

## CHAPTER 115

### WATERS AND WATER RIGHTS

**§11501. Overview.** The subject of waters is an extremely important and complex one, which embraces a number of distinct (yet sometimes overlapping) concepts, including:

- (a) State ownership of riparian lands.
- (b) Governmental regulation of wetlands and coastal areas.
- (c) The navigational servitude in favor of the United States.
- (d) Common law rights to use waters abutting or flowing through one's lands.
- (e) The "public trust" doctrine.

It is important to recognize the distinction between governmental *regulation* of **wetlands** and coastal areas, and the State of New Jersey's claim to *ownership* of certain **riparian** lands; *i.e.*, lands which are currently or were formerly subject to the flow of the tide. The difference between the two should be recognized at all times, although the term **wetlands** is sometimes used carelessly to embrace both. Each of the concepts set forth above will be discussed in more detail below.

The terms **tidelands** and **riparian** are used more-or-less interchangeably herein, although it is not strictly accurate to do so. The word **tidelands** refers to lands flowed by the tide (and sometimes includes lands *formerly* flowed by the tide). **Riparian** properly refers to the rights of owners adjoining a river or stream, while **littoral** properly refers to the rights of owners adjoining seas or lakes. The distinction between **wetlands** and **tidelands** is discussed above.

**Accretion** may be defined as the gradual, imperceptible accumulation of land caused by the receding of the water; it is the opposite of **erosion**.<sup>1</sup> Accretion is to be distinguished from **avulsion** (the sudden removal of a large quantity of soil from one place to another, owing to the action of water), and **reliction** (a sudden, perceptible increase in land, owing to the withdrawal of the water).<sup>2</sup>

**§11502. Historical Background; England.** The common law of England recognized the Crown as having dominion over all navigable waters. For example, in an ancient decision, it was said:

Every navigable river, so high as the sea flows and ebbs in it, is a royal river, and the fishery of it is a royal fishery, and belongs to the King by his prerogatives; but in every other river not navigable, and in the fishery of such river the terre tenants on each side have an interest of common right.<sup>3</sup>

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<sup>1</sup>*Friedman v. Monaco and Brown Corp.*, 258 N.J. Super. 539 (App. Div. 1992).

<sup>2</sup>*Bailey v. Driscoll*, 19 N.J. 363 (1955); *City of Long Branch v. Liu*, 363 N.J. Super. 411 (Law Div. 2003) (discussing distinction between avulsion and accretion).

<sup>3</sup>*The Royal Fishery on the River Banne*, Davies Rep. 149 (*ca.* 1604).

This view was echoed by Lord Hale in a 17th Century treatise entitled *De Jure Maris* ["The Law of the Sea"]:

...the sea, and the arms of the sea, and the navigable rivers in which the tide ebbs and flows, are of the dominion of the King, as his proper inheritance; and that this dominion embraces also the shores, litora... [and the land where the tide flows and reflows...]

It was also affirmed by Sir William Blackstone, citing certain provisions of the **Magna Charta** (1215).<sup>1</sup> However, it must be remembered that in England, the rivers are generally navigable only as far as they are tidal; and thus the tidal test came to be substituted for the navigability test, as a means of determining the extent of the Crown's dominions. The **royal prerogative** over tidal [navigable] waters was exercised through the maritime [admiralty] courts,<sup>2</sup> and by the right to take fish therefrom (subject to the right of the people to fish as well).<sup>3</sup>

**§11503. Historical Background; United States.** The Common Law of England, as it existed in 1776, was generally incorporated into the law of New Jersey (and of the other States as well).<sup>4</sup> In the first reported decision in New Jersey to address this issue, it was held that the people, (acting through the Legislature) replaced the Crown as sovereign (as a result of the Revolution of 1776), and thus succeeded to the royal prerogative over waters.<sup>5</sup>

As the nation expanded, it soon became apparent that the tidal-flow test was inadequate. Huge bodies of water (such as the Great Lakes) and immense rivers (including much of the Mississippi) were too far inland to be **tidal**, but were nevertheless **navigable**. Thus, it was held that proper test was navigability, and *not* tidal-flow.<sup>6</sup> On the other hand, the various States had developed their own standards independently of one another. Some used tidal-flow; others, navigability; and still others, some variation or combination of these tests.

In a leading decision by the United States Supreme Court,<sup>7</sup> the **equal footing doctrine** was applied to waters. Under this principle, each State is admitted to the Union on an **equal footing**. Thus, each State receives title to the navigable waters within its boundaries, because the thirteen original colonies held such title.

The United States Supreme Court has generally permitted each State to make its own rules concerning waters within its boundaries. So a State is free to adopt tidal flow, navigability, or another

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<sup>1</sup>2 *Blackstone's Commentaries*, 261, 262 (8<sup>th</sup> Ed.).

<sup>2</sup>1 *Blackstone's Commentaries*, 263 (8<sup>th</sup> Ed.).

<sup>3</sup>2 *Blackstone's Commentaries*, 39 (8<sup>th</sup> Ed.).

<sup>4</sup>*Loudon v. Loudon*, 114 N.J. Eq. 242 (E. & A. 1933); see §7203, *supra*.

<sup>5</sup>*Arnold v. Mundy*, 6 N.J.L. 1 (Sup. Ct. 1821); *accord*, *Martin v. Waddell's Lessee*, 41 U.S. 367 (1842).

<sup>6</sup>*The Propeller Genesee Chief v. Fitzhugh*, 53 U.S. 442 (1851); *accord*, *The Steamer Daniel Ball v. U.S.*, 77 U.S. 557 (1871).

<sup>7</sup>*Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845).

standard, so long as it bears some rational relationship to the problem at hand.<sup>1</sup> This "hands off" approach was re-affirmed in *Phillips Petroleum Co. v. Mississippi*,<sup>2</sup> in which a majority of the Court permitted the State of Mississippi to adopt a currently or formerly tidally-flowed test (similar to New Jersey's), despite a vigorous dissent.<sup>3</sup>

**§11504. The "Public Trust" Doctrine.** Over the years, the courts have gradually refined the **royal prerogative** concept into the **public trust doctrine**; *i.e.*, the State holds title to waters and other public lands (the "trust *corpus*") as a **trustee** for the benefit of the people (the "trust beneficiaries").<sup>4</sup> In the leading case, the United State Supreme Court invoked this concept to uphold the revocation of a legislative grant to a railroad of approximately 1,000 acres of submerged land along the Chicago waterfront:

The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them... than it can abdicate its police powers in the administration of government and the preservation of peace. In the administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the State the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. *So with trusts connected with public property, or property of a special character, like lands under navigable waterways, they cannot be placed entirely beyond the direction and control of the State.*<sup>5</sup>

The **public trust doctrine** has frequently been invoked by the Attorney General and by the courts of New Jersey to support the State's position with respect to riparian lands.<sup>6</sup> It has also been used to justify the public's purported rights of access to beaches, etc. The doctrine has been codified in administrative regulations governing the use and development of coastal areas, as part of the Department of Environmental Protection's [DEP's] Coastal Zone Management [CZM] rules.<sup>7</sup> These applications of the doctrine are discussed in more detail below.<sup>8</sup>

**§11505. Tidelands in New Jersey.** It was apparent at a very early date that the State asserted some interest in tidal waters and the lands under those waters, but the extent of the State's interest was unclear for many years.<sup>9</sup> It is now well-settled that **the State holds title in fee simple to all lands currently or**

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<sup>1</sup>*Shively v. Bowlby*, 152 U.S. 1 (1894).

<sup>2</sup>484 U.S. 469, 98 L. Ed. 2d 877 (1988).

<sup>3</sup>*Id.* at 485, 98 L. Ed. 2d at 891.

<sup>4</sup>See generally Chapter 109 for a discussion of trusts.

<sup>5</sup>*Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 453 (1892) (emphasis added).

<sup>6</sup>See *Bor. of Neptune City v. Bor. of Avon*, 61 N.J. 296 (1972).

<sup>7</sup>“Public Trust Doctrine’ means a common law principle that recognizes that the public has particular inalienable rights to certain natural resources. [etc.] ....” N.J.A.C. 7:7-1.3.

<sup>8</sup>See §§ 11505 *et seq.*; 11513, *infra*.

<sup>9</sup>*Arnold v. Mundy*, 6 N.J.L. 1 (Sup. Ct. 1821). See also *Cobb v. Davenport*, 32 N.J. Eq. 369 (Sup. Ct. 1867); *Atty. Gen'l v. Del. & Bound Brook R.R. Co.*, 27 N.J. Eq. 1 (Ch. 1876), *aff'd* 27 N.J. Eq. 631 (E. & A. (continued...))

**formerly flowed by the tide**, whether or not part of or connected with a navigable waterway.<sup>1</sup> There are, nevertheless, several exceptions to this rule:

- 1) Lands conveyed by the State through a riparian grant.<sup>2</sup>
- 2) Lands which had ceased being tide-flowed on November 3, 1941 *and* for which the State had not filed a claim map by November 3, 1982, or which thereafter may have ceased being tide-flowed for forty (40) years and for which the State has not filed a claim map.<sup>3</sup>
- 3) Lands which had ceased to be tide-flowed through *accretion*.<sup>4</sup>
- 4) Land which was filled, or upon which a dock or wharf was erected, following passage of the Wharf Act<sup>5</sup>, but prior to the repeal thereof in 1869<sup>6</sup> and in 1891<sup>7</sup>, pursuant to the provisions thereof.<sup>8</sup>
- 5) Lands to which the State had relinquished its interest by special legislative grant.<sup>9</sup>

The major points set forth in the Court's opinion in *O'Neill v. State Highway Dept.*,<sup>10</sup> may be summarized as follows:

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<sup>9</sup>(...continued)  
1876).

<sup>1</sup>*O'Neill v. State Highway Dept.*, 50 N.J. 307 (1967); *City of Newark v. Natural Resource Council*, 82 N.J. 530 (1980).

<sup>2</sup>N.J.S.A. 13:1B-13 *et seq.*

<sup>3</sup>As per Constitutional Amendment effective November 3, 1981 to *N.J. Const.*, Art. VIII, §5; *Dickinson v. Fund for Support of Free Public Schools*, 95 N.J. 65 (1983).

<sup>4</sup>*Borough of Wildwood Crest v. Masciarella*, 51 N.J. 352 (1967). But see *City of Long Branch v. Liu*, 363 N.J. Super. 411 (Law Div. 2003) (beach created through reclamation program did not belong to upland owners through accretion).

<sup>5</sup>L. 1851, p. 335.

<sup>6</sup>L. 1869, c. 383 (as to lands adjoining the Hudson River and Kill von Kull).

<sup>7</sup>L. 1891, c. 124 (as to the remainder of the State).

<sup>8</sup>*Bell v. Gough*, 23 N.J.L. 624 (E. & A. 1852); *Stevens v. Paterson & Newark R.R. Co.*, 34 N.J.L. 532 (E. & A. 1870); *Ward Sand & Materials Co. v. Palmer*, 51 N.J. 51 (1958).

<sup>9</sup>*River Development Corp. v. Liberty Corp.*, 45 N.J. Super. 445 (Ch. Div. 1957), *aff'd* 51 N.J. Super. 447 (App. Div. 1958), *aff'd per curiam* 29 N.J. 239 (1959).

<sup>10</sup>50 N.J. 307 (1967). Adapted from "Special Problems Related to Lands Located Along or Near Tidal Waterways", by John R. Weigel and Joseph M. Clayton, Jr. (Rev. Feb. 1986).

- (a) As an incident of its state sovereignty, the State of New Jersey owns all tide-flowed lands up to the mean high water mark, which is the line formed by the intersection of the tidal plane of mean high tide with the shore.
- (b) The "mean high tide" (sometimes called the "ordinary high tide") is a mean of all the high tides, and the average to be used should be, if possible, the average of all the high tides over a tidal epoch of 18.6 years.
- (c) The State cannot acquire interior lands by such artificial works as ditching which enables the tide to ebb and flow on lands otherwise beyond it.
- (d) So too the riparian owner cannot, today, enlarge his holdings by excluding the tide, although at one time he could do so down to mean low water under a "local custom" which was accepted and sanctioned by the **Wharf Act**.<sup>1</sup>
- (e) The burden of persuasion with respect to the impact of the prior artificial changes is on the party challenging the existing tidal scene, although an appropriate inference may be drawn against a party who deliberately alters that scene to his benefit without preserving evidence of the tideland status of the property.
- (f) An action by the owner of upland to settle a tideland controversy is outside the doctrine of sovereign immunity.
- (g) The State's failure to exercise dominion over its properties or to somehow give public notice of its many holdings should not operate by way of estoppel to divest the State of title in favor of someone who in good faith dealt with the property in the belief that it was privately-owned, but the appropriate officers of the State should do what is feasible to catalogue the State's far-flung holdings.<sup>2</sup>

As suggested above, the State has embarked on a program of mapping to delineate its tidelands claims.<sup>3</sup> The maps consist of the following elements:

- (a) base photomaps (prepared from aerial photographs);
- (b) claim overlays; and
- (c) grant overlays.

The claim maps utilize both scientific (biological) and historical data. The methodology employed has been subject to much criticism, but has generally been upheld by the courts.<sup>4</sup> The tidelands maps also contain the following *caveat*:

Article VIII, Section 5, Paragraph 1 of the New Jersey Constitution requires the State to assert its riparian claim to land which has not been flowed by the tide since November

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<sup>1</sup>See notes accompanying ¶4 in text, *supra*.

<sup>2</sup>But see *Devins v. Borough of Bogota*, 124 N.J. 570 (1991), discussed in §11509, *infra*.

<sup>3</sup>See N.J.S.A. 13:1B-13.1 *et seq.*

<sup>4</sup>*Newark v. Natural Resources Council*, 82 N.J. 530 (1980).

3, 1941 by November 3, 1982, or forfeit its claim. Similarly, as to land which acquires the status of property not tidally flowed for 40 consecutive years after November 3, 1981, the State must assert its riparian claim before the conclusion of the 40 year period, or lose it. These maps are adopted to avoid these forfeitures and constitute the State's claims to riparian lands.

The claim lines do not reflect the changes constantly occurring from the movement of land and water at the ocean's shore and elsewhere; or the impact of additional data which may become available or usable after the maps were drawn.

Also, the claims lines do not show valid grants made by the State, and, therefore, also do not reflect grant overlays, ungranted riparian land inshore of adjacent to grants, or the legal effects of failed grants. Nor do the lines drawn reflect or impact on claims made in particular litigation, or reflect filling under the Wharf Act of 1851 or the location of the former head of tide in inland waterways. In all these respects the lines are subject to alteration.

To the extent not precluded by the New Jersey Constitution or applicable law the Tidelands Resource Council reserves the right to adjust the claims lines landward or waterward as new evidence becomes available.

This wording has been found acceptable by the New Jersey Supreme Court.<sup>1</sup> Notwithstanding the foregoing, it is arguable that the State may be estopped to assert title to previously unclaimed lands as against a *bona fide* purchaser who relied on the filed maps to his detriment.

*The filing of a tidelands map does not, in and of itself, operate to divest the record owner's title to lands claimed thereby.*<sup>2</sup> However, to the extent the maps accurately depict the State's claims, they do serve as notice that the record owners may not have good title to the lands in question. In other words, the filing of a tidelands map is *not* the act by which the State *acquires title* to riparian lands. Rather, subject to the several exceptions previously discussed, the State's paramount title is vested *by operation of law* (*i.e.*, automatically) in all currently or formerly tidally-flowed lands. The maps merely serve as a graphic representation of the State's interest in the lands it owns. Thus, the State's claims operate outside the scope of the **Recording Act**.<sup>3</sup>

It is to be noted that 17 of New Jersey's 21 counties are subject to tidelands claims. Only the four (4) counties in the northwestern corner of the State are exempt: Morris, Sussex, Warren and Hunterdon. A fifth county (Somerset) has very few tidelands claims.

**§11506. Remedies of the Record Owner.** A landowner whose property is affected by a tidelands claim map may pursue several avenues for relief:

(A) application for a riparian grant or lease;

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<sup>1</sup>*City of Jersey City v. Tidelands Resource Council*, 95 N.J. 100 (1983).

<sup>2</sup>*Brancasons, Inc. v. State*, 8 N.J. Tax 413 (Tax Ct. 1985).

<sup>3</sup>N.J.S.A. 46:21-1 and 46:22-1; see §702, *supra*. However, the claim maps themselves impart constructive notice, as suggested above. Furthermore, the TRC occasionally causes a **Notice of Action** (or similar document) to be recorded in the land records, which asserts the State's interest in the lands described therein.

(B) application for a statement of no interest;

(C) filing of a quiet title suit against the State.

Each remedy is discussed in more detail in the following sections.<sup>1</sup>

**§11507. Riparian (Tidelands) Grants.** The authority of the State to make grants of riparian lands has been codified.<sup>2</sup> Although a literal reading of the statute suggests that it is restricted to **meadowlands**, judicial decisions have confirmed that the State's mapping and grant procedures properly extend to *all* riparian lands within the State.<sup>3</sup>

The grant applications must be approved by the **Tidelands Resource Council** ["TRC"] and by the Attorney General. The actual grants are executed by the Governor, attested by the Secretary of State, and sealed with the Great Seal of New Jersey. [Exhibit "A".] <sup>4</sup>They are filed in the records of the **Bureau of Tidelands Management** in Trenton. However, it is advisable to record each grant with the County Clerk or Register as well.<sup>5</sup>

The consideration for the grant is generally based upon fair market value, although so-called **good faith** and **litigation risk** discounts are sometimes available.<sup>6</sup> The State takes the position that it is not empowered to give away **public trust** lands,<sup>7</sup> and thus valuable consideration must be paid. It appears that the State enjoys broad discretion in fixing the amount of consideration to be paid.<sup>8</sup> Yet the prices fixed are often somewhat arbitrary, and there is a lack of consistency from one case to the next. The income derived from the grants is committed by law to the **Fund for the Support of Free Public Schools**, which guarantees the financial obligations of local school boards.<sup>9</sup>

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<sup>1</sup>For more information, see Wm. E. Andersen, "Resolving State Title Claims to Tidelands: Practice and Procedure", *New Jersey Lawyer (Magazine)* (April, 1995).

<sup>2</sup>N.J.S.A. 13:1B-13 *et seq.*

<sup>3</sup>*City of Newark v. Natural Resource Council*, 82 N.J. 530 (1980).

<sup>4</sup>N.J.S.A. 13:1B-13.

<sup>5</sup>The grants are recordable under N.J.S.A. 46:16-1 or 46:16-2. See §702, *supra*.

<sup>6</sup>*Atty. Gen.'s F.O. No. 3* (1983).

<sup>7</sup>See §11504, *supra*. *Henderson v. Atlantic City*, 64 N.J. Eq. 583 (Ch. 1903); *N.J. Const.*, Article VIII, §3, ¶13 (1947).

<sup>8</sup>See *LeCompte v. State*, 128 N.J. Super.552 (App. Div. 1974); 65 N.J. 447 (1974). See also *Taylor v. Sullivan*, 119 N.J. Super. 426 (App. Div. 1972); *Atl. City Elec. Co. v. Bardin*, 145 N.J. Super. 438 (App. Div. 1976).

<sup>9</sup>N.J.S.A. 18A:56-1 *et seq.*; *N.J. Const.*, Art. 8, §4, ¶2 and §5 (1947); *Dickinson v. Fund for Support, etc.*, 95 N.J. 65 (1983).

The grant is in the nature of a **fee simple conditional**,<sup>1</sup> predicated on the grantee's status as the upland owner; *i.e.*, the owner of the non-tidal lands adjoining the area being conveyed. The State has a general policy of making conveyances only to the **upland owner**.<sup>2</sup> If the grantee is not the upland owner, the grant is void. The State is under no legal obligation to convey its interest to the applicant, but it will generally do so.<sup>3</sup> However, if the lands are environmentally sensitive, or needed for some public purpose, *or currently flowed by water*, it may decline to convey them, or convey them subject to restrictive covenants.

Statutory provision is also made for the issuance of **corrective** and **confirmatory grants**.<sup>4</sup> In some cases it may be possible to obtain a **sweep grant** which covers all of the State's claims within a defined area. If record title is found to be vested in the Fund for Support, etc. (which rarely occurs), statutory provision is made for conveyances.<sup>5</sup>

**§11508. Statements of No Interest.** Any person who is "aggrieved" by the filing of a tidelands map may apply to the TRC for a **Statement of No Interest** or a quitclaim deed.<sup>6</sup> This procedure is useful where the State's map filing is apparently erroneous, or where it fails to take into account a previous grant, etc. Where grants were obtained prior to the compilation of the current "scientific" maps, discrepancies may exist between the map and the grant. In these instances, a Statement of No Interest may be an appropriate remedy. [See Exhibit "B".]

The Statements are generally issued upon payment of nominal consideration. They are in recordable form and should be recorded. It is important to distinguish these "official" Statements of No Interest from informal "no interest" letters issued by employees of the Bureau of Tidelands. The latter may be helpful, but are not legally binding.

**§11509. Suits to Quiet Title.** As a result of the holding in *O'Neill v. State Highway Dept.*,<sup>7</sup> a landowner who is adversely affected by the filing of a tidelands map may commence a **quiet title suit** against the State. The State may not plead sovereign immunity as a defense.<sup>8</sup> Moreover, the burden of proof is cast upon the party who is challenging the "existing tidal scene". So, where (as is frequently the case) the State has claimed lands which are alleged to be *formerly* tidal-flowed, the State must (at least in theory) prove the accuracy of its contentions.

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<sup>1</sup>See §205, *supra*.

<sup>2</sup>N.J.S.A. 12:3-7. The State requires a Certificate of Title [**Exhibit "C"**] to confirm that the applicant is the upland owner. See §11510, *infra*. Where the applicant is *not* the upland owner, see N.J.S.A. 12:3-9; -23.

<sup>3</sup>*Bailey v. Driscoll*, 19 N.J. 363 (1955).

<sup>4</sup>N.J.S.A. 12:3-38; -45.

<sup>5</sup>N.J.S.A. 18A:56-14.

<sup>6</sup>N.J.S.A. 13:1B-13.5.

<sup>7</sup>50 N.J. 307 (1967). See §11505, *supra*.

<sup>8</sup>*Id.*; see N.J.S.A. 13:1B-13.5(b).



It is possible to prosecute a quiet title suit while simultaneously negotiating with the TRC for a riparian grant or statement of no interest. On the other hand, the Attorney General may use the quiet title remedy to challenge a previously-made grant.<sup>1</sup>

It is well-known that many of the tidelands maps contain drafting errors. Moreover, the areas claimed by the State are not necessarily completely supported by historical or scientific data. For example, the claim maps do not give the upland owner credit for lands acquired through **accretion**. Accordingly, it is possible to challenge the State and obtain at least partial success in many instances. On the other hand, litigation of this nature is expensive and time-consuming.

Some have suggested that the State's position may be vulnerable where the upland owner claims title through a conveyance made by the Proprietors *prior to* their surrender of governmental functions to Queen Anne in 1702.<sup>2</sup> It is arguable that a conveyance made prior to 1702 of lands which were subject to tidal-flow carried with it the Sovereign's paramount title thereto.<sup>3</sup> Although this issue has not been directly addressed by our courts in recent years, several older opinions decided the point in favor of the State.<sup>4</sup>

The Supreme Court's decision in *Devins v. Borough of Bogota*,<sup>5</sup> permits the assertion of adverse possession claims against the State under certain circumstances. It is unknown whether the holding applies to riparian claims. If it does, it may be possible to challenge the State's claims to formerly tidally-flowed lands on this basis. The opinion seems to be in accord with a statute which purports to limit the State's ability to assert claims against real property to a twenty (20) year period.<sup>6</sup>

In any event, a quiet title suit may be a useful tool for clarifying the validity and extent of the State's claim in a given case.

**§11510. Underwriting Practices; In General.** Every title in each of the seventeen (17) counties affected by tidelands claims should be analyzed in order to determine whether the State has in fact asserted such a claim. This may be done by consulting the relevant tidelands claim map. It is possible to obtain a softbound book from the State entitled: **Index, Lands Subject to Investigation for Areas Now or Formerly Below Mean High Water** (for a nominal charge) by writing to:

Dept. of Environmental Protection & Energy  
Maps and Publications  
CN-402  
Trenton, NJ 08625

The book is an index of all tidelands maps. When the location of the subject premises has been ascertained, the relevant base photomap, claims map, and claims overlay may be obtained by writing to:

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<sup>1</sup>N.J.S.A. 2A:62-23 *et seq.* See generally Chapter 97.

<sup>2</sup>See §602, *supra*.

<sup>3</sup>See §§11502 & 11503, *supra*.

<sup>4</sup>See *Stevens v. Paterson & Newark R.R. Co.*, 34 N.J.L. 532 (E. & A. 1870), citing *Arnold v. Mundy*, 6 N.J.L. 1, 77 (Sup. Ct. 1821); *Schultz v. Wilson*, 44 N.J. Super. 591 (App. Div. 1957).

<sup>5</sup>124 N.J. 570 (1991), discussed in §2201, *supra*; see also N.J.S.A. 2A:14-8.

<sup>6</sup>N.J.S.A. 2A:14-8. But see *Jersey City v. Hall*, 79 N.J.L. 559 (E. & A. 1910).  
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Dept. of Environmental Protection & Energy  
Bureau of Tidelands Management  
Attn: Jo Ann Cubberly, Mgr.  
CN-401, Trenton, NJ 08625  
(609) 292-2573

Because of the small scale of the maps, it is often difficult to determine whether a particular parcel is affected. One alternative is to order a tidelands search from a commercial firm such as Charles Jones, LLC. [See **Exhibits "D, E & F"**.] One should **simultaneously** request a search for both **tidelands claims** and **tidelands grants** affecting the land to be insured.<sup>1</sup>

The searcher should also be instructed to check, as a matter of course, the copies of the maps filed with the County Clerk or Register. However, as noted above, the small scale of the maps often presents difficulties.<sup>2</sup> In many instances, the State's interest is limited to a **pencil stream**, so-called because it is reflected on the maps as having the width of a line drawn by a pencil. This type of claim represents an area formerly flowed by a small tidal stream or creek.<sup>3</sup>

Once it has been determined that the State is in fact asserting a claim as to the land to be insured, the following exceptions may be appropriate:

No title is insured to so much of the land insured as is now or was formerly affected by the ebb and flow of the tide.

-or-

Right, title and interest of the State of New Jersey, in fee, in and to so much of the premises in question as is now or was formerly affected by the ebb and flow of the tide.

For the reasons discussed above, failure to set up the appropriate exception may lead to substantial liability.<sup>4</sup> Where it appears that a tidelands problem *may* exist, but the actual existence or extent thereof is unclear, the following language should be used:

Possible right, title and interest of the State of New Jersey, in fee, in and to so much of the premises in question as is now or was formerly affected by the ebb and flow of the tide.

The wording contained in the following exceptions should be **avoided**:

Right, title and interest of the State of New Jersey in and to any portion of the land lying below the present or former high water mark of the \_\_\_\_\_ River.

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<sup>1</sup>It is advisable to order the search as soon as possible, so that it will be received prior to closing.

<sup>2</sup>Thus, ordering a search from a tidelands search company (as suggested above) will frequently be helpful.

<sup>3</sup>Since many searchers do not routinely check tidelands maps, it is dangerous to assume that a given property is not affected merely because the county search fails to state that it is affected. See generally Chapter 8.

<sup>4</sup>See §11505, *supra*.

Right, title and interest of the State of New Jersey in and to any portion of the land lying below the high water mark of \_\_\_\_\_ River.

In the first example, the exception may *not* be broad enough because it may be interpreted as failing to take into account small streams, creeks, tributaries, etc., which are not, strictly speaking, part of the watercourse mentioned specifically. In the second example, language referring *only* to lands lying below "the high water mark" of a certain body of water is to be avoided, as it is unclear whether this refers to the current high water mark, or the current, *as well as the former*, high water mark.

Where the examination of title reveals the existence of a tidelands grant or lease, the following exceptions are appropriate:

Terms and conditions, other than the condition that the grantee be the owner of the upland ["ripa"], contained in riparian grant [lease] recorded in Deed Book \_\_, page \_\_ &c.

-or (preferably) -

Terms and conditions of riparian grant recorded in Deed Book \_\_, page \_\_ &c. Policy will insure that the grantee was the owner of the upland at the time the grant was made.

The second form of the exception is less confusing and thus preferable. The affirmative insurance arises from the condition (found in all grants) that the grant is *void* if the grantee is not the upland owner.<sup>1</sup> This is because the statutory right to apply for a grant is (in general) given only to the adjoining property owner.<sup>2</sup> If this were not so, a third party could acquire, for example, a strip of filled land lying between the water's edge and the upland, thereby depriving the upland owner of access to the waterfront. Of course, *one must first satisfy oneself that the grant was in fact given to the upland owner*.<sup>3</sup> The first form of the exception, by the way, gives the same affirmative coverage by implication.

*The grant must be carefully examined to ensure that it covers all the lands currently claimed by the State within the boundaries of the subject premises.* Of course, if the instrument is a **lease**, an appropriate exception should be made for the lessor's [the State's] right of reversion at the end of the term.<sup>4</sup>

The State has traditionally taken the position that, once a valid grant of its interest has been made (usually to the upland owner, as discussed above), the upland and the tideland may be treated as separate parcels. Although an older judicial decision contained a suggestion to the contrary (*i.e.*, that the upland and tideland parcels must remain in common ownership), this statement has been disapproved by a more recent one.<sup>5</sup> In any event, it is clear that many titles (which were once tidelands) have been separately conveyed and developed over the years. There seems to be no rational basis for challenging the accepted custom and practice at this time.

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<sup>1</sup>See §11507, *supra*.

<sup>2</sup>*Id*; N.J.S.A. 12:3-7.

<sup>3</sup>This is determined through the customary search of the land records. It is not uncommon for a developer (for example) to convey subdivided lots *prior to* the delivery and recording of a grant.

<sup>4</sup>See §7308, *supra*.

<sup>5</sup>*Karam v. D.E.P.*, 308 N.J. Super. 225 (App. Div. 1998), *aff'd per curiam*, 157 N.J. 187 (1999); *Panetta v. Equity One*, 190 N.J. 307 (2007) (title to riparian parcel did **not** pass by implication with upland parcel; N.J.S.A. 46:3-16 construed). See §3709, *supra*.

Where a grant contains an **automatic extension** clause (discussed below), or where it is in fact a **license** (discussed below), the above-quoted exceptions should be modified:

Terms and conditions of riparian grant recorded in Deed Book\_\_\_\_\_, page\_\_\_\_&c. Policy will not insure title to any portion of the premises therein granted which is derived from the "automatic extension" provision contained in said grant, unless a confirmatory grant is obtained. Policy will insure that the grantee was the owner of the upland at the time the grant was made.

- or -

Terms and conditions of riparian grant recorded in Deed Book\_\_\_\_\_, page\_\_\_\_\_ &c., including, without limitation, the obligation imposed upon the grantee to fill or otherwise improve the premises granted or any portion thereof. Policy will insure that the grantee was the owner of the upland at the time the grant was made.

If a discrepancy exists between the area covered by the tidelands claim map and by a riparian grant, or where it is unclear whether the State is claiming title to a particular area, the TRC is empowered by statute to issue a **Quitclaim Deed** or **Statement of No Interest** in recordable form.<sup>1</sup> However, these "Statements" should not be confused with so-called "No Interest Letters" issued by certain employees of the Department of Environmental Protection. The latter have no statutory basis and will not necessarily prevent the State from asserting a claim in the future.<sup>2</sup>

Grants must be examined carefully in order to determine whether they are in fact grants of a **fee simple interest**, as opposed to **leases** or **licenses**. Some grants (particularly those created by **legislative enactment** in the nineteenth century) were actually licenses which would ripen into fee simple grants only if the grantee [licensee] filled or otherwise improved the premises in question within a certain time period. If he failed to do so, the license was subject to revocation.<sup>3</sup> Therefore, as suggested above, *it is important that the contents of grants (and other riparian instruments) be reviewed in order to ensure that title to the land in question is in fact vested in the current upland owner.*

Other old grants contained so-called **automatic extension** provisions; *i.e.*, the grant extended to the **bulkhead** or **pierhead line** in existence when the grant was made, but would be automatically extended to a new bulkhead or pierhead line if the same were established in the future. The State has now taken the position that the Riparian Commissioners lacked the legal authority to include automatic extension clauses in grants, and that these clauses are therefore void. The State's view is based upon the idea that **public trust lands** may not be given away. On the other hand, a provision enabling the grantee to apply for and obtain a **supplemental grant**, upon payment of additional consideration, extending to the new pierhead or bulkhead line, is acceptable, if this was in fact done.<sup>4</sup>

The consideration for some old grants was determined on a **frontage** basis; *i.e.*, the price paid was a multiple of the number of feet the upland abutted a waterway. More recent map filings may disclose

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<sup>1</sup>N.J.S.A. 13:1B-13.5.

<sup>2</sup>See §11508, *supra*.

<sup>3</sup>*River Development Corp. v. Liberty Corp.*, 45 N.J. Super. 445 (Ch. Div. 1957), *aff'd* 51 N.J. Super. 447 (App. Div. 1958), *aff'd per curiam* 29 N.J. 239 (1959).

<sup>4</sup>Bulkhead and pierhead lines are discussed in §11511, *infra*.  
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inconsistencies between the original grant and the State's current claims, whether in these circumstances or otherwise. *Thus, in cases where a discrepancy appears to exist between the State's claim (as shown on a recent map) and an old grant, one should not mechanically rely upon the prior grant as dispositive of the State's claim.* It may be necessary to require that the parties obtain a Statement of No Interest or a [confirmatory] grant or commence a quiet title action.

The following wording should be **avoided**:

Right, title and interest of the State of New Jersey in and to so much of the land as is claimed by the State under Tidelands Map No. \_\_\_\_, filed \_\_\_\_.

The State may later file a revised or amended map which may alter the area claimed, thereby exposing the title insurer to liability.

**§11511. Navigational Servitude.** As suggested above, the United States of America enjoys certain authority over navigable waterways (and other waters appurtenant thereto) as an incident of its sovereignty.<sup>1</sup> This concept, known as the **navigational servitude**, derives from the United States Constitution, and is codified in **Title 33** of the **United States Code**.<sup>2</sup> It differs from the riparian or tidelands rights of the State of New Jersey in that the latter are *not* based upon navigability, and serve to vest title in the State to the lands so affected.<sup>3</sup> The interest of the United States is primarily regulatory in nature; however, it affects title to the extent that the United States may take *without compensation* lands lying below the [former] high-water mark of a navigable waterway, where necessary to carry out projects in aid of navigation.<sup>4</sup>

The **United States Army Corps of Engineers** is generally charged with the authority and duty to carry out projects in aid of navigation in or near navigable waters.<sup>5</sup> As part of its duties, it has created **Bulkhead** and **Pierhead Lines** along such waterways. The **Bulkhead Line** denotes the limit to which lands flowed by water may be filled; a bulkhead is constructed at the edge of the fill. The **Pierhead Line** denotes the limit to which piers are permitted to extend into the channel. These lines *may* be shifted from time to time in either direction. The State of New Jersey formerly fixed its own Bulkhead and Pierhead Lines. (The Bulkhead Line was originally known as the **Exterior Line for Solid Fill**.) The State now relies on the lines fixed by the United States. As noted above, certain riparian grants extend to the Pierhead Line or Bulkhead Line.<sup>6</sup>

Thus, when insuring title to lands abutting or near a navigable waterway, the following exceptions may be appropriate:

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<sup>1</sup>§11503, *supra*.

<sup>2</sup>33 U.S.C. §§1 *et seq.* See also 43 U.S.C. §§1301 *et seq.*, the Submerged Lands Act, which, subject to certain exceptions, releases the claims of the United States in navigable waters to the States. 43 U.S.C. §§1311, 1313.

<sup>3</sup>See §11505, *supra*.

<sup>4</sup>*Oregon ex rel. State Land Board v. Corvallis Sand and Gravel Co.*, 429 U.S. 363 (1977).

<sup>5</sup>See, e.g., 33 U.S.C. §1344 (Clean Water Act, §404); *City of Long Branch v. Liu*, 363 N.J. Super. 411 (Law Div. 2003) (beach reclamation project). See also §11518, *infra*.

<sup>6</sup>See §11510, *supra*.

The right of the United States Government to establish harbor, bulkhead or pierhead lines or to change or alter any such existing lines and to compel the removal of fill or improvements thereon, including buildings or other structures [from land now or formerly below the high-water mark of the \_\_\_\_\_ River] without compensation to the insured. [Note: the bracketed language ( [ ] ) is optional.]

-or-

Navigational servitude in favor of the United States of America, as per the United States Constitution and Title 33 of the United States Code.

The **State of New Jersey** enjoys a loosely-analogous right to regulate waterfront development.<sup>1</sup> It is not necessary or desirable to raise an exception for this, since it is covered under the police power, governmental regulation and land use portions of the policy's *Exclusions from Coverage* section.<sup>2</sup> However, it may be advisable to set forth an **informational note** in certain cases.<sup>3</sup>

*Note:* Although governmental regulation of matters pertaining to the environment and land use and the governmental police power are beyond the scope of coverage afforded by the policy, we call your attention (for informational purposes only) to the fact that all or some portion of the land to be insured may be affected by the provisions of N.J.S.A. 12:1-1 *et seq.*, which empowers the State to regulate waterfront development.

Note that the Company may not legally insure that the proposed transaction comports with the provisions of any land use or environmental statute or regulation (including, without limitation, the statute referred to above) or to provide affirmative insurance with respect to same.

**§11512. Affirmative Insurance.** One may be asked from time to time to provide affirmative insurance with regard to State **tidelands claims** or the **navigational servitude** in favor of the United States, as the same may affect improvements, etc. These requests should be dealt with on a case-by-case basis after consultation with the appropriate underwriting authorities. It will generally be necessary to consult a current survey on which the surveyor has depicted the extent of the claims of the State and Federal governments in relation to the improvements. Typical coverage requested may be to the effect that the claims of the State and of the United States do not affect the improvements currently located on the land insured.

**§11513. Beach and Shore Rights.** The **public trust doctrine** was extended by the New Jersey Supreme Court to apply in some cases to the **dry sand area**, as well as to the **wet sand area**, which, being tidal-flowed, would normally belong to the State.<sup>4</sup> In order to make the public's rights meaningful, the Court also created a right of access to the beach under certain circumstances. Unfortunately, **notice of these rights will not normally appear in the public records**. In addition, it has been held that those developing

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<sup>1</sup>N.J.S.A. 12:1-1 *et seq. Matter of Waterfront Dev't*, 257 N.J. Super. 524 (App. Div. 1992).

<sup>2</sup>See, e.g., *ALTA Owner's Policy*, Exclusion No. 1 (1992). See also §1103, *supra*.

<sup>3</sup>See §11517, *infra*.

<sup>4</sup>*Matthews v. Bay Head Improvement Ass'n.*, 95 N.J. 306 (1984); see also *Bor. of Neptune v. Bor. of Avon*, 61 N.J. 296 (1972). See §11504, *supra*, for a discussion of the public trust doctrine.

formerly tide-flowed lands along the shore may be compelled to provide walkways or other amenities for the benefit of the public (including a means of access thereto).<sup>1</sup>

In a recent decision, the New Jersey Supreme Court affirmed the principle of public beach access as part of the public trust doctrine.<sup>2</sup> The plaintiff sought declaratory relief to the effect that its members were entitled to both **horizontal** and **vertical access** across defendant's lands in order to gain access to the foreshore and the Atlantic Ocean. The former would allow the crossing the beach club's land in order to reach the water; the latter would permit a portion of the dry sand parallel and adjacent to the wet sand to be used for recreational purposes. Defendant had sought to limit the public's access by charging beach access fees and prosecuting those who (in its view) were trespassing by entering upon or crossing the beach without having paid to do so.

In balancing the rights and obligations of the parties, the court applied a four-part test derived from the *Matthews* decision: (1) the location of the dry sand area in relation to the wet sand area; (2) the accessibility and availability of public beaches in the neighborhood; (3) the extent of the public's demand; and (4) utilization of the beach area by the record owner. After a lengthy analysis of the factors discussed above, the court concluded that "... based upon the circumstances in this case and on application of the *Matthews* factors, we hold that the [defendant's] upland sands must be available for use by the general public under the public trust doctrine".<sup>3</sup> It only remained for the court to determine what charge (if any) the beach club could lawfully impose upon the public. The court found that the New Jersey Department of Environmental Protection [NJDEP] had jurisdiction to promulgate a fee schedule under the **Coastal Area Facilities Review Act** [CAFRA], and administrative regulations adopted thereunder.<sup>4</sup>

Some underwriters feel that these applications of the **public trust doctrine** fall within the ambit of the policy's exclusions for governmental regulation, police power, etc.<sup>5</sup> Yet others believe that it is prudent to set up an exception, such as the following one, when insuring a title which abuts a **public** or **private** beach or shore area:

Rights, if any, of the public to use any portion of the land insured as a public beach or recreation area or to gain access thereto for similar purposes.

This exception may be waived in cases where it seems appropriate to do so, after consultation with appropriate underwriting authorities.

Private rights of beach or shore access may be created by deed or filed map. The same should be excepted, where necessary, as would any other easement burdening the land insured.<sup>6</sup>

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<sup>1</sup>*Nat'l Ass'n of Home Builders v. State of N.J., D.E.P.*, 64 F. Supp. 2<sup>d</sup> 354 (U.S.D.Ct., D.N.J. 1999). See N.J.S.A. 12:5-1 *et seq.*; N.J.A.C. 7:7-1.3 ("Public Trust Doctrine" means a common law principle that recognizes that the public has particular inalienable rights to certain natural resources. [etc.]...") See also N.J.A.C. 7:7E-3.50 (lands and waters subject to public trust rights) and 7:7E-8.11 (public trust rules).

<sup>2</sup>*Raleigh Ave. Ass'n v. Atlantis Club*, 185 N.J. 40 (2005), *aff'g* 370 N.J. Super. 171 (App. Div. 2004)

<sup>3</sup>185 N.J. at 55-59.

<sup>4</sup>N.J.S.A. 13:19-1 *et seq.*; N.J.A.C. 7:7-1.1 *et seq.* and 7:7E-1.1 *et seq.* See §11518, *infra*.

<sup>5</sup>See, e.g., *ALTA Owner's Policy* (2006), Excl. No. 1.

<sup>6</sup>*Bubis v. Kassin*, 323 N.J. Super. 601 (App. Div. 1999) (right of beach access created by deed upheld, (continued...))

**§11514. Private Rights in Waters.** A party whose land abuts or is traversed by a body of water enjoys certain common law rights therein, such as drainage, bathing, fishing, boating, etc.<sup>1</sup> At the same time, these rights are held in common with the other persons whose lands abut or are traversed by the same body of water.<sup>2</sup>

Thus, when insuring title to land which abuts or which is traversed by a body of water, the following exception is appropriate:

Rights or easements of others to drain through or to otherwise use [the Passaic River] running along or through the insured premises.

The exception should be raised regardless of whether the body of water in question is navigable or non-navigable, or tidal or non-tidal.

**§11515. Descriptions.** As noted elsewhere,<sup>3</sup> a conveyance to the bank or shore of a **non-tidal stream** will pass title to the centerline of the stream,<sup>4</sup> but if the land borders on a **non-tidal lake or pond**, title will be construed to pass only to the shoreline.<sup>5</sup> If the body of water is **flowed by the ebb and tide**, title will pass only as far as the [former] high-water mark.<sup>6</sup>

Title to the bed of a **non-tidal lake or pond** may be acquired by conveyance, and the abutting owners may or may not obtain easements to use the surface waters for swimming, boating, fishing, etc.<sup>7</sup> If one acquires title to the land lying on both sides of a **non-tidal river or stream**, he owns the entire bed thereof, subject to the rights of others to use the same.<sup>8</sup> Where the center of a non-tidal river marks the boundary line, and the course of the river shifts only slightly (owing to **accretion or erosion**),<sup>9</sup> it seems that

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<sup>6</sup>(...continued)

even though beach was submerged owing to erosion); *Bubis v. Kassin*, 353 N.J. Super. 415 (App. Div. 2002), *rev'd* 184 N.J. 612 (2005). See generally Chapter 56.

<sup>1</sup>*Pinkowski v. Twp. of Montclair*, 299 N.J. Super. 557 (App. Div. 1997).

<sup>2</sup>*Stanfield v. Schneidewind*, 96 N.J.L. 428 (Sup. Ct. 1921); *Camp Clear-water, Inc. v. Plock*, 52 N.J. Super. 583 (Ch. Div. 1958), *aff'd* 59 N.J. Super. 1 (App. Div. 1959). Each owner is limited to the reasonable use of such waters. *Johns-Manville Sales v. N.J. Water Supply*, 211 N.J. Super. 315 (App. Div. 1986).

<sup>3</sup>See §5504, *supra*. With respect the effect of a tax foreclosure on riparian lands, see *Friedman v. Monaco and Brown Corp.*, 258 N.J. Super. 539 (App. Div. 1992). See also § 10209, *supra*.

<sup>4</sup>*Paterson v. East Jersey Water Co.*, 74 N.J. Eq. 49 (Ch. 1908), *aff'd* 77 N.J. Eq. 588 (E. & A. 1910). The phrase *ad medium aquae filum* is often used.

<sup>5</sup>*Lieberman on Abstracts on Titles*, §378 (3d Ed. 1966); *Baker v. Normanoch Ass'n.*, 25 N.J. 407 (1957).

<sup>6</sup>*Atty-Gen'l v. Del. & Bound Brook R.R. Co.*, 27 N.J. Eq. 1 (Ch. 1876), *aff'd* 27 N.J. Eq. 631 (E. & A. 1876).

<sup>7</sup>*Cobb v. Davenport*, 32 N.J. Eq. 369 (Sup. Ct. 1867).

<sup>8</sup>3 *Kent's Commentaries*, 345 (1828). See §11514, *supra*.

<sup>9</sup>2 *Tiffany on Real Property*, §661 (3d Ed. 1939).  
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the boundary shifts as well. But if the change is sudden and dramatic (owing to an **avulsion** or **reliction**),<sup>1</sup> then the original boundary remains the same.<sup>2</sup>

Accordingly, the title examiner must take care that the **description** of the land to be insured does not include (either expressly or by implication) title to, or an easement or rights in, any part thereof which did not pass to the insured. Thus, where the land to be insured abuts a **lake** or **pond**, it may be advisable to *except* any portion of the lake or pond which lies within the description. Moreover, it may be prudent to state in the commitment and policy that no title or easements or rights in and to the lake or pond are insured.<sup>3</sup>

If a **non-tidal stream** or **river** forms one of the boundaries of the land to be insured, similar exceptions may be appropriate.<sup>4</sup> Of course, if the land to be insured abuts a **tidal body of water**, the riparian exceptions set forth above must also be set up.<sup>5</sup>

**§11516. Wetlands; In General.** As noted above, the term **wetlands** should properly be applied only to certain environmentally-sensitive lands which are subject to governmental regulation.<sup>6</sup> In New Jersey environmental concerns have led to the enactment of the **Coastal Wetlands Act**,<sup>7</sup> covering salt-water wetlands; the **Freshwater Wetlands Protection Act**;<sup>8</sup> the **Coastal Area Facility Review Act**;<sup>9</sup> the **Hackensack Meadowlands Reclamation and Development Act**;<sup>10</sup> etc. Of course, certain lands may contain **both** wetlands and tidelands. A tidelands grant from the State may perfect the upland owner's title,<sup>11</sup> but environmental restrictions may render it useless.<sup>12</sup>

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<sup>1</sup>*Id.* For definitions of *accretion*, *erosion*, etc., see §11501, *supra*.

<sup>2</sup>3 *Kent's Commentaries*, 345 (1828); 2 *Blackstone's Commentaries*, 261 (8th Ed.); 6 *Thompson on Real Property*, §§3075 *et seq.* (1962).

<sup>3</sup>See §11512, *supra*.

<sup>4</sup>See preceding Note.

<sup>5</sup>See §§11510 and 11511, *supra*. A conveyance of the upland may pass title *by implication* to riparian rights in adjacent lands under water (subject to the tidelands claim of the State, if any). *Vagnoni v. Gibbons*, 251 N.J. Super. 402 (Ch. Div. 1991). But fee title to a riparian parcel will not generally pass by implication along with the upland parcel. *Panetta v. Equity One*, 190 N.J.307 (2007). See § 3709, *supra*.

<sup>6</sup>See §11501, *supra*.

<sup>7</sup>N.J.S.A. 13:9A-1 *et seq.*

<sup>8</sup>“FWPA”, N.J.S.A. 13:9B-1 *et seq.*

<sup>9</sup>“CAFRA”, N.J.S.A. 13:19-1 *et seq.*

<sup>10</sup>N.J.S.A. 13:17-1 *et seq.*

<sup>11</sup>See §11507, *supra*.

<sup>12</sup>See, e.g., *Last Chance Dev't. Partnership v. Kean*, 119 N.J. 42 (1990); *Griffith v. D.E.P.*, 340 N.J. Super. 596 (App. Div. 2001); *East Cape May Assocs., v. D.E.P.*, 300 N.J. Super. 325 (App. Div. 1997) (discussing possible “regulatory taking” arising from land use regulation). See also *Mansoldo v. State*, 189 N.J. 50

(continued...)

**§11517. Wetlands; Underwriting Practices.** The policy contains **exclusions** relating to such matters as environmental regulation, land use and governmental policy power.<sup>1</sup> Therefore, environmental and land use matters are generally beyond the scope of the policy. Moreover, the providing of affirmative insurance with respect to same, or the deletion of the relevant policy exclusions, may constitute a violation of the **Title Insurance Act**.<sup>2</sup> Thus, the existence of wetlands and related regulations are not generally an appropriate subject for a title exception, *except where a recorded Wetlands Order or similar document appears in the chain of title to the land to be insured, in which case the same should be set forth as an exception*.<sup>3</sup>

On the other hand, some underwriters believe that it may nevertheless be desirable to insert an **informational note** in commitments covering lands which (are or may be) affected by wetlands or related legislation:

Note: Although environmental and land use regulation is beyond the scope of coverage afforded by the policy, your attention is called (for informational purposes only) to the fact that all or some portion of the land to be insured may be affected by the provisions of the Coastal Wetlands Act of 1970, N.J.S.A. 13:9A-1 *et seq.*, or the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 *et seq.*, or both.

Note that the Company may not insure that the proposed transaction comports with the provisions of any land use or environmental statute or regulation or to provide affirmative insurance with respect to same.

A similar sort of "Note" may be used with respect to other regulatory laws (discussed in the next section) where appropriate.

**§11518. Summary of Wetlands and Related Regulation.** As noted above, wetlands regulation is generally beyond the scope of the policy.<sup>4</sup> Accordingly, as discussed in the preceding section, it is generally unnecessary (and in fact inappropriate) to set up requirements or exceptions with respect to the same in the commitment and policy. Nevertheless, these laws and regulations have an indirect impact on the title industry; thus, it is useful to obtain some understanding of its meaning. The Department of Environmental Protection ["DEP"] has promulgated extensive regulations supplementing such legislation.<sup>5</sup>

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<sup>12</sup>(...continued)  
(2006) (excessive regulation as possible regulatory taking). So-called **inverse condemnation** is discussed in §3409, *supra*.

<sup>1</sup>See, e.g., *ALTA Owner's Policy* (2006), Excl. No.1.

<sup>2</sup>N.J.S.A. 17:46B-54; see §§1101, 1110 and 1404, *supra*.

<sup>3</sup>See §5702, *supra*. See also §11518, *infra* ("Summary of Wetlands and Related Legislation").

<sup>4</sup>See §11517, *supra*.

<sup>5</sup>It is noteworthy that parties applying to the DEP for regulatory permits, etc., have on occasion been advised that their applications will not be approved until a riparian grant [§11507, *supra*] is obtained (where necessary).

Coastal wetlands (*i.e.*, salt water wetlands)<sup>1</sup> are governed by the **Coastal Wetlands Act of 1970**,<sup>2</sup> which generally provides for the approval of the DEP before any **regulated activity** may take place. This includes, but is not limited to:

...draining, dredging, excavation or removal of soil mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, driving of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow.<sup>3</sup>

The Coastal Wetlands Act was followed by the enactment of the **Freshwater Wetlands Protection Act** [FWPA], which became effective on July 1, 1988.<sup>4</sup> Its provisions have been supplemented by a comprehensive set of administrative regulations.<sup>5</sup> The term **freshwater wetland** is defined in the FWPA as:

...an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation....<sup>6</sup>

The Act generally requires the issuance of a **Freshwater Wetlands Permit** in connection with the performance of any of the following **regulated activities** in a wetlands area:

- (1) The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;
- (2) The drainage or disturbance of the water level or water table;
- (3) The dumping, discharging or filling with any materials;
- (4) The driving of pilings;
- (5) The placing of obstructions; or

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<sup>1</sup>It should be noted that tidal waters are generally brackish (*i.e.*, salty), while non-tidal waters usually are not.

<sup>2</sup>N.J.S.A. 13:9A-1 *et seq.*

<sup>3</sup>N.J.S.A. 13:9A-4.

<sup>4</sup>N.J.S.A. 13:9B-1 *et seq.*

<sup>5</sup>N.J.A.C. 7:7A-1 *et seq.* *In re Freshwater Wetlands Act Rules*, 180 N.J. 478 (2004); *In re Freshwater Wetlands*, 372 N.J. Super. 578 (App. Div. 2004).

<sup>6</sup>N.J.S.A. 13:9B-3. FWPA has been construed to prohibit issuance of a permit to fill wetlands which flowed into a tidal stream. *Doyal v. N.J.D.E.P.*, 390 N.J. Super. 185 (App. Div. 2007).

- (6) The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees.<sup>1</sup>

Certain operations are nevertheless exempt from the requirement for a permit.<sup>2</sup> These include:

- (1) Normal farming or cultivation;
- (2) Normal harvesting of forest products;
- (3) Activities carried on in areas regulated under the Coastal Wetlands Act of 1970.

Another form of wetlands regulation derives from the **Coastal Area Facility Review Act**.<sup>3</sup> This statute regulates numerous activities within a defined "coastal area" which extends from the Raritan Bay to Cape May, and thence along the Delaware Bay and River. Persons seeking to develop lands within the coastal area must obtain DEP approval.<sup>4</sup>

In addition, the **United States Army Corps of Engineers** has been given authority by Congress to regulate certain **wetlands**.<sup>5</sup> The Corps has prepared maps delineating wetlands areas which may be found in the County Clerks' or Registers' Offices.<sup>6</sup> The denial by the Corps of a permit to fill wetlands with dredged materials has been held to be an unconstitutional "taking" of private property without compensation.<sup>7</sup>

Reference should also be made to the **Hackensack Meadowlands Reclamation and Development Act**,<sup>8</sup> which created the **Hackensack Meadowlands Development Commission** ["HMDC"], in order to regulate development within the **Hackensack Meadowlands District**.<sup>9</sup> HMDC is now called the **New Jersey Meadowlands Commission** ["NJMC"].<sup>10</sup>

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<sup>1</sup>N.J.S.A. 13:9B-3.

<sup>2</sup>N.J.S.A. 13:9B-4.

<sup>3</sup>"CAFRA"; N.J.S.A. 13:19-1 *et seq.*

<sup>4</sup>*Lusardi v. Curtis Point Prop. Owners Ass'n.*, 86 N.J. 217 (1981).

<sup>5</sup>33 U.S.C. §§1251 *et seq.*; §1344 (Clean Water Act, §404). See §11511, *supra*.

<sup>6</sup>As suggested by §11517, *supra*, it may be advisable to advert to the wetlands maps in the commitment and insert an "informational note" with respect to same.

<sup>7</sup>*Loveladies Harbor, Inc. v. U.S.*, 21 Cl. Ct. 152 (1990), *aff'd* 28 F.3d 1171 (Fed. Cir. 1994). So-called **inverse condemnation** is discussed in §3409, *supra*.

<sup>8</sup>N.J.S.A. 13:17-1 *et seq.*

<sup>9</sup>*Meadowlands Regional Redev't Agency v. State*, 112 N.J. Super. 89 (Ch. Div. 1970), *aff'd* 63 N.J. 35 (1973).

<sup>10</sup>N.J.S.A. 13:17-3, as amended by P.L. 2001, c. 232.  
Rev. 2007 115-20

The **Pinelands Protection Act**<sup>1</sup> established the **Pinelands Commission** to oversee development of this environmentally-sensitive area.<sup>2</sup> Consideration should be given to a statutory requirement that contracts for sale of lands within the area subject to regulation be submitted to the **Pinelands Commission** for approval.<sup>3</sup> The effect of failure to comply with this statute is unclear; therefore, underwriters are divided in the approach to be taken with regard to same. Some will require proof of compliance in Schedule B - Section I of the Commitment. Others believe that it falls within the ambit of the policy exclusion for governmental regulation, etc.,<sup>4</sup> and accordingly do not address the statute in the commitment or policy.

Finally, the **Highlands Water Protection and Planning Act**<sup>5</sup> serves as a counterpart of the Pinelands Protection Act, but affecting a different area of the State: portions of Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren Counties. The Act creates the **Highlands Water Protection and Planning Council**, which is charged with the duty of protecting the water supply within the **Highlands Region** (as more specifically defined in the Act) by regulating development therein. The statute (and administrative regulations to be adopted pursuant thereto) clearly fall within the ambit of the policy's exclusions for governmental and environmental regulation, etc.<sup>6</sup>

The foregoing is **not** intended to constitute an exhaustive survey of wetlands and related litigation. For more information about environmental and land use regulation, see **Chapters 57 and 116**, respectively. The concept of **inverse condemnation** arising from so-called **regulatory taking** is discussed in **Chapter 34**.<sup>7</sup>

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<sup>1</sup>N.J.S.A. 13:18A-1 *et seq.*

<sup>2</sup>*Gardner v. N.J. Pinelands Comm'n*, 125 N.J. 193 (1991).

<sup>3</sup>N.J.S.A. 13:18A-22. *Cf.* N.J.S.A. 4:1C-39 (farmland preservation program).

<sup>4</sup>See, e.g., *ALTA Owner's Policy* (2006), Excl. No. 1

<sup>5</sup>N.J.S.A. 13:20-1 *et seq.*

<sup>6</sup>See, e.g., *ALTA Owner's Policy* (2006), Excl. No. 1.

<sup>7</sup>See §3409, *supra*. See also §11516, *supra*.

FILE NO. 89-0110-T  
Delivered \_\_\_\_\_  
Mailed \_\_\_\_\_

THE STATE OF NEW JERSEY  
TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,  
GREETINGS:

WHEREAS, THE STATE OF NEW JERSEY has asserted its ownership to a portion of the lands hereinafter described as being formerly flowed by tidewater;

AND WHEREAS, the Tidelands Resource Council (hereinafter "Council") in the Division of Coastal Resources in the Department of Environmental Protection is empowered under N.J.S.A. 13:1B-13 to approve grants of lands now or formerly flowed by tidewater;

AND WHEREAS, HACKBRIDGE CORPORATION, a New Jersey corporation, having an office at 174 Passaic Street, in the City of Garfield, in the County of Bergen and State of New Jersey

PREPARED BY: James R. Johnson, Chief  
Bureau of Tidelands  
(N.J.S.A. 46:15-13)

representing itself to be the record owner of land in the City of Hackensack, in the County of Bergen and State of New Jersey, which lie above the former mean high water lines of unnamed tributaries of the Hackensack River, adjacent to or within the lands hereinafter described are situate, has applied to the Council for a grant of said lands formerly flowed by tidewater, and to have it determine the price or consideration to be paid therefor, and the covenants, conditions and limitations of said grant;

AND WHEREAS, a majority of the members of the Council and the authorized State officials, having due regard for the public interest, have approved the grant hereinafter described upon the covenants, conditions and limitations herein set forth, and having fixed the sum of SIXTY - TWO THOUSAND FIVE HUNDRED AND NO HUNDREDTHS (\$62,500.00) DOLLARS, as the price or reasonable consideration to be paid to the State for said lands;

NOW THEREFORE, the State of New Jersey, acting by and through the Council, the Governor and the Commissioner of Environmental Protection and a majority of the members of the Council approving in consideration of the premises, the covenants, conditions and limitations herein contained, and of the said sum above set forth paid by the grantee to the State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey, remise, release and quitclaim unto the said HACKBRIDGE CORPORATION, a New Jersey corporation, and to its successors and assigns the following:

ALL that tract or parcel of land and premises situate, lying and being in the City of Hackensack, in the County of Bergen and State of New Jersey, as shown within the dash lines on the map attached hereto and made a part hereof marked as Exhibit A (Map #89-0110-T) and being more particularly described as follows:

BEGINNING at a point in the present easterly line of Hackensack Avenue, where the same is intersected by the southerly line of lands, formerly of American Ink Company, more recently of the Hackensack Industrial Center, said line being further described as being the southerly line of Commerce Way (fifty feet wide) and the northerly line of the premises herein described and running thence

(1) South 78 degrees 33 minutes 30 seconds East, along the southerly line of Commerce Way, a distance of 509.62 feet to a point; thence

(2) South 64 degrees 00 minutes East, a distance of 927.00 feet to a point; thence

(3) South 20 degrees 20 minutes 54 seconds West, a distance of 562.75 feet to a point; thence

(4) North 76 degrees 00 minutes West, a distance of 588.90 feet to a point; thence

(5) North 75 degrees 19 minutes 30 seconds West, a distance of 664.00 feet to a point in the easterly line of Hackensack Avenue; thence

(6) North 32 degrees 40 minutes 57 seconds West, along said easterly line of Hackensack Avenue, a distance of 29.40 feet to a point of curvature; thence

(7) northwardly, still along the same, on a curve to the left having a radius of 1010.00 feet, an arc distance of 105.61 feet to a point of tangency; thence

(8) North 03 degrees 16 minutes 30 seconds East, still along the easterly line of Hackensack Avenue, a distance of 127.65 feet to a point of curvature; thence

(9) northwardly and eastwardly, still along the same, on a curve to the right having a radius of 80.00 feet, an arc distance of 80.16 feet to a point of tangency; thence

(10) North 29 degrees 18 minutes 54 seconds West, still along the easterly line of Hackensack Avenue, a distance of 43.65 feet to a point; thence

(11) North 03 degrees 16 minutes 30 seconds East, still along the same, a distance of 64.85 feet to a point; thence

(12) North 35 degrees 37 minutes 39 seconds East, still along the same, a distance of 53.14 feet to a point of curvature; thence

(13) westwardly and northwardly, still along the same, on a curve to the right having a radius of 90.00 feet, an arc distance of 90.56 feet to a point of tangency; thence

(14) North 03 degrees 16 minutes 30 seconds East, still along the same, a distance of 130.98 feet to a point of curvature; thence



(15) northwardly and eastwardly, still along the same, on a curve to the right having a radius of 40.00 feet, an arc distance of 68.38 feet to a point of tangency; thence

(16) North 11 degrees 26 minutes 30 seconds East, a distance of 10.00 feet the point and place of BEGINNING.

Subject to an easement of record to the Bergen County Utilities Authority.

Containing 21.348 acres of which 6525 square feet is claimed to be formerly flowed by the mean high tide as shown on tidelands map #756-2172.

Being Lot 13.01, Block 504-02, on the tax map of the City of Hackensack, Bergen County

By acceptance hereof, the State of New Jersey and the grantee herein acknowledge the existence of solid fill existing within the area of the lands granted above to which the State of New Jersey claims ownership but which claim is by virtue of this grant released to the grantee.

IT IS ALSO PROVIDED, that this grant is made upon the condition and limitation, that if the said HACKBRIDGE CORPORATION, a New Jersey corporation, is not the record owner of any parts of the land above described and hereby granted, on the date of delivery of this grant, then and in that event, this grant, and all of the covenants herein on the part of the State shall be void with respect to the land herein granted as to which the said HACKBRIDGE CORPORATION, A New Jersey corporation, is not the record owner on said date, and the granted land shall automatically revert to the ownership of the State, but without any diminution of the consideration paid upon delivery of this instrument.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging.

TO HAVE AND TO HOLD all and singular the above granted and described lands formerly flowed by tidewater and premises, subject to the terms, conditions and limitations aforesaid unto the said HACKBRIDGE CORPORATION, a New Jersey corporation, its successors and assigns forever.

IN WITNESS WHEREOF, the State of New Jersey has caused these presents to be signed by the Governor, the Commissioner of Environmental Protection, and the Chairman of the Tidelands Resource Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be concurred in by the Attorney General and the Secretary of State this            day of            1989.

\_\_\_\_\_  
Thomas H. Kean, Governor

\_\_\_\_\_  
Christopher J. Daggett, Commissioner  
Department of Environmental Protection

\_\_\_\_\_  
David F. Moore, Chairman of the Tidelands  
Resource Council

ATTEST:

\_\_\_\_\_  
Jane Burgio, Secretary of State

CONCUR:

\_\_\_\_\_  
Peter N. Perretti, Jr., Attorney General

This signature page is the 6th page of the riparian grant to HACKBRIDGE CORPORATION, a New Jersey corporation, Division of Coastal Resources File #89-0110-T.

STATE OF NEW JERSEY     )  
                                  )     SS:  
COUNTY OF MERCER        )

BE IT REMEMBERED, that on this        day  
1989, before me a Notary Public of New Jersey, personally appeared  
Jane Burgio, who being by me duly sworn on her oath says that she  
is the Secretary of State of the State of New Jersey, the grantor  
named in this instrument; that she knows the Great Seal of the  
State of New Jersey; that the seal affixed to this instrument is  
said seal and was affixed by her as the act and deed of the  
grantor; that on the date each signatory executed this instrument  
each held the office attributed to them, Thomas H. Kean was the  
Governor of the State of New Jersey, Christopher J. Daggett was the  
Commissioner of the Department of Environmental Protection, Peter  
N. Perretti, Jr., was the Attorney General, and David F. Moore was  
the Chairman of the Tidelands Resource Council; that she knows  
their signatures and that they signed this instrument as the act  
and deed of the State of New Jersey; that this deed was concurred  
in by the Attorney General and that the consideration paid by the  
grantee was \$62,500.00.

\_\_\_\_\_  
Jane Burgio, Secretary of State

Sworn to and Subscribed  
before me the date aforesaid

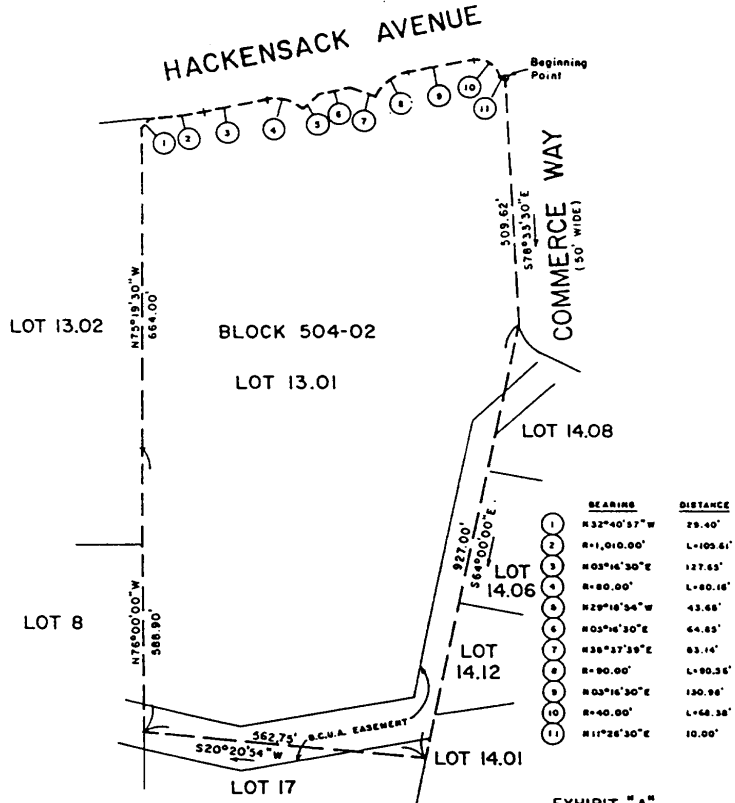
\_\_\_\_\_  
A Notary Public of New Jersey

(This instrument was reviewed and  
approved by the Attorney General's  
Office of the State of New Jersey.)

(This is the 7th page of the riparian  
grant to HACKBRIDGE CORPORATION, A New  
Jersey corporation, Division of Coastal  
Resources File #89-0110-T)

89-0110-T

SCALE: 1" = 200'



**NOTE:**  
 AREA within the dashed lines contains 21.348 acres of which 6,525 sq. ft. is claimed to be land formerly flowed by the mean high tide as shown on tidelands map # 756-2172.

**EXHIBIT "A"**  
 STATE OF NEW JERSEY  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 DIVISION OF COASTAL RESOURCES  
 MAP SHOWING  
 LANDS UNDER TIDE-WATER SITUATE  
 in the City of Hackensack  
 in the County of Bergen  
 Grant to  
**HACKBRIDGE CORPORATION,**  
 a New Jersey Corporation  
 Dated

DESIGNED & DRAWN BY R.B. DATE: 9/6/1989  
 CHECKED AND APPROVED [Signature] DATE: 7/26/89

3rd Ed.

STATEMENT OF NO INTEREST

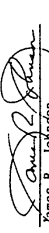
This statement made the 22<sup>nd</sup> day of February 1990.

WHEREAS, pursuant to N.J.S.A. 12:3-1, et seq., and N.J.S.A. 13:1B-13.1 et seq., the State of New Jersey, through the Tidelands Resource Council, is authorized to consider applications for conveyances of tidelands and applications of parties who are aggrieved by a designation that certain parcels are State owned lands now or formerly flowed by the mean high tide;

WHEREAS, ROBERT LACH and LORRAINE LACH, his wife, are the record owners of certain lands known and designated as Lot 4, Block 41 on the official tax assessment map of the Borough of Ship Bottom, County of Ocean, and State of New Jersey; and

WHEREAS, the State of New Jersey conveyed to ELLA LOUISE TAYLOR by a riparian grant dated April 16, 1917 certain tidelands lying within the said Lot 4, Block 41; and

WHEREAS, the State of New Jersey, through the Tidelands Resource Council has adopted and published on May 27, 1982, the State Photo basemap and tidelands claim overlay, number, 294-2130, entitled "Cedar Bonnet", asserting a tidelands claim of State ownership to a portion of Lot 4, Block 41, Borough of Ship Bottom, Ocean County and ROBERT LACH and LORRAINE LACH, his wife, have applied to the Tidelands Resource Council for a Statement of No Interest with respect to said property; and considered the application of ROBERT LACH and LORRAINE LACH, his wife, the aforesaid riparian grant issued by the State of New Jersey to ELLA LOUISE TAYLOR, the source material pertaining to the "Cedar Bonnet" claims overlay, and has determined that the said riparian grant issued to ELLA LOUISE TAYLOR was intended to convey all the State's tidelands ownership in Lot 4, Block 41;

  
James R. Johnson  
Assistant Secretary  
Tidelands  
Division of Coastal Resources

PREPARED BY:

(N.J.S.A. 46:15-13)


0849

Ch. 115, Exh B


COUNTY OF OCEAN  
CONSIDERATION None  
REALTY TRANSFER FEE CR 2116  
DATE 5-30-97 BY MLC

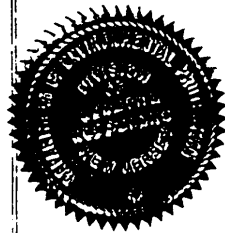
NOW, THEREFORE, THE STATE OF NEW JERSEY, by and through a majority of the members of the Tidelands Resource Council, by resolution adopted July 27, 1989, with the approval of the Commissioner of Environmental Protection, hereby states and declares that it has no right, title or ownership interest in Lot 4, Block 41 being described in Schedule A attached, being land of ROBERT LACH and LORRAINE LACH, his wife, situate in the Borough of Ship Bottom, County of Ocean, State of New Jersey.

IN WITNESS WHEREOF, the said Tidelands Resource Council has caused these presents to be signed by its Chairman the day and year first above written.

  
\_\_\_\_\_  
David F. Moore, Chairman  
Tidelands Resource Council

WITNESS:

  
\_\_\_\_\_  
James R. Johnson



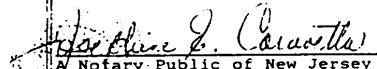
084906-0674

Page 2 of 4

STATE OF NEW JERSEY )  
 ) SS:  
COUNTY OF MERCER )

BE IT REMEMBERED that on this <sup>27<sup>th</sup></sup> day of February, 1990,  
before me a Notary Public of New Jersey, personally appeared David  
F. Moore, Chairman of the Tidelands Resource Council of the State  
of New Jersey who being duly sworn of his oath deposes and makes  
proof to my satisfaction, that he is the Chairman of the Tidelands  
Resource Council, and he has been duly authorized by proper  
resolution of the Tidelands Resource Council, and he has signed  
this statement as an act pursuant to said resolution.

Sworn to and Subscribed  
before me the date aforesaid

  
A Notary Public of New Jersey  
Josephine E. Carvella  
Notary Public of New Jersey  
My Commission Expires Dec. 1, 1993

DB 4906-0675

Page 3 of 4



SCHEDULE A

BEGINNING at the point of intersection of the northwesterly line of Bay Terrace (20 feet wide) with the southwesterly line of 21st Street (60 feet wide) and running; thence

(1) Southwestwardly, along the said northwesterly line of Bay Terrace, a distance of 60.00 feet to a point; thence

(2) Northwestwardly, at right angles to the said northwesterly line of Bay Terrace, a distance of 100.00 feet to a point; thence

(3) Northeastwardly, parallel to Bay Terrace and at right angles to 21st Street, a distance of 60.00 feet to a point in the southwesterly line of 21st Street; thence

(4) Southeastwardly, along the said southwesterly line of 21st Street, a distance of 100.00 feet to the point and place of BEGINNING.

Containing 6,000 square feet of land.

Being the same premises acquired by Robert Lach and Lorraine Lach, his wife, by deed dated December 30, 1988, recorded January 9, 1989 in Deed Book 4728, Page 38, etc. in the Ocean County Clerk's Office in Tom River, New Jersey.

084906-0676

Page 4 of 4

STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION DIVISION OF COASTAL RESOURCES	Recorded in Liber. 0-7..... Folio.....207, etc.	THE STATE OF NEW JERSEY TO ROBERT AND LORRAINE LACH	STATEMENT OF NO INTEREST	Dated February 22, 19 90 Record & Return to: STERN, DUBROW & MARCUS A Professional Corporation 111 Dannel Road Maplewood, New Jersey 07040  THIS STATEMENT SHOULD BE RE- CORDED IN THE DEED RECORD AT THE COUNTY CLERK'S OFFICE IN THE COUNTY IN WHICH THE LANDS ARE SITUATE.
--	--	---	--------------------------------	---

089773  
RECORDED  
DEAN COUNTY  
CLERKS OFFICE  
1244 PM  
MAY 30 1991  
M. DEAN HAINES  
COUNTY CLERK  
TOWNS RIVER N.J.

*26.00 cash*

Micro-Filmed  
Indexed

CERTIFICATE OF TITLE

Department of Environmental Protection  
Division of Coastal Resources  
Bureau of Tidelands  
CN 401  
Trenton, New Jersey 08625

Gentlemen:

I hereby certify that according to the records in the County Clerk's Office of  
County of  
New Jersey  
the owner of record in fee simple of the following described premises, by deed dated  
and recorded in Deed Book at page and  
that not sold, assigned, or in any way disposed of  
rights in said lands so far as the records of said County reveal:

IN WITNESS WHEREOF, I have hereunto placed my hand and seal the  
day of 19

**ST. LOUIS, MO**  
\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Municipality)

(THIS FORM IS TO BE SIGNED BY EITHER A NEW JERSEY ATTORNEY AT LAW OR A REPRESENTATIVE OF A TITLE GUARANTEE COMPANY.)

Ch. 115, Exh C

CERTIFICATE OF TITLE

Department of Environmental Protection  
Division of Coastal Resources  
Bureau of Tidelands  
CN 401  
Trenton, New Jersey 08625

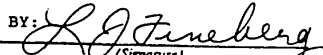
Gentlemen:

I hereby certify that according to the records in the County Clerk's Office of  
Bergen County at Hackensack,  
New Jersey HACKBRIDGE CORPORATION is  
the owner of record in fee simple of the following described premises, by deed dated 08/19/63,  
recorded 12/04/63 ~~and recorded~~ in Deed Book 4579 at page 276 &c. and  
that that is not sold, assigned, or in any way disposed of  
its rights in said lands so far as the records of said County reveal:

IN WITNESS WHEREOF, I have hereunto placed my hand and seal the  
18th day of April, 19 91

CHICAGO TITLE INSURANCE COMPANY

BY:



(Signature)

Lawrence J. Fineberg, Res. N.P.  
6 Becker Farm Road

(Address)

Roseland, New Jersey 07068

(Municipality)

(THIS FORM IS TO BE SIGNED BY EITHER A NEW JERSEY ATTORNEY AT LAW OR A REPRESENTATIVE  
OF A TITLE GUARANTEE COMPANY.)

**Tideland Search Request**

**Date:** \_\_\_\_\_ **Account Number:** \_\_\_\_\_

Please charge and mail a certified tideland search for the property designated to:

Firm Name: \_\_\_\_\_

Mail Address: \_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_ Ordered by: \_\_\_\_\_

Reference: \_\_\_\_\_

**Designated Property**

Municipality: \_\_\_\_\_ County: \_\_\_\_\_

Type of Municipality: [ ] City [ ] Borough [ ] Township [ ] Town [ ] Village

Tax Map Block: \_\_\_\_\_ Lot(s): \_\_\_\_\_ Unit/Qualifier: \_\_\_\_\_

Present Owner(s): \_\_\_\_\_

Street Address: \_\_\_\_\_

Subdivision Filed Map: \_\_\_\_\_  
(if any)

Extra Instructions: \_\_\_\_\_

**✓ Check One:**

- Tideland Claim Search Only - \$25.00
- Tideland Claim/Grant Search Package - \$35.00
- Grant Search (Prior Tideland Claim Search Required) - \$25.00

\_\_\_\_\_  
**Authorized Signature**

➔ *If you have any questions, please call our Flood & Geographic Search Services Department at 800/792-8888.*

**For Office Use Only**

Search Results:	Tax Map Date:	Tide Map Number:	Tide Map Date:	Type of Claim:
Claim Size %:	Notes:			
Searched By:	Checked By:	Entered by:		
Tax Map Page:	Cert Rev:	Revision Notes:		

CHARLES JONES, LLC.  
HEREBY CERTIFIES TO:

TIDELAND SEARCH  
CERTIFICATE

ACCOUNT: 100000000

RE: TEST

ATTN: JOANN  
SPECIAL TESTING ACCOUNT  
300 PHILLIPS BLVD.  
EWING NJ 08618-

THAT ALL OR A PORTION OF THE PROPERTY HEREINAFTER DESIGNATED IS CLAIMED BY THE STATE OF NEW JERSEY AS AREA NOW OR FORMERLY BELOW MEAN HIGH WATER AS SHOWN ON THE APPLICABLE TIDELANDS MAP PREPARED BY THE OFFICE OF ENVIRONMENTAL ANALYSIS AND APPROVED BY THE TIDELANDS RESOURCE COUNCIL, SUBJECT TO PRIOR GRANTS OR LEASES OF STATE-OWNED TIDELANDS AND OTHER RESERVATIONS WHICH APPEAR ON THE ADOPTED MAP AND OVERLAY.

APPLICABLE TIDELANDS MAP:  
-----

TIDELANDS MAP NUMBER: 555-6666  
TIDELANDS MAP DATE: 05 MAY 2002

DESIGNATED PROPERTY:  
-----

COUNTY: ATLANTIC STATE: NEW JERSEY  
MUNICIPALITY: CITY OF ABSECON  
BLOCK : 11 LOT : 29  
STREET NUMBER & NAME: 246 BAYVIEW DRIVE  
AS SHOWN ON TAX MAP DATED OR LAST REVISED ON: 01 JANUARY 2002

SEARCH RESULTS:  
-----

FINDINGS: CLAIMED  
TYPE OF CLAIM: WATER COURSE  
APPROXIMATE SIZE OF CLAIM: 100%  
NOTE: TEST SEARCH PLEASE PROCESS TO DELIVERY

DATED 08-12-02

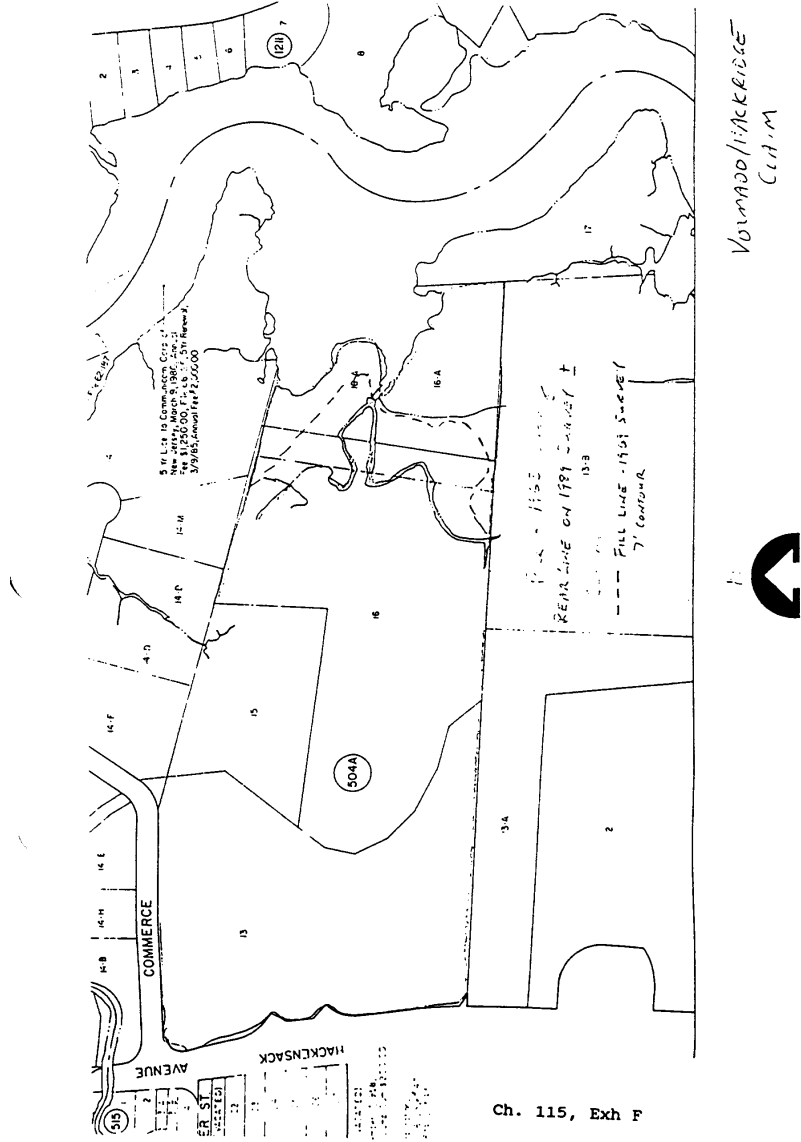
IN WITNESS WHEREOF, CHARLES JONES, LLC.  
HAS CAUSED THIS CERTIFICATE TO BE  
EXECUTED BY ITS PRESIDENT.



TD02-224-1072

PRESIDENT

Ch 115, Exh E



VOLUME/ACKRIDGE  
CUT-M



Ch. 115, Exch F