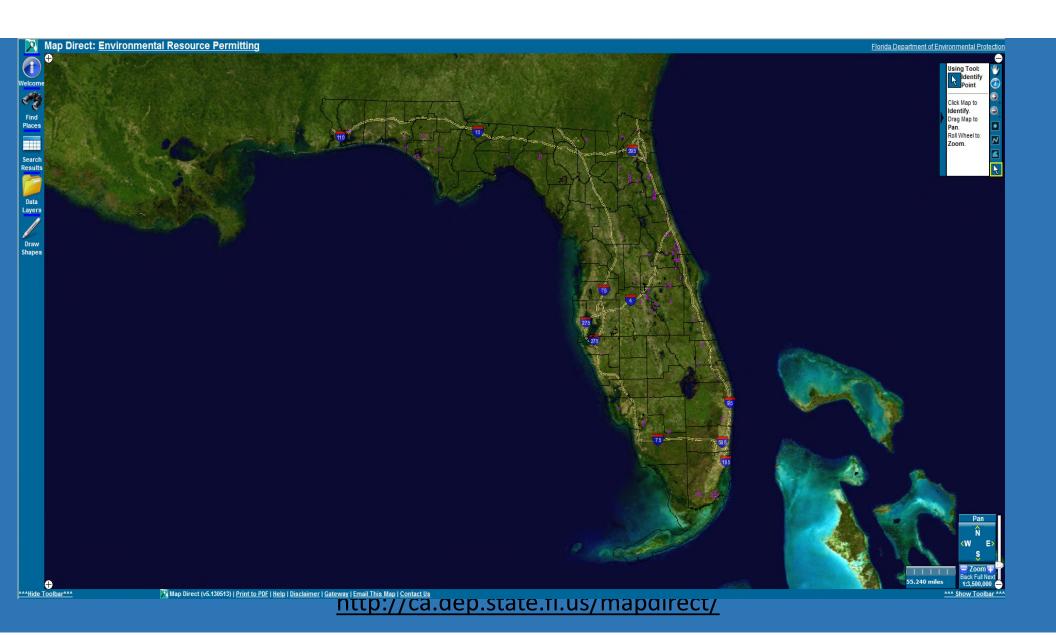


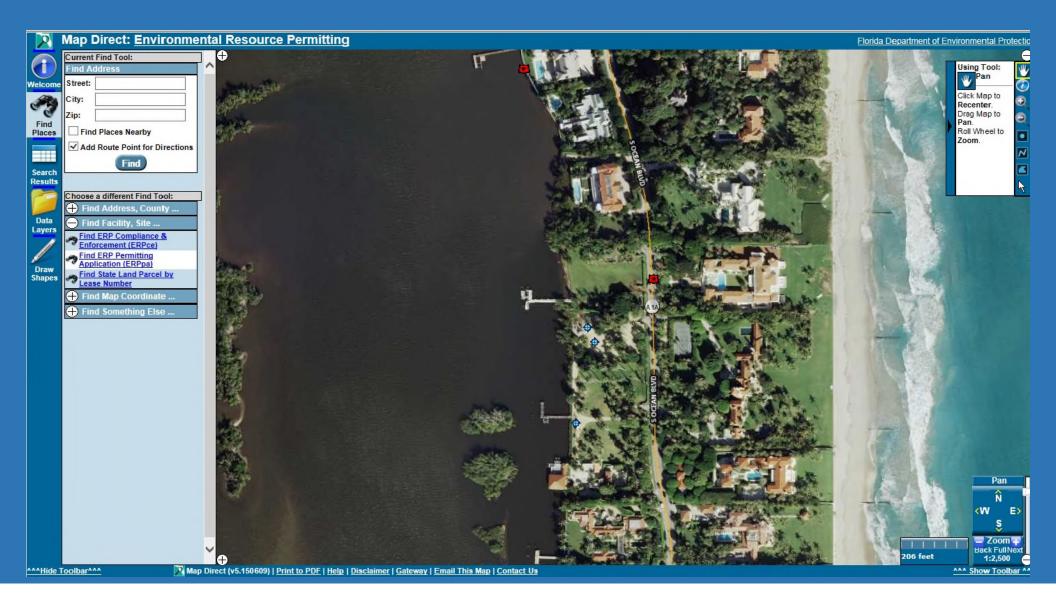


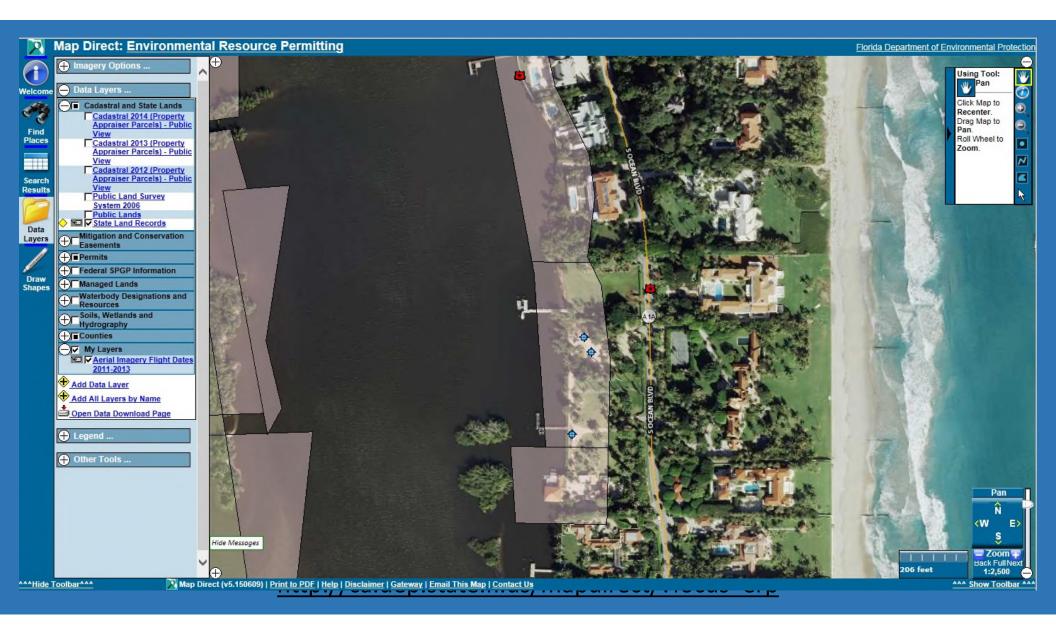


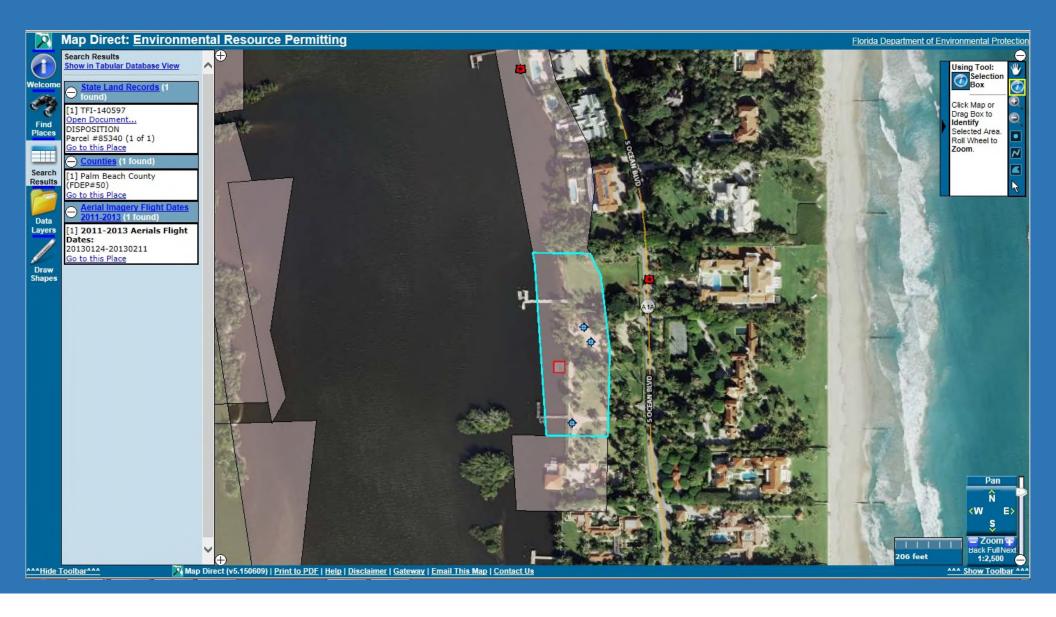








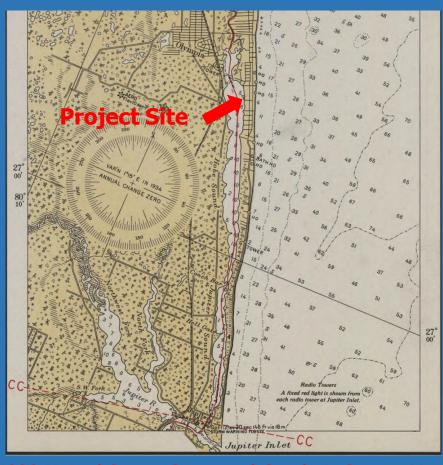




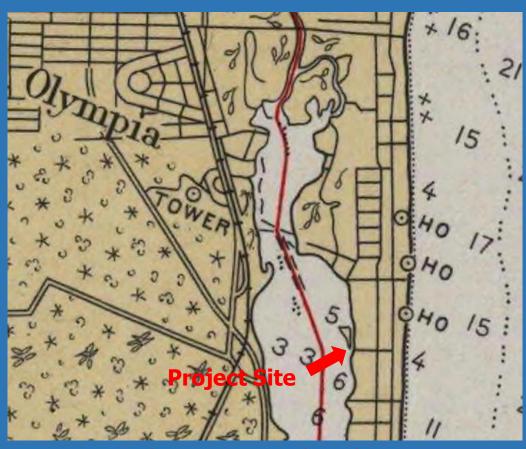




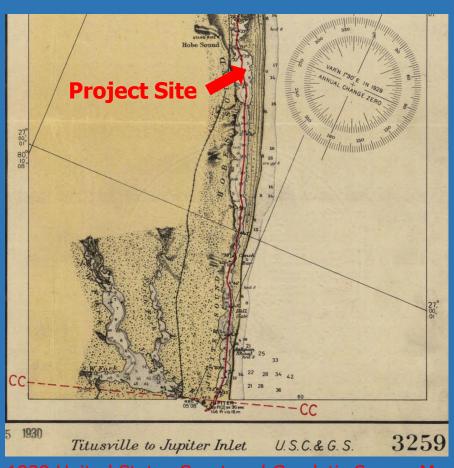
Quad map from LABINS



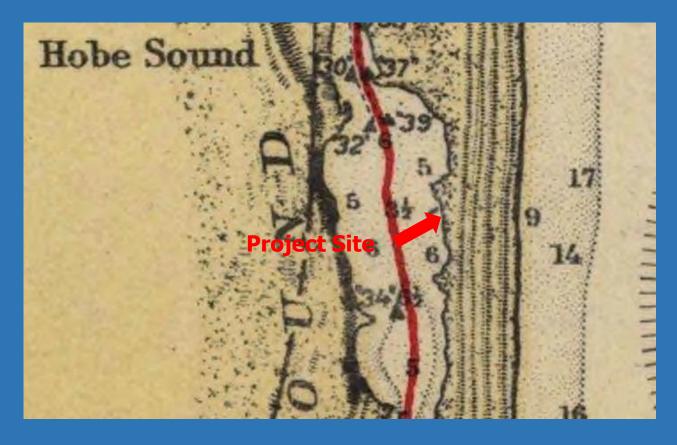
1932 United States Coast and Geodetic Survey Map



1932 United States Coast and Geodetic Survey Map

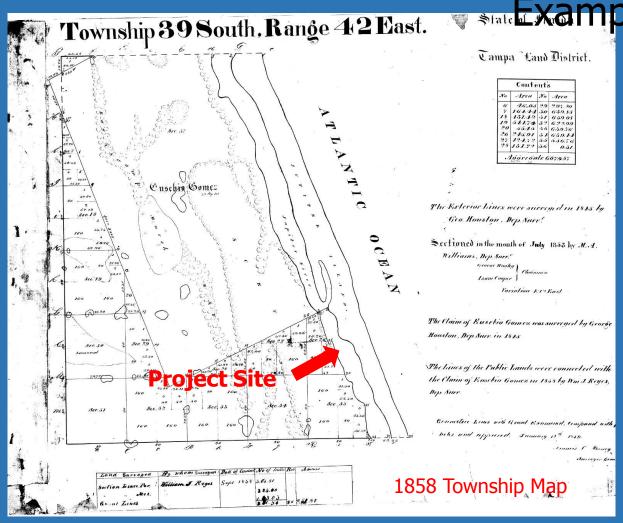


1929 United States Coast and Geodetic Survey Map



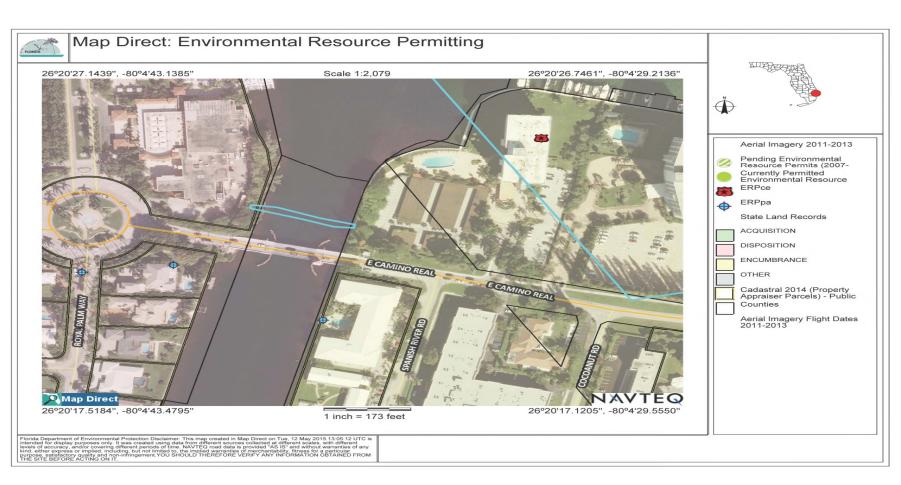
1929 United States Coast and Geodetic Survey Map

SSL Determination 42 East. State Example





2014 Aerial



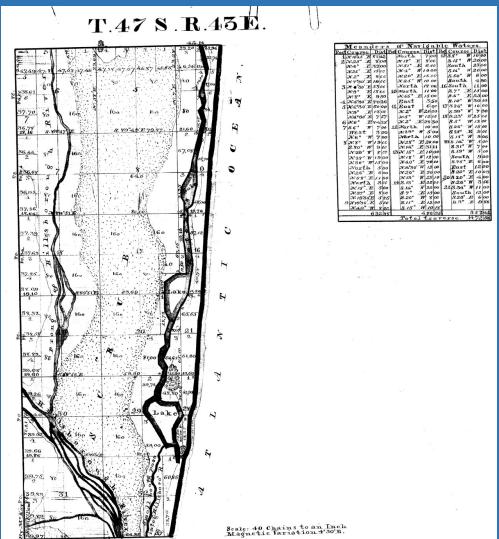
Boca Raton

Boca Raton 2 (C) Boca Raton (C)

Boca Raton Inlet



1927 Quad Map



Township Map

SOVEREIGNTY LAND CONVEYANCES

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND
OF THE STATE OF FLORIDA

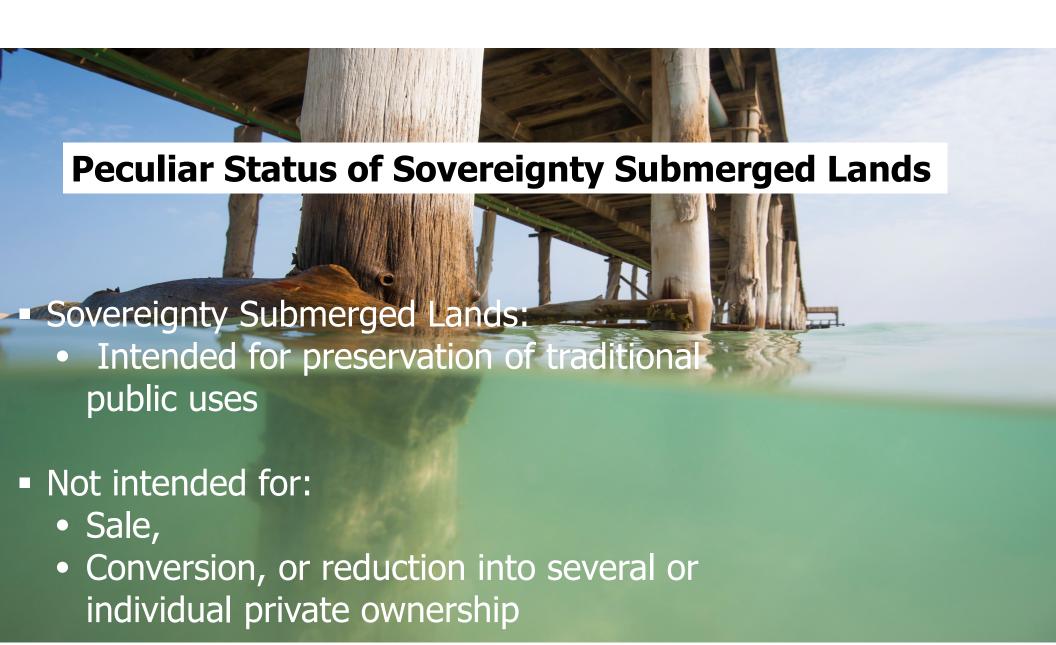
DEED NO. 22909

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under authority of law, for and in consideration of the sum of One Hundred and OO/100 Dollars, to them in hand paid by LAURA BROWN of the County of Pinellas, State of Florida, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey, unto the said LAURA BROWN and her heirs and assigns, the following described lands, to-wit:

From the Northwest corner of Section 6, Township 30 South, Range 15 East, run South 89° 02' 19" East, 975.55 feet along the North boundary of said Section 6, to the Mean High Water mark of Clearwater Harbor for a Point of Beginning.
Run thence by a curve to the right, Radius 2100.00 feet, arc 625.19 feet, chord South 40° 10' 48" East, 622.87 feet; thence by a curve to the left, Radius 600.00 feet.



- Sovereignty Submerged Land cannot be conveyed without:
 - Clear intent; and
 - Authority
- Conveyances of Sovereignty Land In a Deed:
 - Are disfavored by the law
 - Will be closely scrutinized by the Courts
 - Must be clearly or expressly stated in the deed
 - Any doubt or ambiguity will be resolved in favor of retaining the sovereign character of the land





The Public Trust Doctrine:

Codified in Florida's Constitution as well as Chapter 253 of Florida's Statutes.

Dictates that lands beneath navigable waters be held in trust for the people to protect traditional public uses.

Traditional public uses include:

Boating

Fishing

Swimming



- Board of Trustees of the Internal Improvement Trust Fund (i.e., the Governor and Cabinet)
 - Empowered by the Florida Constitution and the Legislature to hold title to and administer state lands and sovereign lands.
- **Department of Environmental Protection**
 - Serves as staff to the Board of Trustees.
 - Includes the Division of State Lands, Division of Recreation and Parks, Office of Greenways and Trails, and the Office of Coastal and Aquatic Managed Areas.





- Public trust tests are used to evaluate private uses of sovereign lands.
- Proprietary Rules define public interest as:
 - Demonstrable environmental, social, and economic benefits accruing to the public at large because of a proposed action in such manner that exceeds all demonstrable environmental, social, and economic costs.
- Florida Law recognizes two public interest standards:
 - Not contrary to the public interest
 - Is the default standard in the proprietary realm
 - In the public interest
 - Becomes effective in proprietary realm where a project falls within the boundaries of a state Aquatic Preserve



What are Riparian Rights?

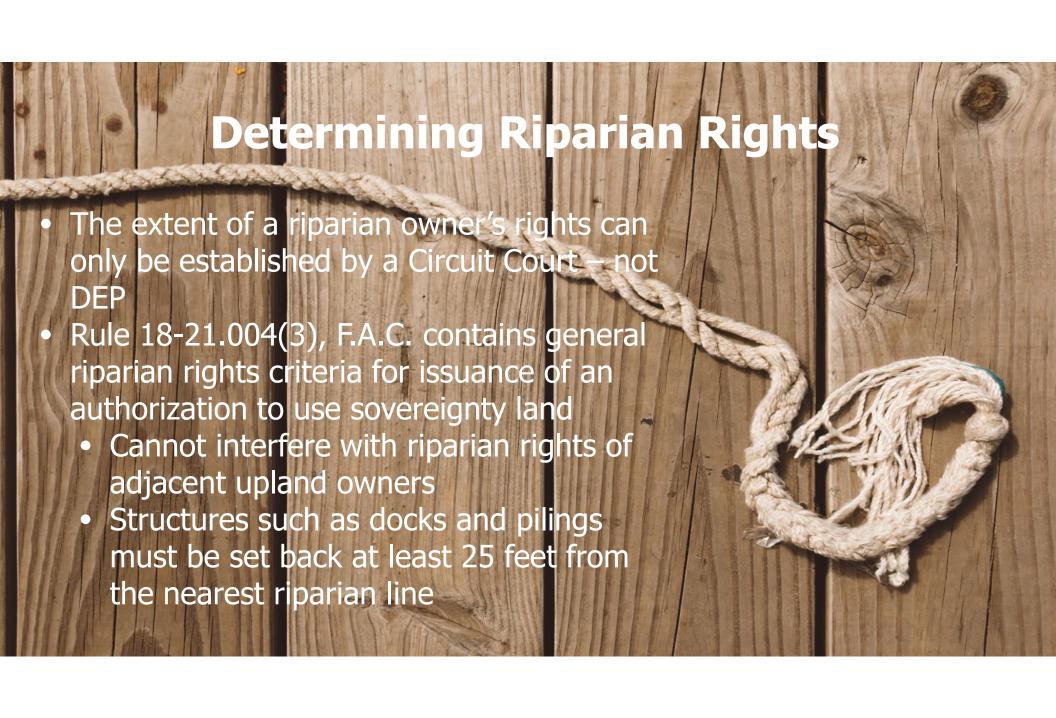
- An owner's right in land that borders on navigable waters
- The rights include access to, and use of the water
- Must demonstrate "sufficient upland interest" in the riparian property to exercise riparian rights to use of adjacent submerged land
- Exercise of riparian rights is confined to the upland owner's "Riparian Area."

GENERAL RIPARIAN RIGHTS

- Rights shared by the general public including the rights to:
- Navigation
- Commerce
- Fishing
- Swimming
- Boating

SPECIAL RIPARIAN RIGHTS

- Rights unique to the upland riparian owner, including:
- Right to wharf out to navigability
- Right to take title to additions to upland property from accretion or reliction
- Right to an unobstructed view over the adjoining waters or channel



Department's Review of Riparian Rights

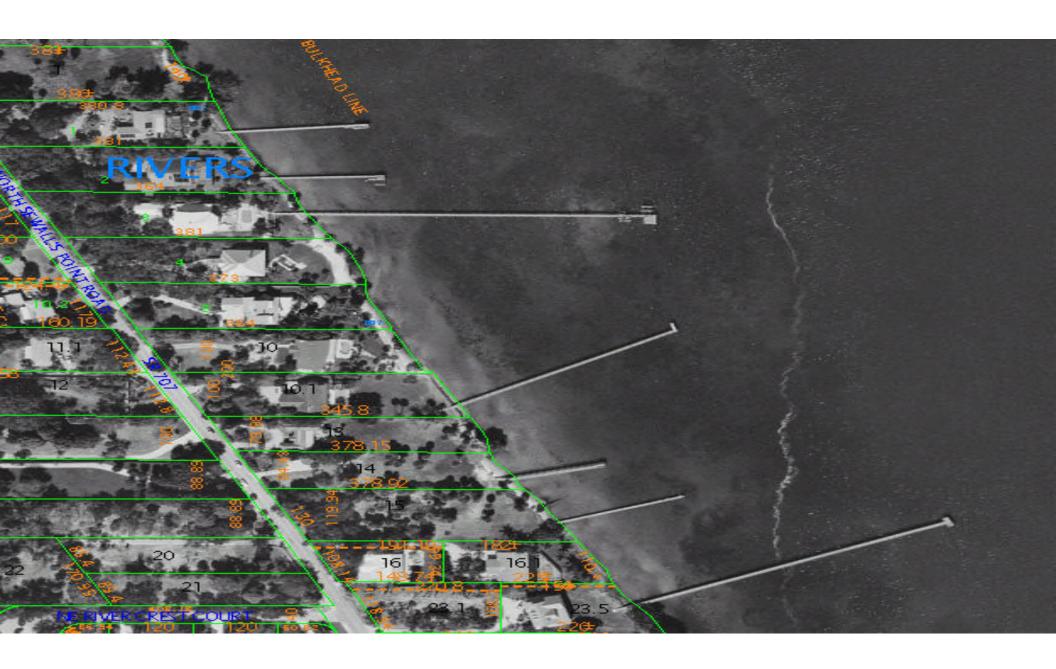
- Department must determine if criteria are met without actually determining or adjudicating any party's riparian rights.
- Applications should include some depiction of proposed riparian lines of the adjacent property.
- Department review is confined to:
 - Whether depiction of the location and extent of riparian rights is professionally acceptable
 - In the event of a conflict, the Department will refer the parties to the Circuit Court.

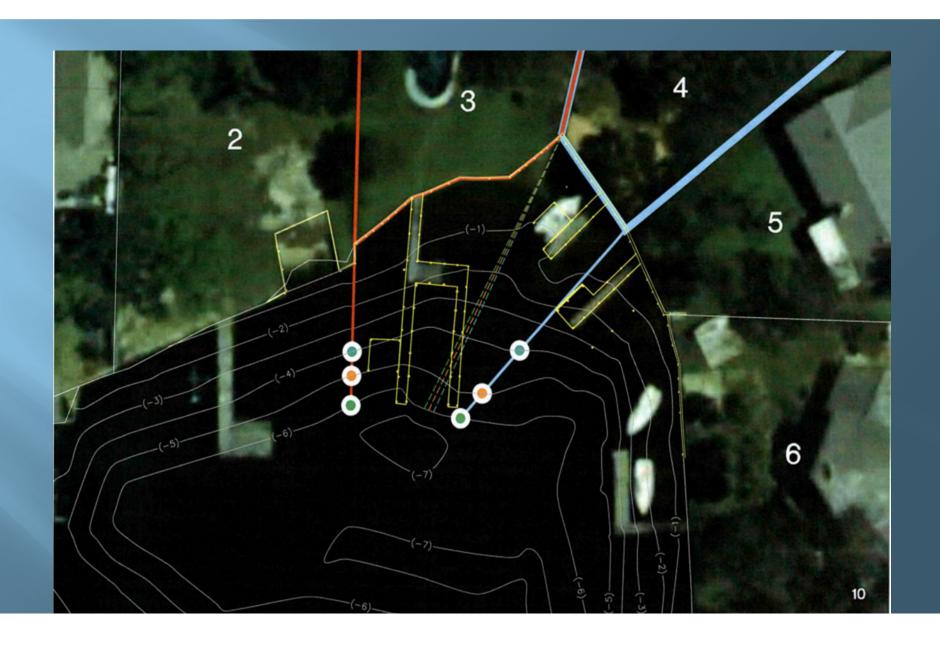
Do You Have Riparian Rights?

- Your property must touch the water (MHWL or OHWL).
- The waterbody must be "navigable" in its ordinary, natural condition.
- No riparian rights exist in privately owned, artificial canals or waterways dredged from uplands. <u>Publix Supermarkets v. Pearson</u>, 315 So.2d 98 (Fla. 2d DCA 1975).
- Recent Development: Riparian rights in third party upland owners still exist in former sovereignty land deeded into private ownership. <u>5F, LLC v. Dresing</u>, 142 So.3d 936 (Fla. 2d 2013).
- Severance of Riparian Rights:
- Can only be severed from the upland property by express, bilateral agreement or deed.
- If deed is silent or ambiguous, riparian rights are legally assumed to follow ownership
 of the upland property.

Where are Your Riparian Rights?

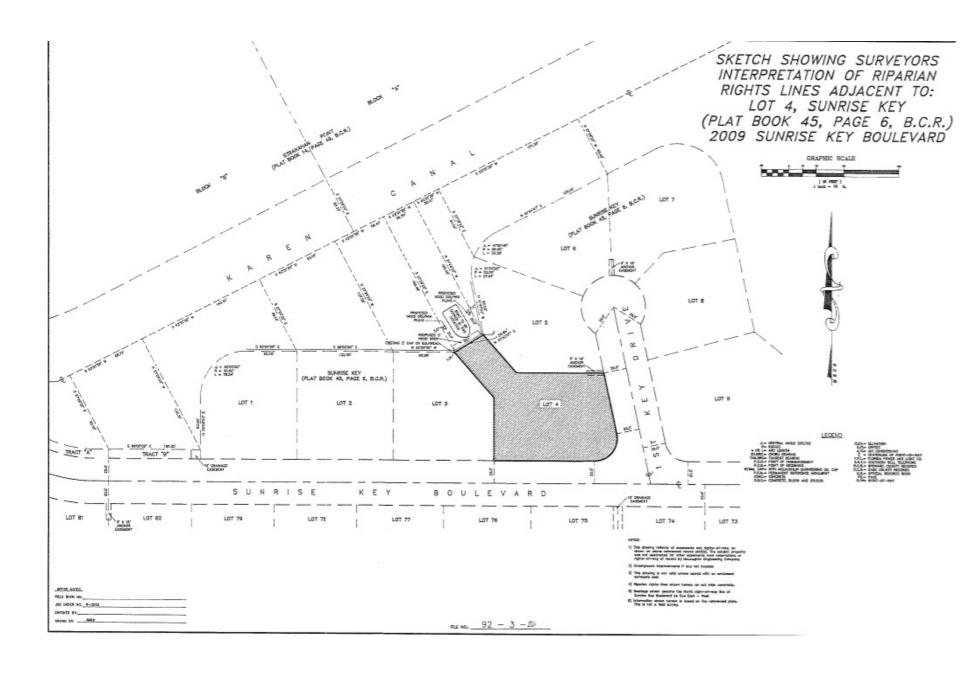
- Riparian lines DO NOT follow projections of your lot lines out into the water this method has been rejected by Florida Courts
- Goal of the Circuit Court is to equitably apportion access from the riparian properties to the water
- Generally accepted Methods for Drawing Riparian Lines:
- Perpendicular to the Shoreline
 - Use for large waterbodies without a nearby formally marked channel
- Perpendicular to the Channel
 - Use for waterbodies with a nearby marked navigation channel to provide the most equitable access to the channel drawn at right angles
- The "Proportionate" Shoreline or "Cove" Method
 - A cove causes inequity if either of the perpendicular methods are used
 - Since the shore deviates from the channel geometry, the goal is direct access to the "line of navigability"
 - An "outer line" such as the first deep water is established, and an inner line following the general "pristine" shore of the cove are established, and the lines are connected.











Authorization to use Sovereign Submerged Lands

Governor and Cabinet serving as the Board of Trustees of the Internal Improvement Trust, (BOT) (Board)

DEP or WMD's

- FS 373 Activity based split
- Project linking

Department of Agriculture and Consumer Services

Florida Fish and Wildlife Conservation Commission as directed by B

Exceptions; > 50 slips, > 50,000 sq ft, heightened public concern, and others to Board for Approval

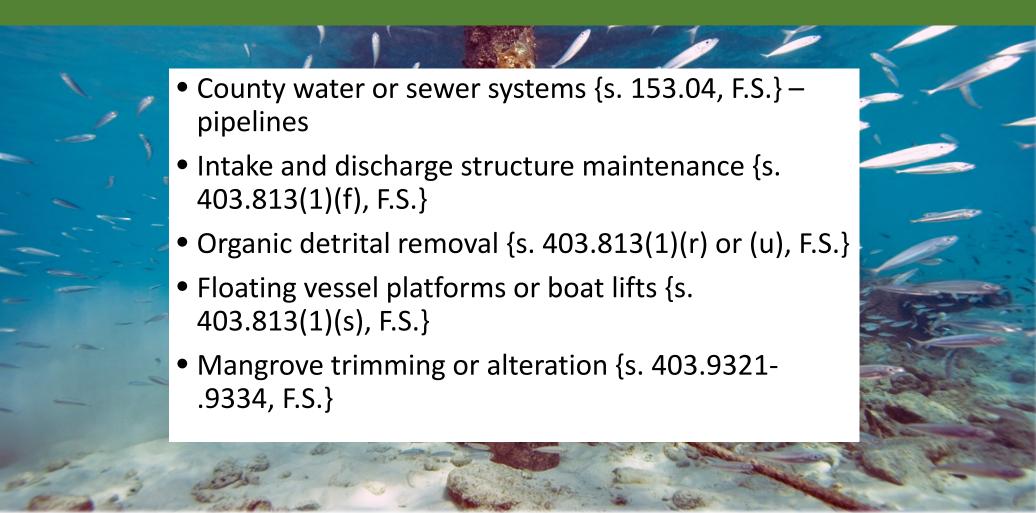
Forms of Authorization

- Exceptions
- Consent by rule
- *Letters of Consent*
- Leases
- Easements

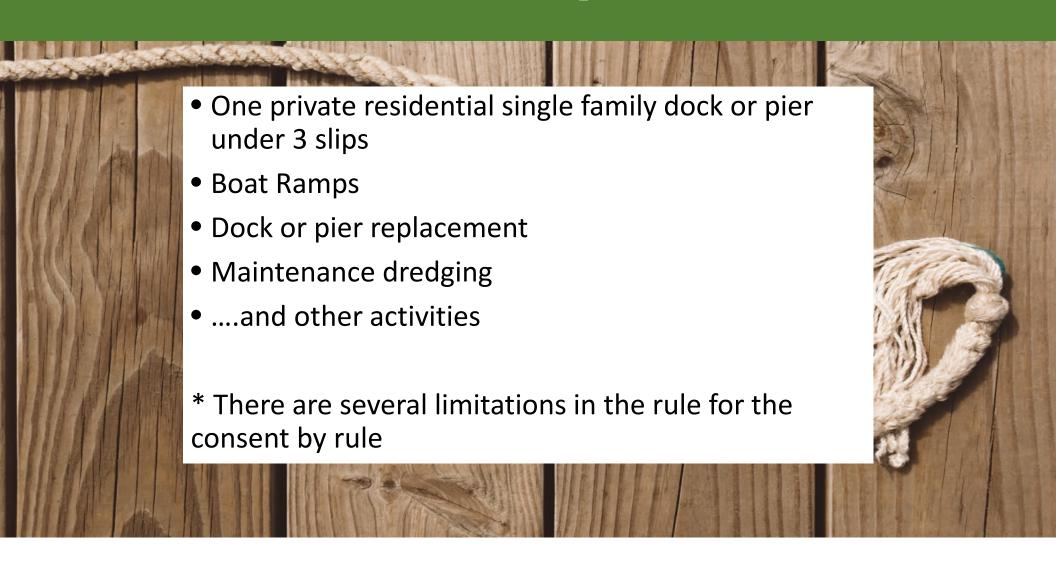


Chapter 18-21.005, F.A.C.





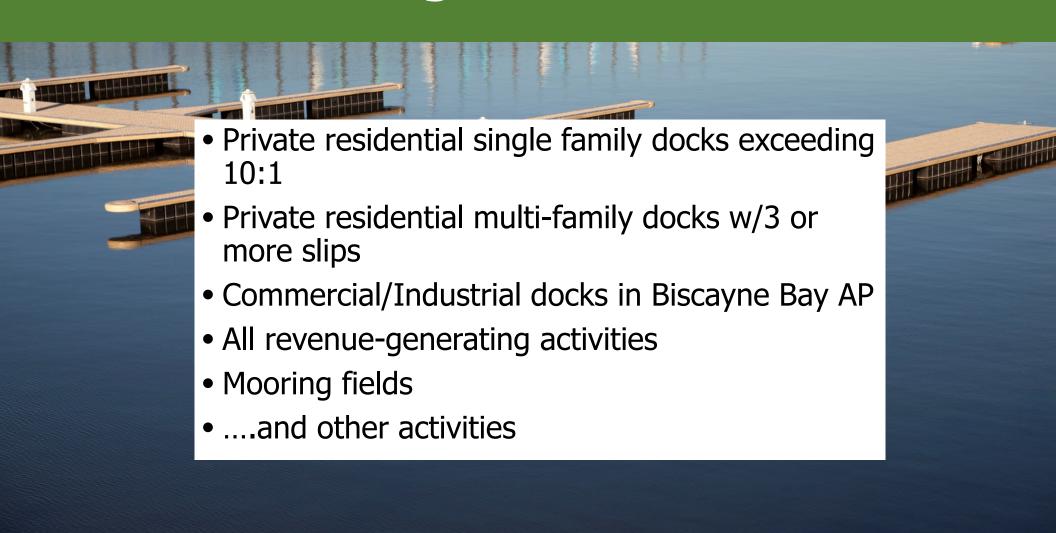
Consent by Rule





- Minimum sized docks
- Single Family docks/piers under 10:1
- Private channels under 10:1
- Statutory exempt activities (as listed in the rule)
- Shoreline stabilization
- Artificial reefs
- Public docks
-and other activities

Submerged Land Leases



Easements

- Road and bridge crossings
- Shoreline protection structures that exceed letter of consent
- Public and private navigation channels
- Spoil disposal sites
- Borrow areas for beach nourishment
- Treasure salvage
-and other activities



- All activities must be "not contrary to the public interest."
- Activities on sovereign submerged lands are limited to water dependent activities.
- Stilt houses, boat houses with living quarters and residential structures are prohibited.
- Uses that generate profits or eliminate traditional public uses require equitable compensation
- The use of sovereign submerged lands to provide road access to islands where none previously existed is prohibited.
- The use of sovereign submerged lands to provide road or utility access to unbridged, undeveloped coastal barrier island is prohibited.

General Resource Management Policies

- All activities must minimize or eliminate the cutting, removal, or destruction of wetland vegetation.
- Vertical seawall construction is discouraged.
 - Alternative forms of shoreline stabilization are to be used to the maximum extent possible.
- Dredging is generally discouraged and approved only when shown to be:
 - The minimum amount necessary to accomplish a stated purpose, and designed to minimize the need for maintenance dredging.
- Dredging to provide upland fill is generally prohibited.

Aquatic Preserves

More stringent criteria under Chapter 18-20, F.A.C. control

More rigorous design criteria

Typically demand reduction in overall project scale and impact

No dock shall extend waterward of the MHWL/OHWL high water line more than 500 feet or 20 percent of the width of the water body, whichever is less.

Docking facilities shall be designed to ensure that vessel use will not cause harm to site specific resources.

Any wood planking used to construct the walkway surface of a facility shall be no more than eight inches wide and spaced no less than one-half inch apart after shrinkage. Walkway surfaces constructed of material other than wood shall be designed to provide light penetration which meets or exceeds the light penetration provided by wood

Must be elevated a minimum of five feet above mean or ordinary high water

Aquatic Preserves — Elevated Public Interest Standard

Project must be shown to be "in the public interest."

Must balance the <u>Costs and Benefits</u> of the project

Costs:

- 1. Reduced/degraded water quality;
- Reduced/degraded natural habitat and function;
- 3. Destruction, harm or harassment of endangered or threatened species and habitat;
- 4. Preemption of public use;
- 5. Increasing navigational hazards and congestion;
- 6. Reduced/degraded aesthetics; and
- 7. Adverse cumulative impacts.

Examples of Specific Public Benefits

- 1. Donation of land, conservation easements, restrictive covenants which will protect or enhance the aquatic preserve;
- 2. Providing access or facilities for public land management activities;
- 3. Providing public access easements like beach access or boat ramps,
- 4. Restoration/enhancement of altered habitat or natural functions,
- 5. Improvements to water quality,
- 6. Upland dry storage as an alternative to westslips
- 7. Marking channels to avoid damage to resources



