

# RIPARIAN RIGHTS AND SURVEYING

## AN INTRODUCTION FOR DEVELOPING RIPARIAN LINES





## YOUR PANEL



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Richard P. Green, Esq.



- Senior Attorney in LLW's St. Petersburg office since 2016.
- Nearly 10 years of experience representing private and governmental clients in permitting, enforcement and civil and administrative litigation concerning:
  - Docks, piers, marinas and boat basins and dredging projects
  - Coastal construction control line permitting
  - Beach Renourishment
  - Riparian rights
  - Title and ownership disputes concerning submerged land and shoreline property boundaries
  - Real Estate Matters
  - General Civil Litigation



# GOALS FOR TODAY

HISTORY OF RIPARIAN RIGHTS AND SOVEREIGNTY LANDS

THE ROLE OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

TECHNIQUES FOR DETERMINING AN EQUITABLE DISTRIBUTION

NEW AND EMERGING TECHNOLOGIES AND METHODS



A photograph of a wooden dock extending into a calm lake at dusk. Two dark-colored Adirondack chairs are positioned on the dock, facing away from the camera towards the water. The sky is dark, and the trees on the far shore are silhouetted against the twilight. The water reflects the light from the sky and the surrounding landscape.

# RIPARIAN RIGHTS – LEGAL CONSIDERATIONS FOR FLORIDA SURVEYORS

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By: Andrew J. Baumann



## Andrew J. Baumann, Esq.



- Shareholder in LLW's West Palm Beach office since 2005.
- Former Senior Assistant General Counsel for the Florida Department of Environmental Protection focused on submerged lands and state land title issues.
- Former Assistant County Attorney for Palm Beach County focused on eminent domain and environmental and land use/zoning issues
- Nearly 30 years of experience representing private and governmental clients in permitting, enforcement and civil and administrative litigation concerning:
  - Docks, piers, marinas and boat basins and dredging projects
  - Riparian rights
  - Title and ownership disputes concerning submerged land and shoreline property boundaries
  - Coastal and marine construction, armoring and beach renourishment issues



# What are Riparian Rights?

Riparian rights are those incident to land bordering upon navigable waters. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land.

- Ingress/egress between the property and the navigable waters
- Boating
- Bathing
- Wharfing out (qualified by government regulation)
- Unobstructed view of the waterway or channel
- Right to receive accretions and relictions – subject to erosion
- Remains subject to the general public's superior right of navigation.



# Partially codified by statute - Florida Statute Section 253.141

**Riparian rights defined; certain submerged bottoms subject to private ownership.—**

(1) Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.



# What are Riparian Rights?

- Waterfront property (common law codified by statute 253.141).
- Implicitly attached to frontline property of bordering navigable waters.
- “These rights are considered affirmative easements because ‘they grant ‘rights to enter and use land in possession of another’”.
- *BB Inlet Property, LLC v. 920 N. Stanley Partners, LLC*, 293 So.3d 538, 543 (Fla. 4th DCA 2020).
- The ownership of the submerged land itself is not relevant – only the nature of the land as being land lying beneath “navigable waters. *5F, LLC v. Dresing*, 142 So.3d 936, 944 (Fla. 2d DCA 2014).



An aerial photograph of a waterfront property. A cyan line outlines a large area including a house, a driveway, a pool, and a dock with several boats. Yellow lines extend from the text boxes to specific points on the property: one points to the dock, another to the shoreline, and a third to the road. Labels on the map include 'Martin Palm Beach' near the water, 'Beach Rd' along the road, and '19999' near a house. A red fire hydrant is marked on the road.

## RIPARIAN RIGHTS ARE EASEMENTS

- Riparian rights apply regardless of ownership of the submerged land – BB Inlet Holdings, LLC v. 920 N. Stanley Partners, LLC, 293 So.3d 538 (Fla. 4<sup>th</sup> DCA 2020)

## EVIDENCE OF SUFFICIENT UPLAND INTEREST –

Must show DEP you have control and interest in the adjacent riparian upland  
Rule 18-21.003(63), FAC.



# Do You Have Riparian Rights?

- Must own riparian uplands
  - Land must touch mean high water of a navigable waterbody
  - Navigability of the waterbody is determined by its natural condition at statehood
- No riparian rights in artificially created, privately-owned water bodies

*Publix Supermarkets v. Pearson*, 315 So. 2d 98 (Fla. 2d DCA 1975)
- Emerging Trend: riparian rights even where submerged lands are privately held

*5F, LLC v. Dressing*, 142 So. 3d 936 (Fla. 2d DCA 2013)  
*5F, LLC v. Hawthorne*, 2021 WL 745361 (Fla. 2d DCA 2021)





## NAVIGABILITY IS THE TEST

Determined by waterway's  
condition at Statehood – March  
3, 1845

Waterbody must be permanent  
in character and, in its ordinary  
and natural state is navigable by  
the public for useful purposes  
Broward v. Mabry, 50 So. 826  
(Fla. 1909).



# Navigation Test

- “Where a stream or body of water is permanent in character, and in its ordinary natural state is in fact navigable for useful purposes, and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located...”
  - *Broward v. Mabry*, 50 So. 826, 830 (Fla. 1909).



# What about artificial portions of water?

- “As a general proposition, it has been held that riparian rights do not ordinarily attach to artificial water bodies or streams...”
  - *Publix Super Markets, Inc. v. Pearson*, 315 So.2d 98, 99 (Fla. 2d DCA 1975).
- “We believe that the Silver Blue Lake case is distinguishable from the instant case for the reason that in the cited case the water body was specifically incorporated into the subdivision and the deeds of conveyance to the property owner fronting the water contained deed restrictions allowing said owners to use the lake.”
  - *Id.* at 99.



# Surveying a riparian easement

- Determining the location and extent of a waterfront property's riparian rights (you are surveying the bounds of an easement).
- Treated as a survey of boundaries of a property line.
- Easements are a possessory estate in real property – title and boundary to real property can only be determined by an Article V (Circuit Court Judge (26.012)).
- Unless set by a court or recorded bilateral agreement, riparian lines are generally the expression of a surveyor's opinion (therefore subject to differing opinions).



**177.041 Boundary survey and title opinion or property information report required.**—Every plat or replat of a subdivision submitted to the approving agency of the local governing body must be accompanied by:

(1) A boundary survey of the platted lands. However, a new boundary survey for a replat is required only when the replat affects any boundary of the previously platted property or when improvements which may affect the boundary of the previously platted property have been made on the lands to be replatted. The boundary survey must be performed and prepared under the responsible direction and supervision of a professional surveyor and mapper preceding the initial submittal of the plat to the local governing body. This subsection does not restrict a legal entity from employing one professional surveyor and mapper to perform and prepare the boundary survey and another professional surveyor and mapper to prepare the plat.

(2) A title opinion of an attorney at law licensed in Florida or a property information report showing that record title to the land as described and shown on the plat is in the name of the person, persons, corporation, or entity executing the dedication. The title opinion or property information report must also show all mortgages not satisfied or released of record nor otherwise terminated by law.

*History.*—s. 1, ch. 71-339; s. 1, ch. 72-77; s. 1, ch. 88-48; s. 3, ch. 98-20; s. 1, ch. 99-288; s. 1, ch. 2017-132.

# F.S. SECTION 177.40



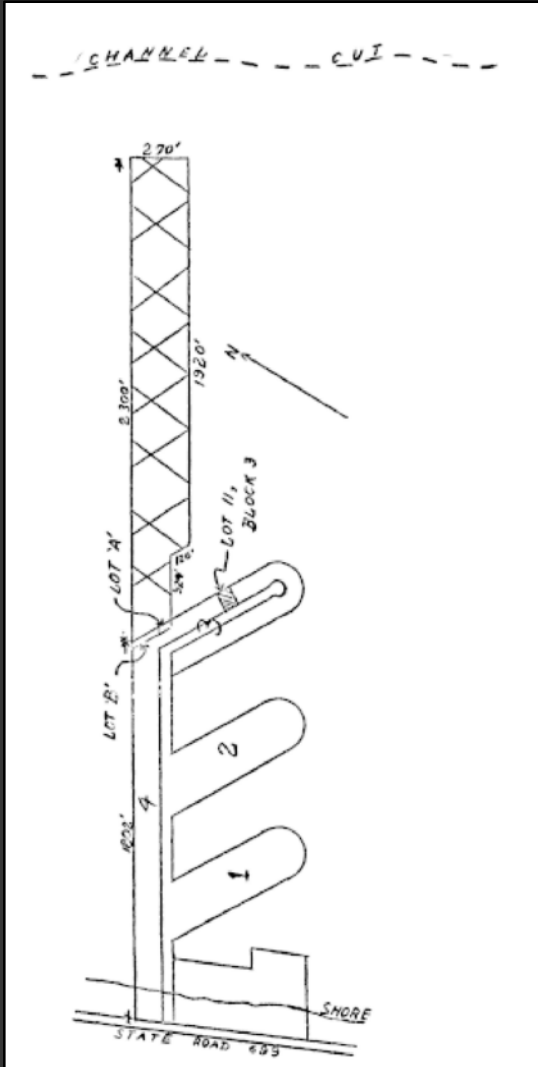
# Hayes v. Bowman, 91 So.2d (Fla. 1957)

## Geometry v. Equity

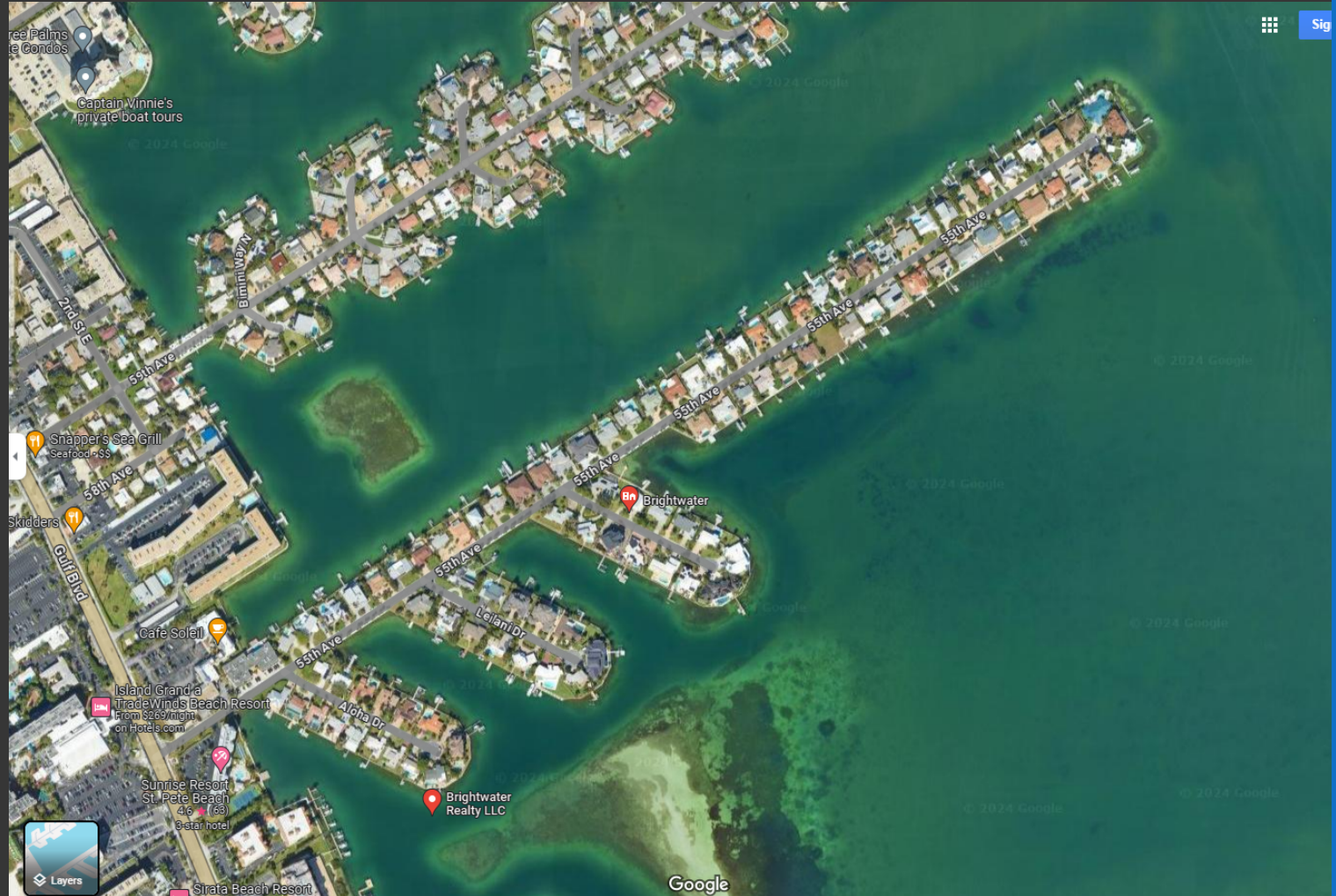
- "It is absolutely impossible to formulate a mathematical or geometrical rule that can be applied to all situations of this nature. The angles (directions) of side lines of lots bordering navigable waters are limited only by the number of points on a compass rose. These two conditions make the mathematical or geometrical certainly implicit in the rules recommended by the contesting parties literally impossible."
- *Hayes v. Bowman*, 91 So.2s 795, 801 (Fla. 1957).



- Graphic from *Hayes v. Bowman*, 91 So.2d 795, 797 (Fla. 1957)



- Current Aerial Photo (Google Maps 2024)





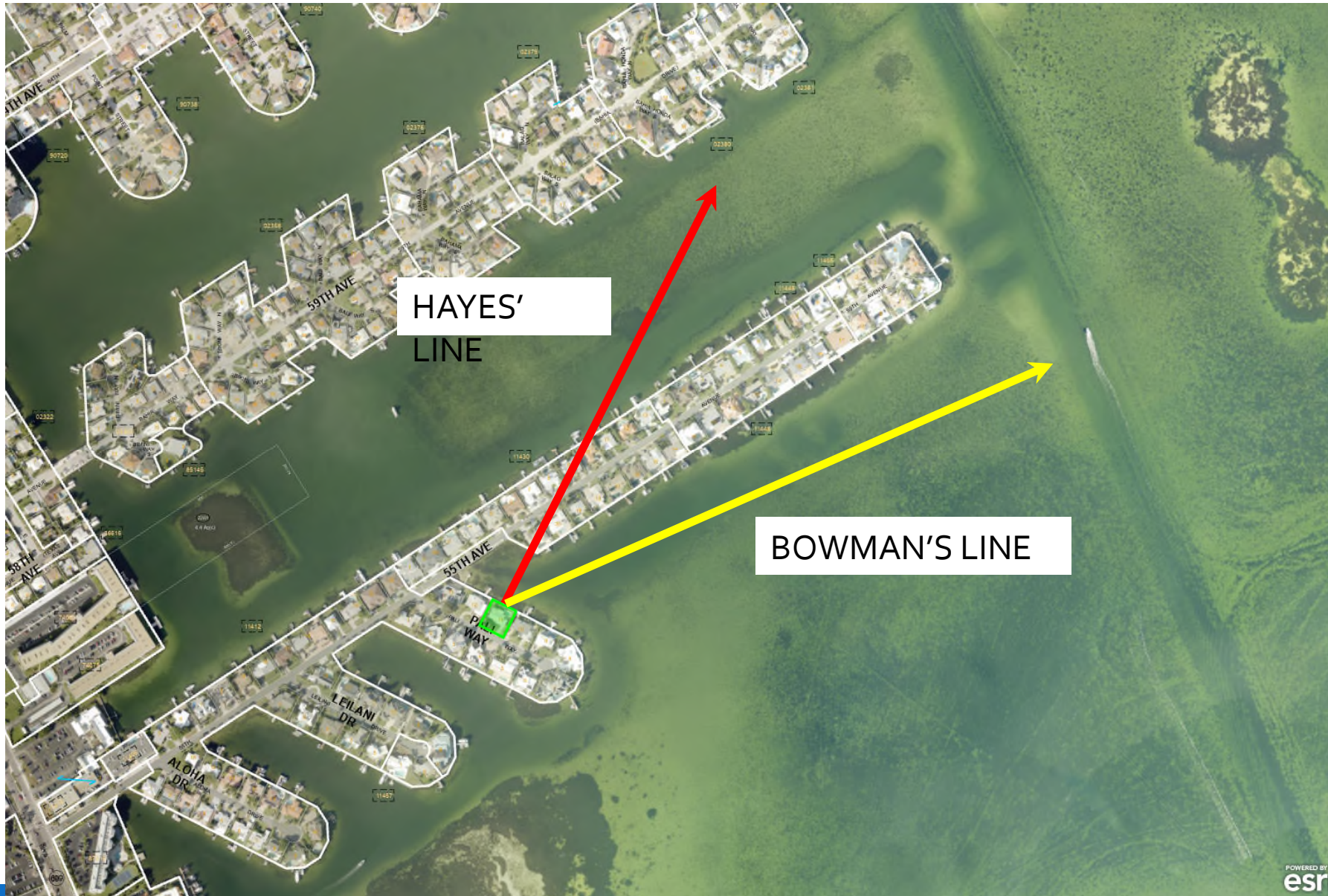
# Aerial in 1951



Source: University of  
Florida Digital Collection



# Competing Riparian Theories



Source: Pinellas  
County Property  
Appraiser



# The Hayes Test

Hayes v. Bowman, 91 So.2d 795 (Fla. 1957)

“We therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area ‘as near as practicable’ in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such ‘equitable distribution’ the Court necessarily must give due consideration to the lay of the upland shore line, the direction of the Channel and the co-relative rights of adjoining upland owners.”

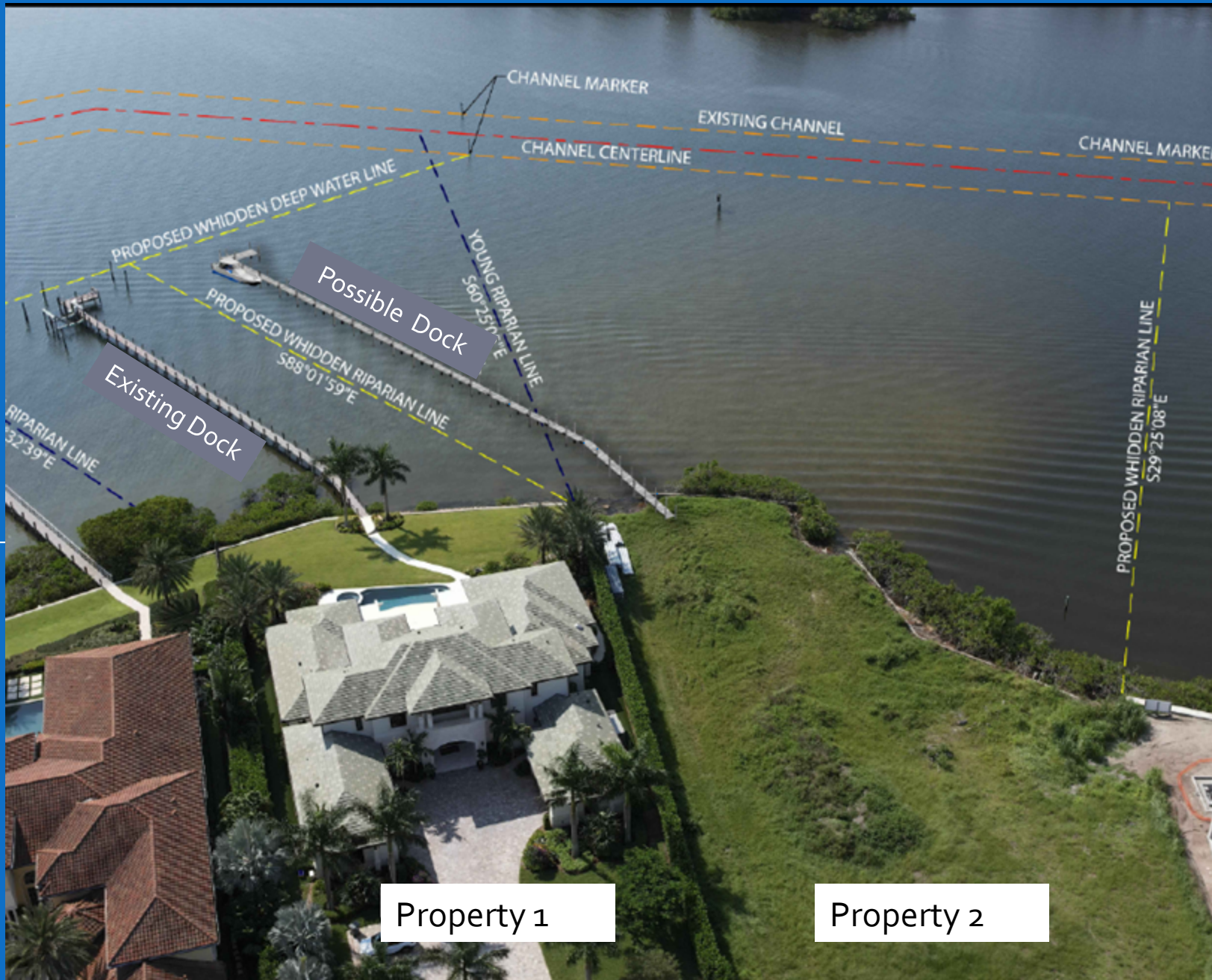
Hayes, 91 So.2d at 802



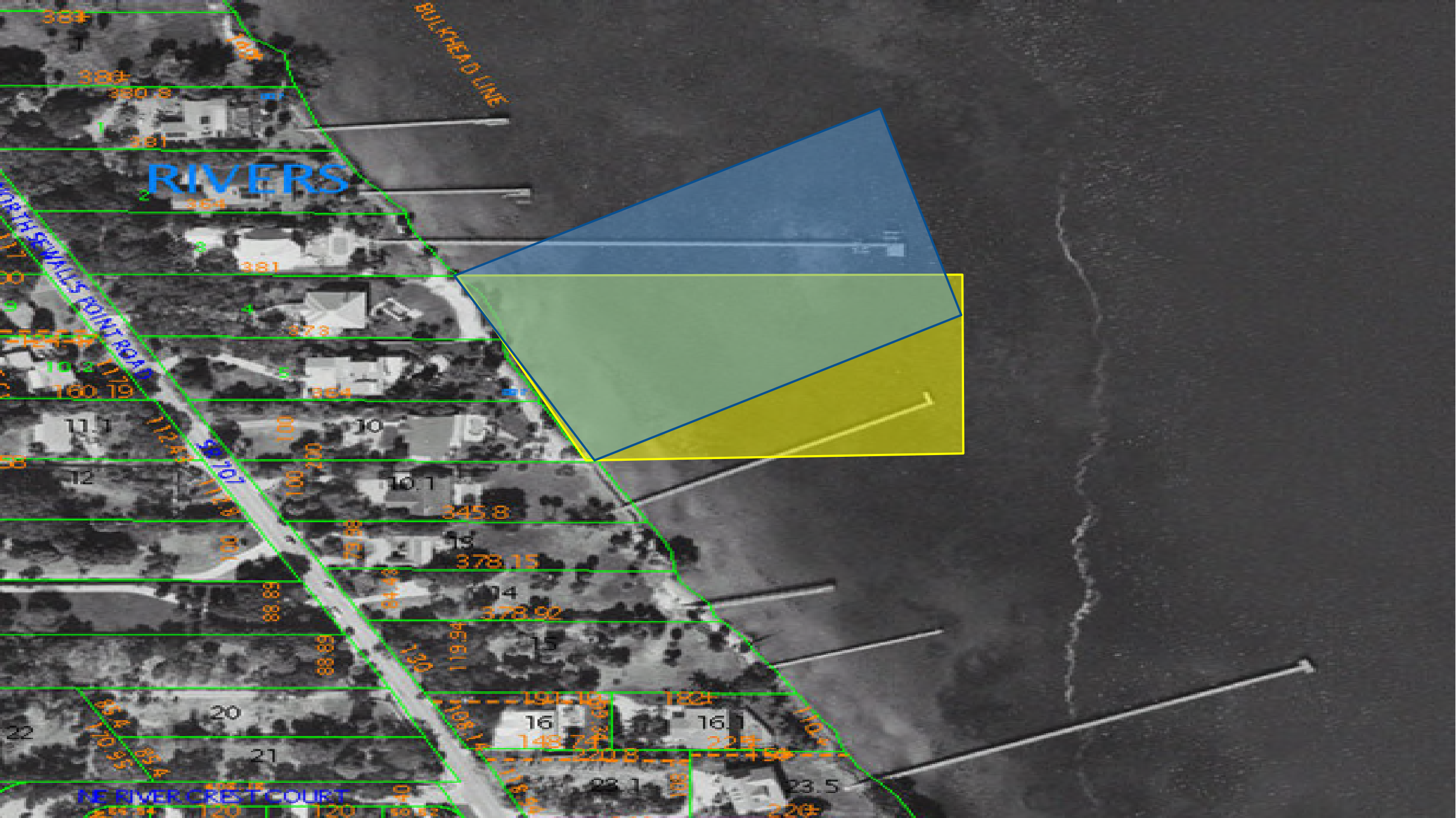
# Drawing Riparian Lines Under Hayes v. Bowman

- 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 Channel – The Default Under Hayes v. Bowman**
    - Use for waterbodies with a nearby marked navigation channel to provide the most equitable access to the channel drawn at right angles
  - **Perpendicular to the Shoreline**
    - Use for large waterbodies (large bays, the Ocean/Gulf of Mexico) without any nearby established channel
  - **The “Proportionate” Shoreline or “Cove” Method – Line of Deep Water**
    - 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







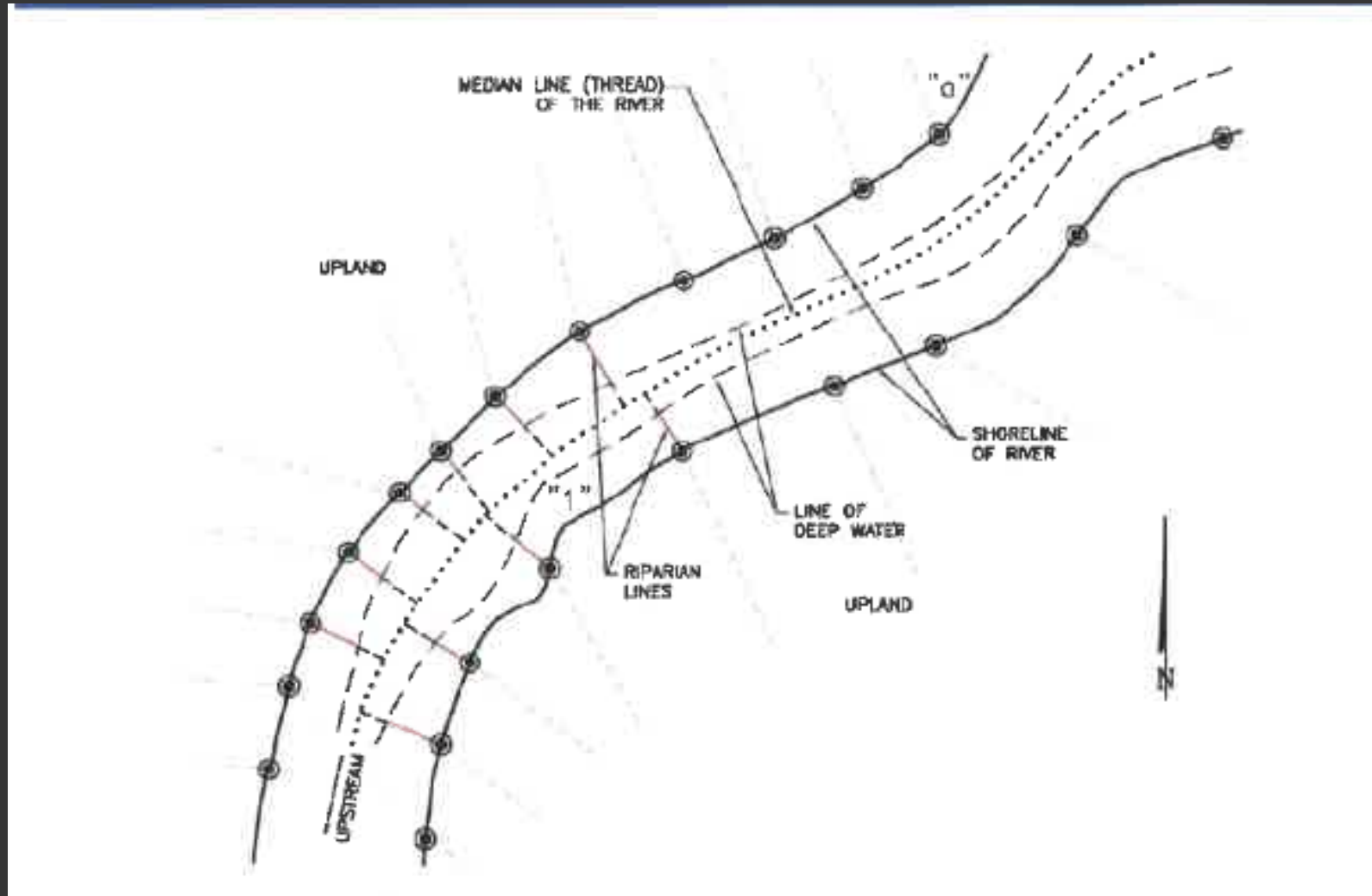






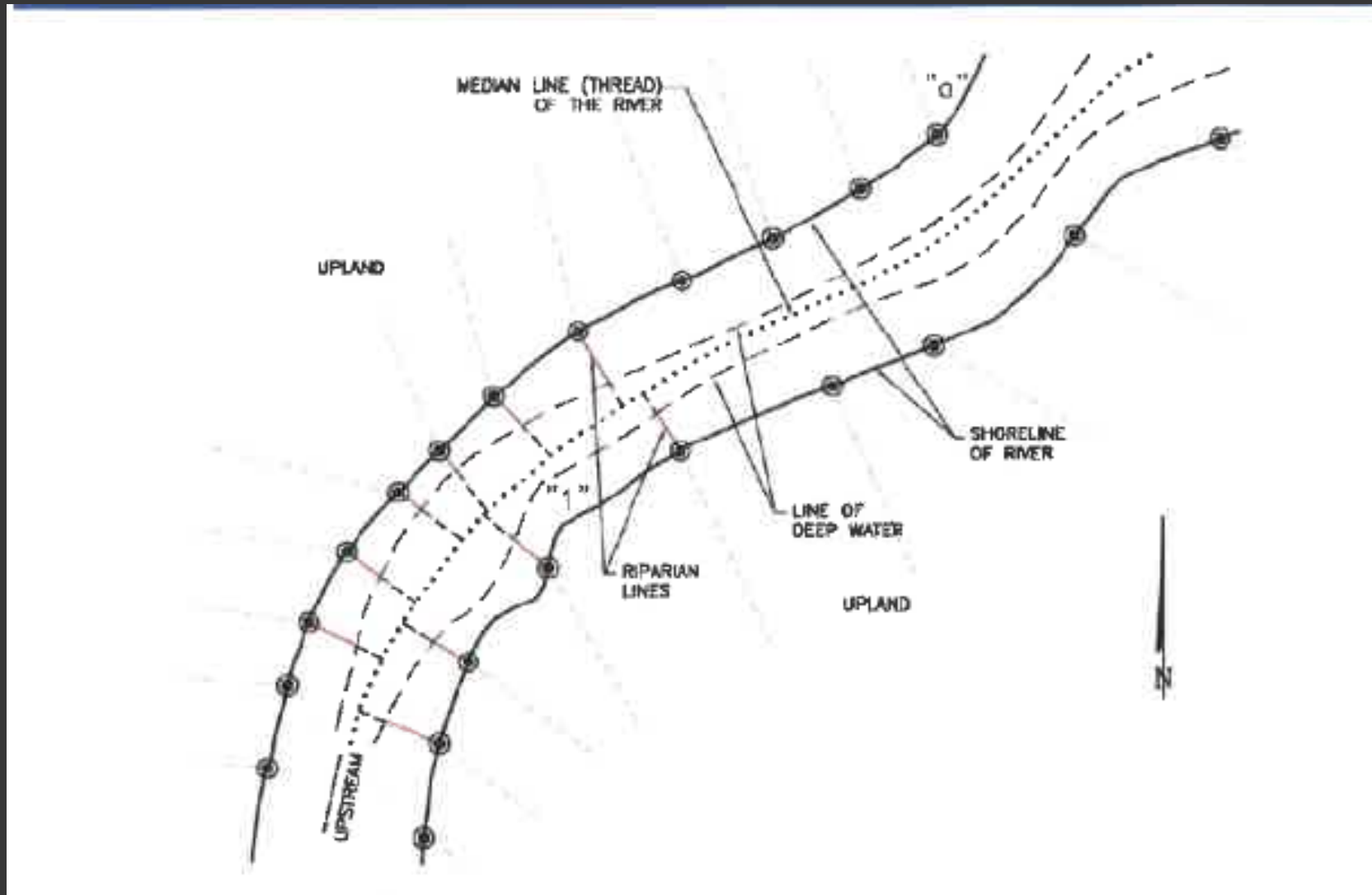


## River, No Marked Channel, Parallel Banks – Perpendicular with Median Line



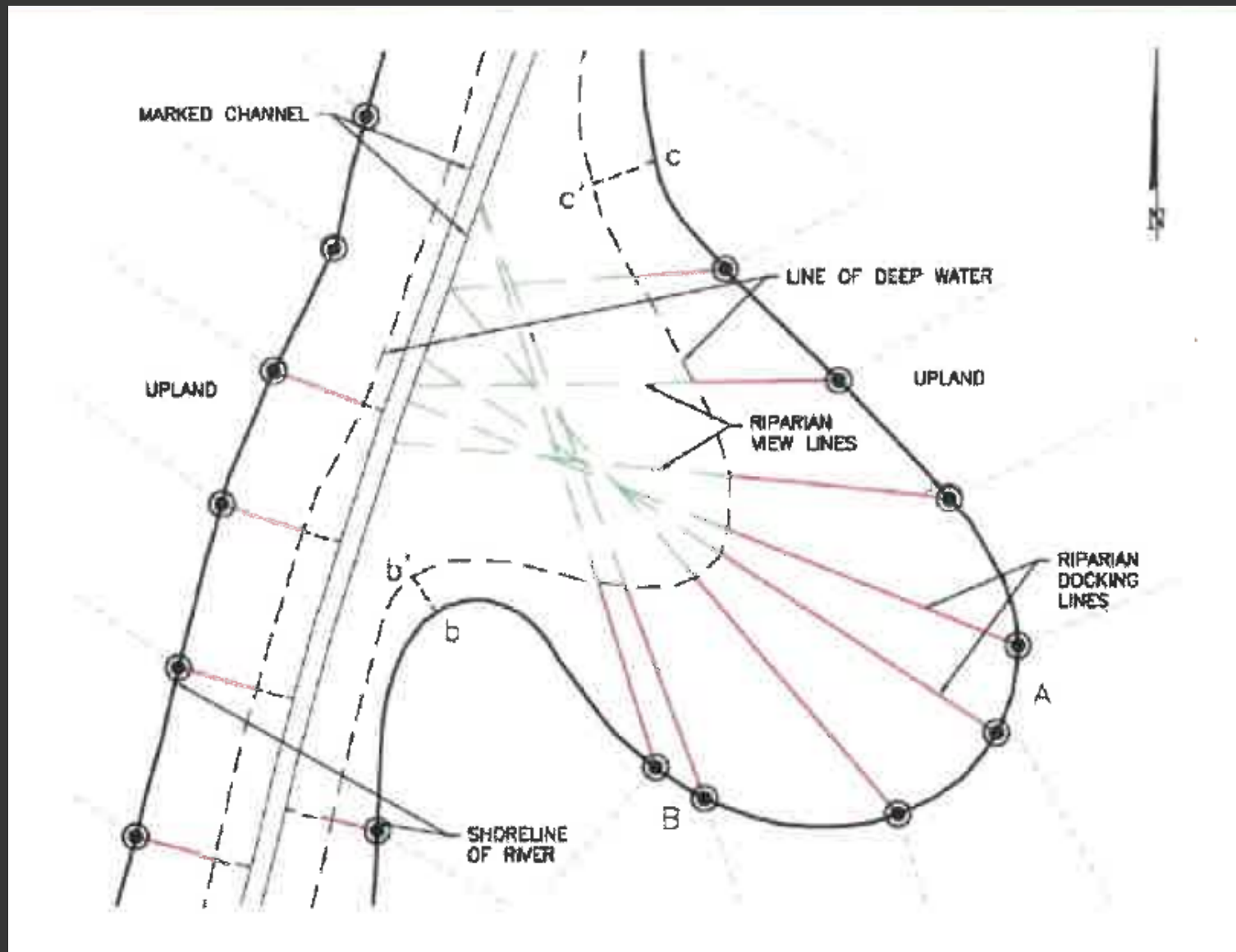


## River, Marked Channel, Parallel Banks – Perpendicular with the Channel Line



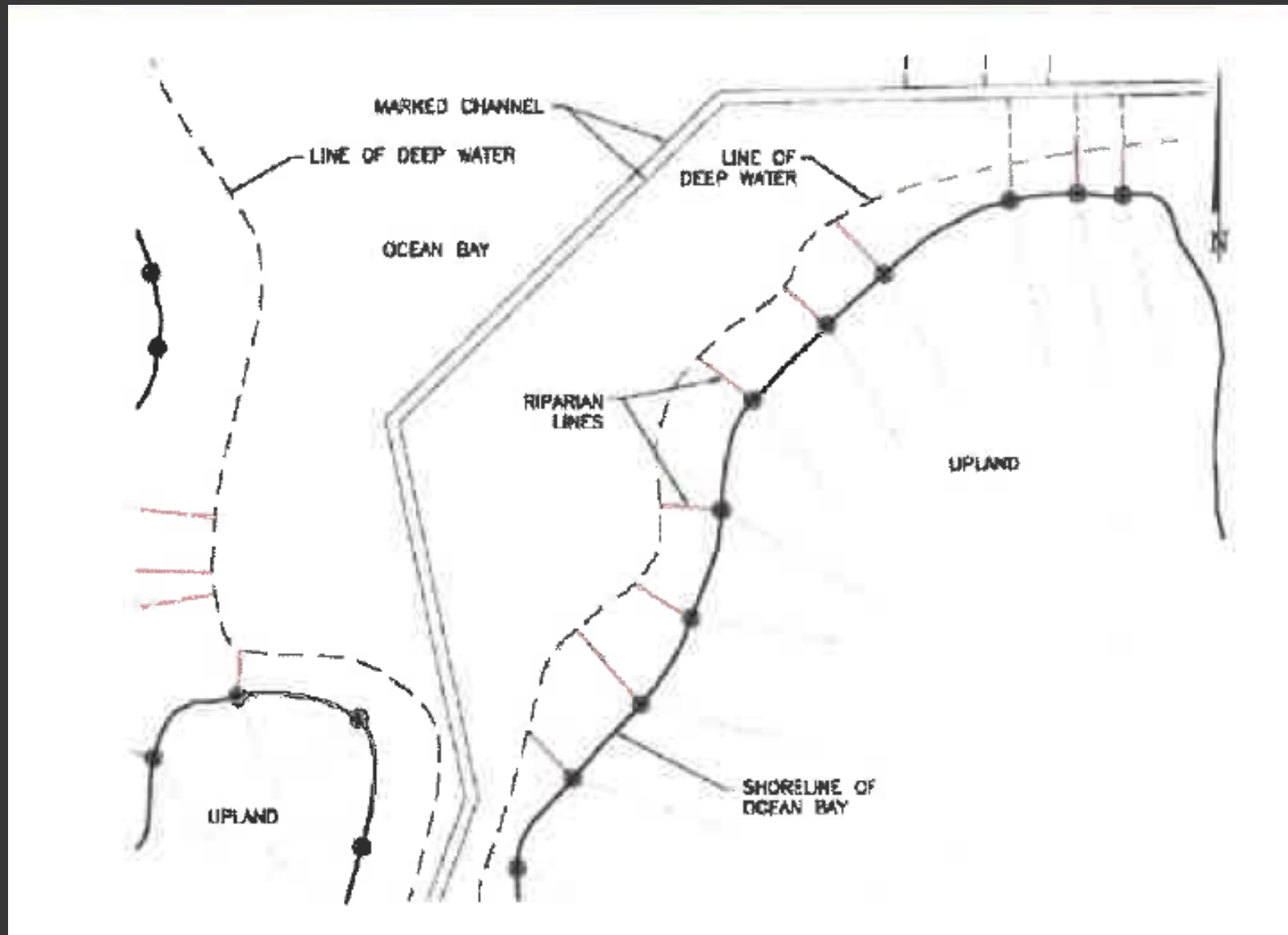


## Deep Cove on One Bank – Apportion Line of Navigability



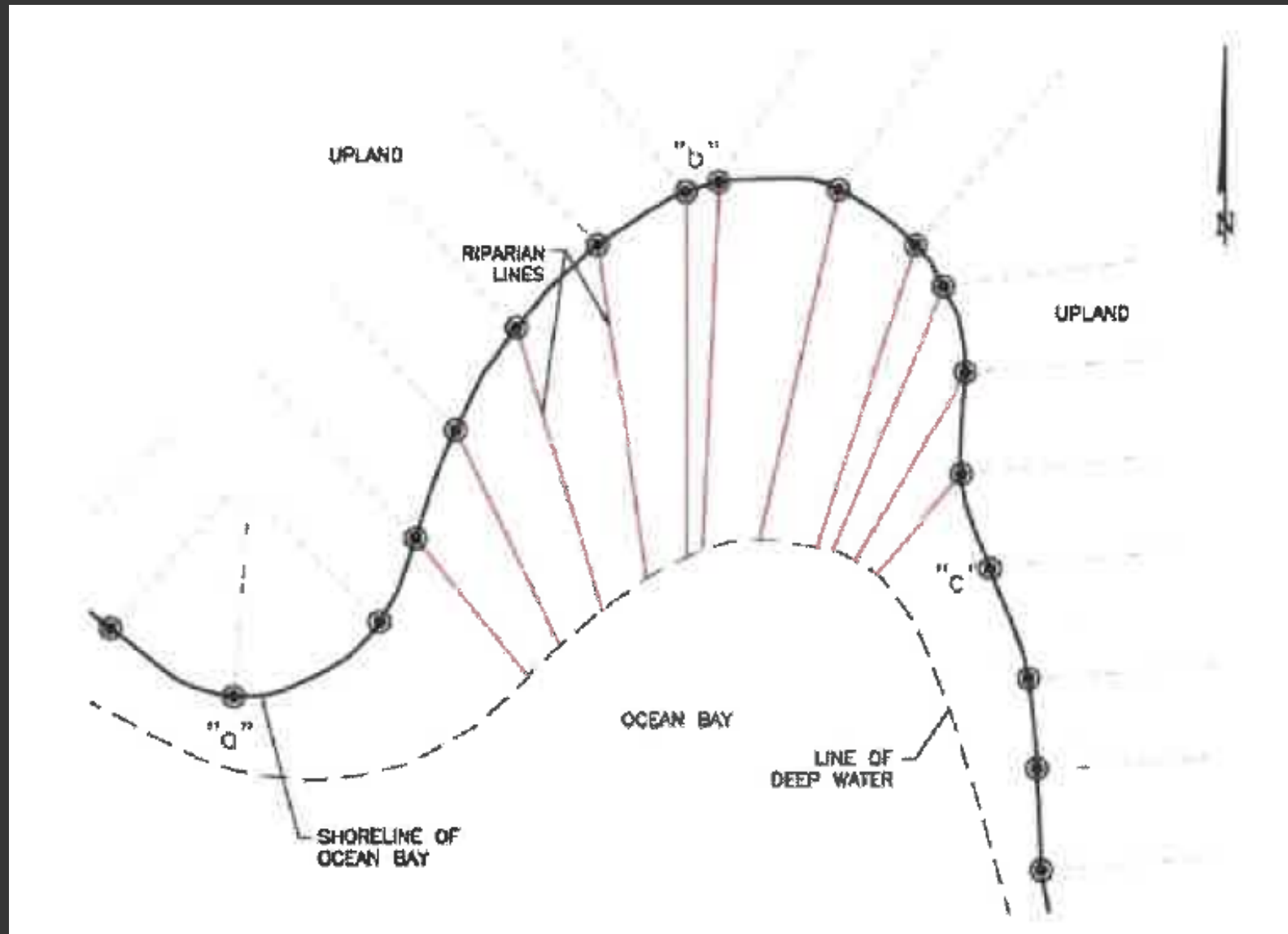


## Large Water Body – Perpendicular with Shore



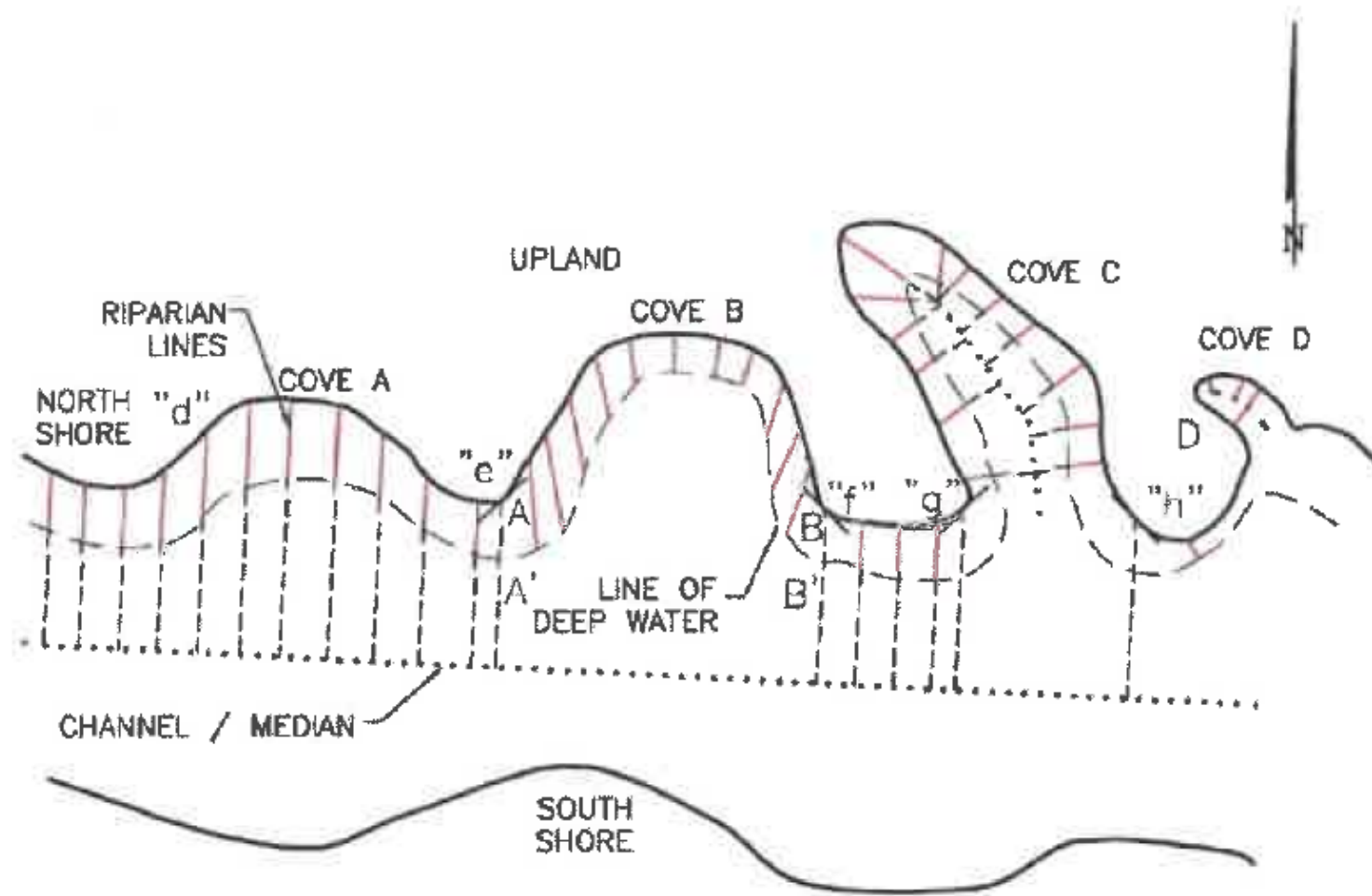


## Large Bay Cove – Apportion Line of Navigability





## Multiple Coves







Andrew J. Baumann, Esq.  
Lewis, Longman & Walker,  
P.A.

**THANK  
YOU!**

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# RIPARIAN RIGHTS/SOVEREIGNTY LANDS

**Richard Malloy/Scott Woolam**

Division of State Lands

Florida Department of Environmental Protection



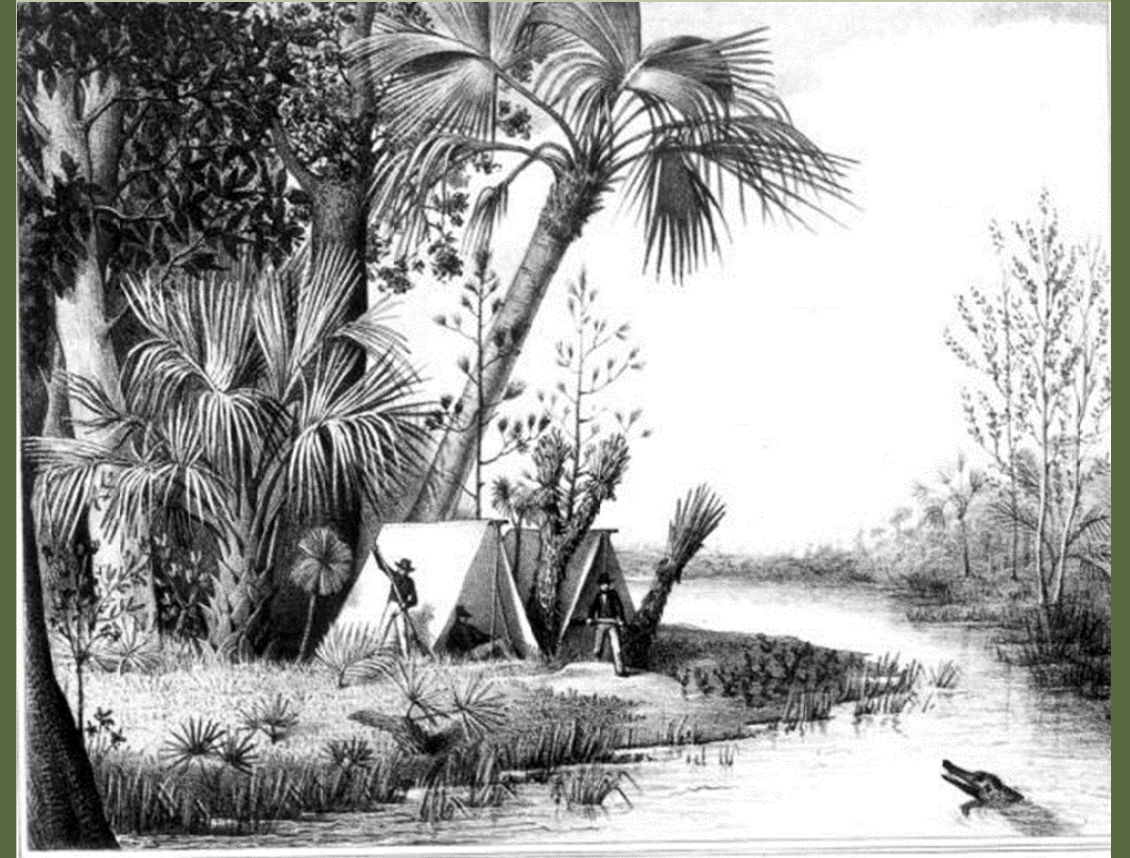


# Riparian Rights/Sovereign Lands

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Article X, Section 11, Florida Constitution

- 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.







# Riparian Rights/Sovereign Lands

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

### How to determine Sovereignty Lands

#### TWO STEP PROCESS:

1. Was the waterbody navigable, or susceptible to navigation at statehood.....
2. Where is the current MHWL/OHWL located today-taking into account laws and court rulings that effect the waterbody. (Butler Act, Bulkhead Act, 253.12(9), Florida Statutes.....







# Riparian Rights/Sovereign Lands

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

- Riparian Rights are rights attached to an upland bordering sovereign lands. These rights cannot be severed unless expressly done so by the upland owner. (Riparian agreement or easement)
- Sovereign lands that have been conveyed out to private ownership still have their riparian rights. (Hillborough County, Welaka, Ft. Myers are examples of a few)  
This is because of the item above.
- Private submerged lands (that have never been sovereign) do not have riparian rights. They are a parcel land just like an upland. However, there are exceptions.

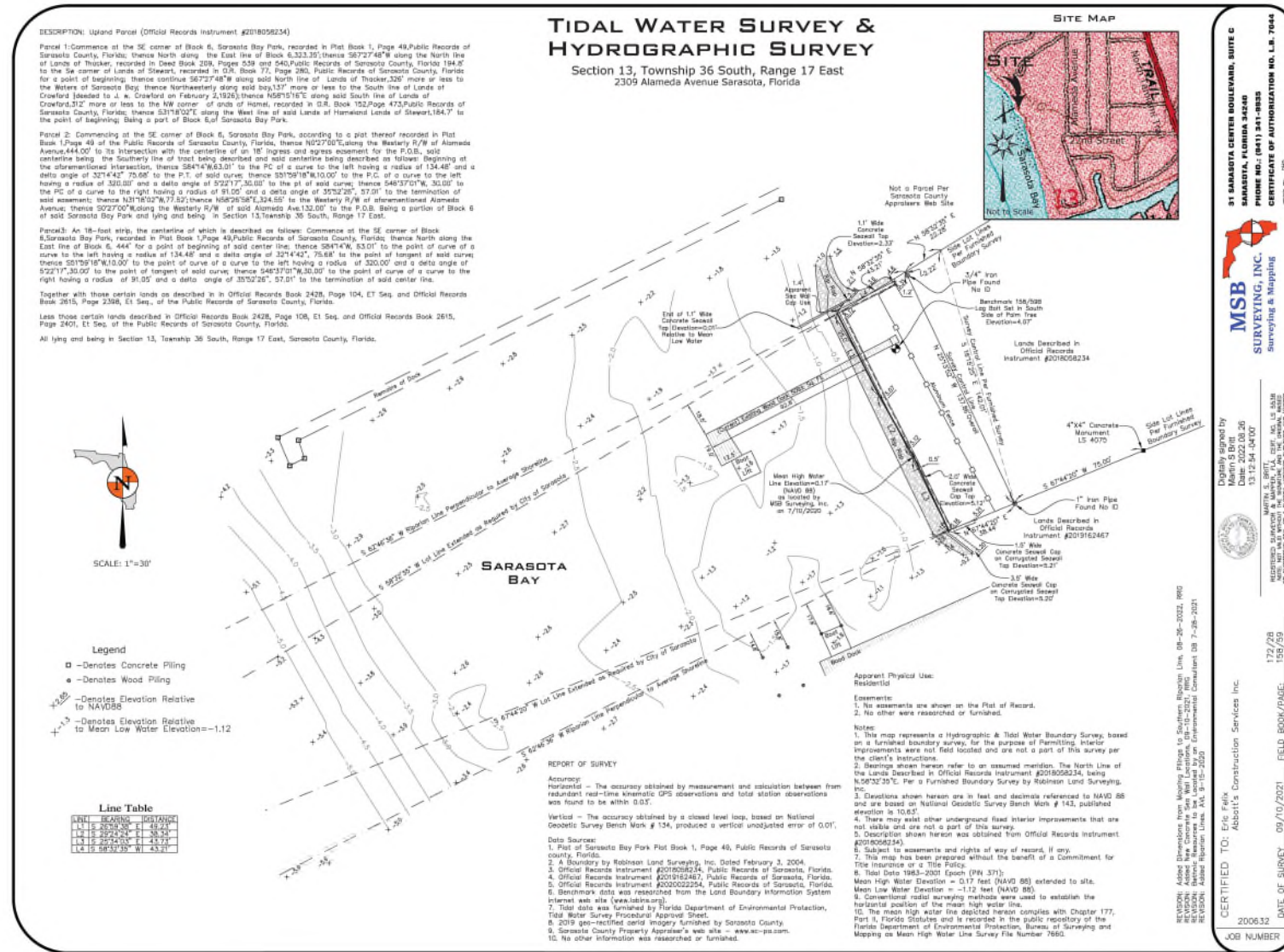


# RIPARIAN RIGHTS / SOVEREIGN LANDS

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Example of a municipality that requires the extension of lot lines (city of Sarasota).

The surveyor noted proper allocation of the riparian lines.

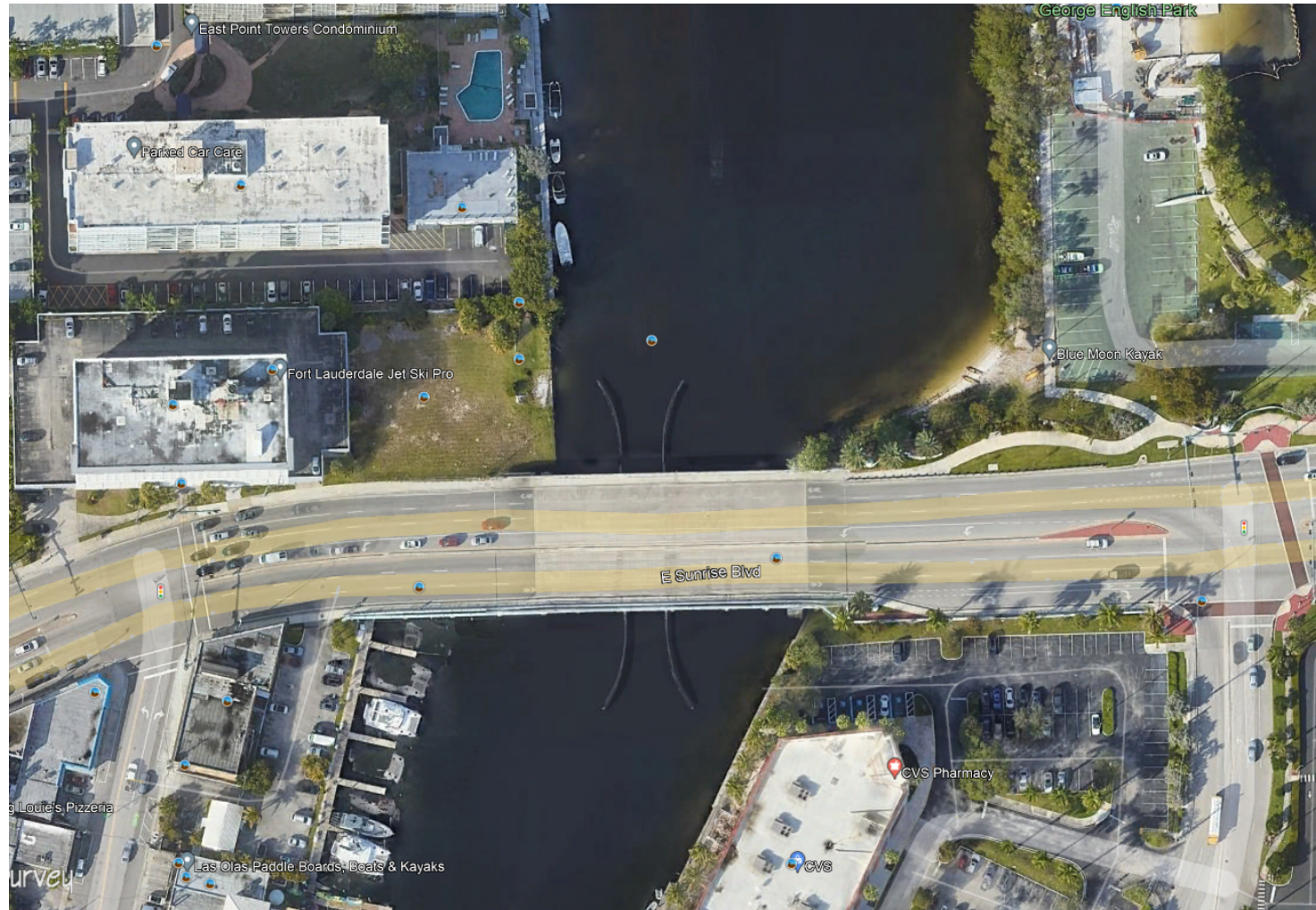






# Riparian Rights/Sovereign Lands

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION





# Riparian Rights/Sovereign Lands

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

labs.org/survey\_data/water/water.cfm

LABINS  
Land Boundary Information System

HOME AERIALS LAND RECORDS WATER BOUNDARY HORIZ/VERT CONTROL MAPPING DATA EXTERNAL DATA CLEARING HOUSE

BOGGY CREEK

LABINS Data

- + Published Tide Station Reports from LABINS database
- + Erosion Control Line Index and Maps
- + MHW Survey Index
- + Florida DEP, Office of Resilience and Coastal Protection, Coastal Construction Control Line Program

Riparian Rights

- Allocation of Riparian Rights

Download





# Riparian Rights/Sovereign Lands

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



### Guidelines for Allocation of Riparian Rights for Florida Department of Environmental Protection

February 26, 2013



Dr. David Gibson  
Associate Professor, University of Florida

REWRITE – dated 2.26.13

#### Guidelines for Allocation of Riparian Rights

Survey and Mapping sponsored a study of the effect of shoreline and riparian rights. This study was prepared by Dr. David Gibson, Associate Professor, University of Florida. The research was intended to analyze existing methods for making a study of different shoreline configurations. The result was a set of guidelines.

Riparian right "equities" of dominant interest among waterfront owners are the right to build a dock out to deep water, (2) right to a navigational channel (view). The following are conclusions from the study.

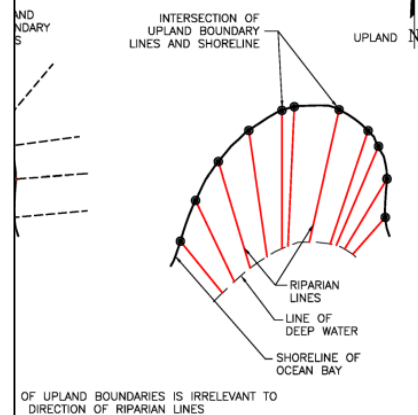
The right is limited by the line of deep water (line of navigability or line of tidality). It indicates that when docking is the primary issue, courts will usually use the line of navigability.

On a relatively straight shore on a large body of water (one without a nearby lake, ocean bay or wide river, the dominant construction makes the direction of the shore extended to the line of navigable water. On a shoreline with smaller indentations and projections, and perpendiculars from the place where the side lot line hits the Mean High Water

and the opposite bank is in proximity to the area of concern, the lines perpendicular with the stream's thread (median). The median line of the water surface half way between the banks during

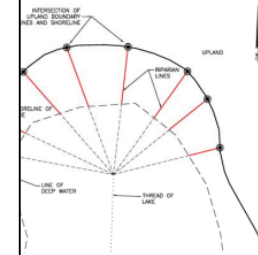
nearby marked navigation channel and a regular shore, most courts use the channel edge as opposed to the thread. It appears that the similarly established outer line, will most likely be used by courts for the shore is relatively straight.

Generally ignored when apportioning riparian rights. The public's extension of their side upland lines is the most frequent cause of must be **equitably apportioned** as if all waterfront owners were water body – see example below.



a cove or projection into an ocean, ocean bay, lake or river, most divide riparian rights as opposed to any perpendicular method –

the whole water body, such as the center point method in lakes, or threads, should be used mainly for those riparian rights that are. They may also be used to determine direction but not the they give substantially the same apportionment as a near-shore with concentric water depth contour lines, along rivers with parallel banks with consistent water depth contours – see example below.



water is the most universal technique for division of riparian rights. It is a traditional technique in many cases and will follow dominant riparian law.

#### Classification

There will be made to several sketches which were constructed to illustrate the various methods. It is presumed that the main considerations are docking, view and noted that the upland boundaries of the lots surrounding the water body are the reasons stated in no. 5 above.

**Perpendicular with Median Line** In the river example below, the median line of the water surface half way between the banks during low tide is used. It is a narrow river where the opposite bank is of a consideration and at deep coves and projections.

The "perpendicular with the stream's thread" method. The banks are determined. A median line would be constructed along the ordinary stage of water. Perpendiculars would be constructed at points. Docking and access rights would stop at the line of deep water.



- PROCESS FOR LOW WATER LINE
- CONTACTING THE ENVIRONMENTAL
- DISPLAYING THE ON YOUR SURVEY
- SECTION 177.28,
- PROCESS FOR CO HIGH-WATER LINE
- OBTAINING VERI FLORIDA DEPART ENVIRONMENTA



## FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399

Ron DeSantis  
Governor

Jeanette Nunez  
Lt. Governor

Kosh Valenslein  
Secretary

### Tidal Water Survey Procedural Approval

Date: 2/2/2022  
Name: Howard Ehrke  
Firm Name: GCY, Inc.  
Address: P.O. Box 1469  
Palm City, FL 34990  
Phone: 772.286.8083 Email: howard@gcyinc.com

\*\*\*\*\*  
Point Identification No. 11 County: Palm Beach  
USGS 7.5-Minute Quad Map Name: Jupiter  
Mean High Water (MHW): -0.05 Mean Low Water (MLW): -1.86  
Unit of Measurement: Feet Datum: NAVD88 Tidal Epoch: 1983 – 2001  
Procedure: Extend the above MHW height to job if within one-half mile.

Source of Data: Florida Department of Environmental Protection, Bureau of Survey and Mapping.

This form constitutes approval of the method to be used to survey the mean high-water line or the mean low-water line within one half mile of the point identified above.

\*\*\*\*\*  
Retain this form for record keeping. Submit a copy of this form with the completed survey to the Bureau of Survey and Mapping.

Contact:  
Florida Department of Environmental Protection  
Bureau of Survey and Mapping  
Mean High Water Repository  
3800 Commonwealth Boulevard, Mail Station 105  
Tallahassee, FL 32399-3000  
Tel. (850) 245-2640  
email pdf to: [mhwrequest@floridadep.gov](mailto:mhwrequest@floridadep.gov)

Approved by:

Kevin Mears, PSM Digitally signed by Kevin Mears,  
PSM  
Date: 2022.02.03 09:21:12 -0500

2/3/2022

(Date)

5199 Pennock Point Road, Jupiter

# WL

of the mean high-water line.—

ng the shores of land immediately bordering on navigable waters is  
ne boundary between the foreshore owned by the state in its  
bjeet to private ownership. However, no provision of this part shall  
er of state ownership of sovereignty submerged lands, nor shall any  
to impair the title to privately owned submerged lands validly  
or its legal predecessors.

shall be deemed to modify the common law of this state with  
cretion, reliction, erosion, or avulsion.





# QUESTIONS?

## FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION







# THANK YOU

**Richard Malloy / Scott Woolam**

Division of State Lands

Florida Department of Environmental Protection

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