April 1980

TITLE NEWS

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TITLE NEWS

Volume 59, Number 4

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Title News is published monthly by the American Land Title Association, 1828 L Street, N.W., Washington, D.C. 20036. Telephone (202) 296-3671.

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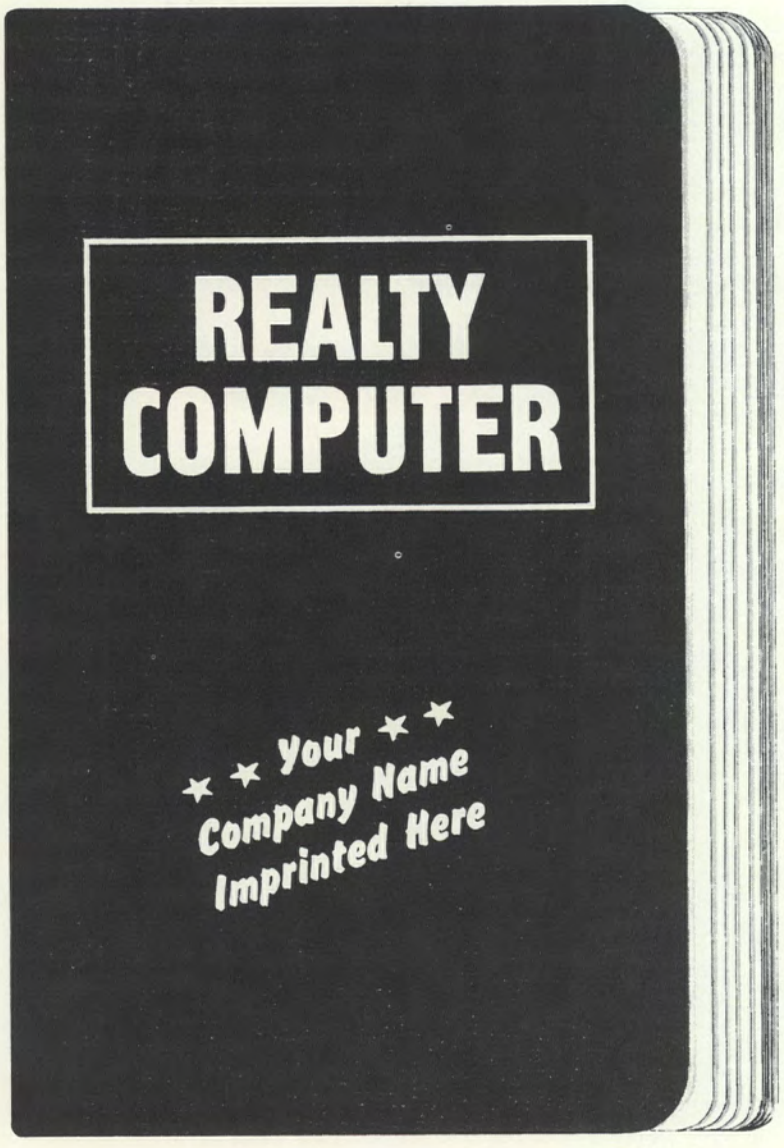

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A Message From the Chairman, Abstracters & Title Insurance Agents Section

The title business is in a recession because run-away inflation has forced our government to raise interest rates to a record high. The immediate effect of this action is a slow down in credit sales. As we all know, credit is a vital ingredient in the housing market.

Looking on the bright side, though, there is good to be found in these bad times. For one thing, you suddenly find the time to do all those things for which you never seemed to have time. And besides, maybe—just maybe—we can solve some of the long-term problems with our economy by enduring this recession. For the first time in many years it appears that Congress is ready to approve a balanced budget.

In an area closer to our business, we must examine declining savings. Historically, the household sector has always been a major contributor to the savings available for capital formation. But a continuing decline in the saving rate of Americans is drying up that source.

Commerce Department estimates put the saving rate at 3.3 cents for each dollar of after-tax income in the fourth quarter of 1979, which was less than half the average during the first half of the 1970s and well below the average of six cents per dollar of income for the years since World War II.

Today, France saves 18 percent; West Germany, 15 percent, and Japan saves 25 percent.

Morgan Guaranty Trust Co., New York City, blames three major factors for the trend. First, many people are unwilling to trim their living standard to meet higher food and energy costs so use funds that might otherwise have been saved. Second, people who have given up hope that inflation will be curbed have decided to buy now before it costs more. Thirdly, increases in real estate values have made home owners feel richer and consequently less inclined to save.

The answer to a decline in savings by Americans is to give meaningful tax relief for income from savings, thus encouraging an increase in savings.

Frank O'Connor, the Irish writer, tells in one of his books how as a boy, he and his friends would make their way across the countryside. When they came to an orchard wall that seemed too high and too doubtful and difficult to permit their voyage to continue, they took off their hats and tossed them over the wall. They then had no choice but to follow their hats.

This nation, or rather the Federal Reserve, has tossed its cap over the wall of high interest rates. We have no choice but to live with it. Whatever the difficulties, they will be overcome. Whatever the hazards, they must be guarded against. With the help and support of thinking Americans, we will find a way to climb this wall and put our economy on a proper course.

Tom McDonald

Thomas S. McDonald

First of a Series:
Risk-Sharing Alternatives

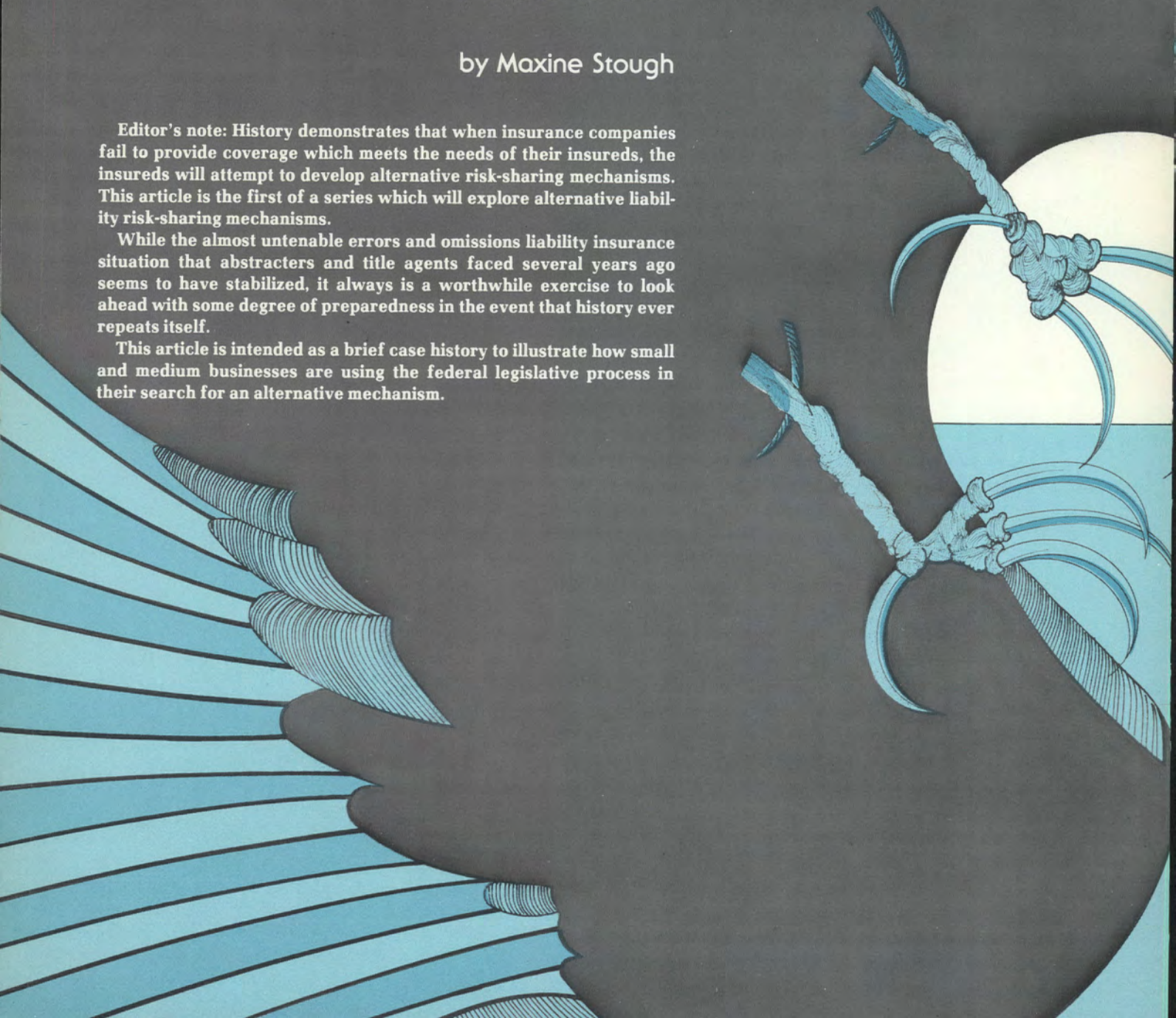
Manufacturers Seek Federal Legislative Solution

by Maxine Stough

Editor's note: History demonstrates that when insurance companies fail to provide coverage which meets the needs of their insureds, the insureds will attempt to develop alternative risk-sharing mechanisms. This article is the first of a series which will explore alternative liability risk-sharing mechanisms.

While the almost untenable errors and omissions liability insurance situation that abstracters and title agents faced several years ago seems to have stabilized, it always is a worthwhile exercise to look ahead with some degree of preparedness in the event that history ever repeats itself.

This article is intended as a brief case history to illustrate how small and medium businesses are using the federal legislative process in their search for an alternative mechanism.



In the last decade when abstracter and title insurance agent errors and omissions liability insurance premiums rose to unprecedented levels and some abstracters and agents showing no loss experience had their policies suddenly cancelled, another group of small businessmen in the nation was being put through its own liability insurance chamber of horrors.

The liability insurance unavailable-unaffordable syndrome hit product manufacturers in the early 1970s. In the next eight years, in some cases, insurance premiums increased 7,000 percent, according to one estimate. As could be expected, it was the small and medium size businesses that felt the brunt of the crunch.

In much the same way that doctors took their malpractice insurance dilemma to the capital in 1975, product manufacturers took their problem to Washington and laid it at the feet of the federal government. However, unlike physicians, who decided they preferred to settle their affairs at the state level, manufacturers persisted in their attempt to find a federal legislative solution to the high cost and/or unavailability of adequate liability coverage.

Recently, their efforts began to bear fruit when the House passed the Product Liability Risk Retention Act, an insurance bill to protect businesses from losses in suits involving their products.

The legislation, H.R. 6152, breezed through the House in March by a vote of 332 to 17 and has been referred to the Senate Commerce, Science and Transportation Committee where it underwent hearings and will be marked up, probably in May.

Risk Retention Groups

In its present form, the bill allows businesses to pool their product liability risks by preempting state insurance regulations which act as barriers against businesses self-insuring on a group

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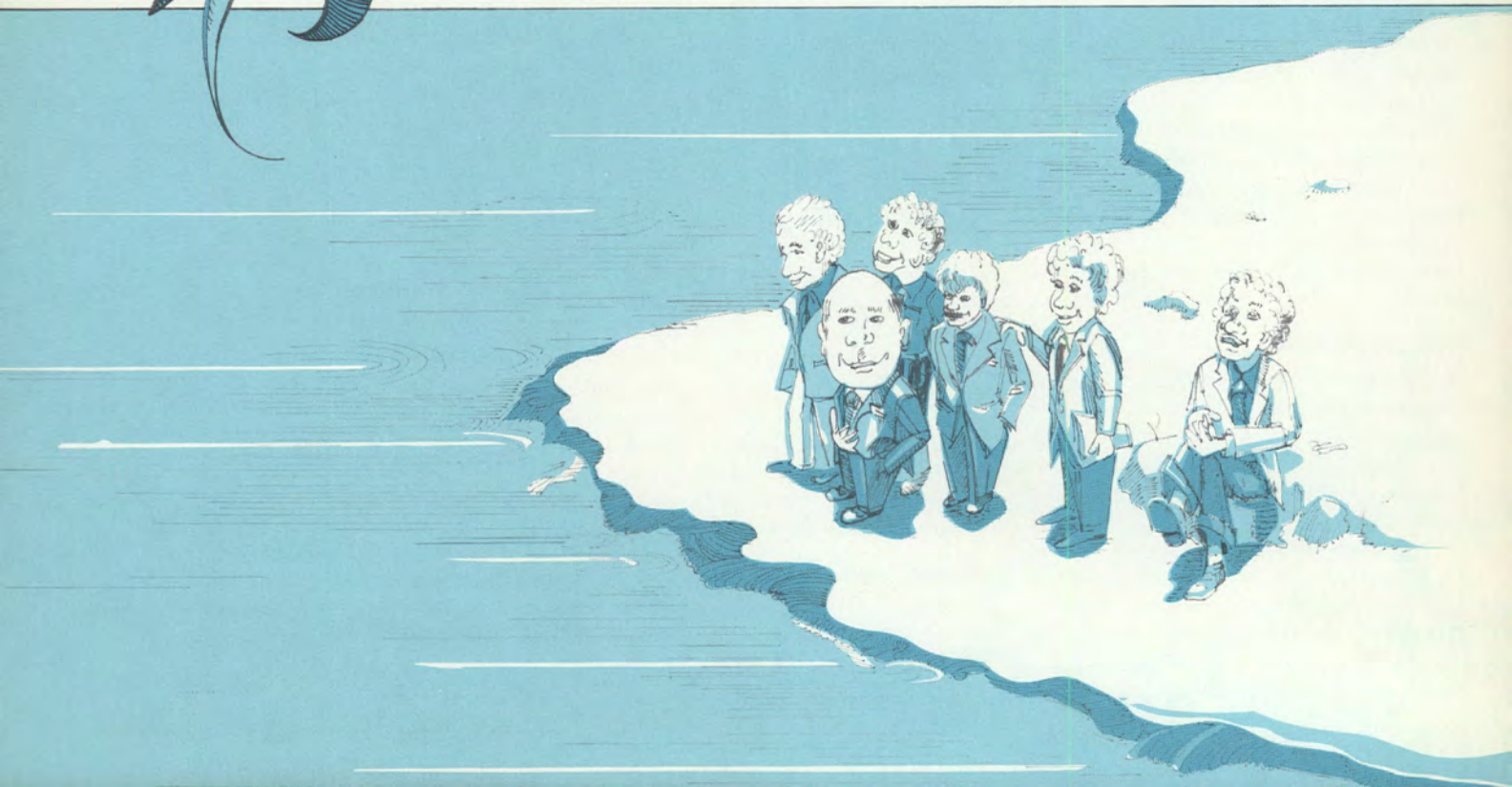
Ms. Stough is Title News *editor.*



basis. It would enable product businesses from different states to form their own insurance cooperatives, called risk retention groups, to provide product liability and completed operations coverage.

"It would enable product businesses from different states to form their own insurance cooperatives, called risk retention groups, to provide product liability coverage."

Members of the group would share the risk of a claim against a single member of the group and pay premiums to cover judgments. Individual business members would be able to insure only their deductibles or they could obtain greater amounts of coverage.

Just as they now deduct the cost of insurance premiums from their income tax as a normal business expense, group members would be permitted to deduct money paid into the risk retention group fund. Under present tax law, businesses which self-insure may not deduct money paid into self-insurance funds.

Many business groups are ecstatic. The National Federation of Independent Business has taken the position that "the magnitude of the (product liability) problem demands that every alternative be explored." They have endorsed the Product Liability Risk Retention Act as "only the first step in the process."

But, National Machine Tool Builders' Association Public Affairs Director James H. Mack was even more positive about the legislation when he said at the Senate Committee hearings, "This bill specifically addresses the product liability insurance availability/affordability problem, and offers capital goods manufacturers relief from panic pricing and other inequitable insurance rating practices."

The Opposition

However, the insurance industry is not so enthusiastic. After such smooth sailing in the House, proponents of the Product Liability Risk Retention Act may find that the bill could come into rougher seas as it enters the Senate.

Lawrence R. Herman, director of congressional relations for Independent Insurance Agents of America, one of the insurance groups opposing the bill, said that members of the House had made up their minds well in advance as to how they would vote on the bill. "The ballgame was over before the first pitch was thrown," Herman said. By contrast, he believes that many senators are approaching the bill with a much more open mind.

Both Herman and Paula Johnson, public affairs director for the Alliance of American Insurers, said that their constituencies oppose the Product Liability Risk Retention Act because it is unnecessary. They believe that the problem of product liability insurance can be solved through existing mechanisms such as reciprocals or captive insurance companies.

The real fear of the insurance groups, however, is that this federal foray into the insurance business is the first step toward federal regulation of the insurance industry. Johnson said the bill "chips away" at the McCarran-Ferguson Act, which leaves regulation of the business of insurance to the states. Herman characterized the bill as "the camel's nose under the tent."

"The real fear of the insurance groups, however, is that this federal foray into the insurance business is the first step toward federal regulation of the insurance industry."

But Rep. Matthew Rinaldo (R-N.J.), ranking minority member of the House Consumer Protection and Finance Subcommittee, said during floor debate on the bill, "This bill does not amend McCarran-Ferguson in any way whatsoever, nor does it change the immunity of commercial insurers from the federal antitrust laws under the McCarran-Ferguson Act. It does not preempt any state regulations of commercial insurers. . . ."

Experts in the Department of Commerce argue that the private sector has not responded to the product liability problem by creating mechanisms like reciprocals or captive insurance companies because such mechanisms cannot muster sufficient capital and economies of the scale that would be necessary to support the regulatory framework of states in which they would operate.

Group Regulation

Risk retention groups would be regulated by the Department of Commerce. Businesses which wish to form a group would apply to the secretary of commerce who would either issue a certificate of approval or a written refusal within 90 days. It would be the department's job to formulate appropriate regulations designed to assure that the groups operate with sufficient assets to meet risks and to see that they are managed responsibly with sufficient reserves and an adequate loss prevention program. The secretary of commerce may require the group to limit the total amount of risk it retains and to acquire reinsurance to cover losses in excess of such limitation.

The secretary may not approve any group in which the risk coverage afforded to any one participant exceeds five percent of the total risks assumed by the group. Taken from Revenue Ruling 78-338, this limitation is intended to maximize the probability that a risk retention group which qualifies for approval under the law would also qualify for the tax treatment available to insurance companies under the Internal Revenue Code.

Unlike insurance companies, risk retention groups would be subject to federal antitrust laws. But, like insurance companies, they would be subject to state insurance premium taxes.

All information that a group might be required to submit to the secretary of commerce would be exempt from the Freedom of Information Act. The secretary may require each group to collect and provide data regarding the group's product liability claims experience but is bound not to disclose such information except in a format which does not identify any particular member.

Each group, its members and its member affiliates would be subject to audit and examination when deemed necessary by the secretary. A group also may be required to engage an independent qualified public accountant to determine the conformity of its financial statements with generally accepted accounting principles.

"Unlike insurance companies, risk retention groups would be subject to federal antitrust laws. But, like insurance companies, they would be subject to state insurance premium taxes."

Groups of businesses also would be allowed, under the law, to purchase product liability insurance on a group basis

through the existing insurance system. This feature of the bill is aimed at permitting product sellers to negotiate with commercial insurers for premium discounts, coverage plans and other benefits which otherwise would not be available to the firms individually.

Other purposes of the legislation are:

- To reduce insurance costs for product sellers
- To ensure prompt payment of valid claims made by persons injured by products
- To promote competition among the providers of such insurance coverage
- To reduce the outflow of capital and premiums to offshore jurisdictions which have attracted captive insurance companies of U.S. parent corporations.

State Level Barriers

According to a Commerce Department report, without federal legislation risk retention groups would be subject to the same state regulatory requirements with which commercial insurers must comply. Some of these requirements would be so burdensome for a group as to constitute a barrier preventing its establishment.

These requirements, designed to ensure the solvency of commercial insurers, include substantial capitalizations, such as surplus levels, complex reporting systems designed to give early warning of potential insolvency problems, detailed rate and policy form regulation and, in many states, a requirement of insurer membership in state insurance guaranty funds.

Commerce concludes that while state regulations such as these, which are designed to protect the public against insurer insolvencies, are justified for commercial insurers, they are not justifiable for risk retention groups whose job it is to provide liability risk protection to their members.

"Commerce concludes that while state regulations . . . designed to protect the public against insurer insolvencies are justified for commercial insurers, they are not justifiable for risk retention groups whose job it is to provide liability risk protection to their members."

Congressional Intent

It is clearly the intent of Congress that this legislation applies to product manufacturers and not to professionals experiencing liability insurance difficulties, according to congressional staff working on the measure. In addition, George Neidich, senior legal advisor of the Department of Commerce's Task Force on Product Liability and Accident Compensation, said that it would be greatly stretching the point to consider an abstract a product and, furthermore, that it is highly unlikely that the eventual Commerce Department regulations would be broad enough to apply to professionals such as abstracters and title agents.

Whatever the outcome of this legislation in the Senate, it illustrates, among other things, how one group is using the legislative process in an attempt to develop an alternative risk-sharing mechanism.

The Wetland Survey:

It used to be that everybody knew what a swamp was. Today, it is far more complex than that. Inadequate surveys, poor maps and ambiguous laws have severely complicated the situation. The limits of swamps and other wetlands no longer are obvious. Vegetation, soil and a sometimes invisible water table may be controlling factors.

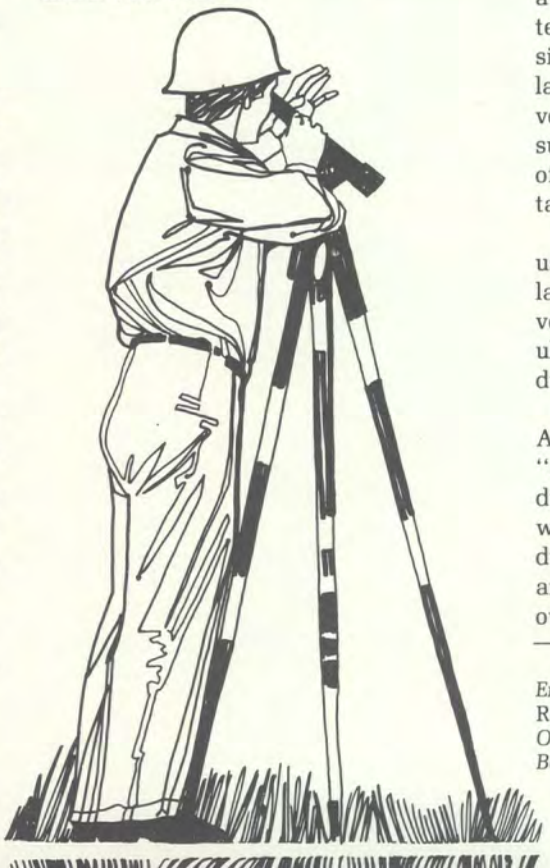
"Surveys for title insurance on or near wetlands require efforts beyond routine land surveys. In addition to metes and bounds, the surveyor may have to determine a third dimension—elevation."

Although most laws do not flatly prohibit development activity on wetlands, they do impose constraints which carry economic ramifications. Restrictions on use, setback requirements, maintenance of flood storage, minimum floor elevations and sanitary codes affect the cost of development. Accurate determination of wetland boundaries is, therefore, of vital importance to the land owner. Consequently, now more than ever, the question of whether or not to build is being put to the survey engineer.

Technically, there are three types of wetlands. They are coastal, inland and flood plains. Each classification requires a different method of determining and locating the boundaries and each may have two types of boundaries—legal and physical.

Usually, the surveyor's responsibility entails the delineation of wetlands; the application of coordinates, bearings and distances and their relation to property boundaries, and the computation of quantities, that is, area and volume. Local ordinances as well as state and federal laws, all affect the collection of these data.

Depending on state law, the surveyor may need to enlist the assistance of experienced specialists in the fields of hydrology, biology, botany, dendrology and/or soils science.



These specialists may determine the physical extent of a wetland in the field, enabling the registered land surveyor to then locate these limits within a parcel of land and incorporate them in his survey plat.

Coastal Wetlands

With passage of the Coastal Zone Management Act of 1972 (CZMA), states have developed or are beginning to formulate coastal zone management programs. Massachusetts is one state which has adopted such a plan.[1]

The Massachusetts wetland protection act requires that any person who wishes to "fill, dredge, remove, or alter" a wetland must first file a "notice of intent." This is to protect what are considered the seven public benefits of wetlands: flood control, storm damage prevention, water supply, groundwater supply, pollution prevention, protection of fisheries and protection of land containing shellfish.

Type of vegetation is one criterion used in defining limits of the coastal wetland. An important point of which surveyors must be mindful is that the regulations distinguish between coastal dunes and coastal beaches.

Shoreland rights were a concern to Americans long before the phrase "coastal zone management" was introduced to our vocabulary. Riparian rights were vital to the early settlers and, during flood tide, navigation, free fishing and fowling are public rights that upland owners always have had to tolerate.

Mr. Greulich is a registered land surveyor in seven states, a registered professional engineer in two states and a certified photogrammetrist. He is a co-founder and principal of Boston Survey Consultants, Inc., in Boston, Mass. The firm is an associate member of the New England Land Title Association.

[1]*Department of Environmental Quality Engineering, "A Guide to Coastal Wetlands Regulations," Coastal Zone Management Office, Commonwealth of Massachusetts, Boston, Mass., 1978*

Beyond Metes and Bounds

by Gunther Greulich

Nevertheless, grants of uplands are usually defined by such general terms as "by the sea," "where the tide ebbs and flows," "primitive mean high water," or "mean high water."

It is no surprise then that the determination of the mean high water (MHW) line as a property boundary is a problem that has dogged surveyors for years. Author Rachel Carson aptly put it in her book *The Edge of the Sea* when she wrote, "For no two successive days is the shoreline precisely the same.... Today a little more land may belong to the sea, tomorrow a little less. Always the edge of the sea remains an elusive and indefinable boundary...."

Traditionally, the surveying practice to determine MHW has been to observe high tides during an 18.6 lunar cycle, also known as metonic cycle. Tide predictions have been published in the United States since 1830.[2]

Now, however, it is possible to determine local MHW in a shorter period. Depending on accuracy requirements, the time needed for such observations ranges from a few days to a year. For a quick approximation, surveyors sometimes locate the debris line along the shore. The National Ocean Survey has established tidal benchmarks along the east and west coasts.

The former Sea Level Datum of 1929 (now National Geodetic Vertical Datum of 1929) often is confused with local half tide. To equate the two is a mistake because there is considerable difference. Only local tidal benchmarks are suitable for establishing the MHW line on locus.

[2]*U.S. Department of Commerce,* "Tide and Current Glossary," *National Ocean Survey, Revision of U.S.C.G.S. Special Publication No. 228, Washington, D.C., 1975*

"Recent technological advancements of photo-interpretation and remote sensing have led to attempts to replace the traditional surveying practice with a type-of-vegetation test."

The American Society of Civil Engineers drafted a definition of MHW as follows: "The Mean High Water Line of a tidal body of water is that line that is made by the intersection of the sloped surface of the land with the water surface at the elevation of mean high water which is the arithmetic mean of the high water heights observed for a series of points over a specific 19-year metonic cycle (235 lunations) also known as the National Tidal Datum Epoch and as held by the U.S. Supreme Court in *Borax Consolidated Ltd. v. Los Angeles* (296 U.S. 10, 1935). The MHW line may or may not be coincidental with lines of ownership or lines of vegetation."[3]

In urban areas such as Boston, filling of tidelands has been going on since the American Revolution. Since Massachusetts retained certain rights in granting licenses to maintain fill or structures, the surveyor often has to rely on ancient harbor plans. The original MHW line or low water line has long been filled over and disappeared. Its location can be reconstructed, however, through diligent research and interpretation of old maps and bathymetric charts.

Recent technological advancements of photo-interpretation and remote sensing have led to attempts to replace the traditional surveying practice with a type-of-vegetation test.

The division line between two types of plants is assumed to be the approximate MHW line. The two plants most commonly used for this test are salt hay *(spartina patens)* and cord grass *(spartina alterniflora).* The former has to perpetually have its "feet" out of the water while the latter needs to be inundated twice daily in order to grow vigorously.

In the case of *Dolphin Lane Associates, Ltd. v. Town of Southampton*[4] this particular type-of-vegetation test was rejected. In this case, the New York Court of Appeals further confused the issue by replacing one type-of-vegetation test with another, even less reliable.

In *Dolphin Lane,* when the court recognized "long time surveying practice" and "the application of the traditional and customary method," it referred to a unique and rather crude surveying method of certain Long Island land surveyors.[5]

The so-called traditional method of Long Island surveyors consists of locating the outer (seaward) edge of marsh grass and substituting that edge for the true MHW line. Fordham University law Professor John A. Humbach commented

[3]*Greulich, Gunther, "Definition of Mean High Water Line"* Journal of the Surveying and Mapping Division, *Proceedings of the American Society of Civil Engineers, Vol. 105, SU 1, Nov. 1979*

[4]Dolphin Lane Associates, Ltd. v. Town of Southampton, *37 N.Y. 2d 292 (Court of Appeals, 1975)*

[5]*Greulich, Gunther, "Nearly Flat to the Transit—MHW vs. Vegetation,"* Surveying and Mapping, *American Congress on Surveying and Mapping Vol. XXXVIII, No. 3, Washington, D.C. Sept. 1978*

in 1975, ". . . the Court of Appeals has established a line of 'high water' which one must go wading to see." [6]

It is often falsely assumed that in *Dolphin Lane* the court supported the truly traditional surveying practice of MHW demarcation, while in fact it elevated a local surveyor's short-cut method to the law of the state.

As it now stands, with the exception of New York, there is no substitute for tidal observations when determining the MHW line.

[6]*Humbach, John A. and Gale, Jane A., "Tidal Title and the Boundaries of the Bay: The Case of the Submerged High Water Mark,"* Fordham Urban Law Journal, *1975*

Inland Wetlands

Included in the category of inland wetlands are usually marshes, swamps, bogs, wet meadows, areas where groundwater or surface water supports certain wetland plant life for at least five months of the year, ponds, lakes, streams, rivers and any bank which touches inland waters. Regulations protecting these areas are similar to those for coastal wetlands.

A surveyor may have to determine the high water mark of open bodies of water by field observation. The condition of a high water table occurs during certain times of the year, such as in the spring, after snow and ice have melted.

More recently, however, types of vegetation have become the preferred indicator in defining inland wetlands. In fringe areas, a team effort between botanist and land surveyor is required which is an expensive undertaking.

Most individual land owners and, indeed, most communities cannot afford to survey their wetlands on the ground.

FIG. 1: Recorded Wetlands Restriction Map Norfolk County, Massachusetts

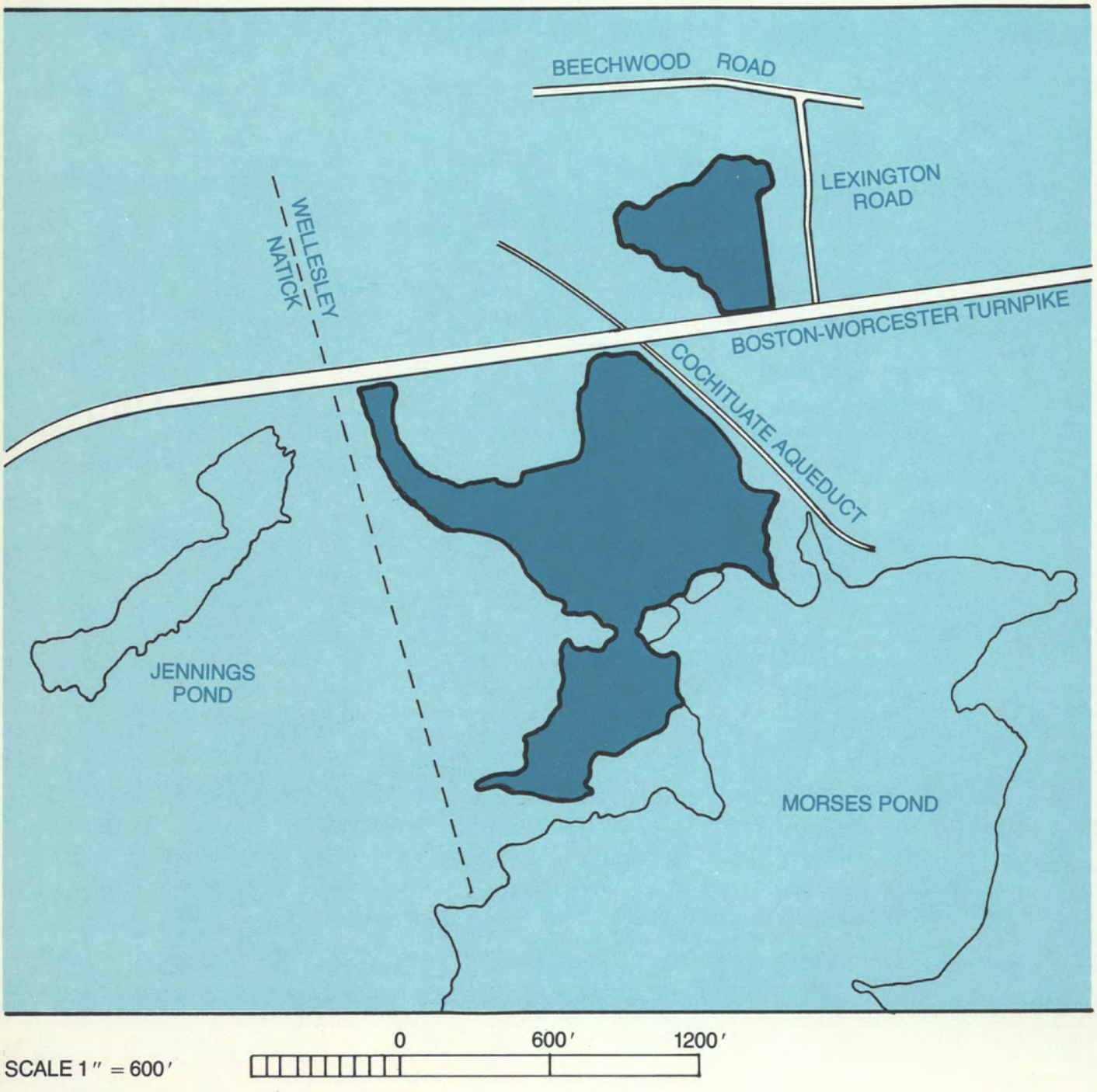
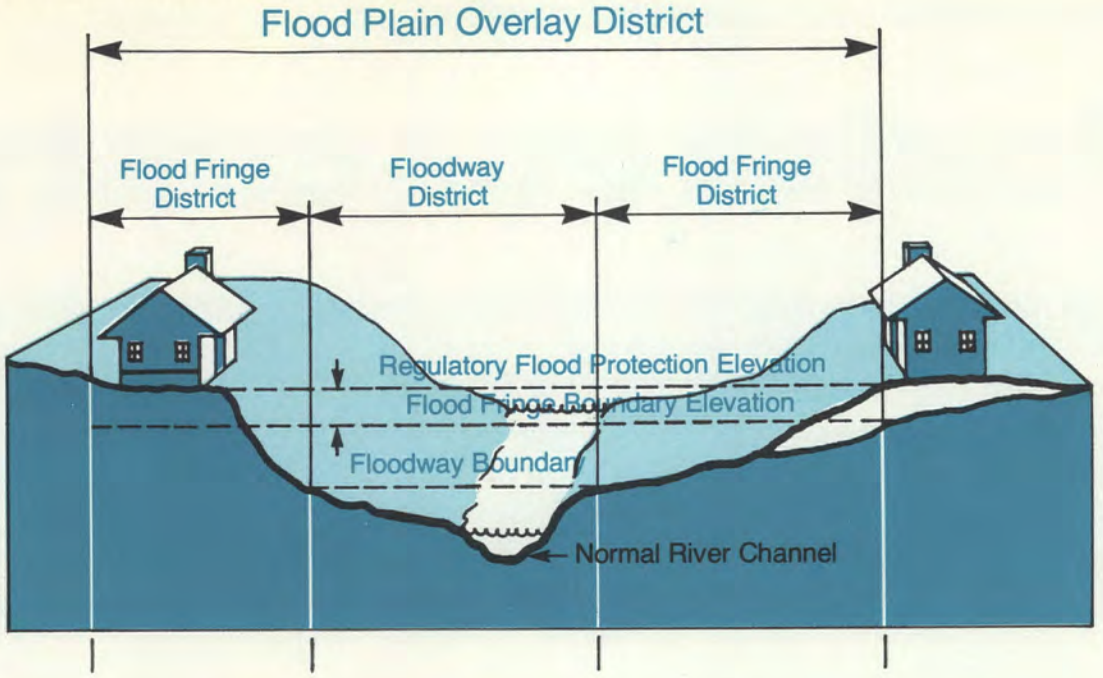


FIG.2: Two-District Flood Plain Zoning



Instead, they often rely on existing data of questionable origin and compile information obtained from incompatible maps. This has led to confusion and financial hardship for some private developers.

Penny Wise and Pound Foolish

The Massachusetts Wetlands Restriction Program (G.L. 131, S.40A) is a classic example of how good intentions combined with inadequate funding and improper guidance can result in a waste of the taxpayers' money.

In 1971, the state launched a major mapping program of wetlands for selected communities. In order to save money, uncontrolled vertical aerial photographs and incompatible, unreliable tax maps formed the basis of the restriction program.

Wetlands were delineated on contact prints by photo-interpretation and superimposed on the local assessor's map. Since aerial photographs per se do not have a uniform scale, the affected land parcels were selected by a crude overlay method with the result that much fudging was required to overcome the inherent scale inaccuracies.

The wetland areas were numbered and traced onto a primitive location map at a scale of one inch = 600 feet (Fig. 1). No property boundaries or lot lines were shown. The affected (and restricted) land owners were grouped together and tabulated by wetland areas. Both documents were recorded at the county registry of deeds. No attempt was made to give an indication of the extent of the restriction on an individual land parcel. The recorded document does not tell whether the entire lot or only a part of it is wetland. Both the listing and map merely indicate that the parcels listed are subject to a wetlands restriction.

Subsequent public opinion and concerted efforts of land surveyors forced the state Department of Natural Resources to consider revising its methods of wetlands mapping and restriction.

> "Using a variety of source maps for depiction of wetlands on a survey plat makes the official plane coordinate system a reliable quality control mechanism. It should be a requirement for title insurance surveys."

Flood Plains

The U.S. Water Resources Council in 1976 defined flood plains as "areas adjoining a river, stream, watercourse, ocean or lake, or other body of standing water that have been or may be covered by floodwater." [7]

Flood plain zoning may be in the form of a single district. Frequently, the flood hazard area is divided into two districts: floodway and flood fringe (Fig. 2).

Floodway districts include the stream or flood channel and adjacent portions of an inland flood plain. Flood fringe districts are flood plain areas outside the floodway that may be inundated by the so-called, 100-year flood. Because there is only a one percent chance that the flood fringe will be flooded in a given year, land use restrictions there are less severe.

The U.S. Department of Housing and Urban Development (HUD) and the Federal Insurance Administration have prepared small-scale flood hazard maps. At an approximate scale of one inch = 1,000 feet, these maps are rather crude and difficult to interpret at the fringes.

The surveyor is called upon to certify whether or not a certain parcel of land is located within a flood hazard zone. If it is located within 200 feet of the flood hazard zone's perimeter, the surveyor may be unable to make a statement with certainty. Therefore, it may be necessary to run levels on the ground and to determine lot corners and floor eleva-

[7] *U.S. Water Resources Council*, "A Unified National Program for Flood Plain Management," *Washington, D.C., July 1976*

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tions based on the official vertical datum.

Many municipalities have established their own flood plain zones based on years of local experience. These locally defined flood plains are not directly related to HUD flood hazard zones. Overlay zoning maps usually depict flood plain limits in the form of contour elevations.

"The multi-purpose cadastre will make future title insurance surveying more efficient and more reliable in these communities."

Zoning bylaws often fail to identify an unambiguous vertical datum. This can lead to misinterpretation of contours and thereby mislocation of the flood plain. Field surveys are costly because official benchmarks are scarce.

Title Insurance Surveys

Surveys for title insurance on or near wetlands require efforts beyond routine land surveys. In addition to metes and bounds, the surveyor may have to determine a third dimension—elevation. For the protection of all concerned, elevations must be referred to an official vertical datum. Both benchmarks and datum should be clearly identified on the plat.

Where vegetation is a criterion, the expertise of a botanist may be necessary. The plants identified should be recorded on the plat. Test pits may have to be dug to determine the groundwater table.

In the event that wetlands are determined by photo-interpretation, the final boundary must be checked and verified in the field.

Where the MHW line is a legal boundary, local tidal benchmarks must be referred to and identified on the plat. In the absence of tidal benchmarks, tidal observations may be required.

In the case of filled tideland, ancient maps may be used to locate the original MHW line or the original extreme low water line. In either case, the source must be identified on the plat to lend legitimacy to the surveyor's interpretation.

Because government flood hazard maps are being improved and updated, the surveyor always should specify the date and number of the map referred to in his certificate. Obviously, it is incumbent upon the surveyor to seek out the latest map issued.

Using a variety of source maps for depiction of wetlands on a survey plat makes the official plane coordinate system a reliable quality control mechanism. It should be a requirement for title insurance surveys.

The U.S. Water Resources Council and others recommend the adoption of official maps and implementation of master plans for all communities. Recently, certain cities and counties have begun to create within their political boundaries a comprehensive land data system, also known as a multi-purpose cadastre. The determination and coordination of wetlands is one of its functions.

The multi-purpose cadastre will make future title insurance surveying more efficient and more reliable in these communities. For most of the country, however, the tug-of-war between educated guesswork and costly field surveys will continue.

A.D. Little Study Projects Possibility of One-Stop Trend

Single stop selling of real estate-related services is likely to become a major new trend in the next 10 to 15 years, according to a study recently completed for the National Association of Realtors by Arthur D. Little, Inc. The real-estate related services that the study named are brokerage, mortgage, title, property, warranty, and mortgage insurance as well as escrow and home sale guarantee.

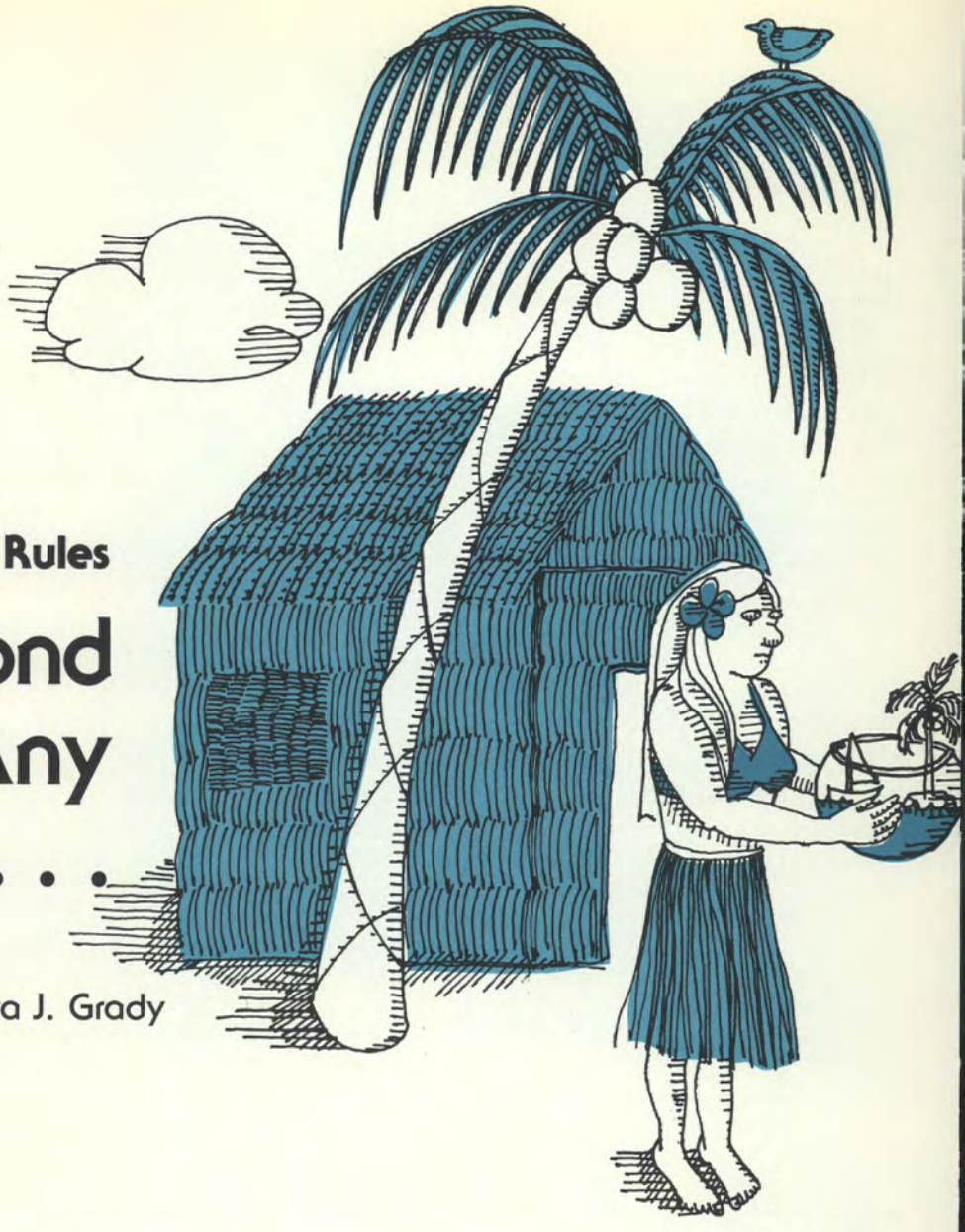
The rationale for this projection is that with growing expertise among Realtors and with the increased use of computer information retrieval services such as multiple listing, it will become relatively easier and faster to implement one-stop shopping.

The study states, "There are service bureaus in existence today, for example, that do title searches by computer for title insurance companies in response to an inquiry made on a terminal, and this allows title companies to make tentative commitments to providing title insurance on a while-you-wait basis. This same kind of rapid service, we expect, will be extended to the making of tentative mortgage and other kinds of insurance commitments as a result of broker interrogations over a terminal while a potential buyer is waiting."

The study recognizes that there is a question of the legality of the relationship between the Realtor and the provider of related services and points out that at the present time if an agency relationship arises, "there could be required sweeping revision in a variety of laws which would presently inhibit comprehensive cross-marketing involving the linking and/or conditioning one service with another."

The remainder of the 97-page study entitled *The Challenge of Success* focuses on various aspects of the projected development and composition of the real estate industry. The section of the report concentrating on one-stop shopping is a single aspect of Chapter Two which deals with trends in the structure of the real estate industry.

The Arthur D. Little project team for this study was headed by Vincent Giuliano.



High Court Rules

A Fish Pond By Any Other Name . . .

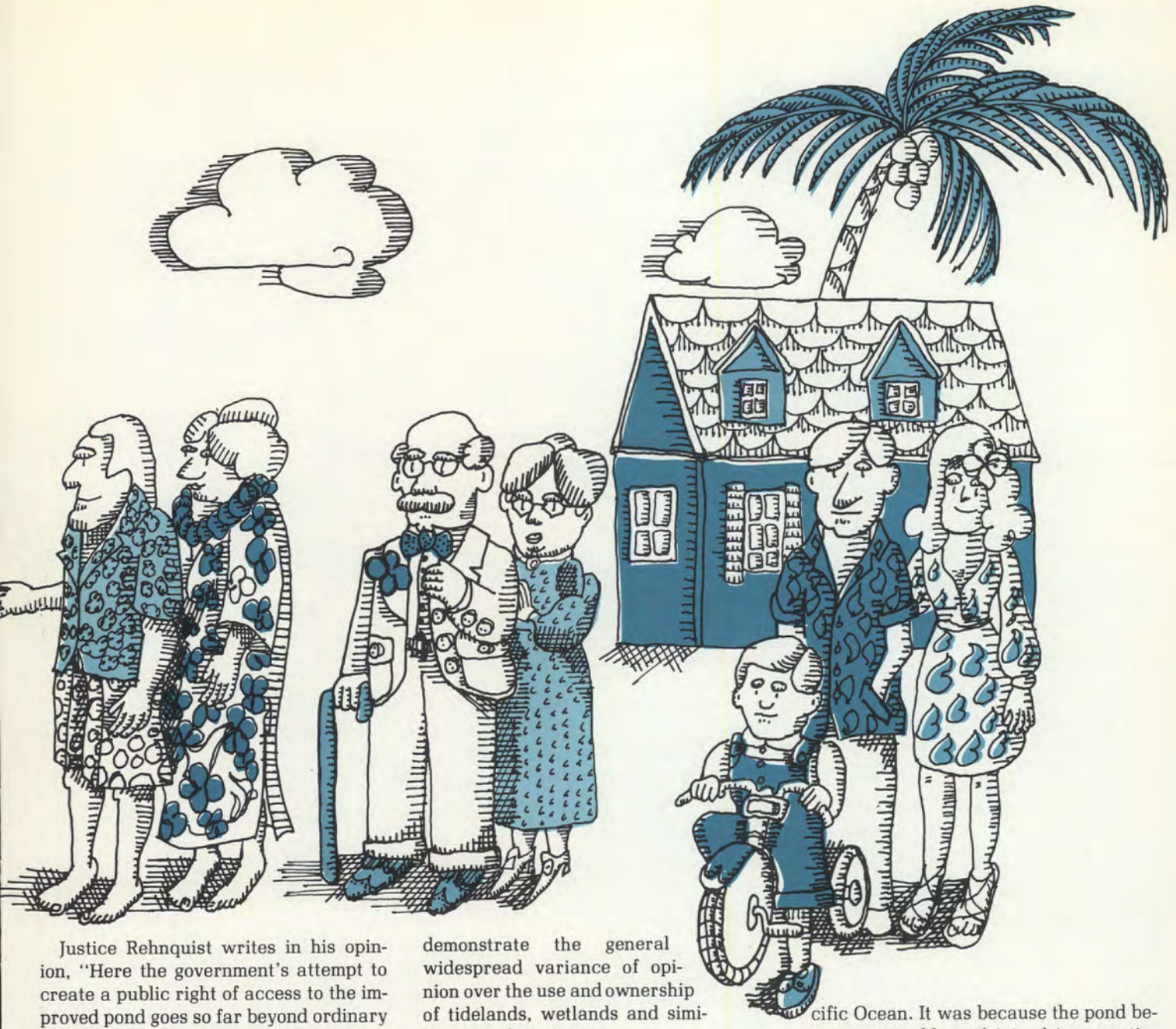
by Barbara J. Grady

The seemingly carte blanche authority of the U.S. Army Corps of Engineers suffered a check in the Supreme Court recently, when the high court decided a coastal land use and navigational servitude case in favor of private landowners and denied the Corps of Engineers' claim. A debate over use of and ownership rights to a converted pond on the island of Oahu, Hawaii, the case illustrates the extent to which the scope of government jurisdiction over tidelands, wetlands and other coastal areas remains unclear.

Kaiser Aetna et al. v. United States, decided Dec. 4, 1979, raised the question whether Kuapa Pond, a former fish pond that private developers transformed into a marina so that it would be navigable by small craft, is subject to a federal navigational servitude of public right of access, which, if judged applicable, would require the owners to allow free public use of the marina.

The Supreme Court's decision, delivered by Justice Rehnquist who was joined by Chief Justice Burger and Justices Stewart, White, Powell and Stevens while Justices Blackmun, Brennan and Marshall dissented, held that although the newly made Hawaii Kai Marina is in fact a navigable water of the U.S. and thus subject to the regulatory jurisdiction of the U.S. Army Corps of Engineers, the government does not have the authority to require the owners to allow free public access to the marina unless the government financially compensates the owners for a taking of property, as required under the eminent domain clause of the U.S. Constitution's Fifth Amendment.

Ms. Grady is Title News *editorial assistant.*



Justice Rehnquist writes in his opinion, "Here the government's attempt to create a public right of access to the improved pond goes so far beyond ordinary regulation or improvement for navigation involved in typical riparian condemnation cases as to amount to a taking requiring just compensation."

The court's decision established a distinction between the regulation of navigable waters and the navigational servitude of public access, which the court concluded cannot be considered as perpetual legal companions. Additionally, the case affirms that the government's power to regulate a navigable water does not represent an exemption from the just compensation requirement of the Fifth Amendment's eminent domain clause.

The lower court decisions which mark the case's journey to the Supreme Court demonstrate the general widespread variance of opinion over the use and ownership of tidelands, wetlands and similar coastal territories.

The Case Genesis

This particular case began in 1972 when the U.S. Army Corps of Engineers informed Kaiser Aetna Co. that a permit would be needed for any further alteration of the pond. Kaiser Aetna Co. is a developer under a subdivision development contract with Bishop Estate, the owner of the pond and surrounding area.

By 1972, Kaiser Aetna had dredged Kuapa Pond and changed it to a recreational marina surrounded by leased residential waterfront lots. Kaiser Aetna also dredged a channel which opened the pond to Maunalua Bay and the Pacific Ocean. It was because the pond became navigable and joined in a continuous path with the bay and ocean when the channel was built that the Corps determined it was a navigable water of the United States. Only 11 years earlier when the initial development began, the Corps said no permit was needed for alteration of the pond.

Kaiser Aetna contested the Corps' 1972 statement on Kuapa Pond's navigability on the grounds that fish ponds are considered private property under Hawaiian state law and that the pond became navigable only through the developer's extraordinary and costly efforts.

Faced with these arguments, the Corps brought the disagreement to U.S. District Court, seeking a declaratory

j[illegible]ment that Kuapa Pond, as altered, is a navigable water of the U.S. subject to the Corps' regulation over dredging and construction, and furthermore, that because of the marina's navigability, the owners must allow free public use of the waterway under the federal Commerce Clause of navigational servitude.

"Kaiser Aetna contested the Corps' 1972 statement on Kuapa Pond's navigability on the grounds that fish ponds are considered private property under Hawaiian state law and that the pond became navigable only through the developer's extraordinary and costly efforts."

The U.S. District Court for the District of Hawaii ruled on Feb. 6, 1976, that the marina is in fact a navigable water of the U.S. and therefore, in accordance with the Rivers and Harbors Act of 1899, the owners must obtain a permit from the Corps for any excavation or construction in the pond area or obstruction of navigability. The District Court rejected, however, the Corps' claim regarding a navigational servitude of public access and held that a public right of access could not legally be imposed upon the privately made marina.

The District Court, presided by District Judge Martin Pence, deemed the marina navigable because, under the authority of the Rivers and Harbors Act of 1899, a waterway is navigable in law if navigable in fact. After Kuapa Pond was deepened from two feet to six feet, the pond could be and, in fact, was used for navigation by small recreation boats. Also, with the creation of the channel, the pond was susceptible to use in interstate commerce. During the years 1967 to 1972, a small commercial craft called the Marina Queen was used by Kaiser Aetna to show the marina to small groups of potential homesite purchasers, developers and school children.

The court also brought up the fact that boaters who were not residents of the Hawaii Kai development were permitted, with purchased licenses, to use their craft in marina waters. In the court's viewpoint, the occasional sailing of the Marina Queen and the practice of selling boating passes to non-residents rendered the marina a waterway used for interstate commerce and therefore a navigable water of the U.S.

Fish Ponds in Hawaii

The pond would have been deemed navigable prior to its development by the standard of the ebb-and-flow test of navigability, were it not for the Hawaiian state law which recognizes fish ponds to be private property, as stated in the Hawaiian Constitution, Article 10, Section 3 and the Hawaiian Organic Act, Sections 95, 96 and 48. Continued legal recognition of fish ponds as fast land was requisite for the annexation of Hawaii to the Union.

The District Court acknowledged the authority of the Hawaiian law over a federal power of navigation, "There is nothing inconsistent between Hawaiian law of private ownership of fish ponds and federal power of navigation; latter was merely surrender of jurisdiction by states of powers inherited from crown or acquired by 'equal footing doctrine,' and only to extent that states had jurisdiction over waters to surrender."

The District Court's ruling on the Corp's second claim was based on the belief that federal power over navigation varies in scope with the situation, and that jurisdiction over navigable waters can be circumscribed. The District Court's ruling reads, "Any reliance upon judicial precedent in considering meaning of the term 'navigability' must be predicated upon careful appraisal of purpose for which concept was invoked in particular case, e.g., title to river and lake beds, congressional jurisdiction, navigation servitude and admiralty jurisdiction."

"The title to the land in question has rested in one family and its heirs and assignees since the dissolution of monarchical feudalism."

A federal jurisdiction granting public access to a navigable water does not follow logically, the court said, from a federal jurisdiction over that water for regulatory purposes. Because the marina became navigable in law only after privately financed development, to decree a public right of navigation would deprive the owners of return on their investments and impose upon them undue economic injury. The court quoted *United States v. Appalachian Electric Power Co.* (311 U.S. n.9 at 408) as precedent.

Decision Appealed

Each side in the dispute, Kaiser Aetna and the U.S. government for the Corps, appealed for a higher court decision on the particular ruling against them from the District Court. The U.S. Court of Appeals for the Ninth Circuit heard the case and rendered an opinion Aug. 11, 1978. Judge Charles M. Merrill for the Court of Appeals upheld the District Court's ruling that Kuapa Pond is a navigable water of the U.S. and subject to the Corps' regulatory jurisdiction over alteration of the pond, but reversed the District Court's ruling concerning a public right of navigation. The Court of Appeals held that the navigational servitude applies to the new marina specifically because it is a navigable water, and thus the owners cannot legally prevent the public from using the marina.

"Additionally, the Appeals Court stated that the pond lost its character of fast land—qua fish pond—upon its alteration into a marina and thus no longer could be considered private property."

The Court of Appeals reasoned, "In our judgment, federal regulatory authority over navigable waters and the right of public use cannot consistently be separated . . . the federal navigational servitude and the public right of use . . . exist as characteristics of all navigable waters of the U.S."

Additionally, the Appeals Court stated that the pond lost its character of fast land—*qua* fish pond—upon its alteration into a marina and thus no longer could be considered private property. The court compared the situation to when fast land adjacent to a river is excavated to become submerged land and part of the waterway. Such an area is thereafter available for public navigation.

Thirdly, the court said that requiring the owners to allow public access to the marina under the navigational servitude would not be an imposition in the nature of a seizure, but is a consistent procedure with all navigable waters of the U.S.

Certiorari Granted

The adverse decision on a public right of access to the marina induced Kaiser Aetna and Bishop Estate to petition the U.S. Supreme Court for a *writ of certiorari*, which was granted Feb. 20, 1979. Justice Rehnquist wrote in the court's December opinion, "We granted *certiorari* because of the importance of the issue and a conflict concerning the scope and nature of servitude."

Although this statement was not elaborated upon in the court's opinion, the large number of cases before courts across the nation dealing with the scope of federal jurisdiction over navigable waters and cases concerning the use of wetlands occurring on private property leads to the surmise that the Supreme Court wishes to define the often questioned scope of authority of the Army Corps of Engineers.

In delivering his opinion, Justice Rehnquist referred to another case before the Supreme Court decided Dec. 4, 1979, on navigational servitude of privately constructed canals in Louisiana, *Vaughn v. Vermilion Corp.*, 1979. The Court ruled in *Vaughn* as it did in *Kaiser Aetna*, that a navigational servitude of free public access does not apply to the privately constructed canals, even though they were recognized as navigable waters of the U.S.

> "Justice Rehnquist wrote in the court's December opinion, 'We granted certiorari because of the importance of the issue and a conflict concerning the scope and nature of servitude.' "

The Supreme Court's decision in *Kaiser Aetna* rests on the same premise as that of the District Court—that the navigational servitude does not necessarily follow from a determination of navigability. "We do agree with its (the District Court's) conclusion that all of this court's cases dealing with the authority of Congress to regulate navigation and the so called navigational servitude cannot simply be lumped into one basket," Rehnquist said.

The Supreme Court placed more emphasis than did the District Court, however, on a distinction between government confiscation of private use of property to substantially improve navigation and commerce, as allowed under the Commerce Clause, and a confiscation the form of a taking of property.

The key to this distinction, the Supreme Court said, is the value to the public interest in the free flow of interstate waters to be gained by opening up the waterway in question. Hawaii Kai Marina is not an essential connector between major navigable waters that would qualify under the logic established in *United States v. Chandler-Dunbar Co.* (229 U.S. 53, 1913), "that the running water in a great navigable stream is incapable of private ownership." Such waterways, vital to the improvement of navigation, would fall under a navigational servitude and the government would not need to financially compensate the private owners for a taking of property or use of property.

In stating that the Corps' attempt to mandate a public right of access to Kuapa Pond exceeds ordinary regulation or improvement for navigation to the extent that to do so would be a taking of property requiring just compensation, the court argued that Kuapa Pond in its original state was clearly "incapable of being used as a continuous highway for the purpose of navigation in interstate commerce," that it is not now a major navigable water of the kind usually deemed unfit for private ownership and

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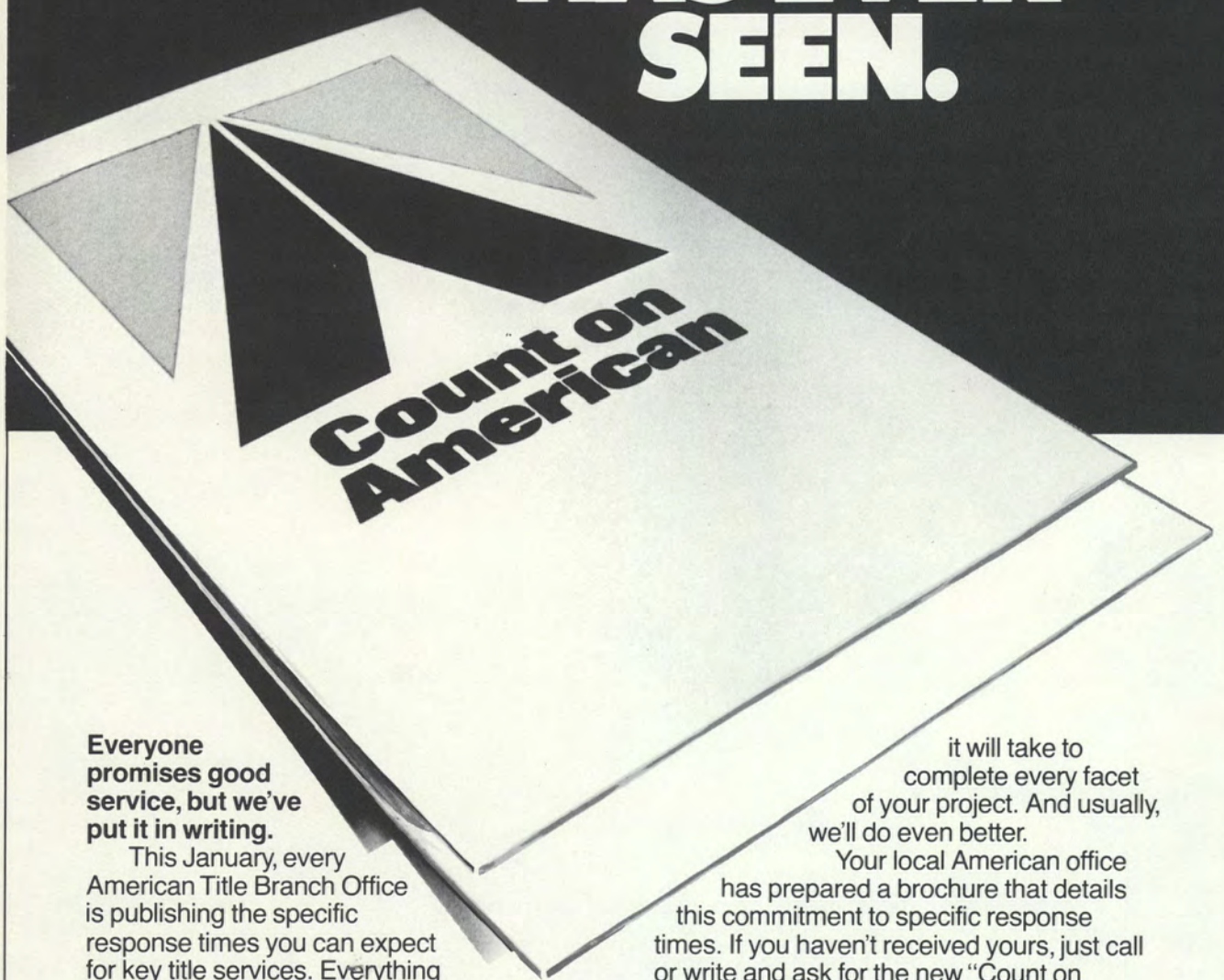

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that since Kuapa Pond was legitimately recognized as private property under Hawaiian state law, "the interests of the petitioners in the now dredged marina is strikingly similar to that of owners of fast land adjacent to navigable water." The court said, "The imposition of the navigational servitude in this context will result in an actual physical invasion of the privately owned marina." Therefore, it reversed the ruling of the Ninth Circuit Court of Appeals and held that the government could not require the owners to allow free public access to the marina without a payment of just compensation.

Kuapa Pond's History

The waterway and surrounding land at issue in the *Kaiser Aetna v. United States* dispute is akin to tidelands, wetlands and coastal lands—lands of familiar concern to title insurers. Kuapa Pond, as it existed for centuries, was a wetland, an area washed by sea water and habitated by many kinds of vegetation and small animal life.

The pond was a naturally occurring geological phenomenon resulting from melting glaciers and rising sea levels. Before development began, it covered 523 acres and was filled with brackish water which reached a maximum depth of two feet. The pond was separated from Maunalua Bay and the Pacific Ocean by a barrier beach which was breached at two points, where sea water passed to and fro between the pond and the bay. The pond unquestionably was affected by the ebb and flow of the tide, with two-thirds of its water supplied by the sea and periodic high tides flooding and cleansing the fish pond.

"The Supreme Court's decision in Kaiser-Aetna rests on the same premise as that of the District Court—that the navigational servitude does not necessarily follow from a determination of navigability."

But Kuapa Pond and its surrounding area differed in a legal sense from the definitional tideland in one important aspect. Hawaii state law regards fish ponds as the equivalent of fast lands. The legal recognition of fish ponds as private property persisted after Hawaii joined the United States, in deference to the value of the ponds in the very important and centuries old fishing industry. Cultivation of fish in shallow fish ponds has been a mainstay of the Hawaiian economy for a long time. Kuapa Pond was used to cultivate mullet for centuries.

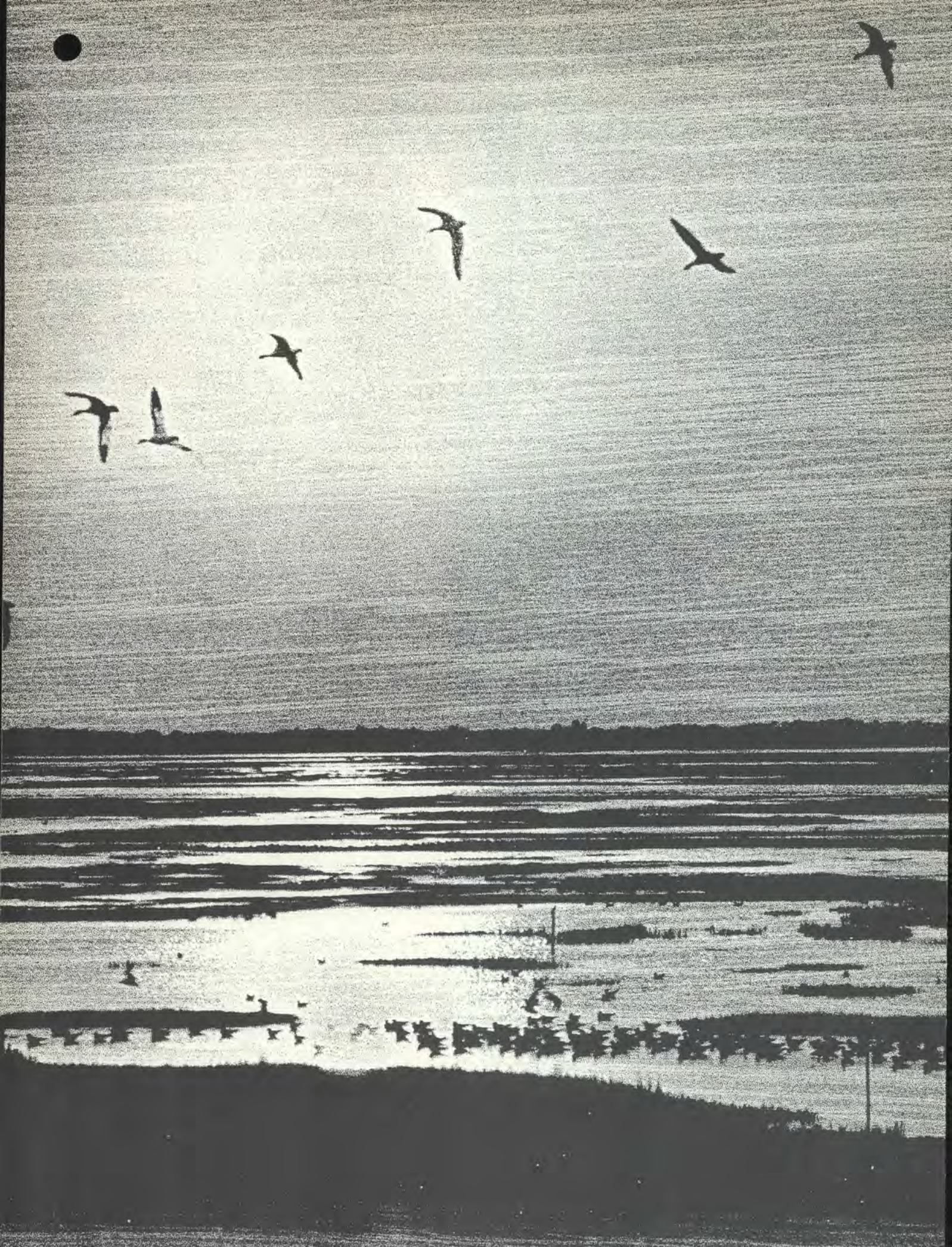
The title to the land in question has rested in one family and its heirs and assignees since the dissolution of monarchical feudalism. After the Hawaiian feudal kingdom was divided up into ahupuaas, or land parcels, during the Great Mahele of 1848, the Maunalua land tract encompassing Kuapa Pond was awarded to Princess Victoria Kamamula and subsequently to her descendant, Princess Bernice Pauahi Bishop. When Bernice P. Bishop died in 1884, the land passed to her trustees and their successors, the Bishop Estate, who own the land to this day.

The cultivation of fish in Kuapa Pond continued until 1961 when the Bishop Estate entered into an agreement with Kaiser Aetna for development rights. The agreement allowed Kaiser Aetna to lease the pond area and, through excavation and filling, to construct a recreational marina subdivision.

In 1966, Kaiser Aetna made plans to open up the marina to Maunalua Bay by dredging a channel under one of the breaches in the barrier beach. Kaiser Aetna applied for a permit from the Corps which was granted with the single comment from the Corps' chief of construction that a deepened channel might cause beach erosion.

With the channel connecting Hawaii Kai Marina to Maunalua Bay and the Pacific Ocean, a continuous navigable path was formed among the marina, bay and ocean. The Corps of Engineers, from that time on, required permits before any further alteration or construction could be carried out in the pond or pond area. In 1971, when Kaiser Aetna had plans to build a fueling facility, they applied for a permit from the Corps accompanied by a statement that they challenged its authority. In response to Kaiser Aetna's protests, the Corps filed suit in the District Court, thus initiating the legal process culminating in the Supreme Court's decision.

The Supreme Court's decision in *Kaiser Aetna*, favorable to the private land owner, should be of particular interest to the title insurance industry. It has been suggested by title counsel that the decision in *Kaiser Aetna* could have important case law implications in other tideland matters.



Navigating North Carolina's Wetlands Statutes

by Edmund T. Urban

The estuarine areas of North Carolina are the East Coast's largest[1]* and contain resources of greater importance than any other state along the U.S. eastern seaboard.[2] In fact, North Carolina estuaries—coastal complexes where fresh water from the land meets salt water of the sea with a daily tidal-flux—are exceeded in total area only by those of Alaska and Louisiana.[3]

Classification of Wetlands

Chapter 146 of the North Carolina General Statutes deals with state lands including certain wetlands.[4] The statute classifies wetlands as submerged lands,[5] swamplands[6] and vacant and unappropriated lands.[7]

State law defines submerged lands as state lands[8] which lie beneath any navigable waters[9] within the boundaries of the state[10] or beneath the Atlantic Ocean to a distance of three geographical miles seaward from the state's coastline.[11]

Tidelands are defined by some authors as those lands located between the lines of ordinary low water and ordinary high water. Submerged lands are below both of these water lines.[12] However, a reading of North Carolina case[13] and statutory[14] law would indicate that North Carolina uses the term "submerged lands" to encompass both submerged and tidelands.

Mr. Urban is vice president and general counsel, AMI Title Insurance Co., Raleigh, N.C. He is a member of the ALTA Wetlands Committee and is vice president of the North Carolina Land Title Association.

*Footnotes for this article begin on page 29.

The courts have held that the state owns all of the land below the "ordinary high water mark"[15]—that is, the boundary line between private property and submerged lands. In fact, the state follows the high water mark rule of ownership which was set forth in *Borax Consolidated, Ltd.* v. *Los Angeles*, 296 U.S. 10, 80 L. Ed. 9, 56 S. Ct. 23 (1935).[16] It was held in *Borax* that the ordinary high water mark means the mean high tide line.[17]

> "A trilogy of cases known as the Parmele decisions only compounded the confusion over what constituted navigable water. This confusion was heightened in the federal case of Swan Island Club, Inc. v. White."

Then, in 1979, the North Carolina General Assembly, apparently cognizant of the North Carolina Supreme Court's statement that, prior to *Carolina Beach*, the state law was uncertain on this point,[18] passed a statute stating that: "The seaward boundary of all properties within the state of North Carolina, not owned by the state, which adjoins the ocean, is the mean high water mark. Provided that this section shall not apply where title below the mean high water mark is or has been specifically granted by the state." [19]

Clearly, submerged lands includes lands beneath navigable rivers as well as lands beneath the Atlantic Ocean.

The North Carolina General Statutes define swamplands as, "lands too wet for cultivation except by drainage, and includes all state lands which have been or are known as 'swamp' or 'marsh' lands, 'pocosin bay' 'briary bay' or 'savanna,' and which are a part of one swamp exceeding 2,000 acres in area, or which are a part of one swamp 2,000 acres or less in area which has been surveyed by the state; and all state lands which are covered by the waters of any state-owned lake or pond." [20]

Vacant and unappropriated lands are, "all state lands title to which is vested in the state as sovereign, and land acquired by the state by virtue of being sold for taxes, except swamplands as hereinafter defined." [21]

The Public Trust Doctrine and Rules of Disposition

It has been said that the scope, limits and powers of the public trust doctrine remain largely undefined even after its evolution through Roman law, English common law, the laws of the United States and state law.[22] Generally speaking, however, the state holds lands under navigable waters of its sounds, rivers, bays and inlets in trust for its citizens[23] because every member of society possesses important rights, privileges and interest in these waters and it is the duty of the state to protect them.

In England, lands categorized as *jus publicum* that were subject to the public trust included all tidelands and lands under territorial seas to the high tide line.[24] As trustee, the sovereign could convey these lands only on behalf of the

people who were beneficiaries of the public trust and not for his own behalf as he could with *just privatum* lands.[25] The "ebb and flow test" was used to determine title to submerged land.[26]

Illinois Central Railroad Co. v. *Illinois*[27] has been referred to as the lodestar of American public trust law.[28] The message seemed to be that a state cannot abdicate its authority as trustee unless the grant of public trust lands will benefit the public or will not significantly impair public rights.[29] Thus, the primary responsibility for defining the limits of the public trust doctrine and formulating a policy concerning the disposition of sovereignty submerged lands within the states' respective boundaries continues to rest with the states.[30]

The public trust doctrine was introduced into North Carolina case law[31] by *Tatum* v. *Sawyer*.[32] The case of *Wilson* v. *Forbes*[33] extended the doctrine to include lands under waters navigable by boats that were not subject to the ebb and flow of tides.[34]

To a certain extent, the public trust doctrine has found its way into the North Carolina General Statutes. G.S. 146-3(1) provides that no submerged lands may be conveyed in fee, but easements therein may be granted.[35]

Under G.S. 146-2, the Department of Administration has been given responsibility for management, control and disposition of all vacant and unappropriated lands, swamplands and submerged lands. G.S. 146-2(1) mandates that the department take measures to establish, preserve and enhance the interests of the state. In G.S. 146-4, the department is granted the right to sell vacant and unappropriated lands and swamplands upon such terms deemed proper by the governor and council of state, but submerged lands are not mentioned. Thus, G.S. 146-3(1) and G.S. 146-4 appear to be consistent.

Although the definition of vacant and unappropriated lands that appears in G.S. 146-64(9) is inartfully drafted in such a way that could include submerged lands and thus render G.S. 146-3(1) and G.S. 146-4 inconsistent, it is probably true that submerged lands were not intended to be part of vacant and unappropriated lands.[36]

G.S. 146-3(2) provides, "No natural lake belonging to the state or to any state agency on Jan. 1, 1959, and having an area of 50 acres or more, may be in any manner disposed of, but all such lakes shall be retained by the state for the use and benefit of all the people of the state and administered as provided for other recreational areas owned by the state."

The sale and lease of mineral rights or deposits in state lands under water is governed by G.S. 146-8, apparently including submerged lands. Any such sale or lease, however, is made subject to all rights of navigation.

Submerged Lands—What Are Navigable Waters?

After submerged lands were defined to include lands lying beneath navigable waters, it then remained to define navigable waters. In so doing, North Carolina in 1822 adopted the "ebb-and-flow" test.[37] From that point until 1859 there was much confusion regarding just what constituted navigable waters.[38] It was in 1859 when the case of *State* v. *Glenn*[39] was tried and as a result of that case, the Supreme Court adopted a "two-test rule" of navigability.

This two-test rule stipulated that all bays and inlets on the coast, where the tide from the sea ebbs and flows, and all other waters, whether sounds, rivers or creeks which can be navigable by sea vessels were held navigable.[40]

By the turn of the century, however, there were three possible tests in land title and navigation cases. They were:

- The ebb-and-flow test
- The sea-vessel test
- An any-craft test for obstruction of navigation cases.[41]

A trilogy of cases known as the *Parmele* decisions[42] only compounded the confusion over what constituted navigable water. This confusion was heightened in the federal case of *Swan Island Club, Inc. v. White*[43]. In the latter case, it was held that hunting in small boats—a capacity for navigation in the usual mode for the area—constituted navigability.

North Carolina has now statutorily defined navigable waters as waters which are "navigable in fact."[44] The statute does not, however, specify what type of vessel the waters must be navigable. Author David Rice suggests that in North Carolina, "a single test of navigability . . . has now become law: navigability in fact by any form of vessel or water transport common to the times."[45] But he also concedes that future litigation might be necessary to make sure.[46]

Another author correctly points out that to conclude that North Carolina has adopted an any-vessel test is as premature as scholastic-burial of the ebb-and-flow test would be at this time.[47]

Therefore, if a determination of what constitutes a navigable water is uncertain, so is what constitutes a submerged land that cannot be conveyed in fee.

A realistic, definite and workable definition of "navigable in fact" for title determination purposes must be established before exact boundaries between submerged lands and other lands can be established.

Submerged Lands Or Swampland?

Although the statutes distinguish between swamplands and submerged lands and while submerged lands may not be conveyed in fee,[48] and swamplands may be sold by the state,[49] it is not always clear whether a tract or a part thereof is submerged land or swampland.

In *Home Real Estate Loan and Insurance Co.* and *Shaffner* v. *Parmele*,[50] the court held that a tidal marsh covered by 20 inches of water at high tide was subject to entry and grant as swampland because the waters were not navigable by sea vessels.

In so deciding, the court seemed to reject the two-part sea-vessel and ebb-and-flow test recognized by earlier decisions without specifically overruling them.[51] The court stated that "navigable waters has reference to commerce of a substantial and permanent character to be, or which may be, conducted thereon."[52]

In *Resort Development Co.* v. *Parmele*,[53] the plaintiff and defendant were engaged in litigation over whether the defendant had to comply with a contract to purchase land which the plaintiff had obtained from Sneeden to whom the state of North Carolina issued a grant in 1841 recorded in the register of deeds office.

The plaintiff contended that the land was part of a swamp and that the state could validly give a grant. But the court agreed with the defendant who contended that the land was covered by navigable waters, was not a swamp,

"But the court agreed with the defendant who contended that the land was covered by navigable waters, was not a swamp, was submerged land and, therefore, was not to be granted by the state."

was submerged land and, therefore, was not to be granted by the state.

In this case, the lands in question were covered by water at high tide. The lands were not swamplands, as then defined by statute *i.e.* lands too wet for cultivation except by drainage.[54]

Author Thomas Earnhardt contends that the case implies that where waters adjoining marshlands are navigable in fact and the marshlands themselves are covered at high tide, the waters covering the marshlands will also be deemed navigable in fact and hence, the lands covered thereby submerged lands.[55]

In *State Board of Education* v. *Roanoke Railroad and Lumber Co.*,[56] the parties argued, among other things, over the nature of the ground. It was determined to be wet, spongy and saturated with water although not usually covered with it. Could knolls or higher ground surrounded by the swampland be part of the swamp? The answer was affirmative.

In *Beer* v. *Whiteville*,[57] the question presented was whether Big Cypress Swamp was a separate and distinct swamp, or part of Seven Creeks. Section 1693 of the old statutes provided that marsh or swamp lands in excess of 2,000 acres were not subject to entry. The court held that Big Cypress and Seven Creeks were separate and distinct swamps, the former being a tributary to the latter, and that the entry and grant was valid.

Today, swamplands can be conveyed by the state without restriction.[58] Even if a land is not within the definition of swamplands but if it is part of the state's vacant and unappropriated lands, it can be conveyed by the state provided that it is not a submerged land.[59]

Under current statutes, lakes or ponds and the underlying land potentially can pose a problem if the lake or pond is large enough and inquiry is not made of the state. The swamplands that can be conveyed by the state include state lands covered by waters of any state-owned lake or pond.[60] However, no natural lake belonging to the state or any state agency on Jan. 1, 1959, and having an area of 50 acres or more may, in any manner, be disposed of.[61]

Accretion, Relection, Avulsion and Erosion

Accretion or accreted lands comprise additions to land resulting from the gradual deposit of sand, sediment or other solid material[62] by water. Accretion is the opposite of avulsion, which

"Under current statutes, lakes or ponds and the underlying land potentially can pose a problem if the lake or pond is large enough and inquiry is not made of the state."

is the sudden and perceptible gain or loss of riparian land.[63] Alluvion is the deposit itself while accretion denotes the act.[64] The doctrine of accretion was firmly established in North Carolina by 1820.[65] Relection refers to land formerly covered by water but which has become dry by imperceptible recission of water.[66] Erosion is the gradual and imperceptible wearing away, by natural action of the elements, of land located on a body of water.[67] Avulsion is either the sudden and perceptible alteration of the shoreline by water, or the sudden change of the bed or course of a stream forming a boundary whereby it abandons its old bed for a new one.[68]

In North Carolina, gradual physical loss of land by these processes results in loss of title and gradual physical gain of land results in the acquisition of title thereto.[69] Subject to G.S. 146-6, both of these rules apply to lands adjoining non-navigable as well as navigable waters.[70]

Artificial accretion or relection is another problem. It has been said generally that the law of accretion or relection applies whether they result from natural or artificial causes.[71] It also has been stated that a landowner may not intentionally increase his estate through accretion or relection by artificial means, although artificial conditions created by third persons without his consent can add to his estate.[72] There does not appear to be any clear North Carolina law on this point.[73]

The case of *State* v. *Johnson*[74] illustrates the problems of accretion and avulsion. In determining the boundary line of properties that had been situated north and south of a coastal inlet until the inlet was closed in 1933 by accretion, the southern boundary of the property lying north of the inlet was fixed on the ground at the point where the accretion acting from the north of the inlet finally connected with the accretion acting from the south to close the inlet. The location of the boundary line so formed was affected neither by the avulsive opening in 1944 of a new inlet north of the pre-1933 inlet nor by the imperceptible southward shifting of the 1944 inlet towards and through the location of the pre-1933 inlet.

It is therefore apparent that insuring title to land that used to be underwater or on the other side of a river or inlet can be a hazardous undertaking primarily because the nature of the physical gain of the land might be avulsive rather than gradual and imperceptible.

Title To Land Raised From Navigable Water

If land is, by *any* process of nature or as the result of the erection of any pier, jetty, or breakwater, raised above the high water mark of any navigable water, title vests in the adjoining land owner, according to G.S. 146-6(a). Thus, even if the physical gain of land is caused by avulsion, if the land adjoins navigable water, the adjoining landowner acquires title. This difference in rules of avulsion applicable to navigable and non-navigable waters once again illustrates the necessity of determining what is a navigable water.

Prior to Chapter 414 of the North Carolina Session Laws, 1979, G.S. 146-6(b) provided that if land was, by act of man, raised above the high water mark of any navigable water by filling, except such filling to reclaim lands theretofore lost by natural causes, or as provided in G.S. 146-6(d), title vested in the state and the land so raised became part of the vacant and unappropriated lands of the state, unless the governor and council of state previously have approved the act under G.S. 146-6(c).

The difference between the rule applicable to land raised as a result of certain acts of man—the erection of a pier, jetty or breakwater—and land raised by certain filling operations is apparent. Filling operations bring with them statutory ambiguities regarding title.

As it appeared prior to the 1979 amendment, G.S. 146-6(c) provided that if any owner of land adjoining navigable water desired to fill the area immediately in front of his land he may apply to the Department of Administration for an easement to make the fill.

A copy of the application had to be delivered to each riparian owner of land adjoining the applicant and such adjoining owners had 30 days to file written objection to the granting of the easement to fill. If the Department of Administration found that the proposed fill would not impede navigation or the use of navigable water by the public or injure

arian owners, it had to issue the easement to fill and fix the consideration to be paid therefor and the easement was conclusive evidence of compliance with all statutory requirements.

G.S. 146-6(c) went on to say that upon completion of the filling, the governor and council of state may,[75] upon request, execute a quitclaim deed to the owner to whom the easement was granted conveying the land so raised upon terms deemed proper by the department and approved by the governor and council of state. Apparently, once raised under the easement, the lands ceased to be submerged land and the prohibition against conveyance of submerged land in G.S. 146-3(1) no longer applied.

Both before and after the 1979 amendment, G.S. 146-6(b) and (c) contain disturbing ambiguities.

Consider transactions prior to the 1979 amendment. *X* loses land by natural causes under G.S. 146-6(b)—that is, the high water mark shifts westward and title to the land lying east of the high water mark becomes vested in the state.[76] With the idea of reclaiming the lost land, *X* fills the land without applying for an easement to fill under G.S. 146-6(c). Curiously, according to the terms of G.S. 146-6(b), title to the land does not vest in the state and become part of its vacant and unappropriated lands.

G.S. 146-6(b) does not state in whom title is vested. Certain state officials take the position that title is vested in the state because *X* did not apply for and obtain an easement to fill under G.S. 146-6(c). Further analysis of (b) and (c) is necessary for possible explanations.

Perhaps the following explanation is valid: Title to the land lying east of the high water mark is vested in the state in fee as submerged land.[77] If the land is filled because of a reason other than to reclaim land lost by nature, title to the raised land shifts from title vested in fee as submerged land to title vested in fee in the state as part of the vacant and unappropriated lands of the state.[78]

If the land is filled because *X* wants to reclaim lands lost by natural causes, but G.S. 146-6(c) is not complied with, title does not become vested in the state as vacant and unappropriated land under G.S. 146-6(b), but it remains vested in the state as submerged land illegally filled by *X*.

Although this analysis is literally logical, it results in an ironic and illogical reality: Land that is filled for a reason other than to reclaim it due to loss by natural causes is vested in the state as conveyable, vacant and unappropriated land, while land filled to make the aforesaid reclamation is vested in the state as submerged land which cannot be conveyed by the state.

> "Grants of submerged lands to individuals have resulted from the mistaken impression that the lands were not covered by navigable waters."

Suppose that *X* applies for and obtains an easement to fill under G.S. 146-6(c), but neglects to obtain a quitclaim deed from the state as that statute allows. Does *X* own the fee? G.S. 146-6(b) does not say that he does, nor does G.S. 146-6(c). But certain state officials feel that he might own the fee anyway. In fact, certain state officials will tell you that you don't need a quitclaim deed. This could present a problem when administrations change.

G.S. 146-6(c) provides that if the governor and council of state have it proved to them that land has been raised above the high water mark of navigable water "by any process of nature or by the erection of any pier, jetty or breakwater and that this, or any other provision of this section vests title in the riparian owner thereof," a quitclaim deed can be obtained. This section does not apply to reclamation by filling operations.

The state takes the position that lands lost by natural causes prior to the 1959 effective date of G.S. 146-6 cannot be reclaimed by filling.

In another example under G.S. 146-6(b) and (c) prior to the 1979 amendment, *X* loses land to the state by natural causes. *X* gives to *Y* a deed with a metes and bounds description that includes the lost land. The state takes the position that *Y* cannot reclaim land lost by *X*. The owner who loses land must be the one that reclaims it.

The state bases its position on the following language in G.S. 146-6(b): "except such filling be to reclaim lands theretofore lost to the owner . . ." *Y* could apply for and obtain an easement to fill and quitclaim deed under G.S. 146-6(c). According to the state, the difference between this remedy and reclamation is two-fold:

- The state will be less inclined to grant relief to *Y* under G.S. 146-6(c) than if *Y* was entitled to reclaim and
- *Y* will have to pay not only a standard charge for the easement to fill, but also consideration for the purchase of a quitclaim deed.

In such an example, certain state officials take the position that *Y* must obtain a quitclaim deed from the state to obtain title. G.S. 146-6(c) did not make this clear.

Amendment Deficiencies

The 1979 amendment to G.S. 146-6(b) and (c) was enacted pursuant to Chapter 414 of the 1979 Session Laws entitled: "An Act to Amend G.S. 146-6 To Provide That No Easement To Fill Shall Be Required In Order For A Riparian Owner To Reclaim Lands Theretofore Lost By Natural Causes."

Unfortunately, G.S. 146-6(b) has not been clarified. The first sentence of G.S. 146-6(c) has not been changed and, hence, the state officials still interpret G.S. 146-6(c) to require an owner seeking to fill to reclaim lands lost by natural causes to apply for an easement to fill. However, if the department finds that the purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural causes, no easement to fill will be required and the department must give the applicant written permission to proceed with the fill. That is the only substantive change in G.S. 146-6(c). All other ambiguities still exist.

It makes little sense to require even an application under this statute if the purpose of the fill is to make reclamation. Certain state officials feel that failure to make application could mean that title to the fill would not be obtained by the owner.

G.S. 146-6(d)'s rule remains unchanged. If an island is, by any process of nature or by act of man, formed in any navigable water, title thereto vests in the state and becomes a part of the state's vacant and unappropriated lands. G.S. 146-6(d) contains a rule vesting deposits of excavated materials in owners in certain cases.[79]

Another deficiency in G.S. 146-6 is that it makes no reference to the other permit requirements pertaining to fills in G.S. 113-229 and G.S. 113A-118 and, like those statutes, does not state the effect on title of noncompliance with those other statutes.[80]

G.S. 146-6(b) and (c) presently do not state whether land lost by natural causes after the effective date of original G.S. 146-6(b) and (c) but before the effective date of the amendment is governed by the original or amended version of

G.S. 146-6(b) and (c). Presumably, nothing appearing in the amendatory act to the contrary, the amended version would apply, but this is in no way clear.

Until G.S. 146-6, G.S. 113-229 and G.S. 113A-118 are amended to provide clear answers to the questions raised above, the only safe course for one to follow regarding filled lands is to apply for or to apply for and obtain, as the case might require, an easement to fill under G.S. 146-6(c), obtain permits from the state under G.S. 113-229 and G.S. 113A-118,[81] obtain permits from the federal government or a decision that such is unnecessary, and obtain a quitclaim deed from the state under G.S. 146-6(c). Any amendment should contain a curative statute validating certain titles.

Regarding title to filled land, *Carolina Beach Fishing Pier, Inc.* v. *Town of Carolina Beach*[82] should be considered. In this case, the plaintiff's lots had become completely submerged by the Atlantic Ocean. That is, the lots were located east of the high water mark due to relection and erosion. The case does not indicate when this process was complete; but, it was completed no later than January, 1964.

Effective May 22, 1963, Chapter 511 of the 1963 Session Laws was ratified. Under this statute, lands to be filled and restored which lie east of the "building line" (established in the Act) were granted by the state to the town of Carolina Beach in fee simple.

The high water mark was located approximately in the center of Carolina Beach Avenue North. Under the Act, the building line became the western margin of that road.

In December, 1964, the city built a berm or sand sea wall to prevent or reduce erosion of the beach due to the sea, weather and storms. The sea wall covered the lots. The plaintiff sued, alleging that his land had been taken fo public use without just compensation.

The court held that even before the berm was built, title had been lost to the state by relection and erosion. The court also held that the lots were raised above the high water mark under Chapter 511 and not under G.S. 146-6(b) and (c) pertaining to filled lands "to reclaim lands theretofore lost to the owner by natural causes."

Had G.S. 146-6(b) and (c) applied, rather than the Act, the plaintiff would have reacquired title to the lots. The court cited the Act's apparent inconsistency with G.S. 146-3(1)'s prohibition of conveyance of a fee interest in submerged lands, but held that the Act controlled over all other laws inconsistent therewith.[83]

It should therefore be apparent that the prospective grantee, title attorneys and title insurers should exercise extreme caution when becoming involved in land that is, or may be, filled. Notwithstanding G.S. 146-6(a), if bulkheads are involved, investigation of all of the circumstances surrounding the fill or possible fill should be made.

Another Trap For the Unwary?

G.S. 113-205(a), passed in 1965, requires a person claiming title to any part of the bed lying under navigable waters of any coastal county superior to that of the public to register with the Secretary of Natural Resources and Community Development[84] the grant, charter or other authorization under which he claims. All rights and titles not regis-

Further Suggested Reading

Maloney and Ausness, "The Use and Legal Significance of the Mean Highwater Line in Coastal Boundary Mapping," 53 *N.C.L. Rev.* 185 (1974)

Glenn, "The Coastal Management Act in The Courts: A Preliminary Analysis," 53 *N.C.L. Rev.* 303 (1974)

Heath, "A Legislative History of the Coastal Area Management Act," 53 *N.C.L. Rev.* 345 (1974)

Schoenbaum and Parker, "Federalism in the Coastal Zone: Three Models of State Jurisdiction and Control," 57 *N.C.L. Rev.* 231 (1979)

Schoenbaum, "Public Rights and Coastal Zone Management," 51 *N.C.L. Rev.* 1 (1972)

Taylor, "Navigable Waters and the Quagmire of Wetlands," *Campbell U. School of Law Law Observer*, Vol. 1, No. 3, March 1980.

Johnson, "Enforcing the Federal Water Resources Servitude on Submerged and Riparian Lands," 1977 *Duke L.J.* 347 (1977)

Webster, *Real Estate Law in North Carolina* (1971), Secs. 315-320

Dunes of Emerald Isle, N.C.

ed pursuant to G.S. 113-205(a) on or before Jan. 1, 1970, are null and void.

This statute is codified under Article 16 of Chapter 113 of the General Statutes. The article is entitled, "Cultivation of Oysters and Clams," yet it is written about in a way that indicates that it applies to all title claims.[85] There is certainly nothing in the statute to rebut this contention. Claims have been filed under this statute for swamps, farm ponds, drainage ditches, salt marshes, oyster beds, shoal water, submerged lands and "unquestionably navigable water."[86]

This statute is one more indication of the confusion that exists over what constitutes navigable water in North Carolina.[87] At least two authors feel that this statute might be vulnerable to attack as having the effect of taking property without due process of law,[88] and this position appears to be valid.

However, the person interested in title should play it safe and comply with this registration requirement in addition to the requirement that conveyances be recorded in the register of deeds office in the county where the land lies in order to be valid against purchasers for value and lien creditors.[89]

Non-Navigable Waters

The bed of a private or non-navigable stream or body of water belongs to the owner of the soil through which it flows.[90] If the banks are owned by different persons, each owns *prima facie* to the middle of the stream.[91] If a legal description in a deed calls for a body of non-navigable water as a monument, the deed will convey title to the center of the stream or non-navigable water source.[92]

Again, it is important to determine what is navigable water, for if the water is "navigable in fact" a conveyance will only carry to the high water mark. If the description restricts the grant to the edge or shore of a stream, it does not carry to the center.[93]

A call to a particular point and "thence down the swamp" establishes the boundary at the edge rather than the run of the swamp,[94] but the phrase "with the run of the swamp" will convey land to the center of the swamp or adjacent stream rather than to its banks.[95]

The Public Trust Doctrine—Questions

The public trust doctrine is very strong in North Carolina.[96] Prior to the 1959 State Lands Act, many acres of submerged lands (mostly in the form of tidal marsh) were conveyed to private individuals.[97] It is appropriate to analyze the validity of such grants and the application of the public trust doctrine to them. The claims filed under G.S. 113-205 indicate that many people believe that they own good title to lands under navigable waters. A proprietor's grant of submerged lands would be invalid under the ruling of *Martin v. Waddell*.[98]

"Title by adverse possession can be obtained against the state. Without color of title, the period is 30 years. With color of title, the period is 21 years."

Grants of submerged lands to individuals have resulted from the mistaken impression that the lands were not covered by navigable waters.[99] Even though prior to 1959 there was no specific statutory prohibition against the state's granting of submerged lands,[100] one author has suggested that the public trust doctrine is applicable to privately owned submerged lands.[101] One federal court decision[102] has so indicated, although the North Carolina Supreme Court has not spoken.[103]

If this is true, even though the title to submerged lands otherwise void is established by adverse possession, it will be encumbered by the public trust as though the land was still owned by the state. This obviously is an area of North Carolina law troubled by confusion.[104]

Earnhardt has suggested the following revised definition of submerged lands that would be subject to G.S. 146-3(1)'s prohibition against conveyance in fee: "All lands, including foreshore[105] and salt marsh, over which the tide ebbs and flows,[106] regardless of its depth at high tide, and lands covered by waters having the capacity for navigation by water craft of the day, whether they be used for commercial,[107] recreational,[108] or sporting purposes,[109] are submerged lands and waters covering them are deemed to be navigable."

Earnhardt candidly admits, however, that a challenge to a deed issued by the state based on a new definition of navigable waters could make the legislation itself subject to constitutional attack.[110] This problem could and should be avoided by not making the statute retroactive.

He advocates the bringing of test cases "for the purpose of having dubious claims to the most important of our submerged lands declared void."[111] He suggests actions by the attorney general under. G.S. 146-63 based on mistake or ignorance of a material fact: "The state could assert in many cases that when the grants are made it did not know that the water covering the land was 'navigable in fact,' and thus the lands under them would not have been subject to entry and grant."[112] This is a rather forceful call to arms.[113]

Fighting City Hall Can Be Difficult

Title by adverse possession can be obtained against the state.[114] Without color of title the period is 30 years.[115] With color of title the period is 21 years.[116] Of course, even if the requisite period can be established, the remaining elements of adverse possession are often hotly contested and difficult to establish.[117] Also, the leading authority on North Carolina real property law indicates that in

North Carolina, if X is under the mistaken impression that he owns land that is not described in his deed, title to the land cannot be acquired by adverse possession because conscious intent to claim the land of another does not exist.[118]

The cases of *State v. Brooks*[119] should be examined by those seeking to do battle with the state. The first case was over the question of title to marshlands, with the action being brought by the state. The theory of the defendant's case was adverse possession for 30 years without color of title.

The court found that the possession was not exclusive for the 30-year period.[120] Also, the defendants stipulated that they did not own the bottoms of navigable waters. Since it was impossible to determine what part of the premises was in non-navigable waters,[121] this stipulation proved fatal to the defendants. There was no evidence where the lines of possession were for 30 years.[122] The defendants failed to even attempt proof of adverse possession under color of title.[123] The case was remanded for determination of whether the state was the owner of the land.

"It should be apparent that proving adverse possession against the state is difficult primarily because of the difficulty in establishing recognizable boundaries in a complete chain."

In the second case, the litigants again worked their way up to the state Supreme Court. G.S. 146-79 provides that if the state is involved in an action to try title, title is deemed vested in the state until the other party shows that title is vested in him.[124]

The state, the party that brought the suit, offered evidence consisting of a stipulation and recorded map which showed the land and rested. The defendants were simply unable to show good and valid title in themselves by virtue of a chain of title going back to the sovereign.[125] It should therefore be apparent that proving adverse possession against the state is difficult primarily because of the difficulty in establishing recognizable boundaries in a complete chain.

If a grant of land is made after March 6, 1893, pursuant to the statutes governing entries and grants, but the land was granted prior to that date to someone else by the state or its predecessors in title, G.S. 146-39 provides that the grant made after March 6, 1893, is absolutely void for all purposes and in no case constitutes color of title.[126]

Earnhardt suggests that as to lands encumbered by the public trust, it may be that the usual rules of adverse possession do not apply,[127] citing *Shelby v. Cleveland Mill and Power Co.*[128] That is probably going too far, although as mentioned, establishing title to public trust lands by adverse possession is extremely difficult.

Void Conveyances and Curative Statutes

G.S. 146-39 provides that every entry made and grant issued for lands not authorized by law existing prior to June 2, 1959 is void. There is a curative statute[129] that attempts to validate certain conveyances but it does not specifically mention void conveyances. Even if it did, substantial question exists in North Carolina concerning the validity of curative statutes that purport to make valid void transactions. For example, analogous cases dealing with the validity of deeds of gift have held that a curative statute cannot revive a void deed.[130] Other statutes do little to clarify the situation.[131]

Conclusion

Insuring title to lands that are or may be wetlands can be, at best, an uncertain exercise. Among other things, the underwriter should ask:

- Is the land submerged land which cannot be conveyed in fee or is it swampland or vacant and unappropriated land which can be so conveyed?
- If the land has been filled, has the filling been done properly and has the title been obtained from the state?
- Is the underwriter being asked to insure land created by avulsion or accretion?
- Does the conveyance from the state comply with all laws applicable thereto?
- Have all registration laws been complied with?
- If water is involved, is it "navigable in fact"?

Policy exceptions should be drafted by the underwriter to exclude liability in instances where title in the prospective insured cannot be substantiated. The appropriate "high water mark" exceptions should be taken if navigable water or the ocean abuts the land. Such an exception should make it clear to the insured that wherever the high water mark is deemed to be, the title insurer does not insure title to land lying beyond it.[132]

Footnotes

[1]*Earnhardt*, "Defining Navigable Waters and the Application of the Public Trust Doctrine in North Carolina: A History and Analysis," 49 *N.C.L. Rev. 888 (1971), at 889.*

[2]*Earnhardt, n.1, supra, at 890; Schoenbaum,* "The Management of Land and Water Use In The Coastal Zone: A New Law Is Enacted In North Carolina," *53 N.C.L. Rev. 275 (1974), at 275.*

[3]*Rice,* Estuarine Land of North Carolina: Legal Aspects of Ownership, Use and Control, *46 N.C.L. Rev. 780 (1968), at 780.*

[4]*See generally G.S. 146-1 through G.S. 146-83.*

[5]*G.S. 146-64(7).*

[6]*G.S. 146-64(8).*

[7]*G.S. 146-64(9).*

[8]*G.S. 146-64(6) defines "state lands": "State lands" mean all land and interests therein, title to which is vested in the state of North Carolina, or in any state agency, or in the state to the use of any agency, and specifically includes all vacant and unappropriated lands, swamplands, submerged lands, lands acquired by the state by virtue of being sold for taxes, escheated lands, and acquired lands.*

G.S. 146-64(1) defines "acquired lands": "Acquired lands" means all state lands, title to which has been acquired by the state or by any state agency by purchase, devise, gift, condemnation, or adverse possession.

[9]*G.S. 146-64(4).*

[10]*G.S. 146-64(7)a. See G.S. 77-15(a) (1979 Cum. Supp.).*

[11]*G.S. 146-64(7)b. Although set forth in the North Carolina statute, the three-mile rule is actually federal law. See The Submerged Lands Act of 1953, 43 U.S.C. Sec. 1301 et seg., discussed in* Bruton v. Enterprises, Inc., *273 N.C. 399, 160 S.E. 2d 482 (1968);* Capune v. Robbins, *273 N.C. 581, 160 S.E. 2d 881 (1968); and* Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, *277 N.C. 297, 177 S.E. 2d 513 (1970). The Submerged Lands Act provides that the three-mile limit begins at the coastline, defined as "the line of ordinary low water along sea and the line marking the seaward limit of inland waters." 43 U.S.C. Sec. 1301(c) (1970). See Shalowitz,* "Boundary Problems Raised by the Submerged Lands Act," *54 Colum. L. Rev. 1021 (1954). See also G.S. 141-6(a) which refers to Article I, Sec. 34 of the 1868 North Carolina Constitution (now Article XIV, Sec. 2, which provides that the "limits and boundaries of the state shall be and remain as they now are") and provides that since the 1783 U.S.-Great Britain Treaty of Peace and the 1776 Declaration of Independence, the eastern boundary of the state of North Carolina has been and is one marine league eastward from the Atlantic seashore measured from the extreme low water mark. One marine league is equal to three geographical miles.* Bruton v. Enterprises, Inc., *273 N.C. 399, 160 S.E. 2d 482 (1968). Note the literal and technical difference between "the line of ordinary low water . . ." in the Submerged Lands Act and "extreme low water mark" in G.S. 141-6(a). Presumably, federal law controls if there is a tecunical inconsistency. G.S. 141-7.1 and G.S. 141-8 purport to establish lateral seaward boundaries between (1) North and South Carolina and (2) North Carolina and Virginia. The*

acts are only effective upon ratification by the respective states of South Carolina and Virginia and by the United States.

[12]Beasley, "Wetlands: Probing Murky Depths," 58 Title News Vol. 12 (Dec. 1979), at 4.

[13]Carolina Beach, supra n. 11, at 302.

[14]See, e.g., G.S. 146-3(1); G.S. 146-6; G.S. 146-64(7).

[15]Carolina Beach, supra, n. 11, at 303.

[16]Id.

[17]Maloney and Ausness, Further Suggested Reading, page 27, at 205.

[18]Carolina Beach, supra, n. 11, at 302.

[19]G.S. 77-15(a) (1979 Cum. Supp.).

[20]G.S. 146-64(8).

[21]G.S. 146-64(9).

[22]Earnhardt, n. 1, supra, at 891.

[23]Id.

[24]Snively v. Bowlby, 152 U.S. 1, 13 (1894).

[25]Earnhardt, n. 1, supra, at 893.

[26]152 U.S. at 11.

[27]146 U.S. 387 (1892), discussed in Earnhardt, n. 1, supra, at 894-896.

[28]Sax, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention," 68 Mich. L. Rev. 473, 486 (1970).

[29]Earnhardt, n. 1, supra, at 895.

[30]Maloney and Ausness, Further Suggested Reading, page 27, at 193.

[31]For other cases, see Bell v. Smith, 171 N.C. 116, 87 S.E. 987 (1896); State v. Twiford, 136 N.C. 603, 48 S.E. 586 (1904).

[32]9 N.C. 226 (1822).

[33]13 N.C. 30 (1828).

[34]Earnhardt, n. 1, supra, at 901.

[35]See G.S. 146-12 for easements that can be granted in lands covered by navigable waters or by the waters of any lake owned by the state.

[36]Rice, n. 3, supra, at 792. Rice states that the three categories of state lands, including submerged lands, swamplands, and vacant and unappropriated lands, are defined in such a manner "that is appears clear that these categories are intended to be mutually exclusive."

[37]Tatum v. Sawyer, 9 N.C. 226 (1822).

[38]Earnhardt, at 901-903.

[39]52 N.C. 321 (1859).

[40]52 N.C. 321, 333, discussed in Earnhardt, at 903.

[41]Earnhardt, at 904.

[42]Home Real Estate Loan and Insurance Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938); Resort Development Co. v. Parmele, 235 N.C. 689, 71 S.E. 2d 474 (1952); Parmele v. Eaton, 240 N.S. 539, 83 S.E. 2d 93 (1954), discussed in Earnhardt, at 904-906.

[43]114 F. Supp. 95 (E.D. N.C. 1953) aff'd sub nom., 209 F. 2d 698 (4th Cir. 1954). (A tidal marsh which could be crossed only by a small boat at high tide if the northeasterly wind was not steady was part of waters navigable in fact.)

[44]G.S. 146-64(4).

[45]Rice, n. 3, supra, at 802. See Maloney and Ausness, Further Suggested Reading, page 27, at 215, citing Parmele v. Eaton, 240 N.C. 539, 548, 835.E. 2d 93, 99 (1954) as defining navigable waters as those which in their ordinary state can be used for water commerce, trade and travel. These authors state that in North Carolina, the ebb-and-flow test has been rejected, citing Wilson v. Forbes, 13 N.C. 30 (1828).

[46]Id.

[47]Earnhardt, at 907. See Schoenbaum, Further Suggested Reading, page 27, at 11-12. Schoenbaum categorizes Earnhardt's view as a partial rejection of Rice's conclusion and a statement that the navigability-in-fact test may be supplemental to the ebb-and-flow rule. 51 N.C.L. Rev. 1, at 12. He states that although the law is not settled on this point, Earnhardt's view is probably correct. Schoenbaum states that "The navigable-in-fact test was adopted to protect the state's title to the beds of inland navigable waters unaffected by the tides; the ebb-and-flow rule was rejected only insofar as it would preclude state ownership of lands under inland navigable waters. Tidal ebb and flow is still determinative of ownership of the tidelands of the foreshore and the salt marshes unless there has been a valid grant or conveyance by the state. Navigability-in-fact is the test for title of inland non-tidal waters.

"This conclusion is supported by the recent decision of the North Carolina Supreme Court in Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach which was decided subsequent to Rice's article. In that case the court was called upon to determine the dividing line between the property of the state and that of the littoral private owner. The lands involved were shorelands fronting on the Atlantic Ocean. The court held that with respect to the "foreshore," which it defined as "the 'strip of land between high-and-low-tide lines,' " private property ends at the mean high tide mark. The court called this a "long established rule." "

[48]G.S. 146-3(1).

[49]G.S. 146-4.

[50]214 N.C. 63, 197 S.E. 714 (1938).

[51]Earnhardt, n. 1, supra, at 904.

[52]214 N.C. at 68, 197 S.E. at 717.

[53]235 N.C. 689, 71 S.E. 2d 474 (1952).

[54]See G.S. 146-64(8).

[55]Earnhardt, n. 1, supra, at 905. Earnhardt also contends that this case can be read as an apparent revival of the double test for public trust lands apparently rejected in Home Real Estate Loan and Insurance Co. v. Parmele, supra at n. 51.

[56]158 N.C. 313, 73 S.E. 994 (1912).

[57]170 N.C. 337, 86 S.E. 1024 (1915).

[58]See G.S. 146-4.

[59]Rice, n. 3, supra, at 794.

[60]G.S. 146-64(8) b.

[61]G.S. 146-3(2).

[62]Jones v. Turlington, 243 N.C. 681, 684, 92 S.E. 2d. 75, 77 (1956).

[63]State v. Johnson,278 N.C. 126, 179 S.E. 2d 371 (1971).

[64]Maloney and Ausness, Further Suggested Reading, page 27, at 225.

[65]Murray v. Sermon, 8. N.C. 56 (1820); Rice, n. 3, supra, at 806.

[66]Maloney and Ausness, Further Suggested Reading, page 27, at 225.

[67]Id.

[68]State v. Johnson, 278 N.C. 126, 179 S.E. 2d 371 (1971).

[69]Rice, no. 3, supra, at 806.

[70]Murray v. Sermon, 8 W.C. 56 (1820); Jones v. Turlington, 243 N.C. 681, 92 S.E. 2d 75 (1956).

[71]56 AM JUR Waters Sec. 486 (1947); Maloney and Ausness, Further Suggested Reading, page 27 at 235.

[72]Id., at 226.

[73]Davis v. Morgan, 228 N.C. 78, 44 S.E. 2d 593 (1947), has been cited in Maloney and Ausness, Further Suggested Reading, page 27, at 226 as authority contra to the proposition that a land owner may not intentionally increase his estate through artificial means. See also Maloney and Ausness at 235. However, if accretion was caused by artificial means in this case, it appears that it was caused by dredging operations of the United States government and not by the land owner.

[74]278 N.C. 126, 179 S.E. 2d 371 (1971). The accretion and evulsion took place prior to 1959 and, therefore, G.S. 146-6 was not applicable.

[75]The statute says "may" and not "shall" or "must."

[76]Carolina Beach, n. 11, supra.

[77]Carolina Beach, n. 11, supra; G.S. 146-64.

[78]See G.S. 146-6(b).

[79]G.S. 146-6(d).

[80]G.S. 113-229(e) (1979 Cumm. Supp.) has been amended to provide for authority to consolidate the permits required by G.S. 113-229 and G.S. 113A-118. For a brief article pertaining to permit requirements under federal law, see Taylor, "Navigable Waters and the Quagmire of Wetlands," Campbell U. School of Law Law Observer, Vol. 1, No. 3, March 1980.

[81]See n. 80, supra.

[82]277 N.C. 297, 177 S.E. 2d 513 (1970), cited at n. 11, supra.

[83]Article XIV, Sec. 3 of the Constitution of North Carolina contains a prohibition against special or local acts. It might be that this local act is therefore unconstitutional.

[84]See also G.S. 113-1.

[85]Rice, n. 3, supra, at 795; Earnhardt, n. 1, supra, at 899, 900, 907 and 913; Schoenbaum, Further Suggested Reading, page 27, at 10.

[86]Earnhardt, n. 1, supra, at 900.

[87]Id.

[88]Rice, n. 3, supra, at 795 (n. 80); Schoenbaum, Further Suggested Reading, page 27, at 10.

[89]G.S. 47-18. Under this statute, conveyances need not be recorded to be valid as between parties to the instrument and as against persons other than purchasers for value and lien creditors. See Webster, Real Estate Law In North Carolina, Secs. 330-343 (1971).

[90]Webster, Further Suggested Reading, page 27, at Sec. 317; and Kelly v. King, 225 N.C. 709, 36 S.E. 2d 220 (1945).

[91]Id., citing Rose v. Franklin, 216 N.C. 289, 4 S.E. 2d 876 (1939).

[92]Rose v. Franklin, n. 91, supra; Webster, Further Suggested Reading, page 27, at Sec. 161.

[93]Webster, Further Suggested Reading, page 27, at Sec. 161.

[94]Rowe v. Cape Fear Lumber Co., 128 N.C. 301, 38 S.E. 896 (1901); Hartsfield v. Westbrook, 2 N.C. 258 (1796).

[95]Rowe v. Cape Fear Lumber Co., n. 94, supra.

[96]Earnhardt, n. 1, supra, at 916.

[97]Earnhardt, n. 1, supra at 920.

[98]41 US (16 Pet.) 367 (1842), discussed in Earnhardt, n. 1, supra, at 894 and 908.

[99]Earnhardt, n. 1, supra, at 898 and 920.

[100]Earnhardt, n. 1, supra, at 912.

[101]Earnhardt, n. 1, supra, at 916-918.

[102]Swan Island Club, Inc. v. Yarbrough, 309 F. 2d 698 (4th Cir. 1954).

[103]Earnhardt, n. 1, supra at 917.

[104]See Schoenbaum, Further Suggested Reading, page 27, at 16-18. The author states that North Carolina has accepted the public trust doctrine. 51 N.C.L. Rev. at 16. He cites Shepard's Point Land Co. v. Atlantic Hotel, 132 N.C. 366, 44 S.E. 39 (1903). Schoenbaum states that the extent of public trust ownership is confused and uncertain in North Carolina. The author also states that it is unclear to what extent the Supreme Court of North Carolina will extend the public trust doctrine to privately owned lands. "It is probable, however, that at least the traditionally defined public easement burdens privately held trust lands in North Carolina." 51 N.C.L. Rev. at 18, citing State v. Twiford, 136 N.C. 603, 48 S.E. 586 (1904). The application to lands raised pursuant to G.S. 146-6 has not been litigated in the courts.

[105]Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E. 2d.

[106]See Resort Development Co. v. Parmele, 235 N.C. 689, 71 S.E. 2d 474 (1952); State v. Glen, 52 N.C. 321 (1859).

[107]See State v. Narrows Island Club, 100 N.C. 477, 5 S.E. 411 (1888); Broadnax v. Baker, 94 N.C. 675 (1886).

[108]See State v. Twiford, 136 N.C. 603, 48 S.E. 586 (1904) (pleasure boating mentioned as a test of navigability).

[109]See Swan Island Club, Inc. v. Yarbrough, 209 F.2d 698 (4th Cir. 1954).

[110]Earnhardt, n. 1, supra, at 919.

[111]Earnhardt, n. 1, supra, at 920.

[112]Id.

[113]Earnhardt concludes his challenge: "If North Carolina's Attorney General and courts take the active, positive role of which they are capable, they can provide a model for the future for all coastal states of this nation." Id.

[114]See G.S. 1-35; G.S. 146-68.

[115]Id.

[116]Id.

[117]See Webster, Further Suggested Reading, page 27, Secs. 257 through 263 for a discussion of the other elements: "There must be an actual possession of the real property claimed; the possession must be hostile to the true owner; the claimant's possession must be exclusive; the possession must be open and notorious; the possession must be continuous and uninterrupted for the statutory period; and the possession must be with an intent to claim title to the land occupied." Webster, Sec. 258.

[118]Webster, Further Suggested Reading, page 27, Secs. 260 and 263, citing Gibson v. Dudley, 233 N.C. 255, 63 S.E. 2d 630 (1951). Webster agrees that as to other jurisdictions, the weight of authority is to the contrary.

[119]275 N.C. 175, 166 S.E. 2d 70 (1969); and 279 N.C. 45 (1971).

[120]275 N.C. at 180.

[121]275 N.C. at 180-181.

[122]275 N.C. at 181.

[123]275 N.C. at 181.

[124]See also G.S. 1-36.

[125]279 N.C. at 50.

[126]See Rice, n. 3, supra, at 792, n. 69.

[127]Earnhardt, n. 1, supra, at 914.

[128]155 N.C. 196, 71 S.E. 218 (1911).

[129]G.S. 146-78.

[130]Cutts v. McGhee, 221 N.C. 465, 20 S.E. 2d 376 (1942); Booth v. Hairston, 195 N.C. 8, 41 S.E. 480 (1928).

[131]See G.S. 146-20 (failure to register certain swampland deeds within 12 months means that the deeds are void); G.S. 146-66 (conveyances contrary to Chapter 146 are voidable); G.S. 146-76 (certain conveyances ineffective).

[132]Reyburn, "Is the Title 'Trust' Worthy?", 58 Title News, No. 12, 27 (1979). Perhaps this would tend to make the coverage "illusory," as the author suggests. He believes that it is extremely hazardous to insure the precise location of the high water mark at date of policy.

Houston Titleman Runs In Boston

Marathon runner Rick McMahan, right, was greeted by co-workers at American Title Co., Houston, Texas, with a custom made T-shirt and a round trip airline ticket to send him off to the Boston Marathon in late April. Having qualified for the race as one of the top five percent of marathon runners in the country, this Texas titleman found the trip a little too far away to be affordable. But his fellow workers chipped in and purchased a round trip flight ticket for him and now he's set to run. Presenting the T-shirt is American Title president Roland M. Chamberlin, Jr.

Names in the News . . .

Jack Diehl

LeRoy King

Jack R. Diehl was elected chairman and chief executive director of St. Paul Title Insurance Corp., St. Paul, Minn., succeeding **Thomas D. Jones.** Prior to his election, Diehl was senior vice president for regional operations of St. Paul Fire and Marine Insurance Co. Both St. Paul Title and St. Paul Fire and Marine are subsidiaries of The St. Paul Companies, Inc.

Diehl has been with St. Paul Fire and Marine for 33 years, serving in senior management positions since 1971. In 1971, he became senior vice president for marketing, and in 1978, director of regional operations.

Leroy F. King, senior vice president and chief financial officer of Commonwealth Land Title Insurance Co., was elected treasurer of the company. He has been with the company for 34 years.

King is a member of ALTA's Research Committee and chaired the ALTA Task Force on Statistical Reporting and Rate Service.

Commonwealth also has announced that **John A. Day** of Philadelphia, Pa., and **John M. Daly** of Manhasset, N.Y., have joined the company as vice presidents. Day was appointed vice president and general manager of Commonwealth's Miami division. Daly is the new vice president/claims for the company's Philadelphia office. Day is a 20-year veteran of the title insurance industry and Daly has been active in both the title and real estate industries.

Also new at Commonwealth is the promotion of **John D. Waters** to assistant vice president/assistant counsel for the company's operations in Delaware, Maryland, Virginia, Washington, D.C. and eastern Pennsylvania. Located in Fairfax, Va., Waters formerly directed the company's legal department in Virginia.

Anthony C. Guinta was named an assistant title officer for Commonwealth. He works in the company's Media, Pa. office.

USLIFE Title Insurance Company of Dallas announced the election of three officers to newly created positions.

Harry A. Fisher has become senior vice president-administration. He comes to this position with experience in auditing and accounting and most recently was the firm's vice president, treasurer and chief financial officer. Fisher is a member of the ALTA Accounting Committee.

Two new senior vice presidents-marketing are **A.M. Clifford** and **J.D. Eaton.** Clifford is president of USLIFE Title Company of Arizona, a subsidiary of the Dallas firm. Under his new responsibilities, he directs the company's Region One office in Phoenix, Ariz., and is responsible for Arizona, Nevada, Utah and California.

Eaton, who is president of another USLIFE of Dallas subsidiary, USLIFE Title Company of Alburquerque, directs the Region Two office of the parent firm, in Albuquerque, N.M. He is responsible for Colorado, New Mexico, and a western portion of Texas. Both experienced officers, Clifford and Eaton now work on subsidiary operations and agency department activities with the president of USLIFE of Dallas.

Donald Taylor

Louis Burkey

First American Title Insurance Co. announced the retirement of two title executives, **Donald G. Taylor,** vice president-escrow, and **Clifton H. Woodhams, Jr.,** regional vice president in San Mateo, Calif.

Taylor joined First American in 1953. His contributions to the company include a role in setting up the firm's trust department, which was the forerunner to the First American Trust Co., and establishing First American's regional office in the Los Angeles Del Amo Financial Center. He is the author of numerous books on escrow matters.

Woodhams joined San Mateo County Title Co., a First American subsidiary, in 1951. He was president of San Mateo Title during the ten years prior to its becoming a division of First American in 1975, at which time he became vice president and manager of the San Mateo County division. Woodhams also served the company as regional vice president, overseeing First American's operations in Napa, San Mateo and Solano counties.

Louis J. Burkey was elected chairman of the board of Tacoma Title Company, Inc., a division of First American Title Insurance Co. acquired in 1979. Burkey has been with Tacoma Title since 1943, serving as president and manager since 1960.

Succeeding Burkey as president and manager is **Chester L. Wainhouse,** who has been with Tacoma Title since 1956. Wainhouse was the senior vice president prior to his recent promotion.

Chester Wainhouse

Charles Foster Jr.

Charles H. Foster, Jr. was elected senior vice president and chief financial officer of Lawyers Title Insurance Corp., Richmond, Va. Before joining Lawyers Title in March, Foster was vice president of Western Employers Insurance Co., Fullerton, Calif., which is an affiliate of Continental Financial Services Co.

Bruce Eberlin and **James W. Theobald** were elected senior title attorneys for Lawyers Title. Eberlin is assigned to the company's Chicago office where he has been a title attorney since 1975. Theobald is assigned to Lawyers Title's Richmond, Va. branch office. He has been a title attorney in the company's home office since January 1978.

Also new at Lawyers Title is the election of **Pam K. Saylors** as manager of the Atlanta, Ga., National Division, **Stanley M. Rumian** as branch counsel in New Brunswick, N.J., and **Jeffrey H. Otto** as branch manager of the Wichita, Kan. office.

Saylors, who has been with Lawyers Title since 1977, was national accounts

administrator during the past year. Rumian joined Lawyers Title in 1979 as a title attorney, having had over eight years of title insurance experience. Otto has been with Lawyers Title since 1969, serving most recently as a methods analyst.

American First Title & Trust Co. (AFT&T), following their recent reorganization and divestiture from First National Bank of Oklahoma City, announced the appointment of company officers.

William A. Towler will continue to serve as president and chief executive officer, along with his duties as president of American First Corp.

Gerry Scott, former manager of AFT&T's savings division, was named executive vice president. **Kenneth E. McBride,** former vice president and general counsel, was named senior vice president and will continue as general counsel.

Also appointed to officer positions are **John W. Cox** as vice president/treasurer, **James B. Dixon** as assistant vice president and **Kaye Gillespie** as escrow officer/assistant secretary.

USLIFE Title Insurance Company of New York announced the appointment of **James R. Curtis** to the Albany/Upstate New York office where he is responsible for market development and title insurance services in the Upstate New York area. Curtis has over ten years of experience in the title insurance industry.

Also at USLIFE of New York, **Joyce Baker** was appointed computer services coordinator. With USLIFE since 1974, Baker recently helped create USLIFE's new agency computer system, which is based in the company's Mid-Atlantic regional office in Clinton, Md.

Pioneer National Title Insurance Co. (PNTI) announced the recent appointment of two managers, **Richard F. Bales** and **Carol Schmalholz.** Bales manages PNTI's Kane County, Ill., operation. He is responsible for administration and coordination of the company's title insurance and escrow activities in that county.

Schmalholz now manages PNTI's Oak Brook, Ill., operation where she is responsible for coordination of PNTI title insurance and escrow sales and service activities.

Chicago Title Insurance Co. announced 11 promotions. They include the election of **Thomas Adams** in Chicago to vice president; **Donald Benedetto** to title operations officer and branch manager of the New York City office; **Patricia Czerwinski** to assistant vice president in Southfield, Mich.; **Richard DiLaurenzio** to title operations officer and branch manager in Brooklyn, N.Y., and **Thomas Duh** to assistant vice president in Indianapolis, Ind.

William Laiblin was promoted to the position of vice president and associate general counsel in Chicago, Ill.; **Richard Mensing** to title officer in St. Paul, Minn.; **Edmund Michalak** to title operations officer in Southfield, Mich.; **William Naeher** to title officer in Arlington, Va.; **David Weaver** to assistant vice president in Fort Wayne, Ind., and **Gary Wilson** to title operations officer in Fort Myers, Fla.

Sally J. Treherne was appointed assistant vice president-administration for the American Realty Title Assurance Co. of Columbus, Ohio. With the company since 1977, Treherne is now in charge of administrative functions, including supervision of the company's title and escrow operations.

American Title Co., Houston, Texas, announced the promotion of **A.A. Davis** to vice president and **Donna H. Wilson** to director of personnel. Davis now manages the company's operations in Brazoria County. He had been an assistant vice president. Wilson joined American Title in 1979 in a personnel administration capacity.

Continental Acquires Two Former LTIC Agencies

The Continental Group, Inc., acquired two former agent companies of Lawyers Title Insurance Corp., Guaranty Title Co., Tampa, Fla., and Florida Southern Abstract & Title Co. with offices in Winter Haven, Lakeland and Lake Wales.

Lawyers Title is a division of Continental Financial Services, Co., which is a member of The Continental Group, Inc.

Guaranty Title now operates as Lawyers Title's Tampa branch office, managed by C.J. Bryan, former Guaranty Title president. Florida Southern Abstract & Title operates as Lawyers Title's Winter Haven branch, managed by Glenn Graff, former president of Florida Southern Abstract. The Lakeland and Lake Wales offices of Florida Southern Abstract are service offices of the Winter Haven branch.

Alvin R. Robin, former chairman of the boards of Guaranty Title Co. and Florida Southern Abstract & Title Co., joined Lawyers Title as a management consultant.

152 Attend ALTA Atlanta Seminar

The role of title insurance in conveyancing was the topic of a seminar attended by 152 attorneys, lenders, real estate brokers, government officials, life insurance counsels, title insurers and agents. Held recently in Atlanta, Ga., the seminar was sponsored by ALTA in cooperation with the Dixie Land Title Association. Above, Marvin C. Bowling Jr., senior vice president and general counsel of Lawyers Title Insurance Corp., speaks on the title insurance approach to current problems in real estate, lending and investing. Other speakers, left to right, are Neal M. Kamin, associate general counsel of Life Insurance Company of Georgia; Ted W. Morris Jr., assistant vice president and associate title counsel of Pioneer National Title Insurance Co., Robert T. Haines, vice president and general underwriting counsel, Chicago Title Insurance Co., and William J. McAuliffe Jr., ALTA executive vice president, who moderated the seminar. Also on the program, but not pictured, was James M. Ney, an attorney with the Atlanta, Ga., firm of Alston, Miller & Gaines.

Tennessee Titlemen Meet with Commissioner

Tennessee Insurance Commissioner John C. Neff and members of the Commissioner's Committee on Title Insurance discuss their recommendations for revising the existing laws governing title insurance at a recent meeting in Nashville. Members of the committee include, from left to right in back, Charles O. Hon, III, of Chattanooga, Charles D. Murrell of Nashville, Derry Jackson of Knoxville, Percy Wilkins of Nashville, John Brown of Cleveland and Jim Meyer of Nashville. In the front row, from left to right, are committee members J.L. Boren Jr., of Memphis who is ALTA president-elect, Commissioner Neff and F. Evans Harvil of Clarksville.

ALTA Television Spot Wins Silver

This humorous television public service minidrama produced last year as an activity of the ALTA Public Relations Program has won the Silver Award of the International Film & TV Festival of New York. Entitled "The Great Impersonator," the 60-second public service announcement tells of a woman who poses as the wife of a neighbor and signs the deed so he can sell his home without the consent of his spouse—and reminds that owner's title insurance will protect home buyers. The minidrama received more than 37 hours of free air time from stations in 36 states and reached an audience of over 76 million. If equivalent air time were purchased, the cost would be nearly $675,000.

Trans Builds New Center

Transamerica Title Insurance Co., Portland, Ore., began construction of a new service center which will house various support units for the company's 46 Oregon branch offices and the title records of the Portland tri-county area.

Scheduled for completion July 1, 1980, the center will be a 17,000 square foot, two story structure located at 124th and E. Burnside.

Henry P. Ritz, assistant vice president and Oregon state manager, predicts the center will add to productivity and facilitate the use of the computer in company operations. In addition, its location is ideal for Transamerica's growth plans in the east county Portland area.

ALTA Counsel Moves Offices

Jackson, Campbell & Parkinson, Washington, D.C., the law firm of ALTA General Counsel Thomas S. Jackson, announced its formation as a professional corporation effective April 1.

The new address of the principal office is One Lafayette Centre, Suite 300 South, 1120 20th Street, N.W., Washington, D.C. 20036. The new telephone number is (202) 457-1600.

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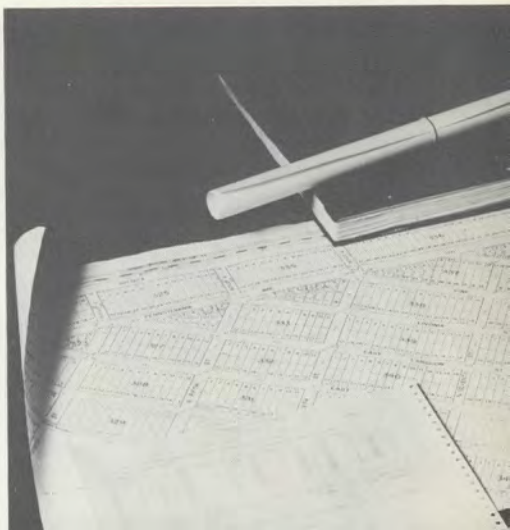

Calendar of Meetings

May 1-3
Oklahoma Land Title Association
Hilton Inn, West
Oklahoma City, Oklahoma

May 1-4
New Mexico Land Title Association
Inn of Mountain Gods
Mescalero, New Mexico

May 8-10
California Land Title Association
Silverado Country Club
Napa Valley
Napa, California

May 8-10
Texas Land Title Association
Hyatt Regency at Reunion
Dallas, Texas

May 23-25
Tennessee Land Title Association
Fairfield Glade
Knoxville, Tennessee

June 1-3
Pennsylvania Land Title Association
Buck Hill Inn
Buck Hill Falls, Pennsylvania

June 8-10
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 13-14
South Dakota Land Title Association
Holiday Inn of the Northern Hills
Spearfish, South Dakota

June 19-21
Land Title Association of Colorado
Wildwood Inn
Snowmass Village, Colorado

June 19-21
New England Land Title Association
Wentworth-By-The-Sea
Portsmouth, New Hampshire

June 26-28
Michigan Land Title Association
Sugar Loaf Mountain Resort
Cedar, Michigan

June 26-28
Oregon Land Title Association
Sun River Lodge
Bend, Oregon

June 27-29
Illinois Land Title Association
Marriott Pavilion Hotel
St. Louis, Missouri

July 10-13
Idaho Land Title Association
Elkhorn at Sun Valley
Sun Valley, Idaho

July 11-12
Utah Land Title Association
Holiday Inn Park City
Park City, Utah

July 17-19
Wyoming Land Title Association
Laramie, Wyoming

July 31-August 6
American Bar Association
Honolulu, Hawaii

August 7-9
Montana Land Title Association
Edgewater Inn
Missoula, Montana

August 14-16
Minnesota Land Title Association
Sunwood Inn
St. Cloud, Minnesota

August 15-16
Kansas Land Title Association
Ramada Inn
Topeka, Kansas

September 6-9
Indiana Land Title Association
Sheraton West Hotel
Indianapolis, Indiana

September 7-9
Ohio Land Title Association
King's Island Inn
Cincinnati, Ohio

September 7-10
New York State Land Title Association
Kutsher's Country Club
Monticello, New York

September 11-13
North Dakota Land Title Association
Holiday Inn
Fargo, North Dakota

September 17-19
Nebraska Land Title Association
Holiday Inn-Old Mill
Omaha, Nebraska

September 17-19
Washington Land Title Association
The Alderbrook Inn
Union, Washington

September 25-26
Wisconsin Land Title Association
Playboy Club
Lake Geneva, Wisconsin

September 26-28
Missouri Land Title Association
Almeda Plaza Hotel
Kansas City, Missouri

October 14-17
American Land Title Association
Honolulu, Hawaii

October 24-26
Palmetto Land Title Association
Myrtle Beach Hilton
Myrtle Beach, South Carolina

October 26-29
Mortgage Bankers Association
San Francisco, California

October 30-31
Land Title Association of Arizona
Westward Look Resort
Tuscon, Arizona

November 5-8
Florida Land Title Association
Don Cesar Hotel
St. Petersburg Beach, Florida

November 7-13
National Association of Realtors
Anaheim, California

November 16-21
U.S. League of Savings Associations
San Francisco, California

December 3
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

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