

Land Surveying Legal Principles

Conveyances -- generally, every interest in writing by which an estate or interest in realty is created.

Simultaneous Conveyance

- Multiple parcels created by one instrument at the same time, by the same person(s).
- All parcels have equal standing and no parcel has senior rights over another parcel.
- Subdivision plats are simultaneous conveyances although no interest in property is transferred.

Sequential Conveyance

- Parcels created by different instruments at different times.
- Senior/Junior rights apply.

Real property can be conveyed by:

- Deed
- Will
- Court Action

Definitions

Indenture deed: A deed executed in parts between two (2) or more parties and signed by all parties.

Deed Poll: A deed made by one party only.

Race notice: The first party to record a deed transferring property gets title to the property as opposed to an earlier but unrecorded conveyance.

Dedication: Setting aside land for a particular public use (roads, parks, etc.).

- Latent Ambiguity:** The language of a written document is clear and intelligible, suggesting only one meaning, but some extrinsic fact or external evidence creates a necessity for either interpretation or a choice between two (2) or more possible meanings.
- Patent Ambiguity:** Inconsistency in the language of a written document which is capable of more than one meaning, obscure, defective or insensible.
- Extrinsic Evidence:** Evidence which is not furnished by the document itself but is derived from external sources (such as parol evidence).
- Intrinsic Evidence:** Evidence appearing within a written document.
- Color of Title:** The appearance of a legally enforceable right of possession or ownership. A written instrument that purports to transfer ownership of property but, due to some defect, does not have that effect. A document purporting to pass title to land, such as a deed that is defective due to a lack of title in the grantor, passes only color of title to the grantee.
- Eminent Domain:** The right of a government to appropriate private property for public use, usually with compensation to the owner.
- Adverse Possession:** A method of gaining legal title to real property by the actual, open and notorious, hostile, and continuous possession of it to the exclusion of its true owner for the period prescribed by state law.
- Elements of adverse possession:**
- Open and notorious
 - Actual
 - Exclusive
 - Hostile
 - Continuous for the statute period
- Ejectment:** Court action to restore possession of property to its entitled owner. Owner must establish his or her rights of possession AND show the defendant in wrongful possession.
- Doctrine of Laches:** Equity aids the vigilant. Loss of advantage for neglecting to act for an unreasonable period of time to do what should have been done under the law to assert rights. Warrants the presumption that one has abandoned right or claim.

Estoppel by Laches:	Loss of advantage for neglecting to do what should or could, have been done to assert a claim or right for an unreasonable and unjustified time causing disadvantage to another.
Tacking:	Permits an adverse possessor to add the period of time of a prior adverse possessor to his/her own period to establish continuous possession for the statute period.
Escheat:	Ownerless property can revert to the state for lack of a competent heir.
Sovereign Immunity:	Suit cannot be brought against the state without its consent. (The King can do no wrong. It's good to be the King!)
Parol Evidence:	Spoken evidence, word of mouth.
Tort:	A breach of duty for which the remedy is an action for damages.
Fraud:	An intentional act of deceit or misrepresentation resulting in damage to another.
Trespass:	Unauthorized entry of private premises or land of another.
Negligent Misrepresentation:	Misrepresenting a fact in a negligent manner.
Declaratory Judgment:	States the status and rights of the parties involved in an action but does not take action.
Stare Decisis:	To abide by or adhere to established legal precedent.
Lis Pendens:	A pending legal action.
5 Disabilities:	Coverture (marriage) – no longer applicable Minor child Beyond the seas Imprisonment Insanity – no longer applicable
Privity of Contract:	Only the parties to a contract are bound by the rights and obligations.
Expert Witness:	A person with special training or experience in a particular field. That special training or experience entitles that person to testify and render opinions on the facts of a case. Expert witnesses are entitled to compensation.

- Joint Tenants:** A tenancy created by a single conveyance to two or more persons in which each tenant owns an undivided interest in the whole. The primary feature is survivorship, by which upon the decease of any joint tenant remains to the survivors, ultimately to the last survivor.
- Tenants in Common:** A tenancy by two or more persons whereby each tenant holds an undivided interest in the property which does not terminate upon his/her prior death. There is no right of survivorship; the interests of the deceased pass to his/her estate or heirs.
- Tenants by the Entirety:** A joint tenancy between husband and wife whereby they hold title together to the whole, with the right of survivorship. At the death of one spouse, the remaining spouse inherits the whole.
- Testate:** Dying with a will.
- Intestate:** Dying without a will.
- Testator:** A person who makes a will.
- Statute of Limitations:** The statute law which bars the right of action unless an action is filed within a specified period of time after the occurrence of an event which caused an injury.
- Statute of Repose:** The statute law which terminates any right of action after a time limit measured from delivery of product or completion of work on certain legal claims, whether or not any injury has occurred. .
- Metes:** Courses and distances, (measurements.)
- Bounds:** Adjoining properties, specific monuments, and landmarks.

Maryland Court System

- District Court: Hears traffic claims, small suits.
 Circuit Court: Hears real estate cases, juries sit.
 Court of Special Appeals:
 Court of Appeals: Maryland's highest court.

Deeds

Definitions

Deed - an instrument in writing which conveys an interest in land from one person to another.

From the Annotated Code of Maryland

"Deed" includes any deed, grant, mortgage, deed of trust, lease, assignment, and release, pertaining to land or property or any interest therein or appurtenant thereto, including an interest in rents and profits from rents.

Quitclaim Deed - conveys only such rights as the grantor may have.

Warranty Deed - conveys specific rights which together comprise good title.

Special Warranty – is only against the grantor, and the grantor only agrees to warrant and defend title against himself, his heirs and assigns

General Warranty - is against all persons

Parts of a deed:

- Premises – names of the parties to the instrument, date, consideration, receipt of consideration, the grant and a description of the estate or interest granted.
- Conditions upon which the grant is made
- Description of the tenure of the estate to be held (to have and to hold)
- Description of the estate of interest granted (habendum clause – to have and to hold)
- Covenants - oblige the parties, or one of them, to do something beneficial to, or to abstain from something, which if done, might be prejudicial to the other.
- Reservations (redendum)
- Warranty
- Conclusion, which mentions the execution and the date, either expressly, or by reference to the beginning.

Requirements for a valid deed:

- It must be in writing
- The parties to the instrument (grantor and grantee) must be named
- The estate or interest being conveyed must be described.
- Consideration paid.
- An agreement properly set forth.
- It must be signed and sealed.
- It must be delivered.
- It must be attested by witnesses.
- It should be properly acknowledged (notarized).

Descriptions

In conveyances property must be described “with reasonable certainty”.

A proper description should describe one unique and distinct parcel.

Types of descriptions:

- Metes and bounds
- Subdivision lot and block
- Adjacent lands
- Tract name
- Street address
- U.S. Public Lands System

Order of preference governing inconsistencies in the description of land:

1. natural monuments or landmarks;
2. artificial monuments and established lines, marked or surveyed;
3. adjacent boundaries or lines of adjoining tracts;
4. calls for courses and distances;
5. designation of quantity (area.)

Lot Proration - proportioning

A method of reestablishing lot corners in a subdivision by applying prorated dimensions between found property monumentation.

- Only appropriate for simultaneously created lots or parcels
- Use the same principles to reestablish lot corners on curves
- Cannot be used to set perimeter subdivision corners
- Use a single proportionate measure between two found monuments within a subdivision
- If an end lot has no record distance place the excess or deficiency on that lot

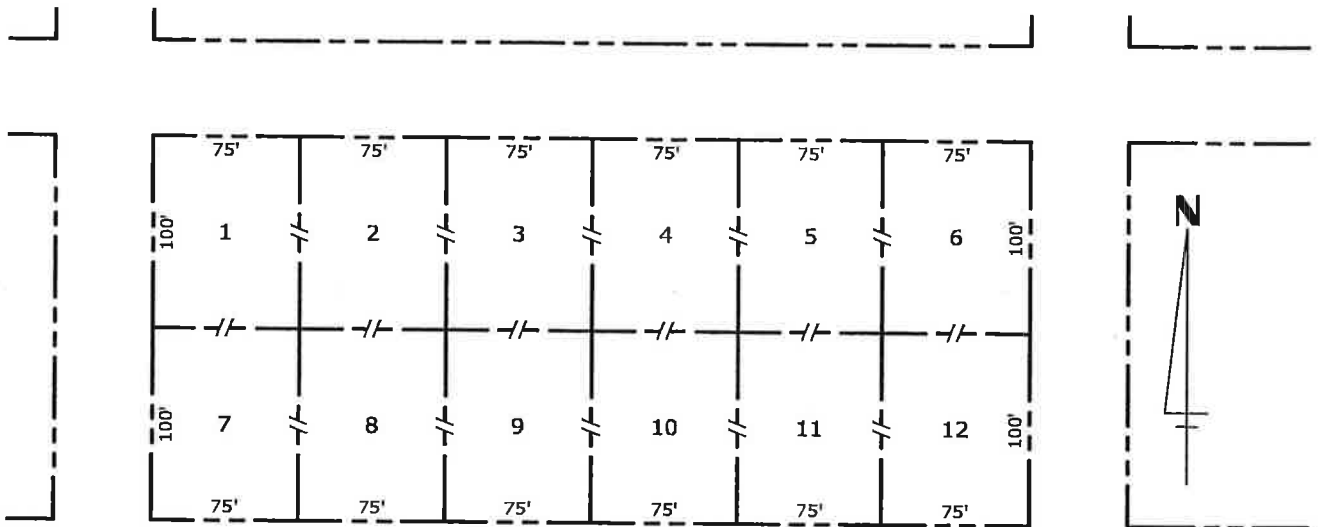
1. You have been asked to set the property corners of the easterly line of Lot 10 as shown on the Subdivision Plat below. After examining your field notes you determine that:

The length of the southerly line of Lot 10 is:

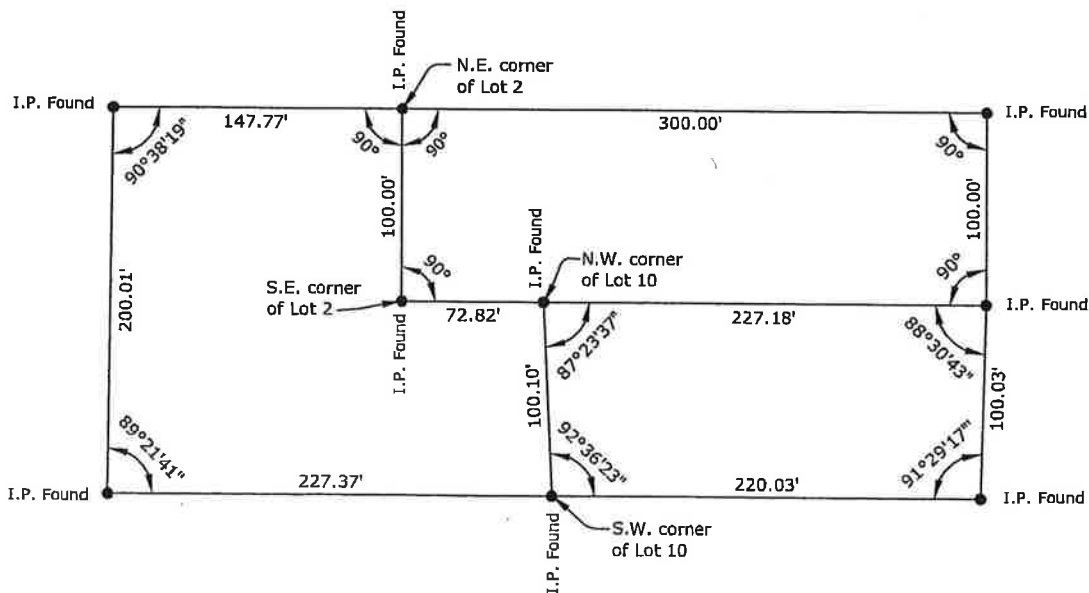
- (A) 70.03 feet
- (B) 73.34 feet
- (C) 74.57 feet
- (D) 75.00 feet; and

The length of the northerly line of Lot 10 is:

- (A) 75.00 feet
- (B) 75.73 feet
- (C) 77.18 feet
- (D) 77.89 feet.



Subdivision Plat



Field Survey Notes

Proportioning.dwg

Water Boundaries – Riparian Rights

DEFINITIONS

- Accretion:** The process by which new land is accumulated by gradual and imperceptible natural causes.
- Alluvion:** The gradual addition to land to land along a river, lake, etc. as through the deposit of sedimentary material (alluvium).
- Avulsion:** The sudden and perceptible tearing away or separation of land by violent action of water.
Note: Determining whether change in course is by accretion or avulsion is not a test whether witnesses might see from time to time that progress has been made but whether witnesses could perceive change while it was going on.
- Common law:** The law of a country or state based on custom, usage and the decisions and opinions of law courts: distinguished from Statute law: it is now largely codified by legislative definition.
- Dereliction:** The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of alluvion. Also land left dry by running water retiring imperceptibly from one of its shores and encroaching on the other. (Reliction)
- Diurnal:** Daily; Actions that are completed within 24 hours and recur every 24 hours.
- Erosion:** The wearing away gradually of soil by water, currents or tides.
- Foreshore:** The strip of land between the ordinary high and low water marks that is alternately covered and uncovered by the flow of the tide. Often used synonymously with "wet sand beach."
- Freshwaters:** Waters that do not ebb and flow with the tide. The determinative factor is that the water body does not ebb and flow with the tide, not whether or not the water contains salt.
- Harbor Line:** The line marking the boundary of a certain part of a public water which is reserved for a harbor. The line beyond which wharves and other structures cannot be extended.
- Jus privatum:** The proprietary rights in the use and possession of land beneath tidal waters and navigable freshwaters.

- Jus publicum:** The collective rights of the public to fully use and enjoy trust lands and waters for commerce, navigation, fishing, bathing, and other related public purposes. A state cannot convey the jus publicum interest into private ownership, nor can it abdicate its trust responsibilities. If the state owns the property the *jus privatum* interest is held by the state in tandem with the *jus publicum* interest, but may be conveyed in the form of title ownership or lessor freehold to a private individual or entity.
- Littoral:** Associated with or appurtenant to shorelands of tidal waters. Although the term "littoral" differs from the term "riparian," these two terms are often incorrectly used synonymously.
- Mean high water:** The average height of all the high waters occurring over a period of 19 (18.6) years (a tidal epoch)
- Mean low water:** The average height of all the low waters occurring over a period of 19 (18.6) years (a tidal epoch)
- Navigable Waters:** Rivers are navigable in fact when they are used or susceptible of being used in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel over water.
- Navigable-in-law:** Generally: all waters that are subject to the ebb and flow of the tide up and to the mean high water level, without regard to navigability.
- Ordinary high water line or High water mark:** The boundary of nontidal waters: from Federal Case Law: . . . This line is to be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual and so long continued in all ordinary years, as to mark upon the soil of the bed a character distinct from that of the banks, in respect to vegetation, as well as in respect to the nature of the soil itself.
- Reliction:** An increase of land by the gradual and imperceptible withdrawal of water from land that it covers by the lowering of its surface level from any cause. If the retreat of the waters is permanent—i.e., not merely seasonal—the owner of the contiguous property acquires ownership of the dry lands thus created.
- Riparian:** Associated with or appurtenant to shorelands of non-tidal waters. Although the term "riparian" differs from term "littoral," these two terms are often incorrectly used synonymously.

- Riparian rights:** The rights of an owner of land contiguous to a navigable body of water, including principally the right of access to the water, the right to accretion and reliction, and the right to other improvements.
- Tidal datum:** A plane of reference for elevations that is based upon average tidal height.
- Tidal epoch:** Measurement of tidal extremes over 19 years (18.6 years rounded to the nearest whole year to include a multiple of the annual cycle associated with the declination of the sun)

ENVIRONMENT - Title 16**§ 16-101. Definitions.****(j) *Private wetlands.***-

(1) "Private wetlands" means any land not considered "State wetland" bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth.

(2) "Private wetlands" includes wetlands, transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred

(n) *State wetlands.*- "State wetlands" means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Wetlands of this category which have been transferred by the State by valid grant, lease, patent or grant confirmed by Article 5 of the Maryland Declaration of Rights shall be considered "private wetland" to the extent of the interest transferred

Article 5. Common law and statutes of England applicable; trial by jury; property derived under charter granted to Lord Baltimore.

(a) (1) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.

(2) Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds \$10,000.

(b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.

(c) That notwithstanding the Common Law of England, nothing in this Constitution prohibits trial by jury of less than 12 jurors in any civil proceeding in which the right to a jury trial is preserved.

§16-201.

(a) A person who is the owner of land bounding on navigable water is entitled to any natural accretion to the person's land, to reclaim fast land lost by erosion or avulsion during the person's ownership of the land to the extent of provable existing boundaries. The person may make improvements into the water in front of the land to preserve that person's access to the navigable water or, subject to subsection (c), protect the shore of that person against erosion. After an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. A right covered in this subtitle does not preclude the owner from developing any other use approved by the Board. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972, and the burden of proof that the loss occurred after this date is on the owner of the land.

(b) The rights of any person, as defined in this subtitle, which existed prior to July 1, 1973 in relation to natural accretion of land are deemed to have continued to be in existence subsequent to July 1, 1973 to July 1, 1978.

(c) (1) Improvements to protect a person's property against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation, except:

(i) In areas designated by Department mapping as appropriate for structural shoreline stabilization measures; and

(ii) In areas where the person can demonstrate to the Department's satisfaction that such measures are not feasible, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures.

(2) (i) Subject to subparagraph (ii) of this paragraph, in consultation with the Department of Natural Resources, the Department shall adopt regulations to implement the provisions of this subsection.

(ii) Regulations adopted by the Department under subparagraph (i) of this paragraph shall include a waiver process that exempts a person from the requirements of paragraph (1) of this subsection on a demonstration to the Department's satisfaction that nonstructural shoreline stabilization measures are not feasible for the person's property.

§16-304.

Notwithstanding any regulation adopted by the Secretary to protect private wetlands, the following uses are lawful on private wetlands:

- (1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;
- (2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted;
- (3) Exercise of riparian rights to improve land bounding on navigable water, to preserve access to the navigable water, or to protect the shore against erosion;
- (4) Reclamation of fast land owned by a natural person and lost during the person's ownership of the land by erosion or avulsion to the extent of provable preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the land; and
- (5) Routine maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment.

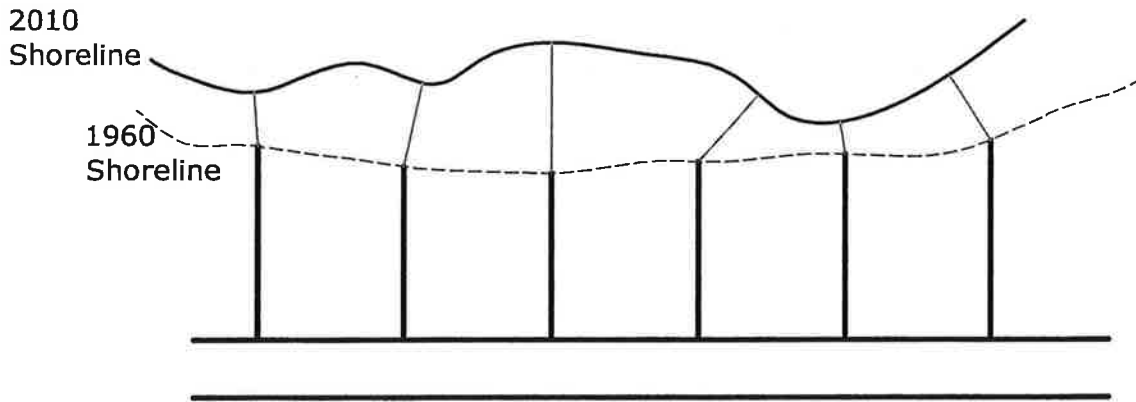
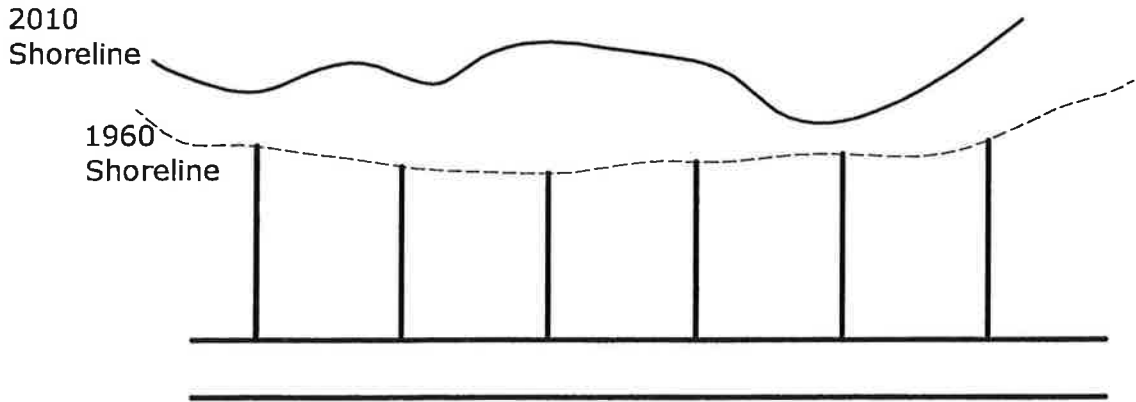
Apportionment of accreted lands

Water frontage controls apportionment of riparian rights

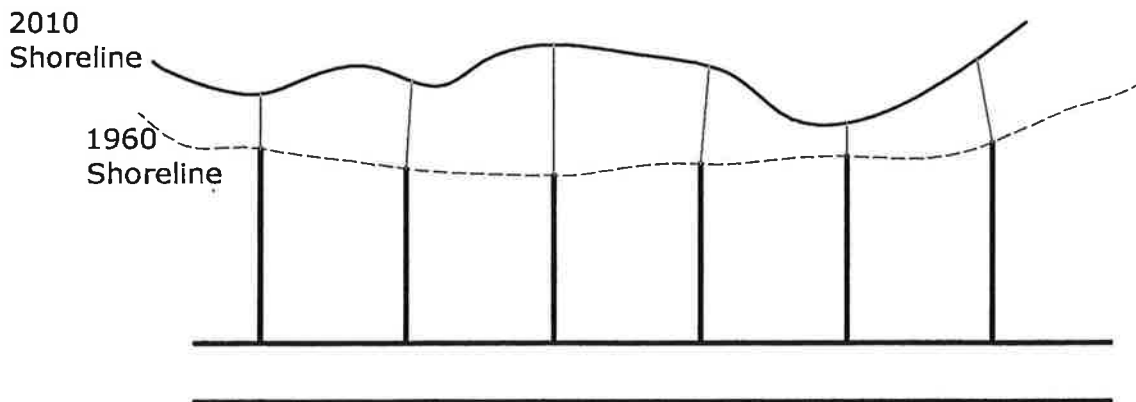
An entire tract may be lost by long term erosion and subsequent accretion.

- The point of departure for apportioning is the intersection of the old shoreline with the lateral boundaries of the parcel.
- For narrow bodies of water project a line from the point of departure to the thread.
- For lakes project a line from the point of departure to the center point of the lake.
- For large bodies of water:
 - Project a line from the point of departure to a point perpendicular to the shoreline, or
 - For very irregular shorelines establish the new water frontage by proportioning.

Riparian Rights - Apportionment



LOT LINES EXTENDED PERPENDICULAR TO NEW SHORELINE



NEW WATER FRONTAGE ESTABLISHED PROPORTIONAL TO FRONTAGE IN 1960

Easements

- Easement:** An easement is a non-possessory interest to use real property in possession of another person for a stated purpose. Such use must not be inconsistent with any other uses already being made of the land.
- Right of Way:** An easement for passage or access upon or across the lands of another, except when used to describe the strip of land upon which a railroad is constructed, whereupon it describes the land itself, not the right of passage.
- Covenant:** An agreement or promise to do or not to do a particular thing; to enter into a formal agreement; to bind oneself in contract; to make a stipulation; a promise incidental to a deed or contract, which is either express or implied; "an agreement, convention or promise of two or more parties, by deed in writing signed, and delivered, by whichever of the parties pledges himself to the order that something is either done or shall be done or stipulates for the truth of certain facts".

Terms associated with the parties to an easement:

- Dominant tenement or dominant estate: the benefited land.
- Servient tenement or servient estate: the burdened land.

Easement appurtenant: An easement attached to and benefiting a dominant estate and burdening a servient estate Easements appurtenant run with the land and are therefore passed when the property is transferred.

Easement in Gross: A purely personal privilege to make use of another's land. It is not appurtenant to a dominant estate and is therefore not assignable or inheritable but "dies" with the person who acquired it.

TYPES OF EASEMENTS:

Affirmative Easement: An easement that allows the grantee to do affirmative acts on the servient property, such as to use the servient property as a right of way.

- Easement by Estoppel:** An easement that is created when the conduct of the owner of land leads another to reasonably believe that he or she has an interest in the land so that he or she acts or does not act in reliance on that belief. The elements of an easement by estoppel are inducement, reliance, use and damage.
- Easement of Necessity:** One in which the easement is indispensable to the enjoyment of the dominant estate, such as an easement necessary for the continued use of the land when a larger tract of land has been subdivided. The existence of such an easement is determined by assessing the facts surrounding the original conveyance severing the dominant estate from the servient estate. If without the easement either the grantee or grantor cannot make use of his property, then the existence of an "easement by necessity" is implied by operation of law.
- Implied Easement:** An easement that is not expressly created but rather is implied at the time real property is transferred from the prior continuous and apparent use of the subservient property and the necessity of the easement to the enjoyment of the dominant property.
- Prescriptive Easement:** An easement acquired through the uninterrupted use of another's land for the same statutory period of time necessary to satisfy adverse possession requirements. The use must be adverse to the rights of the owner, open and notorious, continuous and uninterrupted, and with the knowledge and acquiescence of the owner. There can be no prescriptive rights acquired where the use is with the permission of the record owner or his agent. The easement only permits a certain use, and has no effect on the underlying title.
- Equitable Easement:** An equitable servitude, and therefore only enforceable in equity. To be enforceable at law, there must be privity between the grantor and grantee. As an equitable servitude, however, privity is not necessary to enforce the easement so long as the subsequent grantee has either actual or constructive notice of the easement. Violation of this easement is remedied by an injunction rather than money damages. Examples: buildings to be used for certain purposes, building restriction lines, special privileges for certain uses, etc.

Negative Easement: An easement which restricts the owner of land from doing certain acts on or in connection with the owners land. A negative easement is one the effect of which is not to authorize the doing of an act by the person entitled to the easement, but merely to preclude the owner of the land from doing that which, if no easement existed, he would be entitled to do. Restrictive covenants are sometimes viewed to have the same legal consequences as negative easements, although technically a covenant is merely a personal undertaking while an easement is a claim on lands.

Augmenting Easement: An easement granted in augmenting clause in a deed.

Recognition and Acquiescence

An act by adjoining property owners regarding the location of common boundaries in the case where the boundaries are unknown and there is implied unspoken consent of one owner permitting use of property by the adjoining owner.

Termination of Easements

- Unity of title - merger
- Written abandonment.
- Oral abandonment with actions
- Estoppel
- Alteration by dominant tenement
- Exceeding the scope
- Destruction
- Necessity
- Prescription
- Change in conditions. cessation of the purpose for which the easement was created
- Express Terms – based on a future occurrence