



FLORIDA SURVEYING AND MAPPING SOCIETY

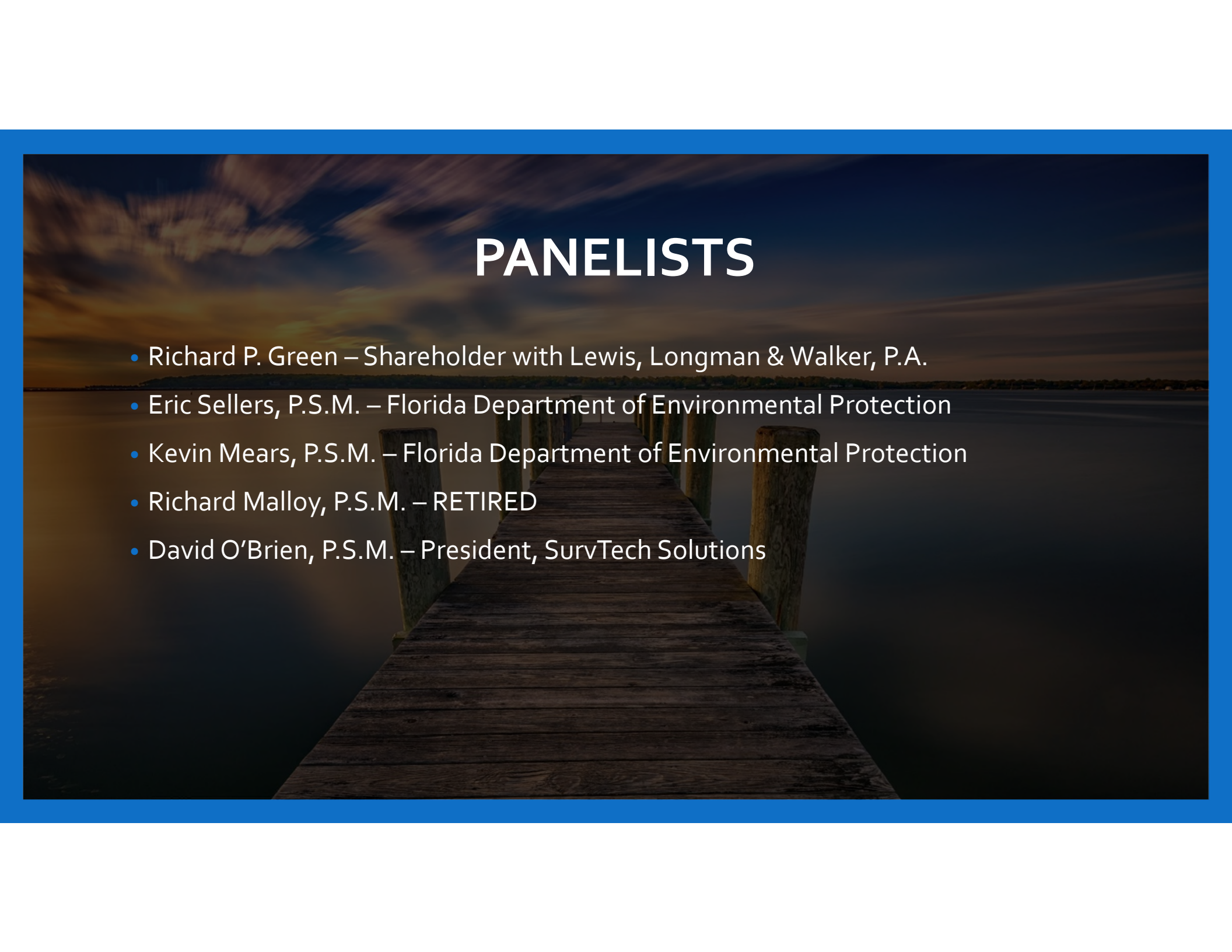
RIPARIAN RIGHTS AND SURVEYING

Riparian Rights (6 CEC – #11310)

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ASSISTANCE**



PANELISTS

- Richard P. Green – Shareholder with Lewis, Longman & Walker, P.A.
- Eric Sellers, P.S.M. – Florida Department of Environmental Protection
- Kevin Mears, P.S.M. – Florida Department of Environmental Protection
- Richard Malloy, P.S.M. – RETIRED
- David O'Brien, P.S.M. – President, SurvTech Solutions

ROAD MAP

- Overview of riparian rights and state of the law
- FDEP Block – Eric Sellers, Kevin Mears and Richard Malloy
- Lunch
- Role of a Surveyor in conducting a “riparian rights” survey
- Emerging Methods and technology in riparian rights surveying
- Panel questions and answers



RIPARIAN RIGHTS – LEGAL CONSIDERATIONS FOR FLORIDA SURVEYORS

By: Richard P. Green

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- Shareholder in LLW's St. Petersburg office.
- More than a decade 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 construction, armoring, marine construction and impact, 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.

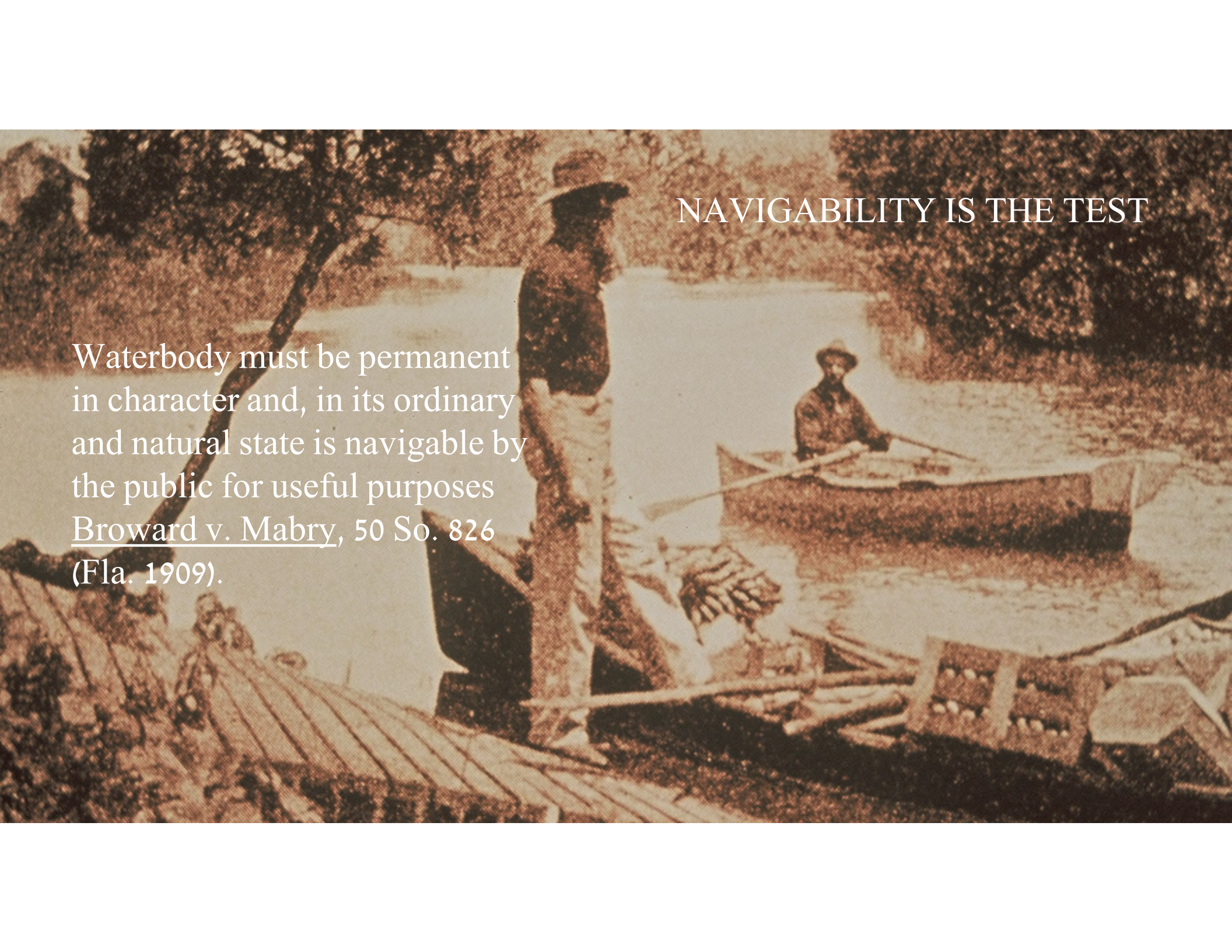
Partially codified by statute - Florida Statute Section 253.141

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.

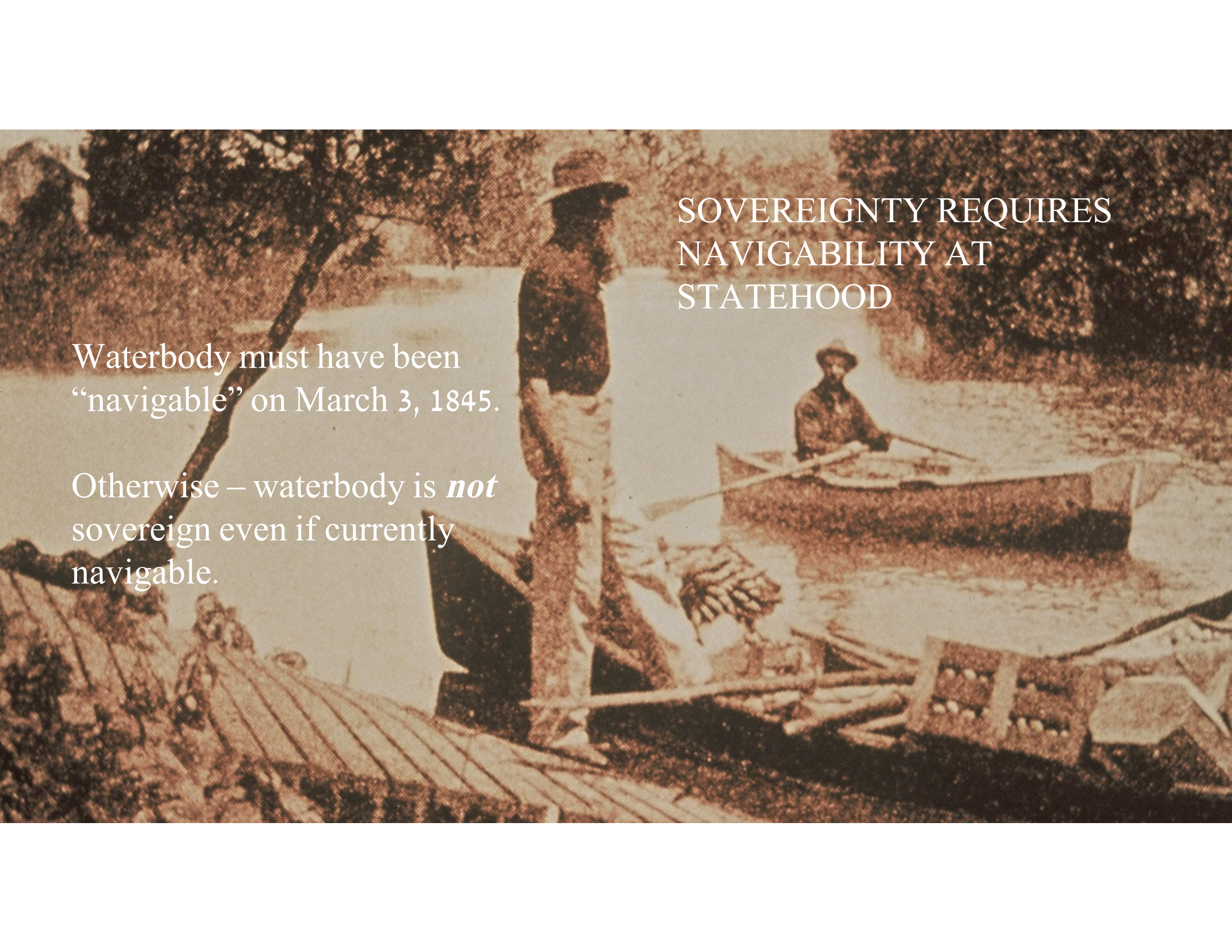
What are Riparian Rights?

- 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).



NAVIGABILITY IS THE TEST

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).



SOVEREIGNTY REQUIRES NAVIGABILITY AT STATEHOOD

Waterbody must have been
“navigable” on March 3, 1845.

Otherwise – waterbody is *not*
sovereign even if currently
navigable.

Do You Have Riparian Rights?

- Must own riparian uplands
 - Land must touch mean/ordinary high water of a navigable waterbody
- Emerging Trend: Privately owned submerged lands which **were** sovereign are still subject to adjacent upland owner riparian rights.
 - 5F, LLC v. Dressing*, 142 So. 3d 936 (Fla. 2d DCA 2013)
 - 5F, LLC v. Hawthorne*, 2021 WL 745361 (Fla. 2d DCA 2021)

Do You Have Riparian Rights?

- What about non-sovereign privately owned submerged lands under navigable waters?
 - *Publix Supermarkets v. Pearson*, 315 So. 2d 98 (Fla. 2d DCA 1975)
 - Dealt with **non**-navigable lakes.
 - *Immer v. Weintraub*, 413 So. 2d 47 (Fla. 3d DCA 1982)
 - “Appellant has cited several decisions recognizing distinctions between artificial and natural bodies of water, insofar as the application of riparian rights is concerned. Yet, no such distinctions have been drawn, nor could be drawn, as to *navigable* bodies of water, whether artificial or natural.”



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. 4th DCA 2020)

EVIDENCE OF SUFFICIENT UPLAND INTEREST –

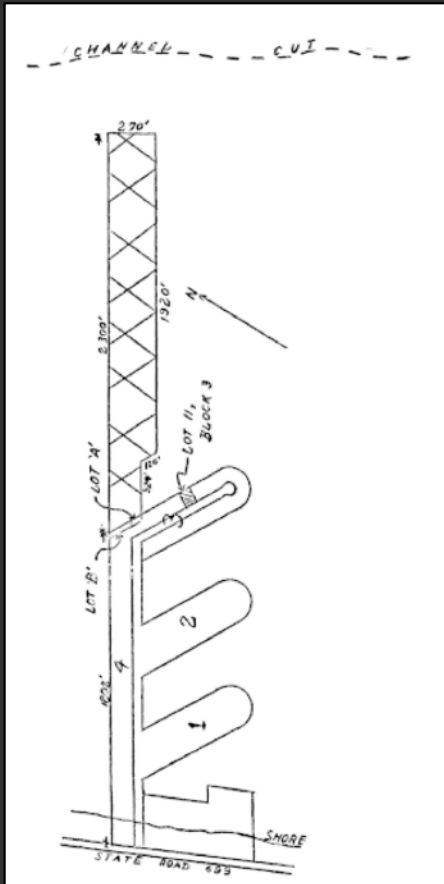
Must show DEP you have control and interest in the adjacent riparian upland
Rule 18-21.003(63), FAC.

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

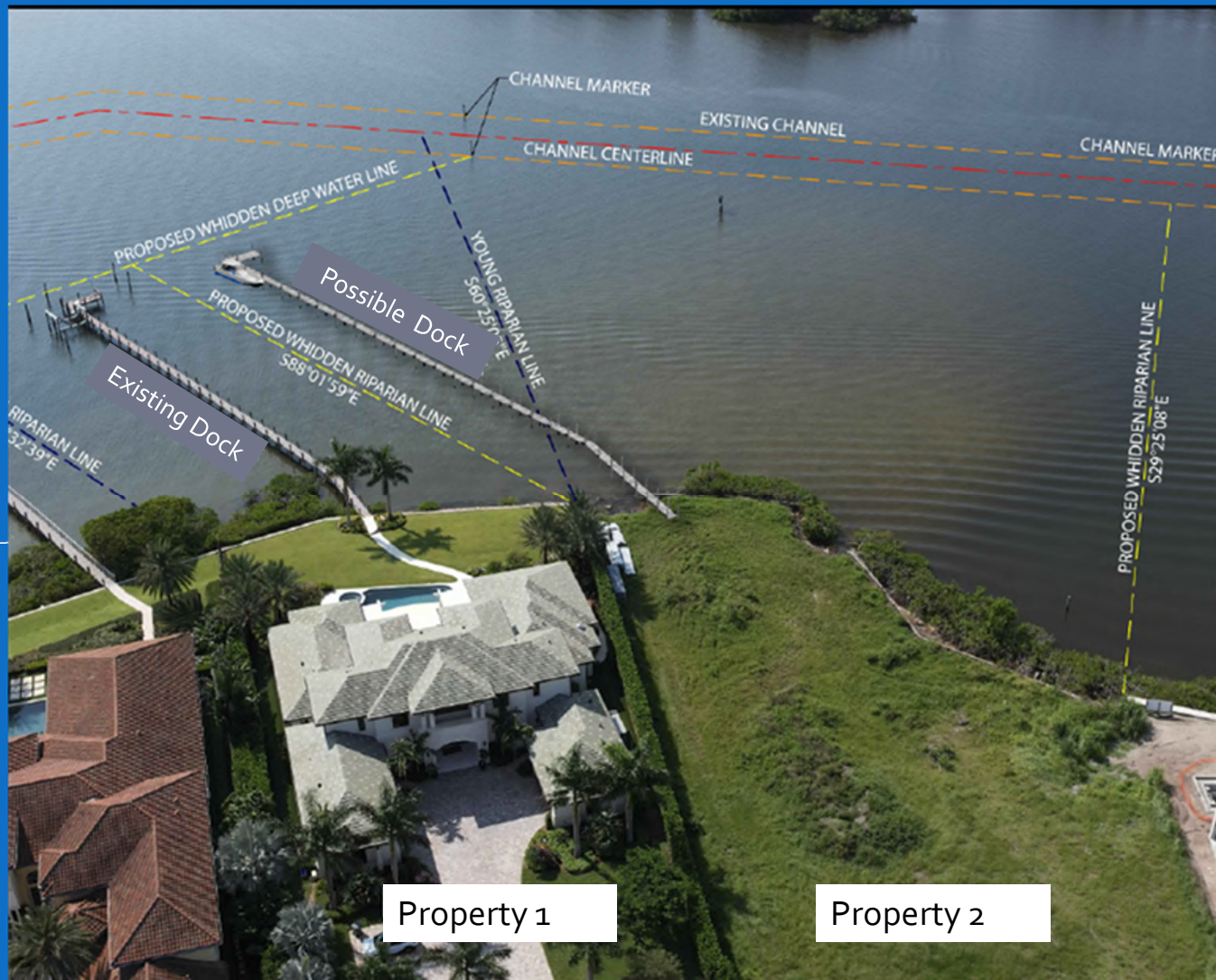
Hayes v. Bowman, 91 So.2d 795 (Fla. 1957)

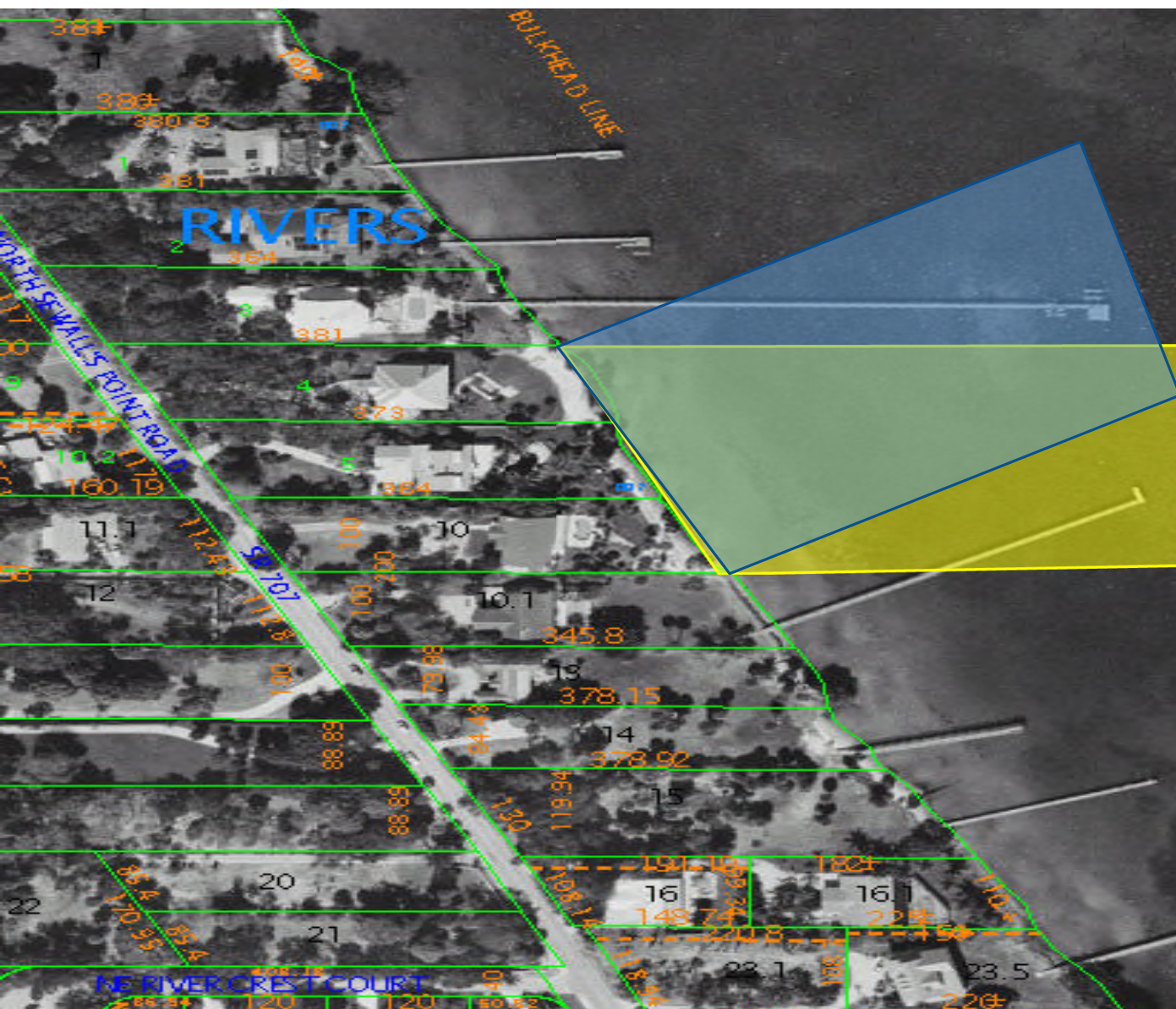
“We therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area ‘as near as practicable’ in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such ‘equitable distribution’ 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 NECESSARILY 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 – Method used in 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







Current Trends: Equitable Apportionment Test Versus Unreasonable Interference Test

- ***Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957).**
 - **Equitable Apportionment Test**
 - **Followed in Florida for 70 years**
 - **Has developed into practice of presenting competing riparian lines drawn by surveyors to the courts**
- ***Geise v. Fleck*, 433 So. 3d 931 (Fla. 6th DCA 2026).**
 - **- Rejects Equitable Apportionment Test in Most Riparian Disputes**
 - **-Adopts Unreasonable Interference Test**

Unreasonable Interference Test

Geise v. Fleck, 433 So.3d 931 (Fla. 6th DCA 2026)

- ***Hayes* Equitable Apportionment Test is limited to apportioning riparian rights from dredged and filled lands (the facts of the *Hayes* case)**
- **Adopts “unreasonable interference” test in lieu of drawing riparian lines:**

“Simply put, Appellants do not have a constitutional right to a judicial divvying up of the metes and bounds usage of what is quintessentially public property – sovereign submerged land beneath the waters of a lake that is owned by the State and held in trust [for the public] ... for use by private individuals whose respective riparian rights to access and view and use and wharf out to navigability are correlative and must therefore be measured in reasonable relation to one another pursuant to an unreasonable interference test.”

WHERE DOES THIS LEAVE US?

- *Geise v. Fleck* has CERTIFIED A CONFLICT - Now before the Florida Supreme Court
- In 5 of Florida District Courts, *Hayes v. Bowman* is still the law – Surveyors are primary field of expertise to identify riparian lines
- Courts appear to be increasingly critical of being “forced” to draw riparian lines in resolving disputes between adjacent owners
- Unreasonable Interference Test has little or no criteria and lacks predictability – Surveying is not applicable
- May Affect Orange, Osceola, Polk, Hardee, Highlands, Charlotte, Glades, Lee, Hendry and Collier Counties.

INTERESTING POINTS TO CONSIDER

- *Geise v. Fleck* ignores *Hayes* claiming *Hayes* is only applicable when dealing with dredged and filled lands.
- *Hayes* dealt with a water body which was sovereign lands
 - This means the waterbody was necessarily *navigable*.
- *Geise* derives the “unreasonable interference” test from *Duval v. Thomas*, 114 So. 2d 791 (Fla. 1959)
 - Waterbody in *Duval* was a non-navigable lake that was privately owned by adjacent landowners to the center of the lake.
 - Waterbody in *Geise* is a sovereign lake
- *Publix Supermarkets* case which holds that riparian rights do not ordinarily attach to lands border artificial waterbodies dealt with a non-navigable artificial lake.
 - *Publix Supermarkets* relied on *Duval*

SIXTH DISTRICT COURT OF APPEALS

- Orange, Osceola, Hardee, Highlands, Polk, Charlotte, Collier, Glades, Hendry and Lee Counties
- Currently unknown which standard to follow until resolution of *Geise* before Supreme Court.
- Suggestion – Determine if lake if sovereign. If sovereign – equitably distribute riparian area per *Hayes*. If not sovereign – do not undertake project to draw riparian lines.



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**THANK
YOU!**
