

**New Jersey
N2K Hour:**

**Water Rights in
New Jersey**

Webex Presentation,
October 13, 2020
11:00am EST

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What is a tideland claim?

- NJ defines a “tideland” as: all lands that are currently and formerly flowed by the mean high tide of a natural waterway.
- Two major legal cases in NJ established the state’s sovereign right and fee title to all tidelands:
 - O’Neill v. State Highway Dept., 50 N.J. 307 (1967)
 - City of Newark v. Natural Resource Council, 82 N.J. 530 (1980)
- Tidelands are managed by the Tideland Resource Council.

O'Neill v. State Highway Dept.

- Case Summary:
 - State is not estopped to assert its riparian claims.
 - Doesn't matter that landowner has paid real estate taxes on the claimed land.
 - Adverse possession does not run against the State.
 - Money received from sale of riparian lands are to be used for the support of schools.

City of Newark v. Natural Resource Council

- N.J.S.A 13:1B-13.1 (enacted in 1969), the legislature directs the Tidelands Resource Council to map all claimed land.
- This Supreme Court case affirmed the mapping method set forth in the statute.

Common Tideland Terms

- **Grant:** Deed from the State of New Jersey for the sale of its formerly flowed tidelands.
- **Statement of No Interest (SNI):** Official document issued by the State of New Jersey attesting to the fact that a particular property or area is free from all state tidelands claims. SNIs are only issued when an applicant can prove beyond all doubt that the State of New Jersey has no tidelands claim to that particular parcel.

Common Tideland Terms

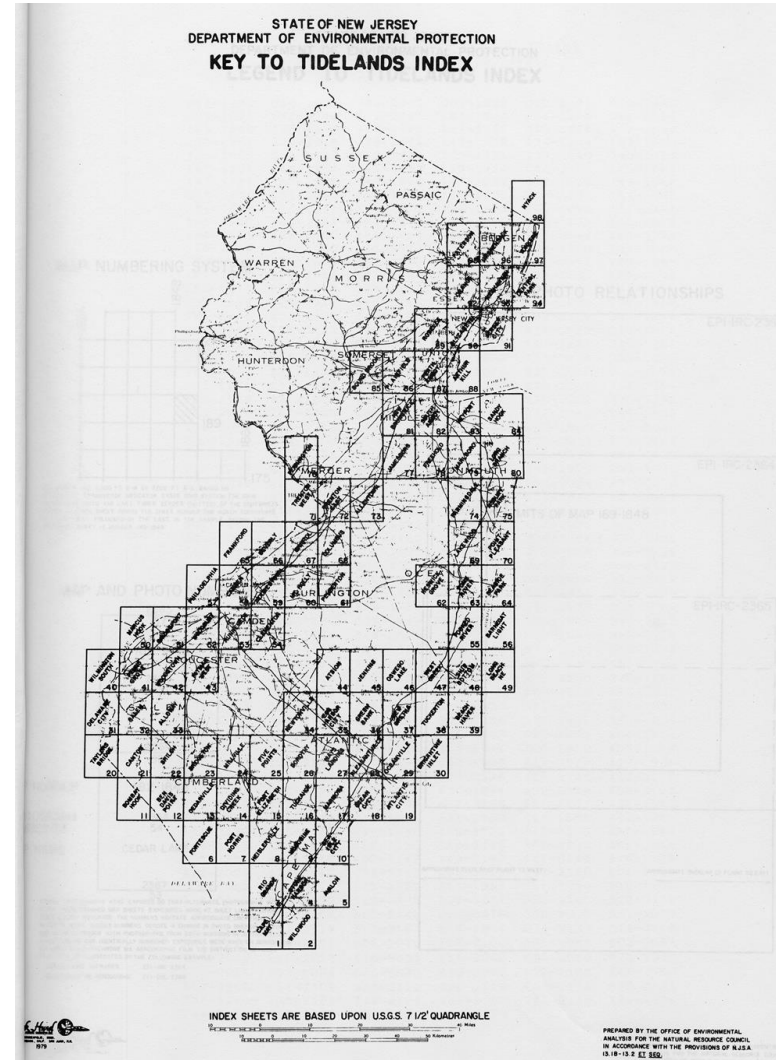
- **License:** Short term rental agreement from State for use of its currently flowed tidelands.
- Used for:
 - Fixed structures, Bulkhead extensions that exceed or will exceed the mean high water line, Marina slips, Yacht and Boat Club structures, Dredging within state-owned tidal water, Utilities or Utility-related structures, Bridge construction/maintenance over state-owned tidelands

Common Tideland Terms

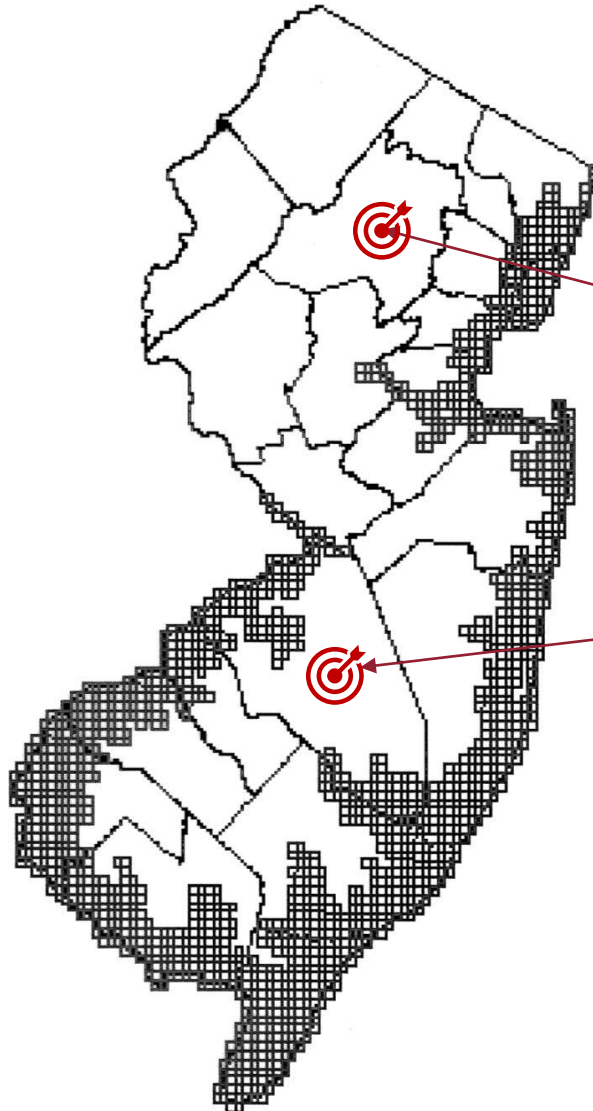
- **Lease:** a long-term rental agreement from the State of New Jersey for the use of currently flowed tidelands.
 - Leases are only issued for projects that involve long term financing issues such as homes that have been constructed over water or large-scale development projects. Smaller construction projects over currently flowed tidelands require a License rather than a Lease.
 - Leases must be obtained for all proposed construction as well as any past construction regardless of whether or not the current property owner is responsible for that construction. The state does not grandfather homes over water with respect to Tidelands conveyances.

New Jersey Tideland Claims

- Every County except **Morris, Sussex, Warren and Hunterdon** has Tideland Claims.
- Tideland Claims are not limited to “shore areas” or ocean front property.
- Tideland Searches are pass through charges.



NEW JERSEY TIDELANDS KEY MAP



**No Need To
Order if your
Property is
Located Here**

HEREBY ISSUED TO:

TIDELAND SEARCH CERTIFICATE

ATTN:

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

APPLICABLE TIDELANDS MAP

TIDELANDS MAP NUMBER: 392-2154

TIDELANDS MAP DATE: 27-MAY-1982

DESIGNATED PROPERTY

COUNTY: OCEAN

STATE: NEW JERSEY

MUNICIPALITY: TOWNSHIP OF BERKELEY

BLOCK: 1217

LOT: 10,11,12

STREET NUMBER & NAME: 60 GOOD LUCK DR

SEARCH RESULTS

FINDINGS: CLAIMED

TYPE OF CLAIM: SHORELINE

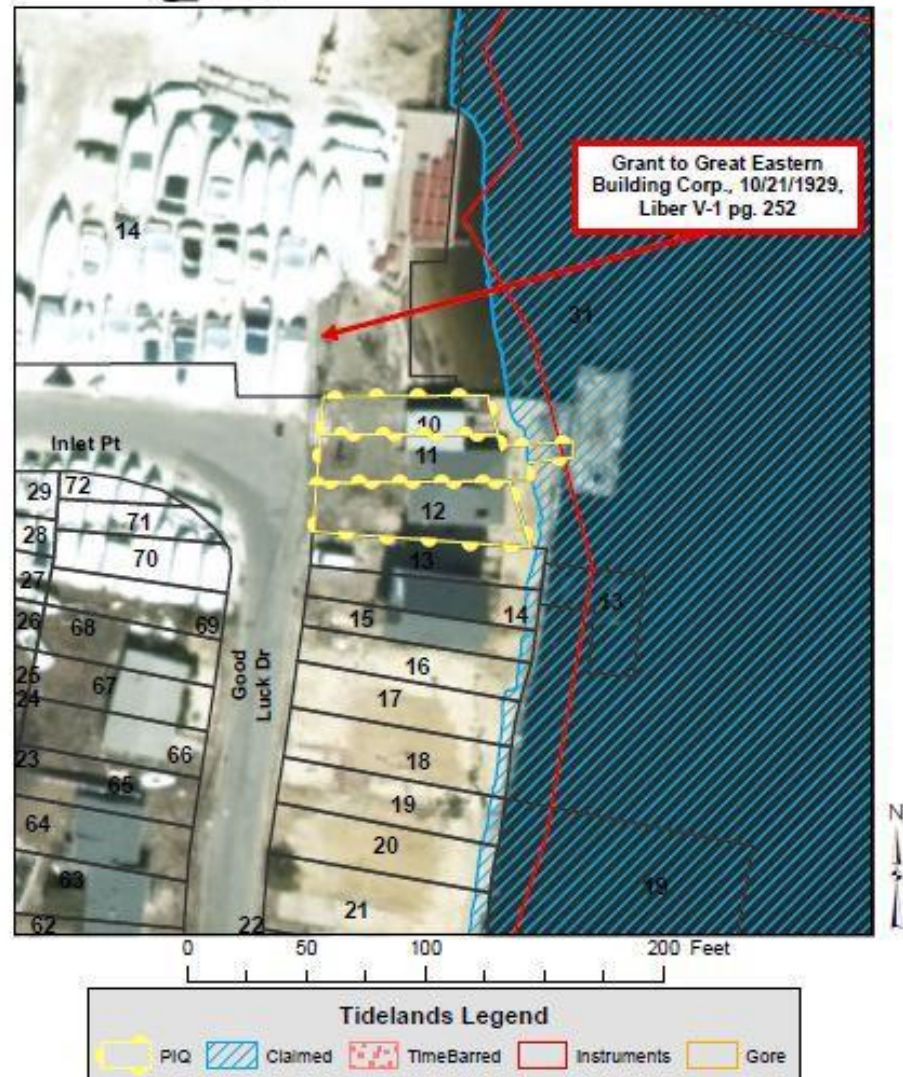
APPROXIMATE SIZE OF CLAIM: 3%

DATED: 16-MAY-2018

FEE: \$30.00

TAX: \$0.00

TOTAL: \$30.00



There is a tideland grant!

- If the Tideland Search shows the property is claimed, you must confirm the existence of any riparian grants.
- If Grant Search shows that there is a Grant, you must obtain a copy of the Grant, and determine that the Grant covers the property.
- After the grant is reviewed for coverage, you need to make sure that the grantee was the upland owner at the time the grant was obtained.
 - If not, the grant is ineffective!

There is a tideland grant!

- If the Grant covers the entire area claimed by the State, show the Grant as an exception on Schedule B as follows:
 - *Terms, conditions and limitations as contained in Riparian Grant from the State of New Jersey recorded * in Deed Book *, Page *.*
- The following affirmative statement may be given for a grant exception for a lender:
 - *“Policy will insure that the grantee was the upland owner at the time the grant was made.”*
 - Provided, a search of the public record confirms that the grantee was, in fact, the upland owner at the time of the grant was made.

Don't Assume when it comes to Tidelands

- As to “Shoreline” Grants, you may not assume they cover interior streams and they may not be relied upon for that purpose without written approval of the company.
- You may not assume a Grant covers lands later claimed by the state due to erosion.
- You may not assume a Grant covers all lands later claimed by the state where the grant pre-dates the claim map and the high water line on the Grant does not match the claim line.

Rights of New Jersey Exception

- If the search shows a claim and there is no Grant, an exception must be raised to the rights of the State of New Jersey:
 - *Title, rights, or claims of the State of New Jersey to any part of the insured premises which is or may be alleged by the State of New Jersey to be, or is hereafter determined to be, salt marsh, tidelands or meadowland of land now or formerly flowed by the mean high tide of the ocean or any bays, rivers, streams, creeks, or their tributaries*

Waterfront Properties

- As to all property, which borders on tidal flowed water, the below exception should be taken, unless written permission is given by the company to remove the exception:
 - *Title is not insured as to any portion of the premises lying below the present or former high-water mark of “ * ” (Name of body of water)*

Condominiums and Tideland Claims

- What about condominiums and Tidelands claims?
 - If a portion of the condominium property is claimed by the state and there isn't a grant, contact your underwriter.
 - Depending on the situation, we may be able to provide affirmative coverage if we can determine that the grant only affects the common elements of the condominium and not the actual unit being sold

- If there is a Tidelands Claim, you must contact your underwriter. Possible solutions include:
 - Leave the exception in the Policy
 - Delay closing until Grant is obtained (Typically, at least a year)
 - Indemnity and undertaking based upon a prior owner policy
 - Escrow of funds, together with an indemnity by sellers, with an application for a Grant, License, Lease, or Statement of No Interest

How do you determine the escrow?

$$f(x) = a_0 + \sum_{n=1}^{\infty} \left(a_n \cos \frac{n\pi x}{L} + b_n \sin \frac{n\pi x}{L} \right)$$

(Just Kidding)

- Use the tax assessment to determine land value vs improvement value
- Land value percentage multiplied by sales price (FMV)
- Multiply that amount by the percentage claimed
- Then multiply by 2.5!

Escrow Example

- Tax assessment shows that the land value is 90%, improvement value 10%
- Purchase price is \$1,000,000
- Claimed area = 10%
- Land value 90% times \$1 million = \$900,000 x claimed area of 10% = 90,000 x 2.5 = \$225,000

Notices of Action

- The Tidelands Resource Council can record a “Notice of Action” in the land records.
- These Notices of Action effectively put the world on notice of the Council’s interest in the land described.
- However, there is no statutory authority for the Notices or the “lien” created by them.
- If you come across a Notice of Action in your search, contact your underwriter!

Other Riparian Issues

- Rights of the Federal Government
- Environmental Issues
- Beach Access/Private Rights
- Lake Associations

Exceptions for rights of the Federal Government

- If property abuts/is near a navigable waterway:
 - *Paramount rights of the United States Government to regulate and control navigation and in that connection to establish and change bulkhead and pierhead lines.*
 - *Rights of the Federal Government to take without compensation any lands now or formerly flowed by tidal water for the purpose of commerce and navigation.*

Environmental Issues

- Generally speaking, both ALTA Owner and Lender policies exclude environmental regulations and land use from coverage (Exclusion #1).
- New Jersey has a number of wetlands related acts.
- No affirmative coverage may be given for these items
- Violations of these acts can result in liens against the property – contact your underwriter!

Exceptions for Beach Access/Private Rights

- *Subject to the rights of the public in and to beach (dry sand area) abutting the Atlantic Ocean, its bays and tributaries for the purpose of access to the water and recreation.*
- *Rights, public and private, together with flooding and drainage rights, if any, in and to all rivers, streams, lakes, or water courses, crossing, bounding, or affecting the Land.*

Lake Associations

- There is a relatively new trend in NJ where lake associations are filing lawsuits to enforce back dues on properties, whether or not they actually use the lake or association property.
- Trend has legal precedent: *Highland Lakes v. Franzino*, 186 N.J.99 (2006)
- If your transaction involves a property near a lake (or you know has lake access), confirm there is no pending litigation or back dues owed on the property.

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Keyword Search

Example : Absentee

Find it

☒ All of these words ☐ This exact phrase ☐ Any of these words

Select a Location

Select a state ▼

Virtual Underwriter

NJUWing@Stewart.com



THANK YOU FOR JOINING US

Please mark your calendars for our:

November N2K HOUR

Tuesday

November 10th

11:00AM