



# SOVEREIGNTY SUBMERGED LANDS IN FLORIDA

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*An Introductory Overview*

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# ORIGIN OF FLORIDA'S SOVEREIGN TITLE

## The "Negative Community" of Property

- Derived from early Roman civil law, the "negative community" of property includes things like air, running water, and natural light that could not be owned by one person any more than another.
- *Res communes* – things common to all or *res nullius* – things owned by no one – objects in the "negative community" are not considered "property" of any one person.

Dan Tarlock, Law of Water Rights & Resources § 3.3 (2006).

Evolved into ownership by the Crown/Sovereign (since no one person can own these things) – but ownership in trust for the public to ensure public use.

CONCEPTS EVOLVED INTO THE MODERN PUBLIC TRUST DOCTRINE IN 18<sup>TH</sup> CENTURY ENGLAND



# **THE EQUAL FOOTING DOCTRINE – TITLE GOES TO FLORIDA**

- **Following the American Revolution, the original 13 colonies won their independence and achieved sovereignty – thus, each held sovereign ownership to lands under the navigable waters and carried those rights with them when they joined the Union.**
- **Upon acquisition of territory by the United States, title to these lands passed to the U.S.**
- **Following adoption of the Constitution, any new state's admission into the Union must be on "equal footing" with the original 13 states, and the new state enters possessing the same rights as the original states.**

**Shivley v. Bowlby, 152 U.S. 1 (1894).**



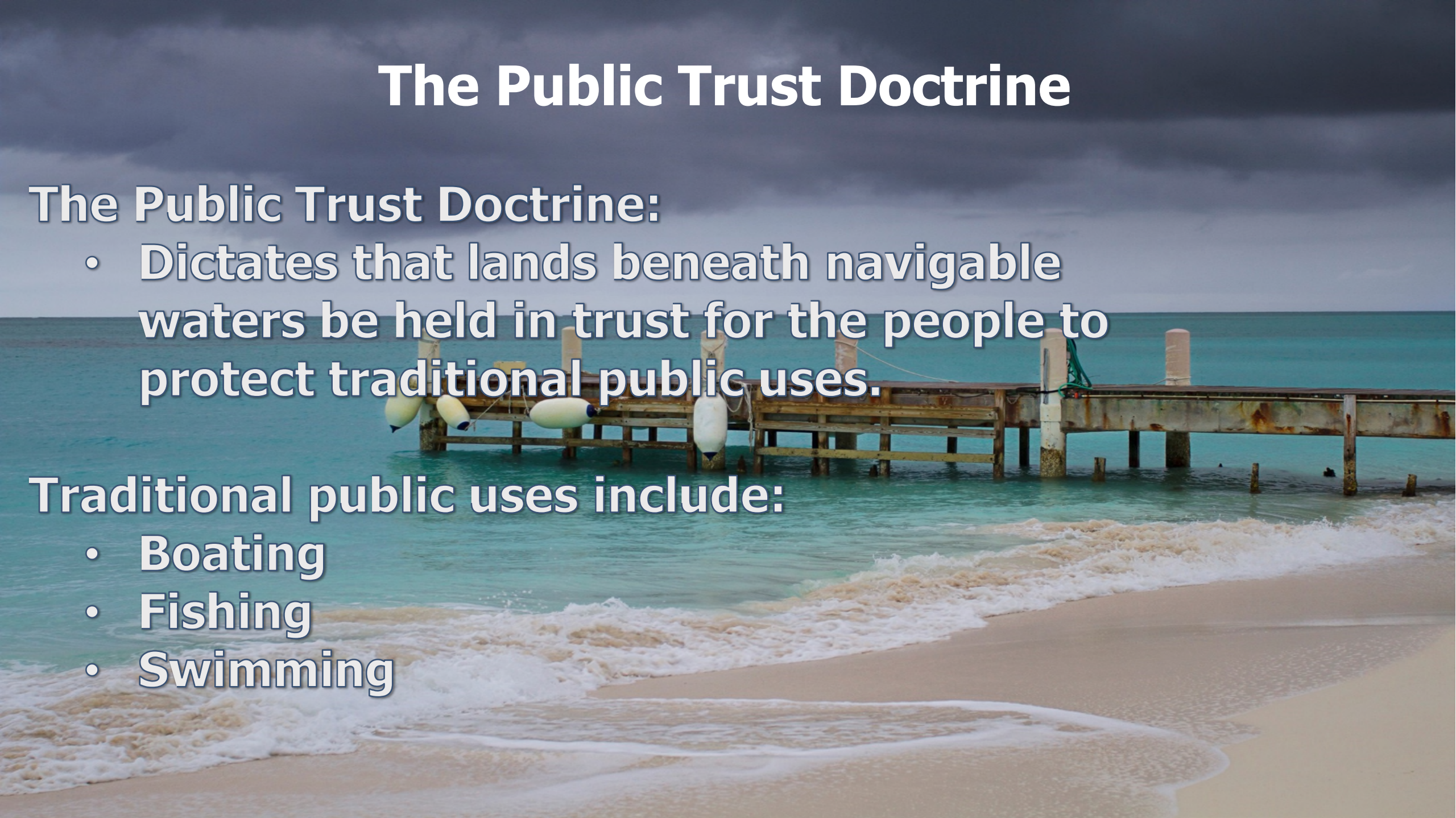
# The Public Trust Doctrine

## The Public Trust Doctrine:

- 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





# FLORIDA CODIFIES THE PUBLIC TRUST DOCTRINE

## 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.



# CONVEYANCES OF SOVEREIGNTY LAND

“Sovereignty lands cannot be conveyed without clear intent and authority, and conveyances, where authorized and intended, must retain public use of the waters.” *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 339, 343 (Fla. 1986).



# CLEAR INTENT

In *Coastal Petroleum*, “[t]he fact that a deed of swamp and overflowed lands does not explicitly exempt sovereignty lands from the conveyance does not show that the Trustees intended to convey [the] sovereignty lands[.]”

- There needs to be explicit language within such deed or grant that shows a clear intent that sovereign lands are to be conveyed



# Administration of the Public Trust Doctrine

- **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.



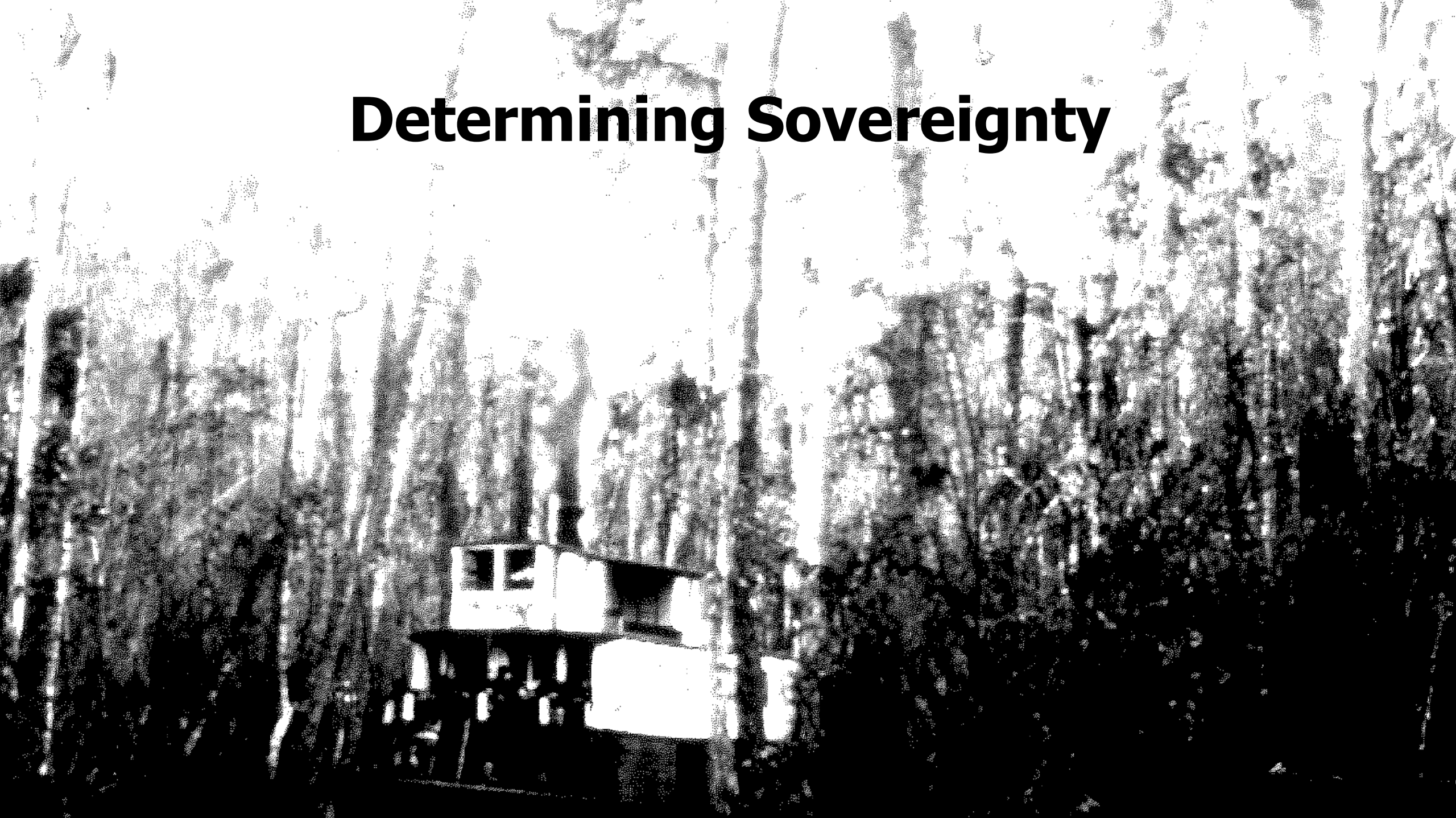
An aerial photograph of a large, interconnected floating dock system on a body of water. The docks are made of dark, rectangular floats with a light-colored deck. Several white, lighthouse-like structures are positioned along the docks. The water is calm, reflecting the sky and the docks. The background shows more docks extending into the distance.

# The Public Interest Test

- 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



# Determining Sovereignty



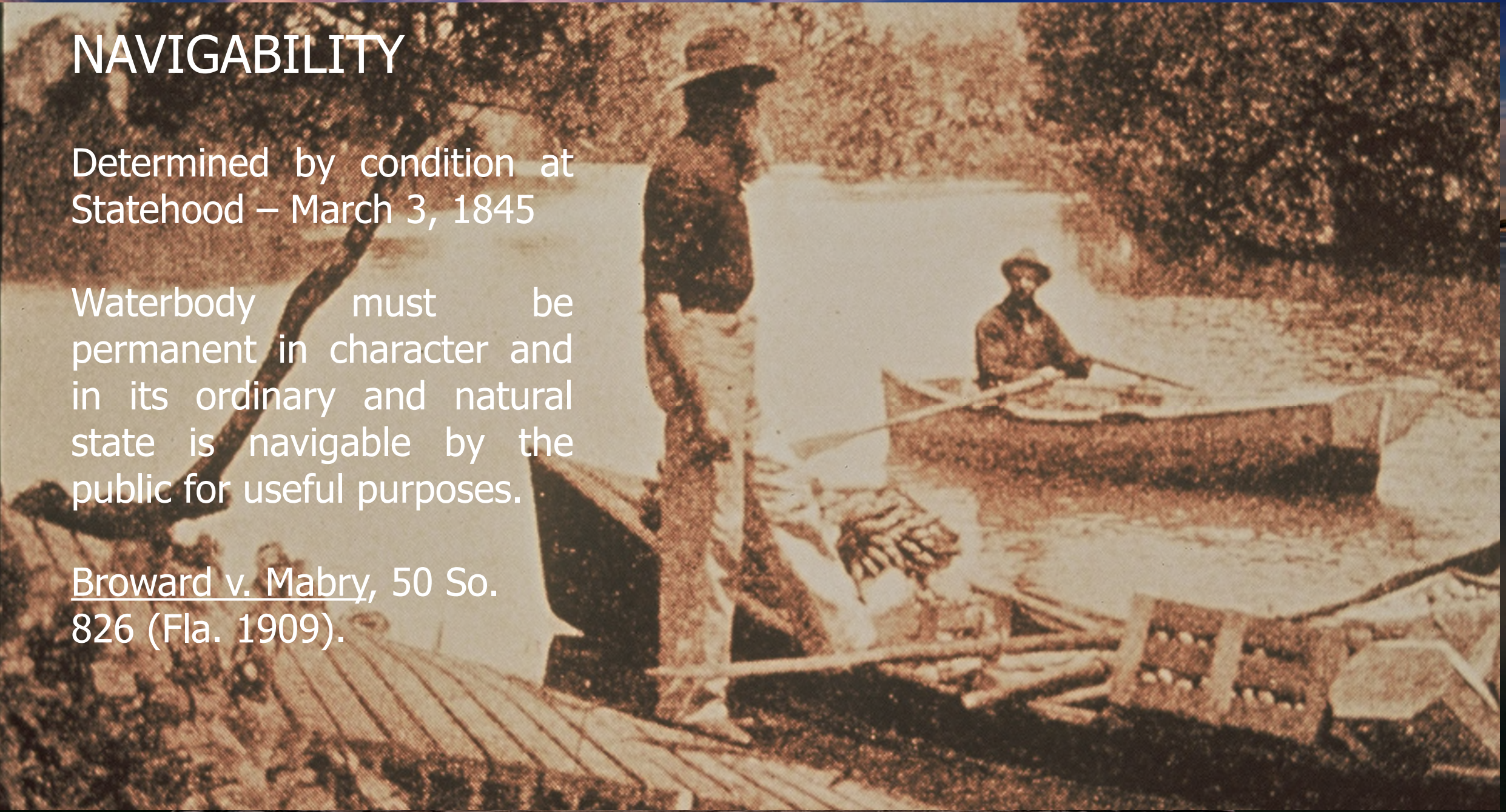


# NAVIGABILITY

Determined by 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).





# NOT SOVEREIGN LAND

- Submerged Land dredged from uplands
- Former Sovereign Lands conveyed by Legislative Acts
- Submerged Lands Conveyed by Trustees' Deed
- Non-tidal and Non-navigable in natural condition
- Land submerged through avulsive act (hurricane, dredging).
- Statutes clearing title to formerly filled or improved sovereign lands (Butler Act, 1975 fill Act).



# STILL SOVEREIGN LAND

- **SOVEREIGNTY LANDS DESCRIBED IN PRIVATE DEED**
- **TAX DEEDS**
- **SPANISH LAND GRANTS**
- **SWAMP AND OVERFLOW DEEDS**
- **U.S. LAND PATENTS**
- **DREDGED FROM LANDS BELOW MHWL/OHWL**
- **NON-MEANDERED WATERBODY**
- **FILLED LANDS (ABSENT DEED OR STATUTORY GRANT)**



# Dredging From Uplands Example





## A photograph showing a horizontal, rusted metal beam supported by a vertical wooden post in a body of water. The sky is a clear, pale blue. The water is calm with some small ripples. The metal beam shows significant corrosion and peeling paint. The wooden post is weathered and has some dark spots, possibly from algae or decay.

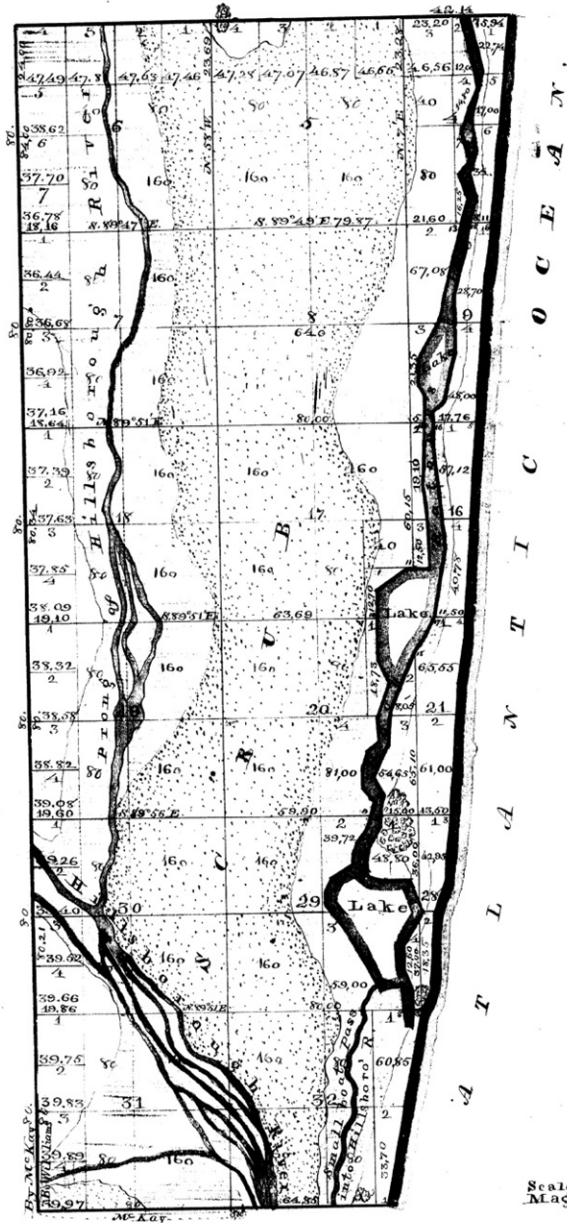


Traverse			
Course	Dist	Course	Dist
Sec.	6	Sec.	5
From Post	6.50 E	From Post	6.50 E
of 1742.		N. W. 2	
S 33 E	21.00	N 15 E	9.00
S 35 E	14.00	S 45 E	10.00
S 18 E	30.00	N 32 E	8.00
South	26.00	S 20 E	12.00
S 24 E	15.50	S 11 E	50.00
Sec.	7	Sec.	8
S 24 E	15.00	S 19 E	24.65
S 7 E	25.00	Sec.	11
S 23 E	30.00	N 15 E	25.15
S 3 E	14.00	Sec. 1	6
Sec.	12	S 21 E	29.60
S 10 E	26.00	Sec.	21
S 20 E	10.00	S 16 E	40.00
S 60 E	5.00	S 18 E	45.00
Sec.	15	Sec.	23
N 25 E	19.00	S 20 E	30.00
North	12.00	S 15 E	53.50
N 32 E	5.57	Sec.	33
Sec.	18	Sec.	34
N 15 E	53.00	S 14 E	28.50
N 20 W	13.00	Sec.	35
N 67 W	11.25	S 27 E	53.00
Sec.	19		
N 30 W	14.00		
N 16 E	10.00		
N 52 W	6.65		
Sec.	20		
N 20 W	20.00		
N 57 W	12.00		
N 20 E	24.00		
N 10 E	25.00		
N 6 W	6.80		

## 1884 Government Land Office (GLO) Survey



# T.47 S. R.43 E.



Post	Course	Dist	Post	Course	Dist	Post	Course	Dist	Post	Course	Dist
1	N 65° E	1142	North	700	19	S 35° W	1000				
2	N 25° E	800	N 8° E	800	20	S 45° W	2000				
3	N 4° E	3200	N 51° E	600	21	South	2300				
4	N 20° E	1500	N 4° W	1000	22	S 14° W	2000				
5	N 2° E	800	N 20° E	1500	23	S 50° W	600				
6	N 75° E	1000	N 25° W	1000	24	South	400				
7	N 45° E	5500	North	1800	25	South	1100				
8	N 9° E	1800	North	1100	26	S 7° E	1500				
9	N 8° E	900	N 35° E	1500	27	S 6° E	2500				
10	N 45° E	8000	East	350	28	S 10° W	3000				
11	N 45° E	6000	East	600	29	S 26° W	1000				
12	N 9° E	1300	N 2° W	2000	30	S 30° W	700				
13	N 45° E	757	N 5° W	1200	31	S 25° W	2500				
14	N 6° E	428	N 2° E	2830	32	S 3° W	1200				
15	N 6° W	700	North	1000	33	S 26° W	1500				
16	N 6° W	700	North	1000	34	S 29° E	900				
17	N 6° W	700	North	1000	35	S 15° W	900				
18	N 30° W	1900	N 25° E	2000	36	S 14° W	500				
19	N 20° W	800	N 14° E	3111	37	S 31° W	700				
20	N 28° W	1900	N 15° E	1000	38	S 19° W	500				
21	N 36° W	1500	N 15° W	1200	39	South	900				
22	North	500	N 40° E	700	40	S 25° E	600				
23	N 26° E	600	N 20° E	2000	41	East	1200				
24	N 55° E	1100	N 15° W	2510	42	S 20° E	1000				
25	North	300	N 13° E	2200	43	S 20° E	400				
26	N 15° E	500	S 16° W	2000	44	S 26° W	350				
27	N 37° E	800	S 7° E	1500	45	South	1200				
28	N 1930 E	505	S 20° W	800	46	S 20° E	600				
29	N 1930 E	505	S 11° E	1200	47	S 3° E	950				
30	N 40° W	800	S 15° W	1015	48						
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Scale: 40 Chains to an Inch.  
Magnetic Variation 4° 30' E.

Township Map



The background of the slide is a photograph of a wooden pier or bridge structure extending over a body of water. The image is taken from a low angle, looking up at the wooden pilings and the underside of the bridge deck. The water is calm, reflecting the sky and the structure. The sky is a clear, pale blue with some light clouds. The overall tone is serene and natural.

# MEANDERED VS NON-MEANDERED

- Meandered in original surveys – presumed navigable
- Non-meandered in original surveys – presumed non-navigable
- Meander lines are NOT boundary lines

Odom v. Deltona Corp., 341 So. 2d 977 (Fla. 1976)



# WHERE IS THE BOUNDARY?

## MEAN HIGH WATER LINE (MHWL) / ORDINARY HIGH WATER LINE (OHWL)

- The Boundary Line is Ambulatory – the boundary between sovereignty submerged land and private uplands moves with natural (and sometimes artificial) processes.
- MHWL – for tidally affected waters.
- Constitutes the average of high tides over an 18 ½ year cycle known as lunar-nodal cycle – also called a “tidal epoch.”
- Chapter 177, Part II Florida Statutes establishes a required process through the FDEP for surveying the MHWL Perpendicular to the Shoreline.
- OHWL – for non-tidal waters such as lakes and (inland rivers).
- Defined as the intersection of the water with the land at the time of “normal” high water – not during occasional periods of flood or freshet.
- Much too difficult to determine.
- Safe Upland Line



# Riparian Rights





# 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. § 253.141, F.S.

Riparian Rights are affirmative easements. BB Inlet Property LLC v. 920 Stanley Partners, LLC, 293 So. 3d 538 (Fla. 4<sup>th</sup> DCA).

- Ingress/egress between property and navigable water
- Unobstructed view of water/channel
- Wharfing out – qualified by state and federal regulations
- Right to receive accretions
- Subject to public's superior right of navigation
- Riparian rights take the form of affirmative easements over the sovereignty land in favor of the waterfront owner



# Riparian rights are triggered by waterbody's "navigability" not its ownership

- Waterfront owners hold riparian rights to adjacent navigable water – the current ownership of the land (public or private) changes nothing.
- This includes the right to erect wharves and piers on privately owned (formerly sovereign) submerged land out to the mean low water line.
- 5F, LLC v. Dressing, 142 So. 3d 936 (Fla. 2d DCA 2014).





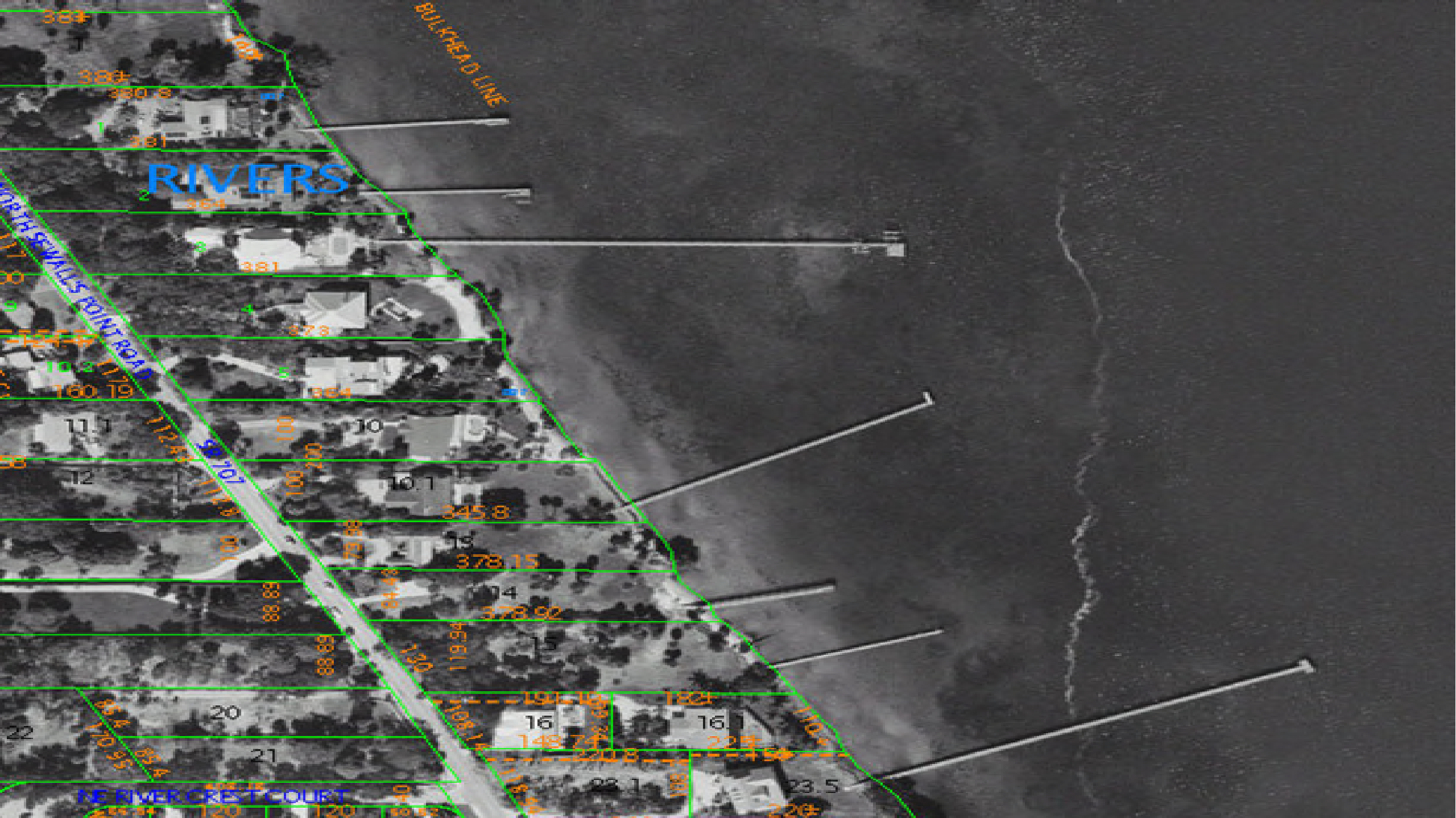
An aerial photograph of a waterfront property. A cyan line outlines a large area including a house, a driveway, a pool, and a dock with several boats. Yellow lines extend from the text boxes to specific points on the map: one points to the dock, another to the shoreline, and a third to the water. Labels on the map include 'Martin Palm Beach' near a road, 'Beach Rd' near a street intersection, and '1999' near a house. A red fire hydrant symbol is also visible 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.







# Establishing Riparian Rights Lines

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

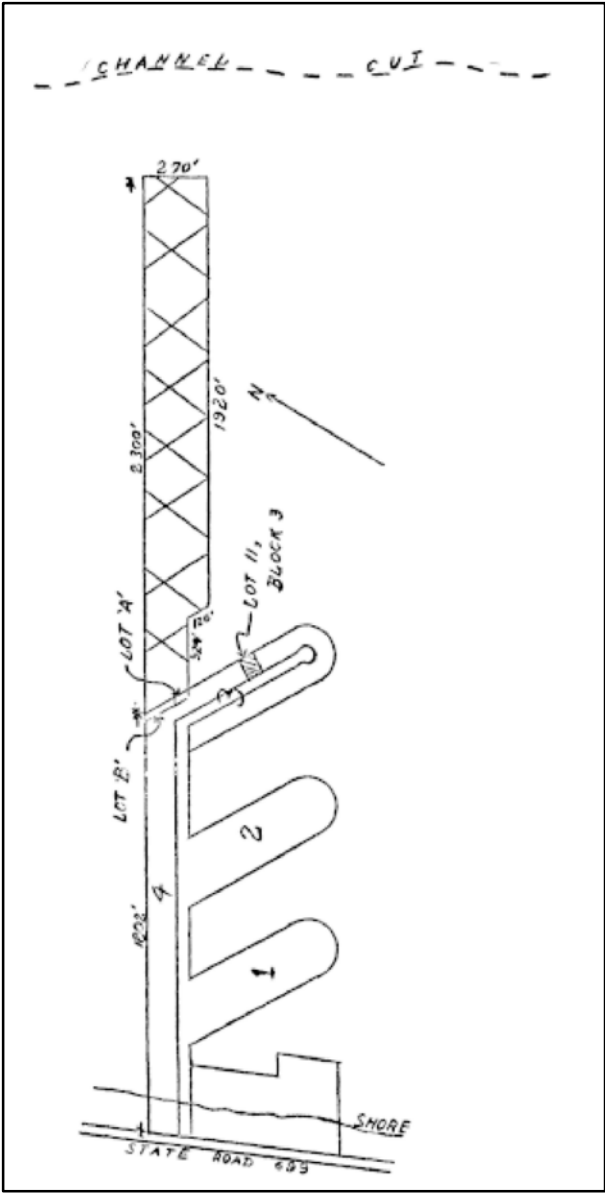
## Geometry vs. Equity

“It is absolutely impossible to formulate a mathematical or geometrical rule that can be applied to all situations of this nature. The angles (direction) of side lines of lots bordering navigable waters are limited only by the number of points on a compass rose. Seldom, if ever, is the thread of a channel exactly or even approximately parallel to the shoreline of the mainland. 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.2d at 801



Graphic From the Reported Case



Current Aerial



Source: Google Maps



# Aerial in 1951



Source: University of  
Florida Digital Collection



# Aerial in 1957



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



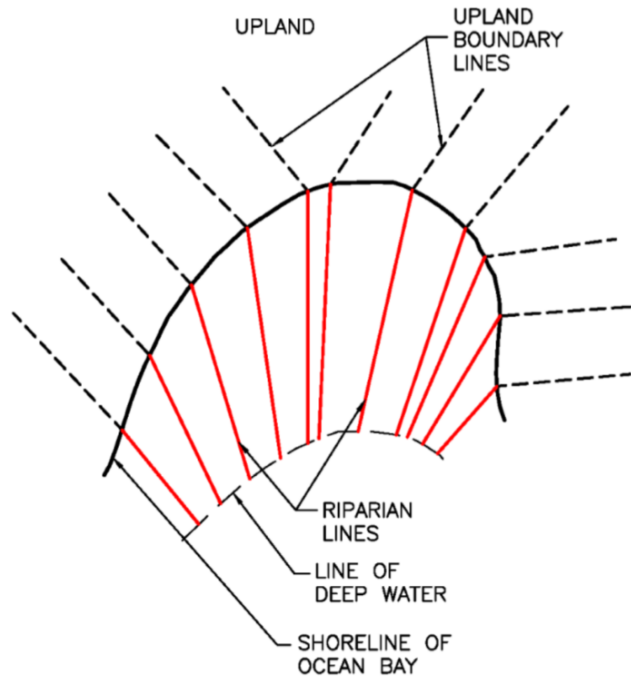
# Department's Review of Riparian Rights

- 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.

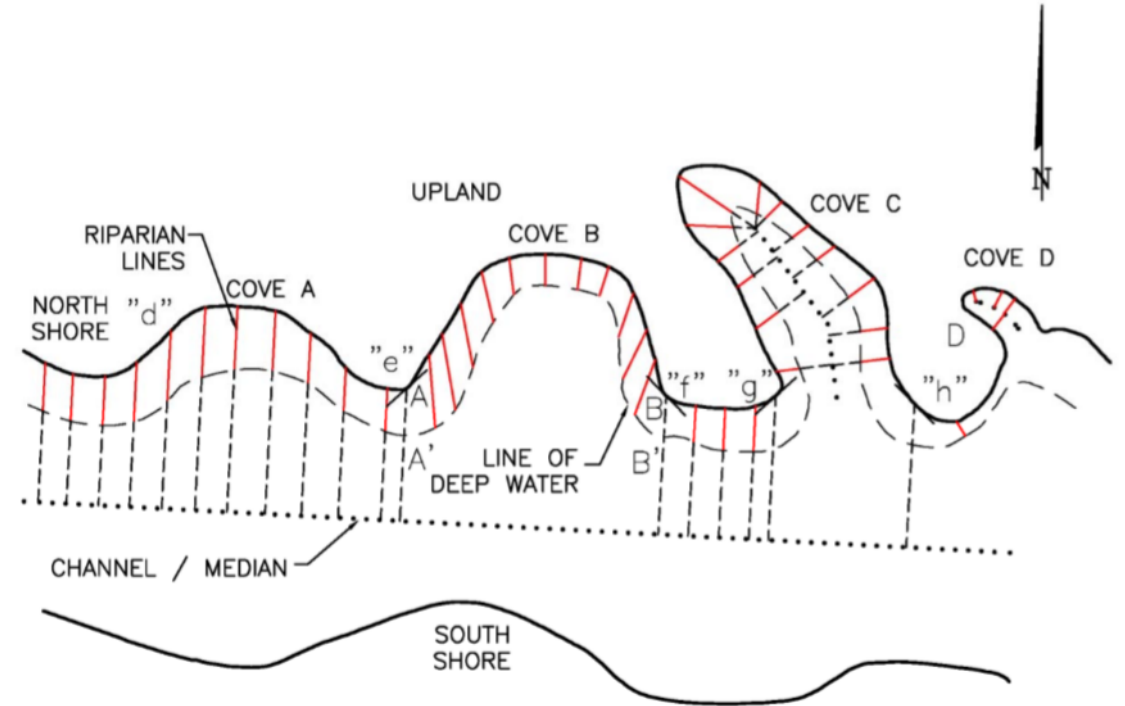




# Guidelines on Allocation of Riparian Rights

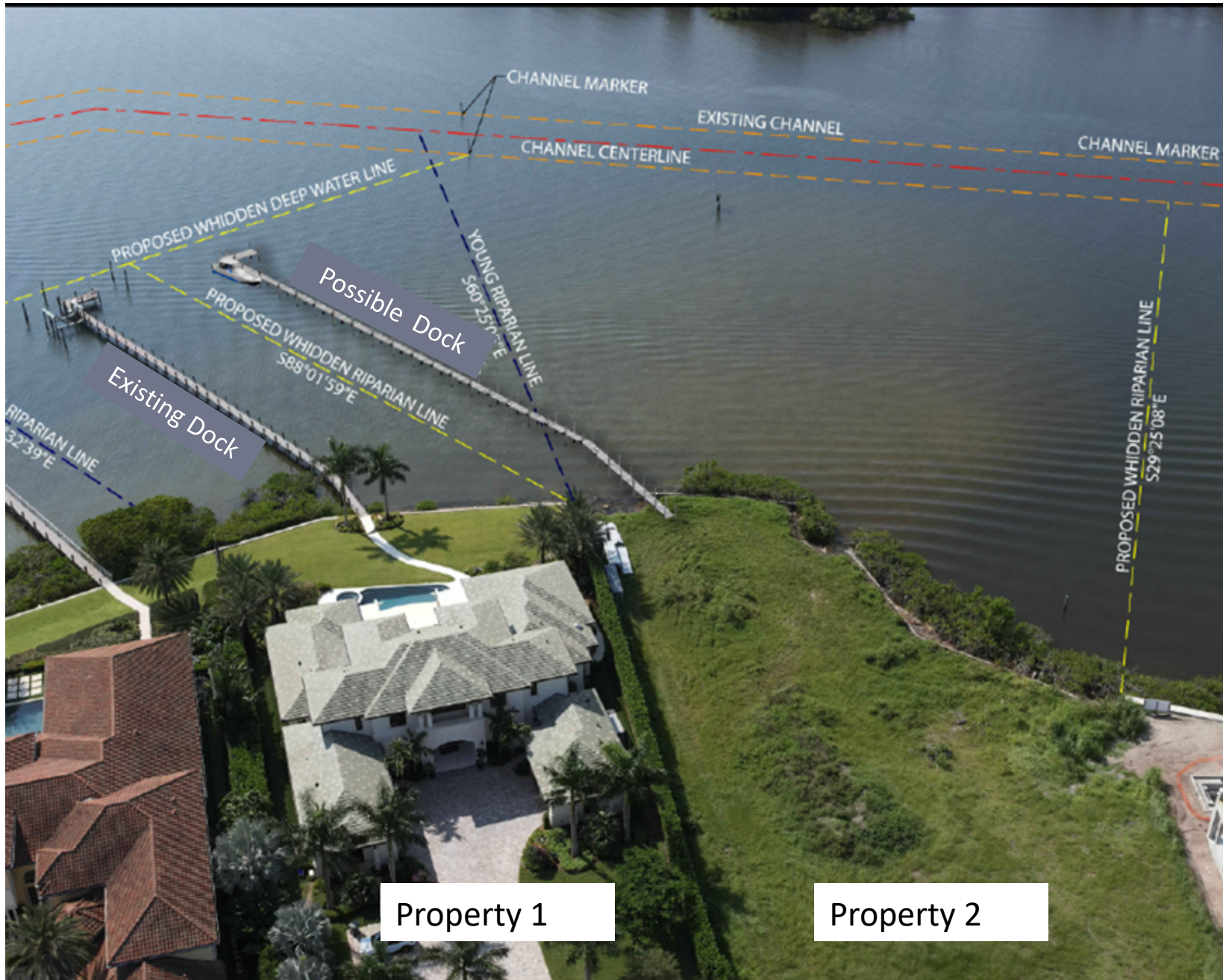


- Cove/Bay method – using line of navigability or line of deep water.
- Property lines are not extended into the water



- Presence of channel becomes primary objective along relatively “normal shorelines
- Line of navigability/deep water becomes primary objective when shoreline becomes abnormal when related to channel (i.e. large or deep coves).







# USEFUL RESOURCES

## Historical Resources:

- **Government Land Office (GLO) surveys of the State of Florida**
- **U.S. Coast and Geodetic Survey Maps (“T Sheets”)**
- **Historic Township Maps/Surveys**
- **Perpendicular to the Shoreline**
- **Quad Maps**
- **Recorded Plats**
- **Historic Trustees Deeds**
- **Historic Aerial Photographs (FDOT, UF, FIND).**

## Useful Publications/Web Resources

- **SLER 0950 (published by FDEP)**
- **FDEP Map Direct Website (Particularly the Division of State Lands (DSL))**



# Thank You



**LLW**

**LEWIS  
LONGMAN  
WALKER**

ATTORNEYS AT LAW