

# Waterfront Titles in Washington State

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# OVERVIEW



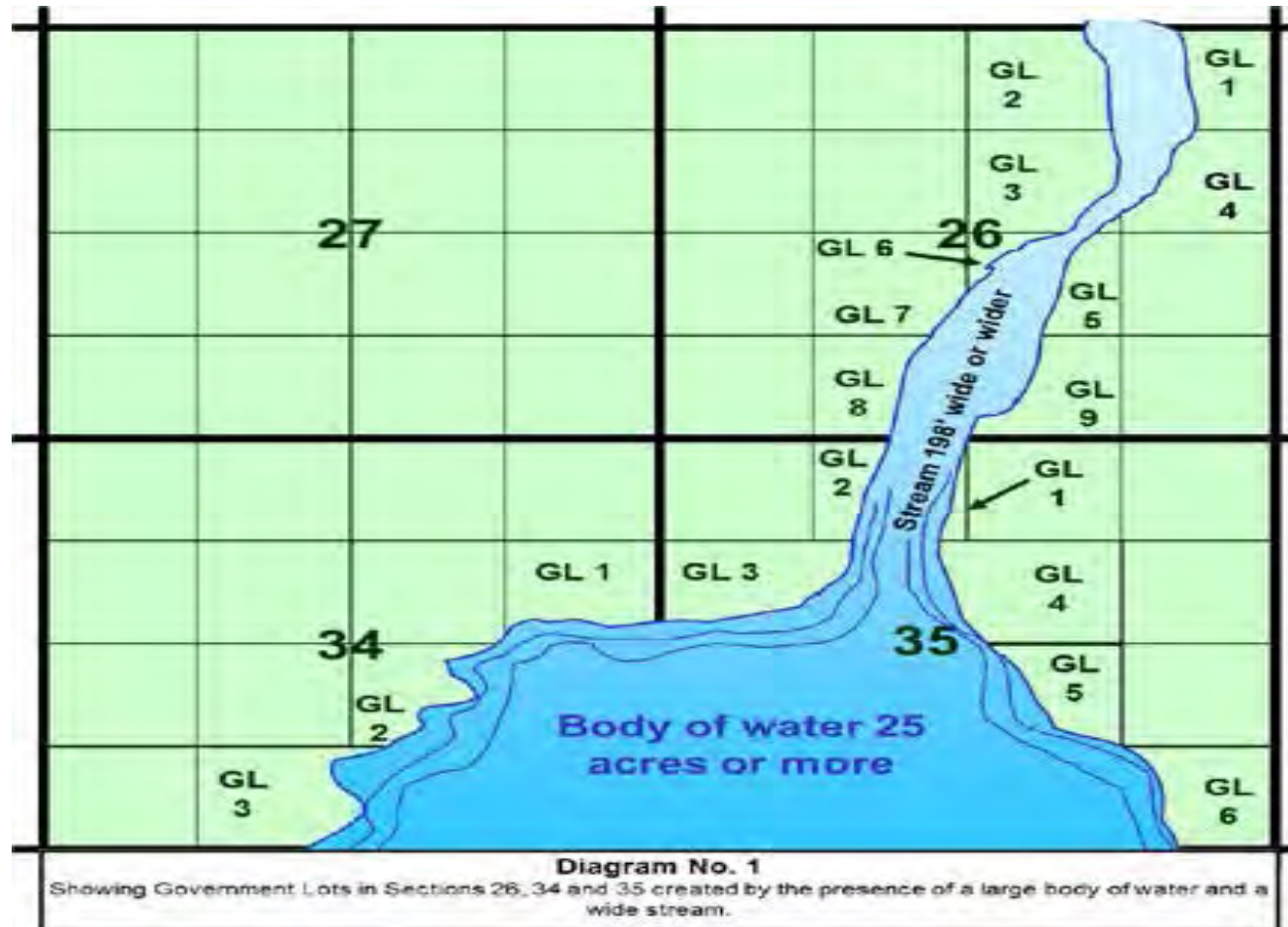
# Overview

- 1 Definitions and Concepts
- 2 Water
- 3 Water- related Land
- 4 Special Exceptions

# DEFINITIONS AND CONCEPTS



# Government Lots



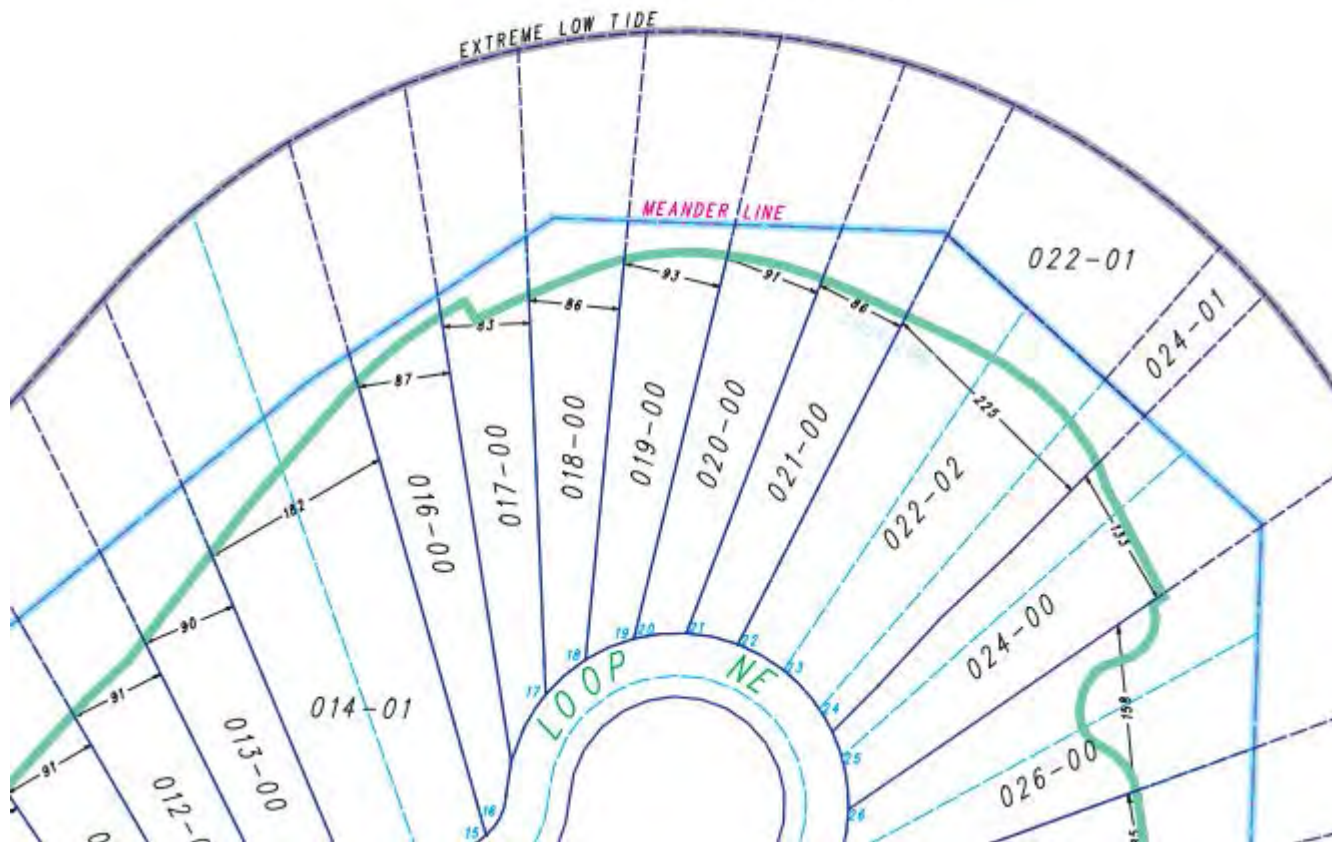
- US Rectangular System of Survey!

# Definitions

- **Meander Line:** Approximates the shoreline. It is an arbitrary line laid out by Federal Surveyors as part of the computation of area contained within a Government Lot.
- **Uplands:** The dry land adjoining a body of water.
- **Tidelands:** The land over which the tide ebbs and flows.
- **Shorelands:** Land covered by water that is adjacent to the shore of a navigable body of water and not subject to tidal action.
- **Patent:** The original conveyance of Federally owned lands.

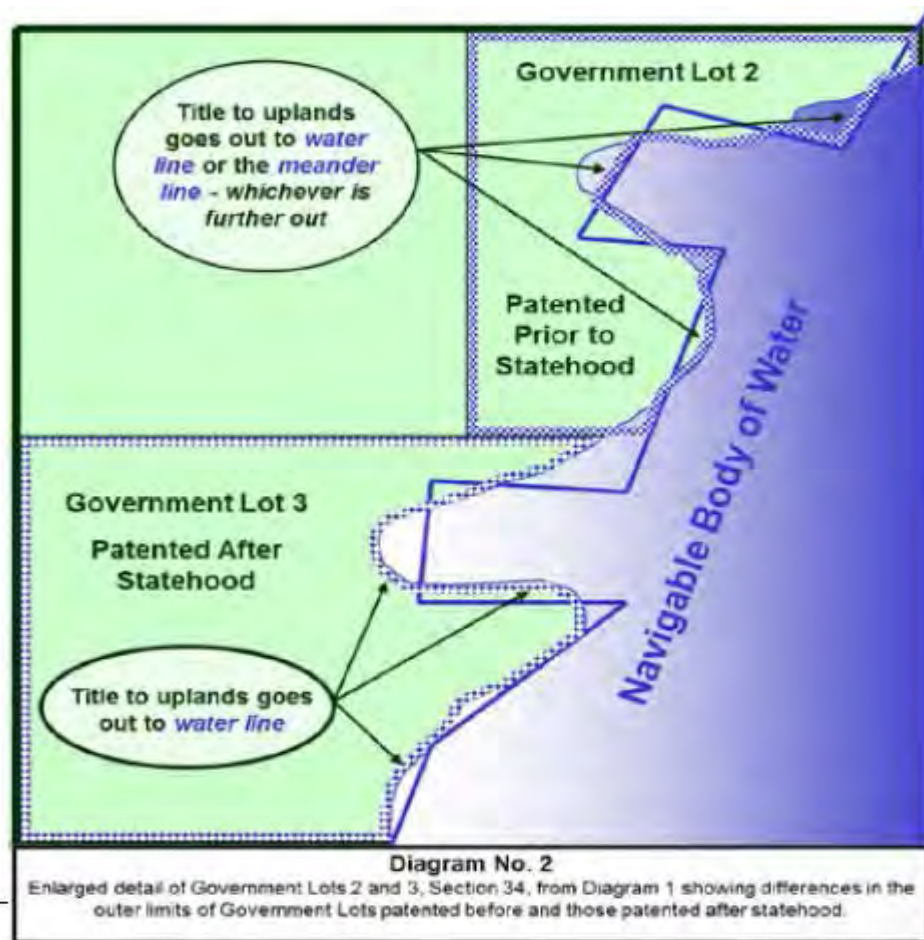
# Assessor's Map

GOVERNMENT LOT 1  
PATENTED 11/1/65  
VOLUME 1 PAGE 207



Arrow Point Beach  
Bainbridge Island, WA

# Outer Limit of a Government Lot

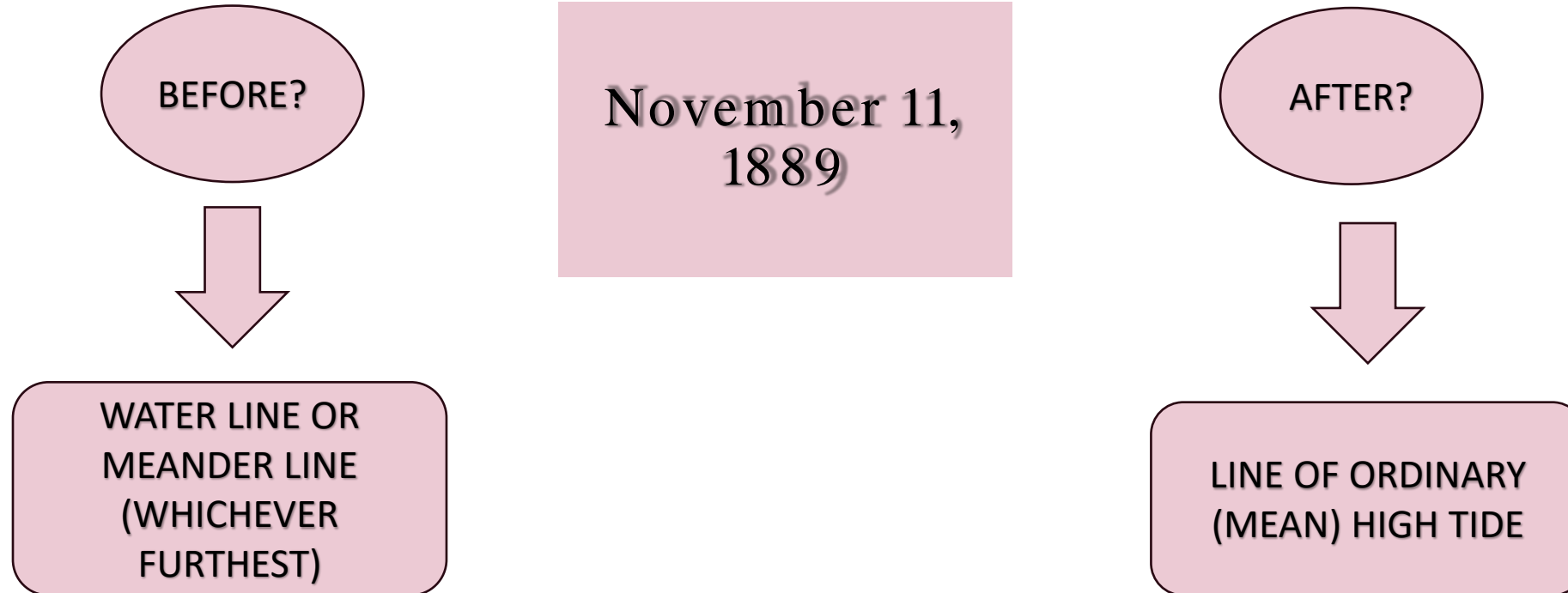


- When was the Federal Patent earned?



# What is the outer boundary of a Government Lot?

When was the Federal Patent earned?



# Public Trust Doctrine

Vests the Government with the authority to:

- *Protect the public interest,*
- *To regulate shorelands, tidelands and wetlands, and uplands that are within 200 feet of these lands.*
- *This regulation includes, development, commerce, navigation and environmental protection.*

# Navigability

- The Washington State Supreme Court has held that for a particular body of water to be navigable, it must be capable of being used practically for the carriage of commerce.
- Whether a body of water is navigable depends on its navigability on November 11, 1889, the date Washington became a State.
- We should always take the position that the question of navigability is one that can only be settled by a decision from our State Supreme Court.

# Definitions- Changing Boundaries!

- **Accretion:** The building up of land (i.e., with silt and sediment).
- **Alluvion:** That which is deposited (i.e. silt and sediment).
- **Avulsion:** Establishment of a new channel by a stream or riven in a sudden action.
- **Erosion:** Gradual wearing away.
- **Reliction:** The uncovering of lands formerly covered by water.

# WATER



We don't insure water.



# General Exception in Schedule B of ALTA Policies

- *“Water rights, claims or title to water”*
- Standard and Extended policies

We do not insure water....

BUT water affects:

- (1) **Title** to the land,
- (2) **Use** of the land, and
- (3) **Boundaries** of the land

# Water



## *What is it?*

- *A physical substance that can be next to, on or under land*
- *It is not part of the “land” as defined in a title insurance policy*

## *Who owns it?*

- *Not owned by the land owner or other individuals*
- *It is a natural resource owned/managed by the State*



# WATER- RELATED LAND



# Land

What is it?

*As defined by the ALTA policies:*

- Dirt (maybe includes rock, sand and gravel)
- Minerals (maybe includes rocks, sand and gravel)
- Growing trees and shrubs
- Growing crops
- Improvements

# Water-related land

There are three kinds of water-related land:

- Uplands: not under water- but maybe abutting water
- Submerged land: under water part or all of the time
- Wetlands: affected by water

# Submerged Land

Submerged Lands: there are 4 categories in WA

- *Tidelands*
- *Shorelands*
- *Bed of non-navigable bodies of water*
- *Land beyond the outer limits of tidelands or shorelands  
(line of navigability)*

# Tidelands

## Tidelands

- Beds of navigable waters: applies to Puget Sound, ocean, the mouths of some rivers that are subject to the ebb and flow of tides
- State owns since 11/11/1889. Some conveyed to private owners.
- If conveyed to private owners, need a separate chain of title from adjoining uplands
- Boundary is line of ordinary high tide

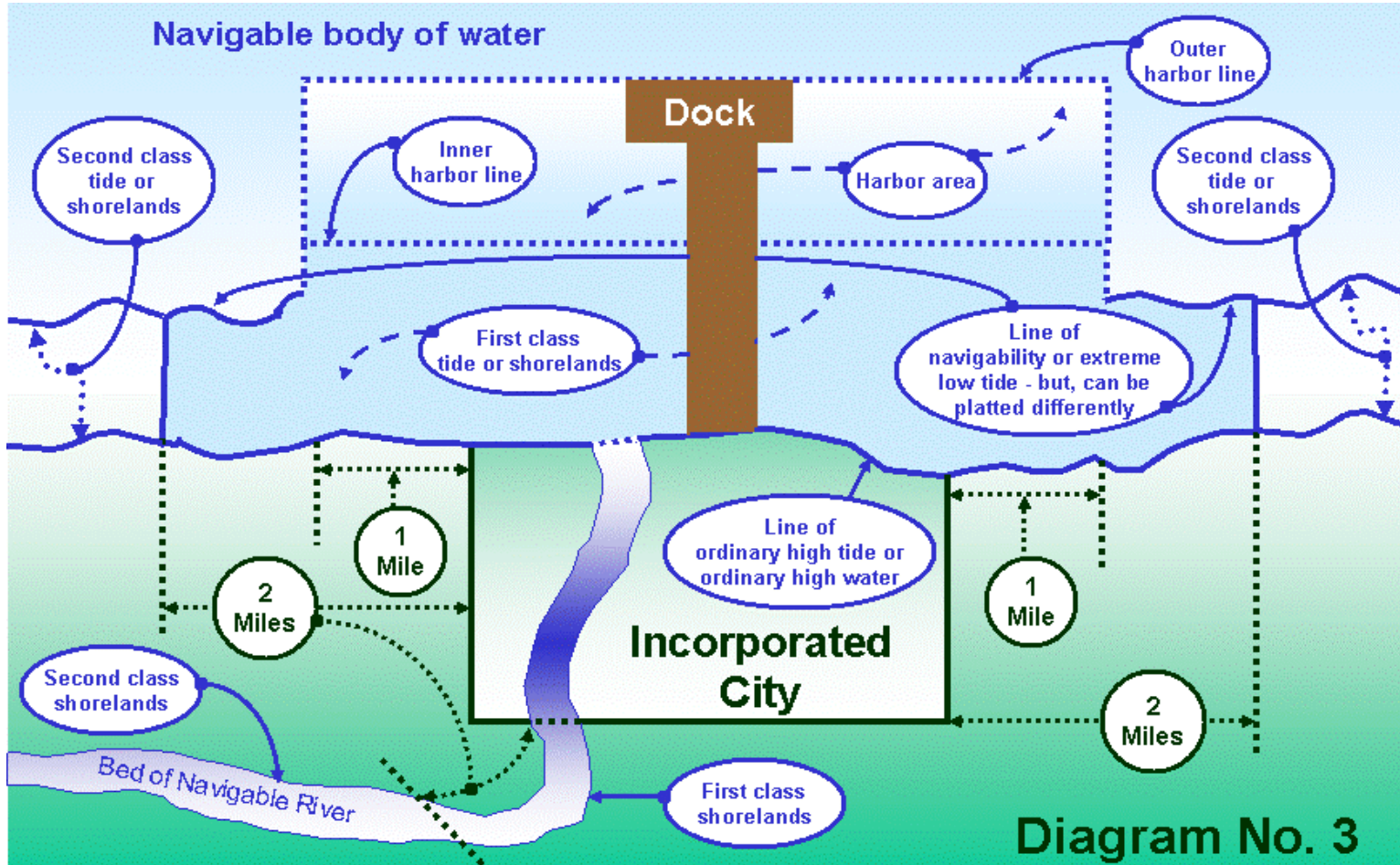
# Shorelands



## Shorelands

- Beds of navigable waters: applies to lakes, rivers and streams
- State owned since 11/11/1889. Some conveyed to private owners.
- If conveyed to private owners, need a separate chain of title from adjoining uplands
- Boundary is line of ordinary high water

# First Class or Second Class?



# How far do tidelands go out?

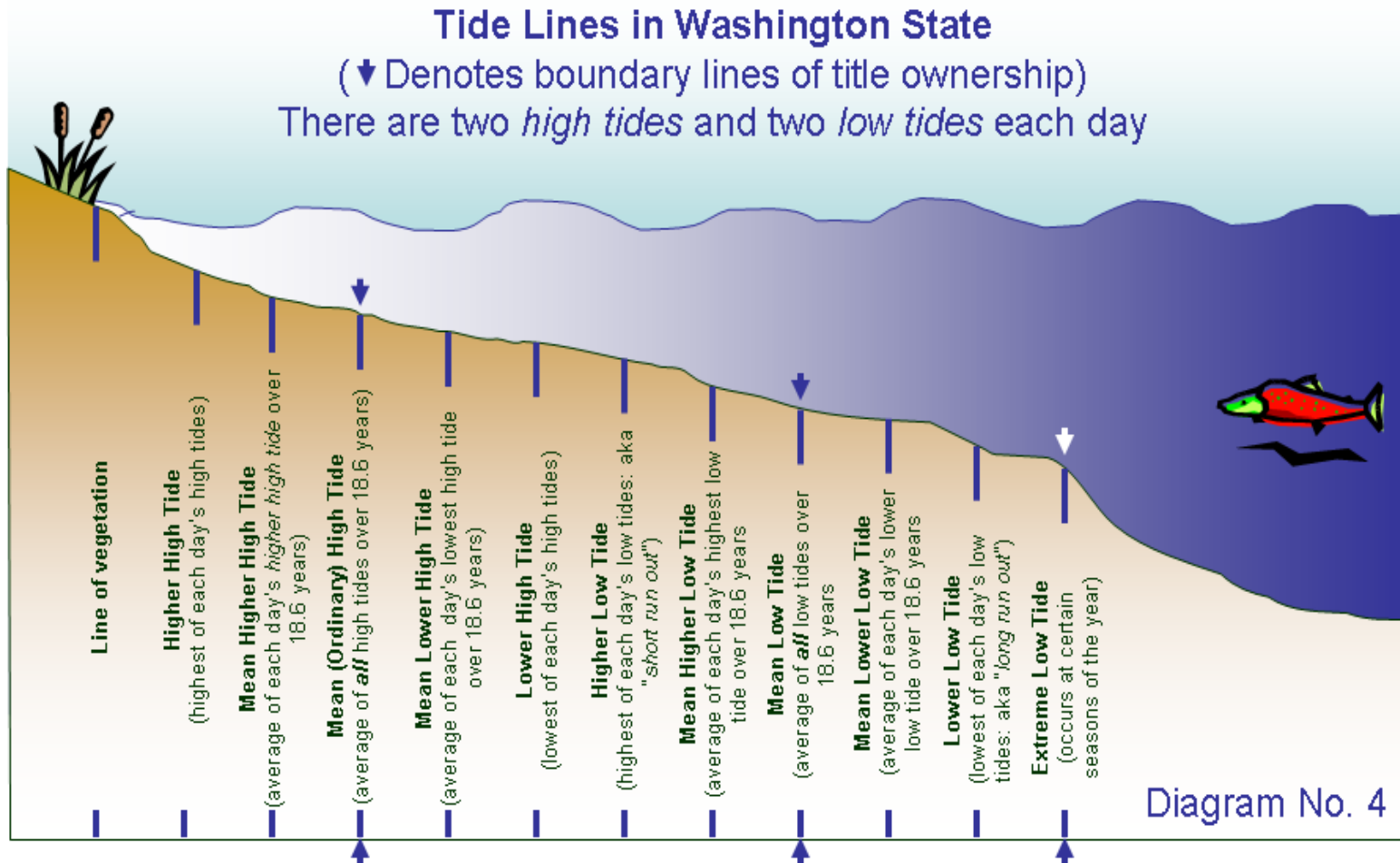
When was the application to purchase the land submitted to the State?



★ If between March 8, 1911 and March 7, 1921, contact DNR



# Tide Lines in Washington State



# Non-navigable bodies of water

## Bed of non-navigable bodies of water

- Applies to small lakes and streams
- Title not vested in the State
- Title is included in uplands description without mentioning it

# Beyond line of navigability

Land beyond the outer limits of tidelands or shorelands (line of navigability)

- *Cannot be in private fee ownership*
- *Portions (harbor areas) can be leased from the State*

# TITLE EXCEPTIONS



# Special Exceptions- Considerations

- The nature of the land determines what exceptions are shown
- The legal description might not even mention water
- Exact language may vary among title companies
- Some deal with TITLE, some with USE, some with BOUNDARY
- Because waterfront titles are an extra hazardous risk we show these exceptions without question when applicable.

# State of Washington Ownership

*Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of the [insert name of the body of water], if it is navigable.*

- The state of Washington owns the bed of a navigable body of water
- Deals with title to submerged land
- Added when the land is riparian (only if navigable water flows through, covers, or adjoins the insured property).
- Always assume a body of water is navigable unless it has previously been adjudicated non-navigable. Thus this exception is **always shown**.

# River, Stream, or Slough Boundary

*Any question that may arise due to shifting or change in the course of the [insert the name of the body of water] or due to the [insert the name of the body of water] having shifted or changed its course.*

- Applies when the legal description ties to either the bank or the thread of a river, stream, brook, creek, slough, or similar body of water.
- This is a boundary exception.

# Lake, Sound, Bay, or Ocean Boundary

*Any questions that may arise due to shifting or change of the line of high water of the [insert the name of the body of water] or due to the [insert the name of the same body of water] having shifted or change its line of high water.*

- This is a boundary exception.
- Should be shown whenever the land is bounded by the Pacific Ocean, Puget Sound, a lake, or similar body of water. It applies when insuring title to: (1) uplands only; (2) uplands with submerged lands (including either tidelands or shorelands); (3) submerged lands only; or rarely, (4) lands added by accretion or reliction.



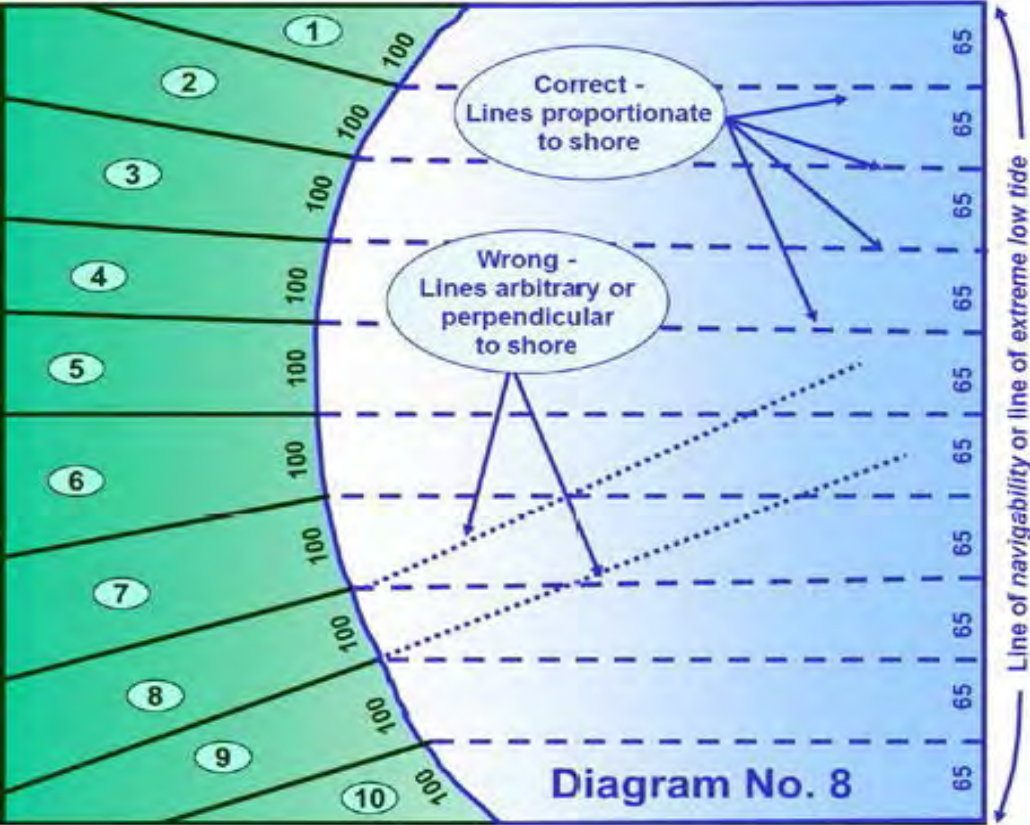
# Lateral Boundaries of Submerged Lands



*Any question that may arise as to the location of the lateral boundaries of the [tidelands][shorelands] described herein.*

- This is a boundary exception.
- Added to all policies where tidelands or shorelands are included in the description.
- Lateral lines (common boundary) between adjoining submerged lands.

# Lateral Lines



# Public and Private Riparian Rights

*Any prohibition or limitation on the use, occupancy, or improvements of the Land resulting from the rights of the public or riparian owners to use any waters which may cover the Land or to use any portion of the Land which is now or may formerly have been covered by water.*

- Relates to the USE of submerged (or formerly submerged) land
- Also relates when insured uplands adjoin such land.
- Includes public trust doctrine
- This exception is added to all policies covering the above-mentioned types of property

# Definitions- Riparian or Littoral?:

- Riparian: Belonging or pertaining to the land abutting a stream, river or lake
- Littoral: Belonging or pertaining to the shores abutting a large lake or sea.
- Riparian = Littoral

# Public and Private Riparian Rights

- *Covers, among other things:*
  1. Rights of downstream owners to water that crosses upstream riparian land
  2. Rights of other owners to use the surface of the water (Bitter Lake)
  3. Rights of the public to use the surface (Lake Chelan)
  4. Rights of the state to regulate uses of tidelands, shorelands and adjoining uplands under the Shoreline Management Act (“public trust”)

# Public and Private Riparian Rights

- *It applies to:*
  1. Tidelands;
  2. Shorelands;
  3. Land between high tide and the seaward meander line if patented before statehood;
  4. Current or former lake beds, whether navigable or not;
  5. Current or former beds of rivers, streams, or sloughs, whether navigable or not;
  6. Harbor areas;
  7. Uplands abutting such lands; and
  8. Oyster lands

# Private Riparian Rights

- A riparian owner is an abutting upland owner in addition to any title to the bed.
- Riparian owner has the right, along with all riparian owners to reasonable use of the surface of water
- Riparian rights of abutters are owned in common. This means that each upland owner can use entire surface of water, not just the area over the bed owned by the riparian abutter.

# Public Riparian Rights



General public has rights to use the surface of water for recreational purposes



# Navigation Rights (Navigational Servitude)

*The right of use, control, or regulation by the United States of America in exercise of power over commerce and navigation. OR Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.*

- This exception deals with USE of land.
- The question of navigability is one of fact, determined on November 11, 1889, the date Washington was admitted to the Union.

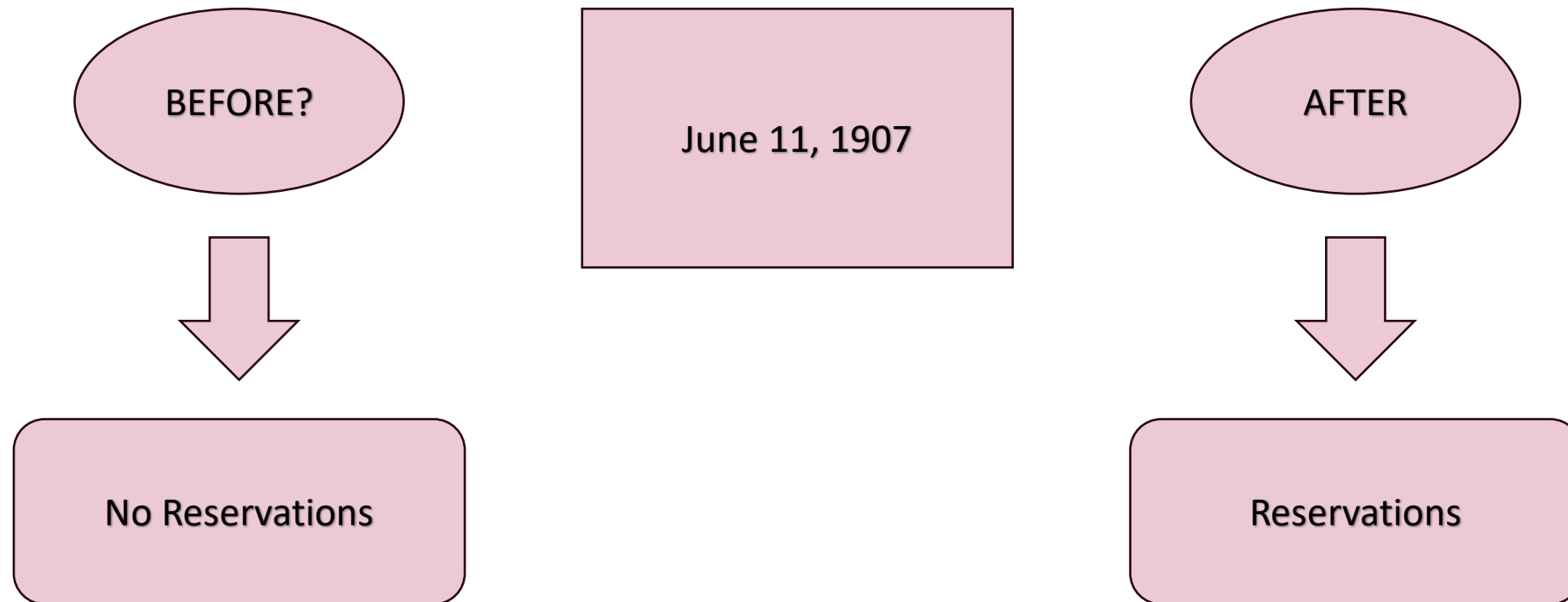
# Oyster Land Reversions and Restrictions



*Conditions, restrictions, reservations, exceptions and reversionary provisions contained in the deed from the State of Washington for oyster lands recorded [insert recording data] and in the Bush Act approved March 2, 1895, and in the Callow Act approved Marc 4, 1895, as amended.*

# Are there mineral reservations?

What was the date of the State's deed out?

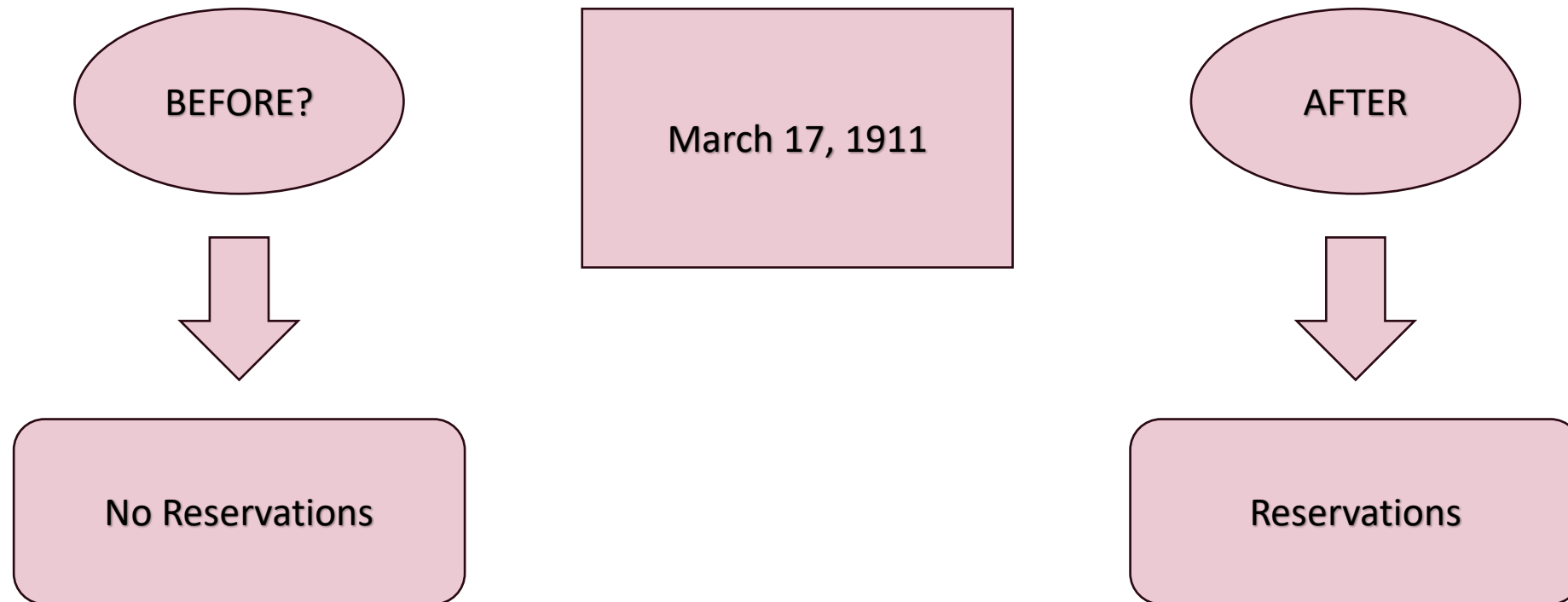


# Reservations

*Exceptions and reservations, including the exception and reservation of all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry for exploring, opening, developing and working the same, etc., including the construction of improvements and the right to occupy the Land and providing that such rights shall not be exercised until provision has been made for full payment of all damages sustained by reason of such entry, all pursuant to statutes in effect as of the date of conveyance by the State, currently codified as RCW 179.11.210 as it may be amended or recodified, pursuant to the deed from the State of Washington recorded [insert recording data].*

# Reservation for rights of way?

What was the date of the State's deed out?



# Reservations

*Right of State of Washington or its successors, subject to payment of compensation therefor, to acquire rights of way for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals and other products from this and other property, pursuant to statutes in effect at the date of conveyance by the State, currently codified as RCW 79.110.010, as it may be amended or recodified, pursuant to the deed from the State of Washington recorded [insert recording data]*

Thank you to George Peters for being a  
Waterfront Title Guru!!!



# Thank you!



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