General Overview of Riparian Rights in Florida

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Introduction

Florida is blessed with nearly 2,000 miles of coastline, 11,000 miles of rivers, streams and waterways, and approximately 7,700 lakes over 10 acres.[1] As a result of this bountiful, but ultimately limited supply of waterfront, owners of waterfront property and the public, possess certain delineated rights known as riparian rights. Although Florida courts have addressed the extent and nature of riparian rights for more than a century, and more recently the Florida legislature has attempted to clarify these rights, they are far from clearly settled and static.[2] Additionally, in some areas, Florida common law and statutory provisions conflict with one another.[3]

The purpose of this paper is to provide a general overview of the state of riparian rights in Florida. The first section defines the general nature of riparian rights. The second section details the specific rights included within riparian rights. The third section explains how riparian rights are determined and the final section deals with the remedies available for curing alleged violations of an individual's riparian rights.

I. The Nature of Riparian Rights

A. History

In 1845, Florida was granted statehood and admitted to the Union, and simultaneously was granted title to all lands beneath navigable waters, by virtue of its sovereignty.[4] As later codified by the Florida Constitution and Statutes, the Board of Trustees of the Internal Improvement Fund, ("Trustees") holds title to these sovereign submerged lands in trust for the public, known as the public trust doctrine.[5] Specifically, Article X, Section 11, of the Florida Constitution states:

> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.[6]

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By subordinating private property interests to the interest of the public as a whole, Florida's public trust doctrine creates a constant tension between private and public interests in sovereign submerged lands.[7] Discussed in detail below, riparian rights have been dealt with extensively by Florida courts and more recently have been codified by the Florida legislature.

B. Common Law Interpretation

1. General Overview

Riparian rights are "legal rights incident to lands bounded by navigable waters and are derived from the common law as modified by statute."[8] Under Florida law, a riparian owner must own to the line of the ordinary high water mark on navigable waters.[9] A determination of navigability of the adjacent water body is necessary to establish riparian rights. While the term "riparian rights" has been used broadly in Florida cases and statutes to refer to the legal rights of waterfront owners, "riparian" rights refer to owners along rivers and streams, while "littoral" rights apply to waterfront owners along oceans or lakes.[10] However, this distinction is ignored in general discussion and the term riparian rights will be used herein to encompass both categories of rights.[11]

Although riparian rights are recognized as legal property rights,[12] they are distinguishable from the classic concept of real property ownership as holding a "bundle of sticks."[13] Under the classic concept, ownership is broken down into distinct and separate rights such as the right to use, lease, or sell the property. However, due to the underlying state ownership of the water bottom limitations such as lawful state regulation in the interest of the public and the authority of Congress to regulate commerce and navigation,[14] these rights do not necessarily constitute a full bundle of property rights. Consequently, they have been described by Florida courts as qualified rights.[15]

As early as 1918, the Florida Supreme Court determined in *Thiesen v. Gulf*, that riparian rights are sufficiently "property" to be subject to the takings clause and consequently can not be taken without just compensation.[16] More recently in *Belvedere v. Dep't of Transp.*, the Supreme Court affirmed the protected property rights status of riparian rights, holding it to be an unconstitutional taking for the Department of Transportation to condemn a property owner's waterfront land without also compensating the owner for the value of the riparian rights taken.[17]

2. Conveyance and Severance

Riparian rights may be severed by bilateral or voluntary agreement,[18] but severance can not be inferred from a silent deed.[19] The common law interpretation of the alienability of riparian rights provides that riparian rights are transferred with the upland property, unless the parties explicitly agree otherwise. [20] This rationale was articulated in *Theisen v. Gulf*, when the Florida Supreme Court stated that:

> The fronting of a lot upon a navigable stream or bay often constitutes its chief value and desirability, whether for residence or business purposes. The right of access to the property over the waters, the unobstructed view of the bay, and the

> enjoyment of the privileges of the waters incident to ownership of the bordering land would not, in many cases, be exchanged for the price of an upland lot in the same vicinity. In many cases, doubtless, the riparian rights incident to the ownership of the land were the principal, if not sole, inducement leading to its purchase.[21]

Because riparian rights are an essential ingredient in the overall value of the corresponding upland property, Florida Courts have shown reluctance in separating the two, short of full compensation or an express bilateral agreement.[22]

Additionally, the Florida Supreme Court in *Belvedere* addressed the extent and limit to which riparian rights can be involuntarily separated from upland ownership.[23] In *Belvedere*, the Florida Department of Transportation condemned fee simple title to the upland property but, attempted, over the Landowner's objection, to reserve the riparian rights to the owner.[24] However, the owners were to be given no easement or right to enter the taken land and even if a dock was to be built, it would have had to be free standing and accessed only by boat.[25] The Court held this to constitute a full taking of both the upland property and the attached riparian rights and concluded that, in the absence of an express bilateral agreement, that the two cannot be severed in a condemnation proceeding.[26] Specifically, stating "[a]lthough riparian rights are property, they are unique in character. The source of those rights is not found within the interest itself, but rather they are found in, and are defined in terms of the riparian uplands. In most cases, therefore, it is not difficult to find that riparian rights are an inherent aspect of upland ownership and are not severable from it."[27]

C. Statutory Codification

The Florida legislature has codified many aspects of the common law riparian rights.[28] Section 253.141, Fla. Stat., states:

> Riparian rights are those incident to land bordering upon navigable waters. Such rights are not of a proprietary nature. They are rights inuring to the owner of the land. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.[29]

Two notable distinctions exist between the common law and statutory definitions of riparian rights. The statute provides that riparian rights are not of a proprietary nature and are inseparable from the riparian lands.[30] While this appears to contradict the common law articulation of riparian rights, in application by Florida courts, these variations have not been interpreted literally.[31] Thus, courts have defaulted to the common law interpretations.[32]

Additionally, Section 18-21.004(3)(b), F.A.C. states that "[s]atisfactory evidence of sufficient upland interest is required for activities on sovereignty submerged lands riparian to uplands."[33] Additionally, Section 18-21.004(3)(c), F.A.C. states that "[a]ll structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners."[34] These requirements essentially mirror the Florida common law.

II. Specific Rights Included Within Riparian Rights

A. Common Law

1. Specific vs. General Rights

The scope of riparian rights is narrowly defined.[35] Florida common law has broken down the bundle of riparian rights into general and special rights.[36] General rights, which are shared by the public, include the right to navigation, commerce, fishing, bathing and boating.[37] By contrast, special rights are rights exclusive to the owner of upland property to use of the adjacent water body.[38] The special rights include the right of access from the water to the riparian land, a right to wharf out to navigability,[39] the right to take title to the property by accretion and reliction, and, the right to an unobstructed view over the adjoining waters.[40]

2. Right to View and Right to Ingress and Egress

Florida common law recognizes that riparian rights specifically include the right to an unobstructed view and the right of ingress to and egress from the water.[41] The seminal case of *Hayes v. Bowman* sheds light on what is included within the right of an unobstructed view of the adjoining waters.[42] Florida common law is unique in its recognition of a right to unobstructed view.[43] The Florida Supreme Court in *Hayes* held that "[a]n upland owner must in all cases be permitted a direct, unobstructed view of the Channel and as well a direct, unobstructed means of ingress and egress over the foreshore and tidal waters to the Channel."[44] In *Freed v. Miami Pier Corp.*, the Florida Supreme Court clarified that the right to ingress and egress, includes the right to erect wharves, piers, or docks in order to facilitate access to and the use of navigable waters.[45]

The Florida Department of Environmental Protection in recognition of potential conflicts among competing rights, has acknowledged that an order of priority has been implied through various Florida court decisions.[46] Specifically, the dominant riparian right is usually the near shore right of ingress to and egress from navigable waters, which takes precedence over the right to view and other specific rights.[47]

3. Right to Accretion and Reliction

The right to accretion and reliction has consistently been upheld in Florida as a common law riparian right.[48] Accretion is the process in which the action of water causes a build-up in riparian land through the gradual accumulation of solid material, whether silt, sand, soil, or sediment, resulting in the creation of new dry land in an area that was previously covered by

water.[49] Reliction applies to lands that were once covered by waters, but that have since become uncovered by the gradual recession of the waters.[50]

Riparian owners have the common law right to receive accretions to their lands, so long as the deposits were not of the riparian owner's own doing.[51] The Florida Supreme Court in *Bd. Of Trs. Of the Internal Improvement Trust Fund v. Medeira Beach Nominee, Inc.*, in recognizing the mean high water line as the dividing line rule between upland ownership and state sovereign land in the context of accretion and relictions stated that "[a]ny other rule would leave riparian owners continually in danger of losing access to water which is often the most valuable feature of their property, and continually vulnerable to harassing litigation challenging the location of the original water lines."[52] In *Save our Beaches,* the First District Court of Appeal held that landowners are entitled to the accretion if caused by the state.[53] Additionally, the court in *Ford v. Turner*, held that unless excepted, the title to accretion or reliction to soil passes with the title to the land to which accretions are appurtenant.[54]

4. Riparian Rights of Non-waterfront Owners

Private riparian rights are not limited to owners of direct waterfront properties, but may be held by owners of property which is not directly adjacent to navigable waterways or more generally, by the public at large.[55] For example, it is common for Developers to reserve riparian rights for non-waterfront property owners within the development.[56] Such reservations are usually created through easements located on the properties of other waterfront owners.[57] These easements are a frequent source of conflict since typically, the non waterfront owners must physically cross his neighbor's property to access the water.[58]

In *Cartish v. Soper*, a plat indicated that for all lots within a subdivision, "each owner ha[s] an easement of passage for ingress to and egree[sic] from the waters of Boca Ciega Bay."[59] A dispute arose when the fee simple waterfront lot owner planted a hedge across a portion of his property, thus, partially obstructing the reserved access easement to the water.[60] The *Cartish* court, in rejecting the argument that riparian easement rights cannot be created by implication, held that "insofar as riparian rights are necessary to or consistent with the purposes of the easement, they are impliedly granted to appellees and, as a corollary, reserved from the appellant fee owners."[61] Thus, the court held that an unobstructed walkway through the easement was included within an "easement of passage for ingress to and egress from the waters."[62]

The riparian rights which accompany easements can be created by reservation as opposed to created expressly.[63] The 2007 decision in *Brannon v. Boldt*, clarified *Cartish* by defining under similar circumstances, what riparian rights are necessarily implicit to an "easement for ingress and egress" reserved for non-waterfront lot owners.[64] The court held that in the absence of a detailed easement which delineates specific rights, that an easement for ingress to and egress from the water includes the ability to apply for a permit to build a dock, right to cross the property in a reasonable amount of time in order to access any area below the mean high water mark, and the right to cross the property in order to launch a small boat, canoe, or flotation device.[65] However, this type of easement does not imply the right to fish from the shore or to remain on the property for extended periods of time.[66]

5. Riparian Rights Created Non-expressly and through Reservations

Riparian rights resulting from deeds are most often created by express grant. [67] However, where a deed is unclear, the legal maxim that a deed is to be construed most strongly against the grantor and most beneficially for the party to whom it is made, controls.[68] The court in *Haynes v. Carbonell* in using this maxim as support, awarded ownership of a 50 foot strip of land to the grantee of the adjacent landlocked parcel, instead of to the grantor.[69] Since the deed stated that it contained all of the property's riparian rights, the court found it unlikely that even though a miscalculation existed as to the footage included in the deed, that this 50 foot strip was impliedly granted to the grantor.[70]

Additionally, Florida courts have upheld riparian rights created through reservations.[71] For instance, in *Padgett v. Cent. and S. Florida Flood Control Dist.*, the Trustees of the Internal Improvement Fund conveyed formerly submerged lands to the Padgetts, subject to the reservation, that the land could be reclaimed for flood control purposes.[72] Thus, the court did not find a violation of the Padgett's riparian rights, when a portion of the granted lands were permanently covered with water as a result of a subsequent flood control project.[73]

B. Statutes

1. General Rights

The Florida legislature has deferred to the common law regarding the general riparian rights granted to riparian land owners in Section 253.141, Fla. Stat., which states that these rights include "the rights of ingress, egress, boating, bathing, and fishing and such others as may have been defined by law."[74]

2. Easements

The District Court decision in *Parlato v. Secret Oaks Owners Ass'n.,* addressed the sufficiency of easements to establish riparian rights under the Florida Administrative Code.[75] In *Parlato,* all property owners within a subdivision were granted an easement which authorized them to "cross over Lots 10 and 11 and to use any dock now or hereafter located thereon".[76] However, a dispute arose when the rebuilding of a dock would have resulted in a setback violation of the riparian rights of the two lot owners.[77] The court held that the easement represented sufficient title interest in the uplands to rebuild the dock under rule 18-21.004(3)(b), F.A.C. which states that an "[a]pplication for activities on sovereignty lands riparian to uplands can only be made by and approved for the upland riparian owner, their legally authorized agent or person with sufficient title interest in uplands for the intended purpose."[78] Additionally, the court held that the riparian rights of the owners of Lots 10 and 11 were subordinated to the access and dock easement rights of the subdivision as a whole[79], since; the two lot owners purchased the lots subject to and with knowledge of the existence of the easement.[80]

3. Accretion and Reliction

Recently, a conflict has arisen between the statutes and common law regarding a riparian owner's entitlement to land bordering the mean high water line, where the shore has been extended seaward as the result of state erosion control projects.[81] In a recent decision in *Save Our Beaches v. Fla. Dep't of Envt'l Prot.*, the District Court found that portions of Florida's beach restoration program unconstitutionally infringed upon riparian rights.[82] Section 161.191(2), Fla. Stat., states that:

> "Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141-161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3)."[83]

The net effect of this statutory provision was to reserve all common law riparian rights to riparian owners, with the exception of the right to have the property directly touch the water and the right to receive accretions and relictions in the event of state erosion control projects.[84] The court held this provision unconstitutional as applied because the effect was to deprive upland owners of their riparian rights without just compensation, as required by common law.[85] Additionally, the court cited Section 161.141, Fla. Stat., as further support, which states "If an authorized beach restoration, beach nourishment, and erosion control project cannot reasonably be accomplished without the taking of private property, the taking must be made by the requesting authority by eminent domain proceedings." [86] The District Court's decision in *Save Our Beaches* has been appealed to the Florida Supreme Court and a decision is pending.

A similar decision was reached in *Bd. of Tr. of the Internal Improvement Trust Fund v. Sand Key Assc. Ltd.*, where the Florida Supreme Court reviewed Section 161.051, Fla Stat., [87] which provides:

> Where any person, firm, corporation, county, municipality, township, special district, or any public agency shall construct and install projects when permits have been properly issued, such works and improvements shall be the property of said person, firm, corporation, county, municipality, township, special district, or any public agency where located, and shall thereafter be maintained by and at the expense of said person, firm, corporation, county, municipality, township, special district, or other public agency. No grant under this section shall affect title of the state to any lands below the mean high-water mark, and any additions or accretions to the upland caused by erection of such works or improvement shall remain the property of the state if not previously conveyed.[88]

The Court held that the provision "was intended to codify common law principles and was not intended to deprive unsuspecting waterfront owners of their rights to accretion and reliction caused by artificial improvements for which they were not responsible." [89]

III. How Riparian Lines are Established

A. Common Law

1. Subjective Nature

The Florida Supreme Court in *Hayes v. Bowman* addressed the subjective and uncertain nature of locating riparian lines by stating:

> Riparian lines do not necessarily extend into the waters according to upland boundaries nor do such rights under all conditions extend at right angles to the shore line. Our own precedents are completely inconsistent with the appellees' view that such rights extend over an area measured by lines at right angles to the Channel. . . . we cannot define the area within which the rights are to be enjoyed with mathematical exactitude . . . we therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area as near as practicable in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such equitable distribution' the Court necessarily must give due consideration to the lay of the upland shoreline, the direction of the Channel and the co-relative rights of adjoining upland owners.[90]

2. General Methods

In *Hayes*, the Court considered whether an upland owner's riparian rights to view and access to the channel should be exclusive to all interference in an area extending from the property lines directly out into the water body or whether these rights should be measured by drawing a perpendicular line from the channel to the corners of the property.[91] Ultimately, the court decided on the later because this method resulted in neither an obstruction to the view of or access to the channel.[92]

The *Hayes* decision set the criteria for allocation of riparian rights in future cases.[93] No firm rule can be laid down as to every situation.[94] However, the two general methods of "prolongation of the property line" and direct line from the property to the channel are still in use.[95] Moreover, determinations of riparian rights are still based on equitable principles.[96] The goal stated by the Court is to give each owner a "fair and reasonable opportunity of access to the channel" based on outward proportional lines.[97]

3. Florida Department of Environmental Protection's Interpretation

Conflicts still arise today. When the channel is not parallel to shore, when the shoreline is curved, or where no channel exists in the water body, competing methods for allocating riparian rights may yield drastically different results.[98] In an effort to provide some guidance to the surveying community, the Florida Department of Environmental Protection ("DEP") surveyed the status of Florida law on the issue and the effect of shoreline and channel geometry on the allocation of riparian rights, and published recommendations to surveyors and practitioners.[99]

The DEP found that along a straight river without a marked channel, the most accepted method is to construct dividing lines perpendicular with the line of navigability.[100] Along a river or other water body with a nearby marked navigation channel, most courts will construct perpendiculars with the nearest limit of the channel in lieu of the line of navigability.[101] Additionally, the direction of upland property lines is largely ignored when apportioning riparian rights, except when there is only a minor deviation between the property line extension and other methods.[102] However, when the shore is irregular, for example with coves or projections into lakes or oceans, most Florida courts apportion the line of navigability to divide docking rights equally as opposed to using one of the perpendicular methods described above.[103]

B. Statutes & Regulations

Florida statutes are silent on the method of allocating riparian rights. However, DEP regulations under Section 18-21.004(3)(d) F.A.C., requires minimum setbacks for structures regardless of how the riparian rights are allocated.[104]

The Florida House has recently proposed legislation which will likely facilitate riparian owners' ingress to and egress from navigable waters, especially in scenarios in which riparian property water frontage are limited in width, or are of irregular shape. Proposed House Bill No. 395 Section 1 (17) states that:

> Notwithstanding any other provisions of this chapter, any rule adopted by the Board of Trustees of the Internal Improvement Trust Fund, or any local ordinance or rule, for upland properties of 55 linear feet or less in width bordering on navigable waters, two adjacent property owners, upon agreement, may utilize a single dock to be used by both upland owners provided that the dock runs adjacent and parallel to a seawall and does not exceed 100 feet in overall length.[105]

The sharing of docks between such properties is seen as a potential means to avoid scenarios in which insufficient setbacks exist or where it may be challenging to navigate boats between closely located docks.

IV. Remedies

A. General Remedies and Specific vs. Non-Specific Injuries

A riparian landowner, under Florida common law, has a variety of remedies available in the event his riparian rights have been violated. The landowner is not limited to seeking relief from public authorities but may, and often must, file a suit on his own behalf.[106] Underlying policy concedes that public officials may not have the same degree of interest in enforcing a private landowner's rights as they might otherwise be in the case of a violation of riparian rights of the public as a whole.[107] Florida statutes are silent on the issue of remedies, but, Section 253.14, Fla. Stat., states that a riparian owner may bring injunction suits in equity.[108]

Suits enforcing riparian rights generally include declaratory judgments, injunctive relief, suits to quiet title, ejectment, as well as damages. Generally, standing exists upon a showing that the unlawful use of public waters or the underlying lands works a special injury to the riparian owner in the use and enjoyment of his riparian land.[109] As set forth in one of the first Florida cases to articulate special injuries, an example would be "if the defendant in fact so uses the [navigable] water or the land thereunder including the shore, as to deprive the complainant of all access to the river or to injure the complainant in the use and enjoyment of his riparian land or the business thereon."[110]

By contrast, recovery is not typically due a riparian owner when the injury is of a non-special nature. In this situation, the remedy would be with a public official.[111] For example, in *Cent. & S. Fla. Flood Control Dist. v. Griffith*, the court denied an upland owner's request to enjoin the construction of a water control dam across a canal downstream from the owner's canal front property.[112] Even though this dam would prevent the owner from accessing the ocean from the property by boat, the court held the right of navigation to be a right common to the public in general and that "riparian owners acquire no additional rights to navigation other than those shared concurrently with the public."[113] Essentially, the court held that the building of the dam amounted to the deprivation of a right of navigation which would affect the public as a whole and not specifically to this particular upland owner, thus amounting to a non-special injury.[114] However, the court did state that if the construction of the dam caused flooding on the upland owner's property, that this would qualify as a special injury and that the owner would be able to seek damages.[115]

B. Declaratory Judgments and Actions to Quiet Title

Declaratory judgment actions are a common method to adjudicate riparian rights disputes.[116] Additionally, a suit may be brought to quiet title to disputed lands.[117] For instance, in *Ford v. Turner*, a property owner disputed an adjacent property owner's claim to a significant portion of land which had built up through accretion.[118] The court, in keeping with precedent, ultimately dismissed the property owner's dispute citing the legal entitlement of waterfront owners to lands built up through accretion.[119]

C. Injunctions

Riparian owners can and often bring actions for injunctive relief.[120] However, in practice, injunctive relief can be difficult to obtain. Florida courts have held that in order to successfully obtain an injunction, the riparian owner must prove an injury to substantial rights constituting material impairment and not just a partial compromise of riparian rights.[121] For example, the Florida Supreme Court in *Freed v. Miami Beach Pier Corp.*, noted that the construction of a pier did not materially impair the upland owner's right of access to the water and that the pier only created a "partial obstruction to distant view" looking out upon the water from the upland property, thus, further strengthening the Court's denial of an injunction.[122] Similarly, in *Eustis v. Firster*, in denying an injunction for the removal of a city pier on a lake, the court supported the heightened scrutiny by stating that "the remedy of a mandatory injunction for removal of encroachments is a drastic one and should be granted only cautiously and sparingly depending in each controversy upon circumstances particular to it."[123]

D. Damages

Riparian owners can also sue for damages, which may be decided by either judge or jury and the criteria is similar to those for injunctions.[124] For instance, in *Lee County v. Kiesel*, upland property owners successfully brought an inverse condemnation action against Lee County due to the construction of a bridge, which blocked eighty percent of the landowner's view of the river channel.[125] The court awarded the landowner full monetary compensation for the diminution in land value resulting from the obstruction, and stated that for a compensable obstruction of the right of view, the interference must be more than a "mere annoyance."[126] Specifically, that the obstruction "must substantially and materially obstruct the land owners' view to the channel", however, a "loss of the most convenient access to property is not compensable where other suitable access continues to exist."[127] The court distinguished this instance from a regulatory taking, in which, compensation would not be due to the property owner by stating that "this case involved an actual physical intrusion to an appurtenant right of the Kiesels' property ownership."[128]

E. Waivers and Laches

As with most rights, property owners can expressly waive assertion of their riparian rights.[129] For instance, in *Freed*, the Miami Beach Pier Corporation applied to Mr. Freed for a waiver of his riparian rights, since the pier was to encroach on his riparian right to an unobstructed view.[130] Although Freed declined to waive his riparian right to an unobstructed view, had he done so, the protracted litigation which followed, would have been avoided.[131]

The more difficult questions have arisen when a party is alleged to have implicitly waived its riparian rights. In certain situations, even if an upland owner's riparian rights have been violated, the owner may have waived his right to relief under the doctrine of laches.[132] Laches would apply where there is a substantial delay in the enforcement of a riparian right resulting in "injury, embarrassment, or disadvantage of any person, but particularly the person against whom relief is sought."[133]

For instance, in *Eustis*, an upland owner's riparian right to an unobstructed view and also his right to full access to the lake from the upland property were compromised by the construction of a city pier.[134] However, the court held that because the upland owner waited ten years to enforce his rights, that he had waited too long and that the right to maintain the action had "long since accrued" to the city.[135]

In *Freed*, the Supreme Court of Florida recognized the general right to relief against encroachments upon riparian rights, however, found this right waived because the riparian owner waited until construction of a fishing pier was nearly complete before challenging its encroachment upon his riparian rights.[136] Specifically, the Court stated "any substantial encroachment upon the rights of others may be remedied by timely and appropriate procedure in due course of law at the instance of proper parties, but the rights of individuals to remedy may be waived by undue delay or laches in seeking a remedy."[137]

V. Conclusion

Florida, which owns the majority of the submerged lands under the state's navigable waters, has had to balance the demand for private waterfront development with the need to provide public access to the water, all while preserving the environment for future generations. The net result of this balancing is a state of riparian rights in Florida, which is far from certain. Because of this, the increasing and competing demands of population growth and tourism on Florida's vast, but limited waterfront areas pose the likelihood that the definition and scope of riparian rights will be further refined and clarified by both the Florida legislature and court system.

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[1] StateOfFlorida.com, Florida Quick Facts, http://www.stateofflorida.com/Portal/DesktopDefault.aspx?tabid=95.
[2] *Alden v. Pinney*, 12 Fla. 348 (Fla. 1868) (recognizing right to an unobstructed view and right to navigation as riparian rights).
[3] *Infra* at note 31.
[4] *Broward v.* Mabry, 50 So. 826, 830 (Fla. 1909).
[5] *Hayes v. Bowman*, 91 So.2d 795, 800 (Fla. 1957).
[6] Fla. Const. art. X, § 11.
[7] *Hayes*, 91 So.2d at 799.
[8] *Haynes v. Carbonell*, 532 So.2d 746, 748 (Fla. 3d DCA 1988).
[9] *Save our Beaches, Inc. v. Fla. Dept. of Envtl. Prot.*, No. 1D05-4086, 2006 WL 1112700, at *8-*9 (Fla. 1st DCA July 3, 2006), rev. g., 937 So.2d 1099 (Table) (Fla. 2006). (defining the ordinary or mean high water line as the intersection of the tidal plane of mean high water and the shore and mean high water means the average height of the high waters over a 19 year period).
[10] *Id.* at 7.
[11] *Id.*
[12] *Haynes, 532 So.2d at* 748.
[13] Levite, Robert, *Estate Planning for Private Landowners: The "Bundle of Sticks", available at* http://www.umass.edu/nrec/pdf_files/bundle_of_sticks.pdf.
[14] *Freed v. Miami Beach Pier Corp.*, 112 So. 841, 844 (Fla. 1927).
[15] Id.
[16] *Thiesen v. Gulf, F. & A. Ry. Co.*, 78 So. 491, 507 (Fla. 1918). *See also Brannon v. Boldt*, No. 2D03-4477, 2007 WL 162166, at *5 (Fla. 2d DCA Jan. 24, 2007), rev. g. 956 So.2d 455 (Table) (Fla. 2007) (recognizing the riparian right of access from the water as a property right which may be regulated by law, but may not be taken without just compensation and due process of law).
[17] *Belvedere Dev. Corp. v. Dep't of Transp., Div. of Admin.*, 476 So.2d 649, 653 (Fla. 1985).
[18] *Id.* at 652-653.
[19] *Haynes*, 532 So.2d at 748.
[20] *Belvedere Dev. Corp.*, 476 So.2d at 651.
[21] *Thiesen*, 78 So. at 507.
[22] *Infra* at note 26.
[23] *Belvedere Dev. Corp.*, 476 So.2d at 651-652.
[24] *Id.* at 651.
[25] *Id.*

[26] *Id.* at 652.
[27] *Id.*
[28] *Haynes*, 532 So.2d at 748.
[29] FLA. STAT. § 253.141 (2007).
[30] *Id.*
[31] *Belvedere Dev. Corp.*, 476 So.2d at 652-653 (noting that literally interpreting the statutory scope of riparian rights would be inconsistent with the generally accepted property doctrines and contrary to established case law in Florida).
[32] *Id.*
[33] FLA. ADMIN. CODE ANN. R. 18-21.004(3)(b) (2007).
[34] FLA. ADMIN. CODE ANN. R. 18-21.004(3)(c) (2007).
[35] *Tewksbury v. City of Deerfield Beach*, 763 So.2d 1071, 1072 (Fla. 4th DCA 1999).
[36] *Brannon*, 2007 WL 162166 at *5.
[37] *Id.*
[38] *Id.*
[39] *Shore Village Prop. Owners' Ass'n, Inc. v. State of Fla. Dept. of Envtl. Prot.*, 824 So.2d 208, 211 (Fla. 4th DCA 2002).
[40] *Brannon*, 2007 WL 162166 at *5.
[41] *Hayes*, 91 So.2d at 801.
[42] *Id.* at 801-802.
[43] *Brannon*, 2007 WL 162166 at *5.
[44] *Hayes*, 91 So.2d at 801.
[45] *Freed*, 112 So. at 844.
[46] The Florida Department of Environmental Protection sponsored a study of the effect of shoreline and channel geometry on the division of riparian rights. The conclusions may be accessed at http://www.dep.state.fl.us/lands/surv_map/ripright.htm.
[47] *Id.*
[48] *Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n*, 48 So. 643, 644-645 (Fla. 1909) (recognizing as early as 1909 the right to accretion and reliction as riparian rights).
[49] 78 AM. JUR. 2D *Waters* § 311 (2007).
[50] FLA. JUR. *Public Lands* § 72. Where water periodically rises over land and then recedes, for example, that caused by the seasons, there is no reliction. *Id.*
[51] *Bd. of Tr. of the Internal Improvement Fund v. Sand Key Assoc.*, 512 So.2d 934, 939 (Fla. 1987). *See also Ford v. Turner*, 142 So.2d 335, 335 (Fla. 2d DCA 1962) (stating "Florida is bordered by water on the east, south and west. The numerous islands or keys are constantly changing by various methods of accretion, alluvion, erosion, reliction and avulsion, giving rise to myriad problems. Public policy demands a definite standard of quieting title to these areas despite the fact that occasionally some hardship may occur.").
[52] *Bd. of Tr. of the Internal Improvement Fund v. Medeira Beach Nominee*, 272 So.2d 209, 213 (Fla. 2d DCA 1973).
[53] *Save our Beaches*, 2006 WL 1112700 at *8-*9 (holding that notwithstanding riparian owners' right to state caused accretions, the state may deprive the owners of these rights as long as full compensation is paid).

[54] *Ford*, 142 So.2d at 340. *See also Freed*, 112 So. at 893 (awarding a property owner 100 feet of ocean front property as the result of accretion).
[55] *Cartish v. Soper*, 157 So.2d 150, 155 (Fla. 2d DCA 1963) (Smith, C.J., concurs, White, J., concurs specially) Concurrence 155 (stating that although riparian rights generally attach to the fee, ownership of the fee is not a necessary condition precedent to riparian rights).
[56] *Brannon*, 2007 WL 162166 at *1.
[57] *Id.*
[58] *Id.*
[59] *Cartish*, 157 So.2d at 152.
[60] *Id.*
[61] *Id.* at 153-154.
[62] *Cartish* at 154-155.
[63] *Brannon*, 2007 WL 162166 at *5.
[64] *Id.* at *1.
[65] *Id.* at *6-*7.
[66] *Id.* at *7.
[67] *See Haynes*, 532 So.2d at 749.
[68] *See id.*
[69] *Id.* at 747, 749.
[70] *Id.* at 749.
[71] *Padgett v. Cent. & S. Control Dist.*, 178 So.2d 900, 904 (Fla. 2d DCA 1965).
[72] *Id.* at 905.
[73] *Id.*
[74] FLA. STAT. § 253.141 (2007).
[75] *Parlato v. Secret Oaks Owners Ass'n.*, 793 So.2d 1158, 1161 (Fla. 1st DCA 2001).
[76] *Id.* at 1160.
[77] *Id.* at 1162. FLA. ADMIN. CODE ANN. r. 18-21.004(3)(d) (2007) states "All structures and other activities must be set back a minimum of 25 feet from the applicant's riparian rights line. Marginal docks may be set back only 10 feet. There shall be no exceptions to the setbacks unless the applicant's shoreline frontage is less than 65 feet . . ."
[78] *Id.* at 1163 (quoting FLA. ADMIN. CODE ANN. r. 18-21.004(3)(b)) (2007).
[79] *Id.*
[80] *Id.* Owners of lots 10 and 11 argued that FLA. ADMIN. CODE ANN. r. 18-21.004(3)(a) which states "None of the provisions of this rule shall be implemented in a manner that would unreasonably infringe upon the traditional common law riparian rights of upland property owners adjacent to sovereignty lands" prohibited rebuilding of the dock, since, it would result in a setback violation. *Id.*
[81] *Save our Beaches*, 2006 WL 1112700 at *9.
[82] *Id.* at *9-*1 (finding FLA. STAT. § 161.191 unconstitutional as applied).
[83] FLA. STAT. § 161.191(2) (2007).
[84] *Save our Beaches*, 2006 WL 1112700 at *8.
[85] *Id.* at *10-*11.
[86] FLA. STAT. § 161.141 (2007).
[87] *Bd. of Tr. of the Internal Improvement Trust Fund v. Sand Key Assoc., Ltd.*, 512 So.2d 934, 939 (Fla. 1987).

[88] FLA. STAT. § 161.051 (2007).
[89] *Sand Key*, 512 So.2d at 939.
[90] *Hayes*, 91 So.2d at 802.
[91] *Id.* at 798.
[92] *Id.* at 802. However, obstructions did exist based on an extension of the property lines even though the channel ran parallel to the shore. *Id.*
[93] See *Lee County v. Kiesel*, 705 So.2d 1013, 1015 (Fla. 2d DCA 1998).
[94] *Lake Conway Shores Homeowners Ass'n v. Driscoll*, 476 So.2d 1306, 1309 (Fla. 5th DCA 1985). *See* also *Lee County*, 705 So.2d at 1015 (stating "This rule means that each case necessarily must turn on the factual circumstances there presented and no geometric theorem can be formulated to govern all cases.").
[95] *Id.*
[96] *Lake Conway Shores Homeowners Ass'n*, 476 So.2d at 1308.
[97] *Id.* at 1308-1309.
[98] The Florida Department of Environmental Protection sponsored a study of the effect of shoreline and channel geometry on the division of riparian rights. The conclusions may be accessed at http://www.dep.state.fl.us/lands/surv_map/ripright.htm.
[99] *Id.* Initially, it is necessary to distinguish the channel from the line of deep water (line of navigability, or line of navigation). The channel being the officially marked navigation channel and the line of navigability being the distance offshore where the depth of water is sufficient for navigation year round. *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] FLA. ADMIN. CODE ANN. r.18-21.004(3)(d) (2007).
[105] H.R. 396, 190th Reg. Sess. (Fla. 2007).
[106] *Harrell v. Hess Oil & Chem. Corp.*, 287 So.2d 291, 295 (Fla. 1973).
[107] *Id.*
[108] FLA. STAT. § 253.14 (2007).
[109] *Ferry Pass Inspectors' & Shippers' Ass'n*, 48 So. at 645.
[110] *Id.* at 646.
[111] *Id.* at 645.
[112] *Cent. & S. Fla. Flood Control Dist. v. Griffith*, 119 So.2d 423, 425 (Fla. 3d DCA 1960).
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Haynes*, 532 So.2d at 748. (declaring that a strip of land was obtained by *Haynes* through an implied grant contained in the deed from the previous owner).
[117] *Ford*, 142 So.2d at 342.
[118] *Id.* at 336.
[119] *Id.* at 342.
[120] *Griffith*, 119 So.2d at 423.
[121] *Freed*, 112 So. at 845-846.
[122] *Id.* at 845.

[123] *City of Eustis v. Firster*, 113 So.2d 260, 263 (Fla. 2d DCA 1959).
[124] *Prince v. McLaughlin*, 431 So.2d 276, 276 (Fla. 5th DCA 1983).
[125] *Lee County*, 705 So.2d at 1014, 1016.
[126] *Id.* at 1014-1015.
[127] *Id.* at 1015-1016.
[128] *Id.* at 1015.
[129] *Freed*, 112 So. at 896.
[130] *Id.*
[131] *Id.*
[132] *City of Eustis*, 113 So.2d at 263.
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Freed*, 112 So. at 845.
[137] *Id.* (quoting Riparian Acts of 1856 and 1921).