CHY. NO. 5766

No. 5766

Kent Island Estates Corp, Inc.

VS

East Bay Colony Associates

[redacted] CASE No. 5766 [redacted]

DATE		
1/14/76	1	Bill of Complaint To Quiet Title And For Injunction and Exhibits A thru C.
"	2	Motion To Limit Service of Exhibits
"	3	Order of Court granting above Motion
"		Summons issued for defendants.
01/22/76	4	Summons for John M. Nelson, III Trustee returned served
"	5	Summons for William I. Dixon Trustee returned served
"	6	Summons for Md. National Realty Investors Inc. returned served on John M. Nelson, III, Resident Agent.
1/23/76	7	Summons for East Bay Colony Assoc. ret'd served on William E. Dixon
1/26/76	8	Summons for Rebecca Aaron returned served.
"	9	Summons for Samuel J. Aaron returned served
3/26/76	10	Respondents Answer To Bill of Complaint & cert/Svc
4/15/76	11	Petition to Add William E. Dixon as Party Respondent and Limit Service of Exhibits & cert. of Svc.
4/15/76	12	Order of Court granting
"		Summons issued for Wm. E. Dixon with copy of Bill of Complaint, Petition and Order.
5/3/76	13	Summons ret'd showing service on William E. Dixon 4-28-76
9/27/76		Answer of William E. Dixon To The Bill of Complaint & cert/Svc.
10/15/76		Trial before Harry E. Clark, Judge; Joseph McGrath, Court Reporter. Counsel were heard. Plaintiff's witness was sworn & examined. Trial continued.
10/15/76		Stipulation of Agreed Facts & Exhibits P, Q, R, S, & T; Agreed Issues & certificate of Counsel filed.
12/8/76		Trial Continued before Harry E. Clark, Judge; Joseph McGrath, Court Reporter. Plaintiff's motions to include Exhibits 1 thru 6, Exhibit R & Exhibit A thru T heard & granted. Plaintiff's witnesses were sworn & examined. Def's witnesses were sworn & examined. Mr. Atwater submitted Def's Trial Memorandum. Counsel were heard in closing argument. Plaintiff's Trial Memorandum to be submitted within 30 days.
2/2/77		Plaintiff's Memorandum filed.
9/14/77		Decision & Appendix A (Sept. 15/1977) Judge Clark) filed. Copies mailed to counsel.

CHY. NO. 5766

DATE

CASE No.

Exhibits P, Q, R, S, and T; Agreed Issues and Certificate of Counsel filed.

Dec. 8, 1976 -- Trial continued before Harry E. Clark, Judge; Joseph McGrath, Court Reporter. Plaintiff's motions to include Exhibits 1 through 6, Exhibit R and Exhibit A through T heard and granted. Plaintiff's witnesses were sworn and examined. Defendant's witnesses were sworn and examined. Mr. Atwater submitted Defendant's Trial Memorandum. Counsel were heard in closing argument. Plaintiff's Trial Memorandum to be submitted within 30 days.

March 2, 1977 -- Plaintiff's Memorandum filed.
March 22, 1977 -- Defendant's Additional Memorandum filed.
September 16, 1977 -- Decision and Appendix A (Sept. 15, 1977 JUDGE CLARK) filed. Copies mailed to counsel.

October 13, 1977 -- Order of Appeal to the Court of Special Appeals of Maryland and certificate of service filed.

January 5, 1978 -- Motion And Order For Extension Of Time For Filing Record and Order of the Court of Special Appeals of Maryland extending the time for filing the record until January 13, 1978 filed.

February 10, 1978 -- Motion And Order For Extension Of Time For Filing Record and Order of the Court of Special Appeals of Maryland extending the time for filing the record until February 13, 1978; and Supplemental Petition For Extension Of Time for Filing Record and Order of the Court of Special Appeals of Maryland extending the time for filing the record until March 31, 1978 filed.

March 31, 1978 -- Transcript of Testimony filed.

March 31, 1978 -- Certified copy of record delivered to Court of Special Appeals of Maryland by Joseph McGrath, Court Reporter.

August 28, 1978 -- Copy of Order of the Court of Appeals of Maryland, Petition Docket No. 222, Sep. Term, 1978, denying the Petition for a Writ of Certiorari filed.

November 9, 1978 -- Mandate from the Court of Special Appeals of Maryland, No. 108, September Term, 1978 - 1046-78 Per Curiam filed. Judgment affirmed. Costs to be paid by appellants.

February 19,2009-- Notice Regarding Contemplated Destruction of Exhibits filed. Copies mailed to The Honorable John W Sause, Jr. and Charles Atwater Esq.

March 13,2009-- Plaintiff's exhibits returned to The Honorable John W Sause Jr and receipt filed.

March 24,2009 -- Defendant's exhibits destroyed.

IN THE CIRCUIT COURT
FOR QUEEN ANNE'S COUNTY, MARYLAND

EQUITY NO. 5766

TITLE	DOCKET ENTRIES
KENT ISLAND ESTATES CORPORATION, INC. a Maryland corporation, Stevensville, Maryland 21666 Complainant vs. EAST BAY COLONY ASSOCIATES, a Limited partnership serve on: WILLIAM E. DIXON, partner 650 Ritchie Highway Severna Park, Anne Arundel County, Maryland 21146 SAMUEL J. AARON 416 North Charles Street Baltimore, Maryland 21201 REBECCA AARON 416 North Charles Street Baltimore, Maryland 21201 MARYLAND NATIONAL REALTY INVESTORS, INC. a Maryland corporation serve on: JOHN M. NELSON, III Resident Agent, 10 Light Street Baltimore, Maryland 21202 JOHN M. NELSON, III, Trustee 10 Light Street Baltimore, Maryland 21202 WILLIAM T. DEFINE, Trustee 10 Light Street Baltimore, Maryland 21202 Respondents William E. Dixon COUNSEL FOR COMPLAINANT John W. Sause, Jr. J. Donald Braden 758-0970 COUNSEL FOR RESPONDENTS Mylander, Atwater, Carney & Stone Charles C. W. Atwater 1211 W. R. Grace Building Baltimore, Md. 21202 752-6254	1-Filed Jan. 14, 1976. Bill of Complaint To Quiet Title And For Injunction and Exhibits A thru O. 2-Filed Jan. 14, 1976. Motion To Limit Service of Exhibits. 3-Filed Jan. 14, 1976. Order of Court granting above Motion. Jan. 14, 1976. Summons issued for defendants. 4-Filed Jan. 22, 1976. Summons for John M. Nelson, III, Trustee returned served. 5-Filed Jan. 22, 1976. Summons for William T. Define, Trustee returned served. 6-Filed Jan. 22, 1976. Summons for Maryland National Realty Investors, Inc. returned served on John M. Nelson, III, Resident Agent. 7-Filed Jan. 23, 1976. Summons for East Bay Colony Associates returned served on William E. Dixon. 8-Filed Jan. 26, 1976. Summons for Rebecca Aaron returned served. 9-Filed Jan. 26, 1976. Summons for Samuel J. Aaron returned served. 10-Filed Mar. 26, 1976. Respondents' Answer To Bill of Complaint and certificate of service. 11-Filed April 15, 1976. Petition to Add William E. Dixon as Party Respondent and Limit Service of Exhibits and certificate of service. 12-Filed April 15, 1976. Order of Court granting above Petition. April 15, 1976. Summons issued for William E. Dixon with copy of Bill of Complaint, Petition and Order. 13-Filed May 3, 1976. Summons returned showing service on William E. Dixon April 28, 1976. Sept. 27, 1976. Answer Of William E. Dixon To The Bill of Complaint and certificate of service. Oct. 15, 1976. Trial before Harry E. Clark, Judge; Joseph McGrath, Court Reporter. Counsel were heard. Plaintiff's witness was sworn and examined. Trial continued. Oct. 15, 1976. Stipulation of Agreed Facts and over

STATEMENT OF COSTS

PLAINTIFF'S		DEFENDANT'S	
Appearance fee	$ 10.00	Appearance fee	$ 10.00
Clerk's fee	$ 40.00 Re-3248	Clerk's fee	$
Clerk's Additional	$	Clerk's Additional	$
Record	$	Record	$
Sheriff's fee B. City	$ 50.00	Sheriff's fee	$
Sheriff's Additional A.A.	10.00	Additional	$

JOHN T. GAYNARD,
CLERK

Clerk of the Circuit Court
FOR TALBOT COUNTY
EASTON, MD. 21601
TELEPHONE: 822-5510

Date October 19, 1976

NOTICE TO COUNSEL:

RE: Kent Island Estates Corp.,Inc.
-vs-
East Bay Colony Associates, et al

THE ABOVE CASE (S) HAS (HAVE) BEEN SCHEDULED FOR A Court TRIAL

ON December 8, 1976, AT 9:00 O'clock, A.M.

Please determine promptly whether this date is suitable. A request for a change of trial date will only be granted for any of the following reasons: (a) conflict with other commitments, (b) unavailability of witnesses, (c) pending discovery proceedings, or (d) any other adequate reason. All such requests must be made to the Assignment Clerk within thirty (30) days of the receipt of this notice. Thereafter no continuance will be considered by the Court except in accordance with the appropiate provisions of Maryland Rule and Second Circuit Rule 527.

Please acknowledge receipt of this notice by signing and returning the enclosed card.

Charles F. Madden
Assignment Clerk

John W. Sause, Esq.,
204 North Commerce Street
Centreville, Maryland 21617

Charles C. Atwater, Esq.,
1211 Grace Building
Baltimore, Maryland 21202

Clerk of the Court
Circuit Court For Queen Anne's County
Courthouse
Centreville, Maryland 21617

KENT ISLAND ESTATES CORPORATION, INC.
Complainant

v.

EAST BAY COLONY ASSOCIATES et al.
Respondents

STATE OF MARYLAND
IN THE
CIRCUIT COURT
FOR
QUEEN ANNE'S COUNTY

Criminal case number _____
Law case number _____
Equity case number 5766
Juvenile case number _____

* * * * * * *

TO THE CLERK OF COURT:

Kindly issue summons for the named person (s) to be and appear before this Court to testify in the above entitled proceeding as follows:

Date	Time	Location of Court House	Room	To testify for
10/15/76	9:45	Centreville, Maryland	Courtroom	Complainant

Name/address/telephone/signature of person requesting summons:
Sause & Braden
204 North Commerce St.
Centreville, Maryland 21617
758-0970
J. Donald Braden
Signature

NAME	NAME	NAME
ANTHONY E. MOORE	ROBERT SNYDER	REGINALD W. JONES
ADDRESS	ADDRESS	ADDRESS
Burrisville Road		Reginald W. Jones Realty
CITY/TOWN AND ZIP	CITY/TOWN AND ZIP	CITY/TOWN AND ZIP
Centreville, Maryland 21617	Stevensville, Md. 21666	Stevensville, Md. 21666
COUNTY	COUNTY	COUNTY
Queen Anne's	Queen Anne's	Queen Anne's
☐ Summons Duces Tecum Attached	☐ Summons Duces Tecum Attached	☐ Summons Duces Tecum Attached

To be completed by Clerk of Court and Sheriff of said county

Sheriff's Return	Sheriff's Return	Sheriff's Return
Served 10-7-76 Time 1045 AM	Served 10 5 76 Time 7. PM	Served 10-5-76 Time 7 15 PM
If Non Est State Reason	If Non Est State Reason	If Non Est State Reason
Deputy Sheriff William Foster	Dep. Sheriff Walter Clough	Dep. Sheriff Walter Clough

TO THE SHERIFF:

You are hereby commanded to summon the named person to testify as stated above.

By ORDER of THE HONORABLE George B. Rasin, Jr., CHIEF JUDGE of said Court.

Issued this 5th day of October, 19 76.

FILED
OCT 8 1976

Charles H. Cole
Clerk

KENT ISLAND ESTATES
CORPORATION, INC.
Complainant

v.

EAST BAY COLONY ASSOCIATES
et al.
Respondents

STATE OF MARYLAND
IN THE
CIRCUIT COURT
FOR
QUEEN ANNE'S COUNTY

Criminal case number _____

Law case number _____

Equity case number 5766

Juvenile case number _____

* * * * * * *

TO THE CLERK OF COURT:

Kindly issue summons for the named person (s) to be and appear before this Court to testify in the above entitled proceeding as follows:

Date	Time	Location of Court House	Room	To testify for
10/15/76	9:45	Centreville, Maryland	Courtroom	Complainant

Name/address/telephone/signature of person requesting summons:
Sause & Braden Centreville, Maryland 21617
204 North Commerce St. 758-0970

J. Donald Braden
Signature

NAME
ROBERT C. WEBSTER, JR.
Project Forester
ADDRESS
Department of
Natural Resources
CITY/TOWN AND ZIP
County Office Building
Centreville, Maryland 21617
COUNTY
Queen Anne's

☐ Summons Duces Tecum Attached

To be completed by Clerk of Court and Sheriff of said county

Sheriff's Return

Served 10/8/76 Time 11:00 am

If Non Est
State Reason

Sheriff William B. Shop

TO THE SHERIFF:

You are hereby commanded to summon the named person to testify as stated above.

By ORDER of THE HONORABLE George B. Rasin, Jr. , CHIEF JUDGE of said Court.

Issued this 5th day of October , 19 76.

FILED
OCT 8 1976

Charles H. Cecil
Clerk

KENT ISLAND ESTATES
CORPORATION, INC.
Complainant

v.

EAST BAY COLONY ASSOCIATES
et al.
Respondents

STATE OF MARYLAND
IN THE
CIRCUIT COURT
FOR
QUEEN ANNE'S COUNTY

Criminal case number _____
Law case number _____
Equity case number 5766
Juvenile case number _____

* * * * * * *

TO THE CLERK OF COURT:

Kindly issue summons for the named person (s) to be and appear before this Court to testify in the above entitled proceeding as follows:

Date	Time	Location of Court House	Room	To testify for
10/15/76	9:45	Centreville, Maryland	Courtroom	Complainant

Name/address/telephone/signature of person requesting summons:
Sause & Braden Centreville, Maryland 21617
204 North Commerce St. 758-0970

J. Donald Braden
Signature

NAME
ROBERT C. WEBSTER, JR.
Project Forester
ADDRESS
Department of
Natural Resources
CITY/TOWN AND ZIP
County Office Building
Centreville, Maryland 21617
COUNTY
Queen Anne's
☐ Summons Duces Tecum
Attached

To be completed by Clerk of Court and Sheriff of said county

Sheriff's Return

Served Time
If Non Est
State Reason

Sheriff

TO THE SHERIFF:

You are hereby commanded to summon the named person to testify as stated above.

By ORDER of THE HONORABLE George B. Rasin, Jr. , CHIEF JUDGE of said Court.

Issued this 5th day of October , 19 76.

COPY

Clerk

KENT ISLAND ESTATES
CORPORATION, INC.
Complainant

v.

EAST BAY COLONY ASSOCIATES
et al.
Respondents

STATE OF MARYLAND
IN THE
CIRCUIT COURT
FOR
QUEEN ANNE'S COUNTY

Criminal case number _____
Law case number _____
Equity case number 5766
Juvenile case number _____

* * * * * * *

TO THE CLERK OF COURT:

Kindly issue summons for the named person (s) to be and appear before this Court to testify in the above entitled proceeding as follows:

Date	Time	Location of Court House	Room	To testify for
10/15/76	9:45	Centreville, Maryland	Courtroom	Complainant

Name/address/telephone/signature of person requesting summons:
Sause & Braden
204 North Commerce St.
Centreville, Maryland 21617
758-0970

J. Donald Braden
Signature

NAME	NAME	NAME
ANTHONY E. MOORE	ROBERT SNYDER	REGINALD W. JONES
ADDRESS	ADDRESS	ADDRESS
Burrisville Road		Reginald W. Jones Realty
CITY/TOWN AND ZIP	CITY/TOWN AND ZIP	CITY/TOWN AND ZIP
Centreville, Maryland 21617	Stevensville, Md. 21666	Stevensville, Md. 21666
COUNTY	COUNTY	COUNTY
Queen Anne's	Queen Anne's	Queen Anne's
☐ Summons Duces Tecum Attached	☐ Summons Duces Tecum Attached	☐ Summons Duces Tecum Attached

To be completed by Clerk of Court and Sheriff of said county

Sheriff's Return	Sheriff's Return	Sheriff's Return
Served Time	Served Time	Served Time
If Non Est State Reason	If Non Est State Reason	If Non Est State Reason
Sheriff	Sheriff	Sheriff

TO THE SHERIFF:

You are hereby commanded to summon the named person to testify as stated above.

By ORDER of THE HONORABLE George B. Rasin, Jr., CHIEF JUDGE of said Court.

Issued this 5th day of October, 19 76.

COPY

_____
Clerk

STATE OF MARYLAND
IN THE
CIRCUIT COURT
FOR
Queen Anne's COUNTY

KENT ISLAND ESTATES
CORPORATION, INC.
Complainant

v.

EAST BAY COLONY ASSOCIATES
et al.
Respondents

Criminal case number _____

Law case number _____

Equity case number 5766

Juvenile case number _____

* * * * * * *

TO THE CLERK OF COURT:

Kindly issue summons for the named person (s) to be and appear before this Court to testify in the above entitled proceeding as follows:

Date	Time	Location of Court House	Room	To testify for
12/8/76	9:00	Easton, Maryland	Courtroom	Complainant

Name/address/telephone/signature of person requesting summons:
Sause & Braden
204 North Commerce St.
Centreville, Maryland 21617
758-0970

Signature

NAME
ROBERT C. WEBSTER, JR.
Project Forester
ADDRESS
Department of
Natural Resources
CITY/TOWN AND ZIP
County Office Building
Centreville, Maryland 21617
COUNTY
Queen Anne's

☐ Summons Duces Tecum Attached

To be completed by Clerk of Court and Sheriff of said county

Sheriff's Return

FILED
OCT 26 1976

Served 10-26-76 Time 11:10 AM

If Non Est
State Reason

Sheriff George B. Sharp

TO THE SHERIFF:

You are hereby commanded to summon the named person to testify as stated above.

By ORDER of THE HONORABLE George B. Rasin, Jr., CHIEF JUDGE of said Court.

Issued this 21st day of October, 1976.

Charles H. Ceil
Clerk

STATE OF MARYLAND
IN THE
CIRCUIT COURT
FOR
Queen Anne's COUNTY

KENT ISLAND ESTATES
CORPORATION, INC.
Complainant

v.

EAST BAY COLONY ASSOCIATES
et al.
Respondents

Criminal case number _____
Law case number _____
Equity case number 5766
Juvenile case number _____

* * * * * * *

TO THE CLERK OF COURT:

Kindly issue summons for the named person (s) to be and appear before this Court to testify in the above entitled proceeding as follows:

Date	Time	Location of Court House	Room	To testify for
12/8/76	9:00	Easton, Maryland	Courtroom	Complainant

Name/address/telephone/signature of person requesting summons:
Sause & Braden
204 North Commerce St.
Centreville, Maryland 21617
758-0970
Paul Rauch
Signature

NAME	NAME	NAME
ANTHONY E. MOORE	ROBERT SNYDER	REGINALD W. JONES
ADDRESS	ADDRESS	ADDRESS
Burrisville Road		Reginald W. Jones Realty
CITY/TOWN AND ZIP	CITY/TOWN AND ZIP	CITY/TOWN AND ZIP
Centreville, Md. 21617	Stevensville, Md. 21666	Stevensville, Md. 21666
COUNTY	COUNTY	COUNTY
Queen Anne's	Queen Anne's	Queen Anne's
☐ Summons Duces Tecum Attached	☐ Summons Duces Tecum Attached	☐ Summons Duces Tecum Attached

To be completed by Clerk of Court and Sheriff of said county

Sheriff's Return	Sheriff's Return	Sheriff's Return
Served 10-25-76 Time 7:07 PM	Served 10-22-76 Time 7 PM	Served 10-22-76 Time 7 PM
If Non Est State Reason	If Non Est State Reason	If Non Est State Reason
Deputy Sheriff William Foster	Dep Sheriff Walter Clough	Dep Sheriff Walter Clough

TO THE SHERIFF:

You are hereby commanded to summon the named person to testify as stated above.

By ORDER of THE HONORABLE George B. Rasin, Jr., CHIEF JUDGE of said Court.

Issued this 21st day of October, 1976.

FILED
OCT 26 1976

Charles H. Coil
Clerk

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C. W. ATWATER
DWIGHT C. STONE

EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6254
AREA CODE 301

October 11, 1977

Clerk, Circuit Court
of Anne Arundel County
Court House
Centreville, MD 21617

Re: Kent Island Estates, vs
East Bay Colony, et al
Chancery No: 5766

Dear Mr. Clerk:

Enclosed please find the original and two copies of my Notice to enter Appeal.

Also enclosed is my check in the amount of $105, as per our telephone conversation of today's date, which breaks down as follows:

Sheriff Baltimore City	$50.00
Sheriff A.A. County	10.00
Appearance fee-Plaintiff	10.00
Appearance fee-Defendant	10.00
Preparation of Record	25.00

Also enclosed is my check in the amount of $30.00 made payable to the Clerk of the Court of Special Appeals.

I have ordered the transcript prepared by the Court Reporter.

Very truly yours,

Charles C. W. Atwater

CCWA:gc
Enclosures

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C.W. ATWATER
DWIGHT C. STONE

EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6254
AREA CODE 301

October 11, 1977

Mr. Joseph McGrath
Consolidated Reporting
12611 Cambleton Drive
Upper Marlboro, MD 20870

Re: Kent Island Estates, Inc. vs
East Bay Colony Associates, et al
Trial: December 8, 1976 in Circuit Court
for Queen Anne's County

Dear Mr. McGrath:

I am filing an appeal in the above captioned case. Please prepare the remaining transcript of the December 8th proceedings. Please advise me if you wish a deposit.

Very truly yours,

Charles C. W. Atwater

CCWA:gc

KENT ISLAND ESTATES CORPORATION, INC.	*	IN THE
Complainant	*	CIRCUIT COURT FOR
vs		QUEEN ANNE'S COUNTY
	*	
EAST BAY COLONY ASSOCIATES, et al		Chancery No: 5766
	*	
Respondents		

* * * * *

MR. CLERK:

Please enter an appeal to the Court of Special Appeals of Maryland from the Decision dated September 15, 1977 and filed September 16, 1977 in the above entitled matter.

CHARLES C. W. ATWATER
1112 W. R. Grace Building
Baltimore, Maryland 21202
752-6254
Attorney for Defendants

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed this 11 day of October, 1977 to John W. Sause, Esquire at 204 North Commerce Street, Centreville, Maryland 21617.

CHARLES C. W. ATWATER

KENT ISLAND ESTATES CORPORATION, INC.	*	IN THE
Complainant	*	CIRCUIT COURT FOR QUEEN ANNE'S COUNTY
vs	*	
EAST BAY COLONY ASSOCIATES, et al		Chancery No: 5766
Respondents	*	

* * * * *

MR. CLERK:

Please enter an appeal to the Court of Special Appeals of Maryland from the Decision dated September 15, 1977 and filed September 16, 1977 in the above entitled matter.

CHARLES C. W. ATWATER
1112 W. R. Grace Building
Baltimore, Maryland 21202
752-6254
Attorney for Defendants

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed this 11 day of October, 1977 to John W. Sause, Esquire at 204 North Commerce Street, Centreville, Maryland 21617.

CHARLES C. W. ATWATER

The Second Judicial Circuit of Maryland

GEORGE B. RASIN, JR.
CHIEF JUDGE
CHESTERTOWN, MD. 21620

HARRY E. CLARK
ASSOCIATE JUDGE
EASTON, MD. 21601

H. KENNETH MACKEY
ASSOCIATE JUDGE
ELKTON, MD. 21921

B. HACKETT TURNER, JR.
ASSOCIATE JUDGE
CENTREVILLE, MD. 21617

J. ALBERT RONEY, JR.
ASSOCIATE JUDGE
ELKTON, MD. 21921

K. THOMAS EVERNGAM
ASSOCIATE JUDGE
DENTON, MD. 21629

CAROLINE COUNTY
CECIL COUNTY
KENT COUNTY
QUEEN ANNE'S COUNTY
TALBOT COUNTY

September 15, 1977

Mr. Charles W. Cecil, Clerk
Circuit Court for Queen Anne's County
Court House
Centreville, Maryland 21617

Re: Kent Island Estates Corporation, Inc.
v.
East Bay Colony Associates, et al

Dear Charlie:

I am pleased to enclose herewith the file in the above captioned case together with my Decision. As I have indicated at the bottom of my Decision, I would like you to make photocopies of the Decision, exclusive of the Appendix A attached thereto, and mail the same to counsel of record.

You will note when you open the file that there are three Memoranda which were submitted by counsel for the parties. I have marked the dates these were filed with me, but you have [redacted] them in your docket, so I will be obliged if you will do so at your earliest convenience.

I have entrusted the exhibits in this case, which are contained in a case that is quite heavy and bulky, with our Circuit Court Administrator, Roger Mooney, who will be dropping it off to you within the next few days.

Thanking you for your kind attention to these matters, I am

Cordially yours,

Harry

HARRY E. CLARK

Enc.

OFFICE OF

CLERK OF THE CIRCUIT COURT
FOR QUEEN ANNE'S COUNTY
CENTREVILLE, MARYLAND 21617

758-1773 AREA CODE 301

May 11, 1976

John W. Sause, Jr., Esquire
J. Donald Braden, Esquire
204 North Commerce Street
Centreville, Maryland 21617

Charles C. W. Atwater, Esquire
Mylander, Atwater, Carney & Stone
1211 W. R. Grace Building
Baltimore, Maryland 21202

Re: Kent Island Estates Corporation, Inc. vs. East Bay Colony Assoc. et al
Chy. No. 5766

Case has been definitely set for Court Trial on Friday, October 15, 1976, at 9:45 A. M.

Your attention is invited to Second Circuit Rule 527 and Maryland Rule 527. No continuance will be granted unless the Court shall be satisfied that such an emergency has arisen, not reasonably forseeable, as would result in an injustice if the trial is required to take place.

(Mrs.) Anne F. Ward

Assignment Clerk

ASSIGNMENT OFFICE
CIRCUIT COURT FOR QUEEN ANNE'S COUNTY
P.O. Box 67
CENTREVILLE, MARYLAND 21617
Telephone: 758-1773

DATE April 6, 1976

TO: John W. Sause, Jr., Esquire
J. Donald Braden, Esquire
204 North Commerce Street
Centreville, Maryland 21617

Charles C. W. Atwater, Esquire
Mylander, Atwater, Carney & Stone
1211 W. R. Grace Building
Baltimore, Maryland 21202

RE: Kent Island Estates Corporation, Inc. vs. East Bay Colony Assoc. et al
Chy. No. 5766

THE ABOVE CASE (S) HAS (~~HAVE~~) BEEN SCHEDULED FOR Court

TRIAL ON Friday, October 15, 1976, at 9:45 A.M.

Please determine promptly whether this date is suitable. A request for a change of the trial date will only be granted for any of the following reasons: (a) conflict with other commitments, (b) unavailability of witnesses, (c) pending discovery proceedings, or (d) any other adequate reason. All such requests must be made to the Assignment Clerk within thirty (30)days of the receipt of this notice. Thereafter no continuance will be considered by the Court except in accordance with the appropriate provisions of Maryland Rule and Second Circuit Rule 527.

One day has been assigned for the trial of this case.
Court requires trial briefs to be filed at least one (1) week before date of trial.

Assignment Clerk

Please return postal card promptly.

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNES' COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		
	*	Chancery No: 5766
Appellee		

* * * * *

SUPPLEMENTAL PETITION FOR EXTENSION OF TIME FOR FILING RECORD

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of East Bay Colony Associates, Appellants, by Charles C.W. Atwater, their attorney, respectfully shows:

1. Appellants' counsel has been in touch with the Court Reporter who should prepare the transcript of testimony in this case. He was first informed that some extension of time would be required because of the press of business in the courts, whereby the court reporter could not complete the transcript. Subsequently, he was informed that the court reporter could not find "some" of his notes and that the court reporter would confirm this fact to the Court of Appeals by direct letter, with a copy to the attorney for Appellants.

2. Appellants' counsel has been endeavoring to reach the court reporter for several weeks and has been unable to contact him personally. The secretary of Judge Clark, who was the trial judge in the Circuit Court for Queen Annes' County, when she was informed of the situation, said that she would speak to the judge and have him request the court reporter to act. Nothing further has been heard from the reporter even after this.

3. A Petition for Extension of Time was filed on January 11, 1978 to extend the time for 30 days from January 13, 1978, which was the date the transcript and the record should have been filed with the court. This was to be supplemented by the letter from the Court Reporter, which counsel for Appellants has been unable to obtain. Time is now growing short, even if the court grants the extension requested.

4. The last word counsel had from the reporter was that he was still trying to find the balance of his notes. In the event the reporter is unable to find the balance of his notes, it will be necessary for counsel for Appellants and counsel for Appellee to get together and possibly confer with the Court to see if an agreed statement of the testimony of the second day of trial can be prepared. This obviously will be impossible within the present time.

5. Counsel for Appellant has consulted with counsel for Appellee and informs the court that there is no objection to this extension by counsel for Appellee.

WHEREFORE your Petitioner prays that this court may, by its order, extend the time for filing the record in the above entitled case to March 31, 1978.

S/

CHARLES C.W. ATWATER
1112 W.R. Grace Building
Baltimore, Maryland 21202
(301) 752-6254
Attorney for Appellants

I HEREBY CERTIFY that on this 3 day of February, 1978 a copy of the foregoing Supplemental Petition for Extension of Time for Filing Record was mailed to John W. Sause, Esquire at 204 North Commerce Street in Centreville, Maryland 21617, attorney for Appellees.

CHARLES C.W. ATWATER
Attorney for Appellants

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNE'S COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		
	*	Chancery No: 5766
Appellee		

* * * * *

O R D E R

Upon the foregoing Supplemental Petition for Extension of Time to File the Record, it is this _____ day of _____, 1978 by the Court of Special Appeals of Maryland, hereby

ORDERED that the time for filing the record in this matter be, and is hereby, extended up to and including March 31, 1978.

_____

JUDGE

2	2

EQUITY MASTER

1	7	2	4

COURT CODE

A. | | | | | 5 | 7 | 6 | 6 |

DOCKET NUMBER

B. | 0 | 1 | 1 | 4 | 7 | 6 |

DATE FILED
(Month/Day/Year)

C. | 6 | |

PROCEEDING

Adoption
1—Regular
2—Guardianship

3—Divorce, Nullity or Maintenance

4—Paternity

5—Foreclosure

6—Other

CHRONOLOGY

Event	Date	Hours	Judge
C T	1 0 1 5 7 6		2 0 2
C T	1 2 0 8 7 6		2 0 2
D I S P	0 9 1 6 7 7		2 0 2

SUMMONSES ISSUED

DATE	NAME	COUNTY	SERVED	COST	SWORN
1/14/76	East Bay Colony Assoc.	A.A.	1/22/76	5.00	
"	Samuel J. Aaron	City	1/22/76	10.00	
"	Rebecca Aaron	City	1/22/76	10.00	
"	Md. National Realty Investors Inc.	City	01/19/76	10.00	
"	John M. Nelson III Jr	City	01/19/76	10.00	
"	William L. Lefevre Jr	City	01/19/76	10.00	
4/15/76	William E. Dipon	AA	4/28/76	5.00	

In the Circuit Court of Queen Anne's County

KENT ISLAND ESTATES CORPORATION, INC.

vs.

EAST BAY COLONY ASSOCIATES, ET AL.

Certified copy of docket entries, exhibits and original papers

Chancery No. 5766

Delivered ~~XXXXX~~ the 31st day of March 19 78

Test:

Charles W. Cole Clerk

I HEREBY CERTIFY, that on the 31st day of March nineteen hundred and 78, I received under cover from the Clerk of the Circuit Court for Queen Anne's County, the above record. H. Stone

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Circuit Court for _____ County, on this 31st day of March nineteen hundred and 78

Julius A. Romano

Clerk of the Circuit Court for _____ County.

Court of Special Appeals
of Maryland

Annapolis, Md. 21401

TELEPHONE 269-3646

HOWARD E. FRIEDMAN
CLERK

DAVID L. TERZIAN
CHIEF DEPUTY

THAYER A. LARRIMORE
DEPUTY

August 25, 1978

Mr. Charles W. Cecil, Clerk
Circuit Court for Queen Anne's County
Court House
Centreville, Maryland 21617

Re: East Bay Colony Associates et al vs. Kent Island Estates Corporation, Inc.

No. 108, September Term, 1978

Dear Mr. Cecil:

Enclosed is a copy of an order of the Court of Appeals of Maryland, Petition Docket No. 222, September Term, 1978, (Civil), denying the Petition for a Writ of Certiorari filed on behalf of the above-named appellant. Will you please make the appropriate docket entry in the transcript of record which has been returned to your court.

Very truly yours,

Howard E. Friedman

Howard E. Friedman
Clerk

HEF:meb

Enclosure

Argued Sept 18, 1978

3/31/78

QA Co

EAST BAY COLONY
ASSOCIATES et al.

v.

KENT ISLAND ESTATES
CORPORATION, INC.

In the
Court of Appeals
of Maryland

Petition Docket No. 222
September Term, 1978
(No. 108, September Term, 1978
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: August 18, 1978.

Court of Special Appeals
of Maryland

No. 108, SEPTEMBER TERM, 19 78

East Bay Colony Associates, et al.

vs.

Kent Island Estates Corporation, Inc.

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

10-6-78 - Per Curiam filed. Judgment affirmed. Costs to be paid by appellants.

TRANSCRIPT

RETURNED TO Clerk, Circuit Court for Queen Anne's County

Centreville, Maryland 21617 **Date** November 6, 1978

BY FIRST CLASS MAIL

Howard E. Friedman

Howard E. Friedman, Clerk

REMARKS:

FILED

NOV 9 1978

CIRCUIT COURT
QUEEN ANNE'S CO.

MANDATE

Court of Special Appeals of Maryland

No. 108 **, September Term, 19** 78

East Bay Colony Associates, et al vs. Kent Island Estates Corporation, Inc.	October 6, 1978 - Per Curiam filed. Judgment affirmed. Costs to be paid by appellants. November 6, 1978 - Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for Queen Anne's County

Record	25.00
Stenographer's Costs	322.00

In Court of Special Appeals:

Filing Record on Appeal	30.00
Printing Brief for Appellant	327.31
Reply Brief	
Portion of Record Extract — Appellant	1,214.04
Printing Brief for Cross-Appellee	
Printing Brief for Appellee	437.00
Portion of Record Extract — Appellee	
Printing Brief for Cross-Appellant	

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this sixth *day of* November *A.D. 19* 78

Howard E. Friedman

Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

MANDATE

Court of Special Appeals of Maryland

No. 108 September Term, 19 78

West Bay Colony Associates, et al	October 6, 1978 - Per Curiam Filed. Judgment affirmed. Costs to be paid by appellants.
vs.	
Kent Island Estates Corporation, Inc.	November 6, 1978 - Mandate issued.

STATEMENT OF COSTS:

In Circuit Court for Queen Anne's County

Record	25.00
Stenographer's Costs	322.00

In Court of Special Appeals:

Filing Record on Appeal	30.00
Printing Brief for Appellant	327.31
Reply Brief	
Printing of Record Extract -- Appellant	1,214.04
Printing Brief for Cross-Appellee	
Printing Brief for Appellee	437.00
Printing of Record Extract -- Appellee	
Printing Brief for Cross-Appellant	

STATE OF MARYLAND, SS:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals this sixth day of November, A.D. 19 78.

Clerk of the Court of Special Appeals of Maryland

Costs shown on this Mandate are to be entered between counsel and NOT THROUGH THIS OFFICE

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 108

September Term, 1978

EAST BAY COLONY ASSOCIATES,
et al.

V.

KENT ISLAND ESTATES CORPORATION,
INC.

Lowe
Mason
MacDaniel,

JJ.

Per Curiam

Filed: October 6, 1978

In January 1976, the appellee, Kent Island Estates Corporation, Inc., brought a proceeding in equity in the Circuit Court for Queen Anne's County against the appellants, East Bay Colony Associates and their mortgagees, (hereinafter referred to as the appellant) to remove a cloud and quiet title. The piece of property in question was claimed by the appellant as the result of a dispute as to which of two "streams" constituted the boundary between the respective estates. The lower court found that the appellee had good title to the disputed property but included the proviso that the appellant be allowed to use the channel which runs through the appellee's property. The appellant now questions whether the lower court applied the correct law in determining the boundary between the two estates. We will affirm.

The adjoining properties are known as Kent Island Estates, owned by the appellee, and East Bay Colony (formerly known as the Benton or Tolson farm), owned by the appellant. They are separated by the waters of Tolson Creek and an inlet from the Chesapeake Bay to Tolson Creek and are located along the bay front of Kent Island in the Fourth Election District of Queen Anne's County, Maryland. Kent Island Estates lies to the north, and East Bay Colony to the south.

The judge below found that the appellee acquired title to its property by a deed from the Romancoke Holding Company dated June 27, 1969, and that, exclusive of lot sales made by them to private individuals not here involved, the appellee and its predecessors in title have had record title to the tract known as Kent Island Estates from March 1950 up to the present time. The disputed area, a sand

bar, was also a part of Kent Island Estates although not included within the lots into which the bulk of the tract was subdivided. The appellant acquired title to the land adjoining appellee's land by deed from Samuel J. Aaron and Rebecca Aaron, his wife, dated September 11, 1973. The appellant's predecessors in title had record title to that farm but, according to the lower court, "had no record title to the . . . property that is the subject of this dispute."

In 1970, because the natural inlet to Tolson Creek had closed up, the then-president and principal owner of the appellee corporation dredged a new channel through the narrowest part of the peninsula sand bar which extends down from the bulk of his property. This point was north of the old inlet to Tolson Creek. The dispute arose because, prior to taking title to its property in 1973, the appellant commissioned a survey, which survey used the new inlet as the boundary rather than the old inlet which had been used in previous surveys. Thus, the appellant's deed was written to include the disputed property. The lower court stated:

> "Prior to the Ward survey of 1973, the record titles to both properties were entirely consistent and compatible with each other."

As the appellant admitted in its oral argument, if the new inlet had not been made, the disputed property would clearly have belonged to the appellee.

A plat which depicts the differences between the parties regarding the location of the property line is included herein.

The lower court accepted as its own the conclusions of the appellee's expert in geology and sedimentology. These included:

> "b. [The peninsula, the ownership of which is disputed] was formed by the action of a strong seasonal current running from North to South in the Chesapeake Bay parallel to the Western Shore of Kent Island. . . .
>
> c. The old inlet is the only natural drain for the waters of Tolson Creek to the Chesapeake Bay and has served as such ever since the mouth of this creek was closed sometime between 1877 and 1933. However, it is the type of drain that opens and closes at different times depending on the character of the environmental or ecological conditions prevailing. . . .
>
> c.[sic] . . . when the new inlet was opened, it took pressure off the old inlet so that its plug will probably not be broken again unless and until the new inlet is plugged. . . .
>
> d. The bed or course of the channel to the old inlet from its Easterly end to the point where it was plugged is still discoverable by ground observation . . . ."

The appellant's most interesting argument concerns the doctrines of accretion and avulsion. While not entirely clear, the argument seems to be that the making of a new inlet by the appellee is an *artificial* change to which those doctrines do not apply and that, hence, the Court should protect the appellant's "basic riparian rights" by giving it title to all property up to the new inlet.

An analysis of basic riparian rights, however, requires us to uphold the lower court. In *Steinem v. Romney*, 233 Md. 16, 23 (1963), the Court of Appeals, citing *Lamprey v. Metcalf*, 52 Minn. 181, 53 N.W. 1139 (1893), indicated that the purpose behind the accretion doctrine was to preserve the fundamental riparian right of access to water. The Court in *Lamprey* elaborated:

> ". . .[What] often constitutes the principle value of land [is] access to the water. The incalculable mischiefs that would follow if a riparian owner is liable to be cut off from access to the water, and another owner sandwiched

> in between him and it, whenever the water line had been changed by accretions or relictions, are self evident . . . ."
> 53 N.W. at 1142.

Those mischiefs include endless litigation over property lines as well as loss of access to the water. In one Maryland case, *Waring v. Stinchcomb*, 141 Md. 569 (1922), the mischief which the application of the doctrine of accretion prevented was "the making of [the plaintiff's] property an inland farm . . ." by the formation of a sand bar on the waterfront.

In the case now before the Court, however, there are no such "equities" of riparian rights operating in favor of the appellant. As can be seen from the diagram, the appellant's estate has not been cut off at all from the Chesapeake Bay or Tolson Creek, and access to the new outlet was expressly reserved to the appellant by the judge in the court below. We fail to see what the appellant has lost. Accordingly, on this argument we find for the appellee.

Next, the appellant argues that it is entitled to the disputed property because the outlet to Tolson Creek is a "monument" which was used in past surveys to describe the boundary between the two properties and which it relied upon to its detriment. There is no merit to this argument.

Surveys of the properties made in 1948 and 1950 did refer to the outlet, along with courses and distances, in describing the properties. The appellant asserts that courses and distances must give way to monuments and that the monument in this case must be the new outlet. However, the appellant has oversimplified and misunderstood the rules of construction. As the Court of Appeals stated

in *Giles v. DiRobbio*, 186 Md. 258, 265 (1945):

> "'Calls' [to monuments], when they can be found, prevail over courses and distances because they have the greater certainty; but it is equally true that this rule is only a rule of construction to ascertain the intention of the parties and will not be applied when it would defeat such intention as clearly shown."

In *Wood v. Hilderbrand*, 185 Md. 56, 60 (1945) the Court acknowledged that "these rules are not inflexible, but simply express the truth of common experience as to where error is most likely to occur."

In the case now before this Court, we do not believe that the call to the monument which, *arguendo*, might be construed as either of two inlets would prevail over the courses and distances which, as testified to in the court below, showed that use of the new inlet as the boundary was probably wrong. This is particularly true in light of the fact that the parties to the earlier surveys and deeds obviously did not intend the new inlet, which did not then exist, as a boundary. Thus, the appellant incorrectly applied the law to its problem when it based its survey only on a supposed "monument" and ignored the courses and distances which would have pointed out and corrected its error.

Finally, the appellant argues that the appellee is estopped from denying that the new inlet is the boundary between the respective properties because it permitted the appellant to rely to its detriment on the new inlet as the boundary. This argument has no merit. As the Court of Appeals stated in *Savonis v. Burke*, 241 Md. 316, 319 (1965):

> "Pomeroy, in his *Equity Jurisprudence* (5th ed., vol. 3), § 804, page 189 defines equitable estoppel as follows:

> 'Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy.'

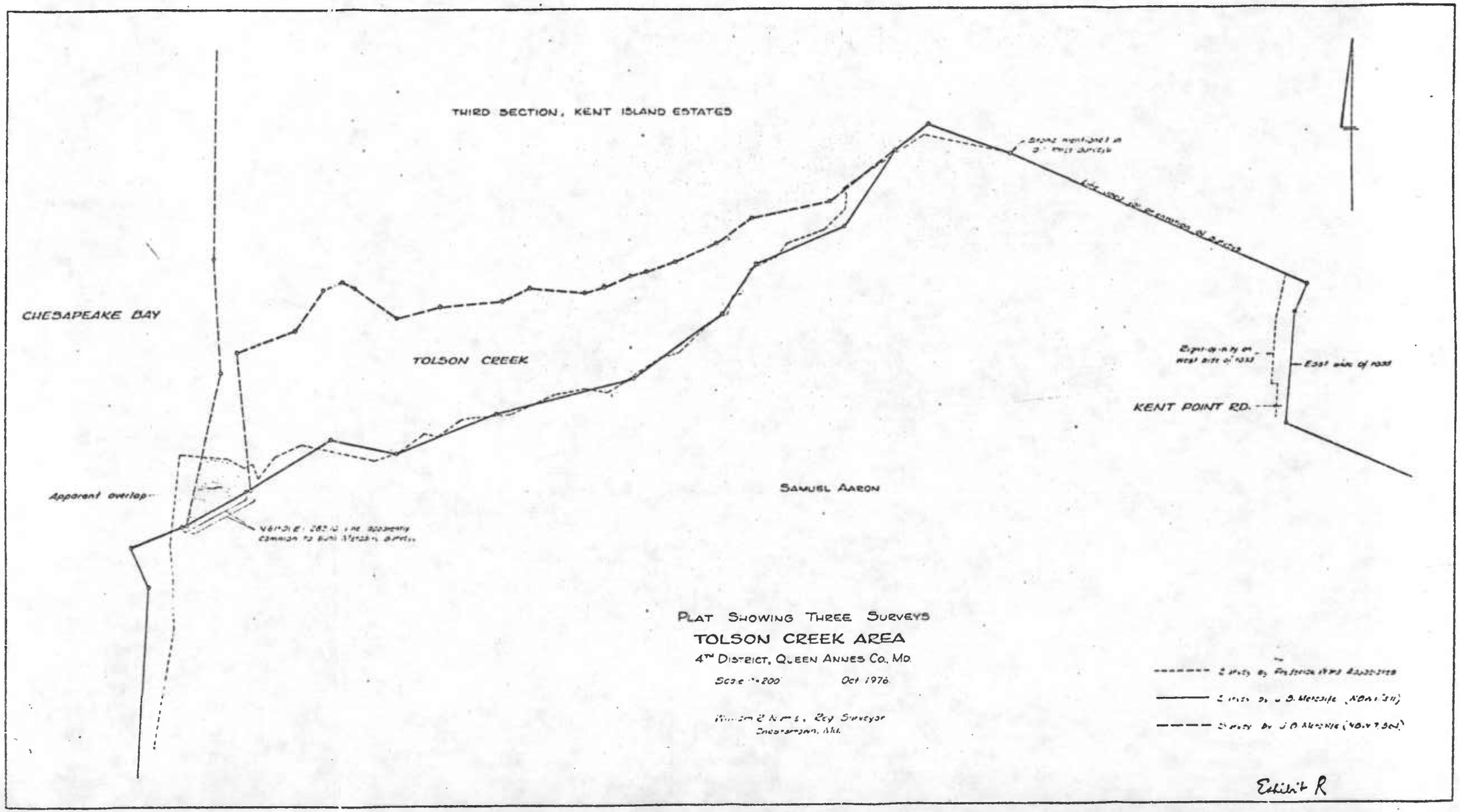
> We have adopted and have continually applied this definition of equitable estoppel. *Bayshore Industries v. Ziats*, 232 Md. 167, 175, 192 A. 2d 487, 492 (1963); *Webb v. Johnson*, 195 Md. 587, 595, 74 A. 2d 7, 10 (1950); *Crane Co. v. Onley*, 194 Md. 43, 50, 69 A. 2d 903, 906 (1949) and the prior cases cited therein."

Applying this to the present case, appellant's argument fails for several reasons. First, as the Court of Appeals stated in *Klein v. Dove*, 205 Md. 285, 295, *et. seq.*, (1953), "'. . . it is well settled that mere silence as to rights of record does not create an estoppel.'" As indicated by the court below, the appellee's rights were "of record." Second, there was testimony in the court below that the old inlet was discoverable and that the appellant was aware of a possible problem in relying on the new inlet as the boundary. The appellant did not seek clarification, and, as the court below suggested, if the appellant was misled, it appears to have been willingly misled.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

STIPULATION EXHIBIT R



No. 108 (LEAVE BLANK), SEPTEMBER TERM, 19 78

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

Judge: The Honorable Harry E. Clark

IN THE CASE OF

EAST BAY COLONY ASSOCIATES, et al.

Appellant

VS.

KENT ISLAND ESTATES CORPORATION, INC.

Appellee

TO THE

COURT OF SPECIAL APPEALS OF MARYLAND

Charles C. W. Atwater
1112 W. R. Grace Building
Baltimore, Maryland 21202
752-6254

FOR APPELLANT

John W. Sause, Jr.
J. Donald Braden
204 North Commerce Street
Centreville, Maryland 21617
758-0970

FOR APPELLEE

Filed 3/30/78 (LEAVE BLANK)

THE COURT OF SPECIAL APPEALS OF MARYLAND — ANNAPOLIS, MD. 21404

June 14, 1978

John W. Sause, Jr., Esquire
204 North Commerce Street
Centreville, Maryland 21617

Charles C. W. Atwater, Esquire
1112 W. R. Grace Building
Baltimore, Maryland 21202

Re: East Bay Colony Associates et al. v. Kent Island Estates Corporation, Inc.
No. 108, September Term, 1978

Dear Counsel:

Your joint Motion to Correct Omission in the Record, in the captioned case, was granted by Chief Judge Richard P. Gilbert on June 12, 1978. The motion, Order and deposition attached to the motion are now included in the appeal record.

Very truly yours,

Julius A. Romano
Clerk

JAR/nze

June 16, 1978

John V. Barnes, Jr., Esquire
200 North Commerce Street
Centreville, Maryland 21617

Charles O. McLaughlin, Esquire
1111 N. Calvert Building
Baltimore, Maryland 21202

Re: Sand Bay Colony Associates et al. v. Kent Island Estates Corporation, Inc.
No. 108, September Term, 1978

Dear Counsel:

Your joint Motion to Correct Opinion in the Record, in the captioned case, was granted by Chief Judge Richard P. Gilbert on June 12, 1978. The motion, order and deposition attached to the motion are now included in the appeal record.

Very truly yours,

Julia A. Romano
Clerk

JAR/rmc

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

EAST BAY COLONY ASSOCIATES et al *

Appellant *

September Term 1978

vs

* No: 108

KENT ISLAND ESTATES CORPORATION, INC.

*

Appellee

* * * * *

FILED

JUN 8 1978

JULIUS A. ROMANO, CLERK
COURT OF SPECIAL APPEALS
OF MARYLAND

MOTION TO CORRECT OMISSION
IN THE RECORD

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Motion of East Bay Colony Associates, Appellants in the above entitled matter, respectfully shows:

1. The record in this case was received and docketed in this Court on March 31, 1978.

2. It was learned when the record was being prepared for transmittal to this court that the court reporter was unable to locate most of his notes for preparation of transcript for the second day of trial in the lower court.

3. The record, as filed, omits the testimony of all but one of Appellee's witnesses and the direct ~~several witnesses, including the~~ testimony of Joseph T. Downey, a surveyor called by the Appellants (Defendants below); the Court, the Honorable Harry E. Clark, suggested and counsel acted on the suggestion that the deposition of said witness be taken by counsel and if it appeared to be substantially in accordance with the recollection of the trial court and counsel for both parties, that said deposition was substantially the same as given in court, that such deposition be substituted and added to the record.

4. By agreement of counsel the deposition of Joseph T. Downey was taken on Wednesday, April 26, 1978 and transcribed.

5. The trial court has agreed that the testimony appears to be substantially in accordance with the testimony of such witness in court and counsel have agreed and stipulated that the said deposition be filed with this court to correct the omission in the record pursuant to Maryland Rules of Procedure, Rule 1027.

6. It has further been agreed by counsel that the findings of fact made by the court based upon the testimony of the witnesses produced by the Appellee on said date which were not transcribed by the court reporter, would not be challenged and that such findings of fact by the court with reference to those witnesses, Reginald Jones, Tony Moore, Ruby Quandt, and Robert Snyder are accepted by all parties.

7. This Motion is being presented by agreement of counsel for Appellant and Appellee and has the approval of the trial court as indicated hereon.

WHEREFORE it is respectfully moved that this Court may by its Order authorize the correction of the record to permit the testimony of the witness, Joseph T. Downey taken by deposition on April 26, 1978 be included in the record in lieu of the testimony of this witness, omitted from the record.

JOHN W. SAUSE, JR.
204 North Commerce Street
Centreville, MD 21617
Attorney for Appellee

CHARLES C.W. ATWATER
1112 W.R. Grace Building
Baltimore, MD 21202
Attorney for Appellant

APPROVAL

The proposed addition to the record to correct the omission in the record as filed, pursuant to the foregoing Motion of the parties is hereby approved by me.

Harry E. Clark, Trial Judge

IN THE COURT OF SPECIAL APPEALS OF
MARYLAND

EAST BAY COLONY ASSOCIATES	*	
Appellant		September Term, 1978
vs	*	No: 108
KENT ISLAND ESTATES, INC.		
Appellee	*	

ORDER

Upon the foregoing Motion and approval of the Trial Court, it is this 12th day of June, 1978 by the Court of Special Appeals of Maryland

ORDERED that the omission in the record shall be corrected by the inclusion in the record of the transcript of testimony of Joseph T. Downey, taken April 26, 1978 which testimony is attached to said Motion.

Richard P. Gilbert
CHIEF JUDGE

Court of Special Appeals
of Maryland
Annapolis
21401

Deposition of Joseph T. Downey
taken April 26, 1978
per Order of Ct. of
6-12-78

No. 108/78

KENT ISLAND ESTATES CORP., INC.,	*	IN THE CIRCUIT COURT
Plaintiffs	*	FOR QUEEN ANNE'S COUNTY
v.	*	EQUITY # 5766
EAST BAY COLONY ASSOCIATES,	*	COURT OF SPECIAL APPEALS
Defendants	*	# 108, Sept. Term 1978

* * * * * * * * * * * * *

Pursuant to notice, the deposition of JOSEPH T. DOWNEY was taken on Wednesday, April 26th, 1978, commencing at 3:15 p.m. at the law offices of Sause and Bradow, 204 Commerce Street, Centreville, Maryland, 21617,before Donald F. Ames, a Notary Public.

APPEARANCES:

John W. Sause, Esquire
and
Donald Bradow, Esquire
On behalf of the Plaintiffs

Charles C. W. Atwater, Esquire
On behalf of the Defendants

Reported by:

Donald F. Ames

I N D E X

1 S T I P U L A T I O N S

2 It is stipulated and agreed by and between counsel
3 for the respective parties that the reading and signing of
4 this deposition by the witness be and the same is hereby
5 waived.

6 It is further stipulated and agreed that the filing
7 of this deposition with the Clerk of the Court be and the same
8 is hereby waived.

9 * * *

10 Whereupon,

11 JOSEPH T. DOWNEY,

12 a witness, called for examination by the defendants, being
13 first duly sworn to tell the truth, the whole truth, and
14 nothing but the truth, testified as follows:

15 EXAMINATION BY MR. ATWATER:

16 Q. Will you give your name and home address and office
17 address, please.

18 A. Joseph Tilghman Downey, Jr., Box 563, St. Michaels,
19 Maryland. Do you want my office address?

20 Q. And your office address.

21 A. Is the Stewart Building, Easton, Maryland.

Q. And you are a member of the firm or employed by Frederick Ward Associates, Stewart Building, in Easton?

A. I was, sir.

Q. You were in 1973?

A. That is correct.

Q. Mr. Downey, were you asked to make an outline survey of a parcel of land being purchased by East Bay Colony Associates, which is a partnership composed of Mr. William E. Dixon and others, in 1973?

A. I was asked to make an outline survey by Mr. Dixon. I did not know of any corporation that was set up at that time but, yes, sir, Mr. Dixon did ask me to make an outline survey.

Q. And did you make an outline survey which was introduced in the trial of this case as Stipulation Exhibit Q? And we will have this marked for identification by the Court Reporter today.

A. Yes, sir, I did.

(Whereupon, the document referred to above was marked as Downey Deposition Exhibit Number One.)

BY MR. ATWATER:

Q. Mr. Downey, in preparation or while you were working

on this survey plat did you have available and did you look at earlier deeds and plats of this property and adjacent properties?

A. Earlier deeds, sir.

Q. I will ask specifically. Were you familiar with the two surveys made by a Mr. Metcalf, one of this farm, which we will refer to as the Tolson Farm, and one of the farm across Tolson Creek which was the --

MR. ATWATER: Gibson Farm; is that right, John?

MR. SAUSE: I think that's right.

BY MR. ATWATER:

Q. The Gibson Farm?

A. Yes, sir.

Q. Now, Exhibit G in this case is a deed dated September 11th, 1973 between Samuel J. Aaron and wife and East Bay Colony Associates. I believe the description in that is taken from your land description of the Tolson Farm?

MR. ATWATER: To save time, can we stipulate that, John?

MR. SAUSE: What?

MR. ATWATER: That the description in that deed is

1 the description he prepared. I think that was his prior
2 testimony. Rather than his going through it now.
3 MR. SAUSE: I assume so.
4 THE WITNESS: (Pause) I'm sure it is correct but
5 I would like to find mine. (Pause) Yes, you are correct.
6 Yes, that is correct.
7 BY MR. ATWATER:
8 Q. All right, Mr. Downey, did you personally inspect
9 the property of which the survey was made?
10 A. Yes, sir.
11 Q. When you were surveying the line of Tolson Creek at
12 the Chesapeake Bay your description runs northerly along the
13 Chesapeake Bay, and I call your attention to the call in that
14 deed -- you have a copy of it there?
15 A. I do. Right here.
16 Q. -- to the call which runs north seven degrees
17 nineteen minutes thirty seconds east 342.09 feet to the inlet
18 of Tolson Creek?
19 A. Correct.
20 Q. In running the line along the shoreline of the
21 Chesapeake Bay was there any other inlet in existence at the

time of your survey?

A. No, sir.

Q. So that when you run to the waters or to the inlet of Tolson Creek you ran to the then existing inlet in 1973?

A. That is correct, sir.

Q. And what did you follow from there?

A. The mean high water line. I went in the inlet around the wetlands, I would call it, and up the shoreline of Tolson Creek. At that point it's rather wide.

Q. And the lines shown on your plat, Stipulation Exhibit Q, are the lines you ran as your survey on that -- whatever date that was before the date this plat was prepared?

A. That is correct.

Q. I'm going to ask you to be very careful. Did you see any indication of any other inlet connecting Tolson Creek with the Chesapeake Bay?

A. No, sir. There was no inlet cutting through to the Bay.

Q. Were you aware that the Metcalf surveys of 1948 and 1949 showed this inlet in a slightly different position further to the south?

A. I was aware that the distance along the Bay was different on my survey than the Metcalf survey.

Q. What do you mean by that, sir?

A. The Metcalf survey came down a creek to the Bay and then came up the Bay to the outlet, which is now Tolson Creek. And his courses along the Bay came up to a different total than what mine did.

Q. All right. Now, I hand you a copy of Stipulation Exhibit R, which I believe you saw at the time of the trial, which is a comparison of three surveys.

A. That is correct.

Q. Your survey and the two previous Metcalf surveys?

A. Correct.

Q. You are familiar with that, sir?

A. Yes, sir, I am.

Q. Is that plat substantially accurate as a comparison of those three surveys?

A. Yes, sir. It is.

Q. And looking at the line of that survey, the dotted line is your survey; is it not, sir?

A. The fine dots, yes, sir.

Q. The fine dots --

A. The fine dashes.

Q. All right. Now, looking at the lines of the survey of the Tolson Farm on the Chesapeake Bay, just southerly of Tolson Creek --

A. All right.

Q. What difference is there in those two lines?

A. Well, there is considerable distance. This plat is on a one inch equals two hundred feet. So at one point you have -- at the most northerly point, before it cuts in, you have a little better than a hundred -- you have approximately one hundred fifty feet of possible erosion along the shore.

Q. So that the shoreline there would indicate it possibly eroded one hundred fifty feet from 1948 and '49 to 1973?

A. At the most extreme point, sir.

Q. At the most extreme point. And that would be the northerly -- the most northerly line along the Chesapeake Bay?

A. Yes. At the northwesterly most corner.

Q. You understand there is no real conflict of any other line on these surveys at issue in this case except the

line following Tolson Creek. Now, what, if any, principle of surveying did you follow in locating that line?

A. Both my deed on the Aaron property and the deed for the property immediately north of it, both called to the inlet or to the mouth of the creek. That to me is a monumental call which would normally take precedence over any distance.

Q. Well, what principles of survey -- principles of surveying apply to a line binding on --

MR. SAUSE: I have to object to that, Charlie, before you even get it all out. Number one, you haven't qualified him as an expert. And number two is, it's leading. And number three is that it calls for a legal conclusion.

MR. ATWATER: Mr. Sause, I believe at the time of the prior hearing we stipulated Mr. Downey's qualifications as a surveyor-engineer, qualified land surveyor.

MR. SAUSE: I don't believe that. I don't recall that.

Do you recall that?

MR. BRADOW: No. That doesn't mean it didn't happen though.

MR. ATWATER: Off the record a second.

(There was a brief discussion held off the record.)

BY MR. ATWATER:

Q. Mr. Downey, what is your training and experience as a land surveyor?

A. I've been doing land surveying since 1950. I am a graduate of the Baltimore Polytechnic Institute, which is a high school --

Q. When was that?

A. 1950, sir. I then worked for the Maryland State Road Commission in surveying. I enlisted in the Navy. I was in the Seabees. I went to Surveyor's School in Port Hueneme, California. I served four years in the Seabees with a surveying rate and after that I went back with the State Road Commission and then I went with Frederick Ward, Associates, in 1959 as a party chief in land surveying and was employed by Frederick Ward, Associates, in surveying at the time of this survey.

Q. So you were employed by Frederick Ward, Associates, from 1959 up until 1973 when this plat was prepared and the survey made?

A. Yes. Until 1975.

Q. Were you then the actual party chief in making this survey?

A. No, sir. I was not the party chief in the field at the time the survey was made.

Q. Well, what was your particular job?

A. I was running the office for Frederick Ward, Associates, of Easton and my job was office more than field. I did the computations. I did some of the deed search. Not title search but deed searching. The computations. I drew the plat. And I oversaw the job and then that was -- in turn, everything was approved by Frederick Ward.

Q. And Frederick Ward was the licensed surveyor who was the principle member of Frederick Ward, Associates?

A. That is correct. He was the President and it is his seal that is on the plat.

Q. Now, I believe you, at the time of this hearing, had your application pending for a licensed surveyor in the State of Maryland?

A. That is correct.

Q. Was that subsequently issued?

A. Yes, sir. I set the examination and passed it and

was issued a property line surveyor's license.

Q. But in this particular case you actually went over the property in the course of the survey and you personally drew the plat after office computations as well as computations from all the field notes?

A. That is correct.

MR. SAUSE: Can I just cross examine on the qualifications?

MR. ATWATER: Certainly.

EXAMINATION BY MR. SAUSE:

Q. Number one is, how long is this Seabee School?

A. Oh, that was five months, sir.

Q. Five months?

A. Yes, sir.

Q. And what did that involve other than surveying, if anything?

A. It's purely surveying.

Q. Purely surveying?

A. Yes, sir. It was the mathematics of surveying. We did some field work. Run the traverses and closed them. We did the biography. Ran level loops. Established some

1 boundaries. But it was purely just the fundamental basics of
2 the mathematics and the procedures of land surveying.
3 Q. Have you had any other training, formal training
4 other than that at the Seabee School?
5 A. Well, as far as land surveying?
6 Q. Yes.
7 A. No, sir.
8 Q. And when was this that you took this examination?
9 A. I took the examination in April '77.
10 Q. April of '77. Was that the only time that you took
11 that examination or any similar examination?
12 A. Yes, sir. My first and only time.
13 Q. Well, does the witness recall I objected to his
14 qualifications and the Judge admitted it to give such weight
15 to it as was indicated by the qualifications, so I suppose we
16 will proceed from that point again.
17 MR. ATWATER: Were you asking a question?
18 MR. SAUSE: No. I was just saying for the record.
19 I don't want to lose my objection but I know I was overruled
20 before so it will probably be overruled again. I will have
21 to argue it in Court if I want....

FURTHER EXAMINATION BY MR. ATWATER:

Q. All right, coming back, Mr. Downey. Are there any established principles of land surveying when one of the boundaries is a stream or creek?

A. Well, there are certain weights, measures given to certain things when you are surveying. What is known as a monumental call has more weight than an angle or a distance. A monumental call being to the stream; being to the road; being to a stone; being to a monument. If they exist, if it says -- let's say a hundred and two feet to a stone and you find a stone at a hundred and three feet or a hundred and four feet then you can justify that the angle was pretty good and then the stone takes precedence over the distance or the road or the stream.

Q. Are you familiar with the principles applicable to acretion and reliction?

A. Yes.

MR. SAUSE: Well, now --

THE WITNESS: -- to some extent.

MR. SAUSE: Mr. Atwater, really -- I don't know that anybody in this room except you is an expert on acretion

1 and reliction and that is really a legal question. Especially
2 when you have such a disadvantage without a referee. All your
3 superior knowledge and just poor little me sitting here with
4 all these books.
5 MR. ATWATER: John, you are filling up the record
6 with very strange flattery --
7 MR. SAUSE: Sorry. You are paying for it.
8 MR. ATWATER: Off the record.
9 (There was a brief discussion held off the record.)
10 MR. SAUSE: No, Charlie, I don't think he ought to
11 answer that, honestly, on acretion and reliction. I think
12 that is initially for Judge Clark and then for the Court of
13 Special Appeals.
14 BY MR. ATWATER:
15 Q. Well, in following this line to the inlet of Tolson
16 Creek, are there any established text book principles upon
17 which you would be governed in making that line?
18 A. Yes. There are the principles in which weights and
19 measures are given to certain things and monumental calls take
20 precedence over distances and angles.
21 Q. I don't remember whether this was available at the

1 time of your prior testimony or not, but Exhibit T is a copy
2 of a plat from the Atlas Of Eastern Shore of 1877 -- I know
3 that date is correct -- which shows this area. Can you locate
4 the Tolson Creek and Farm on that?
5 A. Well, I would assume that it's where it calls the
6 Tolson property and the Gibson property. And not only that,
7 but somebody has drawn a pencilled arrow on it.
8 MR. SAUSE: Mr. Atwater is not helpful to his
9 witnesses.
10 MR. ATWATER: I think that was done at the time of
11 trial --
12 THE WITNESS: I don't believe I saw this during
13 the trial itself, sir, to tell you the truth.
14 MR. ATWATER: I don't want to go beyond that so we
15 won't go through that.
16 MR. SAUSE: That's good.
17 BY MR. ATWATER:
18 Q. Were you shown the photographs of that shoreline?
19 And I will hand you one particularly.
20 MR. ATWATER: This one is not marked. I will have
21 to find out later, John, which one it was.

MR. SAUSE: Okay.

BY MR. ATWATER:

Q. Looking southerly from Tolson Creek --

MR. SAUSE: Show it to me.

(A document was handed to Mr. Sause.)

MR. SAUSE: It might be mine. You had two of them introduced. One had --

MR. ATWATER: I had about six introduced.

MR. SAUSE: One had Mr. Dixon and the other one didn't. Then you had three Scotch taped together.

MR. ATWATER: Well, this is one of the three photographs which were Scotch taped together to show a particular area and it ran panoramically around to the east.

MR. SAUSE: Well, that was Exhibits 1A, B and C. Your Exhibits.

MR. ATWATER: Yes, Defendants Exhibits 1A, B and C.

BY MR. ATWATER:

Q. Now, these were taken, according to the testimony, in October 1976. Do these photographs show substantially the condition of that shoreline and the location of Tolson Creek as it was when you surveyed it in 1973?

A. That would be difficult for me to say because I don't know, you know, between '73 and '76 how much may have eroded or how much may have filled in. You know. I would say that there was -- you know, in '73 there was a good bit of beach area there. There certainly was. You know, there was stone down along here.

Q. There was stone along both sides of the inlet?

A. -- but I, you know -- whether or not this is, you know, exactly where it was at that time, you know, I honestly couldn't tell you that.

Q. Well, was there any break in the shoreline between Tolson Creek and the trees shown in the background of this photograph which shows the sandy beach on the Bay side?

A. No, sir, not along the Bay side.

Q. Did you, on the basis of your survey and the plat prepared by you in the office upon which the seal of Mr. Ward is affixed, prepare a land description for use in a conveyance of the Tolson Farm?

A. Yes, sir.

Q. And that land description was based upon this survey; was it not?

A. That is correct.

Q. And you knew that that survey was being prepared for purposes of conveyance of the property?

A. Correct.

(There was a brief discussion held off the record.)

MR. ATWATER: All right, a couple questions.

BY MR. ATWATER:

Q. Did you discuss this survey with Mr. William E. Dixon who employed you to make it?

A. Did I discuss it at what time, sir?

Q. Well, before or at the time you prepared this plat.

A. Yes, sir.

Q. Did you --

A. I mean, both times. I mean, I had to get with Mr. Dixon, you know, as to just what he wanted done and I discussed it with Mr. Dixon after it was completed.

Q. Well, did you discuss with him any of the apparent discrepancies in the land from the time of the Metcalf surveys to the time of your survey in 1973?

A. Yes, sir.

MR. ATWATER: It's not proper for me to ask that,

1 what the discussion was, so I won't ask it.

2 No further questions.

3 EXAMINATION BY MR. SAUSE:

4 Q. Before you went out into the field I take it you

5 did some research work? You didn't just go out like Lewis and

6 Clark with a transit over your shoulder or.... Is that right?

7 A. Yes, sir.

8 Q. And what was this preparation work that you did

9 before the field work was done?

10 A. We went -- I went to the Courthouse and looked up

11 the base tract. That is, the conveyance as it stood to Mr.

12 Aaron, I do believe?

13 Q. Yes.

14 A. And then I ran that back to check -- to get, you

15 know, descriptions. I would have to go through this, Mr.

16 Sause, to find out, you know, to what date I run it. I know

17 I run it back to a 19 -- well, there's a 19, I think, 48

18 description. There is also a description of it, I believe,

19 in 1939.

20 Q. Well, you were familiar with the plat of Mr. Aaron's

21 farm that Mr. Metcalf had done in 1948 or '49?

A. I did not have the copy of that plat, sir.

Q. You know it was on record?

A. Yes, sir.

Q. Is there any reason why you didn't avail yourself of that?

A. Merely because I had to meet some bound descriptions which was a description, supposedly, that was contained on the plat.

Q. Now, did you plat out this meets and bounds description?

A. I did, sir.

Q. So rather than avail yourself of the plat that was already done you put yourself to the exercise of preparing a new plat of the old description?

A. Of platting a new description, yes, sir.

Q. Do you have that with you today?

A. I have part of it here, sir. I believe this is one that we had at the time, if I'm not mistaken. You know, there is several of them here in the file and I would have to read the deed in comparison to the deeds platting.

Q. Did you do that yourself?

A. No, I did not do this myself.

Q. Did you do the investigative work in the Courthouse yourself?

A. Not all of it, no, sir.

Q. Did you do all the field work yourself?

A. No, sir, I did not.

Q. Did you go out in the field at all?

A. Yes, sir, I did.

Q. What did you do when you got out in the field?

A. I walked the outlines of the property, to the best of my ability from what I had on the tax maps at the time, to see what would be involved in accomplishing the survey so I could determine approximately how much time would be involved by the field party.

Q. That was the first time you were on the property?

A. That is correct, sir.

Q. When was the second time you were on the property?

A. I was on the property after the survey was done and before any corners were established, that we would have established at that time. I was on the property when we were working with the State Road because the State Road had come

1 through the property. And, again, I was on the property just
2 prior to -- I was on the property at the first time when I
3 think Mr. Quant?
4 Q. Yes.
5 A. Had made mention of the fact of what he considered
6 an encroachment of his property. And I was on the property
7 just prior to the trial that was held both here and in Harford
8 County and I think that --
9 Q. Talbot County.
10 A. I mean, Talbot County. I beg your pardon. Talbot.
11 Q. Now, after the first time that you went down that,
12 I guess so you could get an estimate of what was going to be
13 involved with this survey, after that preliminary visit, when
14 was the very next time that you visited this farm? I don't
15 mean the date but what was the occasion for it? Let's do it
16 that way.
17 A. I guess it was when we were having some problems
18 establishing the property on the other side of the road.
19 Q. That would be the easterly boundary of the property?
20 A. That's correct.
21 Q. And what's involved here is the northwest --

A. That's right.

Q. -- so that was way far away from this?

A. That's correct.

Q. And after that little problem when was the next time you were on the property?

A. Mr. Sause, I honestly couldn't tell you just exactly what points I visited the property.

Q. Well, you weren't a part of the surveying crew?

A. I beg your pardon.

Q. You were not a part of the surveying crew?

A. No, I did not actually turn the angles or chain the distances. No, sir, I did not.

Q. And in what form did the field group report their findings?

A. They keep notes in a field book of the angles that are turned; the distances that are chained. This is what we call a traverse because we cannot run the property lines. From the traverse, they turn angles to locate any obvious property corners or any physical evidence, such as fence lines. Maybe hedgerows. You know, this sort of thing. This is computed. The traverse is mathematically computed to make sure

there are no angular errors or distance errors. The side shots are computed to locate the different points. These are what we call coordinated. And then between any two points we can, what we call inverse between the coordinates, come up with the bearing and the distance of that particular line.

Q. So that this portion of your work would naturally have turned up that the distance along the Bay was radically different than the one at the prior survey; is that correct?

A. That's correct, sir.

Q. Now, you indicated that the line was run up to the inlet that you found there. Is that what you are telling us?

A. Yes.

Q. But you are also telling us that you are not the one that ran that line; is that right?

A. That is correct.

Q. So that was --

A. In the field, sir.

Q. In the field. Well, suppose you -- I don't know how you did do that in the office but perhaps you can explain it to me.

A. Well, as I said, I can compute the deed -- let's

say that Mr. Metcalf did and coordinate the individual points. I can pull a distance from any point on that survey to any other point by inversing between these coordinates, which is the tangent function of a right triangle. By taking the courses along the Bay that were given in the Metcalf survey and taking -- say the one from the stream below Tolson Creek to the one where you enter Tolson Creek you could pull a straight line distance between those two and you come up with a figure. By taking where we hit the Bay at that creek to where Tolson Creek enters, taking the coordinates of those two figures, we can pull that straight line distance to see what it is. Or you could just total --

Q. Well, I understand that, you see. But going back to your instructions about monuments, and so forth --

A. Yes, sir.

Q. The person who made the decision as to what was a monument and what the distance of the line was was not you because you weren't there; is that not so?

MR. ATWATER: I object to that characterization on the basis that he said he was on the site; he was familiar with the site and he reviewed the field crew which normally worked

1 under an office surveyor.

2 MR. SAUSE: All right, we will go back then.

3 BY MR. SAUSE:

4 Q. Did you say that you were there when the line was

5 run or the traverses which establish the Bay line, were you

6 there?

7 A. No, sir.

8 Q. You were not there?

9 A. No, sir.

10 Q. So the person who selected the beginning and ending

11 points of the westerly lines or points -- if it followed the

12 contours -- that person was not you; was it?

13 A. No, sir. Not in the field.

14 Q. Not in the field.

15 A. Correct.

16 Q. And when you did this work in your office what

17 you did was you worked with the materials which had been

18 brought back to you; is that not correct?

19 A. That is correct.

20 Q. Which --

21 MR. ATWATER: Mr. Sause, I am going to object at

this point. You are not only going well beyond the cross examination in Court, you are just as aware as any of us in this room of surveying practices whereby a field crew does not make up the survey plats and make the final decisions.

MR. SAUSE: Well, may I proceed now?

MR. ATWATER: Yes, sir. Go ahead.

BY MR. SAUSE:

Q. But you were not -- what you were doing in the office was more or less -- and I want you to be accurate about this so I will take out the more or less -- but what you were doing could accurately be characterized as making mathematical or trigonometric computations; is that not correct, from data supplied to you by the crew?

A. Correct.

Q. That would be correct?

A. Yes, sir.

Q. So that if the crew came back -- and I'm just giving you a tremendous hypothetical right now -- and gave you the coordinates -- well, they wouldn't give you -- what?

A. They would give me angles and distances.

Q. And give you angles and distances for a five hundred

foot -- which would come out mathematically to a five hundred foot line, you would necessarily have to come out mathematically to the five hundred foot line. You see what -- you were -- the raw materials --

A. No, sir. No --

Q. -- control the survey?

A. This is not correct, sir. Had they made any error in what we call the traverse in their angles and distances, this would have shown up when the traverse was closed.

Q. Right.

A. You begin at a point. You must end at a point.

Q. Right.

A. At the same point. This was not what we would call an open line traverse.

Q. I understand.

A. So, therefore, had they made any kind of an error -- if they had said this line was -- say five hundred feet -- okay? -- and it was only four hundred feet, then my traverse would have had an error of a hundred feet in the closure.

Q. That's correct. So --

A. Then we would have to go back and find where the

1 error was made.

2 Q. So the fact that taking arbitrarily a line on this

3 Exhibit Q, the north fifty-seven degree five minute fifty-four

4 second east line appear --

5 A. Yes, sir.

6 Q. You computed that line from figures they gave you?

7 A. That is correct, sir.

8 Q. But the decision as to where the beginning and

9 ending points actually were, down to a fine pencil point of

10 exactly where they were, the decisions as to where to begin

11 and end that line were made by the crew?

12 A. Well, --

13 Q. In the field.

14 A. I can't say yes to that because we are picking a

15 bad line, to tell you the truth, because this is a fence line.

16 What they did --

17 Q. I understand.

18 A. -- located a fence post, located some fence posts

19 down here and then located the mean high water line -- say in

20 here -- from which --

21 Q. Well, let's take the next line which begins at a

fence post and ends at a stone,

A. Correct.

Q. Now, they brought you figures back and they selected the fence post and the stone and the figures they gave you came out to that line mathematically, as I understand it?

A. Correct.

Q. But the initial choice of the fence post and the stone -- leaving aside that it's good surveying practice. I'm not questioning that -- but the choice of the fence post and the stone as the beginning and ending points were those of the field crew and not you because you weren't there when they made the decision, right or wrong?

A. Well, yes. Essentially that's absolutely correct.

Q. What I said is correct?

A. I say essentially -- yes, what you say is correct. They would have picked out that fence post and located that they turned an angle and distance and located that stone.

Q. So, in point of fact, when the field crew brought back its field notes you were -- and I'm not trying to be facetious -- but you were the slave of those figures in that

1 book because each one of the angles that came out -- or, that
2 they gave you came out to a certain line and the only thing
3 you could do would be to reduce that to the paper to make sure
4 that they all came together and closed; is that right?
5 A. That is correct.
6 Q. Now, you say that you did plat out the Metcalf
7 survey or a prior survey of this property?
8 A. Yes. Of our property, sir.
9 Q. Of the Aaron property,
10 A. Of the Aaron property.
11 Q. Right. Now, we are talking again about Exhibit Q
12 and we are talking very roughly about this area, which I
13 suppose is indicated as marsh --
14 A. Yes, sir.
15 Q. -- at the northernmost part on the Chesapeake Bay?
16 A. Yes, sir.
17 Q. Now, did it not appear to you at the times that you
18 were on the property that the opening that was there was some-
19 what unusual in that it had stone or riprap on both sides of
20 it?
21 A. Well, no, I wouldn't say that it was unusual.

Because quite a few places where you have inlets on a body of water, such as this where it spreads out, if you don't maintain the inlet it can close on you. You know, all along the Bay you've got revetments set out --

Q. If I told you that opening was totally closed now that wouldn't surprise you either; would it?

MR. ATWATER: You are not putting that in the record.

MR. SAUSE: I object and move to strike.

MR. ATWATER: All right.

THE WITNESS: I think it would surprise me to some extent because it was all sand right there. The rock was there --

BY MR. SAUSE:

Q. Did it not seem unusual to you in 1973 when you saw this that this opening went at almost a direct right angle through the sand bar?

A. No, not really.

Q. I know the Lord works in mysterious ways, but didn't that -- with such geometric precision, that didn't appear to you to be unusual?

MR. ATWATER: I object to the characterization.

THE WITNESS: Not really --

MR. ATWATER: -- I do not think the photographs show geometrically precisionly at right angles.

BY MR. SAUSE:

Q. Do you recall having seen what the first witness in this case -- did you hear his testimony, the engineer from --

A. Was he a geologist or something on this order?

Q. Yes.

A. Yes, sir, I heard his testimony.

Q. And you heard him say that along the old streambed that there were still indications of the old streambed with water in it?

A. Yes, I did hear him say that.

Q. And did you see that at the time you were there?

A. No. Because what I saw, sir, was a bunch of Merkle bushes and swampgrass and so forth.

Q. And so you have never got down in there and looked?

A. Yes, I was down in there. I truly was.

Q. You were down in it?

A. Yes. I was on this point of land, sir.

Q. But you didn't see what he claimed to see? That is, the old opening? Not through but the -- an old channel with water in it.

A. Oh. Yes. That's all wetlands in there. There's all water in there.

Q. Well, I'm speaking of the channel rather than -- you didn't see the bed of this old channel there with water in it?

A. I didn't -- no, I can't honestly say I saw the bed of a channel.

Q. And you really can't say, can you, whether the field crew did?

A. No, I honestly cannot say. When we come up with a discrepancy in the distance we questioned it. I questioned it. I computed the Metcalf survey out, which had an error of closure of a hundred and some feet. I computed my shoreline compared to his, which had a difference of 227.6 feet. That's straight line distance; not the different breaks, you know, up and down.

Q. So that was --

A. My distance from here to here is 227.6 feet longer than what the Metcalf survey called from where he hit the Bay to where he left the Bay.

Q. Which I think is something like a ten or fifteen percent difference? Just speaking in terms of percentages.

A. Probably. His was eighteen hundred feet and ours is two thousand. I mean, you know, in rough figures.

Q. In rough figures. Better than ten percent?

A. Yes.

MR. SAUSE: May I borrow your Nuttle plat a minute, the one that....

BY MR. SAUSE:

Q. We are talking about this disputed area, which our mutual friend, Bill Nuttle, has shown as an apparent overlap. And the heavy line here is --

A. I have a clearer one of that. Here it is, I believe.

Q. This is the one that shows the three different overlays and --

A. The heavy line is the Metcalf.

Q. The heavy line is the Metcalf.

A. The heavy dash line here is the Metcalf.

Q. Now, the Metcalf line is north sixty-one degrees one minute east -- forget the distance for a minute -- and the lines that you came up with for the mouth are, as shown there, are radically different? Just the directions of it.

A. Right.

MR. ATWATER: I object to the radically but proceed.

BY MR. SAUSE:

Q. Well, they are different?

A. Well, they are different by maybe -- what? --

Q. And that doesn't seem --

A. -- twenty degrees.

Q. Well, --

A. I say, you know, if you move this line down here you are talking about, what? twenty-five degrees probably.

Q. Well, your line, of course, is the dotted one?

A. That's correct.

Q. So when I said radically different, I'm sorry, I'll take out the radical. But it does appear rather different --

MR. ATWATER: The plat shows a difference.

BY MR. SAUSE:

Q. It shows a difference to me when one line goes

1 northeast and the other goes southeast.

2 A. Give me Course number fifty-two over here, please.

3 Just read number fifty-two, wherever it happens to be.

4 (Pause) Okay. Right.

5 Q. That is -- when one line is going northeast and

6 the other goes southeast, that is different? I mean, I'm

7 reading the plat right?

8 A. Yes, sir.

9 MR. SAUSE: Anything else? Nothing further, thank

10 you.

11 MR. ATWATER: Just a second. (Pause)

12 FURTHER EXAMINATION BY MR. ATWATER:

13 Q. Mr. Downey, is the way this survey was made and the

14 plat prepared in accordance with normal surveying routine in

15 a surveyor's office?

16 A. Yes, sir.

17 Q. I'm referring specifically to the fact you have a

18 field crew that goes out and actually runs the degrees and

19 angles, chains the distances and comes back with those measure-

20 ments to the office for their review by someone in the office?

21 A. That's -- a lot of people do it this way. Some do

not.

Q. And in this case you not only reviewed those field notes before you prepared the plat; you actually had to walk the outline yourself?

A. Correct.

MR. ATWATER: No further questions.

FURTHER EXAMINATION BY MR. SAUSE:

Q. When somebody does it -- just to use an example of whom I know -- such as when Bill Nuttle does it, he combines both because he does the field work and the office work, too.

A. Mr. Kinderman (phonetic) does, too.

Q. But in the larger offices, such as yours, the practice is to have a field man, field crew and office crew? Sometimes the labors are divided?

A. I will say in the larger firms, like when I worked for Frederick Ward, Associates, -- which I do not any longer -- I do a lot of field work myself.

Q. I see.

A. But in the larger firms this is true. You may have one licensed land surveyor but you may have five field parties. There is no way that the one surveyor could be with all five

of them.

MR. SAUSE: I have no further questions.

MR. ATWATER: Nothing further.

(The examination was concluded.)

STATE OF MARYLAND

CITY OF ANNAPOLIS, SS

I, DONALD F. AMES, a Notary Public, in and for the State of Maryland, County of Anne Arundel, do hereby certify that the within named JOSEPH T. DOWNEY personally appeared before me at the time and place herein set out and after having been duly sworn by me according to law, was interrogated by counsel.

I further certify that the examination was recorded stenographically by me and then transcribed from my stenographic notes to the within typewritten matter in a true and accurate manner.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

AS WITNESS, my hand and Notarial Seal this 30th day of April, 1978, at Annapolis, Maryland.

Donald F. Ames

NOTARY PUBLIC

Court of Special Appeals
of Maryland

Annapolis, Md. 21401

JULIUS A. ROMANO
CLERK

HOWARD E. FRIEDMAN
CHIEF DEPUTY

THAYER A. LARRIMORE
ANN C. SIMMONS
DEPUTIES

TELEPHONE 269-3646

June 9, 1978

John W. Sause, Jr., Esquire
204 North Commerce Street
Centreville, Maryland 21617

Charles C. W. Atwater, Esquire
1112 W. R. Grace Building
Baltimore, Maryland 21202

Re: East Bay Colony Associates et al. v. Kent Island Estates Corporation, Inc.
No. 108, September Term, 1978

Dear Counsel:

In reference to your motion, filed jointly, to have the Court consider the original exhibits set forth in the proposed Order attached to your motion, in the captioned case, please be advised that by Order dated June 9, 1978, signed by Senior Judge James C. Morton, Jr., your motion was granted.

Very truly yours,

Howard E. Friedman
Chief Deputy Clerk

HEF/nze

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	
Appellant	*	September Term, 1978
vs	*	No. 108
KENT ISLAND ESTATES CORPORATION, INC.	*	
Appellee	*	

FILED

JUN 8 1978

JULIUS A. ROMANO, CLERK
COURT OF SPECIAL APPEALS
OF MARYLAND

-oOo-

MOTION FOR LEAVE TO HAVE THE COURT CONSIDER ORIGINAL EXHIBITS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Motion of East Bay Colony Associates, Appeallant and of Kent Island Estates Corporation, Inc. Appellee respectfully shows:

1. There are certain exhibits in the record which are of such size and detail that reproduction in the record extract is impractical. Reproduction would not permit a copy clear enough for the court to review.

2. These movants are advised and believe that it would be proper for this court, by its order, to authorize the use of the original exhibits at the time of argument rather than have them printed in the record extract.

3. The exhibits which these movants request the court to consider are Plaintiff's Exhibits 1, 2, 3, 4, 5, 6 and Stipulation Exhibit Q.

WHEREFORE it is respectfully moved that this court may, by its order, authorize the consideration of the above named exhibits at the time of oral argument rather than have them included in the record extract.

JOHN W. SAUSE, JR.
204 North Commerce Street
Centreville, MD 21617
Attorney for Appellee

CHARLES C.W. ATWATER
1112 W.R. Grace Building
Baltimore, MD 21202
Attorney for Appellant

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	
Appellant	*	September Term, 1978
vs	*	No. 108
KENT ISLAND ESTATES CORPORATION, INC.	*	
Appellee		

-o0o-

ORDER

Upon the aforegoing Motion , it is this 9th day of June, 1978 by the Court of Special Appeals of Maryland

ORDERED that at the time of argument of the above entitled matter the Court shall consider the original exhibits as filed in the record; namely Plaintiff's Exhibits 1, 2, 3, 4, 5, and 6 and Stipulation Exhibit Q.

James C. Morton

~~CHIEF~~ JUDGE

IN THE CIRCUIT COURT

FOR QUEEN ANNE'S COUNTY, MARYLAND

EQUITY NO. 5766

TITLE	DOCKET ENTRIES	INDEX
KENT ISLAND ESTATES CORPORATION, INC. a Maryland corporation, Stevensville, Maryland 21666 Complainant vs. EAST BAY COLONY ASSOCIATES, a Limited partnership serve on: WILLIAM E. DIXON, partner 650 Ritchie Highway Severna Park, Anne Arundel County, Maryland 21146 SAMUEL J. AARON 416 North Charles Street Baltimore, Maryland 21201 REBECCA AARON 416 North Charles Street Baltimore, Maryland 21201 MARYLAND NATIONAL REALTY INVESTORS, INC. a Maryland corporation serve on: JOHN M. NELSON, III Resident Agent, 10 Light Street Baltimore, Maryland 21202 JOHN M. NELSON, III, Trustee 10 Light Street Baltimore, Maryland 21202 WILLIAM T. DEFINE, Trustee 10 Light Street Baltimore, Maryland 21202 Respondents William E. Dixon	1-Filed Jan. 14, 1976. Bill of Complaint To Quiet Title And For Injunction and Exhibits A thru O.	1 - 65
	2-Filed Jan. 14, 1976. Motion To Limit Service of Exhibits.	66
	3-Filed Jan. 14, 1976. Order of Court granting above Motion.	67
	Jan. 14, 1976. Summons issued for defendants.	
	4-Filed Jan. 22, 1976. Summons for John M. Nelson, III, Trustee returned served.	68
	5-Filed Jan. 22, 1976. Summons for William T. Define, Trustee returned served.	69
	6-Filed Jan. 22, 1976. Summons for Maryland National Realty Investors, Inc. returned served on John M. Nelson, III, Resident Agent.	70
	7-Filed Jan. 23, 1976. Summons for East Bay Colony Associates returned served on William E. Dixon.	71
	8-Filed Jan. 26, 1976. Summons for Rebecca Aaron returned served.	72
	9-Filed Jan. 26, 1976. Summons for Samuel J. Aaron returned served.	73
	10-Filed Mar. 26, 1976. Respondents' Answer To Bill of Complaint and certificate of service.	74 - 82
	11-Filed April 15, 1976. Petition to Add William E. Dixon as Party Respondent and Limit Service of Exhibits and certificate of service.	83
	12-Filed April 15, 1976. Order of Court granting above Petition.	84
	April 15, 1976. Summons issued for William E. Dixon with copy of Bill of Complaint, Petition and Order.	
	13-Filed May 3, 1976. Summons returned showing service on William E. Dixon April 28, 1976.	85
	Sept. 27, 1976. Answer Of William E. Dixon To The Bill of Complaint and certificate of service.	86
	Oct. 15, 1976. Trial before Harry E. Clark, Judge; Joseph McGrath, Court Reporter. Counsel were heard. Plaintiff's witness was sworn and examined. Trial continued.	
	Oct. 15, 1976. Stipulation of Agreed Facts and over	87 - 91

COUNSEL FOR COMPLAINANT
John W. Sause, Jr.
J. Donald Braden
758-0970

COUNSEL FOR RESPONDENTS
Mylander, Atwater, Carney & Stone
Charles C. W. Atwater
1211 W. R. Grace Building
Baltimore, Md. 21202
752-6254

STATEMENT OF COSTS

PLAINTIFF'S			DEFENDANT'S		
10/18/77	Appearance fee	$ 10.00 Re:7488	Appearance fee 10/18/77	$ 10.00 Re:7488	
	Clerk's fee	$ 40.00 Re-3248	Clerk's fee	$	
	Clerk's Additional	$	Clerk's Additional	$	
10/18/77	Record	$ 25.00 Re:7488	Record	$	
10/18/77	Sheriff's fee B. City	$ 50.00 Re:7488	Sheriff's fee	$	
10/18/77	Sheriff's Additional A.A.co.	$ 10.00 Re:7488	Sheriff's Additional	$	
		$		$	
		$		$	

	INDEX
Exhibits P, Q, R, S, and T; Agreed Issues and Certificate of Counsel filed.	
Dec. 8, 1976 -- Trial continued before Harry E. Clark, Judge; Joseph McGrath, Court Reporter. Plaintiff's motion to include Exhibits 1 through 6, Exhibit R and Exhibit A through T heard and granted. Plaintiff's witnesses were sworn and examined. Defendant's witnesses were sworn and examined. Mr. Atwater submitted Defendant's Trial Memorandum. Counsel were heard in closing argument. Plaintiff's Trial Memorandum to be submitted within 30 days.	92 - 105
March 2, 1977 -- Plaintiff's Memorandum filed.	106 - 117
March 22, 1977 -- Defendant's Additional Memorandum filed.	118 - 120
September 16, 1977 -- Decision and Appendix A (Sept. 15, 1977 JUDGE CLARK) filed. Copies mailed to counsel.	121 - 146
October 13, 1977 -- Order of Appeal to the Court of Special Appeals of Maryland and certificate of service filed.	147
January 5, 1978 -- Motion And Order For Extension Of Time For Filing Record and Order of the Court of Special Appeals of Maryland extending the time for filing the record until January 13, 1978 filed.	148 - 153
February 10, 1978 -- Motion And Order For Extension Of Time For Filing Record and Order of the Court of Special Appeals of Maryland extending the time for filing the record until February 13, 1978; and Supplemental Petition For Extension Of Time for Filing Record and Order of the Court of Special Appeals of Maryland extending the time for filing the record until March 31, 1978 filed.	154 - 166
March 31, 1978 -- Transcript of Testimony filed.	167
March 31, 1978 -- Certified copy of record delivered to Court of Special Appeals of Maryland by Joseph McGrath, Court Reporter.	

STATE OF MARYLAND, QUEEN ANNE'S COUNTY, to wit:

I HEREBY CERTIFY that the aforegoing is truly taken from the original docket entries of record in "Kent Island Estates Corporation, Inc. vs. East Bay Colony Associates, et al." being Chancery No. 5766, in the Circuit Court for Queen Anne's County.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the Seal of the Circuit Court for Queen Anne's County this 31st day of March, 1978.

Charles H. Ocle

Clerk of the Circuit Court for Queen Anne's County

INDEX

March 22, 1971 -- Defendants' Additional Memorandum Filed.

STATE OF MARYLAND, QUEEN ANNE'S COUNTY, to wit:

I HEREBY CERTIFY that the aforegoing is truly taken from the original docket entries of record in "Kent Island Estates Corporation, Inc. vs. East Bay Colony Associates, et al." bel-g Chancery No. 5746, in the Circuit Court for Queen Anne's County.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the Seal of the Circuit Court for Queen Anne's County this 31st day of March, 1971.

Clerk of the Circuit Court for Queen Anne's County

JAN 14-76 * 23248 *****40.00
JAN 14-76 A 23248 *****40.00

KENT ISLAND ESTATES CORPORATION, INC.
a Maryland corporation,
Stevensville, Maryland 21666

Complainant

v.

EAST BAY COLONY ASSOCIATES,
a limited partnership
serve on:
WILLIAM E. DIXON, partner
650 Ritchie Highway
Severna Park,
Anne Arundel County,
Maryland 21146

SAMUEL J. AARON
416 North Charles Street
Baltimore, Maryland 21201

REBECCA AARON
416 North Charles Street
Baltimore, Maryland 21201

MARYLAND NATIONAL REALTY INVESTORS, INC.
a Maryland corporation
serve on:
JOHN M. NELSON, III
Resident Agent,
10 Light Street
Baltimore, Maryland 21202

JOHN M. NELSON, III, Trustee
10 Light Street
Baltimore, Maryland 21202

WILLIAM T. DEFINE, Trustee
10 Light Street
Baltimore, Maryland 21202

Respondents

IN

THE CIRCUIT COURT

FOR

QUEEN ANNE'S COUNTY

EQUITY NO.
5766

: : : : : : : :

BILL OF COMPLAINT
TO QUIET TITLE
AND FOR INJUNCTION

The Bill of Complaint of Kent Island Estates Corporation, Inc., by John W. Sause, Jr., and J. Donald Braden, its attorneys, respectfully shows:

1. Complainant, a Maryland corporation, is the owner of various parcels of land on Kent Island, Fourth Election District, Queen Anne's County, Maryland, by virtue of a Deed from The Romancoke Holding Company, dated June 27, 1969, recorded in Liber C.W.C. 42, folio 403, and attached as Exhibit A. (As used in this Bill of Complaint, the word "recorded" means recorded among the Land Records of Queen Anne's County, Maryland, at the place indicated. The word "attached" means that a copy of the item is attached to this Bill of Complaint, identified by the Exhibit letter indicated, and incorporated as a part of this Bill of Compalaint pursuant to Maryland Rule 301 b.)

2. The specific part of the land referred to in Exhibit A which is the subject of this proceeding may be generally described as lying to the south of an extension of the southerly line (being South 52°05' East) of Lot 1, Block B, until it intersects the northwesterly line of Lot 55, Block Y, as shown on the plat attached and hereafter more fully identified as Exhibit E. The area referred to in this Paragraph is hereafter referred to as "the subject area."

3. Between March 1950 and June 27, 1969, the following instruments were recorded which described and/or conveyed fee simple title to the subject property:

(a) Deed from Guaranteed Realty Corporation to Kent Island Holding Co., Inc., dated March 1, 1950, recorded in Liber N.B.W. 5, folio 498, and attached as Exhibit B.

(b) Plat titled "Third Section, Kent Island Estates", by J. B. Metcalfe, dated October 1950, recorded on November 3, 1950, in Liber N.B.W. 7, folio 563, as Document #29582, and (reduced in size) attached as Exhibit C.

(c) Deed and Agreement between Kent Island Holding Co., Inc., and The Chesapeake Bay Corporation, dated October 25, 1950, recorded in Liber N.B.W. 7, folio 564, and attached as Exhibit D.

(d) Plat entitled "2nd Edition of the Third Section of Kent Island Estates", recorded on April 6, 1951, in Liber T.S.P. 1, folio 191, also recorded in Plat Book T.S.P. 1, folio 6, and (reduced in size) attached as Exhibit E.

(e) Deed from The Chesapeake Bay Corporation, to The Romancoke Holding Company, dated September 30, 1951, recorded in Liber T.S.P. 3, folio 594, and attached as Exhibit F.

4. Respondent East Bay Colony Associates is a limited partnership which purportedly acquired a tract of land in the Fourth Election District of Queen Anne's County

by Deed from Samuel J. Aaron and Rebecca Aaron, his wife, dated September 11, 1973, recorded in Liber C.W.C. 77, folio 560, and attached as Exhibit G. This tract is hereafter referred to as "the Benton farm." Between September 1948, and September 11, 1973, the following instruments were recorded which described and/or conveyed fee simple title to the Benton farm:

(a) Certificate of Survey of J. B. Metcalfe, dated August 1948, recorded in Liber N.B.W. 1, folio 470, and attached as Exhibit H.

(b) Plat entitled "Benton and Carter Farms", dated August 1948, by J. B. Metcalfe, and recorded in Liber N.B.W. 1, folio 473, as Document #26965, the portion showing lines 1 through 31 of the Benton farm being attached as Exhibit I.

(c) Deed from Byron Courtenay Benton and wife to David M. Nichols, dated September 9, 1948, recorded in Liber N.B.W. 1, folio 473, and attached as Exhibit J.

(d) Deed from David M. Nichols and wife to Samuel J. Aaron and wife, dated September 28, 1948, recorded in Liber N.B.W. 2, folio 4, and attached as Exhibit K.

(e) Deed from Samuel J. Aaron and wife to Aarsco, Inc., dated November 13, 1964, recorded in Liber C.W.C. 14, folio 228, and attached as Exhibit L.

(f) Deed from Aarsco, Inc., to Samuel J. Aaron and Rebecca Aaron, his wife, dated November 13, 1964, and recorded in Liber C.W.C. 14, folio 232, and attached as Exhibit M.

5. Respondents Samuel J. Aaron and Rebecca Aaron, his wife, are the holders of a lien on the Benton farm by virtue of a Mortgage from East Bay Colony Associates, dated September 11, 1973, recorded in Liber C.W.C. 77, folio 566, and attached as Exhibit N.

6. Respondents John M. Nelson, III, and William T. Define, as Trustees, and Respondent Maryland National Realty Investors, Inc., a Maryland corporation, as beneficiary, are the holders of a lien on the Benton farm by virtue of a Deed of Trust from East Bay Colony Associates, dated September 18, 1973, recorded in Liber C.W.C. 77, folio 572, and attached as Exhibit O.

7. Complainant has been in actual peaceable possession of the subject area and/or in constructive and peaceable possession of the subject area under color of title and under claim of right by reason of its and its predecessors' adverse possession for the statutory period.

8. The Respondents and/or their agents, servants, employees, and attorneys have without legal or factual cause, justification or excuse caused a portion of the subject area to be included within the bounds of the Benton farm as described in Exhibits G, N and O (although not so included in Exhibits H through M, through which they admittedly derive any interest that they might have in either the

Benton farm or the subject area). As a result:

(a) Respondent, East Bay Colony Associates, claims of record or otherwise to own the subject area, or a part of it.

(b) Respondents Samuel J. Aaron and Rebecca Aaron claim of record or otherwise to hold a lien or encumbrance on the subject area, or a part of it.

(c) Respondents Maryland National Realty Investors, Inc., John M. Nelson, III, Trustee, and William T. Define, Trustee, claim of record or otherwise to hold a lien or encumbrance on the subject area, or part of it.

9. No action at law or proceeding in equity is pending to test the validity of the title, lien, encumbrance or other adverse claim of the Respondents.

WHEREFORE Complainant prays that this Court:

A. Quiet title of the Complainant in and to the subject area.

B. Remove from the title the cloud of Respondents' adverse claims.

C. Determine the nature and extent of any claim of the Respondents in the subject property adverse to the Complainant.

D. Decree that Complainant has absolute ownership and the right of disposition of the subject area.

E. Enjoin the Respondents, or any of them, from asserting any claims against, or with respect to, the subject area by any action at law or otherwise.

John W. Sause, Jr.
204 North Commerce Street
Centreville, Maryland 21617
758-0970

J. Donald Braden
204 North Commerce Street
Centreville, Maryland 21617
758-0970

Attorneys for Complainant

FILED
JAN 14 1976

Exhibit A

No 61779
Pa. 7 o'clock RECEIVED FOR RECORD June 30 1969 at 2:15 P.M.

THIS DEED, Made this 27th day of June, in the year one thousand nine hundred and sixty-nine, by and between THE ROMANCOKE HOLDING COMPANY, a body corporate of the State of Maryland, of the first part, and KENT ISLAND ESTATES CORPORATION, INC., a body corporate of the State of Maryland, of the second part.

WITNESSETH that for and in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said The Romancoke Holding Company does hereby grant and convey unto Kent Island Estates Corporation, Inc., a body corporate, its successors and assigns, in fee simple, all those parcels of ground situate, lying and being in the Fourth Election District of Queen Anne's County, State of Maryland aforesaid, and described as follows:

BEGINNING for the first, being all that property described in a deed dated June 23, 1950 and recorded among the Land Records of Queen Anne's County in Liber N.B.W. No. 6, folio 445 from Partners Holding Company to The Romancoke Holding Company; subject to the restrictive covenants and conditions contained therein.

SAVING AND EXCEPTING THEREFROM, however, all those parcels of land heretofore conveyed out of said tract.

BEING the remainder of the property described in the aforesaid deed dated June 23, 1950 and recorded among the aforesaid Land Records in Liber N.B.W. No. 6, folio 445.

BEGINNING for the second, being all that property described in a deed dated September 30, 1951 and recorded among the Land Records of Queen Anne's County in Liber T.S.P. No. 3, folio 594 from The Chesapeake Bay Corporation to The Romancoke Holding Company.

SAVING AND EXCEPTING THEREFROM, however, all those parcels of land heretofore conveyed out of said tract.

SUBJECT to the restrictions as contained in a deed from the Kent Island Holding Company, Inc. to the Chesapeake Bay Corporation dated October 25, 1950 and recorded among the Land Records aforesaid in Liber N.B.W. No. 7, folio 564, as amended and modified by confirmatory deed and Articles of Amendment between Kent Island Holding Company, Inc. and the Chesapeake Bay Corporation and The Romancoke Holding Company, dated May 27, 1954 and recorded among the Land Records aforesaid in Liber T.S.P. No. 16, folio 116.

BEING the remainder of the property described in the aforesaid deed from The Chesapeake Bay Corporation to The Romancoke Holding Company, within grantor, dated September 30, 1951 and recorded among the Land Records of Queen Anne's County in Liber T.S.P. 3, folio 594.

FILED
JAN 14 1976

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

TO HAVE AND TO HOLD the said lots of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Kent Island Estates Corporation, Inc., a body corporate, its successors and assigns, in fee simple.

AND the said party of the first part hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property granted and that it will execute such further assurances of the same as may be requisite.

WITNESS the corporate seal of THE ROMANCOKE HOLDING COMPANY and the signature of J. Temple Smith, its President, duly authorized and attested:

TEST: THE ROMANCOKE HOLDING COMPANY

Daphne A. Duncan, Secretary by J. Temple Smith, President

NO TITLE EXAMINATION

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I Hereby Certify that on this 27th day of June, in the year one thousand nine hundred and sixty-nine, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County aforesaid, personally appeared J. Temple Smith, President of The Romancoke Holding Company, above named Grantor, and he acknowledged the foregoing Deed to be the act of said body corporate.

As Witness my hand and Notarial Seal.

T. May Albright
Notary Public

My commission expires
July 1, 1970

T. MAY ALBRIGHT NOTARY PUBLIC BALTIMORE CO., MD.

98

Exhibit B

::

#28,714. QUEEN ANNE'S COUNTY, TO WIT:

Be it remembered that on this Twenty Second day of March, in the year nineteen hundred and fifty, the following Deed was brought to be recorded, to wit:-

This Deed, Made this 1st. day of ~~January~~ March, in the year one thousand nine hundred and fifty, by and between Guaranteed Realty Corporation, a body corporate, of the City of Baltimore, in the State of Maryland, of the first part, and Kent Island Holding Co., Inc., a body corporate, of the same City and State, of the second part.

Witnesseth, that in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Guaranteed Realty Corporation, does grant and convey unto the said Kent Island Holding Co., Inc., its successors and assigns, in fee simple, all that lot of ground, situate, lying and being in Queen Anne County, and described as follows, that is to say:-

All of that tract of land, formerly composed of two contiguous parcels of land, one of which was called or known as the "Bank Farm", the "Gibson Farm", or the "Moore Farm", and the other being known as the "Kent Point School Lot", situate lying and being on Kent Island in the Fourth Estate District of Queen Anne's County, in the State of Maryland, on both sides of the Stevensville Romancoke State Road, containing 376.090 Acres of land, more or less, according to a certificate of survey and plat of said tract of land, including both said parcels of land, made by J. B. Metcalfe, surveyor, in November, 1949; being the same tract of land by deed bearing date the 20th day of January, 1950, which was granted andconveyed unto the mortgagor by the mortgagee, and recorded or intended to be recorded among the Land Records of said Queen Anne's County, immediately proceeding the recording of these presents, the metes and bounds description of said tract contained in said deed being hereby incorporated by reference in said mortgage.

BEING the same tract of land which was granted and conveyed unto Guaranteed Realty Corporation, a body corporate, by Theodore C. Waters, Surviving Executor of the last will and testament of Theodore Cooke, Jr. by Deed bearing date the 20th day of January, 1950, and recorded in Liber N. B. W. No. 5, folio 154, a land record book for Queen Anne's County, aforesaid.

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Kent Island Holding Co., Inc., its successors and assigns, in fee simple.

And the said party of the first part hereby covenant that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property granted and that it will execute such further assurances of the same as may be requisite.

Witness the signature of Guaranteed Realty Corporation, by David M. Nichols, its President, and attested by its corporate seal.

TEST:

CATHARINE C. WALLMAN

GUARANTEED REALTY CORPORATION

DAVID M. NICHOLS (SEAL)
By: David M. Nichols, President

Corporate Seal's Place

STATE OF MARYLAND, City of Baltimore, to wit:

I HEREBY CERTIFY, That on this 1st day of March, in the year one thousand nine hundred and fifty, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, aforesaid, personally appeared David M. Nichols, President of Guaranteed Realty Corporation, the above named grantor, and he acknowledged the foregoing Deed to be the corporate act of said Corporation.

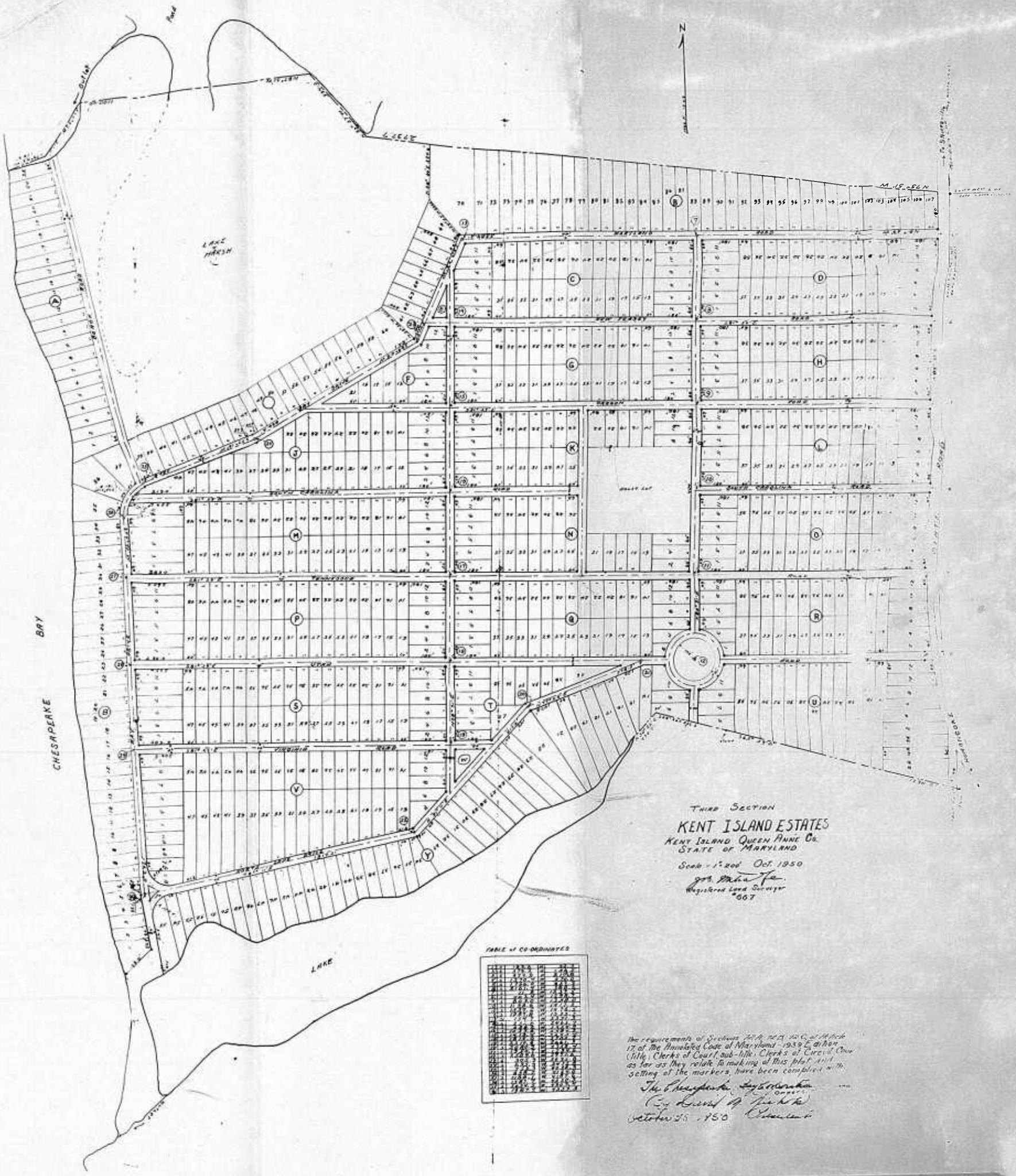
As Witness my hand and Notarial Seal.

CATHARINE C. WALLMAN
CATHARINE C. WALLMAN Notary Public.
NOTARY PUBLIC

Notary Public Seal.

Original opened & sent to owner, 110 E. Lexington Street, Balto. 2, Md. 4/14/50

FILED
JAN 14 1976



The requirements of Sections 70 A, 70 B, 70 C of Article 17 of the Annotated Code of Maryland - 1939 Edition (Title: Clerks of Court, sub-title: Clerks of Circuit Court) as far as they relate to making of this plat and setting of the markers, have been complied with.

The Chesapeake Land Corporation
Owners
By President of Parks
October 25, 1950

EXHIBIT C

Exhibit D

:: QUEEN ANNE'S COUNTY, TO WIT:
#29,483.
Be it remembered that on this Third day of November, in the year nineteen hundred and fifty, the following Deed and Agreement were brought to be recorded, to wit:-

One-Fifty Five Dollar, Two-Twenty Two Dollar and One-Five Dollar Fifty Cent Recordation Tax Stamps. Endorsed 10/25/50 KIHC.

One-Sixty Dollar, One-Thirty Dollar, One-Ten Dollar, Two-Two Dollar and One-Fifty Cent Int. Rev. Stamps. Endorsed 10/25/50 KIHC.

FILED
JAN 14 1976

[illegible]

Nov. 31, 1950.

THIS DEED AND AGREEMENT, made this 25th day of October. 1950, by and between Kent Island Holding Co., Inc., a body corporate, duly incorporated under the Laws of the State of Maryland, party of the first part, and The Chesapeake Bay Corporation, a body corporate, duly incorporated under the Laws of the State of Maryland, party of the second part.

WITNESSETH, that in consideration of the sum of Five Dollars and of other good and valuable considerations, the receipt of which is hereby acknowledged, the said Kent Island Holding Co., Inc., a body corporate, doth hereby grant and convey unto the said The Chesapeake Bay Corporation, a body corporate, its successors and assigns, in fee simple, but subject, as to part of said land, to the restrictions, covenants, agreements, easements, conditions and understandings hereinafter set forth, all that parcel or tract of land situate and being on Kent Island, Queen Anne's County, in the State of Maryland, formerly known as the Gibson Farm, and lying on the easterly and westerly sides of the Romancoke-Stevensville State Road, and described as follows, that is to say:

BEGINNING for the same at a point on the westerly line of the aforesaid State Road north 75 degrees 51 minutes west 64 feet from a 6" x 6" concrete monument marking the northwesterly corner of the Hoxter Farm, now known as Kent Island Estates, thence by and with the line of the lands of the Carvell farm north 75 degrees 51 minutes west 2737.70 feet to an old cedar post standing in a marsh near the waters of a pond or lake and to the line of lands of the Grollman farm, thence by and with the line of the lands of the said Grollman farm the four following courses and distances, north 35 degrees 37 minutes west 394.50 feet to a point on the bank of said pond or lake, north 87 degrees 51 minutes west 1100 feet (this line crosses over said lake or pond and extends to a point on the westerly bank of the stream that drains said pond) south 44 degrees 43 minutes west 311 feet to a point, south 79 degrees 43 minutes west 179.90 feet to a point at the outlet of the aforementioned stream into the Chesapeake Bay, thence by and with the mean high water line of said Bay the six following courses and distances; south 5 degrees 29 minutes west 491.70 feet to a point, south 10 degrees 24 minutes east 827.30 feet to a point, south 7 degrees 31 minutes west 1130.30 feet to a point, south 00 degrees 06 minutes west 1108.70 feet to a point, south 3 degrees 29 minutes east 437.90 feet to a point, south 12 degrees 46 minutes west 600 feet to a point at the mouth of a stream that drains another pond or lake (total frontage on Bay, 4596 feet, more or less), thence by and with the drain to said pond north 61 degrees 01 minute east 282.10 feet to the waters of the said pond, thence by and with the water line of the said pond the 17 following courses and distances: north 5 degrees 56 minutes west 531.90 feet, north 69 degrees 43 minutes east 235.70 feet, north 33 degrees 56 minutes east 186.10 feet, north 67 degrees 26 minutes east 80.00 feet, south 66 degrees 52 minutes east 53.70 feet, south 54 degrees 45 minutes east 199.10 feet, north 75 degrees 53 minutes east 175.20 feet, north 84 degrees 39 minutes east 242.50 feet, north 63 degrees 41 minutes east 115.80 feet, south 84 degrees 46 minutes east 209.60 feet, north 73 degrees 48 minutes east 75.30 feet, north 66 degrees 32 minutes east 109.10 feet, north 75 degrees 16 minutes east 68 feet, north 70 degrees 44 minutes east 118 feet, north 65 degrees 45 minutes east 171.20 feet, north 56 degrees ~~45 minutes east 171.20 feet, north 56 degrees~~ 43 minutes east 173.10 feet, north 78 degrees 05 minutes east 310.40 feet to a point at the headwaters of said pond, thence by and with the lands of the farm known as the "Benton Farm" meandering along and with the center line of a branch or stream north 50 degrees 25 minutes east 472.70 ft to a post, thence continuing with the line of land of the Benton Farm the 2 following courses and distances: south 69 degrees 26 minutes east 336.60 feet to a stone set along the fence line, south

65 degrees 59 minutes east 1238 feet to a stone set 50 feet easterly more or less from the Kent Point public road, thence by and with the line of the farm known as the Bullen farm south 66 degrees 08 minutes east 1677.80 feet to a 6" x 6" concrete monument set in the line of the lands of the Hoxter farm, now Kent Island Estates, thence by and with the said Hoxter lands the 2 following courses and distances, north 6 degrees 39 minutes east 1584.50 feet to a 6" x 6" concrete monument, north 75 degrees 56 minutes west 1696.90 feet to a concrete monument set on the easterly side of the Stevensville-Romancoke State Road, thence crossing over said road north 81 degrees 21 minutes west 64 feet to a point, thence by and with the westerly line of said road north 8 degrees 39 minutes east 1557.40 feet to the point of beginning, containing 376.090 acres more or less.

BEING all of the land and premises which was granted and conveyed by Guaranteed Realty Corporation unto Kent Island Holding Company, Inc., by deed dated March 1st. 1950, and recorded among the Land Records of Queen Anne's County in Liber N. B. W. No. 5, folio 498, etc.

ALL that part of the above described and hereby conveyed property which lies west of the State Road leading from Romancoke to Stevensville is shown on a plat of a subdivision of that portion of the above described and hereby conveyed property, now known as and entitled "3rd Sec. Kent Island Estates" prepared by J. B. Metcalfe, Registered Land Surveyor, dated October 1950, which plat is recorded, or intended to be recorded among the Land Records of Queen Anne's County prior hereto, as a part of this deed.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD The said parcel of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said The Chesapeake Bay Corporation, a body corporate, its successors and assigns, in fee simple; subject, however, as to the part of said parcel of land which lies on the westerly side of the Romancoke-Stevensville State Road, to the legal operation and effect of the following covenants, agreements, easements, restrictions and conditions which it is hereby covenanted and agreed shall be binding upon the said The Chesapeake Bay Corporation, a body corporate, and its successors and assigns, and upon all of the land hereby conveyed, forever:

1. All lots in that part of said land which lies on the westerly side of the above mentioned State Road and as is now shown on the subdivision thereof, now called "3rd Sec. Kent Island Estates" (see the Plat thereof hereinbefore referred to) shall be for residential use only and not for purposes of any trade or business whatsoever. Structures erected on any one lot shall consist of the main dwelling or residence for the occupancy of one family only, together with a private garage and other structures appurtenant to the main residence or to be used in connection therewith and on no lot shall there be more than one main dwelling and on no lot shall more than one family occupy the main dwelling or any structure appurtenant thereto. The main dwelling or residence on any lot shall have a setback from the front line of said lot of at least fifty (50) feet, and shall have a setback from the dividing lines of said lot of at least ten (10) feet and shall have a setback from the rear boundary of the lot of at least ten (10) feet.

2. No residence, dwelling, garage or other structure appurtenant to the residence shall be erected or built on said land, nor shall any addition to or change or alteration therein be made, until the plans and specifications for such structure or alterations and location thereof are submitted to and approved by The Chesapeake Bay Corporation, or its successors in the ownership or development of the entire tract, shown on the Subdivision plat hereinbefore referred to, or its duly authorized agents. Written permission must be obtained from the Corporation to construct or maintain fences, walls, hedges, buildings, piers, boathouses, bulkheads, bathhouses, and outbuildings.

3. All detached garages and other outbuildings of any kind whatsoev-

er shall be in the rear of the dwelling but shall not be within ten (10) feet of the rear boundary of the lot nor within ten (10) feet of the dividing lines of said lot.

4. No trees shall be cut and no excavations shall be made on the premises except for the purpose of building thereon and at the time when the building operations are commenced and no earth or sand shall be removed from said premises except as a part of such excavations.

5. Free and open spaces shall be left on both sides and to the front and to the rear of every building, structure, dwelling, or part thereof, erected on the said lot, which free and open spaces shall extend the full length of all lots and shall be not less than ten (10) feet in width from the dividing lines from the front and from the rear of said lots.

6. No privy of any kind shall be allowed on said property, but each house shall have inside toilets with adequate water supply and septic tank installation for disposal of sewage approved by the Maryland State Board of Health.

7. No noxious or offensive trade shall be carried on upon any lot nor shall anything be done or kept thereon which may be or become any annoyance or nuisance to the neighbors.

8. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

9. In order to preserve or improve the views of land and water, hills and valleys, obtainable on and from the various lots shown on the said Plat, and to promote the free movement of breezes and prevent the harboring places for flies, mosquitos and other insects, the Corporation reserves the right to trim any trees or shrubbery now or hereafter standing in said tract which may, in its opinion, destroy or interfere with such views or the free movements of breezes, or furnishing harboring places for flies, mosquitos or other insects.

10. The land which is contained within the boundaries of the subdivision plat hereinbefore referred to, shall, in respect to that part of it which lies in the bed of the road or roads bordering any of the lots shown on said Plat, be subject to an easement in favor of the owners and occupants of lots and houses bordering other parts of the said road or roads in respect to the free and common use of said road or roads, both for the purpose of passage to and from and for the laying or erecting of water pipes, gas pipes, electric poles or other public utilities to be used in common by the owners and/or occupants of the said subdivision, and further, that the owners or owner of any lot will join in a petition to the proper governmental authorities, that the road or roads bordering the property be taken over by the County as public roads under a proper deed or dedication to be signed by such owner or owners at such time when two-thrids of the owners of the lots along such road or roads shall demand.

11. The Corporation hereby reserves the right in its absolute discreation at any time to annul, waive, change or modify any of the restrictions, conditions, covenants, agreements or provisions contained herein, as to any part of said subdivision then owned by the Corporation, and, with the consent of the owner, as to any other land included in said sub-division; and to grade, change the grade of, or regrade any street, road or lane shown on said plat, and shall have the further right before a sale to change the size of, locate or relocate any of the lots shown on said plat.

12. Easements and rights of way are hereby expressly reserved in and over strips of ground five feet in width along the rear line of the lots for the purpose of erecting, constructing and maintaining wires and the necessary or proper attachments

in connection therewith for the transmission of electricity and for telephones and other public utilities or functions, and the Corporation, its successors, assigns, or nominees shall have the right to enter upon said reserved strips of land for any of the purposes for which said easements and rights are reserved as above set forth.

13. The provisions herein contained shall run with and bind the land and shall inure to the benefit of and be enforceable by the Corporation, or the owner of any land included in said sub-division, their respective personal representatives, heirs, successors, and assigns, and failure by the Corporation or any land owner to enforce any restriction, condition, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so therafter to one occurring prior or subsequent thereto; and the declared invalidity of any one or more of the provisions herein shall not affect the validity of the others.

14. Any or any of the rights and powers, titles, easements and estates reserved or given to the Corporation in this agreement may be assigned to any one or more corporations or associations that will agree to assume said rights, powers, duties and obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purposes of evidencing its acceptance of such rights and powers; and such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Corporation, the Corporation thereupon being released therefrom.

15. All cess pools and all wells are to be approved by The Chesapeake Bay Corporation as to type, size and location, and under no circumstances are any wells to be constructed unless they shall be driven wells and all cess pools and wells which are erected on the premises shall be approved by the Maryland State Board of Health.

16. The Purchaser, or successor in possession, of each lot in said subdivision, covenants to pay to The Chesapeake Bay Corporation, its successors or assigns, on March 1st, in each year the sum of Ten Dollars ($10.00) for each and every lot purchased, to be used for construction, maintenance and repair of roads in the subdivision. At such time as The Chesapeake Bay Corporation, its successors or assigns, shall form an association of the purchasers and owners of the lots in this subdivision for the purpose of administering the road funds each purchaser or owner expressly agrees to join and maintain membership in such association and to accept and abide in all rules and regulations for the conduct of such Association when formed.

AND the party of the first part, Kent Island Holding Co. Inc., does hereby covenant that it will warrant specially the property hereby granted and conveyed and that it will execute such further and other assurances of the same as may be requisite.

WITNESS the corporate seal of Kent Island Holding Co., Inc., a body corporate, and the signature of David M. Nichols, its President.

WITNESS also the corporate seal of The Chesapeake Bay Corporation a body corporate, and the signature of David M. Nichols, its President.

TEST:

CATHERINE W. McCANN

Corporate Seal.

KENT ISLAND HOLDING CO. INC.

By DAVID M. NICHOLS
(David M. Nichols) President

THE CHESAPEAKE BAY CORPORATION

By DAVID M. NICHOLS
(David M. Nichols) President.

Corporate Seal.

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 25th day of October, 1950, before me, the subscriber, a Notary Public of the State and City aforesaid, personally appeared David M. Nichols, President of Kent Island Holding Co. Inc., a body corporate and he acknowledged

the aforegoing deed and agreement to be the act and deed of said body corporate.

WITNESS my hand and Notarial Seal.

CATHERINE W. McCANN
Notary Public
CATHERINE W. McCANN
Notary
Public
Seal.

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 25th day of October, 1950, before me, the subscriber, a Notary Public of the State and City aforesaid, personally appeared David M. Nichols, President of The Chesapeake Bay Corporation, a body corporate, and he acknowledged the aforegoing deed and agreement to be the act and deed of said body corporate.

WITNESS my hand and Notarial Seal.

CATHERINE W. McCANN
Notary Public
CATHERINE W. McCANN
Notary
Public
Seal.

Agreement is recorded in Liber C.W.C. No. 18, folio 81, a Land Record Book for Queen Anne's County.

Agreement is recorded in Liber C.W.C. No. 18, folio 90, a Land Record Book for Queen Anne's County.

Agreement is recorded in Liber C.W.C. No. 29, folio 227, a Land Record Book for Queen Anne's County.
Agreement is recorded in Liber C.W.C. No. 36, folio 195, a Land Record Book for Q. A. Co.
Assignment is recorded in Liber C.W.C. No. 43, folio 12, a Land Record Book.
Assignment is recorded in Liber C.W.C. No. 43, folio 336, a Land Record Book.
Agreement is recorded in Liber C.W.C. No. 46, folio 317, a Land Record Book.
Agreement is recorded in Liber C.W.C. No. 46, folio 635, a Land Record Book.

:::

301 Balto. Life Bldg.
Chas. St. & Lexington
Balto. 1, Md.

Nov. 30, 1950.

#29,584. QUEEN ANNE'S COUNTY, TO WIT: Be it remembered that on this Third day of November, in the year nineteen hundred and fifty, the following Mortgage was brought to be recorded, to wit:-

This Mortgage, made this 25th day of October, in the year one thousand nine hundred and fifty, between The Chesapeake Bay Corporation, a body corporate, duly incorporated under the Laws of the State of Maryland, Mortgagor(s), and Aurora Federal Savings and Loan Association, a body corporate, duly incorporated, Mortgagee.

WHEREAS the said Aurora Federal Savings and Loan Association has this day loaned to said The Chesapeake Bay Corporation, a body corporate, the sum of Sixty-five thousand and 00/100 ($65,000.00) dollars, being the balance of the purchase money for the Property herein described, which said sum the said Mortgagor(s) agree(s) to repay in installments with interest thereon from the date hereof, at the rate of five (5%) per cent per annum, in the manner following:

By the payment of Five hundred and fourteen and 05/100 ($514.05) dollars on or before the first day of each and every month from the date hereof, until the whole of said principal sum and interest shall be paid, which interest shall be computed by the calendar month; and the said installment payments may be applied by the mortgagee in the following order:

FIRST: To the payment of interest at the rate aforesaid.

SECOND: Towards the payment of the aforesaid principal sum.

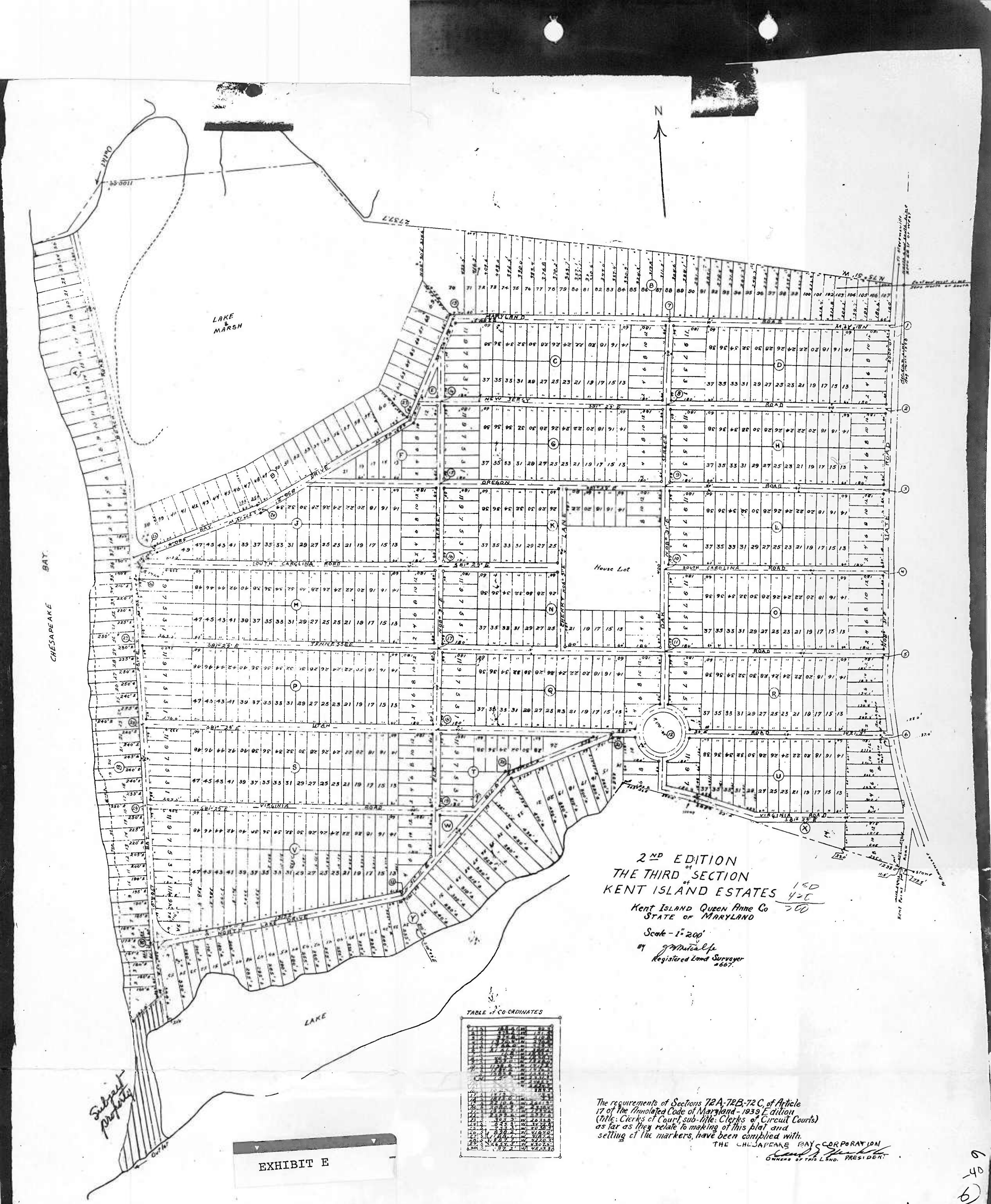
AND WHEREAS this Mortgage shall also secure future advances as provided by Chapter 923 of the Laws of Maryland passed at the January session in the year 1945 or any supplement thereto.

This loan may be prepaid, in whole or in part, and when the amount prepaid equals or exceeds twenty per cent of the original principal amount of the loan, ninety days' interest on the amount prepaid, will be charged as a consideration for the acceptance of such prepayment.

The due execution of this mortgage having been a condition precedent to the granting of said advance.

NOW THEREFORE, this mortgage witnesseth, that in consideration of the premises and of one dollar, the said The Chesapeake Bay Corporation do(th) grant, convey and assign unto said Aurora Federal Savings and Loan Association, its successors and assigns, all that parcel or tract of land situate and lying on Kent Island, Queen Anne's Co. State of Maryland, formerly known as the Gibson Farm, and lying on the easterly and westerly side of the Romancoke-Stevensville State Road and described as follows; that is to say:

BEGINNING for the same at a point on the westerly line of the aforesaid State Road north 75 degrees 51 minutes west 64 feet from a 6" x 6" concrete monument marking the northwesterly corner of the Hoxter farm, now known as Kent Island Estates, thence by and with the line of the lands of the Carvell farm north 75 degrees 51 minutes west 2737.70 feet to an old cedar post standing in a marsh near the waters of a pond or lake and to the line of lands of the Grollman farm, thence by and with the line of the lands of the said Grollman farm the four following courses and distances, north 35 degrees 37 minutes west 394.40 feet to a point on the bank of said pond or lake, north 37 degrees


N
LAKE & MARSH
MARYLAND ROAD
NEW JERSEY ROAD
OREGON ROAD
SOUTH CAROLINA ROAD
TENNESSEE ROAD
UTAH ROAD
VIRGINIA ROAD
NORTH BAY DRIVE
CHESAPEAKE BAY
House Lot
CHERRY LANE
OAK STREET
STATE ROAD
LAKE
Subject property
EXHIBIT E
TABLE of CO-ORDINATES
2ND EDITION of THE THIRD of SECTION of KENT ISLAND ESTATES
Kent Island Queen Anne Co STATE OF MARYLAND
Scale - 1" = 200'
Registered Land Surveyer #667
The requirements of Sections 72A-72B-72C, of Article 17 of the Annotated Code of Maryland - 1939 Edition (title: Clerks of Court sub-title: Clerks of Circuit Courts) as far as they relate to making of this plat and setting of the markers, have been complied with.
THE CHESAPEAKE BAY CORPORATION
OWNERS OF THIS LAND. PRESIDENT

14

Exhibit F

I HEREY CERTIFY that on this 11th day of January, in the year one thousand nine hundred and fifty-two before me the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared I. BENTON GARDNER and REBA C. GARDNER, his wife and they acknowledged the aforegoing MORTGAGE to be their act.

AND at the same time also personally appeared M. Tyson Ellicott, agent of Barton G. Woolfolk, mortgagee, and made oath in due form of law that the consideration set forth in said mortgage is true and bona fide as therein set forth, and that he is the duly authorized agent to make such affidavit.

WITNESS my hand and notarial seal the day and year last above written.

DORIS L. DILLEHUNT Notary Public
Doris L. Dillehunt

Notary
Public
Seal.

QUEEN ANNE'S COUNTY, TO WIT: Be it remembered that on this Twenty Seventh day of April, in the year nineteen hundred and fifty nine, the following Release was brought to be recorded, to wit:-

FOR VALUE RECEIVED, the undersigned does hereby release the aforegoing Mortgage and mortgage indebtedness.

AS WITNESS my hand and seal this 16th day of April 1959, 1959.

B. G. WOOLFOLK (SEAL)

TEST:

::

QUEEN ANNE'S COUNTY, TO WIT:

#31,263.

Be it remembered that on this Fourteenth day of January, in the year nineteen hundred and fifty two, the following Deed was brought to be recorded, to wit:-

Three-Three Dollar and Three-Thirty Dollar
Int. Rev. Stamps. Endorsed 9/30/51 TCBC.

Four-Twenty Two Dollar and One-Eleven Dollar
Recordation Tax Stamps. Endorsed 9/30/51
TCBC.

This Deed, Made this thirtieth day of September in the year one thousand nine hundred and fifty-one between The Chesapeake Bay Corporation, a body corporate, duly incorporated under the Laws of the State of Maryland of the first part, and The Romancoke Holding Company, a body corporate, duly incorporated under the Laws of the State of Maryland, party of the second part, witnesseth:

That in consideration of the sum of Five Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said The Chesapeake Bay Corporation, a body corporate, doth grant and convey unto the said The Romancoke Holding Company, a body corporate, its successors and assigns, in fee-simple, but subject, as to part of said land, to the restrictions, covenants, agreements, easements, conditions and understandings hereinafter mentioned, all that parcel or tract of land situate and being on Kent Island, Queen Anne's County, in the State of Maryland, formerly known as the Gibson Farm, and lying on the easterly and westerly sides of the Romancoke-Stevensville State Road, and described as follows, that is to say:

BEGINNING for the same at a point on the westerly line of the aforesaid State Road north 75 degrees 51 minutes west 64 feet from a 6" x 6" concrete monument marking the northwesterly corner of the Hoxter Farm, now known as Kent Island Estates, thence by and with the line of the lands of the Carvell Farm north 75 degrees 51 minutes west 2737.70 feet to an old cedar post standing in a marsh near the waters of a pond or lake and to the line of lands of the Grollman farm, thence by and with the line of the lands of the said Grollman farm the four following courses and distances, north 35 degrees 37 minutes west 394.50 feet to a point on the bank of said pond or lake, north 87 degrees 51 minutes west 1100 feet (this line crosses over said lake or pond and extends to a point on the westerly bank of the stream that drains said pond) south 44 degrees 43 minutes west 311 feet to a point, south 79 degrees 43 minutes west 179.90 feet

Original & Amended & initial! Rec. 3-14-62 Rec. 2/1/52.

JAN 1 1976

TSP 3/594

to a point at the outlet of the aforementioned stream into the Chesapeake Bay, thence by and with the mean high water line of said bay the six following courses and distances: south 5 degrees 29 minutes west 491.70 feet to a point, south 10 degrees 24 minutes east 827.30 feet to a point, south 7 degrees 31 minutes west 1130.30 feet to a point, south 00 degrees 06 minutes west 1108.70 feet to a point, south 3 degrees 29 minutes east 437.90 feet to a point, south 12 degrees 46 minutes west 600 feet to a point at the mouth of a stream that drains another pond or lake (total frontage on Bay, 4596 feet, more or less) thence by and with the drain to said pond north 61 degrees 01 minute east 282.10 feet to the waters of the said pond, thence by and with the water line of the said pond the 17 following courses and distances: north 5 degrees 56 minutes west 531.90 feet, north 69 degrees 43 minutes east 235.70 feet, north 33 degrees 56 minutes east 186.10 feet, north 67 degrees 26 minutes east 80.00 feet, south 66 degrees 52 minutes east 53.70 feet south 54 degrees 45 minutes east 199.10 feet, north 75 degrees 53 minutes east 175.20 feet, north 84 degrees 39 minutes east 242.50 feet north 63 degrees 41 minutes east 115.80 feet, south 84 degrees 46 minutes east 209.60 feet, north 73 degrees 48 minutes east 75.30 feet, north 66 degrees 32 minutes east 109.10 feet, north 75 degrees 16 minutes east 68 feet, north 70 degrees 44 minutes east 118 feet, north 65 degrees 45 minutes east 171.20 feet, north 56 degrees 43 minutes east 173.10 feet, north 78 degrees 05 minutes east 310.40 feet to a point at the headwaters of said pond, thence by and with the lands of the farm known as the "Benton Farm" meandering along and with the centre line of a branch or stream north 50 degrees 25 minutes east 472.70 feet to a post, thence continuing with the line of land of the Benton Farm the two following courses and distances: south 69 degrees 26 minutes east 336.60 feet to a stone set along the fence line, south 65 degrees 59 minutes east 1238 feet to a stone set 50 feet easterly more or less from the Kent Point public road, thence by and with the line of the farm known as the Bullen farm south 66 degrees 08 minutes east 1677.80 feet to a 6"-x 6" concrete monument set in the line of the lands of the Hoxter farm, now Kent Island Estates, thence by and with the said Hoxter Lands the two following courses and distances: north 6 degrees 39 minutes east 1584.50 feet to a 6" x 6" concrete monument north 75 degrees 56 minutes west 1696.90 feet to a concrete monument set on the easterly side of the Stevensville-Romancoke State Road, thence crossing over said road north 81 degrees 21 minutes west 64 feet to a point, thence by and with the westerly line of said road north 8 degrees 39 minutes east 1557.40 feet to the point of beginning, containing 376.090 acres, more or less. Excepting, however, such parts of said land (being Lots 10 and 12 in Section R and Lot 10 in Section B of the Third Section of Kent Island Estates, as shown and described on a plat of the Third Section of Kent Island Estates, which plat is now of record among the Land Records of Queen Anne's County) as have heretofore been conveyed by the grantor herein by deeds duly recorded among the Land Records of Queen Anne's County.

BEING the same lot of ground described in a deed dated October 25, 1950, and recorded among the Land Records of Queen Anne's County in Liber N.B.W. No. 7, folio 264, from Kent Island Holding Co., Inc. unto the grantor herein

Together with the buildings and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in anywise appertaining.

To have and to hold the said described lot of ground and premises, unto and to the use of the said The Romancoke Holding Company a body corporate, its successors and assigns, in fee simple, forever, subject however to the legal operation and effect of the restrictions conditions, covenants, agreements and understandings set out in the deed from the Kent Island Holding Co., Inc. to The Chesapeake Bay Corporation, dated October 25, 1950, and recorded among said Land Records in Liber N.B.W. No. 7, folio 564; and subject also to the legal operation and effect of a mortgage dated October 25, 1950, and recorded among said Land Records in Liber N.B.W. No. 7,

folio 568, from The Chesapeake Bay Corporation to Aurora Federal Savings and Loan Association originally given to secure the repayment of the sum of $65,000.00.

And the said party of the first part hereby covenants that it has done no act, to encumber said land hereby conveyed; that it will warrant specially the property hereby conveyed; and that it will execute such further assurances of said land as may be requisite.

WITNESS the corporate seal of said grantor and the signature of David M. Nichols, its President.

TEST:

THE CHESAPEAKE BAY CORPORATION

CATHARINE C. WALLMAN

By DAVID M. NICHOLS
(David M. Nichols) President

Corporate
Seal.

STATE OF MARYLAND, BALTIMORE CITY, to wit:

I hereby certify, that on this thirtieth day of September in the year one thousand nine hundred and fifty-one before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared David M. Nichols, President of The Chesapeake Bay Corporation, a body corporate, the above-named grantor and he, as such President acknowledged the foregoing Deed to be the act. and deed of said body corporate.

As witness my hand and Notarial Seal.

CATHARINE C. WALLMAN
CATHARINE C. WALLMAN Notary Public.
NOTARY PUBLIC

Notary
Public
Seal.

My Commission expires May 4, 1953

[illegible] 2/18/52. 801 Baltimore Life Bldg. Charles Street at Saratoga Baltimore 1, Md.

::
#31,264. QUEEN ANNE'S COUNTY, TO WIT: Be it remembered that on this Fourteenth day of January, in the year nineteen hundred and fifty two, the following Agreement was brought to be recorded, to wit:-

THIS AGREEMENT, made this 5th day of November, 1951, by and between Aurora Federal Savings and Loan Association, a body corporate, duly incorporated under the Laws of the United States of America, party of the first part, and The Romancoke Holding Company, a body corporate, duly incorporated under the Laws of the State of Maryland, party of the second part.

WHEREAS, the party of the first part is the holder of a mortgage upon the fee simple property comprising 376.09 acres, more or less, and now known as the Third Section of Kent Island Estates, in the Fourth District of Queen Anne's County, executed by The Chesapeake Bay Corporation, dated October 25th, 1950, and recorded among the Land Records of Queen Anne's County in Liber N.B.W. No. 7, Folio 568, originally given to secure the repayment of the sum of Sixty-five Thousand ($65,000.00) Dollars; and

WHEREAS, the said The Romancoke Holding Company has recently acquired the fee simple interest in the property above described, said conveyance being made subject to the legal operation and effect of the mortgage above referred to; and

WHEREAS, the party of the second part has requested the said party of the first part to consent to the transfer of the said property as hereinbefore recited, subject to the mortgage aforementioned, and the said party of the first part has agreed so to do upon the understandings hereinafter recited.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of One (10¢) Dime, and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part doth hereby consent to the transfer of the property hereinbefore recited unto the said party of the second part, it being understood and agreed that all of the covenants, agreements and conditions recited in the aforegoing mortgage shall continue to be and remain in full force and effect, except as the said mortgage is modified by this agreement.

IN TESTIMONY WHEREOF witnesseth the corporate seal of the party of the first part, and the signature of its President.

AURORA FEDERAL SAVINGS AND LOAN ASSOCIATION

TEST:

By JOHN L. FISHER
(John L. Fisher) President

ELSIE CURTIS
ELSIE CURTIS

Corporate
Seal.

Exhibit G

LIBER 77 PAGE 560

73 636

FEE-SIMPLE DEED — INDIVIDUAL GRANTOR AND GRANTEE — 40

No. 5546 RECEIVED FOR RECORD September 18, 1973 10:50 a.m.

APP. NO. R163962-A

This Deed, Made this 17th day of September

in the year one thousand nine hundred and seventy-three by and between

SAMUEL J. AARON and REBECCA AARON, his wife, parties

, of the first part, and

EAST BAY COLONY ASSOCIATES, a Limited Pasrtnership, party

of the second part.

Witnesseth, that in consideration of the sum of five dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part

do hereby grant and convey unto the said party of the second pasrt, its successors

heirs and assigns,

in fee simple, all those lot(s) of ground, situate, lying and being in

Queen Anne's County , State of Maryland, and described as follows, that is to say:—

Beginning for the same and being more particularly described in Exhibit 'A' attached hereto and made a part hereof.

BEING the same lots of ground which by Deed dated November 13, 1964 and recorded among the Land Records of Queen Anne's County in Liber CWC 14, folio 232, was granted and conveyed by AARSCO, Inc. unto the Grantors herein.

BEING also all and the same lots or parcel of ground which was granted and conveyed by David M. Nichols and Olive J. Nichols, his wife unto Samuel J. Aaron and Rebecca Aaron, his wife by Deed dated September 28, 1948 and recorded among the Land Records of Queen Anne's County in Liber NBW 2, folio 4.

FILED JAN 14 1976

EXHIBIT 'A'

PARCEL NO. 1

BEGINNING for the same at a stone heretofore set at the end of the first or South 68° East 20 1/2 perches line of that tract or parcel of land conveyed by and described in a deed from David M. Nichols and Olive J. Nichols, his wife, to Samuel J. Aaron and Rebecca Aaron, his wife, dated September 28, 1948 and recorded among the land records of Queen Anne's County in Liber NBW No. 2 folio 4, said stone being in the dividing line between the lands of the grantor and the lands of Kent Island Estates as shown on a plat recorded among the land records aforesaid in Liber TSP No. 1, folio 6, and running thence binding thereon as now surveyed, South 64° 56' 42" East 1149.96 feet to intersect the Northwesterly right of way line of Maryland Route 8 as shown on State Roads Commission Plat number 12626, thence binding thereon three courses viz: South 13° 51' 13" West 180.29 feet, South 05° 33' 01" West 248.75 feet, South 84° 27' 56" East 24.26 feet to a point on the side of Maryland Route 8 as now existing, thence binding thereon South 05° 09' 31" West 125.90 feet to the beginning of the fifth or South 66° East 96 perches line of the first mentioned conveyance, thence crossing Maryland Route 8, binding on a part of the last mentioned line, South 65° 20' 26" East 419.60 feet to intersect the westerly right of way line of the state road as shown on State Roads Commission Plat number 12625 and 12626, thence binding thereon by a curve to the left in a Southeasterly direction of radius 2951.79 feet an arc distance of 1297.64 feet to intersect the sixth or South 24° West 59 perches line of the first mentioned conveyance, thence leaving the state road binding on a part of said line South 24° 39' 36" West 423.60 feet to a pipe heretofore set at the end of said line, thence still binding on the outlines of the whole tract and on the dividing line between the lands of the grantor and the lands of Romoncoke on the Bay as shown on a plat recorded among the aforesaid land records in TSP No. 1 folio 43, South 29° 55' 03" West 1187.86 feet to a stone heretofore set, still with the outlines of the first mentioned conveyance five courses viz: South 65° 54' 54" East 973.36 feet to a stone heretofore set, South 66° 37' 46" East 138.75 feet to a stone heretofore set, South 66° 00' 15" East 175.09 feet to a stone heretofore set at the end of the eighth or South 66° East 78 perches line of the first mentioned conveyance, South 20° 00' 45" West 777.59 feet, and South 02° 00' 15" East 544.82 feet to the beginning of the eleventh or North 38° 30' West 102 perches line of the first mentioned conveyance, thence binding thereon, and on the dividing line between the lands of the grantor and the lands of Tower Garden as described in a deed from Tower Gardens on the Bay, Inc. to Lautz H. Willard and Rocco Luppino, Jr. dated July 8, 1965 and recorded among the land records aforesaid in Liber 16, folio 247, North 37° 06' 22" West 1688.31 feet, thence still with the outlines of the whole tract North 50° 20' 18" West 895.99 feet to a point on the easterly side of Maryland Route 8, thence crossing the same, North 50° 20' 18" West 48.28 feet to a pipe heretofore set on the Westerly side thereof at the Northeasterly most corner of Lot No. 8, Section 2, Kent Island Estates, thence leaving the road, binding on the Northerly outlines of lot No. 8, 7, 6, 5, and a part of 4, four courses viz: North 50° 20' 18" West 237.88 feet to a stone heretofore set, North 76° 37' 55" West 457.04 feet, North 51° 09' 21" West 195.85 feet, and South 73° 38' 49" West 129.69 feet to the mean high water line of Tower Lake, thence binding thereon Forth two courses viz: North 15° 05' 35" West 41.08 feet, North 36° 11' 37" West 181.79 feet, North 80° 24' 23" West 82.50 feet, North 26° 21' 34" West 38.62 feet, North 01° 06' 07" East 276.13 feet, North 41° 21' 52" East 51.30 feet, North 20° 34' 14" East 166.41 feet, North 52° 14' 02" East 60.87 feet, North 59°17' 54" West 58.83 feet, South 86° 47' 41" West 123.58

feet, North 64° 50' 10" West 49.92 feet, South 68° 42' 36" West 119.61 feet, South 80° 01' 16" West 405.92 feet, North 17° 56' 38" West 121.39 feet, North 43° 07' 10" East 35.77 feet, North 02° 50' 23" West 72.87 feet, North 83° 46' 44" West 83.51 feet, North 33° 30' 32" West 67.54 feet, North 71° 54' 24" West 78.50 feet, South 57° 17' 01" West 148.03 feet, South 89°38' 45" West 168.32 feet, North 53° 18' 39" West 96.37 feet, South 74° 32' 52" West 78.03 feet, South 33° 57' 07" West 131.73 feet, South 22° 21' 23" West 121.93 feet, South 05° 24' 16" East 83.98 feet, South 56° 55' 45" West 300.49 feet, South 80° 43' 36" West 260.07 feet, North 54° 23' 09" West 368.76 feet, South 25° 00' 01" West 219.63 feet, South 36° 44' 24" West 161.49 feet, South 22° 26' 59" East 146.38 feet, South 49° 57' 48" East 55.90 feet, South 10° 24' 21" East 105.02 feet, South 84° 06' 37" West 181.85 feet, South 46° 19' 18" West 131.81 feet, South 13° 15' 57" West 132.39 feet, North 78° 37' 37" West 212.17 feet, North 07° 19' 04" West 58.25 feet, North 49° 43' 53" West 107.41 feet, North 30° 39' 50" West 91.10 feet, and North 67° 31' 27" West 26.02 feet, to intersect the mean high water line of the Chesapeake Bay, thence binding thereon nine courses viz: North 16° 22' 08" East 397.09 feet, North 13° 41' 41" East 136.68 feet, North 12° 26' 42" East 157.21 feet, North 08° 56' 56" East 209.83 feet, North 10° 13' 35" East 459.05 feet, North 01° 18' 32" West 121.70 feet, North 03° 25' 03" East 65.75 feet, North 04° 32' 10" West 140.60 feet, North 07° 19' 38" East 342.09 feet, to the inlet of Tolson Creek, thence binding on the mean high water line of Tolson Creek twenty nine courses viz: South 83° 52' 11" East 185.69 feet, South 59° 01' 47" East 74.81 feet, North 64° 20' 03" East 37.33 feet, South 19° 19' 40" East 59.46 feet, North 39° 11' 46" East 102.09 feet, North 66° 39' 52" East 107.01 feet, South 76° 40' 24" East 288.24 feet, North 73° 51' 04" East 86.64 feet, North 55° 02' 54" East 130.62 feet, South 77° 46' 55" West 58.40 feet, North 56° 16' 07" East 104.18 feet, North 79° 40' 48" East 40.63 feet, North 85° 47' 21" East 158.65 feet, North 66° 33' 19" East 175.08 feet, North 79° 48' 27" East 121.27 feet, South 78° 21' 09" East 85.54 feet, North 58° 19' 30" East 241.91 feet, North 75° 48' 49" East 71.24 feet, North 48°08' 48" East 196.18 feet, North 72° 17' 50" East 48.50 feet, North 17° 06' 35" East 72.06 feet, North 77° 58' 33" East 37.92 feet, North 21° 06' 33" East 96.04 feet, North 66° 15' 24" East 110.37 feet, North 38° 28' 49" East 62.83 feet, North 71° 25' 23" East 158.36 feet, North 46° 03' 53" East 111.10 feet, North 05° 28' 50" East 53.29 feet, and North 23° 32' 21" West 25.84 feet, thence leaving Tolson Creek, binding on the last or North 54° East 24 perches line of the first mentioned conveyance, and on a fence line North 57° 05' 54" East 370.64 feet to a fence post heretofore set, thence still with the outlines of the whole tract South 76° 33' 30" East 336.58 feet to the beginning hereof containing 286.485 acres of land more or less saving and excepting therefrom 2.835 acres of land more or less within the right of way of Maryland Route 8, leaving a net acreage hereby conveyed of 283.650 acres of land, more or less.

PARCEL NO. 2

BEGINNING for the same at a pipe heretofore set, at the end of the fifth or South 66° East 96 perches line of that tract or parcel of land conveyed by and described in a deed from David M. Nichols and Olive J. Nichols, his wife, to Samuel J. Aaron and Rebecca Aaron, his wife, dated September 28, 1948 and recorded among the land records of Queen Anne's County in Liber NBW No. 2, folio 4, and running thence binding on a part of the sixth line thereof as now surveyed South 24° 39' 36" West 425.63 feet, to intersect the State Road as shown on Maryland State Roads Commission Plat number 12625 and 12626, thence binding thereon by a curve to the right in a Northwesterly direction of radius 2831.79 feet an arc distance of 1057.45 feet to intersect the aforesaid fifth line of the first mentioned conveyance, thence binding on a part thereof South 65° 20' 26" East 961.30 feet to the beginning hereof containing 5.489 acres of land more or less, as surveyed by FREDERICK WARD ASSOCIATES OF EASTON, INC.

Together with the bu. .ngs and improvements thereupon er. .ed, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said party of the second part, its successors

heirs and assigns.

in fee simple.

And the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors.

TEST:

Richard A. Gillespie

Samuel J. Aaron (SEAL)
SAMUEL J. AARON

Rebecca Aaron (SEAL)
REBECCA AARON

TAX $ 525.00 REC. # 53469 SEP 18 '73 Clerk
STATE PROPERTY TRANSFER CLERK

State of Maryland, Anne Arundel County, to wit:

I HEREBY CERTIFY, That on this 11th day of September, 1973, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared

SAMUEL J. AARON and REBECCA AARON, his wife

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

RICHARD A. GILLESPIE NOTARY PUBLIC Baltimore, Md.

Richard A. Gillespie
Notary Public

My Commission expires:

July 1, 1974

For Easement Agreement See Liber CWC No. 92 Folio 339, a Land Record for Queen Anne's County.

IN TESTIMONY WHEREOF, I hereunto set my hand and Notarial Seal affix the day and year herein last above written.

Notary
Public
Seal.

EDNA CHANDLEE (SEAL)
NOTARY PUBLIC

::::::::::::::::::::::::::::::::::::
#26,963. QUEEN ANNE'S COUNTY, TO WIT:
Be it remembered that on this Ninth day of September, in the year nineteen hundred and forty eight, the following Deed was brought to be recorded, to wit:-

THIS DEED, made this 7th day of September in the year 1948, by Vernon Ottenritter, bachelor, of Baltimore City, in the State of Maryland, witnesseth:

THAT for and in consideration of the sum of One Dollar ($1.00), and other good and valuable considerations, receipt of which is hereby acknowledged, the said Vernon Ottenritter does hereby grant and convey unto Elizabeth B. Williams, Elmer F. Williams, Jr., Ellen C. Williams, Jane L. Williams, and E. Brierley Williams, all of Baltimore City, in the State of Maryland, as joint tenants and not as tenants in common and unto the survivors or survivor of them, and unto the hiers and assigns of said survivors, in fee simple, all of the following described real estate, to wit:

ALL that lot or parcel of land situate, lying and being in the town of Church Hill, in the Second Election District of Queen Anne's County, Maryland, on the East side of Main Street, adjoining on one side the William Smith property and on the other side the property of Mary Clough Cain and containing ONE ROOD SIX and ONE-HALF PERCHES of land, more or less; being the same land conveyed unto Vernon Ottenritter, by Elizabeth B. Williams and Elmer F. Williams, Jr., her husband, by Deed of even date herewith and recorded, or intended to be recorded, among the Land Records of Queen Anne's County immediately prior hereto.

TOGETHER with the buildings and improvements thereupon erected, made or being and all of the rights, roads, ways, waters, privileges, appurtenances and advantages to the same belonging, or in anywise appertaining.

AND the said Vernon Ottenritter does hereby covenant to warrant specially the Title to the aforesaid real estate and to execute such other and further assurances thereof as may be requisite or necessary.

WITNESS the hand and seal of the Grantor the day and year herein first above written.

WITNESS:

EDNA CHANDLEE

VERNON OTTENRITTER (SEAL)
(Vernon Ottenritter)

STATE OF MARYLAND, BALTIMORE CITY ----, to wit:

THIS IS TO CERTIFY that on this 7th day of September 1948, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Vernon Ottenritter and did acknowledge the within and aforegoing Deed to be his act and deed;

IN TESTIMONY WHEREOF, I hereunto set my hand and Notarial Seal affix the day and year herein last above written.

Notary
Public
Seal.

EDNA CHANDLEE
NOTARY PUBLIC.

Exhibit H

::::::::::::::::::::::::::::::::::::
#26,964. QUEEN ANNE'S COUNTY, TO WIT:
Be it remembered that on this Ninth day of September, in the year nineteen hundred and forty eight, the following Certificate of Survey was brought to be recorded, to wit:-

CERTIFICATE OF SURVEY

This is to certify that I surveyed, in August, 1948, a lot of land, situated, lying and being on Kent Island, Queen Anne's County, State of Maryland, lying on the easterly and westerly side of the public road leading from Stevensville toward Kent Point, known as the "Benton Farm" conveyed to Byron C. Benton by deed recorded in Liber A.S.G. Jr. No. 1, folio 411, a land record for Queen Anne's County, as follows:

Beginning for the same at a stone set on the division line of these lands and another farm known as the "Cooke Farm" or "Price's Adventure". Said stone is North 58 deg. 23 min. west 230 feet more or less from the center of the aforesaid mentioned public road and running (1) thence by and with the lands of the "Cooke Farm" the two following courses and distances: North 58 deg. 23 min. west 219.60 feet to a point, North 73 deg. 56 min. west 667.10 feet to the waters of Hog Pen Creek, (2) thence crossing over the headwaters of said Creek North 305.30 feet to a point. (3) Thence by and with the waters of Hog Pen Creek, binding on the northerly side of same where the Creek widens out and is affected by the Tide the eleven following courses and distances:

North 55 deg. 59 min. east 529.00 feet to a point
North 03 deg. 05 min. west 122.80 feet to a point
South 76 deg. 06 min. west 1066.80 feet to a point
North 06 deg. 43 min. west 356.40 feet to a point
South 54 deg. 48 min. west 197.00 feet to a point
West 500.00 feet to a point
South 33 deg. 45 min. west 323.80 feet to a point
South 47 deg. 03 min. west 297.90 feet to a point
South 81 deg. 06 min. west 433.90 feet to a point
North 56 deg. 06 min. west 272.70 feet to a point
South 35 deg. 17 min. west 423.90 feet to the orifis of the stream that drains the said Creek.

(4) Thence by and with the center line of said stream

South 69 deg. 50 min. west 550.00 feet to the waters of the easterly shore of the Chesapeake Bay.

(5) Thence by and with the waters of said Bay the five (5) following courses and distances:

North 02 deg. 00 min. east 137.10 feet to a point
North 07 deg. 26 min. east 678.60 feet to a point
North 02 deg. 50 min. east 736.80 feet to a point
North 24 deg. 14 min. west 165.80 feet to a point
North 68 deg. 56 min. east 212.00 feet to the mouth of the stream that drains the Creek between these lands and a farm known as the "Gibson Farm".

(6) Thence by and with the southerly shore of the said Creek the nine (9) following courses and distances:

North 61 deg. 01 min. east 282.10 feet to a point
North 58 deg. 04 min. east 372.40 feet to a point
South 78 deg. 00 min. east 260.80 feet to a point
North 68 deg. 36 min. east 414.90 feet to a point
North 75 deg. 36 min. east 537.90 feet to a point
North 54 deg. 05 min. east 421.00 feet to a point
North 36 deg. 00 min. east 234.70 feet to a point
North 67 deg. 28 min. east 367.60 feet to a point
North 33 deg. 20 min. east 350.40 feet to a point at the end of Tidewater of said Creek.

Original Exhibit + delivered to Howard Wood, Jr., Atty. Nov 9, 1948

(7) Thence by and with the center line of a ditch or drain North 51 deg. 24 min. east 160.40 feet to the lands of the "Gibson Farm".

(8) Thence by and with the said Gibson Farm lands the two following courses and distances:

South 69 deg. 26 min. east 336.60 feet to a stone

South 65 deg. 57 min. east 1238.00 feet to a stone set South 65 deg. 57 min. east 52.00 feet from the center of the Stevensville Kent Point public road.

(9) Thence

South 23 deg. 30 min. west 120.40 feet to a point on the easterly side of the aforesaid public road.

(10) Thence by and with the easterly side of said road

South 04 deg. 30 min. west 429.00 feet to a point.

(11) Thence

South 66 deg. 12 min. east 1546.30 feet to a point, in the center of the old public road now abandoned since the New State Road to Romancoke was built.

South 24 deg. 00 min. west 973.5 feet to a point. (This line passes over the New aforesaid mentioned State Road.)

South 29 deg. 00 min. west 1188.00 feet to a stone set on the northerly side of the Long Point public road, 770 ft. more or less south easterly from the junction of the said Long Point road with the Stevensville Kent Point road.

(12) Thence by and with the northerly side of the Long Point road

South 66 deg. 56 min east 1287.20 feet to a point in the line of lands of other lands of Theodore Cooke, Jr. (The farm known as the Jas. Harris or Cockey Farm.)

(13) Thence

South 21 deg. 00 min. west 792.00 feet to a point

South 05 deg. 34 min. east 545.90 feet to an old post standing on the westerly side of Long Creek, and to the line of lands of the "Cooke Farm" known as "Price's Adventure".

(14) Thence by and with the lands of "Price's Adventure" the two following courses and distances:

North 38 deg. 30 min. west 1683.00 feet to a point

North 50 deg. 18 min. west 1183.20 feet to the point of beginning,

Containing 298.560 acres of land more or less.

NOTE: The azimuth point used in determining the direction of the outline of the above described tract of land does not necessarily agree with surveys of other adjacent properties.

The courses and distances of the water line of creek shores may not conform exactly with the exact water lines of said creeks. Excepting this, I certify the above to be a true survey.

J. B. Metcalfe
Surveyor Md. Reg. #667

J. B. METCALFE

::::::::::::::::::::::::::::::::::

BENTON FARM.				
1	N	58° 23'	W	213.60'
2	N	78° 16'	W	667.10'
3		NORTH		305.90'
4	N	55° 59'	E	529.00'
5	N	03° 05'	W	122.80'
6	S	76° 06'	W	1066.80'
7	N	06° 43'	W	356.40'
8	S	54° 44'	W	137.00'
9		WEST		500.00'
10	S	33° 45'	W	323.80'
11	S	47° 03'	W	297.90'
12	S	81° 06'	W	483.90'
13	N	56° 06'	W	372.70'
14	S	85° 17'	W	429.90'
15	S	69° 50'	W	850.00'
16	N	07° 00'	E	137.10'
17	N	07° 26'	E	678.60'
18	N	02° 50'	E	736.80'
19	N	24° 14'	W	165.80
20	N	68° 56'	E	212.00'
21	N	61° 01'	E	282.70'
22	N	18° 04'	E	372.40'
23	S	78° 05'	E	260.80'
24	N	68° 36'	E	414.30'
25	N	75° 38'	E	537.30'
26	N	54° 05'	E	421.00'
27	N	36° 00'	E	234.70'
28	N	67° 28'	E	307.60'
29	N	33° 20'	E	350.40'
30	N	51° 39'	E	160.50'
31	S	69° 26'	E	336.60'
32	S	65° 57'	E	1238.00'
33	S	23° 30'	W	120.40'
34	S	04° 30'	W	429.00'
35	S	66° 10'	E	1546.30'
36	S	24° 00'	W	373.50'
37	S	23° 00'	W	1188.00'
38	S	66° 56'	E	1287.30'
39	S	21° 00'	W	792.00'
40	S	04° 34'	E	344.50'
41	N	38° 30'	W	168.00'
42	N	50° 18'	W	1183.20'

COOKE FARM				
1	S	70° 18'	E	1183.20'
2	S	38° 20'	E	1623.60'
3	S	18° 51'	W	173.30'
4	N	42° 03'	W	523.30'
5	N	87° 37'	W	2055.60'
6	N	84° 32'	W	1042.30'
7	S	59° 26'	W	733.30'
8	S	46° 32'	W	168.70'
9	S	25° 44'	W	410.20'
10	S	21° 21'	W	373.20'
11	S	32° 26'	W	202.60'
12	S	67° 39'	W	101.50'
13	S	45° 05'	W	238.00'
14	S	67° 07'	W	327.40'
15	N	79° 37'	W	271.20'
16	N	17° 21'	W	144.80'
17	N	16° 56'	W	259.60'
18	N	68° 35'	W	131.10'
19	S	04° 29'	W	362.80'
20	N	75° 37'	W	594.50'
21	S	25° 59'	W	982.50'
22	N	56° 09'	E	70.00'
23	N	02° 00'	E	75.00'
24	N	68° 10'	W	40.00'
25	N	17° 50'	E	25.00'
26	N	44° 50'	E	150.00'
27	N	15° 50'	E	300.00'
28	N	54° 46'	W	300.00'
29	N	38° 39'	E	126.00'
30	N	27° 21'	E	1388.70'
31	N	20° 29'	E	814.60'
32	N	14° 32'	E	615.60'
33	N	08° 34'	E	636.20'
34	N	02° 00'	E	235.00'
35	N	60° 50'	E	550.00'
36	S	32° 07'	W	623.30'
37	S	34° 51'	E	476.70'
38	N	70° 34'	E	565.70'
39	N	15° 14'	W	157.50'
40	N	08° 26'	W	246.80'
41	S	89° 46'	E	367.00'
42	N	32° 22'	E	202.30'
43	N	60° 22'	E	325.30'
44	N	59° 43'	E	107.60'
45	S	82° 18'	E	204.20'
46	N	85° 10'	E	250.80'
47	N	82° 41'	E	309.20'
48	S	50° 37'	E	362.60'
49	S	85° 34'	E	161.70'
50	N	53° 37'	E	193.20'
51	S	73° 36'	E	667.80
52	S	38° 37'	E	289.60

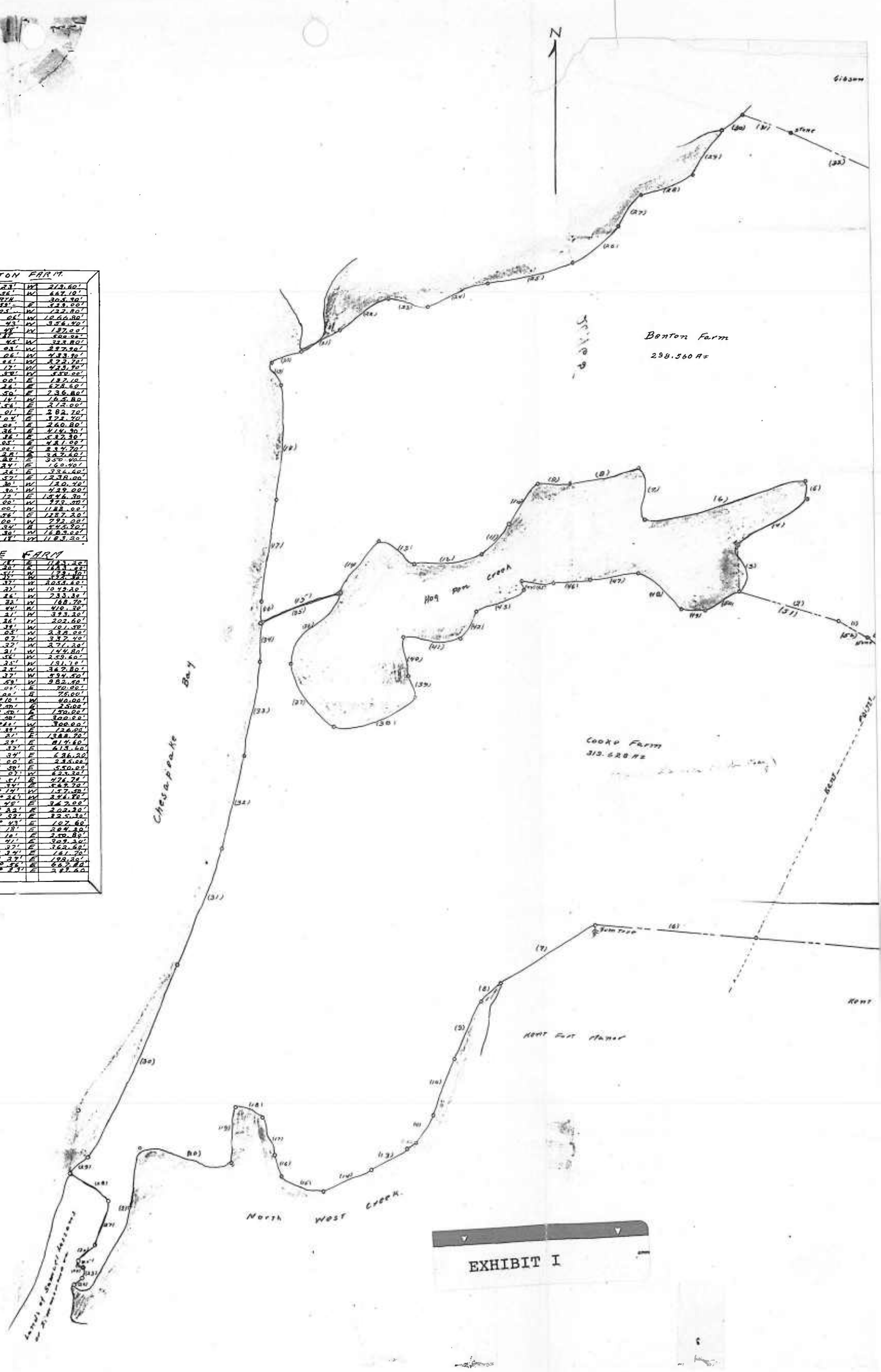


EXHIBIT I

::::::::::::::::::::::::::::::::::::::
#26,965. QUEEN ANNE'S COUNTY, TO WIT:
Be it remembered that on this Ninth day of September, in the year nineteen hundred and forty eight, a Plat was brought to be recorded, the space below is dedicated to said plat which is filed permanently in this office, to wit:-

Exhibit J

::::::::::::::::::::::::::::::::::::::
#26,966. QUEEN ANNE'S COUNTY, TO WIT:
Be it remembered that on this Ninth day of September, in the year nineteen hundred and forty eight, the following Deed was brought to be recorded, to wit:-

Two-Ten Dollar, One-Five Dollar,
One-Three Dollar and One-Five
Cent Int. Rev. Stamps. Endorsed
G&W 9/9/48.

Five-Five Dollar Fifty Cent and
One-Fifty Five Cent Recordation Tax
Stamps. Endorsed G&W 9-9-48.

THIS DEED, made this 9th day of September, in the year nineteen hundred forty-eight, by Byron Courtney Benton and Helen Benton, his wife, of Boulder County, in the State of Colorado;

WITNESSETH, that for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Byron Courtney Benton and Helen Benton, his wife, do hereby grant and convey unto David M. Nichols, of Queen Anne's County, in the State of Maryland, his heirs and assigns, in fee simple, all of the following described real estate, to wit:

ALL that farm or tract of land called or known as the "Dr. John R. Benton's John H. Tolson Farm", situate, lying and being on Kent Island in the Fourth Election District of Queen Anne's County, in the State of Maryland, on the public road leading from Stevensville to Kent Point and adjoining the Moore or Gibson Farm of Theodore Cooke, Jr., being more particularly described by metes and bounds, courses and distances by the certificate of survey and plat thereof made by J. R. Metcalfe, Surveyor, in the month of August, 1948, and containing, in accordance with said certificate and plat, the quantity of 298.560 acres of land, more or less; being the same land which was granted and conveyed unto the said Byron Courtney Benton by John C. Benton, et al., by deed bearing date the 31st day of July, 1939, and recorded in Liber A.S.G. Jr. No. 1, folios 411, etc., a Land Record Book for Queen Anne's County, Maryland.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, roads, ways, waters, privileges, appurtenances and advantages to the same belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the aforementioned and described land and premises unto and to the use of the said David M. Nichols, his heirs and assigns, in fee simple, forever.

AND the said Byron Courtney Benton and Helen Benton, his wife, do hereby covenant that they will execute such other and further assurances of said land as may be requisite.

WITNESS the hands and seals of the said grantors:

Original Plat of Tolson Farm filed Book 3-1, pg 9 9-9-48

and the said Byron Courtney Benton

WITNESS (as to Byron Courtney Benton):

DELHA DANCY ROLPH

BYRON COURTNEY BENTON (SEAL)
(Byron Courtney Benton)

WITNESS (as to Helen Benton):

G. F. DECKER

HELEN BENTON (SEAL)
(HELEN BENTON)

STATE OF MARYLAND,)
) TO WIT:
QUEEN ANNE'S COUNTY,)

I HEREBY CERTIFY, that on this 9th day of September, in the year nineteen hundred forty-eight, before me, the subscriber, a Notary Public of the State of Maryland, in and for Queen Anne's County, personally appeared Byron Courtney Benton, and acknowledged the aforegoing DEED to be his act.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written:

Notary
Public
Seal.

DELHA DANCY ROLPH
Notary Public

STATE OF PENNSYLVANIA,)
) TO WIT:
LYCOMING COUNTY,)

I HEREBY CERTIFY, that on this 8th day of September, in the year nineteen hundred forty-eight, before me, the subscriber, a Notary Public of the State of Pennsylvania, in and for Lycoming County, personally appeared Helen Benton, and acknowledged the aforegoing DEED to be her act.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written:

G. F. DECKER
Notary Public

NOTARY PUBLIC
MONTGOMERY, PA.
My Commission expires end
next session of Senate

Notary
Public
Seal.

::::::::::::::::::::::::::::::::::::

#26,967. QUEEN ANNE'S COUNTY, TO WIT:

Be it remembered that on this Ninth day of September, in the year nineteen hundred and forty eight, the following Mortgage was brought to be recorded, to wit:-

THIS PURCHASE MONEY MORTGAGE, made this 9th day of September, in the year nineteen hundred forty-eight, by David M. Nichols and Olive J. Nichols, his wife, of Queen Anne's County, in the State of Maryland, hereinafter called "Mortgagors";

WHEREAS, the said David M. Nichols is justly indebted unto Byron C. Benton, of Boulder County, in the State of Colorado, hereinafter called "Mortgagee", in the full and just sum of Fourteen Thousand Eight Hundred Dollars ($14,800.00), being the balance of the purchase price due and owing for the hereinafter described real estate; and

WHEREAS, it is understood and agreed that the aforesaid indebtedness shall be repaid, together with interest on the unpaid balance thereof at the rate of four per centum (4%) per annum, payable annually from the date of these presents, in ten equal installments of Fourteen Hundred Eighty Dollars ($1480.00) each, the first such installment to be repaid at the expiration of one year from the date hereof, and the remaining installments to be repaid annually thereafter, interest to abate on each installment of principal from the date of payment thereof, with the privilege reserved unto the Mortgagors to make advance payment of all or any part of said indebtedness prior to maturity as above set forth; and

Original & paid.

WHEREAS, it is the desire of the Mortgagors that this mortgage should be executed to assure and secure the payment of the aforesaid indebtedness and the interest to accrue thereon as aforesaid;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH, that for and in consideration of the premises and of the sum of One Dollar ($1.00), the receipt of which is hereby acknowledged, the said David M. Nichols and Olive J. Nichols, his wife, do hereby grant and convey unto the said Byron C. Benton, his heirs and assigns, in fee simple, all of the following described real estate, to wit:

ALL that farm or tract of land called or known as the "Dr. John

KATHERINE C. O'NEAL

NELLIE G. MEREDITH (SEAL)
Nellie G. Meredith

STATE OF MARYLAND, :
QUEEN ANNE'S COUNTY, : to wit:

I HEREBY CERTIFY, that on this 30 day of September in the year one thousand nine hundred and forty eight before me, the subscriber a Notary Public, of the State of Maryland, in and for the County aforesaid, personally appeared Nellie G. Meredith and she acknowledged the foregoing Deed to be her act.

Witness my hand and notarial seal.

KATHERINE C. O'NEAL

Notary
Public
Seal.

Exhibit K

::::::::::::::::::::::::::::::::::::
#27,058. QUEEN ANNE'S COUNTY, TO WIT: Be it remembered that on this Thirtieth day of September, in the year nineteen hundred and forty eight, the following Deed was brought to be recorded, to wit:-

This Deed, Made this 28th day of September in the year one thousand nine hundred and forty-eight, by and between DAVID M. NICHOLS and OLIVE J. NICHOLS, his wife, of the City of Baltimore in the State of Maryland, of the first part, and SAMUEL J. AARON and REBECCA AARON, his wife, of the City and State aforesaid, of the second part.

Witnesseth, that in consideration of the sum of five dollars and all other good and valuable considerations, receipt of which is hereby acknowledged, the said David M. Nichols and Olive J. Nichols, his wife, do grant and convey unto the said Samuel J. Aaron and Rebecca Aaron, his wife, their heirs and assigns, in fee simple, all that lot of ground, situate, lying and being in Baltimore County, and described as follows, that is to say:-

Beginning for the same all that farm or tract of land called or known as the "Dr. John R. Benton's John H. Tolson Farm", situate, lying and being on Kent Island in the Fourth Election District of Queen Anne's County, in the State of Maryland, on the public road leading from Stevensville to Kent Point and adjoining the Moore or Gibson Farm of Theodore Cooke, Jr., being more particularly described by metes and bounds, corses and distances by the certificate of survey and plat thereof made by J. B. Metcalfe, Surveyor, in the month of August, 1948, and containing, in accordance with said certificate and plat the quantity of 298.560 acres of land, more or less; being the same land which was granted and conveyed unto the said Bryan Courtney Benton by John C. Benton, et al., by deed bearing date the 31st day of July 1939, and recorded in Liber A.S.G. Jr. No. 1, folios 411, etc., a Land Record Book for Queen Anne's County, Maryland.

Being the same lot of ground which by deed dated September 9, 1948, recorded among the land Records of Queen Anne's County, Maryland in Liber N.B.W. No. 1, was granted and conveyed by Byron Courtney Benton and Helen Benton, his wife unto David M. Nichols.

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Samuel J. Aaron and Rebecca Aaron, his wife, their heirs and assigns, in fee simple.

And the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors.

DAVID M. NICHOLS (SEAL)

Original & first & delivered to Tower Title Co. Nov. 16, 1948

TEST: OLIVE J. NICHOLS (SEAL)
Olive J. Nichols

CATHARINE C. WALLMAN
Catharine C. Wallman

STATE OF MARYLAND, City of Baltimore, to wit:

I HEREBY CERTIFY, That on this 28th day of September in the year one thousand nine hundred and forty-eight, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared David M. Nichols and Olive J. Nichols, his wife, the above named grantors, and they acknowledged the foregoing Deed to be their act.

As Witness my hand and Notarial Seal.

Notary
Public
Seal.

CATHERINE C. WALLMAN
CATHERINE C. WALLMAN Notary Public.
NOTARY PUBLIC

::: QUEEN ANNE'S COUNTY, TO WIT:
#27,059.
Be it remembered that on this Thirtieth day of September, in the year nineteen hundred and forty eight, the following Deed & Plat were brought to be recorded, the Plat referred to will be found in State Roads Commission Plat Book B. H. T. No. 1, the deed as follows, to wit:-

WHEREAS, the State Roads Commission of Maryland, acting for and on behalf of the State of Maryland, finds it necessary to acquire land, easements, and/or rights, etc. shown and/or indicated on State Roads Commission of Maryland's Plat No. 6318 which is duly recorded, or intended to be recorded, among the Land Records of Queen Anne County in the State of Maryland, in order to lay out, open, establish, construct, extend, widen, straighten, grade and improve, etc. under its Contract Q206X-224 and/or improve in any manner a highway and/or bridge, together with the appurtenances thereto belonging known as the Queen Anne towards Wye Mills, as a part of the Maryland State Roads System, and, thereafter use, maintain and or further improve said highway and/or bridge, and

WHEREAS, the laying out of said highway and/or bridge and their appurtenances, in addition to being required for public convenience, necessity and safety, is a material benefit to the undersigned.

NOW, THEREFORE, THIS DEED AND RELEASE WITNESSETH: That for and in consideration of the above premises, One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, we do hereby grant and convey unto the State of Maryland, to the use of the State Roads Commission of Maryland, its successors and assigns, forever in fee simple, all our right, title, and interest, free and clear of all liens and encumbrances, in and to all the land, together with the appurtenances thereto belonging, or in any wise appertaining, lying between the lines designated "right of way line" as shown and/or indicated on the aforesaid plat, all of which plat is made a part hereof, so far as our property and or our rights may be affected by the said proposed highway and or bridge and the appurtenances thereto belonging, or in any wise appertaining; and, we, for ourselves, our heirs and assigns, do further release the State of Maryland and the State Roads Commission of Maryland, their members, officers, agents, and employees, from any and all claims or demands, both present and future, for any damages and or injuries whatsoever caused directly or indirectly by the taking, and use, or improvement etc. of the land, easements, and/or rights, etc. for a public highway and/or bridge and their necessary appurtenances, including the creation or extension of slopes, embankments or excavations in connection therewith or any other matters or things, arising out of or caused by the laying out, opening, establishing, constructing, extending, widening, straightening, grading, improving, further improving, use and maintenance, etc. of the said State Highway and/or bridge and their necessary appurtenances within the area of the land, easements and/or rights, etc. hereby granted together with any change of grade therein or drainage therefrom.

Original Eleml. & mailed To Grantee Baltimore, Md. 12/30/48

AND the grantors do further grant to the State of Maryland to the use of the State Roads Commission of Maryland, its successors and assigns, the right to create, use and maintain on the land shown hatched thus ▨ on the the above mentioned plat, such drainage structures, stream changes and facilities as are necessary in the opinion of the State Roads Commission to adequately drain the highway and/or adjacent property and such slopes as are necessary to retain the said highway and or adjacent property, it being understood between the parties hereto, however, that at such times as the contour of the land over which this easement is granted is changed so that the easement required for slopes is no longer necessary to support or protect the property conveyed in fee simple, then said easement for slopes shall cease to be effective.

AND the grantors do further grant to the State of Maryland to the use of the State Roads Commission of Maryland, its successors and assigns, the right to create, use and maintain on or across the adjacent land of the grantors such waterways and/or inlets and outlets as are necessary in the opinion of the State Roads Commission for the drainage structures indicated in the legend shown in the left hand corner of the above mentioned plat.

AND the grantors do further grant to the State of Maryland to the use of the State Roads Commission of Maryland, its successors and assigns the perpetual right to erect and maintain between October 1st. and April 1st. of each and every year, snow fences, within 100 feet of the land hereby granted in fee simple, provided that said snow fences shall not interfere with the construction and use of buildings now erected or hereafter erected, or with growing crops.

Exhibit 2

LIBER 14 PAGE 228

FEE-SIMPLE DEED — CODE — City or County — 60

Rn 53575
Dr 1057R RECEIVED FOR RECORD Apr 8, 1965

This Deed, Made this 13th day of November,

in the year one thousand nine hundred and sixty-four, by and between Samuel J. Aaron and Rebecca Aaron, his wife

of the City of Baltimore in the State of Maryland, of the first part, and Aarsco Inc., a body corporate

of the second part.

Witnesseth, that in consideration of the sum of Five Dollars ($5.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Samuel J. Aaron and Rebecca Aaron, his wife

do es grant and convey unto the said Aarsco Inc., its

successors and assigns, in fee simple, all those lots or parcels of ground, situate, lying and being in Queen Anne's County, Maryland, aforesaid, and described as follows, that is to say:—

Being known and designated as Lots #1 and #2, Block B, Third Section, as shown on the Plat of Kent Island Estates "(Second Edition of 'Third Section)" prepared by J. B. Metcalfe, said plat recorded among the Land Records of Queen Anne's County, Maryland, in Liber T.S.P. No. 1, folio 191.

BEING the same lots of ground described in a Deed dated September 30, 1951 and recorded among the Land Records of Queen Anne's County in Liber T.S.P. No. 4 folio 52 from The Chesapeake Bay Corporation, a body corporate to the within Grantors.

ALL those lots or parcels of land situate, lying and being on Kent Island in the Fourth Election District of Queen Anne's County, State of Maryland, set forth and shown on a plat entitled "Harbor View", by William D. Purdum, registered surveyor, dated August 6, 1952, recorded among the Land Records of Queen Anne's County in Liber T.S.P. No. 6 folio 26; said lot being known and designated thereon as Lot No. 25, Block I, of Harbor View.

BEING part of the same lands described in a Deed dated December 19, 1960 and recorded among the Land Records of Queen Anne's County in Liber T.S.P. 58 folio 485 from Chester Beach, Inc. to the within Grantors.

BEGINNING for the same all that farm or tract of land called or known as the "Dr. John R. Benton's John H. Tolson Farm", situate, lying and being on Kent Island in the Fourth Election District of Queen Anne's County, in the State of Maryland, on the public road leading from Stevensville to Kent Point and adjoining the Moore or Gibson Farm of Theodore Cooke, Jr., being more particularly described by metes and bounds, corses and distances by

C.H.C 14/228

the certificate of survey and plat thereof made by J. B. Metcalfe, Surveyor, in the month of August, 1948, and containing, in accordance with said certificate and plat the quantity of 298.560 acres of land, more or less; being the same land which was granted and conveyed unto the said Byron Courtney Benton by John C. Benton, et al., by deed bearing date the 31st day of July, 1939, and recorded in Liber A.S.G. Jr. No. 1, folios 411, etc., a Land Record Book for Queen Anne's County, Maryland.

BEING the same lot of ground described in a Deed dated September 28, 1948 and recorded among the Land Records of Queen Anne's County in Liber N.B.W. No. 2 folio 4 from David M. Nichols et al to the within Grantors.

ALL of that certain tract or parcel of land called or known as "The Benjamin F. Austin Property", "The Edward T. Bacon Property", and more recently called or known as "The Joseph W. or Elsie M. Lehn Property", or "The Herman Reiser Estate", situate, lying and being on the East side of Cox Neck Road and on the South and West side of the public road leading from said Cox Neck Road to the oyster house of W. Oscar Dunn, and also on the West side of Emma Lewis Cove, a branch of Crab Alley Bay, in Cox Neck on Kent Island, in the Fourth Election District of Queen Anne's County, State of Maryland, and which is described in a Deed dated September 30, 1964 which was granted by Joseph M. Wyatt, Executor to Rebecca Aaron, and is recorded among the Land Records of Queen Anne's County in Liber CWC 11 folio 69 wherein said lot is fully described and a copy of a survey by Show & Bartlett, Engineers was attached and made part of the aforesaid deed. The said property contains 41.558 acres and is subject to certain rights-of-way set forth in said deed.

ALL that lot or parcel of land situate, lying and being on Kent Island, in the Fourth Election District of Queen Anne's County, State of Maryland, BEING known and designated as Lot No. 4, Block B, of the lands of The Romancoke Holding Company, called or known as The Third Section of Kent Island Estates, all as more particularly set forth on the plat of the lands aforesaid entitled "Section Edition of the Third Section of Kent Island Estates", by J. B. Metcalfe, registered surveyor, recorded the 6th day of April, 1951, among the Land Records of Queen Anne's County in Liber T.S.P. No. 1, folio 191.

BEING the same lot of ground described in a Deed from the Romancoke Holding Company, a body corporate, to Leon Abramson and Edda Abramson, his wife, said Deed being dated September 28, 1953 and recorded among the Land Records of Baltimore City in Liber T.S.P. No. 13, folio 200 &c., in Queen Anne's County, Maryland. Said Edda Abramson having departed this life in the City of Baltimore, State of Maryland on the 26th day of May, 1959.

ALL those three lots of ground situate, lying and being in the development known as Cloverfields, in Queen Anne's County, State of Maryland, as follows:

Lots 13 & 14 - Block AA
Lot 2 - Block BB

BEING the same lots described in a Deed from Guaranteed Realty Corporation to Daven Corporation, dated September 3, 1959, recorded T.S.P. No. 50 folio 540 for Lots 1 through 37, Block AA, and Lots 1 through 34, Block BB, Plat 6, Cloverfields.

ALL that lot of ground, situate and being in the development known as Cloverfields, in Queen Anne's County, State of Maryland aforesaid, as follows:

Lots 23 & 24 - Block CC

BEING the same lots described in a Deed from Guaranteed Realty Corporation to Olivet Corporation, dated September 3, 1959, recorded T.S.P. No. 50 folio 538, Lots 1 through 45, Block CC, Plat 6, Cloverfields.

ALL those two lots of ground, situate and being in the development known as Cloverfields in Queen Anne's County, State of Maryland aforesaid, as follows:

Lots 21, 27 & 28 - Block GG

BEING the same lots described in a Deed from Guaranteed Realty Corporation to Monet Corporation, dated 9/3/59, recorded T.S.P. No.50, folio 536, Lots 1 through 34, Block GG, Cloverfields.

ALL that lot of ground, situate and being in the development known as Cloverfields, in Queen Anne's County, State of Maryland aforesaid, as follows:

Lot #1 - Block DD

BEING the same lot described in a Deed from Guaranteed Realty Corporation to Margin Corporation, dated 9/3/59, recorded T.S.P. No. 50 folio 534, for Lots 1 through 22, Block DD, Plat 6, Cloverfields.

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot s of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Aarsco Inc., its successors and assigns, in fee simple.

And the said part ies of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors

TEST:

Alma V. Jenkins

Alma V. Jenkins

Samuel J. Aaron (SEAL)

Rebecca Aaron (SEAL)

Rebecca Aaron

STATE OF MARYLAND, City of Baltimore, to wit:

I HEREBY CERTIFY, That on this 13th day of November, in the year one thousand nine hundred and sixty-four, before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County, personally appeared Samuel J. Aaron and Rebecca Aaron, his wife

the above named grantors, and they each acknowledged the foregoing Deed to be their respective act.

As Witness my hand and Notarial Seal.

Alma Virginia Jenkins

Alma Virginia Jenkins, Notary Public

6/27/65 Rettimond, Inc.

Exhibit M

LIBER 14 PAGE 232

NON-OFFICIAL DEED — COUNTY — City or County — 19

76.5.3.5.7.6

Re 1.0.5.7.8 RECEIVED FOR RECORD Sept 8, 1965

This Deed, Made this 13th day of November,

in the year one thousand nine hundred and sixty-four, by and between AARSCO INC.,

a body corporate, of the City of Baltimore, State of Maryland

, of the first part, and

SAMUEL J. AARON & REBECCA AARON, his wife,

of the second part.

Witnesseth, that in consideration of the sum of Five Dollars ($5.00) and other good

and valuable considerations, the receipt of which is hereby acknowledged,
the said Aarsco Inc.,

do es hereby grant and convey unto the said Samuel J. Aaron & Rebecca Aaron, his

wife, as tenants in common,

their
heirs and assigns,

in fee simple, all those lots or parcels ~~lots~~ of ground, situate, lying and being in

Queen Anne's County,

, State of Maryland, and described as follows, that is to say:—

~~Beginning for the~~ Being known and designaged as Lots #1 and #2, Block B, Third Section, as shown on the Plat of Kent Island Estates "(Second Edition of Third Section)" prepared by J. B. Metcalfe, said plat recorded among the Land Records of Queen Anne's County, Maryland, in Liber T. S. P. No. 1, folio 191.

BEING the same lots of ground described in a Deed dated of even date and recorded among the Land Records of Queen Anne's County prior hereto from Samuel j. Aaron, et al to the within Grantor.

ALL those lots or parcels of land situate, lying and being on Kent Island in the Fourth Election District of Queen Anne's County, State of Maryland, set forth and shown on a plat entitled "Harbor View", by William D. Purdum, registered surveyor, dated August 6, 1952, recorded among the Land Records of Queen Anne's County in Liber T. S. P. No. 6 folio 26, said lot being known and designated thereon as Lot No. 25, Block 1, of Harbor View.

BEING the same lots of ground described in a Deed of even date and recorded among the Land Records of Queen Anne's County prior hereto from Samuel J. Aaron, et al to the within Grantor.

BEGINNING for the same all that farm or tract of land called or known as the "Dr. John R. Benton's John H. Tolson Farm", situate, lying and being on Kent Island in the Fourth Election District of Queen Anne's County, in the State of Maryland, on the public road leading from Stevensville to Kent Point and adjoining the

Moore or Gibson Farm of Theodore Cooke, Jr., being more particularly described by metes and bounds, corses and distances by the certificate of survey and plat thereof made by J. B. Metcalfe, Surveyor, in the month of August, 1948, and containing, in accordance with said certificate and plat the quantity of 298.560 acres of land, more or less; being the same land which was granted and conveyed unto the said Byron Courtney Benton by John C. Benton, et al., by deed bearing date the 31st day of July, 1939, and recorded in Liber A. S. G. Jr. No. 1, follos 411, etc., a Land Record Book for Queen Anne's County, Maryland.

BEING the same lots of ground described in a Deed of even date and recorded among the Land Records of Queen Anne's County prior hereto from Samuel J. Aaron, et al to the within Grantor.

ALL of that certain tract or parcel of land called or known as "The Benjamin F. Austin Property", "The Edward T. Bacon Property", and more recently called or known as "The Joseph W. or Elsie M. Lohn Property", or "The Herman Rohner Estate", situate, lying and being on the East side of Cox Neck Road and on the South and West side of the public road leading from said Cox Neck Road to the oyster house of W. Oscar Dunn, and also on the West side of Emma Lewis Cove, a branch of Crab Alley Bay, in Cox Neck on Kent Island, in the Fourth Election District of Queen Anne's County, State of Maryland, and which is described in a Deed dated September 30, 1964 which was granted by Joseph M. Wyatt, Executor to Rebecca Aaron, and is recorded among the Land Records of Queen Anne's County in Liber CWC H folio 07 wherein said lot is fully described and a copy of a survey by Show & Bartlett, Engineers was attached and made part of the aforesaid deed. The said property contains 41.558 acres and is subject to certain rights-of-way set forth in said deed.

ALL that lot or parcel of land situate, lying and being on Kent Island, in the Fourth Election District of Queen Anne's County, State of Maryland, BEING known and designated as Lot No. 4, Block B, of the lands of The Romancoke Holding Company, called or known as The Third Section of Kent Island Estates, all as more particularly set forth on the plat of the lands aforesaid entitled "Section Edition of the Third Section of Kent Island Estates", by J. B. Metcalfe, registered surveyor, recorded the 6th day of April, 1951, among the Land Records of Queen Anne's County in Liber T.S.P. No. 1, folio 191.

BEING the same lot of ground described in a Deed from the Romancoke Holding Company, a body corporate, to Leon Abramson and Edda Abramson, his wife, said Deed being dated September 28, 1953 and recorded among the Land Records of Baltimore City in Liber T.S.P. No. 13, folio 200 &c., in Queen Anne's County, Maryland. Said Edda Abramson having departed this life in the City of Baltimore, State of Maryland on the 26th day of May, 1959.

ALL those three lots of ground situate, lying and being in the development known as Cloverfields, in Queen Anne's County, State of Maryland, as follows:

Lots 13 & 14 - Block AA
Lot 2 - Block BB

BEING the same lots described in a Deed from Guaranteed Realty Corporation to Daven Corporation, dated September 3, 1959, recorded T.S.P. No. 50 folio 540 for Lots 1 through 37, Block AA, and Lots 1 through 34, Block BB, Plat 6, Cloverfields.

ALL that lot of ground, situate and being in the development known as Cloverfields, in Queen Anne's County, State of Maryland aforesaid, as follows:

Lots 23 - Block CC

BEING the same lots described in a Deed from Guaranteed Realty Corporation to Olivet Corporation, dated September 3, 1959, recorded T.S.P. No. 50 folio 538, Lots 1 through 45, Block CC, Plat 6, Cloverfields.

ALL those two lots of ground, situate and being in the development known as Cloverfields in Queen Anne's County, State of Maryland aforesaid, as follows:

Lots 21, & 28 - Block GG

BEING the same lots described in a Deed from Guaranteed Realty Corporation to Monet Corporation, dated 9/3/59, recorded T.S.P. No.50, folio 536, Lots 1 through 34, Block GG, Cloverfields.

ALL that lot of ground, situate and being in the development known as Cloverfields, in Queen Anne's County, State of Maryland aforesaid, as follows:

Lot #1 - Block DD

BEING the same lot described in a Deed from Guaranteed Realty Corporation to Margin Corporation, dated 9/3/59, recorded T.S.P. No. 50 folio 534, for Lots 1 through 22, Block DD, Plat 6, Cloverfields.

BEING the same lots of ground described in a Deed of even date and recorded among the Land Records of Queen Anne's County prior hereto from Samuel J. Aaron, et al to the within Grantor.

-3-

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot s of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Samuel J. Aaron and Rebecca Aaron, his wife, as tenants in common,

their heirs and assigns,

in fee simple.

And the said part y of the first part hereby covenant s that it ha s not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property granted and that it will execute such further assurances of the same as may be requisite.

Witness the signature of Samuel J. Aaron, President of Aarsco Inc. attested by its corporate seal:

AARSCO INC.

TEST:

Alma V. Jenkins

By Samuel J. Aaron, President [SEAL]

[SEAL]

State of Maryland, City of Baltimore, to wit:

I HEREBY CERTIFY, That on this 13th day of November, 1964, before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County, personally appeared Samuel J. Aaron, President of Aarsco Inc., President of Aarsco Inc., known to me (or satisfactorily proven) to be the whose name(s) is/are subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Alma Virginia Jenkins
Notary Public

My Commission expires:

5/3/65

LIBER 14 PAGE 235

Exhibit N

LIBER 77 PAGE 586

APP. #: R163962-A

Mail 75.6.8.
Date 5.21.76 RECEIVED FOR RECORD Sept 18 1973 10:30 A.M.

This Mortgage, Made this 11th day of September in the year one thousand nine hundred and seventy-three between EAST BAY COLONY ASSOCIATES, a Limited Partnership as defined under the Partnership Laws of the State of Maryland, of Queen Anne's County, State of Maryland, hereinafter sometimes called the Mortgagor;

and SAMUEL J. AARON and REBECCA AARON, his wife

hereinafter sometimes called the Mortgagee.

WHEREAS, the said Mortgagor stands bona fide indebted unto the said Mortgagee in the full and just sum of SEVEN HUNDRED EIGHTY-SEVEN THOUSAND AND FIVE HUNDRED AND 00/100 ($787,500.00) Dollars for money this day loaned by the said Mortgagee unto the said Mortgagor, the said Mortgagor herewith covenants and agrees to repay unto the said Mortgagee, its successors and assigns, together with interest thereon at the rate of eight percent (8%) per annum until fully paid in the following manner and time: One payment for the entire principal to be made five (5) years from the date hereof. Interest to be paid semi-annually, accounting from the date hereof.

It is hereby agreed that the said Mortgagor shall have the right to prepay without any penalty or discount, the principal balance secured, at any time in whole, or to prepay in part any time after the expiration of the Mortgagee's first taxable year from date hereunder; which payments shall include any unpaid accrued interest to date.

It is further agreed that the said Mortgagee shall execute such deeds of easement or rights of way as may be reasonably requested, at any time during the term of this mortgage, with no prepayment of the principal sum secured being required thereon.

All sums aforesaid to be payable in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the office of the Mortgagee in Baltimore City, or at such other place, either within or without the said State, as the holder hereof may, from time to time, in writing, designate.

AND WHEREAS, at the time of making said loan, and as a condition precedent thereto, it was agreed by and between the parties hereto that the repayment of the same and of the interest to become due thereon, and of all taxes, assessments, public dues, and charges levied or to be levied by law on the property hereby mortgaged, and on the mortgage debt or debts created or secured by this Mortgage, and the payment of premiums for fire or other hazard insurance herein provided, shall be secured by the execution hereof.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That in consideration of the premises and the sum of One ($1.00) Dollar, the receipt whereof is hereby acknowledged, the said Mortgagor does hereby grant, convey, transfer and assign unto the said Mortgagee, its successors and assigns, all the lot of ground being, lying and situate in the County of Queen Anne's in the State of Maryland, and described as follows, viz:

See Exhibit 'A' attached hereto and made a part hereof.

BEING the same lot of ground described in a Deed of even date herewith and recorded or intended to be recorded immediately prior hereto among the Land Records of Queen Anne's County from SAMUEL J. AARON and REBECCA AARON, his wife unto the Mortgagors herein.

IT IS HEREBY AGREED between the parties that the Mortgagee will release unto the Mortgagor twenty (20%) percent of the hereinabove referred to property upon request, for no consideration, provided however that the Mortgagor furnish the Mortgagee the metes and bounds description of the parcel to be released, and said released parcel shall be contiguous and adjacent to the properties known as ROMONCOKE ON THE BAY, KENT ISLAND ESTATES.

Additional releases shall be made at an agreed upon prepayment price of $4,500.00 per acre (or any portion thereof) for each acre released, provided however, that all such acreage released shall be contiguous to and adjacent to all prior released land, excepting however, that no waterfront acreage shall be released prior to the release of all other acreage. The terms of this provision may be renegotiated between the parties at any time. Payment for released portions as hereinbefore provided shall also be construed to include all interest payments to date, at the time of said release.

Mar. 1973 Original mailed to: Samuel & Rebecca Aaron, 110 East 68th Street, New York, N.Y.

FILED
JAN 14 1976

CC 77/566

EXHIBIT 'A'

PARCEL NO. 1

BEGINNING for the same at a stone heretofore set at the end of the first or South 68° East 20 1/2 perches line of that tract or parcel of land conveyed by and described in a deed from David M. Nichols and Olive J. Nichols, his wife, to Samuel J. Aaron and Rebecca Aaron, his wife, dated September 28, 1948 and recorded among the land records of Queen Anne's County in Liber NBW No. 2 folio 4, said stone being in the dividing line between the lands of the grantor and the lands of Kent Island Estates as shown on a plat recorded among the land records aforesaid in Liber TSP No. 1, folio 6, and running thence binding thereon as now surveyed, South 64° 58' 42" East 1149.96 feet to intersect the Northwesterly right of way line of Maryland Route 8 as shown on State Roads Commission Plat number 12626, thence binding thereon three courses viz: South 13° 51' 13" West 180.29 feet, South 05° 33' 01" West 248.75 feet, South 84° 27' 56" East 24.26 feet to a point on the side of Maryland Route 8 as now existing, thence binding thereon South 05° 09' 31" West 125.90 feet to the beginning of the fifth or South 66° East 96 perches line of the first mentioned conveyance, thence crossing Maryland Route 8, binding on a part of the last mentioned line, South 65° 20' 26" East 419.60 feet to intersect the westerly right of way line of the state road as shown on State Roads Commission Plat number 12625 and 12626, thence binding thereon by a curve to the left in a Southeasterly direction of radius 2951.79 feet an arc distance of 1297.64 feet to intersect the sixth or South 24° West 59 perches line of the first mentioned conveyance, thence leaving the state road binding on a part of said line South 24° 39' 36" West 423.60 feet to a pipe heretofore set at the end of said line, thence still binding on the outlines of the whole tract and on the dividing line between the lands of the grantor and the lands of Romoncoke on the Bay as shown on a plat recorded among the aforesaid land records in TSP No. 1 folio 43, South 29° 55' 03" West 1187.86 feet to a stone heretofore set, still with the outlines of the first mentioned conveyance five courses viz: South 65° 54' 54" East 973.36 feet to a stone heretofore set, South 66° 37' 46" East 138.75 feet to a stone heretofore set, South 66° 00' 15" East 175.09 feet to a stone heretofore set at the end of the eighth or South 66° East 78 perches line of the first mentioned conveyance, South 20° 00' 45" West 777.59 feet, and South 02° 00' 15" East 544.82 feet to the beginning of the eleventh or North 38° 30' West 102 perches line of the first mentioned conveyance, thence binding thereon, and on the dividing line between the lands of the grantor and the lands of Tower Garden as described in a deed from Tower Gardens on the Bay, Inc. to Lautz H. Willard and Rocco Luppino, Jr. dated July 8, 1965 and recorded among the land records aforesaid in Liber 16, folio 247, North 37° 06' 22" West 1688.31 feet, thence still with the outlines of the whole tract North 50° 20' 18" West 895.99 feet to a point on the easterly side of Maryland Route 8, thence crossing the same, North 50° 20' 18" West 48.28 feet to a pipe heretofore set on the Westerly side thereof at the Northeasterly most corner of Lot No. 8, Section 2, Kent Island Estates, thence leaving the road, binding on the Northerly outlines of lot No. 8, 7, 6, 5, and a part of 4, four courses viz: North 50° 20' 18" West 237.88 feet to a stone heretofore set, North 76° 37' 55" West 457.04 feet, North 51° 09' 21" West 195.85 feet, and South 73° 38' 49" West 129.69 feet to the mean high water line of Tower Lake, thence binding thereon Forth two courses viz: North 15° 05' 35" West 41.08 feet, North 36° 11' 37" West 181.79 feet, North 80° 24' 23" West 82.50 feet, North 26° 21' 34" West 38.62 feet, North 01° 06' 07" East 276.13 feet, North 41° 21' 52" East 51.30 feet, North 20° 34' 14" East 166.41 feet, North 52° 14' 02" East 60.87 feet, North 59°17' 54" West 58.83 feet, South 86° 47' 41" West 123.58

feet, North 64° 50' 10" West 49.92 feet, South 68° 42' 36" West 119.61 feet, South 80° 01' 16" West 405.92 feet, North 17° 56' 38" West 121.39 feet, North 43° 07' 10" East 35.77 feet, North 02° 50' 23" West 72.87 feet, North 83° 46' 44" West 83.51 feet, North 33° 30' 32" West 67.54 feet, North 71° 54' 24" West 78.50 feet, South 57° 17' 01" West 148.03 feet, South 89°38' 45" West 168.32 feet, North 53° 18' 39" West 96.37 feet, South 74° 32' 52" West 78.03 feet, South 33° 57' 07" West 131.73 feet, South 22° 21' 23" West 121.93 feet, South 05° 24' 16" East 83.98 feet, South 56° 55' 45" West 300.49 feet, South 80° 43' 36" West 260.07 feet, North 54° 23' 09" West 368.76 feet, South 25° 00' 01" West 219.63 feet, South 36° 44' 24" West 161.49 feet, South 22° 26' 59" East 146.38 feet, South 49° 57' 48" East 55.90 feet, South 10° 24' 21" East 105.02 feet, South 84° 06' 37" West 181.85 feet, South 46° 19' 18" West 131.81 feet, South 13° 15' 57" West 132.39 feet, North 78° 37' 37" West 212.17 feet, North 07° 19' 04" West 58.25 feet, North 49° 43' 53" West 107.41 feet, North 30° 39' 50" West 91.10 feet, and North 67° 31' 27" West 26.02 feet, to intersect the mean high water line of the Chesapeake Bay, thence binding thereon nine courses viz: North 16° 22' 08" East 397.09 feet, North 13° 41' 41" East 136.68 feet, North 12° 26' 42" East 157.21 feet, North 08° 56' 56" East 209.83 feet, North 10° 13' 35" East 459.05 feet, North 01° 18' 32" West 121.70 feet, North 03° 25' 03" East 65.75 feet, North 04° 32' 10" West 140.60 feet, North 07° 19' 38" East 342.09 feet, to the inlet of Tolson Creek, thence binding on the mean high water line of Tolson Creek twenty nine courses viz: South 83° 52' 11" East 185.69 feet, South 59° 01' 47" East 74.81 feet, North 64° 20' 03" East 37.33 feet, South 19° 19' 40" East 59.46 feet, North 39° 11' 46" East 102.09 feet, North 66° 39' 52" East 107.01 feet, South 76° 40' 24" East 288.24 feet, North 73° 51' 04" East 86.64 feet, North 55° 02' 54" East 130.62 feet, South 77° 46' 55" West 58.40 feet, North 56° 16' 07" East 104.18 feet, North 79° 40' 48" East 40.63 feet, North 85° 47' 21" East 158.65 feet, North 66° 33' 19" East 175.08 feet, North 79° 48' 27" East 121.27 feet, South 78° 21' 09" East 85.54 feet, North 58° 19' 30" East 241.91 feet, North 75° 48' 49" East 71.24 feet, North 48°08' 48" East 196.18 feet, North 72° 17' 50" East 48.50 feet, North 17° 06' 35" East 72.06 feet, North 77° 58' 33" East 37.92 feet, North 21° 06' 33" East 96.04 feet, North 66° 15' 24" East 110.37 feet, North 38° 28' 49" East 62.83 feet, North 71° 25' 23" East 158.36 feet, North 46° 03' 53" East 111.10 feet, North 05° 28' 50" East 53.29 feet, and North 23° 32' 21" West 25.84 feet, thence leaving Tolson Creek, binding on the last or North 54° East 24 perches line of the first mentioned conveyance, and on a fence line North 57° 05' 54" East 370.64 feet to a fence post heretofore set, thence still with the outlines of the whole tract South 76° 33' 30" East 336.58 feet to the beginning hereof containing 286.485 acres of land more or less saving and excepting therefrom 2.835 acres of land more or less within the right of way of Maryland Route 8, leaving a net acreage hereby conveyed of 283.650 acres of land, more or less.

PARCEL NO. 2

BEGINNING for the same at a pipe heretofore set, at the end of the fifth or South 66° East 96 perches line of that tract or parcel of land conveyed by and described in a deed from David M. Nichols and Olive J. Nichols, his wife, to Samuel J. Aaron and Rebecca Aaron, his wife, dated September 28, 1948 and recorded among the land records of Queen Anne's County in Liber NBW No. 2, folio 4, and running thence binding on a part of the sixth line thereof as now surveyed South 24° 39' 36" West 425.63 feet, to intersect the State Road as shown on Maryland State Roads Commission Plat number 12625 and 12626, thence binding thereon by a curve to the right in a Northwesterly direction of radius 2831.79 feet an arc distance of 1057.45 feet to intersect the aforesaid fifth line of the first mentioned conveyance, thence binding on a part thereof South 65° 20' 26" East 961.30 feet to the beginning hereof containing 5.489 acres of land more or less, as surveyed by FREDERICK WARD ASSOCIATES OF EASTON, INC.

It is the intention and it is hereby agreed that any right, title, interest or estate, in the above described property acquired by the Mortgagor after date hereof shall be as fully embraced within the provisions hereof, and subject to the lien hereby created as if said right, title, interest or estate, was now owned by the Mortgagor and was so specifically described herein and conveyed hereby.

Together with the buildings and improvements thereon, and the rights, roads, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

Also Together with and including as part of the buildings and improvements erected on the aforesaid lot or parcel of ground all bathroom fixtures, equipment and accessories, breakfast nook furniture, which is attached to or affixed to the dwelling house, all kitchen cabinets, hot water heaters, gas and electric ranges, laundry equipment and tubs, built in medicine cabinets, lighting fixtures, heating plant, piping, tubing, radiators, oil burner units piping, tubing, and motors used in connection therewith, screens, screen doors and window shades all of which accessories and equipment are herewith declared to be by the said Mortgagor fixtures and permanent additions to the realty and intended to be included as part of the security for this mortgage.

To Have and to Hold the said lot or parcel of ground with the improvements and appurtenances aforesaid unto the said Mortgagee, its successors and assigns in Fee Simple.

Provided that if the said principal sum of money loaned as aforesaid, and the interest thereon, shall be paid when due, and if all of the covenants herein mentioned shall be performed, then this Mortgage shall be void.

But upon any default being made in the payment of the said principal or interest, in whole or in part, when due, or upon any default being made in any covenant or condition of this Mortgage, then the whole mortgage debt hereby secured shall thereupon be deemed due and payable forthwith at the election of the Mortgagee.

And the said Mortgagor, in accordance with the provisions of Article LXVI of the Code of Public General Laws of the State of Maryland, "The Maryland Rules of Procedure" or of any other General or Local Laws of the State of Maryland relating to mortgages, including any amendments, supplements, or additions thereto, does hereby (1) declare his assent to the passing of a decree for the sale of the herein described property at any time after the recording of this mortgage, (said sale to take place after a default has occurred in any of the conditions of this mortgage, as herein provided); and the said Mortgagor does hereby (2) also authorize the said Mortgagee, its successors or assigns, or Herbert Green, its duly authorized Attorney, after any

LIBER 77 PAGE 569

such default shall have occurred as aforesaid, to sell the hereby mortgaged property. And such sale may be of the property as a whole and it shall not be the duty of the party selling to sell the same in parts or in lots *but such party may do so and* the sale shall be made after giving twenty days notice of the time, place, manner and terms of sale in some newspaper printed in the county in which the land is situated; and the party selling may also give such other notice as he may deem expedient; and the terms of the sale may be all cash upon ratification of the sale or such other terms as the party selling may deem expedient. And it is agreed that upon any sale of said property under this Mortgage, whether under the above assent to a decree or under the above power of sale or otherwise, the proceeds of sale shall be applied as follows, to wit: First, to the payment of all expenses incident to said sale, including a counsel fee of $8,000.00 for conducting the proceedings if without contest, but if legal services be rendered to the Mortgagee or its successors or assigns or to the Trustee or party selling under the power of sale in connection with any contested matter in the proceedings, then such additional counsel fees and expenses shall be allowed out of the proceeds of sale as the Court may deem proper; and also a commission to the party making said sale equal to the commission allowed Trustees for making sales of property under decree of a court of equity in Maryland; second, to the payment of all claims of the Mortgagee, its successors or assigns hereunder, whether the same shall have then matured or not; and third, the balance, if any, to the said Mortgagor, or its successors and assigns, and half of such commissions and all such expenses and costs shall be paid by the Mortgagor, or its assigns, in the event that the mortgage debt shall be paid after any advertisement of said property, but before sale thereof.

And it is covenanted that until default be made in any covenant or condition of this Mortgage (but not thereafter), the said Mortgagor shall have possession of the property, upon paying in the meantime all taxes and assessments, public dues and charges levied or assessed or to be levied or assessed on the mortgaged property and on the mortgage debt and interest secured by this Mortgage, which mortgage debt and interest, taxes, assessments, public dues, and charges the said Mortgagor covenants to pay when legally due, and upon payment thereof, *unless paid by the Mortgagee out of funds deposited with it by the Mortgagor*, to exhibit to the Mortgagee, its successors and assigns, the receipted bills therefor at the principal office of the Mortgagee, its successors and assigns. And upon any default in any of the covenants of this Mortgage, the Mortgagee, its successors and assigns, shall be entitled to the rents and profits of said property which in that event are hereby assigned to the Mortgagee, its successors and assigns, as additional security, and the Mortgagee, its successors and assigns, shall also be entitled in that event, if it so elects, to the immediate appointment of a Receiver for said property, without notice to the Mortgagor and without regard to the adequacy or inadequacy of the property as security for the mortgage debt. The Mortgagee, its successors and assigns, or Receiver appointed pursuant to the provisions of this paragraph shall exercise all of the rights of the said Mortgagor with regard to any and all leases between the said Mortgagor and any tenants or lessees occupying any part or all of the mortgaged property and the Mortgagee, its successors and assigns, or Receiver, shall have the right from time to time in its discretion to vary the terms of any written or oral lease, or tenancy, or to sue for the recovery of any sum or sums due, past due or to become due thereunder and any and all acts done by the Mortgagee, its successors or assigns, or Receiver, are hereby authorized, ratified and approved by the Mortgagor.

And the said Mortgagor covenants to keep the improvements on the hereby mortgaged property insured against loss by fire, windstorm and such other hazards that the Mortgagee may from time to time require in an insurance company or companies acceptable to, and in an amount from time to time designated by the said Mortgagee, its successors and assigns, but at no time less than the value of the improvements on said property, and to cause each and every policy of insurance on said property to be so framed or endorsed as in case of fire and/or windstorm or other loss to inure to the benefit of the said Mortgagee, its successors and assigns, to the extent of its or their lien or claim under this Mortgage, and to deliver said policy or policies to the Mortgagee, its successors and assigns, to be kept by the Mortgagee, its successors and assigns, and to deliver all renewals thereof to the said Mortgagee, its successors and assigns, at its said principal office, or at such other place, either within or without the said State, as the owner or holder hereof may, from time to time, in writing, designate, one week in advance of the expiration of the same, stamped "PAID". And in the event of any loss by fire, windstorm or other hazards, the insurance company or companies are hereby directed by the Mortgagor to make payment for such loss to the Mortgagee, its successors and assigns, only, and not to the Mortgagor and Mortgagee, its successors and assigns, jointly; such payment to the Mortgagee, its successors and assigns, shall be applied to the extinguishment of the principal, interest, and expenses secured by this Mortgage, whether then due or not, but not to exceed the amount payable under this Mortgage; provided that the Mortgagee, its successors and assigns, in lieu thereof, may by its written assent consent to the application by the Mortgagor of the said insurance money to the reconstruction of the improvements on the mortgaged property.

And it is further mutually covenanted and agreed that in the event of the passage, after the date of this Mortgage, of any law of the State of Maryland, deducting from the value of land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, the whole of the principal sums secured by this Mortgage, together with interest due thereon, shall at the option of the Mortgagee, its successors and assigns, without notice to any party, become immediately due and payable.

And it is further mutually covenanted and agreed by said parties that in default of the payment by said Mortgagor of all or any taxes, charges, and assessments which may be imposed by law upon the said mortgaged premises or any part thereof; or that in default of the payment of any fire, windstorm or other hazard insurance premium for policies written under the terms of this Mortgage; then and in either or both of such events it shall be lawful for the said Mortgagee, its successors and assigns, to pay the amount of any such tax, charge, assessment, or insurance premium, with any expenses attending the same; and any amounts so paid the said Mortgagor shall repay to the said Mortgagee, its successors and assigns, on demand, with interest thereon, and the same shall be a lien on the said premises and be secured by these presents; and the whole amount hereby secured, if not then due, shall thereupon, if the said Mortgagee, its successors and assigns, so elects, become due and payable forthwith.

And the said Mortgagor covenants to warrant specially the said property, and to execute such further assurances thereof as may be requisite.

Whenever the singular or plural number, or masculine, feminine, or neuter gender is used herein, it shall equally include the other, and every mention herein of the Mortgagor or Mortgagee shall include the heirs, executors, administrators, successors and assigns of the party so designated.

IN WITNESS WHEREOF the said

EAST BAY COLONY ASSOCIATES

the day and year first herein written.

WITNESS:

Gertrude Phillips

By: William E. Dixon (SEAL)
William E. Dixon, General Partner

(SEAL)

(SEAL)

(SEAL)

STATE OF MARYLAND, Anne Arundel Co., to wit:

I HEREBY CERTIFY, that on this 11th day of September, in the year one thousand nine hundred and seventy-three, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared WILLIAM E. DIXON who acknowledged himself to be a General Partner of EAST BAY COLONY ASSOCIATES, and that he as such General Partner, being authorized so to do, executed the within Mortgage.

At the same time personally appeared Robert Rosen, Agent of the within named Mortgagee, and acting for and on behalf of the said Mortgagee made oath in due form of law that the consideration therein set forth is true and bona fide, and further that the amount of the loan which said Mortgage has been given to secure was paid over and disbursed by the party secured by the Mortgage to either the borrower or the person responsible for disbursement of funds in the closing transaction or their respective agent at a time no later than the final and complete execution of the Mortgage, and further that he is only the duly authorized agent of the Mortgagee, and has authority to make this affidavit.

WITNESS my hand and Notarial Seal the day and year above written.

My Commission expires:
July 1, 1974

RICHARD H. PHILLIPS NOTARY PUBLIC Baltimore, Md.

Notary Public

FOR PARTIAL RELEASE SEE LIBER CWC 82 PAGE 634

FOR PARTIAL RELEASE SEE LIBER CWC 90 PAGE 84

FOR PARTIAL RELEASE SEE LIBER CWC 90 PAGE 86

FOR EASEMENT AGREEMENT See Liber CWC No. 92 folio 339, a Land Record.

Exhibit O

LIBER 77 PAGE 572

THE MONUMENTAL TITLE CO.
THE MONUMENTAL TITLE BUILDING
SEVERNA PARK, MARYLAND 21146

R 163962-A

Val. 79,639.
Dei 5514/73 RECEIVED FOR RECORD Sept. 15, 1975 10:30 a.m.

DEED OF TRUST

THIS DEED OF TRUST is made this 11th day of September, 1973, between EAST BAY/COLONY ASSOCIATES, a Limited Partnership, organized and existing under the laws of the State of Maryland, party of the first part (hereinafter referred to as "Grantor"), and JOHN M. NELSON, III and WILLIAM T. DEFINE, parties of the second part (hereinafter sometimes referred to as "Trustees"), as Trustees.

WHEREAS, Grantor has borrowed from Maryland National Realty Investors, Inc. the full sum of Seven Hundred Ninety-Six Thousand Two Hundred Dollars ($796,200) for which amount Grantor has made and issued its certain Promissory Note, bearing even date herewith, the holder of said Note being hereinafter sometimes referred to as "Beneficiary"; and

WHEREAS, Grantor desires to secure the full and punctual payment of said indebtedness and interest thereon according to the terms of the Note.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the Grantor, in consideration of the premises and the sum of One Dollar ($1.00) lawful money of the United States of America, to it in hand paid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell and convey unto said Trustees, their survivors or survivor of them and their or his successors or successor in trust, in fee simple, all that parcel of land situate in Queen Anne's County, Maryland, and described more particularly in Exhibit A hereto and made a part hereof.

TOGETHER with all and singular the tenements, hereditaments, easements, rights of way and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, claim and demand whatsoever of Grantor in and to the same of, in and to every part and parcel thereof.

TOGETHER with all machinery, apparatus, equipment, carpets, furniture, furnishings, appliances, building materials, fittings, fixtures, office furniture, and all other goods and personal property of every kind and nature whatsoever, now or hereafter located in or upon said real estate, or any part thereof, and used or usable in connection with any present or future operation of the said property (hereinafter called "equipment"), and now owned or hereafter acquired by Grantor, including, but without limiting the generality of the foregoing, all heating, lighting, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, refrigerators, ranges, washers, dryers, other laundry equipment, plumbing, lifting, cleaning, fire-prevention, fire extinguishing, ventilating and communications apparatus, air-cooling and air-conditioning apparatus, elevators, escalators, partitions, ducts and compressors. It is understood and agreed that all equipment is part and parcel of the real estate and appropriated to the use of the real estate and, whether affixed or annexed or not, shall for the purpose of this Deed of Trust be deemed conclusively to be real estate and conveyed hereby. Grantor agrees to execute and deliver, from time to time, such further instruments as may be requested by Beneficiary to confirm the lien of this Deed of Trust on any equipment. This paragraph shall not apply to any chattels or personal property owned by tenants of the herein described premises.

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the property, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by Beneficiary, and of the reasonable counsel fees, costs and disbursements incurred by Beneficiary in

connection with the collection of such award or payment. Grantor agrees to execute and deliver, from time to time, such further instruments as may be requested by Beneficiary to confirm such assignments to Beneficiary of any such award or payment.

TO HAVE AND TO HOLD the above granted and described premises, with all of the property, appurtenances and improvements unto the Trustees, their survivors or any other successor or successors in trust, in fee simple, forever.

PROVIDED ALWAYS, and these presents are executed upon this express condition, that if Grantor and its successors or assigns, shall well and truly pay unto Beneficiary the sum of money mentioned in the Note and interest thereon, at the time and in the manner mentioned in the Note, and shall well and truly abide by and comply with each and every covenant and condition set forth herein or in the Note, then these presents and the estate hereby granted shall cease, determine and be void; provided further, that until the happening of any occurrence or event which gives Beneficiary the option to cause the entire indebtedness then secured by this Deed of Trust to become due and payable, Grantor shall have the right to possess and enjoy the premises and to receive the rents, issues and profits thereof; and provided further, that on full payment of the Note and indebtedness secured by this Deed of Trust and all proper costs, charges, expenses, prepayment charges, commissions and half-commissions incurred at any time before the sale hereinafter provided for, Trustees hereunder shall be entitled to a reasonable fee for the release and reconveyance of the premises unto and at the cost of Grantor.

GRANTOR covenants and agrees as follows:

1. That Grantor will pay the said sum of money mentioned in the Note and the interest, at the time and in the manner mentioned in the Note.

2. That Grantor will carry out all the agreements and covenants contained in the Trust Agreement bearing even date with this Deed of Trust.

3. (a) That Grantor will keep the buildings on the premises and equipment insured for the benefit of Beneficiary against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke and (as, when and to the extent insurance against war risks is obtainable from the United States of America or an agency thereof) against war risks, and when and to the extent required by Beneficiary, against any other risk insured against by persons operating like properties in the locality of the premises, in such amounts as are from time to time required by the Beneficiary; that all insurance herein provided for shall be in form and companies approved by Beneficiary; that Grantor will immediately notify Beneficiary of any cancellation of or change in any insurance policy; that regardless of the types or amounts of insurance required and approved by Beneficiary, Grantor will assign and deliver to Beneficiary all policies of insurance which insure against any loss or damage to the premises, as collateral and further security for the payment of the money secured by this Deed of Trust, with loss payable to Beneficiary, as its interest may appear, pursuant to a standard mortgagee clause, without contribution, satisfactory to Beneficiary; that if Grantor defaults in so insuring the premises or in so assigning and delivering the policies, Beneficiary may, at the option of Beneficiary, effect such insurance from year to year and pay the premiums therefor, and Grantor will reimburse Beneficiary for any premiums so paid, with interest at a rate 1% in excess of the then current interest rate provided for in the Note, on demand, and the same shall be secured by this Deed of Trust; that all sums payable under such policy or policies shall be paid over promptly to the Beneficiary and the Beneficiary, at its discretion, may apply such sums, in whole or in part, to the repair, restoration and replacement of the damaged or disturbed property or toward the payment of the moneys secured by this Deed of Trust, (b) that not less than ten (10) days prior to the expiration dates of each policy

required of Grantor pursuant to this Article, Grantor will deliver to Beneficiary a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Beneficiary; and (c) that in the event of a foreclosure of this Deed of Trust by virtue of judicial proceedings or otherwise, Beneficiary shall succeed to all the rights of Grantor, including any right to unearned premiums, and in and to all policies of insurance assigned and delivered to Beneficiary pursuant to the provisions of this Article.

4. That no building or other property now or hereafter covered by the lien of this Deed of Trust shall be removed, demolished or materially altered, without the prior written consent of Beneficiary, except that Grantor shall have the right, without such consent, to remove and dispose of, free from the lien of this Deed of Trust, such equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement Grantor shall be deemed to have subjected such equipment to the lien of this Deed of Trust, or (b) any net cash proceeds received from such disposition shall be paid over promptly to Beneficiary to be applied to the last installments due on the indebtedness secured, without any charge for prepayment.

5. That the whole of the principal sum and the interest shall become due at the option of the Beneficiary: (a) after default in the payment of any installment of principal or interest secured hereby for fifteen (15) days; or (b) after default in the payment of any tax, ground rent, water rate or assessment for ten (10) days after notice and demand; or (c) after default after notice and demand either in assigning and delivering the policies of insurance herein described or referred to or in reimbursing Beneficiary for

premiums paid on such insurance, as herein provided, or (d) after default upon request in furnishing a statement of the amount due on the Note and whether any offsets or defenses exist against the debt secured hereby as hereinafter provided; or (e) after default for thirty (30) days after notice and demand, in the payment of any installment which may be then due or delinquent of any assessment for local improvements which may now or hereafter affect the premises and may be or become payable in installments; or (f) upon the actual or threatened waste, removal or demolition of, or material alteration to, any part of the premises except as permitted by Article 4; or (g) if the Grantor shall (i) apply for, or consent in writing to, the appointment of a receiver, trustee or liquidator of the Grantor or of the trust property or of all or substantially all of the Grantor's other assets, or (ii) file a voluntary petition in bankruptcy or admit in writing its inability to pay its debts as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) file a petition or an answer seeking a reorganization (other than a reorganization not involving the liabilities of the Grantor) or an arrangement with creditors or take advantage of any insolvency law, or (v) file an answer admitting the material allegations of a petition filed against the Grantor in any bankruptcy, reorganization or insolvency proceeding, or (vi) be dissolved as a result of any adversary suit or proceeding; or (h) if (i) any execution or attachment shall be levied against the trust property, or any part thereof, and such execution or attachment shall not be set aside, discharged or stayed within thirty (30) days after the same shall have been levied, or (ii) an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating the Grantor a bankrupt or insolvent, or appointing a receiver, trustee or liquidator of the Grantor or of the trust property, or of all or substantially all of the Grantor's other assets, and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) days or shall not be discharged within ten (10)

days after the expiration of any stay thereof; or (i) upon default in keeping in force the insurance policies as required in Article 3; or (j) upon assignment by Grantor of the whole or any part of the rents, income and profits arising from the premises without the written consent of Beneficiary; or (k) after default for thirty (30) days after notice and demand in and removal of any Federal Tax lien on the premises; or (l) upon notice after default in the observance or performance of any other covenants or agreements of Grantor hereunder or under the Promissory Note secured hereby; or (m) upon the election by Beneficiary to accelerate the maturity of said principal sum pursuant to the provisions of the Note or any other instrument which may be held by Beneficiary as additional security for the Note; or (n) upon the transfer by Grantor, except to a partnership, joint venture or corporation of which Grantor is a principal, of any or all of the real property that is the subject hereof, and more particularly described in Exhibit A hereto, unless the written consent of the Beneficiary is obtained; or (o) upon the encumbrance by Grantor, except where the secured party is a partnership, joint venture or corporation of which one or more of the principals of Grantor is a principal or where the secured party is one of the principals of Grantor, by an instrument creating a lien junior to this Deed of Trust, of any or all of the real property or equipment which is the subject hereof, unless the written consent of the Beneficiary is obtained; or (p) upon the placing or filing of a lien or similar encumbrance against any or all of the real property or equipment which is the subject hereof, unless said lien shall be satisfied and removed within ten (10) days after notice thereof to Grantor; or (q) upon the failure of Grantor to give ten (10) days written notice to Beneficiary of any default in any junior or subordinated lien or encumbrance on the property covered by this Deed of Trust, or failure to give immediate written notice of any foreclosure or threat of foreclosure of such junior or subordinated lien or encumbrance; or (r) upon the construction of any additional improvements on the premises without the prior written consent of the Beneficiary, with the exception of those improvements described in the Trust

Agreement of even date herewith; or (s) upon any default in the covenants and agreements contained in the Trust Agreement, provided such default under the provisions of the Trust Agreement gives the Beneficiary the right to terminate its obligation to make any further advance under said Agreement.

6. That in the event of any default in the performance of any of Grantor's covenants or agreements herein, Beneficiary may, at the option of Beneficiary, perform the same and the cost thereof, with interest at a rate 1% in excess of the then current interest rate provided in the Note, shall immediately be due from Grantor to Beneficiary and shall be secured by this Deed of Trust.

7. That Beneficiary, in any action to foreclose this Deed of Trust, or upon the actual or threatened waste of any part of the premises, or upon default in the observance or performance of any covenant or agreement of Grantor hereunder, shall be at liberty to apply for the appointment of a receiver of the rents and profits of the premises without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the premises, as the Beneficiary may desire. The Grantor will furnish to the Beneficiary within ninety (90) days after the end of each fiscal year, an audited financial statement including balance sheet and income and expense statement in reasonable detail and stating in comparative form the figures as of the end of and for the previous fiscal year. Grantor shall provide, upon Beneficiary's request, convenient facilities for the audit and verification of any such statements.

8. That Grantor, upon request, made either personally or by mail, shall certify, by a writing duly acknowledged to Beneficiary or to any proposed assignee of the Note, the amount of principal and interest then owing on the Note and whether any offsets or defenses exist against the debt secured hereby, within five (5) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

9. That every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally

served on the Grantor, its successors or assigns, or mailed by depositing it in any post office station or letter box, enclosed in a postpaid envelope addressed to Grantor, its successors or assigns, at its address last known to Beneficiary.

10. That Grantor, at the times as hereinbefore provided, will pay, within thirty (30) days after receipt of bills therefor, all taxes, assessments, water rates, sewer rents and other charges and any prior liens now or thereafter assessed or liens on or levied against the premises or any part thereof, and in case of default in the payment thereof when the same shall be due and payable, it shall be lawful for Beneficiary, without notice or demand to Grantor, to pay the same or any of them; that the moneys paid by Beneficiary in discharge of taxes, assessments, water rates, sewer rents and other charges and prior liens shall be a lien on the premises added to the amount of said Note or obligation and secured by this Deed of Trust payable on demand with interest at a rate 1% in excess of the then current interest rate provided in the Note from the time of payment of the same; and that upon request of Beneficiary, Grantor will exhibit to Beneficiary receipts for the payment of all items specified in this Article prior to the date when the same shall become delinquent.

11. That Grantor warrants specially the title to the premises and will execute such further assurances as may be requisite.

12. That Grantor warrants and stipulates that the loan hereby secured is transacted solely for the purpose of carrying on or acquiring a business or commercial investment within the meaning of Sections 1-12 of Article 49 of the Annotated Code of Maryland.

13. That Grantor hereby (i) assents to the passage of a decree by the equity court having jurisdiction for the sale of its interest in the premises, and (ii) authorizes and empowers, upon the maturity of the indebtedness as herein provided, the Trustees to sell its interest in the premises, all in accordance with Rule W 77 of Maryland Rules of Procedure or of any other law of

the State of Maryland or rule of court relating to deeds of trust, including any amendments thereof, or additions thereto, which do not materially change or impair the remedy; and that in case of any sale under this Deed of Trust, by virtue of judicial proceedings or otherwise, said premises may be sold in one parcel and as an entirety or in such parcels, manner or order as the person conducting said sale in his sole discretion may elect.

14. That in the event of the passage after the date of this Deed of Trust of any law of the State of Maryland, deducting from the value of real property for the purposes of taxation any lien thereon or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for State or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Deed of Trust or the Note, Beneficiary of this Deed of Trust and of the debt which it secures shall have the right to declare the principal sum and the interest due on a date to be specified by not less than thirty (30) days written notice to be given to Grantor by Beneficiary, provided, however, that such election shall be ineffective if Grantor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if Grantor, prior to such specified date, does pay such tax and agrees to pay any such tax when thereafter levied or assessed against the premises, and such agreement shall constitute a modification of the Deed of Trust.

15. That if Beneficiary or Trustees shall incur or expend any sums, including reasonable attorney's fees, whether in connection with any action or proceeding or not, to sustain the lien of this Deed of Trust or its priority, or to protect or enforce any of its rights hereunder, or to recover any indebtedness hereby secured, or for any title examination or title insurance policy relating to the title to the premises, all such sums shall on notice and demand be paid by Grantor, together with the interest thereon at a rate 1% in excess of the then current interest rate provided in the Note, and

shall be a lien on the premises subordinate to the lien of this Deed of Trust, and shall be deemed to be secured by this Deed of Trust and evidenced by the Note, and that in any action or proceeding to foreclose this Deed of Trust or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

16. That Grantor will maintain the premises in good condition and repair, will not commit or suffer any waste of the premises, and will comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the premises. Provided that proceeds from insurance or condemnation or sale in lieu thereof are made available to Grantor, Grantor will promptly repair, restore, replace, or rebuild any part of the premises now or hereafter subject to the lien of this Deed of Trust which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Article 17; that Grantor will complete and pay for, within a reasonable time, any structure at any time in the process of construction on the premises; and that Grantor will not, without the written consent of Beneficiary, initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the premises or any part thereof.

17. That notwithstanding any taking by eminent domain, alteration of the premises by any public or quasi-public authority or corporation, Grantor shall continue to pay interest on the entire principal sum secured until any such award or payment shall have actually been received by Beneficiary and any reduction in the principal sum resulting from the application by Beneficiary of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt; that said award or payment may, at the option of Beneficiary, be

retained and applied by Beneficiary toward payment of the moneys secured by this Deed of Trust; or be paid over wholly or in part to Grantor for the purpose of altering, restoring or rebuilding any part of the premises which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the premises, or for any other purpose or object satisfactory to Beneficiary, but Beneficiary shall not be obligated to see to the application of any amount paid over to Grantor; and that if prior to the receipt by Beneficiary of such award or payment the premises shall have been sold on foreclosure of this Deed of Trust, Beneficiary shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Deed of Trust shall have been sought or recovered or denied, and of the reasonable counsel fees, costs and disbursements incurred by Beneficiary in connection with the collection of such award or payment.

18. That Beneficiary and any person authorized by Beneficiary shall have the right to enter and inspect the premises at all reasonable times.

19. That Grantor, as landlord, will carry out all of its covenants and agreements under leases which it has executed or may execute in connection with the premises; failure by Grantor to so carry out its covenants and agreements under any or all leases shall, at the option of the Beneficiary, constitute a default under this Deed of Trust. Beneficiary shall have the right to approve all such leases of the premises which the Grantor may execute after the date of this Deed of Trust. At any time within thirty (30) days after notice and demand by Beneficiary, Grantor will deliver to Beneficiary, but not more frequently than once in every twelve month period, a statement in such reasonable detail as Beneficiary may request, certified by Grantor, of all of the leases relating to the premises, and, on demand, Grantor will furnish to Beneficiary executed counterparts of any such leases.

20. That Grantor will not assign the whole or any part of the rents, income or profits arising from the premises without the written consent of Beneficiary and any assignment thereof shall be null and void; that in the event of any default by the Grantor in the performance of any of the terms, covenants and provisions of this Deed of Trust or the Note, it shall be lawful for Beneficiary to enter upon and take possession of the premises without or with the appointment of a receiver, or an application therefor, and to let the same, either in its own name, or in the name of Grantor, and to receive the rents, issues and profits of the premises and to apply the same, after the payment of all necessary charges and expenses, on account of the amount hereby secured; that said rents and profits are, in the event of any such default, hereby assigned to Beneficiary; and that upon notice and demand, Grantor will transfer and assign to Beneficiary, in form satisfactory to Beneficiary, the lessor's interest in any lease now or hereafter affecting the whole or any part of the premises.

21. That Beneficiary shall have the right from time to time to enforce any legal or equitable remedy against Grantor and to sue the Grantor for any sums (whether interest, damages for failure to pay principal or any installment thereof, taxes, installments of principal or any other sums required to be paid under the terms of this Deed of Trust, as the same become due) without regard to whether or not the principal sum secured or any other sums evidenced by the Note and secured by this Deed of Trust shall be due and without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Grantor including an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

22. That any payment made in accordance with the terms of this Deed of Trust, or by any subsequent owner of the premises,

or by any other person whose interest in the premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation which at any time may be liable as aforesaid or may own the premises, will be deemed to have been made on behalf of all such persons.

23. That any failure by Beneficiary to insist upon the strict performance of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance of any and all of the terms and provisions of this Deed of Trust; that neither Grantor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Deed of Trust shall be relieved of such obligation by reason of the failure of Beneficiary to comply with any request of Grantor or of any other person so obligated to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust, or by reason of any agreement or stipulation between any subsequent owner or owners of the premises and Beneficiary extending the time of payment or modifying the terms of the Note or Deed of Trust without first having obtained the consent of Grantor or such other person, and in the latter event, Grantor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Beneficiary; that, regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien of the premises, Beneficiary may release the obligation of anyone at any time liable for any of the indebtedness secured by this Deed of Trust or any part of the security held for the indebtedness and may extend the time of payment or otherwise modify

the terms of the Note or this Deed of Trust without, as to the security or the remainder thereof, in anywise impairing or affecting the lien of this Deed of Trust or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien; that the holder of any subordinate lien shall have no right to terminate any lease affecting the premises whether or not such lease be subordinate to this Deed of Trust; and that Beneficiary may resort for the payment of the indebtedness secured hereby to any other security therefor held by Beneficiary in such order and manner as Beneficiary may elect.

24. That if at the maturity of the indebtedness, however such maturity may be brought about (including without limitation the unrevoked election of Beneficiary pursuant to the provisions of Article 5 hereof to accelerate the maturity of the indebtedness), default should be made in the payment of the indebtedness, Trustees shall thereupon or at any time thereafter at the request of Beneficiary declare all the debts and obligations secured hereby to be at once due and payable and take possession of the premises or any portion thereof requested by Beneficiary to be sold, and shall make sale of the premises, as an entirety or in parcels by one sale or by several sales as may be deemed by Trustees to be appropriate and without regard to any right of Grantor or any other person to the marshalling of assets, at public auction, at such time or times, at such place or places, and upon such terms and conditions and after such previous public notice as Trustees shall deem appropriate; that (the terms of sale being complied with) Trustees shall convey to and at the cost of the purchaser the interest of the Grantor in the premises so sold, free and discharged of and from all estate, right, title or interest of Grantor, at law or in equity, such purchaser being hereby discharged from all liability to see to the application of the purchase money; that upon any sale of the interest

of Grantor in the premises under this Deed of Trust whether under the assent to a decree, the power of sale, or by equitable foreclosure, the proceeds of sale shall be applied (after paying all expenses of sale, including reasonable counsel fees and a commission to the party making the sale equal to the commission allowed trustees for making sales of property under decrees of the equity court having jurisdiction, and also all taxes and assessments and prior liens thereon due which Trustees or Beneficiary deem it advisable or expedient to pay and all sums advanced as herein provided for with interest thereon) to the payment of the aggregate indebtedness then secured hereby and interest thereon to the date of payment, paying over the surplus, if any, to Grantor or any person entitled thereto upon the surrender and delivery to the purchaser of possession of the premises as aforesaid sold and conveyed less the expense, if any, of obtaining possession thereof; and that immediately upon the first insertion of any advertisement or notice of sale, there shall be and become due and owing by Grantor all expenses incident to any foreclosure proceedings under this Deed of Trust and a commission on the total amount of the indebtedness, principal and interest, equal to one-half the percentage allowed as commission to trustees making sale under orders or decrees of the equity court having jurisdiction, and no party shall be required to receive only the aggregate indebtedness then secured hereby with interest thereon to the date of payment unless the same be accompanied by a tender of the said expenses, costs and commission.

25. That if at any time the United States of America shall require internal revenue stamps to be affixed to the Note, Grantor will pay for the same with any interest or penalties imposed in connection therewith.

26. That the rights, powers, privileges and discretions arising under the clauses and covenants contained in this Deed of Trust shall be separate, distinct and cumulative and none of

them shall be in exclusion of the others; that no act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

27. That Beneficiary shall have, and is hereby granted by Grantor with warranty of further assurances, the irrevocable power to appoint a substitute Trustee or Trustees hereunder (including, in case of death of a Trustee or Trustees or their refusal to act or their non-acceptance of the trust, absence or any other reason to appoint new or replacement or substitute trustee or trustees), to be exercised at any time hereafter without notice and without specifying any reason therefor, by filing for record in the office where this instrument is recorded a Deed of Appointment, and said power of appointment of successor Trustee or Trustees may be exercised as often and whenever Beneficiary deems it advisable, and the exercise of said power of appointment, no matter how often, shall not be an exhaustion thereof; that upon the recordat .on of such Deed or Deeds of Appointment, the Trustee or Trustees so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the premises and with all the rights, powers, trusts and duties of their, his or its predecessor in the trust hereunder with like effect as if originally named as Trustee or as one of the Trustees hereunder; that whenever in this Deed of Trust reference is made to Trustees, it shall be construed to mean the Trustee or Trustees for the time being, whether original or successors or successor in trust; and that all title, estate, rights, powers, trusts and duties hereunder given or appertaining to or devolving upon Trustees shall be in each of the Trustees so that any action hereunder or purporting to be hereunder of any one of the original or any successor Trustees shall for all purposes be considered to be, and as effective as, the action of all Trustees.

28. That if Grantor has demised, or shall hereafter demise, the premises or any part thereof by leases subordinate or junior (either by the date thereof or by the express terms thereof) to the lien hereof, any such lease shall be subject to the condition that in the event of any foreclosure sale or sales hereunder, by virtue of judicial proceedings or otherwise, such lease shall continue in full force and effect and the tenant thereunder will, upon request, attorn to and acknowledge the foreclosure purchaser or purchasers at such sale as landlords thereunder.

29. That wherever used in this Deed of Trust, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the words "Deed of Trust" shall mean this Deed of Trust and any supplement or supplements hereto, the word "Grantor" shall mean "Grantor and any subsequent owner or owners of the Grantor's interest in the premises", the word "Beneficiary" shall mean "Beneficiary or any subsequent holder or holders of the Note secured by this Deed of Trust", the word "Note" shall mean "Note or bond secured by this Deed of Trust", the word "person" shall mean "an individual, corporation, partnership or unincorporated association", the word "premises" shall include the real estate hereinbefore described, together with all improvements, easements, equipment, condemnation awards and any other rights or property interests at any time made subject to the lien of this Deed of Trust by the terms hereof, and pronouns of any gender shall include the other genders, and either the singular or plural shall include the other.

30. That the Beneficiary by its acceptance hereof covenants with the Grantor that the Trustees shall release parcels of not less than one (1) acre each upon payment against principal of a sum equal to one hundred twenty per cent (120%) of the parcel's appraised value on the date hereof provided (a) that the location of the parcel to be released is in all respects satisfactory to the Beneficiary, (b) that the Trustees are furnished with a metes and bounds description

of the parcel to be released, (c) that the released parcels are contiguous, (d) that adequate means of ingress and egress are available to that property which remains subject to this Deed of Trust, and (e) the bulk of the remaining property shall in the opinion of the Beneficiary be buildable.

31. That any default by Grantor under any other mortgage or deed of trust on any of the parcels subject to this Deed of Trust shall constitute a default hereunder.

32. That Grantor hereby grants to the Beneficiary the exclusive right and privilege, but without any obligation, to make, furnish or arrange for construction or "long-term" financing in connection with the development of any of the parcels of property described in Exhibit A hereto; provided, that such financing by the Beneficiary shall be fully competitive, both as to rate and terms. If Grantor or anyone on its behalf arranges for such financing in derogation of Beneficiary's right hereunder, Grantor agrees to pay to Beneficiary as liquidated damages a fee equal to one per cent (1%) of the gross amount of such financing. Beneficiary shall have thirty (30) days within which to arrange or provide such financing after receipt of notification from Grantor. Beneficiary agrees that all cash transactions (where no financing is involved) shall be exempt from the liquidated damage fee above-imposed.

Notwithstanding the provisions of paragraph 30 hereof, Beneficiary shall be under no obligation to release any portion of any of the parcels of land described in Exhibit A hereto unless (a) Beneficiary provides or arranges for the financing hereinabove contemplated; or (b) Beneficiary refuses or fails to furnish or arrange for such financing; or (c) a cash sale is made, or (d) Grantor pays to Beneficiary the liquidated damage fee hereinabove set forth for any financing arranged or procured by Grantor or anyone on its behalf.

33. That wherever the written consent of Beneficiary is required hereunder, it is understood and agreed that such consent shall not be withheld unreasonably.

34. That this Deed of Trust cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

WITNESS the signature of said Grantor the day and year first above-written.

WITNESS or ATTEST:

COLONY
EAST BAY/ASSOCIATES, a
Maryland Limited Partnership

By _____ (SEAL)
William E. Dixon, General Partner

STATE OF MARYLAND, CITY OR COUNTY OF , TO WIT:

I HEREBY CERTIFY, that on this day of , 1973, before me, the undersigned Notary Public of the State of Maryland, personally appeared WILLIAM E. DIXON, who acknowledged himself to be the General Partner of EAST BAY*ASSOCIATES, a Maryland Limited Partnership, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized General Partner of said partnership by signing the name of the partnership by himself as General Partner.

*COLONY

AS WITNESS my hand and Notarial Seal.

RICHARD A. GILLESPIE NOTARY PUBLIC Baltimore, Md.

My Commission Expires: _____ Notary Public

STATE OF MARYLAND, CITY OR COUNTY OF , TO WIT:

I HEREBY CERTIFY, that on this day of , 1973, before me, a Notary Public of the State of Maryland, personally appeared THEODORE J. WIES JR., , who made oath in due form of law that he is the agent of MARYLAND NATIONAL REALTY INVESTORS, INC., the party secured by the foregoing instrument, and that the consideration set forth in the foregoing instrument is true and bona fide as therein set forth and also made oath that he is the agent of the party secured and is duly authorized to make this affidavit; and that the proceeds of the loan secured by said instrument were disbursed to the borrower or its agent or the party responsible for disbursement of the proceeds at settlement or his agent prior to the final and complete execution of said instrument.

AS WITNESS my hand and Notarial Seal.

RICHARD A. GILLESPIE NOTARY PUBLIC Baltimore, Md.

My Commission Expires: _____ Notary Public

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him.

_____
S. Nelson Weeks

App. No. R163962-A

EXHIBIT 'A'

PARCEL NO. 1

BEGINNING for the same at a stone heretofore set at the end of the first or South 68° East 20 1/2 perches line of that tract or parcel of land conveyed by and described in a deed from David M. Nichols and Olive J. Nichols, his wife, to Samuel J. Aaron and Rebecca Aaron, his wife, dated September 28, 1948 and recorded among the land records of Queen Anne's County in Liber NBW No. 2 folio 4, said stone being in the dividing line between the lands of the grantor and the lands of Kent Island Estates as shown on a plat recorded among the land records aforesaid in Liber TSP No. 1, folio 6, and running thence binding thereon as now surveyed, South 64° 58' 42" East 1149.96 feet to intersect the Northwesterly right of way line of Maryland Route 8 as shown on State Roads Commission Plat number 12626, thence binding thereon three courses viz: South 13° 51' 13" West 180.29 feet, South 05° 33' 01" West 248.75 feet, South 84° 27' 56" East 24.26 feet to a point on the side of Maryland Route 8 as now existing, thence binding thereon South 05° 09' 31" West 125.90 feet to the beginning of the fifth or South 66° East 96 perches line of the first mentioned conveyance, thence crossing Maryland Route 8, binding on a part of the last mentioned line, South 65° 20' 26" East 419.60 feet to intersect the westerly right of way line of the state road as shown on State Roads Commission Plat number 12625 and 12626, thence binding thereon by a curve to the left in a Southeasterly direction of radius 2951.79 feet an arc distance of 1297.64 feet to intersect the sixth or South 24° West 59 perches line of the first mentioned conveyance, thence leaving the state road binding on a part of said line South 24° 39' 36" West 423.60 feet to a pipe heretofore set at the end of said line, thence still binding on the outlines of the whole tract and on the dividing line between the lands of the grantor and the lands of Romoncoke on the Bay as shown on a plat recorded among the aforesaid land records in TSP No. 1 folio 43, South 29° 55' 03" West 1187.86 feet to a stone heretofore set, still with the outlines of the first mentioned conveyance five courses viz: South 65° 54' 54" East 973.36 feet to a stone heretofore set, South 66° 37' 46" East 138.75 feet to a stone heretofore set, South 66° 00' 15" East 175.09 feet to a stone heretofore set at the end of the eighth or South 66° East 78 perches line of the first mentioned conveyance, South 20° 00' 45" West 777.59 feet, and South 02° 00' 15" East 544.82 feet to the beginning of the eleventh or North 38° 30' West 102 perches line of the first mentioned conveyance, thence binding thereon, and on the dividing line between the lands of the grantor and the lands of Tower Garden as described in a deed from Tower Gardens on the Bay, Inc. to Lautz H. Willard and Rocco Luppino, Jr. dated July 8, 1965 and recorded among the land records aforesaid in Liber 16, folio 247, North 37° 06' 22" West 1688.31 feet, thence still with the outlines of the whole tract North 50° 20' 18" West 895.99 feet to a point on the easterly side of Maryland Route 8, thence crossing the same, North 50° 20' 18" West 48.28 feet to a pipe heretofore set on the Westerly side thereof at the Northeasterly most corner of Lot No. 8, Section 2, Kent Island Estates, thence leaving the road, binding on the Northerly outlines of lot No. 8, 7, 6, 5, and a part of 4, four courses viz: North 50° 20' 18" West 237.88 feet to a stone heretofore set, North 76° 37' 55" West 457.04 feet, North 51° 09' 21" West 195.85 feet, and South 73° 38' 49" West 129.69 feet to the mean high water line of Tower Lake, thence binding thereon Forth two courses viz: North 15° 05' 35" West 41.08 feet, North 36° 11' 37" West 181.79 feet, North 80° 24' 23" West 82.50 feet, North 26° 21' 34" West 38.62 feet, North 01° 06' 07" East 276.13 feet, North 41° 21' 52" East 51.30 feet, North 20° 34' 14" East 166.41 feet, North 52° 14' 02" East 60.87 feet, North 59°17' 54" West 58.83 feet, South 86° 47' 41" West 123.58

feet, North 64° 50' 10" West 49.92 feet, North 68° 42' 36" West 119.61 feet, South 80° 01' 16" West 405.92 feet, North 17° 56' 38" West 121.39 feet, North 43° 07' 10" East 35.77 feet, North 02° 50' 23" West 72.87 feet, North 83° 46' 44" West 83.51 feet, North 33° 30' 32" West 67.54 feet, North 71° 54' 24" West 78.50 feet, South 57° 17' 01" West 148.03 feet, South 89°38' 45" West 168.32 feet, North 53° 18' 39" West 96.37 feet, South 74° 32' 52" West 78.03 feet, South 33° 57' 07" West 131.73 feet, South 22° 21' 23" West 121.93 feet, South 05° 24' 16" East 83.98 feet, South 56° 55' 45" West 300.49 feet, South 80° 43' 36" West 260.07 feet, North 54° 23' 09" West 368.76 feet, South 25° 00' 01" West 219.63 feet, South 36° 44' 24" West 161.49 feet, South 22° 26' 59" East 146.38 feet, South 49° 57' 48" East 55.90 feet, South 10° 24' 21" East 105.02 feet, South 84° 06' 37" West 181.85 feet, South 46° 19' 18" West 131.81 feet, South 13° 15' 57" West 132.39 feet, North 78° 37' 37" West 212.17 feet, North 07° 19' 04" West 58.25 feet, North 49° 43' 53" West 107.41 feet, North 30° 39' 50" West 91.10 feet, and North 67° 31' 27" West 26.02 feet, to intersect the mean high water line of the Chesapeake Bay, thence binding thereon nine courses viz: North 16° 22' 08" East 397.09 feet, North 13° 41' 41" East 136.68 feet, North 12° 26' 42" East 157.21 feet, North 08° 56' 56" East 209.83 feet, North 10° 13' 35" East 459.05 feet, North 01° 18' 32" West 121.70 feet, North 03° 25' 03" East 65.75 feet, North 04° 32' 10" West 140.60 feet, North 07° 19' 38" East 342.09 feet, to the inlet of Tolson Creek, thence binding on the mean high water line of Tolson Creek twenty nine courses viz: South 83° 52' 11" East 185.69 feet, South 59° 01' 47" East 74.81 feet, North 64° 20' 03" East 37.33 feet, South 19° 19' 40" East 59.46 feet, North 39° 11' 46" East 102.09 feet, North 66° 39' 52" East 107.01 feet, South 76° 40' 24" East 288.24 feet, North 73° 51' 04" East 86.64 feet, North 55° 02' 54" East 130.62 feet, South 77° 46' 55" West 58.40 feet, North 56° 16' 07" East 104.18 feet, North 79° 40' 48" East 40.63 feet, North 85° 47' 21" East 158.65 feet, North 66° 33' 19" East 175.08 feet, North 79° 48' 27" East 121.27 feet, South 78° 21' 09" East 85.54 feet, North 58° 19' 30" East 241.91 feet, North 75° 48' 49" East 71.24 feet, North 48°08' 48" East 196.18 feet, North 72° 17' 50" East 48.50 feet, North 17° 06' 35" East 72.06 feet, North 77° 58' 33" East 37.92 feet, North 21° 06' 33" East 96.04 feet, North 66° 15' 24" East 110.37 feet, North 38° 28' 49" East 62.83 feet, North 71° 25' 23" East 158.36 feet, North 46° 03' 53" East 111.10 feet, North 05° 28' 50" East 53.29 feet, and North 23° 32' 21" West 25.84 feet, thence leaving Tolson Creek, binding on the last or North 54° East 24 perches line of the first mentioned conveyance, and on a fence line North 57° 05' 54" East 370.64 feet to a fence post heretofore set, thence still with the outlines of the whole tract South 76° 33' 30" East 336.58 feet to the beginning hereof containing 286.485 acres of land more or less saving and excepting therefrom 2.835 acres of land more or less within the right of way of Maryland Route 8, leaving a net acreage hereby conveyed of 283.650 acres of land, more or less.

PARCEL NO. 2

BEGINNING for the same at a pipe heretofore set, at the end of the fifth or South 66° East 96 perches line of that tract or parcel of land conveyed by and described in a deed from David M. Nichols and Olive J. Nichols, his wife, to Samuel J. Aaron and Rebecca Aaron, his wife, dated September 28, 1948 and recorded among the land records of Queen Anne's County in Liber NBW No. 2, folio 4, and running thence binding on a part of the sixth line thereof as now surveyed South 24° 39' 36" West 425.63 feet, to intersect the State Road as shown on Maryland State Roads Commission Plat number 12625 and 12626, thence binding thereon by a curve to the right in a Northwesterly direction of radius 2831.79 feet an arc distance of 1057.45 feet to intersect the aforesaid fifth line of the first mentioned conveyance, thence binding on a part thereof South 65° 20' 26" East 961.30 feet to the beginning hereof containing 5.489 acres of land more or less, as surveyed by FREDERICK WARD ASSOCIATES OF EASTON, INC.

2

KENT ISLAND ESTATES CORPORATION, INC.	:	IN
Complainant	:	THE CIRCUIT COURT
v.	:	FOR
EAST BAY COLONY ASSOCIATES, et al.	:	QUEEN ANNE'S COUNTY
Respondents	:	EQUITY NO. 5766

: : : : : : : :

MOTION TO LIMIT SERVICE OF EXHIBITS

Kent Island Estates Corporation, Inc., by John W. Sause, Jr., its attorney, moves pursuant to Maryland Rule 103 f that it not be required to serve exhibits upon Rebecca Aaron and the two persons named as trustees who are three of the respondents in this proceeding and for reason says:

1. This action involves title to certain areas of land in Queen Anne's County. Complainant claims ownership of those areas as set forth in the Bill of Complaint.

2. There are six respondents, but their interests are divided into three distinct classes: (a) Respondent East Bay Colony Associates the purported owner in fee simple of certain land by a Deed referred to as Exhibit G; (b) Respondents Samuel J. Aaron and Rebecca Aaron are purported holders of a mortgage on certain land by Mortgage referred to as Exhibit N; (c) Respondents John M. Nelson, III, and William T. Define, as trustees, and Maryland National Realty Investors, Inc., as beneficiary are purported holders of a Deed of Trust on certain land referred to as Exhibit O. The interests of the persons within each of these three classes at this time appear to be indistinguishable and indivisible.

3. There are attached to the Bill of Complaint fifteen (15) exhibits, most of which consist of a number of pages, and several of which consist of plats of large size and difficult and expensive to reproduce.

4. It would be unnecessarily burdensome and expensive, both to Complainant and to the judicial system, to provide separate copies of all exhibits for each Respondent, since it plainly appears that the furnishing of a copy to one of them in each class would be adequate for any purpose required by the Maryland Rules.

John W. Sause, Jr.

Attorney for Complainant

3

ORDER

The foregoing Motion to Limit Service of Exhibits having been read and considered, it is this 14th day of January, 1976, by the Circuit Court for Queen Anne's County, In Equity, ORDERED pursuant to Maryland Rule 103 f that copies of the exhibits attached to the Bill of Complaint shall be served only on the following: 1. East Bay Colony Associates (William E. Dixon, Partner); 2. Samuel J. Aaron; 3. Maryland National Realty Investors, Inc. (John M. Nelson, III, Resident Agent); PROVIDED, that a copy of this Order shall be served upon each of the other Respondents in lieu of such exhibits.

B. Hackett Turner Jr.
JUDGE

FILED
JAN 14 1976

Circuit Court For Queen Anne's County

EQUITY SUMMONS:

Sd 1-19
1:48 P.M.

February Return Day

File No. 5766

Docket C.W.C. No. 4

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

TO: John M. Nelson, III, Trustee
10 Light Street
Baltimore, Maryland 21202

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of February, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland corporation
Stevensville, Maryland 21666

Issued the 14th day of January 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr.
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

NAME: J. Donald Braden
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

Charles H. Cecil
Clerk
(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE February 17, 19 76, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
JAN 22 1976

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P.3

5760

Pr By C

Summoned John M. Nelson, III Trustee, and a Copy of ~~Nar and Notice to Plead~~ BILL OF COMPLAINT with a Copy of the Process left with the Defendant, at (2200) 10 Light, at 1:48 o'clock P. M., on the 19TH day of Jan, 1976, in the presence of M. Butler,

George W. Freeberger
Sheriff

SHERIFF'S FE
$ 10

RECEIVED
SHERIFF'S OFFICE
JAN 19 10 04 AM '76
BALTIMORE CITY, MD.

Received 19 day of Jan 1976 and forthwith delivered to the Sheriff of Baltimore City,

Test:
Robert H. Bowie Clerk

30

Circuit Court For Queen Anne's County

EQUITY SUMMONS:

by Sd 1-19 2 06 Pm

February Return Day

File No. 5766

Docket C.W.C. No. 4

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

1060

TO: William T. Define, Trustee
10 Light Street
Baltimore, Maryland 21202

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of February, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland corporation
Stevensville, Maryland 21666

Issued the 14th day of January 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr.
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

NAME: J. Donald Braden
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

Charles H. Cecil
Clerk
(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE February 17, 19 76, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
JAN 22 1976

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P-3

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Pro Bytomp

RECEIVED
SHERIFF'S OFFICE
JAN 19 10 04 AM '76
BALTIMORE CITY, MD.

William T. Define,
Summoned Trustee, and a Copy of ~~Nar and Notice to Plead~~ BILL OF COMPLAINT with a Copy of the Process left with the Defendant, at (1000) 10 Light St. at 2:06 o'clock P. M. on the 19TH day of Jan, 1976, in the presence of M. Butler

George W. Freeberger
Sheriff

Received 19 day of Jan 1976
and forthwith delivered to the
Sheriff of Baltimore City.

Test:
Robert H. Bouse, Clerk

SHERIFF'S FEE
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Dance N

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Circuit Court For Queen Anne's County

EQUITY SUMMONS:

1-19
1:47 P.M.

6

2.00

February Return Day

File No. 5766

Docket C.W.C. No. 4

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

TO: Maryland National Realty Investors, Inc.
a Maryland corporation
serve on:
John M. Nelson, III, Resident Agent
10 Light Street
Baltimore, Maryland 21202

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of February, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland corporation
Stevensville, Maryland 21666

Issued the 14th day of January 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr.
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

NAME: J. Donald Braden
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

Charles H. Cecil
Clerk
(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE February 17, 19 76, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
JAN 22 1976

Queen Anne
P-3

5766

Pro By C

SHERIFF'S FEE
$ 10.00

Md. National
Summoned Realty Investors, Incorporated, a corporation, by service on
John M. Nelson III, Res. Agt., and a Copy of ~~Bill of Complaint~~ ~~War and Notice to Plea~~, w'th
a Copy of the Process left with said Res. Agt., at (2200) 10 Light St., at
1:47 o'clock P.M., on the 19th day of Jan, 1976, in the
presence of M. Butler.

George W. Freeberger
Sheriff

Received 19 day of Jan. 1976
and forthwith delivered to the
Sheriff of Baltimore City.

Test:
Robert H. Bouse Clerk

RECEIVED
SHERIFF'S OFFICE
JAN 19 10 04 AM '76
BALTIMORE CITY, MD.

Sarah M

#30

Circuit Court For Queen Anne's County

EQUITY SUMMONS:

February Return Day

File No. 5766

Docket C.W.C. No. 4

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

TO: East Bay Colony Associates, a Limited partnership
serve on:
William E. Dixon, partner
650 Ritchie Highway
Severna Park,
Anne Arundel County,
Maryland 21146

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of February, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland corporation
Stevensville, Maryland 21666

Issued the 14th day of January 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr.
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

NAME: J. Donald Braden
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

Charles H. Ocie
Clerk
(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE February 17, 19 76, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
JAN 25 1976

Summoned East Bay Colony Associates by service on William E. Dixon on this 21st day of January, 1976 and left with him a Subpoena, Bill of Complaint to Quiet Title and for Injunction

$5.00

William R. Huggins

William R. Huggins
Sheriff of A. A. Co.

145

RECD BY SHERIFF'S OFFICE
ANNE ARUNDEL CO.
1976 JAN 19 AM 9:47

EX

East Bay Colony Associates

Serve On:

William E. Dixon, Partner
650 Ritchie Highway
Severna Park, Md.

SERVED 1-21-76
NON EST
NON EST OTHER:

ANNE ARUNDEL COUNTY
BY: Deputy Sheriff

ATTEMPTS AT SERVICE

DATE	TIME

Circuit Court For Queen Anne's County

EQUITY SUMMONS:

February Return Day

File No. 5766

Docket C.W.C. No. 4

8

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

TO: **Rebecca Aaron**
416 North Charles Street
Baltimore, Maryland 21201

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of February _____, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland corporation
Stevensville, Maryland 21666

Issued the 14th day of January 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr.
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

NAME: J. Donald Braden
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

CHARLES W. CECIL
Clerk
(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE February 17, 19 76, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
JAN 26 1976

TRUE COPY
TEST: Charles W. Cecil CLERK

QA
P-3

5766

Pro Bof Complaw

Samuel, Rebecca Aaron, and the Corporation of the Rivers
with a Copy of the Bill of Complaint left with said defendant
at 416 N. Charles St at 1130 hrs on the 22nd day of January
1976 in the presence of R. Lemond.

George W. Lechner
Sheriff.

SHERIFF'S FEE
10.00

Sauer

9

Circuit Court For Queen Anne's County

EQUITY SUMMONS:

9

February Return Day

File No. 5766

Docket C.W.C. No. 4

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

TO: Samuel J. Aaron
416 North Charles Street
Baltimore, Maryland 21201

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of February, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland corporation
Stevensville, Maryland 21666

Issued the 14th day of January 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr.
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

NAME: J. Donald Braden
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970

Charles H. Cole
Clerk

(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE February 17, 19 76, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
JAN 26 1976

5766

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P3

Pro Bq C

Summoned Samuel J. Carson, and a Copy of the Process with a Copy of the Bill of Complaint left with said defendant at 2116 N. Charles St at 1150 hrs on the 22nd day of January 1976 in the presence of R. Samuel.

George A. Fulton
Sheriff

SHERIFF'S FEE
$ 10

Sam J

Received 19 day of Jan 1976
and forthwith delivered to the
Sheriff of Baltimore City.
Test:
Robert H. Rouse Clerk

9

RECEIVED
SHERIFF'S OFFICE
JAN 19 10 04 AM '76
BALTIMORE CITY, MD.

KENT ISLAND ESTATES CORPORATION, INC.	*	IN THE
Complainant	*	CIRCUIT COURT
vs.	*	FOR
EAST BAY COLONY ASSOCIATES	*	QUEEN ANNE'S COUNTY
and		
SAMUEL J. AARON	*	
and		
REBECCA AARON	*	Equity No. 5766
and		
MARYLAND NATIONAL REALTY INVESTORS, INC.	*	
and		
JOHN M. NELSON, III, Trustee	*	
and		
WILLIAM T. DEFINE, Trustee	*	
Respondents	*	

10

* * * * * * *

ANSWER TO BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondents, East Bay Colony Associates, Samuel J. Aaron, Rebecca Aaron, Maryland National Realty Investors, Inc., John M. Nelson, III, Trustee and William T. Define, Trustee, by Charles C. W. Atwater, their attorney, for Answer to the Bill of Complaint filed against them in the above entitled proceedings say:

1. Answering Paragraphs 1, 2, 3 and 4 these Respondents admit the conveyances therein referred to are conveyances recorded among the Land Records of Queen Anne's County, Maryland.

2. These Respondents admit the allegations of Paragraphs 5 and 6.

3. These Respondents deny the allegations of Paragraph 7.

4. In answer to Paragraph 8 these Respondents allege that the area included referred to by the Complainant is owned by the Respondents according to their respective interests and they have legal and factual justification; they do claim the title and interests set forth in Sub-paragraphs (a), (b) and (c) thereof.

5. These Respondents admit the allegations of Paragraph 9.

6. These Respondents further answering said Bill of Complaint and each and every paragraph thereof say:

a. The line of division between the property of these Respondents, sometimes referred to in said Bill of Complaint as "the Benton farm", and the property of the Complainants which in the certificate of survey of J. B. Metcalfe dated

August, 1948, attached to said Bill of Complaint as Exhibit H, is sometimes referred to as the "Gibson Farm", was established many years ago as the stream lying between the two properties; it is noted in the said certificate of survey (Exhibit H) the line of division is noted to be a stream that drains the Creek between these lands (there being described) and a farm known as the "Gibson Farm"; it is further noted that the courses and distances of the water line of the creek may not conform exactly with the exact water lines of said creek.

b. The shoreline of the Chesapeake Bay in this location has been subject to erosion and to regular change by water action by way of accretion and reliction.

c. The outlet of such stream referred to in said survey by Metcalfe (Exhibit H) has varied from time to time both as a result of natural forces and as a result of man-made action; the outlet runs through a sandbar indicated on Exhibit E as lying between the "lake" and the Chesapeake Bay; said sandbar has been subject to inundation by the regular tides of the Chesapeake Bay and at the time of the separation of the ownership of the Benton Farm and the Gibson Farm said sandbar lay below the mean high tide line.

d. Prior to 1950 the Respondents, Samuel J. Aaron and Rebecca Aaron, his wife, had an interest with one David M. Nichols in both the Benton Farm and the property now owned by the Complainants lying northerly thereof and separated therefrom by the said stream; the Benton Farm was conveyed to these Respondents by Deed dated September 28, 1948, recorded among the Land Records of Queen Anne's County in Liber N.B.W. No. 2, Folio 4 from David M. Nichols and wife and the Gibson Farm was owned by a corporation controlled by the said David M. Nichols, The Kent Island Holding Company which, by Deed dated October 25, 1950 recorded among said Land Records in Liber N.B.W. No. 7, Folio 564, was conveyed to the Chesapeake Bay Corporation predeceasor in title of the Complainants.

e. At the time the interest of the said Nichols and the interest of the said Respondents, Aaron, were separated it was agreed that Lots 1 and 2 Block B in the Third Section of Kent Island Estates would be conveyed to said Samuel J. Aaron, said lots being located at the southeasterly end of the property in said Third Section, and being separated from the Benton Farm by the waters of the Creek and the sandbar lying at the mouth of said Creek; said title having been conveyed

by Deed dated September 30, 1951 recorded among said Land Records in T.S.P. No. 4, folio 52 from the Chesapeake Bay Corporation to Samuel J. Aaron and Rebecca Aaron, his wife; as a result of these conveyances, the Respondents, Aaron, acquired the riparian rights appurtenant to the Benton Farm and the riparian rights appurtenant to the Lots 1 and 2 BLOCK B of the Third Section of Kent Island Estates; in 1955 it was agreed between the Respondents, Aaron, and the said David M. Nichols acting on behalf of Chesapeake Bay Corporation that an opening would be dredged approximately in the center of said sandbar at the mouth of the creek or lake so that boats might use said opening; it was further agreed the cost of the opening and maintenance thereof would be divided equally between the said Chesapeake Bay Corporation and the Complainants so that the use of said opening would be for the benefit of the owners on both sides of said lake and creek; attached hereto as part hereof marked "Exhibit A" is a copy of a letter from David M. Nichols to the Respondents, Samuel J. Aaron, dated June 3, 1955; a letter dated June 8, 1955 from the said Samuel J. Aaron to the said David M. Nichols marked "Exhibit B"; a letter dated June 9, 1955 from the said David M. Nichols to the said Samuel J. Aaron marked "Exhibit C"; and a letter dated June 10, 1955 from the said Samuel J. Aaron to the said David M. Nichols marked "Exhibit D".

f. The Respondents, Aaron, maintained said area of the sandbar as part of their riparian rights both as the owners of the Benton Farm and the owners of Lots 1 and 2. BLOCK B

g. On or subsequent to May 1, 1970 Kent Island Estates Corporation, Inc. caused debris in the form of concrete blocks, stones and other material to be deposited on said sandbar and endeavored to assert rights over said sandbar contrary to the riparian rights of the said Respondents, Aaron; conferences and correspondence were exchanged in effort to reconcile the divergent claims.

h. The mouth of said stream, either as a result of natural action or the action of the Complainant or a combination thereof, has been shifted to its present location from the location indicated on the plat of J. B. Metcalfe which he noted as not being exact.

i. The Respondents do claim title to the property included within their proposed development plat of East Bay View including the recreation area indicated

as lying on the south side of said division creek, marked Tolson Creek, said property being located southerly of the present opening through said sandbar; attached hereto as part hereof marked "Exhibit E" is a copy of a preliminary plan of East Bay View.

WHEREFORE, having fully answered said Complaint these Respondents pray that they may be dismissed with their costs.

MYLANDER, ATWATER, CARNEY & STONE

Charles C. W. Atwater
1211 W. R. Grace Building
Baltimore, Maryland 21202
752-6254

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12 day of March, 1976, a copy of the aforegoing Answer was mailed to John W. Sause, Jr., Esquire, 204 North Commerce Street, Centreville, Maryland 21617.

Charles C. W. Atwater

EXHIBIT 'A'

David M. Nichols & Co.

Realtors

SALES RENTALS INSURANCE APPRAISALS REPAIRS REMODELING MORTGAGE LOANS PROPERTY MANAGEMENT

15 West Franklin Street
Baltimore 1, Maryland
LExington 9-6855

Eastern Shore Office
Stevensville, Maryland
Stevensville 2921

June 3, 1955

Mr. Samuel J. Aaron
110 E. Lexington Street
Baltimore 2, Maryland

Dear Sam:

As per our discussion over the telephone, we are proceeding with the dynamiting and bulkheading for an entrance from Chesapeake Bay into the creek which is between your farm and Romancoke Holding Company property, known as Kent Island Estates.

It is our understanding that we are to share the expense and that the cost of each will be approximately $750.00.

Inasmuch as your property apparently runs to the center of this creek, would appreciate your acknowledging this letter, authorizing us to proceed with same.

Very truly yours,

Dave
K

David M. Nichols

DMN:k

EXHIBIT 'B'

June 8, 1955

Mr. David M. Nichols
15 W. Franklin Street
Baltimore-1, Maryland

Dear Dave:

With reference to your letter of June 3rd, 1955, re: proceeding with the dynamiting and bulkheading for an entrance from Chesapeake Bay into the creek which is between my farm and the farm of Tomahoke Holding Company, known as Kent Island Estates, it is perfectly satisfactory to me to share the expense of approximately $750.00.

I would like to have some idea as to what is going to be done.

Yours very truly,

SJA:JP

Samuel J. Aaron

EXHIBIT 'C'

David M. Nichols & Co.

Realtors

SALES RENTALS INSURANCE APPRAISALS REPAIRS REMODELING MORTGAGE LOANS PROPERTY MANAGEMENT

15 West Franklin Street
Baltimore 1, Maryland
LExington 9-6855

Eastern Shore Office
Stevensville, Maryland
Stevensville 2921

June 9, 1955

Mr. Samuel J. Aaron
110 East Lexington Street
Baltimore 2, Maryland

Dear Sam:

I acknowledge receipt of your letter of June 8th pertaining to the dynamiting and bulkheading for an entrance from the Chesapeake Bay into the creek which is between your farm and the farm of the Romancoke Holding Company, known as Kent Island Estates. If you would check my letter of June 3rd, and as per my telephone conversation, you will find that I advised the cost would run $750.00 each and not $750.00 to be divided between the two of us, as per your letter.

You advised over the phone the other day that it was alright to go ahead with this work, which we have done. Please acknowledge this, advising whether you are willing to spend $750.00 as your share.

The work to be done will consist of dynamiting between the Bay and the creek, opening the creek with adequate width to accomodate the average cruiser. The sides of this channel will be bulkheaded for the entire width of the land between the Bay and the creek with heavy timber to prevent same from caving in. There is no thought on our part that this will accomodate depthwise any sizeable cruiser but will enable us for the present to bring in small type craft, which should have great appeal to potential owners.

Very truly yours,

David M. Nichols

DMN:pq

EXHIBIT 'D'

June 10, 1955

Mr. David M. Nichols
15 West Franklin Street
Baltimore 3, Maryland

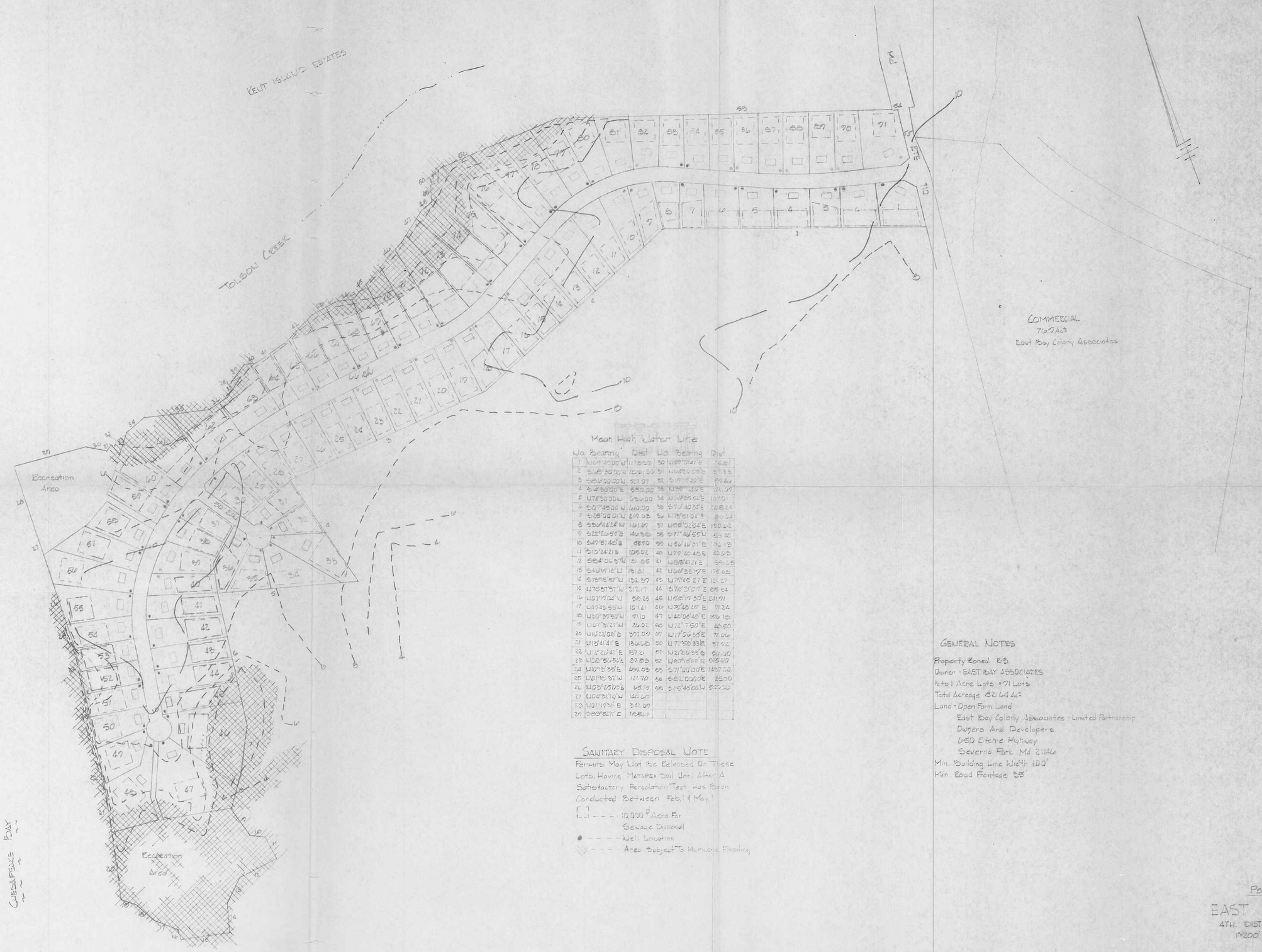
Dear Dave:

In answer to your letter of June 9, 1955, I wish to advise you that I am satisfied to spend $750.00 for my share for taking care of the dynamiting of the creek between the farm of Romancoke Holding Company, known as Kent Island Estates and my farm.

Yours truly,

Samuel J. Aaron

SJA:cs



Mean High Water Line

No	Bearing	Dist	No	Bearing	Dist
1	N04°42'00"W	1175.07	30	N68°04'47"E	42.87
2	S48°30'00"W	1201.30	31	N04°20'00"E	37.83
3	S66°00'00"W	917.07	32	S19°15'20"E	69.44
4	S4°30'00"E	550.00	33	N39°12'00"E	102.07
5	N76°30'00"W	426.00	34	N60°30'00"E	107.01
6	S07°45'00"W	410.00	35	S71°40'00"E	258.34
7	S28°00'00"W	217.03	36	N73°51'04"E	80.64
8	S50°41'24"W	161.47	37	N55°02'54"E	120.62
9	S22°12'57"E	146.85	38	S77°44'55"W	53.20
10	S47°57'48"E	58.70	39	N56°10'07"E	104.13
11	S10°24'21"E	106.02	40	N79°40'45"E	40.00
12	S54°06'37"W	181.05	41	N88°47'21"E	158.15
13	S40°07'15"W	181.81	42	N04°33'17"E	178.05
14	S19°15'57"W	132.87	43	N77°45'27"E	121.27
15	N78°37'37"W	212.17	44	S76°21'07"E	95.64
16	N57°17'02"W	58.25	45	N28°19'55"E	241.71
17	N47°45'55"W	107.41	46	N75°45'07"E	71.24
18	N30°37'55"W	97.10	47	N42°06'40"E	196.15
19	N67°31'27"W	26.02	48	N72°17'50"E	40.50
20	N16°22'05"E	297.00	49	N17°06'35"E	72.06
21	N13°41'41"E	156.45	50	N7°38'35"E	37.02
22	N12°20'42"E	157.21	51	N21°06'35"E	56.00
23	N38°50'06"E	27.83	52	N67°15'00"E	95.00
24	N10°12'38"E	499.05	53	S71°00'00"E	1467.00
25	N01°16'32"W	121.70	54	S62°00'00"E	25.00
26	N03°25'05"E	06.78	55	S05°45'00"W	549.00
27	N04°32'19"W	140.00			
28	N01°17'36"E	342.07			
29	S83°52'11"E	10.54			

SANITARY DISPOSAL NOTE

Permits May Not Be Released On These Lots, Having MATTAPEX Soil Until After A Satisfactory Percolation Test Has Been Conducted Between Feb. 1 & May. 1

[ ] - - - - 10,000 ± Acre For Sewage Disposal

● - - - - Well Location

- - - - Area Subject To Hurricane Flooding

GENERAL NOTES

Property Zoned R-3
Owner - EAST BAY ASSOCIATES
½ to 1 Acre Lots ±71 Lots
Total Acreage 82.64 Ac±
Land - Open Farm Land
East Bay Colony Associates - Limited Partnership
Owners And Developers
650 Stone Highway
Severna Park Md 21146
Min. Building Line Width 100'
Min. Road Frontage 35'

PRELIMINARY PLAN

EAST BAY VIEW

4TH. DIST QUEEN ANNE Co. MD

1"=200' JAN. 1976

Exhibit "E"

KENT ISLAND ESTATES CORPORATION, INC. Complainant	:	IN THE CIRCUIT COURT
v.	:	FOR
EAST BAY COLONY ASSOCIATES ET AL. Respondents	:	QUEEN ANNE'S COUNTY EQUITY NO. 5766

: : : : : : : :

PETITION TO ADD PARTY RESPONDENT
AND LIMIT SERVICE OF EXHIBITS

Kent Island Estates Corporation, Inc. Complainant, by John W. Sause, Jr. and J. Donald Braden, its attorneys, petitions pursuant to Maryland Rule 282 that, William E. Dixon, 650 Ritchie Highway, Severna Park, Anne Arundel County, Maryland, 21146, be made a Respondent and served with process pursuant to the Maryland Rules. The grounds of the petition are as follows:

1. This is an action to quiet title to land owned by the Complainant and enjoin the Respondents from asserting any claims against, or with respect to said land.

2. William E. Dixon, a resident of Maryland, is the general partner of East Bay Colony Associates, a Respondent herein, and was omitted by inadvertence as a Respondent from the Bill of Complaint.

3. William E. Dixon should be included as a Respondent in Paragraph 4, because of his status as the general partner of East Bay Colony Associates.

Complainant further moves, pursuant to Maryland Rule 103 f, that this Court order that copies of the exhibits attached to the Bill of Complaint need not be served on William E. Dixon, for the reason that it appears that such exhibits are voluminous and that such have already been served upon him as agent of East Bay Colony Associates.

John W. Sause, Jr.
204 North Commerce Street
Centreville, Maryland 21617
758-0970

FILED
APR 15 1976

J. Donald Braden
204 North Commerce Street
Centreville, Maryland 21617
758-0970

Attorneys for Complainant

ORDER

The foregoing Petition having been read and considered, it is this 15th day of April, 1976, by the Circuit Court for Queen Anne's County, ORDERED, that William E. Dixon is hereby made a party Respondent in this proceeding; that service of process be made upon him in accordance with the Maryland Rules; and that copies of the exhibits attached to the Bill of Complaint not be served on William E. Dixon, Respondent, provided that a copy of this Order be served in lieu of such Exhibits.

B. Hackett Turner Jr.
JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, this 15TH day of April, 1976, a copy of the foregoing Petition to Add Party Respondent and Limit Service of Exhibits and Order thereon was mailed, postage prepaid, to Charles C. W. Atwater, Esquire, 1211 W. R. Grace Building, Baltimore Maryland 21202, Attorney for East Bay Colony Associates, Samuel J. Aaron, Rebecca Aaron, Maryland National Realty Investors, Inc., John M. Nelson, III, Trustee and William T. Define, Trustee.

J. Donald Braden
J. Donald Braden
Attorney for Complainant

FILED
APR 15 1976

Circuit Court For Queen Anne's County

EQUITY SUMMONS:

13

May Return Day

File No. 5766

Docket C.W.C. No. 9

STATE OF MARYLAND, COUNTY OF QUEEN ANNE'S, TO WIT:

TO:
William E. Dixon
650 Ritchie Highway
Severna Park, Anne Arundel County
Maryland 21146

You are hereby summoned to the Circuit Court for Queen Anne's County to the First Monday of May, next, to answer an action at the suit of

Kent Island Estates Corporation, Inc.
a Maryland Corporation
Stevensville, Maryland 21666

Issued the 15th day of April 19 76

Witness the Honorable George B. Rasin, Jr., Chief Judge of the Second Judicial Circuit of Maryland.

ATTORNEY(S) FOR PLAINTIFF(S)

NAME: John W. Sause, Jr., Esquire
J. Donald Braden, Esquire
ADDRESS: 204 North Commerce Street
Centreville, Maryland 21617
758-0970
NAME:
ADDRESS:

Charles W. Cecil
Clerk
(Seal of Court)

NOTICE TO THE PERSON(S) SUMMONED:

IF YOU FAIL TO FILE AN ANSWER OR OTHER DEFENSE ON OR BEFORE May 18, 1976, THE PLAINTIFF MAY OBTAIN A DECREE PRO CONFESSO AGAINST YOU.

FILED
MAY 3 1976

85

Summoned William E. Dixon on this 28th day of April, 1976 and left with him a Summons, Bill of Complaint, Petition & Order

William R. Huggins

$5.00

William R. Huggins
Sheriff of A. A. Co.

SERVED	4-27
NON EST	
NON EST OTHER:	
ANNE ARUNDEL COUNTY BY: Deputy Sheriff	

ATTEMPTS AT SERVICE	
DATE	TIME
4-22	2.0
4-27	2.30

RECD BY SHERIFFS OFFICE
ANNE ARUNDEL CO.
1976 APR 20 AM 8:49

William E. Dixon
650 Ritchie Highway
~~Sin~~ Severna Park, Md.

314

CCA:dmm
9/24/76

KENT ISLAND ESTATES CORPORATION, INC.	*	IN THE
	*	CIRCUIT COURT
Complainant	*	FOR
v.	*	QUEEN ANNE'S COUNTY
EAST BAY COLONY ASSOCIATES, et al	*	Equity No. 5766
Respondents	*	

* * * * * * *

ANSWER OF WILLIAM E. DIXON
TO THE BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Respondent, William E. Dixon, added as an additional Respondent pursuant to Petition and Order of this Court, by Charles C. W. Atwater, his attorney for Answer to the Bill of Complaint filed against him and other defendants in the above entitled matter says:

1. He adopts the answer previously filed herein by the other Respondents.

WHEREFORE, having fully answered said Complaint this Respondent prays that he may be dismissed with his costs.

Charles C. W. Atwater
1211 W. R. Grace Bldg.
Baltimore, Maryland 21202
752-6254
Attorney for William E. Dixon, Respondent

I HEREBY CERTIFY that on this 24 day of September, 1976, a copy of the aforegoing Answer was mailed to John W. Sause, Jr., Esquire, 204 North Commerce Street, Centreville, Maryland 21617

Charles C. W. Atwater

FILED
SEP 27 1976

STIPULATION OF AGREED FACTS AND EXHIBITS P, Q, R, S, + T

1. The parties stipulate that no person, firm or corporation who is not a party to this proceeding has any present interest in the "subject area." ("Subject area" means that area defined in Paragraph 2 of the Bill of Complaint.)

2. Exhibits A through F, attached to the Bill of Complaint, are admitted by the parties to be copies of documents recorded among the Land Records of Queen Anne's County through which the Complainant claims title to the subject area and to be relevant and admissible in evidence.

3. Exhibits G through O, attached to the Bill of Complaint, are admitted by the parties to be copies of documents recorded among the Land Records of Queen Anne's County through which the Respondents claim title to part or all of the subject area and to be relevant and admissible in evidence.

4. Exhibit E, attached to Respondents' Answer to the Bill of Complaint, is admissible for the purpose of showing the lines of the survey referred to in Exhibits G, N and O attached to the Bill of Complaint. (Said Exhibit E is hereafter referred to as Exhibit P for the purpose of avoiding confusion with Exhibit E attached to the Bill of Complaint.)

5. The outline plat of Frederick Ward and Associates, dated August 6, 1973 and attached as Exhibit Q is admissible for the purpose of showing the lines of the survey referred to in Exhibits G, N and O, attached to the Bill of Complaint.

6. The plat of William R. Nuttle, Registered Surveyor, titled "Plat Showing Three Surveys, Tolson Creek Area", attached as Exhibit R, is admissible for the purpose of showing the relationship between (a) the southern boundary of Complainant's property, as referred to in Exhibits A through F; (b) the northern boundary line of Respondents' property, as referred to in Exhibits H through M; and (c) the northern boundary line of Respondents' property, as referred to in Exhibits G, N, O and P.

7. "Wetlands Boundaries Map, Queen Anne's County, Maryland, No. 83, Prepared for the Department of Natural Resources, State of Maryland, in accordance with the Maryland Wetlands Act" and attached as Exhibit S, is admitted by the parties to be an aerial view of the area in controversy and its environs and is admissible in evidence for the purpose of showing the physical characteristics of what it depicts at the time of the photograph, which is stipulated to be September 24, 1971.

8. In the summer of 1970 and 1971, the Complainant cut a channel through then-existing bar from the Chesapeake Bay to Tolson Creek in the location shown on Exhibit S, which is the location today.

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9. The photocopy attached, marked Exhibit T, is a copy of a map contained in "The 1877 Atlases and Other Early Maps of the Eastern Shore of Maryland" (Bicentennial Edition 1976); and the creek in question is that lying between the "Tolson Farm" and the "Gibson Farm."

10. If Robert C. Webster were called by the Complainant, he would testify that he is employed as a Project Forester with the Maryland Forest Service of the Maryland Department of Natural Resources and that he is qualified to make and has made the determinations set forth in a letter of September 9, 1976, attached hereto as Exhibit U. The tree therein mentioned is located within the subject area; and the precise location will be designated by the parties at the trial.

AGREED ISSUES

1. From the standpoint of both legal end equitable title, including estoppel, what is the legal effect of the Complainant cutting a channel through the subject area in 1970 and 1971 with respect to:

   a-Ownership by the Complainant of the part of the subject area south of such channel; and

   b-Acquisition of title by East Bay Colony in 1973, after such cut was made; and

   c-The effect on acquisition of title by East Bay Colony in 1973, after such cut was made if (as contended by the Respondent, but denied by the Complainant) such new channel thereafter represented the only useable entrance to Tolson's Creek?

2. Is the instrument dated September 30, 1951, and recorded in Liber T.S.P. 4, folio 52, admissible to evidence a valid grant from Chesapeake Bay Corporation to Samuel J. Aaron and Rebecca Aaron?

3. If the answer to #2 is "yes", did Aaron and wife:

   a-acquire title to any part of the "subject area" by virtue of the riparian rights appurtenant to the ownership of Lots 1 and 2, Block B, Kent Island Estates, Section 3; or

   b-Did the subject area become a part of the lots referred to in that deed by accretion on or after September 30, 1951?

4. Whether the deed of September 30, 1951 referred to in #2 is valid or not, have Aaron and wife acquired any rights in the subject area by adverse possession?

   a-If so, do such rights include the part of the subject area to the south of the channel referred to in #1?

5. Did Aaron and wife convey any part of the subject area to East Bay Colony Associates by Exhibit G?

Filed October 15, 1976 89

GBR./nge/9/21/73

KENT ISLAND ESTATES CORPORATION, INC.

VS.

EAST BAY COLONY ASSOCIATES
et al

IN THE CIRCUIT COURT FOR

Queen Anne's County

EQUITY
~~LAW~~ NO. 5766

CERTIFICATE OF COUNSEL

Pursuant to Second Circuit Rule 504, the undersigned attorneys certify that they have met and conferred in a sincere and bona fide manner and have:

1. Determined the issues to be decided are:

a.

See attached list of Agreed Issues

b.

c.

2. Determined the pleadings are in order or will be in order by the filing of the following additional pleadings:

No additional pleadings to be filed.

3. Obtained admissions of fact or documents as follows:

See attached Stipulation of Agreed Facts and Exhibits.

Filed October 15, 1976

4. Obtained agreement as to introduction of photographs, vouchers, laboratory reports and demonstrative evidence which will or might possibly be offered during the trial.
5. Revealed to each other the names, addresses and telephone numbers of all witnesses who might possibly be called to testify, together with a summary of the expected testimony, and copies of all reports of possible expert witnesses.
6. Conscientiously explored the possibility of settlement after all reasonable offers of settlement have been communicated by all parties and abandoned negotiations only after all possibilities of settlement have been exhausted without success.

Attorney for Plaintiff

Attorney for Defendant

KENT ISLAND ESTATES CORPORATION, INC.	*	IN THE
Complainant	*	CIRCUIT COURT
vs.	*	FOR
EAST BAY COLONY ASSOCIATES, et al	*	QUEEN ANNE'S COUNTY
Respondents	*	Equity No. 5766
	*	

* * * * * * *

TRIAL MEMORANDUM ON BEHALF OF DEFENDANTS

Statement of the Case

The Complainant filed its bill to quiet title in Equity to a parcel of land which is essentially a part of a sand bar located across the mouth of Tolson Creek. In Paragraph 2 it alleges that property which is the subject of the proceeding is that property lying south of an extension of the southerly line of Lot 1, Block B of the plat of Kent Island Estates. It states in Paragraph 8 that the Respondents have caused a portion of the subject area to be included within the bounds of the property owned by the Respondent, East Bay Colony Associates. The other Respondents have an interest by way of mortgage or Deed of Trust. The Respondents, Aaron, while joined under an allegation that they hold a mortgage interest also claim title to land which is the remaining part of the subject property referred to in the Complaint. It is further alleged by the Respondents that the portion of the subject property referred to as having been included within the deed to the Respondent, East Bay Colony Associates, was included in the conveyance from the Aarons to East Bay Colony Associates.

This portion of the subject area lies southerly from the present existing channel connecting the Bay to Tolson Creek through the sand bar and what is referred to as the old channel. The old channel is not located by any survey more recent than the one made in 1950 by Metcalfe.

Statement of Facts

Tolson Creek is the historic boundary between two farms. The Gibson or Cook Farm lies to the north of Tolson Creek and is the property owned by Kent Island Estates Corporation. The Benton or Tolson Farm lies to the

Filed December 8, 1976

south of Tolson Creek and is the property owned by East Bay Colony Associates. The entire bay shoreline of Kent Island has eroded and is still eroding several feet each year. The 1877 atlas (Exhibit T) shows the then existing creek as a wide-mouth body of water. Exhibit R shows that the shoreline has eroded more than 100 feet during the period from 1948 at the time of the Metcalfe survey and 1973, the time of the Ward survey. It appears from the Metcalfe surveys that the stream outlet did flow along the line of the Complainant's deed when Metcalfe surveyed the Benton Farm in 1948 and he also used that same line when he surveyed the Gibson Farm in 1950. See Exhibit I for the survey of the Benton Farm in 1948 and Exhibits C & E for plats prepared by Metcalfe of the Gibson Farm for Kent Island Holding Company. We do not have a copy of the original survey made by Metcalfe of the Gibson Farm.

In 1955 the then owners of the properties on the north and south sides of Tolson Creek opened a new channel at approximately the middle of the bar. That channel would have been located a little further northerly than the present channel. That channel did not last. The then owner of the Benton Farm was Samuel J. Aaron and wife. The the owner of the Gibson Farm was The Romancoke Holding Co. (owned by Nichols and Smith).

Complainant in the statement of the issues has inserted an issue as to whether the deed from Chesapeake Corporation to Samuel J. Aaron is a valid deed. We call the Court's attention to the fact that the deed from Chesapeake Bay Corporation to Samuel J. Aaron was dated September 30, 1951. It was acknowledged on that date. The deed from Chesapeake Bay Corporation to The Romancoke Holding Co. was executed also on September 30, 1951 with the same Notary. The deed to Romancoke was recorded January 14, 1952. The deed to Aaron was recorded January 30, 1952. Testimony will be introduced that the equitable owners of Chesapeake Bay Corporation were Nichols and Smith who also were the equitable owners of The Romancoke Holding Co. We question whether they could have claimed

that the deed to Aaron was invalid because it was not an exception in the deed from the Chesapeake Bay Corporation to Romancoke.

Aerial photographs introduced by the Complainant show that the position of the sand bar relative to the land of the Gibson Farm located to the north and the Benton to the south has not changed appreciably for a number of years. The surveys also show that the bar is now located probably as much as 100 feet easterly from its location in 1948. The entire shoreline has moved several feet a year easterly during that period of time. This fact may not be conceded by the Complainant.

In the period from August 1970 into the year 1971 the Complainant opened a new course for the inlet between the Bay and Tolson Creek. This new inlet was deeper and wider than the "old" course of the stream, or inlet, and as the natural result thereof the body of water used the new inlet and the old inlet has silted up so that it may not be located from a visual inspection from the bayfront. Remains of it may be noticed if a physical inspection is made by walking across the property now in dispute. Such a physical inspection was made by the Court with counsel. The "old" course has no opening from the bayside and has no opening from what is known as Tolson Creek inland from that parcel. Testimony is proposed to show that this inlet opened and closed at various times over the course of years.

The basic deeds which are prior in time to both the Complainant's deed and the Respondents' deed bound on the stream. The Respondent, East Bay Colony Associates, purchased the Benton Farm, lying southerly of the creek, in 1973. A survey was made for a survey description of the property before settlement. This survey was made by Frederick Ward Associates, August 6, 1973 (Stipulation Exhibit Q). The Engineer will testify that he made a physical inspection of the property and that he carried the line on the northerly side of the Benton or Tolson Farm along the edge of Tolson Creek. He followed the southerly shoreline of Tolson Creek around the sourtherly edge of the inlet then existing to the Chesapeake Bay. This is in accordance with the basic principles of

surveying when a natural stream is a boundary of the property. The calls to the stream govern over any particular courses and distances. The deed and the two mortgages were then prepared on the basis of this survey as the precise outline of the property covered by the deed and the mortgages.

It is the comparison of the Ward survey with the Metcalfe survey that shows the land has receded approximately 170 feet easterly from the time of the Metcalfe survey. The result of this gradual erosion and reconstitution of the land easterly is that the present sand bar was probably a part of Tolson Creek lying 100 feet easterly of the Bay at the time of the Metcalfe survey. There is no dispute on the fact that the Plaintiff in 1970-71 deliberately opened a new channel through the sandbar which resulted in the closing of the old inlet so that the new channel was the only inlet between Tolson Creek and the Chesapeake Bay. The Defendant purchased the property lying southerly of Tolson Creek and binding on that creek in reliance upon a survey showing the actual location thereof 1973. The Defendant, East Bay Colony Associates, defends its title based upon its right to ownership to the center of the boundary stream. Plaintiff places mistaken reliance upon the description contained in the deed to the Benton Farm to East Bay Colony's predeceasor in title. That description followed the description of Metcalfe. Metcalfe's survey followed the then existing boundary lines of Tolson Creek. In 1973 those lines had changed. The change was no more dramatic than the change from the prior survey to Metcalfe's survey at the time of an earlier conveyance. All surveyors have relied upon the existing stream as the boundary and calls are to that stream. This is in accordance with the normal laws in reference to surveys and boundaries.

Argument

I. Where the deeds of adjoining riparian owners describe a stream as the common boundary of their lands and the course of the stream is artificially changed by one owner so as to accrete riparian land over the original stream channel separating the parcels, the new stream course remains the boundary of the parcels to preserve the riparian character of both. The new riparian land belongs to riparian owner on the side of the stream to which it accretes.

The doctrine by which the Defendants must own the land bounding Tolson Creek is that of accretion. There is no question that had the creek changed

to its present location by natural process, the disputed parcel would belong to the Defendants. In Bosley v. Grand Lodge, 263 Md. 303 (1971) it was said:

> "The rule is stated by Mr. Justice Brewer, speaking for the Supreme Court of the United States, in Nebraska v. Iowa, 143 U.S. 359, 360-61, 12 S. Ct. 396, 397, 36 L. Ed. 186, 187-88 (1892), as follows:
>
> "' It is settled law that when grants of land border on running water, and the banks are changed by that gradual process known as 'accretion,' the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possessions may vary * * *
>
> "' It is equally well settled that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, 'avulsion.'"
>
> "See 2 W. Blackstone, Commentaries 262; Gould on Waters § 156 (2nd ed. 1891); 93 C.J.S. Waters §§ 76,79. See also Causey v. Gray, 250 Md. 380, 387, 234 A.2d 575,581 (1968)."

It would appear that the Plaintiffs act (over a six-month period) of artificially moving the stream bed (a change by avulsion) would preclude the Defendants from obtaining the protection of the above rule. This, however, is not the law applicable to the facts of this case. The Plaintiffs continue to enjoy protection afforded by the basic law of accretion despite their inability to show a gradual process of accretion to their boundary with the stream.

The law pertaining to the present set of facts is set forth in Thompson on Real Property, Vol. 5A 2460 (1957 Replacement), p. 605, 606:

> " * * * when the accretion is due, wholly or in part, to artificial causes, and those causes are not the act of the party owning the original shore land, the decisions hold, and justice would seem to require, that the same rules prevail as to ownership of the accretion as in the case of accretions formed solely by natural causes.[38] So, the general rule is that a riparian owner is not prevented from acquiring title by accretion by the fact that the addition to his land is influenced by artificial causes, in which he has had no part.[39]
>
> "[38] Lovingston v. St. Clair, 64 Ill. 56, 16 Am. Rep. 516; Brundage v. Knox, 279 Ill. 450, 117 N.E. 123; Frank v. Smith, 138 Nebr. 382, 293 N.W. 329, 134 A.LR. 458.
>
> "Riparian owner has right to accretion arising from artificial means, i.e., dredging by the state even though the accretion was rapid and perceptible. State v. Gill, 259 Ala. 332, 66 So. (2d) 141.

"Contra and to effect such accretions belong to the sovereign. Marine Ry. & Coal Co. v. United States, 265 Fed. 437; Carpenter v. Santa Monica, 63 Cal. App. (2d series 772, 147 Pac. (2d) 964.

"39 Federal. Jackson v. United States, 56 Fed. (2d) 340.

"California. Forgeus v. Santa Cruz County, 24 Cal. App. 193, 140 Pac. 1092.

"Illinois. Brundage v. Knox, 279 Ill. 450, 117 N.E. 123.

"Kansas. Adams v. Roberson, 97 Kans. 198, 155 Pac. 22.

"Massachusetts. Adams v. Frothingham, 3 Mass. 352, 3 Am. Dec. 151; Burke v. Commonwealth, 283 Mass. 63, 186 N.E. 277.

"Nebraska. Frank V. Smith, 138 Nebr. 382, 293 N.W. 329, 134 A. L. R. 458.

"New York. Halsey v. McCormick, 18 N.Y. 147; People v. Central R. Co. of New Jersey, 42 N.Y. 283; In re Hutchinson River Parkway Extension, 14 N.Y.S. (2d) 692.

"Ohio. State ex rel. Duffy v. Lakefront East Fifty-Fifth St. Corp., 137 Ohio St. 8, 27 N.E. (2d) 485.

"Oregon. Gillihan v. Cieloha, 74 Ore. 462, 145 Pac. 1061.

"Rhode Island. Horgan v. Jamestown, 32 R.I. 528, 80 Atl. 271.

"English. Attorney-General v. Chambers, 5 Jur. (N.S.) 745, 4 DeG. & J. 55. "

Thompson on Real Property, Vol. 5A 2460 (1957 Replacement) p. 605, 606

The act of the Plaintiff, Kent Island Estates, in moving the stream channel in 1970-1971 is conceded to be their willful and deliberate effort to alter the stream course. The additional riparian land created thereby on the Defendants' side of the stream is without dispute caused and influenced by artificial means in which the Defendant had no part. It is additionally noteworthy that these artificial causes were those of the adjacent riparian owner rather than an uninterested third party.

The United State Supreme Court case of Bonelli Cattle Company v. State of Arizona, 414 U.S. 313, 94 S.Ct. 517 (1973) was a fact situation very similar to that herein. In Bonelli the U. S. Government rechanneled the Colorado River, the effect of which was to shift its flow beyond the riparian title line of the then riparian owner, Bonelli. This is the precise act of the Plaintiff, Kent Island Estates, in the present case. The State of Arizona, similar to the Plaintiff here, claimed for itself the new riparian land created between the new course of the river and Bonelli's former riparian boundary. The court at the outset of the opinion described the issue to be decided:

"The question for decision is whether title to land abandoned by the stream of the Colorado River as a result of a federal rechanneling project vests in the State of Arizona, as owner of the beds under navigable streams within its borders, or in petitioner cattle company, as the owner of land riparian to the river at the time of the rechanneling."

94 S. Ct. 517 at 520

The Arizona Supreme Court held the lands created by the federal rechannelization to be an "avulsive" change which did not divest the State to its title to the former riverbed.

"The Arizona Supreme Court found that, because the federal rechannelization project was an "engineering relocation of the waters of the river by artificial means," it was, under state law, an avulsive change, which did not divest the State of its title to the exposed land which had formerly been part of the riverbed."

94 S. Ct. 517 at 521

The U. S. Supreme Court thought otherwise:

"We hold that the ownership of the subject land is governed by federal law, and that the land surfaced by the narrowing of the river channel belongs, not to the State as owner of the riverbed, but to Bonelli as riparian owner."

94 S. Ct. 517 at 522

The court adopted the view put forth by Thompson, supra:

"It is of course clear that the State of Arizona did hold title to the subject property before the waters of the river receded. Both the State and the Solicitor General of the United States as amicus curiae, urge that the federal common-law doctrine of avulsion is applicable and thus that the State remains holder of the title in the former riverbed. Bonelli, the only private claimant, argues that the narrowing of the river course should properly be characterized as an artificial accretion, hence that the disputed land, which had originally been lost from the Bonelli parcel to the river by erosion, should once again belong to it as the riparian owner.

"[12] Federal law recognizes the doctrine of accretion whereby the "grantee of land bounded by a body of navigable water acquires a right to any . . . natural and gradual accretion formed along the shore." Hughes v. Washington, 389 U.S. 290, 293, 88 S.Ct. 438, 440, 19 L.Ed.2d 530 (1967); accord, Jones v. Johnston, 18 How. 150, 156, 15 L.Ed. 320 (1856). When there is a gradual and imperceptible accumulation of land on a navigable riverbank, by way of alluvion or reliction, the riparian owner is the beneficiary of title to the surfaced land:

"It is the established rule that a riparian proprietor of land bounded by a stream, the banks of which are changed by the gradual and imperceptible process of accretion or

erosion, continues to hold to the stream as his boundary; if his land is increased he is not accountable for the gain, and if it is diminished he has no recourse for the loss."' Philadelphia Co. v. Stimson, 223 U.S. 605, 624, 32 S.Ct. 340, 346, 56 L.Ed. 570 (1912).

"[13, 14] There are a number of interrelated reasons for the application of the doctrine of accretion. First, where lands are bounded by water, it may well be regarded as the expectancy of the riparian owners that they should continue to be so bounded.[21] Second, the quality of being riparian, especially to navigable water, may be the land's "most valuable feature" and is part and parcel of the ownership of the land itself. Hughes v. Washington, supra, 389 U.S., at 293, 88 S.Ct. at 440; Yates v. Milwaukee, 10 Wall. 497, 504, 19 L.Ed. 984 (1871). Riparianness also encompasses the vested right to future alluvion, which is an "essential attribute of the original property." County of St. Clair v. Lovingston, 23 Wall. 46, 68, 23 L.Ed. 59 (1874). By requiring that the upland owner suffer the burden of erosion and by giving him the benefit of accretions, riparianness is maintained. Finally, there is a compensation theory at work. Riparian land is at the mercy of the wanderings of the river. Since a riparian owner is subject to losing land by erosion beyond his control, he should benefit from any addition to his lands by the accretions thereto which are equally beyond his control. Ibid. The effect of the doctrine of accretion is to give the riparian owner a "'" fee, determinable upon the occupancy of his soil by the river," and [to afford] the State [a title] to the river bed [which is] likewise a . . . "qualified" fee "determinable in favor of the riparians upon the abandonment of the bed by the river."'" [22]

"[15, 16] The doctrine of accretion applies to changes in the river course due to artificial as well as natural causes. County of St. Clair v. Lovingston, supra, 23 Wall., at 64-69, 23 L.Ed. 59; United States v. Claridge, 416 F.2d 933 (C.A. 9, 1969), cert. denied, 397 U.S. 961, 90 S.Ct. 994, 25 L.Ed.2d 253 (1970) (changes in the Colorado River's course, caused by the construction of Hoover Dam, are accretive). Where accretions to riparian land are caused by conditions created by strangers to the land, the upland owner remains the beneficiary thereof.[23]

21. E. g., Nebraska v. Iowa, 143 U.S. 359, 365-366, 12 S.Ct. 396, 398, 36 L.Ed. 186 (1892); Hardin v. Jordan, 140 U.S. 371, 11 S.Ct. 838, 35 L.Ed. 428 (1891); Anderson-Tully Co. v. Tingle, 166 F.2d 224, 227-228 (C.A. 5), cert. denied, 335 U.S. 816, 69 S.Ct. 36, 93 L.Ed. 371 (1948).

22. 107 Ariz., at 472, 489 P.2d, at 706 (Lockwood, J., dissenting) quoting State v. R. E. Janes Gravel Co., 175 S.W.2d 739, 741 (Tex. Civ. App. 1943), rev'd on other grounds sub nom. Maufrais v. State, 142 Tex. 559, 180, S.W.2d 144 (1944).

23. See sources collected at Burns v. Forbes, 412 F.2d 995, 997 n. 2 (C.A.3, 1969); cf. Beaver v. United States, 350 F.2d 4, 11 (C.A.9, 1965), cert. denied, 383 U.S. 937, 86 S. Standard Oil Co. v. Jones, 233 La. 915, 98 So.2d 236, aff'd on rehearing, 233 La. 940, 98 So.2d 244 (1957). "

94 S. Ct. 517 at 526, 527, 528

In the New York case In Re Hutchinson River Parkway Extension, 14 N.Y.S. 2d 692 (1939) it was held that riparian owners continue to own

to the ripa even though the lines of the stream were changed by artificial means. The court said this is especially true as agsinst the party who caused the change in stream course. Again it should be noted that the Plaintiff, Kent Island Estates, unlike the State of Arizona in Bonelli, supra, not only claims the riparian lands created by the artificial change but additionally was the cause of the artificial change. The court in Hutchinson recited the early rule set forth in the 1872 Illinois case of Lovingston v. St. Clair County 64 Ill. 56, 16 Am. Rep. 516, 522, 523:

> "[2, 3] 'The fact that the labor of other persons changed the current of the river, and caused the deposit of alluvion upon the land of appellants can not deprive them of a right to the newly made soil.' Lovingston v. St. Clair County, 64 Ill. 56, 16 Am. Rep. 516, 522, 523."
>
> 14 N. Y. S. 2d 692 at 694

The U. S. Supreme Court decision Lovingston was also cited by the Supreme Court 100 years later in Bonelli. Over a hundred years ago the Illinois courts said in Lovingston:

> "If portions of soil were added to real estate already possessed, by gradual deposition, through the operation of natural causes, or by slow and imperceptible accretion, the owner of the land to which the addition has been made has a perfect title to the addition. Upon no principle of reason or justice should he be deprived of accretions forced upon him by the labor of another without his consent or connivance, and thus cut off from the benefits of his original proprietorship. If neither the State nor any other individual can divert the water from him, artificial structures, which cause deposits between the old and new bank, should not divest him of the use of the water. Otherwise, ferry and wharf privileges might be utterly destroyed, and towns and cities, built with sole reference to the use and enjoyment of the river, might be entirely separated from it."
>
> 64 Ill. 56 at 64, 65

In Hutchinson the New York court stated the rule applied to an even greater extent against the party creating the artificial change:

> "[4] It, therefore, is quite apparent that the riparian owner continues to own to the ripa even though the lines of the stream are changed by artificial means. This would seem to be particularly true in the present case where the act of the party taking the property in a condemnation proceeding has caused the lines of the stream to change. This property is awarded to the claimants and the awards for the parcels involved are as follows:"
>
> 14 N. Y. S. 2d 692 at 695, 696

Under the applicable common law of the United States and the facts of the instant case there is no basis by which the Plaintiff, Kent Island Estates, can claim title to the lands sought in this proceeding. The lands are legally and constitutionally those of East Bay Colony, which otherwise would, by reason of the action by Kent Island Estates, lose its riparian ownership to the present stream.

II. The Plaintiff by permitting the Defendant to rely to its detriment on the new stream course as the boundary between the parcels is equitably estopped from claiming otherwise thereafter.

The voluntary conduct of the Plaintiff led to the unnatural change in the stream course which was the boundary of the properties set forth in the Deeds of the Plaintiff and the Defendant as well as their predecessors. The Defendant purchased and mortgaged its property in 1971 (after the stream course change by the Plaintiff) based upon the stream as its boundary and the riparian rights such a boundary provided. The Defendant employed a surveyor who followed basic surveying law and followed all ancient boundaries when he carried his boundary to the stream. When the Plaintiff made the creek flow differently it knew others would and could continue to rely upon the creek as the boundary described in all deeds of record. The Plaintiff also knew these persons could act to their detriment through ignorance of the questionable theory of title proposed herein by the Plaintiff. Such a detrimental reliance occurred and the Plaintiff is equitably estopped to now entertain an ownership of lands contrary to that which it allowed and encouraged the Defendant to perceive in 1971.

The doctrine of equitable estoppel precludes the Plaintiff from claiming the parcel has not accreted to the Defendant. The doctrine is generally defined in Volume 10 M.L.E. Equitable Estoppel § 21:

> "Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which may have otherwise existed, either of property, of contract, or of remedy, against another person who has in good faith relied on such conduct and has been led thereby to change his position for the worse, and who on his part acquired some corresponding right either of property, of contract, or of remedy.[1] Equitable estoppel operates to prevent a party from asserting his rights under general technical rules of law when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so.[2]"

10 M.L.E. Equitable Estoppel at p. 54

The Nebraska case of Roll v. Martin, 164 Neb. 133, 82 N.W.2d 34, (1957) dealt with equitable estoppel in a circumstance where after a river channel between an island and the mainland had been closed purchasers bought the new land formed. The Court held the claim of the island owner to the land accreted to his island failed by estoppel though he was otherwise entitled to it. The island owners assurance to the purchasers prior to their purchase that he did not claim the accretions thereafter estopped him from claiming accretions to the thread of the closed channel.

Although Kent Island Estates in the present case has never assured East Bay Colony that it did not claim the lands sought in this proceeding, it did alter the stream course knowing full well the stream served as the boundary of the parcels over the entire history of recorded deeds. It thereafter made no attempt to notify the Defendant or its predecessor that the stream no longer, to its view, comprised the boundary of the parcels. It would seem that the Plaintiff in order to now argue this theory is bound to show that it did not sit idly by and allow others to act in ignorance of the theory to their detriment relying on the continued existence of the stream as a boundary per the overwelming legal precedent in favor of same.

It was said in Roll:

> "As stated in Colonial Theatrical Enterprises v. Sage, 255 Mich. 160, 237 N.W. 529, 532: "'It has been held in many cases that if the owner of land knowingly stands by and permits his property to be mortgaged or sold by another, to one who is to the owner's knowledge relying on the apparent ownership of the person executing the conveyance, such conduct will estop the owner from asserting his title against the mortgagee or grantee.' Craig v. Crossman, 209 Mich. 462, 480, 177 N.W. 400, 407."

82 N.W. 2d 34 at 39

Even if the Plaintiff has a valid claim to the property sought, and this is dubious under the law, it is equitably estopped from asserting same at this late date after others relied to their detriment on the riparian rights they believed they purchased with no notice of the Plaintiff's contention otherwise.

III. The Defendant has riparian rights to use the stream which rights arise under its deed and applicable law of navigable waters and such use cannot be destroyed by Plaintiffs moving the stream inside the survey line of its deed.

The right of riparian owner to possess to the shore of navigable waters is a right that is so important the law ignores old title lines where the original shoreline may have been altered. Bonelli, supra. The right is a "franchise - a vested right, peculiar in its nature but a quasi property of which the lot owner cannot be lawfully deprived without his consent". B & O R. R. v. Chase, 43 Md. 23, 36 (1875).

The rights of an owner of riparian land include access to the water, title to future accretions, ability to wharf or build piers from fast land as allowed by statute, and the ability to fill or make improvements as allowed by statute. The title to riparian land occupies a unique status. It was said in the Maryland case of Causey v. Gray, 250 Md. 380 (1967):

> "It should be kept in mind that the "'title'" of private owners to "'riparian land'" is created quite differently from the title to fixed land. It is well established that the title to land under navigable water is in the State of Maryland, subject to the paramount right of the United States to protect navigation in the navigable waters. Smith v. Maryland, 18 How. (59 U.S.) 71, 15 L. Ed. 269 (1855); Day v Day, 22 Md. 530, 537 (1865); Smoot Sand & Gravel Co. v. Columbia Granite & Dredging Corp., 146 Md. 384, 388, 126 A.91 (1924). The owner of the fast land, however, has a common law right to land formed by accretion adjacent to the fast land and has the right of access to the navigable part of the river in front of his fast land, with the right to make a landing, wharf or pier in front of his fast land, subject, however, to general rules and regulations imposed by the public authorities necessary to protect the rights of the public. When the statutory law grants the right to a riparian owner to extend his lot or to improve out to the limits prescribed by the public authorities, the riparian owner receives a "'franchise — a vested right, peculiar in its nature but a quasi property of which the lot owner cannot be lawfully deprived without his consent.'" B & O R.R. Co. v. Chase, 43 Md. 23, 36 (1875). When the lot owner makes improvements in front of his lot, complete title then vests in him in the improvements provided it is in front of his lot and does not appropriate the riparian rights of his neighbors. B & O R. R. Co. v. Chase, 43 Md. at 36-37."

The Plaintiff thus not only seeks to deprive the Defendant and its eventual successors of title to land, it thereby seeks to deprive the Defendant of riparian rights. These rights are in addition to ordinary

incidents of land ownership and as stated in B & O R.R. v. Chase they are a vested quasi property right.

IV. The sandbar on the north side of Tolson Creek was at one time below mean high water and over the years emerged as fast land accreting in the process to the property of Samuel J. Aaron.

The facts and testimony of this case will additionally show that the sandbar forming the northern side of Tolson Creek was at one time subject to the ebb and flow of the tide. Over the years it has formed and reformed emerging as fast land adjacent to the Aaron parcel. The Plaintiff helped the natural process by filling with dirt, stone and concrete. The gradual emergence of this bar qualifies it as an accretion to the Aaron tract and under the law of accretion Aaron has title to the bar.

In the Maryland case of Steinem v. Romney, 233 Md. 16 (1963) it was said of a similar situation to that here:

> "Chapter 129 of the Acts of 1862 was passed, according to its preamble, to resolve doubts "'in regard to the extent of the rights of proprietors of land bounding on navigable waters, to accretions to said land, and to extend improvements into said waters.'" Two of the sections of that Act are now codified as Secs. 45 and 46 of Art. 54, Code (1957), and read as follows:
>
> > "'§ 45. The proprietor of land bounding on any of the navigable waters of this State shall be entitled to all accretions to said land by the recession of said water, whether heretofore or hereafter formed or made by natural causes or otherwise, in like manner and to like extent as such right may or can be claimed by the proprietor of land bounding on water not navigable.
> >
> > "'§ 46. The proprietor of land bounding on any of the navigable waters of this State shall be entitled to the exclusive right of making improvements into the waters in front of his said land; such improvements and other accretions as above provided for shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement shall be so made as to interfere with the navigation of the stream of water into which the said improvement is made.'"
>
> "Both below and here all parties to the case proceeded upon the assumption that the newly formed land now in dispute was formed by accretion, and consequently we shall do likewise. So considering the sandbar, we think that the appellees became entitled to it under the statute. This Court has held that Sec. 45 (then Sec. 47) of the statute, giving to the proprietor of land bounding upon any navigable stream all accretions to such land, applies regardless of whether the accretions start at the shore and extend outward to the channel, or start at the channel and extend inward to the shore. Melvin v. Schlessinger, 138 Md. 337, 113 Atl. 875 (1921). The fact that the sandbar is connected to the appellants' land but does not actually

touch the land of the appellees does not give the Steinems title to the entire sandbar, since the bar extends as far westward as the mouth of Little Kingston Creek and lies directly in front of the properties of the appellees. Waring v. Stinchcomb, 141 Md. 569, 119 Atl. 336 (1922)."

233 Md. 16 at 21, 22

As a very minimum Steinem would entitle Aaron to that part of the bar touching the side of his property facing Tolson Creek.

Conclusion

Every approach to this case constitutional, equitable and common law leads to the conclusion that the title to the parcel of land sought to be quieted by the Plaintiff is that of the Defendant. This is particularly apparent when we consider that the Plaintiff's own willful and deliberate act is that which has created the conflicting claims of title and put the Defendant to the task of defending its title.

Respectfully submitted,

Charles C. W. Atwater

Thomas A. Sheehan

KENT ISLAND ESTATES CORPORATION, INC.	:	IN THE
	:	CIRCUIT COURT
Complainant	:	FOR
vs.	:	QUEEN ANNE'S COUNTY
EAST BAY COLONY ASSOCIATES, et al.	:	Equity No. 5766
Respondents	:	

: : : : : : : :

PLAINTIFF'S MEMORANDUM

The facts in the case are virtually undisputed and may accurately be summarized as follows:

1. Exclusive of lot sales made by them to private individuals not here involved, the Plaintiff and its predecessors in title have had record title to the tract which came to be known as "Kent Island Estates, Section 3" (hereafter "Kent Island Estates") from March 1950 up to the present time (Exhibits A through F).

2. The area which is the subject of this dispute was a part of Kent Island Estates but was not included within the lots into which the bulk of the tract was subdivided (Exhibit E).

3. Between 1949 and 1973, the Defendants and their predecessors in title had record title to the tract which became known as East Bay Colony, formerly the Tolson farm (hereafter "East Bay Colony"), but had no record title to the subject part of Kent Island Estates (Exhibits H through M).

4. Prior to 1973, the record title of the Kent Island Estates tract was entirely consistent with the record title of the East Bay colony tract. Indeed, the record title of both tracts was based upon separate surveys by the same surveyor. This can be seen by a comparison of the deeds in the Plaintiff's chain of title (Exhibits A through F) with the deeds in the Defendants' chain of title (Exhibits H through M), but is also manifest from the graphic comparison of the boundary line between the two properties made by William R. Nuttle and introduced as

Filed March 2, 1977

agreed Exhibit R.

5. At least since 1933, the subject area of Kent Island Estates has been fast land, not subject to the ebb and flow of the tide, and attached to and part of the Kent Island Estates tract. Based upon photographic evidence dating back to 1933 (T.55) and his knowledge and training as an expert, John Mullen testified that (T.56):

> Based on the knowledge of the photographs we have [it] is my opinion that the ground has been continuous from the northern piece of property on down to the old natural outlet, if I can use that term, for that period . . . . It was above mean high water.

Again, at T.99:

> . . . it was obvious to me going through the exhibits in their preparation, that major changes had not occurred except up to the point at which the new inlet was installed [in 1970]. Other than that, the land form has the same shape. It is in roughly the same position right now as it was in 1933 or 1937.

6. The undisputed testimony of Ruby C. Quandt and Reginald Jones established that the area in question had been used and regarded by the Plaintiff and its predecessors in title during the entire period as a part of Kent Island Estates.

7. The undisputed testimony of Robert Snyder and Tony Moore established that in 1970, the Plaintiff had attempted to open up the creek for use by small boats and that the location selected for the new outlet was that which would involve the least time and expense and would be entirely upon Plaintiff's property.

8. Mrs. Quandt, at all times an officer and director of Plaintiff, testified without dispute that there was no intention to deprive or affect the owner of the East Bay Colony property in its use of that property, or of Tolson's Creek. In addition, the Defendants' offered no testimony whatsoever that they had been deprived or affected in their use of the Creek.

9. Defendant Aaron testified that in the 1950's, a similar but singularly unsuccessful attempt had been made to open up Tolson's Creek in the same general vicinity as that used by

the Plaintiff in 1970. This attempt was so abortive that Mrs. Quandt, who testified to frequent visits to the property, does not recall having seen it. No evidence of any present trace of this opening was submitted by any party.

Questions Presented

Prior to trial, counsel framed and submitted to the Chancellor five "Agreed Issues." These were based upon what counsel, in preliminary conferences, believed would be raised by the evidence presented at trial.

At the trial, no evidence was presented with respect to the Deed of September 30, 1951, which pertained to the so-called Aaron lots in the Kent Island Estates subdivision and was the basis for Agreed Issues #2 and #3. Because that deed was not introduced in evidence and in the absence of other evidence regarding it or the lots which it involved, there is now no "issue"--indeed, there is no basis for a finding one way or the other--with respect to riparian rights acquired by the owner of the Aaron lots, or with respect to "accretion" to those lots. The short of the matter is that Agreed Issues #2 and #3 do not exist as issues in the context of the case as ultimately presented to this Court.

Similarly, Issue #4 involved the question of whether Aaron and wife had acquired any interest in the subject part of Kent Island Estates "by adverse possession." There was no evidence in the testimony of Defendant Aaron, in the testimony of any other witness, or from any exhibit which would permit the conclusion that Mr. and Mrs. Aaron acquired adverse possession in the subject area--or, for that matter, in any other area. Issue #4 did not materialize.

With the possible exception of the overall general question posed by Agreed Issue #5 ("Did Aaron and wife convey any part of the subject area to East Bay Colony Associates by Exhibit

G?"), the only issue in the case is that framed by counsel as #1:

> From the standpoint of both legal and equitable title, including estoppel, what is the legal effect of the Complainant cutting a channel through the subject area in 1970 and 1971 with respect to:
>
> a-Ownership by the Complainant of the part of the subject area south of such channel;
>
> b-Acquisition of title by East Bay Colony [Associates] in 1973, after such cut was made; and
>
> c-The effect on acquisition of title by East Bay Colony [Associates] in 1973, after such cut was made if (as contended by the Respondent, but denied by the Com plainant) such new channel thereafter represented the only useable entrance to Tolson's Creek?

Argument

In some respects, it is easier to state what this case does not involve than what it does. It does not involve a conveyance of the subject land, which all parties agree was owned of record by the Plaintiff. It does not involve an agreement between the parties to convey that land; rather, the evidence discloses that there was no contact between the parties until after Defendants for the first time recorded conveyances in 1973 by which they claimed lands then and for years previously owned of record by the Plaintiff and its predecessors in title.

The Defendants claim under no instrument or agreement. Their "title" rests solely upon the creation by the Plaintiff--upon and across land then solely owned by it of record, upon and across land outside the bounds of Defendants' then-recorded title--of a new outlet to Tolson Creek. The sum and substance of Defendants' arguments is that this action of the Plaintiff, on its own property, divested it of title to part of that property and transferred it, without solemnization of deed or agreement, to the Defendants.

If the construction had been in another form, for instance a dwelling or even a fence, Defendants would hardly claim a similar result. We submit that the construction of the new outlet to Tolson Creek was no different in kind or quality and

that the law recognizes no such distinction.

Perhaps the closest analogy is to what in effect happened here--the creation of an "island" bounded by the Bay, the Creek, the old inlet and the new inlet. In such a case, says Professor Tiffany flatly (2 Tiffany, Real Property (2nd eidtion) §544:

> An island which is formed, not by deposit or increase of alluvial matter, but by a change in the course of a river, operating to cut off from the mainland a portion of land previously constituting a part of the mainland, continues in the same ownership as before.

See also §538 for the rule that this principle is not subject distinction on the basis that the change was artificial rather than natural.

When the Plaintiff cut a new inlet between Chesapeake Bay and Tolson Creek in 1970, this did no more to transfer its fee simple title to an adjoining landowner than did the cutting of the Chesapeake and Delaware Canal operate to transfer to Delaware the lands lying on the southeasterly side of the new waterway. Defendants reach a different result only by what we respectfully submit is a tortured application of inapplicable principles of real property law, and particularly those relating to riparian rights.

I. DEFENDANTS ACQUIRED NO RIGHTS WHATSOEVER BY "ACCRETION."

Defendants make no pretense that Aaron had any record title in the subject area to convey to East Bay Colony by Exhibit G. Rather they state flatly, at page 4 of their Trial Memorandum, that "The doctrine by which the Defendants must own the land bounding Tolson Creek is that of accretion."

At the outset, it should be noted that this is a different "accretion" than that referred to in abandoned Issue #3. The "accretion" referred to in the Trial Memorandum is to the East Bay Colony tract--not to the Aaron lots in Kent Island Estates.

The difficulty here is that there is no evidence whatsoever of any "accretion" as that term is legally defined: "any increase of soil formed by the waters gradually or imperceptibly receding, or by alluvion in the same manner." Melvin v. Schlessinger, 138 Md. 337, 341. In B. & O. R. R. Co. v. Chase, 43 Md. 23, 34, it is said that:

> By the common law it is well settled, that where land lies adjacent or contiguous to a navigable river, in which there is an ebb and flow of the tide, any increase of soil formed by the gradual and imperceptible recession of the waters, or any gain by the gradual and imperceptible formation of what is called alluvion, from the action of the water in washing it against the fast land of the shore, and there becoming fixed as part of the land itself, shall belong to the proprietor of the adjacent or contiguous land. [Emphasis in original]

We respectfully submit that "accretion" has no place in this case for two reasons: (1) because the change did not come about "by gradual and imperceptible recession" and (2) more importantly, because the soil of the disputed area was not created or exposed by "recession" of any kind.

(a) "Gradual and imperceptible"

Defendants all but concede that there was no "gradual and imperceptible recession." Quoting Bosley v. Grand Lodge, 263 Md. 303, 319, Defendants say that "Plaintiff's act (over a six-month period) of artificially moving the stream bed (a change by avulsion) would preclude the Defendants from obtaining the protection of the above rule [relating to accretion]."

The testimony was both undisputed and unequivocal that the change in the new outlet to Tolson's Creek was anything but "gradual and imperceptible." It was the result of the efforts of the Plaintiff, through Tony Moore and Robert Snyder (and their heavy equipment) which caused a change which was both immediate and perceptible. Agreed Fact #8 ("In the summer of 1970 and 1971, the Complainant cut a channel through the then-existing bar from the Chesapeake Bay to Tolson Creek") is amply supported--and in no way contradicted--by the evidence offered by all parties.

///

(b) Absence of "recession"

The important point, however, is that the land in dispute was not formed by a "recession" of any kind. The Plaintiff's expert witness testified flatly that, at least since 1933 (T.55), "the ground has been continuous from the northern piece of property on down to the old natural outlet . . . . It was above mean high water" (T.56). And, at T.99, he said ". . . the land form . . . is in roughly the same position right now as it was in 1933 or 1937." The eyewitnesses presented by the Plaintiff were unanimous in their testimony that the subject area was at all times in existence as fast land.

Defendants in their first argument rely primarily upon Bonelli Cattle Company v. Arizona, 414 U.S. 313. Their reliance is misplaced. As they indicate, the question viewed there by the Supreme Court involved "title to land abandoned by the stream of the Colorado River as a result of a federal rechanneling project [emphasis supplied]." 414 U.S. at 314-315. The holding was that "ownership of the subject land is governed by federal law, and that the land surfaced by the narrowing of the river channel belongs, not to the State as owner of the riverbed, but to Bonelli as riparian owner [emphasis supplied]." 414 U.S. at 317.

We deal in this case not with "land abandoned by the stream" or "land surfaced." We deal here with land which at all times covered by the evidence was fast land owned of record by the Plaintiff and its predecessors in title.

(c) Alluvion

Defendants do not refer in their Trial Memorandum to "alluvion"--seen in the earlier-cited cases as the alter ego of accretion. Said the Court of Appeals in Linthicum v. Coan, 64 Md. 439, 454: "the leading characteristic of alluvion is the gradual and imperceptible extension of the land from the shore into the water."

What is said before with respect to the facts of the

instant case thus applies equally to "alluvion." There was no "gradual and imperceptible" extension of land. There was no "extension" of land at all. The land in dispute had always been there. It was not made or created, directly or indirectly, by the Plaintiff--or by nature.

II. THERE IS NO BASIS FOR THE APPLICATION OF THE DOCTRINE OF "ESTOPPEL": AND, IF THERE WERE, DEFENDANTS WOULD BE UNABLE TO ASSERT IT.

Defendants point in their second argument to Plaintiff's "permitting the Defendant [sic] to rely to its detriment on the new stream course as the boundary between the parcels." Citing most general language in 10 M.L.E. "Estoppel" §21, Defendants assert that Plaintiff "is equitably estopped to now entertain an ownership of lands contrary to that which it allowed <u>and encouraged</u> the Defendant [sic] to perceive in 1971 (emphasis supplied)."

Confusingly, Defendants concede (page 11) that "Kent Island Estates in the present case has never assured East Bay Colony that it did not claim the lands sought in this proceeding." Indeed it did not!

Again, the facts are undisputed. None of the Defendants relied upon anything done by the Plaintiff. Defendants' surveyor testified that in 1973, he reported a discrepancy in the Bay frontage called for in the deeds to Aaron and that which resulted from running the boundary to the new outlet. It is conceded that there was nothing in the land records to explain this change. It is conceded, and apparent from visual inspection of the property, that traces of the old outlet were (and are) apparent at the places where the deed course would have terminated. There is not even an intimation that the Defendants sought clarification from the Plaintiff.

The conclusion is inescapable that the Defendants were "mislead" about their ownership of valuable Bay frontage to the

degree that they wanted to be mislead. That was a gift horse into whose teeth they did not care to gaze too long.

In Oklahoma v. Texas, 268 U.S. 252, the Supreme Court had before it a remarkably similar set of circumstances. It held, at 257-258, that there was no estoppel present:

> The master conceded, and we agree with him . . . that the Durfee Company and its predecessors in purchasing did not in fact rely upon the Specht and Roberts plats or any statement of Roberts, but upon a report made by their attorneys based on the record title, including the field notes; and that the alleged statement by Roberts to them, if made, was made after they had gone into possession and paid the purchase price. In this situation, the asserted estoppel must fail. Only where conduct or statements are calculated to mislead a party and are acted upon by him in good faith to his prejudice can he invoke them as a basis of such an estoppel. And if they relate to the title of real property where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.

Here there were no statements by the Plaintiff--only the field notes of the surveyor (which disclosed the discrepancy) and the "report made by their attorneys based on the record title."

Defendants assert, somewhat weakly, that after constructing the new channel solely on Plaintiff's own land, Plaintiff "made no attempt to notify the Defendant or its predecessor that the stream no longer, to its view, comprised the boundary between the properties." Presumably the "stream" of which the Defendants speak is the new outlet; and the short answer is that the Plaintiff never regarded the new outlet (or "stream") as a boundary of its property; it could not have been expected to notify the Defendants that it did.

The point is, however, that the Plaintiff's claims rested not only upon its recorded deeds, but the knowledge imputed by the recorded deeds in Defendants' chain of title, up to 1973. When it received notice that Defendants were setting up a claim to lands not formerly within their title, but within Plaintiff' record title, Plaintiff acted promptly to notify both the surveyor and the principal partner of East Bay Colony Associates--as both of them admitted on cross-examination.

Prior silence by the Plaintiff as to its rights of record does not create an estoppel, even if it had dreamed that Defendants would attempt to usurp that title. Klein v. Dove, 205 Md. 285, 295-296; Cityco Realty Co. v. Slaysman, 160 Md. 357, 363-364; Sachs & Sons v. Ward, 182 Md. 385, 395; Oberheim v. Reeside, 116 Md. 265, 276; Frazee v. Frazee, 79 Md. 27, 30. See also, 10 M.L.E. "Estoppel" §49. All of these authorities are fully in accord with the Supreme Court's decision in Oklahoma v. Texas, supra.

Moreover, estoppel may not be invoked where means of knowledge of the true state of the title is equally available to both parties. Cityco Realty Co. v. Slaysman, supra, at 363; Park Association v. Shartzer, 83 Md. 10, 13-14; Schaidt v. Blane, 66 Md. 141, 148; Casey v. Inloes, 1 Gill 430, 502.

Plaintiff had no reason to assume that anyone would claim the land which it held by record title. Much less would it expect Defendants, who held under a title expressly consistent with Plaintiff's title, to do so. As said in Casey v. Inloes, supra, at 502, to cry before one was hurt under such circumstances "would have been an act of supererogation."

Defendants not only show no basis for an estoppel; they show also that, because they had equal means of informing themselves of the true state of the title, they would not be entitled to claim it if such basis otherwise existed.

III. PLAINTIFF HAS NOT INTERFERED WITH DEFENDANTS' "RIPARIAN RIGHTS"

In their third argument, Defendants attempt to assert that Plaintiff has adversely affected their "riparian rights." To begin with, this claim is absolutely without factual foundation. There is absolutely no evidence that the new channel cuts off the East Bay Colony tract from Chesapeake Bay or in any way inhibits access between any part of the East Bay Colony tract and the Bay. It is also undisputed that the old outlet was non-

navigable, in the sense that it would not support even the smallest craft; the new outlet is if anything slightly more usable for that purpose. Officers of the Plaintiff denied in open court any interest or desire to hinder the Defendants in using the new outlet. Not one instance has been cited in which the Defendants sought, or were denied, such use.

Furthermore, the Defendants are again relying upon inapposite legal principles. The underlying premise of Defendants' argument may be absolutely and totally correct: the Plaintiff could not interfere with the riparian rights which were appurtenant to the Defendant's property, including those of accretion, reliction, and avulsion. But, that is not to say that the land which Defendants seek to claim is land subject to those rights--because in point of fact it is not. The land claimed by the Defendants is fast land for years owned in fee simple absolute by the Plaintiff and its predecessors in title.

In the context in which they assert it, the necessary and logical import of Defendants' contention is that their "riparian rights" are not simply traditional rights in submerged lands--"riparian rights" as Defendants view them embrace rights in the fast land owned in fee simple by their neighbors.

The subject area of Kent Island Estates was at all times referred to in the testimony and exhibits of this case (from 1933 to 1976), fast land, owned by the Plaintiff and its predecessors in title. No law, or principle of law, permits the Plaintiff to be disseized by works of internal improvement which it undertook within its own boundaries.

IV. TO THE EXTENT THAT ANY PRINCIPLE OF "RIPARIAN RIGHTS" IS INVOLVED HERE, THEIR APPLICATION DOES NOT ALTER OR AFFECT THE BOUNDARY BETWEEN THE PROPERTIES OF THE PARTIES.

We have earlier urged that whatever occurred on the Plaintiff's property could not, and was not, a "riparian right" of the Defendants or their property. At most, what is in-

volved here in the way of a "riparian right" is an act of what is defined by our Court of Appeals in Bosley v. Grand Lodge, supra, as an "avulsion": the situation in which "a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed." In such cases, said the Court there:

> . . . such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein.

See also to the same effect, Dept. of Natural Res. v. Ocean City, 274 Md. 1, 15.

As noted earlier, Defendants (page 5 of their Trial Memorandum) recognize that the change here was, in their words, "a change by avulsion." Yet they seek to avoid the rule that a change by avulsion "works no change of boundary" by contending that "The Plaintiffs [obviously meaning 'Defendants'?] continue to enjoy protection afforded by the basic law of accretion." Presumably, this means that the Defendants may use the law of accretion to the effect that, as stated in Bosley v. Grand Lodge, supra, "the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possession may vary." 263 Md. at 319.

A complete answer is that, whether or not the distinction is to Defendants' liking, the Court of Appeals has consistently recognized that the distinction exists. Viewing the matter as an avulsion, and assuming (which Plaintiff disputes) that "avulsion" is applicable to tidal water, it is clear that the new outlet to the Creek did not affect the boundary.

Conclusion

For the reasons set forth herein, Plaintiff respectfully asks that the relief sought in its Bill of Complaint be granted.

Respectfully submitted,

John W. Sause, Jr.

/17 J. Donald Braden

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March 21, 1977

Honorable Harry E. Clark
Court House
Easton, Maryland 21601

Re: Kent Island Estates Corporation, Inc. vs.
East Bay Colony Association
Circuit Court for Queen Anne's County
Equity No. 5766

Dear Judge Clark:

We filed a trial memorandum at the time of the hearing on the merits which reviewed the law applicable to the case. We did not, of course, review all of the evidence because it had not as yet been submitted.

We have received Plaintiff's memorandum and we do not propose to file a new memorandum as such; but I do wish to comment upon some of the allegations in the memorandum, particularly those which the Plaintiff says are "not disputed".

Plaintiff speaks of the "record title", particularly in paragraphs three and four, but he is confused as to the meaning of the record title.

The record shows that from the time of the Atlas of Kent County in the 1870's, the stream had been the dividing line between what was then the Benton Farm, later the Tolson Farm and now East Bay Colony Farm; and the Gibson Farm, now Kent Island Estates Corporation Farm was this stream. The first surveys on record and all subsequent surveys carry the title division line with point at the mouth of the stream. It drains another pond or lake, thence by and with the drain to said pond. (See Exhibits D, F and H - all in the Plaintiff's chain of title.) The last survey lines were in the late 40's by Metcalf. But Metcalf surveyed all "to the mouth of the stream", as did all previous descriptions and all subsequent descriptions. This was the "record title".

Plaintiff speaks in paragraph 8 of Mrs. Quant's "intent" not to deprive the owner of East Bay Colony of its property. However, the effect of the action by Mrs. Quant and her corporation was uncontradicted. When a new opening was cut, the old stream channel silted over, was closed by accretion and never reopened.

Filed March 22, 1977

The testimony is also uncontradicted that in the 50's the adjoining owners on both sides of the creek attempted to relocate the opening in approximately the middle of the sandbar across the mouth of the pond. It is strange that Mrs. Quant, in spite of her numerous visits, never saw this opening.

We are at a loss to understand the significance Plaintiff seems to place upon the Aaron deeds: Exhibit L, the deed of Aaron to AARSCO, Inc. and Exhibit M, deed from AARSCO back to Aaron and wife as tenants in common. These deeds included lots one and two in the third section of Kent Island Estates as well as the Benton Farm later conveyed to East Bay Colony Associates. There is no question in the case raised by the Plaintiff except in argument that the Aarons do not own lots one and two in the third section, which are immediately adjacent to the north of the sandbar.

In Argument Plaintiff repeats the statement that all parties agree that the subject land was owned "of record" by the Plaintiff. This is not accurate. The record title as above set forth bounded on the mouth of the stream. This is the "record title", and the Defendants have never conceded that the Plaintiff owns the property in question. The Plaintiff seeks to rely upon the temporary location of this stream shown by one survey, made 30 years prior to this litigation as distinguished from all other evidence of where the stream bed may have been located at various times. There is no dispute that the stream from earliest time known has been and we submit still is the boundary between the properties. This is clear from every instrument of title and every agreement and every survey in the entire history.

The Plaintiff argues that the removal of this boundary stream from one location to another by the action of the Plaintiff should have no more significance to change the title than the moving of a fence. If a fence were a boundary fence called for in the deeds of the parties, and one party moved it without the knowledge and consent of the other party, and a purchaser from the other party, relying upon the physical location of the fence called for in the deeds, we would be in a situation comparable to the present. It is the moving of a monumental boundary call by one party without the consent or the knowledge of the other, and the sale by that ignorant party's property to a third party that changes the boundary as a matter of law and creates rights by estoppel.

Plaintiff argues that there are no rights acquired by the Defendants by accretion. The photograph showing the shoreline southerly from the present stream channel opening shows an uninterrupted, unbroken shoreline which has been filled by the regular action of the water and the waves by gradual accretion. Where is the line on this unbroken shoreline to be placed if the Defendant acquired nothing by accretion. What should the Court do in the exercise of the equitable power to apportion accreted land?

The action of the Plaintiff in relocating the opening had the natural, gradual imperceptible effect of closing the old channel and building up a solid bar on the water line boundary of the Defendant's land. The surveyor called to make a survey by the purchaser and the purchaser's mortgagee in order to remove the typical title policy exception as to "any discrepancies in boundaries which would be shown by a modern survey", made his survey, followed the monumental call which historically had been the boundary - the stream. The surveyor relied upon established principles of surveying, and the purchaser, the purchaser's mortgagee, and the purchaser's title company relied upon a survey showing the present monumental boundaries of the property without knowledge that those boundaries had been changed by the Plaintiff's action.

Plaintiff argues that none of the Defendants relied upon anything "done" by the Plaintiff, and therefore an estoppel cannot apply. The uncontradicted testimony is that the surveyor relied upon the physical condition created as a result of the Plaintiff's action; the Defendants, both purchaser and mortgagees relied upon the survey made in accordance with good surveying practices. The Plaintiff had the nerve to quote the principle applicable when the parties both have "equal" knowledge, when the evidence of the Plaintiff shows that the Defendants had no knowledge of the Plaintiff's action in relocating the stream which was the common boundary. This action by Plaintiff resulted in the old stream being closed by accretion.

Very truly yours,

Charles C. W. Atwater

CCWA:pal

cc: William E. Dixon
John W. Sause, Jr.

KENT ISLAND ESTATES CORPORATION, INC., a Maryland corporation, Stevensville, Maryland 21666

Complainant

v.

EAST BAY COLONY ASSOCIATES, a limited partnership
Serve on:
WILLIAM E. DIXON, partner
650 Ritchie Highway
Severna Park,
Anne Arundel County,
Maryland 21146

SAMUEL J. AARON
416 North Charles Street
Baltimore, Maryland 21201

REBECCA AARON
416 North Charles Street
Baltimore, Maryland 21201

MARYLAND NATIONAL REALTY INVESTORS, INC., a Maryland Corporation
Serve on:
JOHN M. NELSON, III
Resident Agent,
10 Light Street
Baltimore, Maryland 21202

JOHN M. NELSON, III, Trustee
10 Light Street
Baltimore, Maryland 21202

WILLIAM T. DEFINE, Trustee
10 Light Street
Baltimore, Maryland 21202

Respondents

IN THE CIRCUIT COURT

FOR QUEEN ANNE'S COUNTY

CHANCERY NO. 5766

: : : : : : : : : :

D E C I S I O N

This controversy arises out of a dispute over the location of the division line between the property of the Complainant, Kent Island Estates Corporation, Inc., a Maryland corporation, and that of the Respondent, East Bay Colony Associates, a limited partnership. The adjoining properties are now

known as Kent Island Estates, Section 3 (a part of what was formerly known as the Gibson, Moore or Cook farm) and hereinafter referred to as Kent Island Estates, and East Bay Colony (formerly known as the Benton or Tolson farm). They are separated by the waters of Tolson Creek and an inlet from the Chesapeake Bay to Tolson Creek and are located along the Bay front of Kent Island in the Fourth Election District of Queen Anne's County, Maryland.

The Complainant has asked this Court to decree that it has absolute ownership and right to dispose of the property the title to which is in dispute, to remove from its title the cloud of the Respondents' claims and to enjoin them, or any of them, from asserting any claims against, or with respect to the property in dispute by any action at law or otherwise.

The other Respondents are joined herein solely because Mr. and Mrs. Aaron have a purchase money mortgage on the Benton farm and Messrs. Nelson and Devine and the Maryland National Realty Investors, Inc. are trustees and beneficiary, respectively, of a Deed of Trust on said farm given to secure the payment of part of the purchase money advanced to East Bay Colony Associates to enable them to purchase said farm.

FACTS

The facts in this case are virtually undisputed and may be summarized as follows:

The Complainant acquired title to its property, which adjoins that of the Respondents, by a deed from the Romancoke Holding Company dated June 27, 1969, and recorded in Queen Anne's County Land Record Liber C.W.C. No. 42, folio 403 (Exhibit A). Exclusive of lot sales made by them to private individuals not here involved, the Plaintiff and its predecessors in title have had record title to that tract now known as Kent Island Estates, Section 3, from March 1950 up to the present time (Exhibits

A through F).

The Respondent, East Bay Colony Associates, acquired title to the land adjoining the Complainant's land, hereinbefore described, by deed from Samuel J. Aaron and Rebecca Aaron, his wife, dated September 11, 1973, and recorded in Queen Anne's County Land Record Liber C.W.C. No. 77, folio 560 (Exhibit G). This property, variously known as the Benton or Tolson farm and now as East Bay Colony, was still being cultivated as a farm when the Court viewed it last year. From 1949 to date, the Respondent, East Bay Colony Associates, and their predecessors in title had record title to said farm (Exhibits H through M) but had no record title to the hereinafter described property that is the subject of this dispute. Prior to taking title to the Benton farm or Tolson farm in 1973, East Bay Colony Associates had this farm surveyed by Frederick Ward Associates and, in the course of making this survey (Stipulated Exhibit Q), the surveyor, in establishing the Northerly boundary of the property, followed the Southerly boundary of Tolson Creek to the mid-channel line of the new inlet made by the Complainant to the waters of the Chesapeake Bay, instead of following the mid-channel line of the old inlet, which had been formed by the forces of nature and followed by J.B. Metcalfe, a respected and experienced local land surveyor, when he made separate surveys of both farms in 1948 and 1950 (Exhibits H, I & C).

The area which is the subject of this dispute is a part of Kent Island Estates not included within the lots into which the bulk of the tract was sub-divided. As a matter of fact, this area is bound on the North by an extension of the Southerly line (being S. 52° 5' E.) of Lot 1, Block B, Kent Island Estates, Section 3, until it intersects the Northwesterly line of Lot 55, Block Y in said subdivision as shown on the plat identified as Exhibit E, on the East by the waters of Tolson

Creek and the Southwesterly corner of said Lot 55, on the South by the mid-channel line of the old inlet from the Bay to Tolson Creek (but which is now plugged at its Westerly end by the forces of nature), and on the West by the waters of the Chesapeake Bay.-- See Exhibit E.

Prior to the Ward survey of 1973, the record titles to both properties were entirely consistent and compatible with each other. This is quite evident when the documents in the Complainant's chain of title (Exhibits A through F) are compared with those in the Respondents' chain of title (Exhibits H through M).

The differences in location of the division line between the two properties as established by Metcalfe when he surveyed the Benton farm in 1948 and the Gibson farm a year or two later and as established by Ward, when surveying the Benton farm in 1973, is graphically depicted on the plat of the same made by William R. Nuttle, a local, registered, land surveyor, last fall and identified as agreed Exhibit R. This difference in the location of subject division line is due in some, small part to the operation of the forces of nature over the past quarter of century, but for the most part it is due to the fact that Ward elected to use the new inlet created by the Complainant in 1970, rather than the old inlet created by the forces of nature, as the Northwesterly corner of the Benton farm. As a result thereof, we have East Bay Colony Associates claiming title to the middle of the channel of the new inlet, the location of which inlet is depicted on aerial photographs identified as Complainants' Exhibit 1, and Defendants' Exhibits 2 and 3. Furthermore, since this litigation was instituted, we now find that the Aarons are claiming title to all of the land lying Northward of and between the center of the channel to the new inlet and the said Southerly line (being S. 52° 05' E.) of Lot 1, Block B, Kent Island Estates, Section 3,

extended to its point of intersection with the Northwesterly line of Lot 55 in Block Y of said subdivision. The Aarons claim the peninsula North of the new inlet on the premise that at one time it was below mean high water, but over the years emerged as fast land accreting in the process to them as the owners of the Benton farm and Lots 1 and 2 in Block B in Kent Island Estates, Section 3.

In 1960, Reginald Jones, a local clammer, who is now a real estate broker, observed a clam boat passing through the old inlet during a high tide when there was about two to two and a half feet of water in its channel. However, he observed three days later that the Westerly or Bay shore end of the old inlet had closed up. He was clamming off shore at the time. He went on to testify that from the time he started clamming in 1957 to the present he has never known of anyone attempting to open up the old inlet.

In 1955, the Respondent Samuel J. Aaron and one David M. Nichols, who was then one of the principal owners of Kent Island Estates through one of his various corporations, reached an agreement to dynamite a new outlet to the Bay through the narrowest part of the peninsula forming the Westerly boundary of Tolson Creek (i.e., the subject property). This was done in the summer of 1955 with each contributing $750.00 to the cost thereof. The purpose of creating this new inlet was to make the Bay accessible to the owners of lots in Kent Island Estates. (Defendants' Exhibits 4, 5, 6 and 7). But, it turned out to be an exercise in futility, as the cut filled up almost immediately and no boats ever traversed it, according to the testimony of Mr. Aaron.

However, in 1970 Mr. Quandt, the then president and principal owner of Kent Island Estates Corporation, Inc., Com-

plainant herein, had more success when he had a new channel dredged through this peninsula. One Tony Moore, a local drag line operator, who did the dredging, testified that he dredged the channel through the narrowest part of the peninsula to a depth of eight or nine feet and deposited the spoil from this dredging operation on both sides of the channel. He stated it was cheaper to do this than to dredge out the old drain or inlet because he could go in a straight line.

Quandt also engaged a small contractor, Robert E. Snyder, who was born on Kent Island, to spread the spoil Moore had dredged and to dump rip rap and large sections or chunks of concrete along the Bay side of the peninsula, as well as to place rip rap along both sides of the new inlet, to check erosion. Snyder testified that he did all of this except that he did not spread any of the spoil that had been deposited on the South side of the new inlet. For a graphic description of how the rip rap and sections of concrete were deposited along the Bay shore of subject property and sides of the new inlet, see Defendants' Exhibits 1-A, 1-B, 1-C, 8 and 9 and Comp. Exhibits 8-A, 8-B and 8-C. It might be well to note that the Aarons' home located on said Lots 1 and 2 in Block B of the aforesaid subdivision is shown as the first white house one sees when looking North on Defendants' Exhibit 9. It also should be noted that when the Court viewed subject property in company with counsel for all parties, we observed that the channel to the new inlet has filled in to a considerable extent. One witness, John C. Mullen, who visited it in May of 1976 stated that the depth of the channel at that time was only 1.7 feet.

Mr. Quandt embarked upon opening this new channel not only to make the Bay accessible to the owners of lots in Kent Island Estates but because he planned to construct and operate a

small marina on subject property. However, Mr. Quandt's plans for a marina were no longer viable after the enactment of the Maryland Wetlands Act in 1970.

The key witness for the Complainant was its expert, John C. Mullen. Mr. Mullen was accepted by the Court as an expert in the field of geology and certain sub-specialties thereof such as sedimentology (the science of describing, classifying and interpreting sediments and computing geologic time therefrom), geomorphology (the science of classifying and delineating coastal, glacial and arid land forms), and photogrammetry (the use of photography in surveying, map-making from photographs and interpretation of aerial and satellite photographs through the employment of steroscopes and other optical instruments). Indeed, not only were Mr. Mullen's academic credentials impressive, but coincidentally he has for the last three years been working on a land development project for a client of his employer (E. D'Appolonia Consulting Engineers, Inc. of Pittsburg, Pennsylvania) located just North of Kent Island Estates and thus is quite familiar with many aspects of the geological development of Kent Island.

After studying and considering a number of charts, maps and aerial photographs dating from 1877 to 1976 (Plaintiff's Exhibit 1 through 6 and Defendants' Exhibits S and T) and after having made a personal inspection of subject area, Mr. Mullen reached the following conclusions, with which the Court is in complete accord:

a. That subject property, i.e., the peninsula hereinbefore described, has been fast land since sometime prior to 1933, which is to say that it has been above mean high water and not subject to the ebb and flow of average tides for at least the past forty-five years. Furthermore, this land form has been attached to the Kent Island Estates tract since sometime prior to

1933, has not substantially changed its position or location since that date and has not substantially changed its shape until 1970 when the new inlet was cut through it.

b. This land form was formed by the action of a strong seasonal current running from North to South in the Chesapeake Bay parallel to the Western Shore of Kent Island. This current is the dominant environmental or ecological force in the Kent Island area and has caused the closing of other creeks located along the Eastern Shore of the Chesapeake Bay, which in the past were accessible to the Bay by typical bay craft. Likewise, it is also responsible for the seasonal plugging of the little inlets that lead from these creeks into the Bay.

c. The old inlet is the only natural drain for the waters of Tolson Creek to the Chesapeake Bay and has served as such ever since the mouth of this creek was closed sometime between 1877 and 1933. However, it is the type of drain that opens and closes at different times depending on the character of the environmental or ecological conditions prevailing. For instance, at times when precipitation was heavy and frequent, the foliage sparce along the banks of Tolson Creek and its drain and the influence of the aforesaid current at a minimum, the impounded waters of Tolson Creek would reach such an elevation as would cause them to overflow into the Bay through the channel of the old inlet. This would open up and clean out this channel, after which the old inlet would become navigable at least for small craft until it was again plugged by the action of the aforesaid current. This was borne out by the testimony of Ruby C. Quandt and the aforesaid Tony Moore. Mrs. Quandt, who is the widow of the late Mr. Quandt and now the principal owner of the complainant corporation, testified that she was down to the old inlet in the early 1950s and found it to be open and six feet wide.

She did not know how deep the water was but was afraid to attempt to ford it even on a log. Mr. Moore testified that the wind usually blows from the North or Northwest all winter and plugs the little inlets, which are opened in the Spring by the heavy Spring rains and change in wind direction to the South.

c. That when the new inlet was opened, it took pressure off the old inlet so that its plug will probably not be broken again unless and until the new inlet is plugged. Mr. Mullen is supported in this conclusion by Mr. Tony Moore who testified that the effect of the new inlet was to prevent the old inlet from opening up.

d. The bed or course of the channel to the old inlet from its Easterly end to the point where it was plugged is still discoverable by ground observation as Mr. Mullen had no difficulty in locating it when he inspected subject area in May of 1976. He testified that although it was dry for the most part of its length, it had clearly defined banks and was filled with water at its Easterly end.

The said Ruby C. Quandt has lived in Section 1 of Kent Island Estates for the past twenty-six years, sold lots for the aforementioned David M. Nichols in Kent Island Estates from 1950 to 1959, after which she had the exclusive listing for all unsold lots in Section 3 of Kent Island Estates. In 1969, she and her husband, through their corporation, the said Kent Island Estates Corporation, Inc., purchased from the Romancoke Holding Company all the property that corporation owned on Kent Island. Her husband died April 23, 1975. Mrs. Quandt testified that the peninsula or bar, which we have designated as the subject property, was used as a private beach during the 1950s by the late Judge Michael Paul Smith, who was the principal owner of the Romancoke Holding Company, has always been used as a private

beach and never was intended for the use of, or permitted to be used by, the community.

The aforesaid Reginald Jones testified that when the aforesaid Samuel J. Aaron put a fence along the Southerly boundary of Lot 1 in Block B. of Kent Island Estates, Section 3 and across the road to the beach (subject property), he and Mr. Quandt pulled the fence up so they could get to the beach. This road has been kept open ever since and was open when the Court viewed subject property last year. It should be noted that when the Complainant corporation conveyed all of the roads, roadways, alleys and streets in the first, second and third sections of the sub-division known as Kent Island Estates to Kent Island Estates Road Construction and Maintenance Association, Inc. by deed and agreement dated January 20, 1970, and recorded in Queen Anne's County Land Record Liber No. 45, folio 640 (Comp. Exhibit 10), it expressly reserved from said conveyance the roadway or street known as Bay Drive, which lies South of an extension of the Southerly line of Lot 1, Block B, being S. 52° 05' E., until it intersects the Northwesterly line of Lot 55, Block Y, 3rd Section, Kent Island Estates. The short of it is that the Complainant herein and its aforesaid predecessors in title have always exercised exclusive dominion over the property that is the subject of this controversy under the belief that they had a good, merchantable and unencumbered fee simple title thereto.

Mrs. Quandt, an officer and director of the Complainant herein at all pertinent times, and now its president, testified that there was never any intention to deprive the owners of the Benton farm of their riparian rights in any way whatsoever or in any way to limit them in the enjoyment of their property and Tolson Creek. No evidence was adduced to show that these rights have in any way been adversely affected or abridged by the crea-

tion of a new inlet through subject property.

J. Tilghman Downey, Jr., a land surveyor and civil engineer associated with the aforesaid Fred Ward Associates, was in charge of and conducted the survey of the Benton farm at the time it was acquired by East Bay Colony Associates. Mr. Downey testified that when he made the survey, the old inlet was closed so he used the new inlet as the Northwest boundary of the Benton farm. He further testified that in making this survey he relied upon the deed and agreement between the Kent Island Holding Company, Inc. and Chesapeake Bay Corporation, dated October 25, 1950, and recorded in Queen Anne's County Land Record Liber N.B.W. No. 7, folio 564 (Exhibit D), Metcalfe's Certificate of the survey he made of the Benton farm in August of 1948 (Exhibit H), and upon the deed from David M. Nichols et ux to Samuel J. Aaron et ux dated September 28, 1948, and recorded in Queen Anne's County Land Record Liber N.B.W. No. 2, folio 4 (Exhibit K).

ISSUES

Prior to the trial, counsel for all parties submitted to the Court five issues which they agreed would be generated by the evidence that would be adduced at the trial. However, when the trial concluded, the only issues that survived were issues one and five, which are as follows:

1. From the standpoint of both legal and equitable title, including estoppel, what is the legal effect of the Complainant cutting a channel through the subject area in 1970 and 1971 with respect to:

   a-Ownership by the Complainant of the part of the subject area south of such channel; and

   b-Acquisition of title by East Bay Colony in 1973, after such cut was made; and

   c-The effect on acquisition of title by East Bay Colony in 1973, after such cut was made

if (as contended by the Respondent, but denied by the Complainant) such new channel thereafter represented the only useable entrance to Tolson's Creek?

5. Did Aaron and wife convey any part of the subject area to East Bay Colony Associates by Exhibit G?

RESOLUTION OF ISSUES

After having carefully considered all of the evidence and the arguments of counsel, both oral and written, the Court is of the firm opinion that all of the issues in this case must be resolved in favor of the Complainant for the reasons set forth in counsel for the Complainant's very persuasive Memorandum, which Memorandum the Court adopts as part of its Opinion by attaching hereto an exact copy thereof designated "Appendix A" and incorporating the same herein by reference.

Therefore, in answer to Issue 1-a, the Court holds that the ownership by the Complainant of that part of subject area that lies between the old and new channels or inlets was not in any way affected by the Complainant cutting a new channel through subject area in 1970 and 1971.

In answer to Issue 1-b, the Court holds that the acquisition of the Benton farm by East Bay Colony Associates in 1973 did not change its boundary between Tolson Creek and the Chesapeake Bay, which we hold still runs along the center of the channel of the old inlet as mentioned and described in the preceeding deeds to and surveys of said Benton farm.

Answering Issue 1-c, the Court holds that there was no navigable channel between Tolson Creek and the Chesapeake Bay from sometime prior to 1933 until 1970 when the Complainant opened up the new inlet or channel through its property. Certainly the evidence in this case makes it absolutely clear that the old inlet was only navigable on rare occasions and then only by

small craft. It can no more be considered a navigable body of water than a town street which, due to bad drainage floods occasionally to such an extent that it can be navigated for a while by small craft. However, since the Complainant did open a navigable channel through its property in 1970 connecting Tolson Creek with the Chesapeake Bay, we are of the opinion that it must allow East Bay Colony Associates and its successors, heirs and assigns the right to use this inlet for the purpose of going to and from the Bay by boat for as long as the same is navigable; but, has no duty or obligation to keep the new inlet open to navigation.

The answer to Issue No. 5 is "No".

Consequently, the sum and substance of my decision may be said to be that the cutting of the new channel by the Complainant through its property did nothing to change the boundaries thereof or to impair or abridge the riparian rights of the Respondents in any way whatsoever; but that once having elected to open this new channel through its property the Complainant is not now in a position to prevent the Respondents, their heirs, successors and assigns, from utilizing the same to get from Tolson Creek to the Chesapeak Bay by boat and vice versa, with the understanding that the Complainant is under no duty to keep said inlet open to navigation.

* * * * * * *

For the reasons hereinbefore cited, it is this 15th day of September, 1977, by the Circuit Court for Queen Anne's County, in Equity, ADJUDGED, ORDERED AND DECREED that:

A. The claims of the Respondents herein to any part of that peninsula bound on the North by the Southerly line or boundary (being South 52° 05' East) of Lot 1 in Block B of Kent

Island Estates, Section 3, extended to the Northwesterly boundary of Lot 55 in Block Y in said subdivision, on the East by the waters of Tolson Creek, on the South by the center of the channel of the old inlet and on the West by the waters of the Chesapeake Bay are entirely without merit.

B. Insofar as the claims of Respondents herein are concerned, the Complainant has a good and merchantible fee simple title absolute in and to the above described subject area.

C. Respondents herein, their heirs, successors or assigns, or any of them, are hereby enjoined from asserting any claims against, or with respect to the above described area by any action at law or otherwise.

D. The cost of these proceedings shall be borne by the Respondents; and the Clerk of this Court is hereby directed to forthwith make and deliver copies of this Decision (except Appendix A attached thereto) to counsel of record for the parties.

Harry E. Clark

HARRY E. CLARK, JUDGE

Appendix A

KENT ISLAND ESTATES CORPORATION, INC.	:	IN THE
	:	CIRCUIT COURT
Complainant	:	FOR
vs.	:	QUEEN ANNE'S COUNTY
EAST BAY COLONY ASSOCIATES, et al.	:	Equity No. 5766
Respondents	:	

: : : : : : : :

PLAINTIFF'S MEMORANDUM

The facts in the case are virtually undisputed and may accurately be summarized as follows:

1. Exclusive of lot sales made by them to private individuals not here involved, the Plaintiff and its predecessors in title have had record title to the tract which came to be known as "Kent Island Estates, Section 3" (hereafter "Kent Island Estates") from March 1950 up to the present time (Exhibits A through F).

2. The area which is the subject of this dispute was a part of Kent Island Estates but was not included within the lots into which the bulk of the tract was subdivided (Exhibit E).

3. Between 1949 and 1973, the Defendants and their predecessors in title had record title to the tract which became known as East Bay Colony, formerly the Tolson farm (hereafter "East Bay Colony"), but had no record title to the subject part of Kent Island Estates (Exhibits H through M).

4. Prior to 1973, the record title of the Kent Island Estates tract was entirely consistent with the record title of the East Bay colony tract. Indeed, the record title of both tracts was based upon separate surveys by the same surveyor. This can be seen by a comparison of the deeds in the Plaintiff's chain of title (Exhibits A through F) with the deeds in the Defendants' chain of title (Exhibits H through M), but is also manifest from the graphic comparison of the boundary line between the two properties made by William R. Nuttle and introduced as

Filed March 2, 1977

agreed Exhibit R.

5. At least since 1933, the subject area of Kent Island Estates has been fast land, not subject to the ebb and flow of the tide, and attached to and part of the Kent Island Estates tract. Based upon photographic evidence dating back to 1933 (T.55) and his knowledge and training as an expert, John Mullen testified that (T.56):

> Based on the knowledge of the photographs we have [it] is my opinion that the ground has been continuous from the northern piece of property on down to the old natural outlet, if I can use that term, for that period . . . . It was above mean high water.

Again, at T.99:

> . . . it was obvious to me going through the exhibits in their preparation, that major changes had not occurred except up to the point at which the new inlet was installed [in 1970]. Other than that, the land form has the same shape. It is in roughly the same position right now as it was in 1933 or 1937.

6. The undisputed testimony of Ruby C. Quandt and Reginald Jones established that the area in question had been used and regarded by the Plaintiff and its predecessors in title during the entire period as a part of Kent Island Estates.

7. The undisputed testimony of Robert Snyder and Tony Moore established that in 1970, the Plaintiff had attempted to open up the creek for use by small boats and that the location selected for the new outlet was that which would involve the least time and expense and would be entirely upon Plaintiff's property.

8. Mrs. Quandt, at all times an officer and director of Plaintiff, testified without dispute that there was no intention to deprive or affect the owner of the East Bay Colony property in its use of that property, or of Tolson's Creek. In addition, the Defendants' offered no testimony whatsoever that they had been deprived or affected in their use of the Creek.

9. Defendant Aaron testified that in the 1950's, a similar but singularly unsuccessful attempt had been made to open up Tolson's Creek in the same general vicinity as that used by

the Plaintiff in 1970. This attempt was so abortive that Mrs. Quandt, who testified to frequent visits to the property, does not recall having seen it. No evidence of any present trace of this opening was submitted by any party.

Questions Presented

Prior to trial, counsel framed and submitted to the Chancellor five "Agreed Issues." These were based upon what counsel, in preliminary conferences, believed would be raised by the evidence presented at trial.

At the trial, no evidence was presented with respect to the Deed of September 30, 1951, which pertained to the so-called Aaron lots in the Kent Island Estates subdivision and was the basis for Agreed Issues #2 and #3. Because that deed was not introduced in evidence and in the absence of other evidence regarding it or the lots which it involved, there is now no "issue"--indeed, there is no basis for a finding one way or the other--with respect to riparian rights acquired by the owner of the Aaron lots, or with respect to "accretion" to those lots. The short of the matter is that Agreed Issues #2 and #3 do not exist as issues in the context of the case as ultimately presented to this Court.

Similarly, Issue #4 involved the question of whether Aaron and wife had acquired any interest in the subject part of Kent Island Estates "by adverse possession." There was no evidence in the testimony of Defendant Aaron, in the testimony of any other witness, or from any exhibit which would permit the conclusion that Mr. and Mrs. Aaron acquired adverse possession in the subject area--or, for that matter, in any other area. Issue #4 did not materialize.

With the possible exception of the overall general question posed by Agreed Issue #5 ("Did Aaron and wife convey any part of the subject area to East Bay Colony Associates by Exhibit

G?"), the only issue in the case is that framed by counsel as #1:

> From the standpoint of both legal and equitable title, including estoppel, what is the legal effect of the Complainant cutting a channel through the subject area in 1970 and 1971 with respect to:
>
> a-Ownership by the Complainant of the part of the subject area south of such channel;
>
> b-Acquisition of title by East Bay Colony [Associates] in 1973, after such cut was made; and
>
> c-The effect on acquisition of title by East Bay Colony [Associates] in 1973, after such cut was made if (as contended by the Respondent, but denied by the Com plainant) such new channel thereafter represented the only useable entrance to Tolson's Creek?

Argument

In some respects, it is easier to state what this case does not involve than what it does. It does not involve a conveyance of the subject land, which all parties agree was owned of record by the Plaintiff. It does not involve an agreement between the parties to convey that land; rather, the evidence discloses that there was no contact between the parties until after Defendants for the first time recorded conveyances in 1973 by which they claimed lands then and for years previously owned of record by the Plaintiff and its predecessors in title.

The Defendants claim under no instrument or agreement. Their "title" rests solely upon the creation by the Plaintiff--upon and across land then solely owned by it of record, upon and across land outside the bounds of Defendants' then-recorded title--of a new outlet to Tolson Creek. The sum and substance of Defendants' arguments is that this action of the Plaintiff, on its own property, divested it of title to part of that property and transferred it, without solemnization of deed or agreement, to the Defendants.

If the construction had been in another form, for instance a dwelling or even a fence, Defendants would hardly claim a similar result. We submit that the construction of the new outlet to Tolson Creek was no different in kind or quality and

that the law recognizes no such distinction.

Perhaps the closest analogy is to what in effect happened here--the creation of an "island" bounded by the Bay, the Creek, the old inlet and the new inlet. In such a case, says Professor Tiffany flatly (2 Tiffany, Real Property (2nd eidtion) §544:

> An island which is formed, not by deposit or increase of alluvial matter, but by a change in the course of a river, operating to cut off from the mainland a portion of land previously constituting a part of the mainland, continues in the same ownership as before.

See also §538 for the rule that this principle is not subject distinction on the basis that the change was artificial rather than natural.

When the Plaintiff cut a new inlet between Chesapeake Bay and Tolson Creek in 1970, this did no more to transfer its fee simple title to an adjoining landowner than did the cutting of the Chesapeake and Delaware Canal operate to transfer to Delaware the lands lying on the southeasterly side of the new waterway. Defendants reach a different result only by what we respectfully submit is a tortured application of inapplicable principles of real property law, and particularly those relating to riparian rights.

I. DEFENDANTS ACQUIRED NO RIGHTS WHATSOEVER BY "ACCRETION."

Defendants make no pretense that Aaron had any record title in the subject area to convey to East Bay Colony by Exhibit G. Rather they state flatly, at page 4 of their Trial Memorandum, that "The doctrine by which the Defendants must own the land bounding Tolson Creek is that of accretion."

At the outset, it should be noted that this is a different "accretion" than that referred to in abandoned Issue #3. The "accretion" referred to in the Trial Memorandum is to the East Bay Colony tract--not to the Aaron lots in Kent Island Estates.

The difficulty here is that there is no evidence whatsoever of any "accretion" as that term is legally defined: "any increase of soil formed by the waters gradually or imperceptibly receding, or by alluvion in the same manner." Melvin v. Schlessinger, 138 Md. 337, 341. In B. & O. R. R. Co. v. Chase, 43 Md. 23, 34, it is said that:

> By the common law it is well settled, that where land lies adjacent or contiguous to a navigable river, in which there is an ebb and flow of the tide, any increase of soil formed by the gradual and imperceptible recession of the waters, or any gain by the gradual and imperceptible formation of what is called alluvion, from the action of the water in washing it against the fast land of the shore, and there becoming fixed as part of the land itself, shall belong to the proprietor of the adjacent or contiguous land. [Emphasis in original]

We respectfully submit that "accretion" has no place in this case for two reasons: (1) because the change did not come about "by gradual and imperceptible recession" and (2) more importantly, because the soil of the disputed area was not created or exposed by "recession" of any kind.

(a) "Gradual and imperceptible"

Defendants all but concede that there was no "gradual and imperceptible recession." Quoting Bosley v. Grand Lodge, 263 Md. 303, 319, Defendants say that "Plaintiff's act (over a six-month period) of artificially moving the stream bed (a change by avulsion) would preclude the Defendants from obtaining the protection of the above rule [relating to accretion]."

The testimony was both undisputed and unequivocal that the change in the new outlet to Tolson's Creek was anything but "gradual and imperceptible." It was the result of the efforts of the Plaintiff, through Tony Moore and Robert Snyder (and their heavy equipment) which caused a change which was both immediate and perceptible. Agreed Fact #8 ("In the summer of 1970 and 1971, the Complainant cut a channel through the then-existing bar from the Chesapeake Bay to Tolson Creek") is amply supported--and in no way contradicted--by the evidence offered by all parties.

(b) Absence of "recession"

The important point, however, is that the land in dispute was not formed by a "recession" of any kind. The Plaintiff's expert witness testified flatly that, at least since 1933 (T.55), "the ground has been continuous from the northern piece of property on down to the old natural outlet . . . . It was above mean high water" (T.56). And, at T.99, he said ". . . the land form . . . is in roughly the same position right now as it was in 1933 or 1937." The eyewitnesses presented by the Plaintiff were unanimous in their testimony that the subject area was at all times in existence as fast land.

Defendants in their first argument rely primarily upon Bonelli Cattle Company v. Arizona, 414 U.S. 313. Their reliance is misplaced. As they indicate, the question viewed there by the Supreme Court involved "title to land abandoned by the stream of the Colorado River as a result of a federal rechanneling project [emphasis supplied]." 414 U.S. at 314-315. The holding was that "ownership of the subject land is governed by federal law, and that the land surfaced by the narrowing of the river channel belongs, not to the State as owner of the riverbed, but to Bonelli as riparian owner [emphasis supplied]." 414 U.S. at 317.

We deal in this case not with "land abandoned by the stream" or "land surfaced." We deal here with land which at all times covered by the evidence was fast land owned of record by the Plaintiff and its predecessors in title.

(c) Alluvion

Defendants do not refer in their Trial Memorandum to "alluvion"--seen in the earlier-cited cases as the alter ego of accretion. Said the Court of Appeals in Linthicum v. Coan, 64 Md. 439, 454: "the leading characteristic of alluvion is the gradual and imperceptible extension of the land from the shore into the water."

What is said before with respect to the facts of the

instant case thus applies equally to "alluvion." There was no "gradual and imperceptible" extension of land. There was no "extension" of land at all. The land in dispute had always been there. It was not made or created, directly or indirectly, by the Plaintiff--or by nature.

II. THERE IS NO BASIS FOR THE APPLICATION OF THE DOCTRINE OF "ESTOPPEL": AND, IF THERE WERE, DEFENDANTS WOULD BE UNABLE TO ASSERT IT.

Defendants point in their second argument to Plaintiff's "permitting the Defendant [sic] to rely to its detriment on the new stream course as the boundary between the parcels." Citing most general language in 10 M.L.E. "Estoppel" §21, Defendants assert that Plaintiff "is equitably estopped to now entertain an ownership of lands contrary to that which it allowed <u>and encouraged</u> the Defendant [sic] to perceive in 1971 (emphasis supplied)."

Confusingly, Defendants concede (page 11) that "Kent Island Estates in the present case has never assured East Bay Colony that it did not claim the lands sought in this proceeding." Indeed it did not!

Again, the facts are undisputed. None of the Defendants relied upon anything done by the Plaintiff. Defendants' surveyor testified that in 1973, he reported a discrepancy in the Bay frontage called for in the deeds to Aaron and that which resulted from running the boundary to the new outlet. It is conceded that there was nothing in the land records to explain this change. It is conceded, and apparent from visual inspection of the property, that traces of the old outlet were (and are) apparent at the places where the deed course would have terminated. There is not even an intimation that the Defendants sought clarification from the Plaintiff.

The conclusion is inescapable that the Defendants were "mislead" about their ownership of valuable Bay frontage to the

degree that they wanted to be mislead. That was a gift horse into whose teeth they did not care to gaze too long.

In Oklahoma v. Texas, 268 U.S. 252, the Supreme Court had before it a remarkably similar set of circumstances. It held, at 257-258, that there was no estoppel present:

> The master conceded, and we agree with him . . . that the Durfee Company and its predecessors in purchasing did not in fact rely upon the Specht and Roberts plats or any statement of Roberts, but upon a report made by their attorneys based on the record title, including the field notes; and that the alleged statement by Roberts to them, if made, was made after they had gone into possession and paid the purchase price. In this situation, the asserted estoppel must fail. Only where conduct or statements are calculated to mislead a party and are acted upon by him in good faith to his prejudice can he invoke them as a basis of such an estoppel. And if they relate to the title of real property where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.

Here there were no statements by the Plaintiff--only the field notes of the surveyor (which disclosed the discrepancy) and the "report made by their attorneys based on the record title."

Defendants assert, somewhat weakly, that after constructing the new channel solely on Plaintiff's own land, Plaintiff "made no attempt to notify the Defendant or its predecessor that the stream no longer, to its view, comprised the boundary between the properties." Presumably the "stream" of which the Defendants speak is the new outlet; and the short answer is that the Plaintiff never regarded the new outlet (or "stream") as a boundary of its property; it could not have been expected to notify the Defendants that it did.

The point is, however, that the Plaintiff's claims rested not only upon its recorded deeds, but the knowledge imputed by the recorded deeds in Defendants' chain of title, up to 1973. When it received notice that Defendants were setting up a claim to lands not formerly within their title, but within Plaintiff record title, Plaintiff acted promptly to notify both the surveyor and the principal partner of East Bay Colony Associates--as both of them admitted on cross-examination.

Prior silence by the Plaintiff as to its rights of record does not create an estoppel, even if it had dreamed that Defendants would attempt to usurp that title. Klein v. Dove, 205 Md. 285, 295-296; Cityco Realty Co. v. Slaysman, 160 Md. 357, 363-364; Sachs & Sons v. Ward, 182 Md. 385, 395; Oberheim v. Reeside, 116 Md. 265, 276; Frazee v. Frazee, 79 Md. 27, 30. See also, 10 M.L.E. "Estoppel" §49. All of these authorities are fully in accord with the Supreme Court's decision in Oklahoma v. Texas, supra.

Moreover, estoppel may not be invoked where means of knowledge of the true state of the title is equally available to both parties. Cityco Realty Co. v. Slaysman, supra, at 363; Park Association v. Shartzer, 83 Md. 10, 13-14; Schaidt v. Blane, 66 Md. 141, 148; Casey v. Inloes, 1 Gill 430, 502.

Plaintiff had no reason to assume that anyone would claim the land which it held by record title. Much less would it expect Defendants, who held under a title expressly consistent with Plaintiff's title, to do so. As said in Casey v. Inloes, supra, at 502, to cry before one was hurt under such circumstances "would have been an act of supererogation."

Defendants not only show no basis for an estoppel; they show also that, because they had equal means of informing themselves of the true state of the title, they would not be entitled to claim it if such basis otherwise existed.

III. PLAINTIFF HAS NOT INTERFERED WITH DEFENDANTS' "RIPARIAN RIGHTS"

In their third argument, Defendants attempt to assert that Plaintiff has adversely affected their "riparian rights." To begin with, this claim is absolutely without factual foundation. There is absolutely no evidence that the new channel cuts off the East Bay Colony tract from Chesapeake Bay or in any way inhibits access between any part of the East Bay Colony tract and the Bay. It is also undisputed that the old outlet was non-

navigable, in the sense that it would not support even the smallest craft; the new outlet is if anything slightly more usable for that purpose. Officers of the Plaintiff denied in open court any interest or desire to hinder the Defendants in using the new outlet. Not one instance has been cited in which the Defendants sought, or were denied, such use.

Furthermore, the Defendants are again relying upon inapposite legal principles. The underlying premise of Defendants' argument may be absolutely and totally correct: the Plaintiff could not interfere with the riparian rights which were appurtenant to the Defendant's property, including those of accretion, reliction, and avulsion. But, that is not to say that the land which Defendants seek to claim is land subject to those rights--because in point of fact it is not. The land claimed by the Defendants is fast land for years owned in fee simple absolute by the Plaintiff and its predecessors in title.

In the context in which they assert it, the necessary and logical import of Defendants' contention is that their "riparian rights" are not simply traditional rights in submerged lands--"riparian rights" as Defendants view them embrace rights in the fast land owned in fee simple by their neighbors.

The subject area of Kent Island Estates was at all times referred to in the testimony and exhibits of this case (from 1933 to 1976), fast land, owned by the Plaintiff and its predecessors in title. No law, or principle of law, permits the Plaintiff to be disseized by works of internal improvement which it undertook within its own boundaries.

IV. TO THE EXTENT THAT ANY PRINCIPLE OF "RIPARIAN RIGHTS" IS INVOLVED HERE, THEIR APPLICATION DOES NOT ALTER OR AFFECT THE BOUNDARY BETWEEN THE PROPERTIES OF THE PARTIES.

We have earlier urged that whatever occurred on the Plaintiff's property could not, and was not, a "riparian right" of the Defendants or their property. At most, what is in-

volved here in the way of a "riparian right" is an act of what is defined by our Court of Appeals in Bosley v. Grand Lodge, supra, as an "avulsion": the situation in which "a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed." In such cases, said the Court there:

> . . . such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein.

See also to the same effect, Dept. of Natural Res. v. Ocean City, 274 Md. 1, 15.

As noted earlier, Defendants (page 5 of their Trial Memorandum) recognize that the change here was, in their words, "a change by avulsion." Yet they seek to avoid the rule that a change by avulsion "works no change of boundary" by contending that "The Plaintiffs [obviously meaning 'Defendants'?] continue to enjoy protection afforded by the basic law of accretion." Presumably, this means that the Defendants may use the law of accretion to the effect that, as stated in Bosley v. Grand Lodge, supra, "the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possession may vary." 263 Md. at 319.

A complete answer is that, whether or not the distinction is to Defendants' liking, the Court of Appeals has consistently recognized that the distinction exists. Viewing the matter as an avulsion, and assuming (which Plaintiff disputes) that "avulsion" is applicable to tidal water, it is clear that the new outlet to the Creek did not affect the boundary.

Conclusion

For the reasons set forth herein, Plaintiff respectfully asks that the relief sought in its Bill of Complaint be granted.

Respectfully submitted,

John W. Sause, Jr.

J. Donald Braden

KENT ISLAND ESTATES CORPORATION, INC.	*	IN THE
Complainant	*	CIRCUIT COURT FOR QUEEN ANNE'S COUNTY
vs	*	
EAST BAY COLONY ASSOCIATES, et al		Chancery No: 5766
Respondents	*	

* * * * *

MR. CLERK:

Please enter an appeal to the Court of Special Appeals of Maryland from the Decision dated September 15, 1977 and filed September 16, 1977 in the above entitled matter.

CHARLES C. W. ATWATER
1112 W. R. Grace Building
Baltimore, Maryland 21202
752-6254
Attorney for Defendants

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed this 11 day of October, 1977 to John W. Sause, Esquire at 204 North Commerce Street, Centreville, Maryland 21617.

CHARLES C. W. ATWATER

THE COURT OF SPECIAL APPEALS OF MARYLAND — ANNAPOLIS, MD. 21404

January 4, 1978

Charles C.W. Atwater, Esquire
1112 W.R. Grace Building
Baltimore, Maryland 21202

Re: East Bay Colony Associates, et al v. Kent Island Estates Corporation, Inc.
Chancery No. 5766
Circuit Court for Queen Anne's County

Dear Mr. Atwater:

Please be advised that on December 30, 1977 Senior Judge James C. Morton, Jr. signed an Order providing for the transmission of the record on appeal to this Court on or before January 13, 1978 in the captioned appeal.

The original petition and Order are being forwarded to the Clerk of the Circuit Court for Queen Anne's County for appropriate docket entry and inclusion in the record.

Very truly yours,

Julius A. Romano,
Clerk

JAR:shb
cc: Mr. Charles W. Cecil, Clerk (with Petition and Order)
Circuit Court for Queen Anne's County
John W. Sause, Jr., Esquire

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C.W. ATWATER
DWIGHT C. STONE

EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6254
AREA CODE 301

December 15, 1977

Ms. Sharon Braden, Clerk
Court of Special Appeals
of Maryland
Court of Appeals Building
Rowe Boulevard & Taylor Avenue
Annapolis, Maryland 21401

Re: Kent Island Estates vs.
East Bay Colony, et al
Appeal from Anne Arundel County
Circuit Court, Chancery # 5766
Petition for Extension of Time

Dear Ms. Braden:

The Petition for Extension of Time relates to an Appeal entered on October 13, 1977 from the Decision dated September 15, 1977, and filed September 16, 1977 of the Anne Arundel County Circuit Court.

I have been in touch with Mr. McGrath and he will have a letter directly to you, specifically requesting a 30 day extension of time.

Thank you for your help.

Very truly yours,

Gail Dobson

Gail D. Dobson, secretary
Charles C. Atwater

/s

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C.W. ATWATER
DWIGHT C. STONE

EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6254
AREA CODE 301

December 9, 1977

Clerk, Court of Special
Appeals of Maryland
Court of Appeals Building
Rower Boulevard & Taylor Avenue
Annapolis, Maryland 21401

Re: Appeal from Circuit Court of
Queen Anne's County, No:5766

Dear Sir:

I shall appreciate it if you would present the enclosed Motion to the Court immediately. Will you phone me when it is received by you, because I am somewhat concerned about the mail this time of the year.

Thank you for your cooperation.

Very truly yours,

Charles C.W. Atwater

CCA:gd
Enclosure

cc: John W. Sause, Esquire

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C.W. ATWATER
DWIGHT C. STONE

EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6254
AREA CODE 301

December 14, 1977

Ms. Sharon Braden, Clerk
Court of Special Appeals
of Maryland
Court of Appeals Building
Rowe Boulevard & Taylor Avenue
Annapolis, Maryland 21401

Re: Kent Island Estates vs
East Bay Colony, et al
Appeal from Anne Arundel County
Circuit Court, chancery #5766
Petition for Extension of Time

Dear Ms. Braden:

As per our telephone conversation on Monday, the 12th regarding the above, enclosed please find the following:

1. Copy of my letter notifying Anne Arundel County Circuit Court of Appeal

2. Copy of my letter to Joseph McGrath, the Court Reporter, requesting him to prepare the final transcript

3. Copy of Mr. McGrath's letter to me indicating the need for an extension of time

4. Two extra copies of the Motion and Order for Extension of Time

If there is anything further you need, please call me. I would appreciate it if you would call me when the Court grants or denies, as the case may be, the Motion.

Thank you for your cooperation and assistance.

Very truly yours,

Gail

Gail D. Dobson, secretary
Charles C.W. Atwater

FILED
DEC 15 1977
JULIUS A. ROMANO, CLERK
COURT OF SPECIAL APPEALS
OF MARYLAND

/s
Enclosures

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNE'S COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		Chancery No: 5766
	*	
Appellee		

* * * * *

MOTION AND ORDER FOR EXTENSION
OF TIME FOR FILING RECORD

TO THE HONORABLE, THE JUDGE OF SAID COURT:

East Bay Colony Associates, et al, Appellants in the above entitled matter respectfully move that this Court grant an extension of time for filing the record in this matter, and for cause for said Motion say:

1. The Appeal was filed on October 13, 1977.

2. The transcript of the testimony was promptly ordered from the court reporter, but it has not been yet filed, and it is necessary to have an extension of time for the filing for thirty (30) days.

Respectfully submitted:

Charles C.W. Atwater
1112 W.R. Grace Building
Baltimore, MD 21202
(301) 752-6254
Attorney for Appellants

I HEREBY CERTIFY that on this 9 day of December, 1977 a copy of the foregoing Motion and Order for Extension of Time were mailed to John W. Sause, Esquire at 204 North Commerce Street, Centreville, Maryland 21617, attorney for Appellees.

Charles C.W. Atwater

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNE'S COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		Chancery No: 5766
	*	
Appellee		

* * * * *

O R D E R

Upon the foregoing Motion for Extension of Time to File Record, it is this 30TH day of December, 1977 by the Court of Special Appeals of Maryland, hereby

ORDERED that the time for filing the record in this matter be, and is hereby, extended until January 13, 1978.

James C. Morton

Senior ~~CHIEF~~ JUDGE

December 23, 1977

Court of Special Appeals
Court of Appeals Building
Rowe Boulevard and Talyor Ave.
Annapolis, Maryland 21401

Re: Kent Island Estates, Inc. vs
East Bay Colony Associates, et al
Trial: December 8, 1976 in Circuit Court
for Queens Anne's County

Dear Court of Special Appeals:

Due to an excessive back log, I will be unable to prepare the transcript on the above matter within the given period of time.

Therfore, I am notifying Counsel and The Court of Special Appeals that I wish to get a thirty day extension to complete the transcript.

Very Truly Yours,

Joseph Mc Grath

Joseph Mc Grath
Court Reporter

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C.W. ATWATER
DWIGHT C. STONE
EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6251
AREA CODE 301

October 11, 1977

Mr. Joseph McGrath
Consolidated Reporting
12611 Cambleton Drive
Upper Marlboro, MD 20870

Re: Kent Island Estates, Inc. vs
East Bay Colony Associates, et al
Trial: December 8, 1976 in Circuit Court
for Queen Anne's County

Dear Mr. McGrath:

I am filing an appeal in the above captioned case. Please prepare the remaining transcript of the December 8th proceedings. Please advise me if you wish a deposit.

Very truly yours,

Charles C. W. Atwater

CCWA:gc

LAW OFFICES
MYLANDER, ATWATER & STONE
SUITE 1112, GRACE BUILDING
CHARLES AND BALTIMORE STREETS
BALTIMORE, MARYLAND 21202

WALTER C. MYLANDER, JR. (1910-1966)
CHARLES C.W. ATWATER
DWIGHT C. STONE
EUGENE A. ARBAUGH
THOMAS A. SHEEHAN

TELEPHONE
752-6054
AREA CODE 301

October 11, 1977

Clerk, Circuit Court
of Anne Arundel County
Court House
Centreville, MD 21617

Re: Kent Island Estates, vs
East Bay Colony, et al
Chancery No: 5766

Dear Mr. Clerk:

Enclosed please find the original and two copies of my Notice to enter Appeal.

Also enclosed is my check in the amount of $105, as per our telephone conversation of today's date, which breaks down as follows:

Sheriff Baltimore City	$50.00
Sheriff A.A. County	10.00
Appearance fee-Plaintiff	10.00
Appearance fee-Defendant	10.00
Preparation of Record	25.00

Also enclosed is my check in the amount of $30.00 made payable to the Clerk of the Court of Special Appeals.

I have ordered the transcript prepared by the Court Reporter.

Very truly yours,

Charles C. W. Atwater

CCWA:gc
Enclosures

12/12 - Called Clerk in Queen Anne's and asked them to hold pending notification from Ct. of Sp. Appls.

December 12, 1977

Charles C. W. Atwater, Esquire
Mylander, Atwater & Stone
Suite 122, Grace Building
Charles and Baltimore Streets
Baltimore, Maryland 21202

Re: Kent Island Estates, Inc. vs
East Bay Colony Associates, et al

Dear Mr. Atwater:

Due to an excessive back log, I will be unable to prepare the transcript on the above matter within the given period of time.

Therefore, I am notifing Counsel that I wish to get an extension of time to complete the transcript.

Very truly yours,

Joseph Mc Grath
Court Reporter

THE COURT OF SPECIAL APPEALS OF MARYLAND — ANNAPOLIS, MD. 21404

February 9, 1978

Charles C. W. Atwater, Esquire
1112 W. R. Grace Building
Baltimore, Maryland 21202

Re: East Bay Colony Associates, et al v. Kent Island Estates Corporation, Inc.
Chancery No. 5766
Circuit Court for Queen Anne's County

Dear Mr. Atwater:

This refers to your Motion and Supplemental Motion for extension of time for transmitting the record on appeal to this Court. Please be advised that by Order dated February 8, 1978, the time has been extended up to and including February 13, 1978. On the same date, Chief Judge Richard P. Gilbert signed the Order attached to your Supplemental Motion providing for the transmission of the record on appeal to this Court on or before March 31, 1978, in the captioned case.

The original Petitions and Orders are being forwarded to the Clerk of the Circuit Court for Queen Anne's County for appropriate docket entry and inclusion in the record.

Very truly yours,

Julius A. Romano
Clerk

JAR/nze

cc: Mr. Charles W. Cecil, Clerk (with Petitions and Orders)
Circuit Court for Queen Anne's County
John W. Sause, Esquire

THE COURT OF APPEALS OF MARYLAND — ANNAPOLIS, MD. 21401

February 9, 1978

Charles G. W. Alnester, Esquire
1112 W. R. Grace Building
Baltimore, Maryland 21202

Re: East Bay Colony Associates, et al v. Kent Island Estates Corporation, Inc.
Chancery No. 3758
Circuit Court for Queen Anne's County

Dear Mr. Alnester:

This refers to your Motion and Supplemental Motion for extension of time for transmitting the record on appeal to this Court. Please be advised that by Order dated February 2, 1978, the time has been extended up to and including February 13, 1978. On the same date, Chief Judge Fishers Gilbert signed the Order attached to your Supplemental Motion providing for the transmission of the record or appeal to this Court on or before March 13, 1978, in the captioned case.

The original Petitions and Orders are being forwarded to the Clerk of the Circuit Court for Queen Anne's County for appropriate docket entry and inclusion in the record.

Very truly yours,

Julius A. Romano
Clerk

JAR/mrc

cc: Mr. Charles W. Deal, Clerk (with Petitions and Orders)
Circuit Court for Queen Anne's County
John W. Sause, Esquire

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNES' COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		
	*	Chancery No: 5766
Appellee		

* * * * *

SUPPLEMENTAL PETITION FOR EXTENSION OF TIME FOR FILING RECORD

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of East Bay Colony Associates, Appellants, by Charles C.W. Atwater, their attorney, respectfully shows:

1. Appellants' counsel has been in touch with the Court Reporter who should prepare the transcript of testimony in this case. He was first informed that some extension of time would be required because of the press of business in the courts, whereby the court reporter could not complete the transcript. Subsequently, he was informed that the court reporter could not find "some" of his notes and that the court reporter would confirm this fact to the Court of Appeals by direct letter, with a copy to the attorney for Appellants.

2. Appellants' counsel has been endeavoring to reach the court reporter for several weeks and has been unable to contact him personally. The secretary of Judge Clark, who was the trial judge in the Circuit Court for Queen Annes' County, when she was informed of the situation, said that she would speak to the judge and have him request the court reporter to act. Nothing further has been heard from the reporter even after this.

3. A Petition for Extension of Time was filed on January 11, 1978 to extend the time for 30 days from January 13, 1978, which was the date the transcript and the record should have been filed with the court. This was to be supplemented by the letter from the Court Reporter, which counsel for Appellants has been unable to obtain. Time is now growing short, even if the court grants the extension requested.

4. The last word counsel had from the reporter was that he was still trying to find the balance of his notes. In the event the reporter is unable to find the balance of his notes, it will be necessary for counsel for Appellants and counsel for Appellee to get together and possibly confer with the Court to see if an agreed statement of the testimony of the second day of trial can be prepared. This obviously will be impossible within the present time.

5. Counsel for Appellant has consulted with counsel for Appellee and informs the court that there is no objection to this extension by counsel for Appellee.

WHEREFORE your Petitioner prays that this court may, by its order, extend the time for filing the record in the above entitled case to March 31, 1978.

CHARLES C.W. ATWATER
1112 W.R. Grace Building
Baltimore, Maryland 21202
(301) 752-6254
Attorney for Appellants

I HEREBY CERTIFY that on this _____ day of February, 1978 a copy of the foregoing Supplemental Petition for Extension of Time for Filing Record was mailed to John W. Sause, Esquire at 204 North Commerce Street in Centreville, Maryland 21617, attorney for Appellees.

CHARLES C.W. ATWATER
Attorney for Appellants

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNE'S COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		
	*	Chancery No: 5766
Appellee		

* * * * *

O R D E R

Upon the foregoing Supplemental Petition for Extension of Time to File the Record, it is this 8th day of February, 1978 by the Court of Special Appeals of Maryland, hereby

ORDERED that the time for filing the record in this matter be, and is hereby, extended up to and including March 31, 1978.

Robert F. Gilbert

CHIEF JUDGE

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
		CIRCUIT COURT
Appellants	*	
		FOR
vs		
	*	QUEEN ANNE'S COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		
	*	Chancery No: 5766
Appellee		

* * * * *

MOTION AND ORDER FOR EXTENSION
OF TIME FOR FILING RECORD

TO THE HONORABLE, THE JUDGE OF SAID COURT:

East Bay Colony Associates, et al, Appellants in the above entitled matter respectfully move that this Court grant an extension of time for filing the record in this matter, and for reason for said Motion say:

1. That by Order of this Court the time allowed for filing the transcript on the appeal in this matter was extended to January 13, 1978.

2. That the Appellant has just been notified by the Court Reporter that he is unable to locate his notes for the second full day of trial of this case. He is still searching for said notes in order to prepare the transcript.

3. In the event that the reporter isunable to prepare the transcript, counsel for the appellant and appellee will try to agree on a summary of the testimony for filing in lieu of a transcript.

4. A letter from the Court Reporter, Joseph McGrath, setting forth the facts is being sent directly to the Clerk of the Court of Special Appeals.

5. The Appellant requests and extension of time for filing of the transcript to February 13, 1978.

Respectfully submitted:

CHARLES C.W. ATWATER
1112 W.R. Grace Building
Baltimore, Maryland 21202
752-6254
Attorney for Appellants

I HEREBY CERTIFY that on this 10 day of January, 1978 a copy of the foregoing Motion and Order for Extension of Time was mailed to John W. Sause, Esquire at 204 North Commerce Street, Centreville, Maryland 21617, attorney for Appellees.

CHARLES C.W. ATWATER

January 22, 1978

Court of Special Appeals of Maryland
Court of Appeals Building
Rowe Boulevard and Talyor Avenue
Annapolis, Maryland 21401

Trial: East Bay Colony Estates
verses Kent Island Estates
Date: December 8, 1976

Dear Mr. Romano:

As of the date of this letter, I have been unable to locate my notes on the second day of the trial of the above case. I know that I just misplaced them and I am still searching.

Therefore, I am writing this letter to request a thirty day extension on the appeal inorder to complete the second day of the transcript.

If there are any changes, I will notify you immediately. Thank you for your patience.

Very Truly Yours

Joseph Mc Grath
Court Reporter

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

EAST BAY COLONY ASSOCIATES, et al	*	FROM THE
Appellants	*	CIRCUIT COURT
vs		FOR
	*	QUEEN ANNE'S COUNTY
KENT ISLAND ESTATES CORPORATION, INC.		
	*	Chancery No: 5766
Appellee		

* * * * *

ORDER

Upon the foregoing Motion for Extension of Time to file the Record, it is this 8th day of February, 1978 by the Court of Special Appeals of Maryland, hereby

ORDERED that the time for filing the record in this matter be, and is hereby, extended up to and including February 13, 1978.

Chief JUDGE

IN THE CIRCUIT COURT FOR CENTERVILLE, MD.

- - - - - - - - - - - - - - - - - - - x

KENT ISLAND ESTATES CORP., INC. :

Plaintiff, :

vs. : EQUITY NO. 5766

EAST BAY COLONY ASSOCIATES :

Defendant. :

- - - - - - - - - - - - - - - - - - - x

TRANSCRIPT OF PROCEEDINGS

Circuit Courtroom
Courthouse
Centerville, Md.

The above-entitled matter came on for hearing at 9:55 o'clock a.m.

BEFORE:

THE HONORABLE HARRY E. CLARK, Judge

APPEARANCES:

JOHN W. SAUSE, ESQ.,
DONALD BRADON, ESQ.,
appearing on behalf of Plaintiff.

CHARLES C. W. ALTWATER, ESQ..
appearing on behalf of Defendant.

I N D E X

I N D E X

Plaintiff's Witnesses	Direct	Cross	Redirect	Recross
John C. Wells	26			
By Mr. Allmayer	63			
By Mr. Sahne	96			

Exhibits	Identification	Evidence
Plaintiff's No. 1		
Plaintiff's No. 2	45	
Plaintiff's No. 3	51	
Plaintiff's No. 4	52	
Plaintiff's No. 5	53	
Plaintiff's No. 7	55	
Defendant's No. 1 A, 1-B and 1-C	6	
Defendant's No. 2	10	
Defendant's No. 2	91	
Defendant's No. 2-A	91	
Defendant's No. 3	94	

P R O C E E D I N G S

THE COURT: Is Counsel ready for the matter of Kent Island Estates Corporation versus East Bay Colony Associates?

MR. SAUSE: Yes, Your Honor.

MR. ALTWATER: Yes, Your Honor.

THE COURT: Very well, we will hear your opening statement, Mr. Sause.

MR. SAUSE: Your Honor, before that Mr. Altwater and I have completed the certificate which is required and we have amended to that a list of agreed issues and stipulations of agreed facts and exhibits. Generally the exhibits that are attached to the bill of complaint are being agreed to as admissible in evidence and relevant.

The plat attached to the answer is similarly being agreed to and introduced and there are certain additional exhibits, if I may, I would refer to these as I go along in my opening statement but this time we would proffer the certificate to which is attached the agreed issuance and agreed stipulations of the facts.

THE COURT: You may.

MR. SAUSE: Thank you, sir.

MR. ALTWATER: Your Honor, if I might add one possible caveat to the agreed exhibits, one set forth in paragraph six the Nutle plat has not been completely agreed to

P r o c e e d i n g s

THE COURT: Is Counsel ready for the matter of Rhode Island Estates Corporation versus East Bay Colony Associates?

MR. SAUNDS: Yes, Your Honor.

MR. ALTWATER: Yes, Your Honor.

THE COURT: Very well, we will hear your opening statement, Mr. Saunds.

MR. SAUNDS: Your Honor, before that Mr. Altwater and I have completed the certificate which is required and we have amended to that a list of agreed issues and stipulations of agreed facts and exhibits. Generally the exhibits that are attached to the bill of complaint are being agreed to as admissible in evidence and relevant.

The plat attached to the answer is similarly being agreed to and introduced and there are certain additional exhibits, if I may, I would refer to them as I go along in my opening statement but this time we would prefer the certificate to which is attached the agreed issues and agreed stipulations of the facts.

THE COURT: You may.

MR. SAUNDS: Thank you, sir.

MR. ALTWATER: Your Honor, if I might add one possible caveat to the agreed exhibits, one set forth in paragraph six the Moile plat has not been completely agreed to

as yet, because I have not been able to check with my surveyor. I was unable to reach him. Subject to his confirmation, the Nutle plat which is number six is stipulated. I am reserving at the moment the right to object to it until I talk to my surveyor.

THE COURT: Is that one of the plats that have just been handed me.

MR. ALTWATER: Yes, sir. It is marked Exhibit R.

MR. SAUSE: I don't think it is marked at all.

THE COURT: All right. Mr. Sause, you may proceed.

MR. SAUSE: May it please the Court, this case involves an area of land lying on the Chesapeake Bay on Kent Island below -- that is to the south of the Bay Bridge. The stipulation insofar as respects title. It picks up at about 1948 or 1949 at which time there were two adjoining farms, the Gibson or Moore Farm to the north, and to the south was a farm called the Benton Farm. Both of these farms bordered on the Chesapeake Bay and had the Bay as their western boundary.

They were separated -- the Gibson Farm being the northern one and the Benton Farm being the southern one, they were separated by a creek known as Tolsons Creek which ran generally from the Kent Point Road. Its Headwaters, although that is probably overdignified, the beginning at or near the Kent Point Road and there was a drain of that creek into the

as yet, because I have not been able to check with my surveyor. I was unable to reach him. Subject to the qualification, the white plat which is Number six is delineated. I am reserving as the owners the right to object to it merely I talk to my surveyor.

THE COURT: Is that one of the plats that have been marked me.

MR. ALTMAYER: Yes, sir. It is marked Exhibit 8.

MR. GAUSS: I don't think it is marked at all.

THE COURT: All Right. Mr. Gauss, you may proceed.

MR. GAUSS: May it please the Court, this case involves an area of land lying on the Chesapeake Bay on Kent Island below -- that is to the south of the Bay Bridge. The alignment insofar as respects title. It sticks up at about 1865 or 1867 at which time there were two adjoining farms, the Gibson or Moore farm to the north, and to the south was a farm called the Benson Farm. Both of these farms bordered on the Chesapeake Bay and had the Bay as their western boundary.

They were separated -- the Gibson farm being the northern one and the Benson farm being the southern one, they were separated by a creek known as Solomon Creek which ran generally from the east to the west. Its meandering although that is probably overdramatized. The beginning at the east the Kent Point road and there was a dream be that area into the

1 Chesapeake Bay. In the 1950's the more northerly of these
2 forms, the Gibson Farm was platted and given the name Kent
3 Island Estates, Section Three.
4 Sections One and Two being on the other side of
5 Kent Island on the eastern bay, have nothing to do with this
6 case, have separate change of title and are totally uninvolved.
7 After this subdivision, Kent Island Estates was
8 laid out in the early 1950's, lots were sold off and the
9 developer, or the person who sold all of these lots -- not all
10 of the lots, but who made the lot sales was a corporation
11 named Romco Holding Company which sold the Kent Island Estates
12 or what was left of it to the complainant in this case, Kent
13 Island Estates Corporation, Inc. in 1969.
14 The southern farm, or the so-called Benton Farm,
15 was not developed and has not been until this day and has
16 remained as farmland. It was owned probably about 1948,
17 I believe, or around 1950 up until 1973 by Mr. Samuel Aaron,
18 a very distinguished attorney from Baltimore, who in 1973 sold
19 the farm to Mr. Dixon, a very distinguished attorney from
20 Anne Arundel County, who associates and operates under the
21 name of East Bay Colony Associates.
22 East Bay Colony Associates, the present owner of the
23 farm to the south, the so-called Benton Farm, is the primary
24 respondent. Mr. Aaron and his wife being named as respondents
25 because the hold the first mortgage on the property, and the

Chesapeake Bay, in the 1970's the word northern of these terms, the Bluff was platted and given the name Kent Island Estates.

Sections one and two being on the other side of Kent Island on the eastern bay, have nothing to do with this case, have separate chains of title and are totally uninvolved.

After this subdivision, Kent Island Estates was laid out in the early 1950's, lots were sold off by the developer, or the person who sold all of these lots - not all of the lots, but the most, the lot sales was a corporation named Bonco Holding Company which sold the Kent Island Estates or what was left of it to the complainant in this case, Kent Island Estates Corporation, Inc. in 1969.

The southern tier, or the so-called Bonton Farm, was not developed and has not been until this day and was remained as farmland. It was owned probably about 1940, I believe, or around 1950 up until 1973 by Mr. Samuel Acton, a very distinguished attorney from Baltimore, who in 1970 sold the farm to a very very distinguished attorney from Anne Arundel County, who associates and operates under the name of Kent Bay Holding Associates.

Kent Bay Holding Associates, the present owner of the farm to the so-called Bonton Farm, is the primary respondent. Mr. Acton and his wife being named as respondents because the holder of the first mortgage on the property, and the

1 Maryland National Bank and some of the usual faceless
2 trustees have been named as respondents because they have a
3 second deed in trust.
4 THE COURT: Is this the Maryland National Bank?
5 MR. SAUSE: Yes.
6 MR. ALTWATER: It is a real estate subsidiary of
7 Maryland National Bank.
8 THE COURT: It is a real estate investment trust
9 controlled by the Maryland National Bank.
10 MR. SAUSE: Excuse me. I'm not usually connected
11 with sophisticated matters like that. I didn't recognize the
12 distinction. Your Honor, that is a very broad overview and
13 just to give you a very little of flesh on those bones and
14 give kind of a roadmap through these exhibits.
15 The first exhibit, that is A through F, represents
16 the chain of title of the complainant in this transaction.
17 There are certain instruments that I want Your Honor to see
18 the originals.
19 Exhibit B is a deed to this property or what
20 became Kent Island Estates. Exhibit C is a plat which was
21 filed in the proceeding, it was filed merely for purposes of
22 continuity, it was reduced in scale and I would like just to
23 show Your Honor the original of that.
24 We do not believe there will be any violence done
25 to this case if we work from the Xerox copy which is eight and

Maryland National Bank and some of the other trustees trustees have been named as trustee and bonds. They are a second deed in trust.

THE COURT: Is this the Maryland National Bank?

MR. CAUSEY: Yes.

MR. ALTMAYER: It is a real estate subsidiary of Maryland National Bank.

THE COURT: It is a real estate investment trust controlled by the Maryland National Bank.

MR. CAUSEY: Excuse me. It's not usually connected with sophisticated matters like that. I didn't recognize the distinction. Your Honor, that is a very broad overview and just to give you a very little of flesh on those bones and give kind of a roadmap through these exhibits.

The first exhibit, that is A through E, represents the chain of title of the complainant in this transaction. There are certain instruments that I want Your Honor to see the originals.

Exhibit B is a deed to this property as it became Lane Island Estates. Exhibit C is a plat which was filed in the proceeding. It was filed merely for purposes of continuity, it was reduced in scale and I would like that to be Your Honor the original of that.

We do not believe there will be any violence done to this case if we work from the Xerox copy which might

one half inches by fourteen rather than have this very large document. So, with Your Honor's permission, we would like to utilize what is in the file and return the originals downstairs.

THE COURT: I would like to ask a question?

MR. SAUSE: Yes.

THE COURT: In reading through the proceedings, I gather that the subject area mentioned in your bill of complaint -- let me show you where I found it to be. Is this the line right here (indicating)?

MR. SAUSE: That is right.

THE COURT: So, this would be the subject area (indicating)?

MR. SAUSE: That is right. That entire -- what we will call a peninsula lying to the south of that line or projection, is that correct, Mr. Altwater?

MR. ALTWATER: Would you explain that. The subject property line being the property line --

THE COURT: South of this line here. Crosses this road.

MR. SAUSE: That is right.

THE COURT: Now, I recall reading in one of the proceedings that I think Mr. and Mrs. Aaron got the titles to Lots 1 and 2. It doesn't say what block or anything, but it says the southeasterly.

one half inches by fourteen rather than have this very large document. So, with Your Honor's permission, we would like to utilize what is in the file and return the original some-

THE COURT: I would like to ask a question.

MR. SAUSE: Yes.

THE COURT: In reading through the proceedings I get the that the subject area mentioned in your bill of complaint -- let me show you where I found it to be. Is this the line right here (indicating)?

MR. SAUSE: That is right.

THE COURT: So, this would be the subject area (indicating)?

MR. SAUSE: That is right. Just exists -- what we will call a peninsula lying to the south of that line of projection, is that correct, Mr. Alwater?

MR. ALWATER: Would you explain that. The subject property line being the property line --

THE COURT: South of this line here. Crosses this road.

MR. SAUSE: That is right.

THE COURT: Now, I recall reading in one of the proceedings that I think Mr. and Mrs. Saxon got the titles to lots 1 and 2. It doesn't say what block or anything, but is here the southeastern.

MR. SAUSE: Well, that is one thing --

THE COURT: It appears to be southwesterly --

MR. SAUSE: That is one thing that is disputed. I think that is in the defendant's response.

THE COURT: Maybe it was.

MR. SAUSE: There were several facts or inaccuracies in the respondent's answer, but for the purpose of noting the evidence, I am giving Your Honor the reference points which is these two lots which --

THE COURT: That is what I assumed it was, but the direction is wrong and I was a little bit confused. This was a easterly development which was rarely not even used.

MR. SAUSE: Your Honor, Exhibit E is the subdivision plat that the lots were sold from. It is contained therein greatly reduced in scale. The original, if Your Honor would like to see it, is in that large plat book which Mr. Cecil asked that we return it downstairs promptly, because there has been already one title examiner up here this morning trying to use it and Mr. Altwater and I feel, for the purposes of this case, the other is in the file is much more manageable and, as far as the subject area is concerned, there is no difference, really.

So, we will return that thing when we can, whenever.

THE COURT: If we need it, we can send for it.

MR. SAUSE: The other of exhibits A through F, Your

MR. SAUNDERS: Well, that is one thing --

THE COURT: It appears to be sortmewhatcrity --

MR. SAUNDERS: That is one thing that is disputed, I think that is in the plaintiff's response.

THE COURT: Maybe it was.

MR. SAUNDERS: There were several facts or inaccuracies in the respondent's answer, but for the purpose of noting the evidence, I am asking Your Honor the reference points which is three two, three which --

THE COURT: That is what I assumed it was, but the direction is wrong and I was a little bit confused. This was a curvaty development which was rare, not even used.

MR. SAUNDERS: Your Honor, Exhibit 2 is the subdivision plat that the lots detached from. It is contained therein exactly reduced in scale. The original, if Your Honor would like to see it, is in that large plat book which Mr. Cecil asked that we return it somewhere promptly, because there has been already one title examiner up here this morning trying to use it and so, Alexander and I feel, for the purposes of this case, the other is in the file is much more manageable and, as far as the subject area is concerned, there is no difference really.

So, we will return that claim when we can, whenever.

THE COURT: If we need it, we can send for it.

MR. SAUNDERS: The other of exhibits 4 through 9, was

1 Honor, are deeds in our chain of titles picking up as I said
2 before in 1950. Exhibits G through N are instruments in the
3 respondents chain of title. First of all, there is a certi-
4 ficate of title by J. B. Metcalf, which we think is very
5 significant because J. B. Metcalf was a surveyor that is well
6 known in this county and perhaps in Talbot County, Your Honor
7 may have heard of him. He surveyed both of these forms, one
8 in 1948, the other in 1949.
9 There is no dispute here about his surveys. His
10 surveys appeared to have tied together. It is what happened
11 after 1948 that is involved here. In any event, this tracing
12 or this plat which was recorded in 1949 of the farm owned by
13 the respondent -- part of it is reproduced as Exhibit I, but
14 we would like Your Honor to look at the original for the
15 purpose of seeing the only part that is not reproduced is on
16 the eastern side of the farm and is not pertinent here and
17 secondly because we think it is significant that the surveyor
18 -- this is the recorded instrument that I am handing Your
19 Honor now, has indicated with blue lines in this area, I will
20 characterize.
21 Does anybody know why a mapmaker would indicate
22 something with blue lines?
23 THE COURT: Benton Farm was also known as the Tolson
24 Farm too, wasn't it?
25 MR. SAUSE: Yes. That is correct. The other farm

hours are needed in our chain of title. Looking back at a date in 1950 -- Exhibits C through N are instruments in the chain of title. First of all, there is a conveyance of title by G. B. Metcalf, which we think is very significant because G. B. Metcalf was a surveyor that is well known in this county and perhaps in Talbot County. Your Honor may have heard of him. He surveyed both of these farms, one in 1914, the other in 1919.

There is no dispute here about his surveys. His surveys appeared to have tied together. It is what happened after 1919 that is involved here. In any event, this transfer of this plat which was recorded in liber of the farm owned by the respondent -- part of it is recorded as Exhibit 1, but we would like Your Honor to look at the original for the purpose of seeing the only part that is not recorded is on the eastern side of the farm and is not pertinent here and secondly because we think it is significant that the surveyor -- this is the surveyor Jackson is that I am reading Your Honor now, was associated with Blue Lines in this area. I will characterize.

Does anybody know why a surveyor would indicate some lines like Blue Lines?

The court: Eastern Farm was also known as the Tolson Farm too, wasn't it?

Mr. Rudolph: Yes. What is correct, the other farm

to the south that is shown on that plat is not involved in this case at all.

THE COURT: That is the Cook Farm?

MR. SAUSE: Yes. Our farm, the one to the north of the Benton Farm shown on there, was also a Cook Farm that was owned by Theodore Cook who owned 35 farms on Kent Island.

When he died, most of those farms were bought by developers and were subdivided. Now, Your Honor, if Your Honor would look at the exhibit which we have just introduced, which is the plat, which is numbered, I think it is number R as we decided.

THE COURT: I have it.

MR. SAUSE: Mr. Nutle, who is a surveyor engaged in surveying in this county and others, has prepared this plat showing three surveys. The heavy line which the key at the right-hand corner shows the J. B. Metcalf MBW1-71 is the survey of the Benton Farm taken from the instruments which are in the respondents chain of title. The heavily dashed line is the J. B. Metcalf survey of the Kent Island Estate property, if we may, we will refer to it as that, because it has been so for 25 years and that is what most of the witnesses know it by.

It was formerly the Gibson Farm. The short dashed lines was a survey by Frederick Warden Associates which was used for the first time in 1973 by the respondents, that is

so the court that is shown on that plat is not involved in this case at all.

THE COURT: That is the Cook Farm?

MR. GAUSS: Yes. Our farm, the one to the north of the Benton Farm shown on there, was also a Cook Farm that was owned by Theodore Cook who owned 35 farms on Rent Island.

When he died, most of those farms were bought by developers and were subdivided. Now, Your Honor, if Your Honor would look at the exhibit which we have just introduced which is the plat, which is numbered, I think it is Number 8 as we see fit.

THE COURT: I have it.

MR. GAUSS: Mr. Muir, who is a surveyor employed in surveying in this county and others, has prepared this plat showing their survey. The heavy line which the judge at the right-hand corner shows the U. S. Forest Service is the survey of the Benton Farm taken from the instruments which are in the respondents chain of title. The heavily dashed line is the U. S. Forest Service survey of the Rent Island State property as we say, we will refer to it as that. Because it has been so for 25 years and that is what most of the witnesses know it by.

It was formerly the Gibson Farm. The short dashed line was a survey by Frederick Warren Associates which was used for the first time in 1971 by the respondents, that is

when Mr. Aaron and his wife conveyed the property to East Bay Colony Associates.

Now, Your Honor will note that the surveys of Mr. Metcalf are in agreement on their eastern end where there is a stone common to all three surveys and where the lines come together, in fact, the eastern end of the top line there was used for orientation of the survey.

The Metcalf surveys are also in agreement at their point of intersection or near intersection on the Chesapeake Bay. Having been done by the same surveyor only a year apart, reinforces one's faith in the discipline of surveying that the surveys were consistent with each other.

In any event, when Mr. Warden came to do his survey in 1973, there is an overlap and he goes farther north.

THE COURT: Well now, Mr. Sause, this exhibit doesn't show any outlet from Tolsons Creek to the Bay.

MR. SAUSE: Your Honor, both of the deeds of Metcalf indicate that this north 61 degree, one minute east, 282.10 footline is -- the immediate preceding call is to the drain of the creek and that is with the drain to the waters of the creek.

The language in both deeds is not exactly -- both descriptions is not exactly the same. That is where Mr. Metcalf and his survey called those or that particular line which Mr. Nutle has shown.

when Mr. Marion and his wife conveyed the property to East Bay Colony Associates.

Now, Your Honor will note that the surveys of Mr. Metcalf are in agreement on their eastern end where there is a stone common to all three surveys and where the lines cross together. In fact, the eastern end of the top line above was used for orientation of the survey.

The Metcalf surveys are also in agreement at their point of intersection or near intersection on the Cape-side Bay. Having been done by the same surveyor only several months apart one's faith in the discipline of surveying that the surveys were consistent with each other.

In any event, when Mr. Martin came to do his survey in 1972, there is an overlap and he goes farther north.

The COURT: Well now, Mr. Sarna, this exhibit doesn't show any outlet from Polsons creek to the Bay.

Mr. SARNA: Your Honor, both of the deeds of Metcalf indicate that this north 61 degrees, one minute, 20 [illegible] line from the [illegible] generally is in the direction of the [illegible] and that is with the deed to the [illegible] creek.

The language in both deeds is not exactly as [illegible] descriptions is so exactly the same. That is where Mr. Metcalf's and his survey calls, those or that particular line which Mr. Martin has shown.

The hatched area is shown as an overlap of the Kent Island Estates-Metcalf survey by the 1973 survey of Mr. Warden. The location of the overlap -- the northern boundary of the overlap, is a new cut to Tolsons Creek which Your Honor will see from stipulation number eight, was made by the complainant, Kent Island Estate Corporation in 1970 and some work was done in '71 by making a new cut into the creek from Chesapeake Bay, that is, a cut which was alternative to the original or the natural drain as shown on the Metcalf surveys in 1948 and 1949.

There is very little factual dispute between the parties about anything. We agree that in 1948 and 1949 when the Metcalf surveys were done that the natural drain of Tolsons Creek was where Mr. Metcalf said it was, or very nearly.

There is no dispute about that. There is no dispute that in 1970 our people opened this new cut to the creek and this is shown on the wetlands map, Your Honor, the aerial photograph that is exhibit S, and I think it might be helpful to Your Honor if the plats are okay, but the -- I am indicating Tolsons Creek.

It is stipulated that the opening which is clearly discernable to the Bay is the one that was made by the plaintiff in 1970.

The testimony will also be that along this heavy

The hatched area is shown as an overlap of the Long Island Sound-Metcalf survey by the 1972 survey of Mr. Metcalf. The location of the overlap -- the northern boundary of the overlap, is a new cut to Tolsons Creek which your Honor will see from stipulation number eight, was made by the commissioners. Long Island Lands Corporation in 1970 and some work was done in '71 by making a new cut into the creek from Chesapeake Bay, that is, a cut which was alternative to the original or the natural drain as shown on the Metcalf survey in 1968 and 1969.

There is very little factual dispute between the parties about anything. We agree that in 1969 and 1969 when the Metcalf surveys were done that the natural drain of Tolsons Creek was where Mr. Metcalf said it was, or very nearly.

There is no dispute about that. There is no dispute that in 1970 our people opened this new cut to the river and this is shown on the westward map. Your Honor, the central difference here is exactly, and I think is stated before your Honor, if the plats are okay, but the -- I am indicating the Tolsons Creek.

It is stipulated that the opening which is clearly depicted as the day is the one that was made by the Long Island Lands in 1970.

The testimony will show that along this near

1 line, which is on the wetlands map, was done in order to
2 differentiate uplands from wetlands. The line on the south
3 side of the creek, there was a natural drain running along
4 that to the Chesapeake Bay, that is the natural drain that we
5 are talking about.
6 It is the continuation of the area lined between the
7 boundary by the new opening on the north, the original drain
8 on the south, the Bay on the west, and Tolsons Creek on the
9 east that we are concerned with primarily in this case.
10 THE COURT: That subject area right here (indicat-
11 ing).
12 MR. SAUSE: The entire subject area as we began
13 with it up at the top of the unplatted portion on the Bay as
14 shown to the southwestern corner of that Bay. The subdivision
15 plat, Your Honor, I might point out, it is the southwestern
16 corner, but the specific portion of that undeveloped area we
17 are talking about is what I just defined, that is lying to the
18 south of the new cut into the Tolsons Creek and between that
19 new cut and the original natural drain.
20 THE COURT: Is there any dispute about the owner-
21 ship of the land to the north of that new cut?
22 MR. SAUSE: Mr. Altwater seems to think so.
23 MR. ALTWATER: Your Honor, Mr. Aaron's position
24 on that is when you acquire Lots 1 and 2 immediately adjacent
25 to the white area which appears to be saying at this time the

line, which is on the wetlands map, was done in order to differentiate uplands from wetlands. The line on the south side of the creek, there was a natural drain commencing that to the Chesapeake Bay, that is the natural drain that we are talking about.

It is the continuation of the area lined here on the boundary by the new opening on the north, the original drain on the south, the bay on the east, and Tuscons Creek on the west that we are concerned with primarily in this case.

THE COURT: That subject area might here (indicating).

MR. SAUER: The article sub out area as we began with is up at the top of the unplatted portion on the Bay as shown on the southwestern corner of that Bay. The northwestern, your honor, I might point out, is the southwestern corner, but the specific portion of that undeveloped area we are talking about is what I just pointed, that is lying to the south of the new cut into the Tuscons Creek and between that cut and the original natural drain.

THE COURT: Is there any dispute about the ownership of the land to the north of that new cut?

MR. SAUER: No. Attorneys seem to think so.

MR. ANDREWS: Your Honor, Mr. Sauer's position on that is when you acquire lots 1 and 2 immediately adjacent to the white area which appears to be having no this area that

photograph in '71 that this was the period right of these two lots acquired by him.

That this bar has completely natural water by filling and there is no question it has been filled substantially since 1970. That this was the area right at this point (indicating), this actual title questioned raised in the complaint what is called the entire subject property is reference to the southerly portion, south of the creek inland.

Mr. Sause, I don't believe you meant to say one thing as you indicated. The blue lines on this does not indicate water courses.

MR. SAUSE: No.

MR. ALTWATER: They are wetland markings and not water courses. So, this line here does not indicate a stream bed, it indicates a wet line marking.

MR. SAUSE: Well, what I told His Honor was where we showed what represents where the stream bed is. The line on there was not put on by us, it was not put on to differentiate the water courses, it was put on there for what I indicated as the purpose of showing what were the uplands and what were the wetlands, but happens that the boundary coincides with where the natural opening is.

MR. ALTWATER: We have a question mark concerning the natural opening because I know the natural opening, according to the testimony, has to be reopened periodically

photograph in '71 that this was the period right of these two lots acquired by him.

That this bar has completely natural water by filling and there is no question it has been filled substantially since 1970. That this was the area right at this point (indicating), this actual title questioned raised in the complaint what is called the entire and just property in reference to the southerly portion, south of the creek island.

Mr. Sauer, I don't believe you meant to say the thing as you indicated. The blue lines on this does not indicate water courses.

MR. SAUER: No.

MR. ALTWATER: They are wetland markings and not water courses. So, this line here does not indicate a stream bed. It indicates a wet like marking.

MR. SAUER: Well, what I told his honor was where we moved that represents where the stream bed is. The line on there was not put on by me. It was not put on to distinguish the water courses. It was put on there for what I indicated as the purpose of showing what were the uplands and what were the wetlands, but happens that the boundary coincides with where the natural open is.

MR. ALTWATER: We have a question mark concerning the natural opening, because I know the natural opening according to the testimony, has to be lengthened periodically

1 at all times.

2 Now, there was an opening somewhere along this

3 line, but we do not have a new survey to show exactly where

4 it was, because it has disappeared. It even disappeared in

5 1971.

6 So, one of the primary points in this case, Your

7 Honor, is in 1973 my client had the property he was buying

8 surveyed for the purpose of the preparation of the deeds and

9 mortgages.

10 The surveyor called the present map of the stream

11 as the only map of the stream, and the map of the stream, if

12 we are not disputed by Mr. Sause's testimony, was opened by

13 his client in 1971.

14 By the time this map was made, what he refers to as

15 the original stream, is what I refer to as a stream that

16 existed at the time of the Metcalf survey in 1948, and had

17 already closed up in '71 and in '73 was not apparent to a

18 surveyor going around the boundaries of the property and going

19 to the monumental cause of the mouth of the stream.

20 THE COURT: This was closed up by reliction?

21 MR. ALTWATER: Your Honor, we don't know whether

22 there was any at the time this was opened up or whether they

23 dumped the material out of this -- on this bar to the south as

24 well on the north.

25 We have no way of knowing. We weren't there at the

times.

Now, there was an omnibus, or where along this line, but we do not have a map survey to show exactly where it was, because it has disappeared. It even disappeared in 1971.

So, one of the primary points in this case, your Honor, as in 1973 my client had the property he was buying surveyed for the purpose of the preparation of the deed and mortgages.

The surveyor called the present map of the survey as the only map of the stream, and the map of the stream. It was not disproved by Mr. Suarez's testimony, was signed by his client in 1971.

By the time this map was made, what he refers to as the original stream, is what I refer to as a stream that existed at the time of the Wescott survey in 1858, and had already closed up in 71 and in '73 was not anywhere near a stream flowing around the boundaries of the property and in the commonly usage of the mouth of the stream.

The court: This was closed up by reclamation.

Mr. ALVAREZ: Your Honor, so far as how whether or not any at the time this was opened up or whether they used material taken on this -- on this side to the south or the north.

The Hearing Examiner: Mr. Alvarez, there is no

time and perhaps their witnesses will bring out of whether they did or did not. All we know is that in 1971, if this was the case, it was not there and in '73 it was not there when we had the property surveyed.

The surveyor following the normal surveying practice went to call to the mouth of the stream, because further testimony will show that this old shoreline, as Your Honor may know, has eroded substantially over the years.

Even between the survey in the year 1948 and the survey in 1973 along in here (indicating), the survey line was 100 feet further out in the Bay. In 1948 that it is as in '73, the survey is indicated on the Nutle plat.

MR. SAUSE: Was that your opening statement, Mr. Altwater?

MR. ALTWATER: No. I just wanted to understand that map.

MR. SAUSE: Your Honor, that was just that we contend that that area is owned by us, that nothing that we did in 1970 to open the new channels through the creek, affected their title, certainly there was no grant at the time --

THE COURT: Their what?

MR. SAUSE: There was no grant of the title by deed, one cannot abandon a piece of free simple property which we suggest it was.

time and perhaps their witnesses will bring out of whether they did or did not. Follows from is that in 1971, if this was the case, it was not clear and in '73 it was not there when we had the property surveyed.

The surveyor following the normal surveying practice wants to call to the mouth of the stream, because further testimony will show that this old shoreline, as Ross Zonar may show, has eroded substantially over the years.

Even between the survey in the year 1972 and the survey in 1973 alone in here (indicating), the survey line was 120 feet further out in the Bay. In 1962 that it is as in '73, the survey is indicated on the Muir's plat.

MR. SAUER: Was that your opening statement, Mr. Fletcher?

MR. ALTMAIER: No. I just wanted to understand that map.

MR. SAUER: Your Honor, that was just that to conceal that that area is owned by us, that nothing that we did in 1970 to open the new channels through the creek affected their title, particularly there was no grant as the time --

THE COURT: Well, that --

MR. SAUER: There was no grant of the tidelands that one cannot abandon a place out of simple or parcel which we owned it as was.

So, it wasn't abandoned and found fortuitously by the respondent, and the only conceivable thing would be something that is suggested in recent weeks by the respondent, that is, that maybe there is some kind of a stop that had eluded me. But we will be into that later, I guess, and that land was and is at all times belonged to us.

Let me add one footnote to Mr. Altwater's footnote. Nobody is talking about the control of this creek. We are not fighting about whether this is our creek or their creek, or anybody else's. It is open and a navigable creek in the sense that people have a right to navigate through the opening that is there in a craft that will go through it and get in and out of it.

There is absolutely nothing here that we know involved in this case except purely the title to that land. We would be prepared to enter into some kind of an agreement at any stage and perceive that we are not talking about making that creek a private lake or anything else. That has nothing to do with it.

Solely that one piece of triangular piece of land lying between our new opening and the natural drain that we are talking about. Its title, that is all.

Thank you, sir.

THE COURT: Do you wish to make an opening statement?

MR. ALTWATER: Yes, Your Honor.

So, it was's abandoned and owned formerly by the respondent, and the only conceivable thing we could do something that is suggested in recent weeks by the respondent that is, that maybe there is some kind of a step that allowed us. Not we will a time that later, I guess, and that land was not in at all times belonged to us.

Let me add one footnote on Mr. Alsweber's testimony. Nobody is talking about the control of this creek. We are not fighting about whether this is our creek or their creek or anybody else's. It is open and navigable creek in the sense that people have a right to navigate through the opening that is there in a craft that will go through it and get in and out of it.

There is absolutely nothing here that we know involved in this case except purely the title to that land. We would be prepared to enter into some kind of an agreement at any stage and certainly that we are not fighting about making that creek a private lake or anything else. That is not nothing to do with it.

Solely that one piece of triangular piece of land lying between our new opening and the natural dam that we are talking about. Its title, that is all.

Thank you, sir.

THE COURT: Do you wish to make an opening statement?

MR. ALSWEBER: Yes, Your Honor.

1 My interruption of Mr. Sause was for the purpose
2 of clarity of your remarks. Your Honor, Mr. Sause has given
3 a slight oversimplification in this case when he says title
4 is not changed by abandonment.
5 Title, however, does change when property bounds on
6 a stream. That stream changes its boundaries and the normal
7 rule by means of gradual decretion and reliction, the stream
8 changes when the title line is to the stream, that title line
9 changes with the changes in the stream.
10 Now, that is a subject to one change that our
11 Court of Appeals in the case Mr. Sause is quite familiar with,
12 Bosley v. Grand Lodge, says, "When there is an evulsion as
13 when a sudden cut is made across a loop in a stream as a
14 result of a storm or something of that nature, that that is an
15 evulsion and is not a decretion or reliction, and thereby the
16 title does not change" and they quoted from a Supreme Court
17 case and adopted the ruling of that case.
18 We will give Your Honor a memorandum containing
19 these authorities. As to the basic principle that is, it is
20 settled law when grants of land border on running water and
21 their banks have changed by the gradual process known as
22 decretion. The repairing owner boundary lines still remains
23 the stream.
24 Although during the years by this decretion, the
25 actual area of this position may vary. Now, in that particular

My interpretation of Mr. Sauer's was for the purpose of clarity of your remarks. Your honor, Mr. Sauer has cited a slight oversimplification in this case when he says title is not changed by abandonment.

Title, however, does change when property borders on a stream. That stream changes its boundaries and the natural rule by means of gradual accretion and reliction, the stream changes when the title line is to the stream, that title line changes with the changes in the stream.

Now, that is a subject to one change that our court of appeals in the case Mr. Sauer is quite familiar with Bosley v. Grand Lodge, says, "When there is an avulsion as when a sudden cut is made across a long in a stream as a result of a storm or something of that nature, that that is an avulsion and is not a accretion or reliction, nothing the title does nonetheless" and they quoted from a Supreme Court case and adopted the ruling of that case.

We will give your honor a memorandum containing these authorities. As to the basic principle this is, it is settled law when parts of land bordered on running water and small banks have changed by the gradual process known as accretion. The adjoining owner boundary lines still remains the same.

Although during the years by this accretion, the actual area of this tract may vary. Now, in that particular

case, Bosley v. Grand Lodge, the next portion was applicable.

It is equally well settled that where a stream is the boundary for any cause suddenly abandoned, it's old and seeks its new bed, such change of channel works for the change of the boundary.

The boundary remains as it was in the center of the old channel, although, no water may be flowing therein. Now that case of the Supreme Court was a title case between Nebraska and Iowa.

The two states were in Supreme Court for direct trial between the two of them for the boundary lines between the two of them.

Justice Brewer was giving the opinion for the court in the case, Nebraska v. Iowa. There is a further well-established principle and later New York Supreme Court cited this one distinguishes where the boundary is changed not by gradual reliction or decretion but by acts of third parties, not by the acts of the person himself owning the land. If his boundary is increased by the acts of such third parties, he does not lose his repairing rights to the water.

Now, in this case the plaintiffs claim and stipulate is that in 1970 they opened a new deep channel in a bar location different than the channel they say was then existent. At least, there was a channel existing in '48 when the Metcalf surveys.

river boundary situations under, the next section was applicable.

It is equally well settled that where a stream is the boundary but an entire bed is suddenly abandoned, it's old and needs its new bed, such change of channel works for the change of the boundary.

The boundary remains as it was in the center of the old channel. Although, no water may be flowing therein. Now that case of the Supreme Court was a title case between Nebraska and Iowa.

The two states were in Supreme Court for direct trial between the two of them for the boundary lines between the two of them.

Justice Brewer was giving the opinion for the court in the case, Nebraska vs. Iowa. There is a further well-established principle and later New York Supreme Court cited this one distinguishes where the boundary is changed not by gradual accretion or deposition but by acts of third parties, not by the acts of the person himself owning the land. If the boundary is increased by the acts of such third parties, he does not lose his riparian rights to the water.

Now, in this case the plaintiffs claim and stipulated is that in 1970 they opened a new deep channel in a new location different than the channel the, say was then exists. At least, there was a channel existing in 1938 when the basic surveys.

They opened that channel and within a year, if there was an old channel, it was closed by either their filling it or by the gradual decretion to that land as a result of the washing of the shores of the Chesapeake Bay and the washing of the water shores inside the lake which the bar separates from the Bay.

So that, they closed the channel or the channel closed as a result of their actions and opened a new channel and now claim they have the right by their own actions to deprive us of our repairing title line to the stream, which was our basic title and to deprive us of the repairing rights to bound on the mouth of that stream where it enters this lake.

By their own actions, they claim they have that right to deprive us of the repairing rights because they now say, I presume, that it was evulsion and not the gradual decretion.

The stream still exists in the location where it was opened in 1970.

THE COURT: Mr. Altwater, where is the titles to Lots 1 and 2 at present?

MR. ALTWATER: The title of Lots 1 and 2 is in Samuel J. Aaron and wife as a result of the deed in September, 1951.

MR. SAUSE: We dispute that. We think that deed we

They opened Chesapeake and within a year, it there was an old channel. It was closed by either their filling it or by the natural deposition to that land as a result of the washing of the shores of the Chesapeake Bay and the washing of the water shores inside the lake which the bar separates from the Bay.

So that, they closed the channel or the channel closed as a result of their actions and opened a new one and now claim they have the right by their own actions to deprive us of our riparian title to the stream, which was our basic title and to deprive us of the riparian rights to bound on the south of that stream where it enters the lake.

By their own actions, they claim they have that right to deprive us of the riparian rights because they now say, I presume, that it was avulsion and not the ordinary deposition.

The stream still exists in the location where it was opened in 1879.

[illegible] Albemarle, where is the stream to lots 1 and 2 [illegible].

Mr. ALTMAN: The title of lots 1 and 2 is in Samuel T. Barron and wife as a result of the deed in September 1951.

Mr. BAUGH: Mr. [illegible] that. We think that deposition

1 will show is void.

2 MR. ALTWATER: I think Mr. Sause would have a

3 problem showing that this deed was void, but in any event, it

4 is a recorded deed referred to --

5 THE COURT: If that deed were good -- was a good and

6 valid deed, then of course there would be no problem, because

7 you have the ownership in the same party on both sides of

8 either cut, right?

9 MR. ALTWATER: Yes, I think Mr. Sause denies that

10 this stream -- he maintains, I believe, that this bar has

11 always been in said land and denies the claim of Mr. Aaron

12 that his property bounds on what was land subject to title

13 action.

14 So, I think there is a factual dispute on that

15 particular issue, insofar as the deeds that Mr. Sause ques-

16 tions -- we didn't stipulate this specifically as an issue

17 except that he questions the validity of the deed.

18 The deed to Aaron is dated September 30th, 1951.

19 The deed from the Grantor Chesapeake Bay Corporation with

20 Romco Holding Company is dated that same day, September 30,

21 1951 and has the same witness and the same notary.

22 MR. SAUSE: No, it doesn't.

23 MR. ALTWATER: Yes. It does. The deed to Mr.

24 Aaron was reported two weeks after the Romco Holding Company.

25 Neither one of which referred to the other deed and the deed

will show is void.

MR. ARMSTRONG: Filing Mr. Sauer would have a problem showing that this deed was void, but in any event, it is a recorded deed referred to --

THE COURT: If that deed was void -- was a good and valid deed, then of course there would be no article, because you have his ownership in the same manner on both sides of either one, right?

MR. ARMSTRONG: Yes. I think, Judge, Jones claims that this strong -- he maintains, I believe, that this had been always been in said land and denies the claim of Mr. Aaron that it property bought on what was land subject to title action.

So, I think there is a factual dispute on that particular issue. Insofar as the Judge that Mr. Sauer order -- we didn't argument, this is verifiably an issue, right that he questions the validity of the deed.

The deed to Aaron is dated September 20th, 1991. The deed from the grantor Greenpoint Development Corporation to Rocco Holding Company is dated that same day, September 20, 1991 and has the same witness and the same notary.

MR. HAUSER: No, it does.

MR. ARMSTRONG: Yes. It does. The deed to Mr. Aaron was recorded two weeks after the Rocco Holding Company, whether one of which referred to the other deed and the land

1 with the Romco Holding Company did not accept these two
2 particular lots. We will also show, however, that the Romco
3 Holding Company and the Chesapeake Bay Corporation were sub-
4 stantially owned by the same people. So, that was a transfer
5 between two controlled corporations and when Mr. Nichols, the
6 president of the first corporation, conveyed to his own
7 corporation on the same day made an advance to Mr. Aaron of
8 the two lots.

9 I do not think it can be claimed as its conveyance
10 to Mr. Aaron reported as he executed both deeds when his own
11 secretary, the notary, witnessed and acknowledged both deeds.
12 So, we strongly challenge that that claim, that that deed was
13 invalid.

14 Now, we both referred to this Nutle plat of Exhibit
15 R as I said when it was attached to the stipulation. I am
16 still not ready to stipulate at this moment, because my
17 surveyor has not gone over it.

18 But, it appears to me to be fairly accurate as a
19 comparison of the surveys. And, subject to that limitation,
20 I would like to refer to it myself and call the Court's
21 attention to the change in the land at that location on the
22 southerly side of the inlet.

23 There is a line approximately 170 feet which is
24 out in the Chesapeake Bay.

25 THE COURT: What line are you talking about?

with the Power Boating Company did not accept these terms, particularly in the end also show, however, that the Powers Holding Company and the Chesapeake Bay Corporation were substantially owned by the same people. So, there was a tenancy between two controlled corporations and when Mr. Nicola, the president of the first corporation, conveyed to his own corporation on the same day made an advance to Mr. Barron of the two loans.

I do not think it can be claimed as the conveyance to Mr. Barron reported as he executed both deeds when his own secretary, the notary, witnessed and acknowledged both deeds. So, we strongly challenge that that claim, that the deed was invalid.

Now, we both referred to this Marie Blat to exhibit 8 as I said when it was referred to the arbitration. I am still not ready to stipulate at this moment, because my survey has not gone over it.

But, it appears to me to be fairly accurate as a comparison of the surveys. And, subject to that limitation, I would like to make it to speak and call the Court's attention to the same as at the land at that location on the southerly side of the inlet.

There is a line approximately 470 feet which is out in the channel, is that.

The Court: And the line are you talking about?

MR. ALTWATER: I am referring to the furtherest line westward triangular point on the survey of Metcalf.

THE COURT: Right.

MR. ALTWATER: That triangle is out in the Bay beyond the dotted line which was the 1973 survey of the Ward Associates.

THE COURT: Right.

MR. ALTWATER: At that point where that lower or southern line coming south somewhat east, the next circle shown is approximately 100 feet out from the shoreline. There will be testimony, I am sure, that this entire shoreline of the Chesapeake Bay has been eroding away and the loss to the Tolson Farm and Mr. Tolson, who is the son of James Tolson shown on the map of 1877, and has known it since he was a child, says that that field in his childhood was the longest field on the farm.

It is now one of the smallest as the result of the banks washing back as shown here from 1948 to 1973, approximately 28 years.

THE COURT: 25 years.

MR. ALTWATER: 25 years of washing away about 100 feet in one place and about 170 feet in another. The shoreline north of this area where Lots 1 and 2, where Mr. Aaron's are located, has also eroded within his memory at least 50 feet.

MR. ALTMAYER: I am referring to the northwest line westerly parallel point on the survey of Tetcalf.

THE COURT: Right.

MR. ALTMAYER: That triangle is out in the bay beyond the dotted line which was the 1977 survey of the Ward Associates.

THE COURT: Right.

MR. ALTMAYER: At that point where the lower or southern line coming south somewhat east, the most circle shown is approximately 100 feet out from the shoreline. There will be testimony, I am sure, that this entire shoreline of the Chesapeake Bay has been eroding away and the land in the Tolson Farm and Mr. Tolson, who is the son of James Tolson shown on the map of 1877, and has known it since he was a child, says that that field in his childhood was the longest field on the farm.

It is now one of the smallest as the result of the banks washing back as shown here from 1948 to 1972 approximately 28 years.

THE COURT: 25 years.

MR. ALTMAYER: 25 years of washing away about 100 feet in one place and about 170 feet in another. The shoreline north of this area where Lots 1 and 2, where Mr. Baron's are located, has also eroded within the last 50 years.

1 So, when we are talking about a shoreline now
2 existing, we are not talking about a shoreline at any lengthy
3 historical existence. And in fact when we go back to the
4 Atlas which has been recently republished of the Eastern Shore
5 and is the 1877 Atlas showing this area, Tolson Creek is a
6 wide-mouthed body and that is filed as Exhibit T.
7 Did you file those extra copies, John?
8 MR. SAUSE: What extra copies?
9 MR. ALTWATER: You were having Xerox copies made of
10 the Atlas?
11 MR. SAUSE: Yes. They are up there.
12 MR. ALTWATER: What I have is an old Xerox copy.
13 MR. SAUSE: It looks like that (indicating).
14 MR. ALTWATER: Your Honor, looking at Exhibit T, the
15 Gibson Farm is the one now owned by Mr. Sause's clients and
16 the Tolson Farm is the one owned by my clients. You will
17 notice the body of water between them is a wide-mouthed stream
18 and the land to the north of it extends much futher out into
19 the Chesapeake Bay than the land to the south of it.
20 All of that has washed back to some point since
21 1877 and the bar has been created across the mouth of Tolson
22 Creek, which bar we say has changed over the years. It is
23 not in the exact location as it ever was before, and tomorrow
24 it will not be in the exact location as it is in today if we
25 have any kind of a wind or storm.

So, when we are talking about a shoreline now existing, we are not talking about a shoreline at any identify historical existence. And in fact when we go back to the shore which has been recently reconstructed of the Dawson farm and in the 1977 photo showing that area, Tolson creek is a wide-mouthed body and that is filed as Exhibit 7.

Did you file those extra copies, John?

MR. SAUSER: What extra copies?

MR. ALTWATER: You were having Xerox copies made of the Melsar.

MR. SAUSER: Yes. They are up there.

MR. ALTWATER: Where I have a small extra copy.

MR. SAUSER: It looks like that (indicating).

MR. ALTWATER: Your Honor, looking at Exhibit 7, the Dawson farm is the one bought by Mr. Sausele(sic) and the Tolson farm is the one owned by my client. You will notice the body of water between them is a wide-mouthed stream and the land to the north of it extends much further out into the Chesapeake Bay than the land to the south of it.

All of that has washed back in more in the mid 1930's and the bar has been created across the mouth of the creek, which bar we say has changed over the years. It is not in the exact location as it was before, and therefore it will not be in the exact location as it is in today if there has any kind of a wind or storm.

1 Since 1970, it has been substantially filled by
2 the plaintiffs, and there are rocks, concrete and many truck-
3 loads of dirt and sand have been hauled in to that bar.
4 So, the bar as it exists now, you can drive two
5 trucks down it and not worry about losing either one of them.
6 If you would have tried that in '48, I think it would have
7 been extremely hazardous.
8 If you would have tried that at any time before
9 1970, you would have a sand bar with the same type of marsh
10 grass that typically grows on the waters adjacent to the Bay
11 or adjacent to a pond.
12 So, our basic facts are not too much in dispute.
13 Some of it is interpretation of those facts, some of it is
14 the question of Mr. Sause's saying the natural outlet when he
15 refers to the 1948 outlet, because that was the outlet in
16 1948 and if he justified in opening a new outlet whereby the
17 older outlet was closed.
18 So, that we have been deprived of the boundary on
19 the navigable water, the Maryland definition, the stream
20 mouth inlet into the creek which bounds our properties for a
21 considerable distance.
22 THE COURT: Call your witness, Mr. Sause.
23
24
25

Since 1970, it has been substantially altered by the plaintiffs, and there are rocks, concrete and many truck loads of dirt and sand have been hauled in to that bar.

For the bar as it exists now, you can drive two trucks from it and not worry about losing either one of them. If you would have sized that in 1969, I think it would have been extremely hazardous.

If you would have sized that at any time before 1970, you would have a sand bar with the same type of marsh grass that typically grows on the waters adjacent to the Bay or adjacent to a pond.

So, our basic facts are not too much in dispute. Some of it is interpretation of those facts, some of it is the question of law. Sauer's saying the natural outlet when he refers to the 1940 outlet, because that was the outlet in 1944 and it he established is opening a new outlet when the older outlet was closed.

So, here we have been deprived of the [illegible] on the navigable water, the marginal dwelling, the access route inlet into the creek which boards our property for a considerable distance.

THE COURT: Call your witness, Mr. Sauer.

Whereupon,

JOHN C. MULLEN

was called as a witness, and, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SAUSE:

Q. Mr. Mullen, would you give the Court your name, your address, and your occupation, please?

A. My name is John Mullen. I am located at 141 McChunken Road, Pittsburgh, Pennsylvania. I am an employee of a company by the name of D'Appolonia Consulting Engineers. We are located at Pittsburgh, Pennsylvania.

Q. Mr. Mullen, if you would, indicate very briefly the kind of engineering work that D'Appolonia does?

A. D'Appolonia is an international consulting firm and works in a number of areas. The areas that are most pertinent to this case are wetland areas, coastal offshore areas, land developments, construction of fills, channels, acquisitions of making applications for dredging permits.

I would say that is pretty much it.

Q. You have offices in Pittsburgh, Wilmington, Denver, Brussels and various other places?

A. Yes, sir.

Q. Now, forgetting this case, this creek for a moment,

have you ever -- your firm ever had the experience with the Kent Island Estates area in the Chesapeake Bay?

A. Yes, sir. We have been involved in a project north of the Kent Island Estates Corporation property.

Q. In fact, it is the creek that forms the northern boundary of the same piece of land here in question, is that right?

A. Yes, sir.

Q. Go ahead.

A. We have been involved with that property for approximately three years in a capacity of providing feasibility for development and also --

THE COURT: Providing what?

THE WITNESS: Feasibility for developments, sir.

THE COURT: Are you talking about this lake up in the northwest corner of the Gibson Farm?

MR. SAUSE: Yes, sir.

THE WITNESS: Yes. It is termed Prices Creek Inlet.

MR. SAUSE: This is just giving a background of him. There is no particular reference to this.

THE WITNESS: We have also been involved in a number of studies in that particular embayment out in the water and the marshes and up on the fastland. We have made applications for permits for dredging, marine construction. We have had public hearings.

Have you ever -- your firm ever had a conference with the Kane Island Estates area in the Pleasantville area?

A Yes, sir. We have been involved in a project north of the Kane Island Estates Corporation property.

Q In fact, it is the creek that forms the northern boundary of the same piece of land here in question, is that right?

A Yes, sir.

Q Go ahead.

A We have been involved with that property for approximately three years in a capacity of providing feasibility for development and also --

THE COURT: Providing what?

THE WITNESS: Feasibility for development, sir.

THE COURT: Are you talking about this lake up in the northwest corner of the Albson tract?

MR. SAUSE: Yes, sir.

THE WITNESS: Yes. It is certainly the crux of the matter.

MR. SAUSE: This is just cursory background of his. There is no particular reference to this.

THE WITNESS: We have also been involved in a number of studies in that particular area out in the water and the marshes and up on the farmland. We have made applications for permits for dredging, marine construction, as have had public hearings.

MR. ALTWATER: Your Honor, I don't wish to object. I assume Mr. Sause has qualified this witness personally and I would rather have the experience of his trade rather than generally of the firm.

MR. SAUSE: No. This is what he has done.

THE WITNESS: This is my involvement.

MR. SAUSE: This is what we are telling you.

MR. ALTWATER: When he says, "we are", he is speaking of the firm.

MR. SAUSE: Go ahead.

THE WITNESS: Sir, I have been involved in the Kent Island per se on a personal involvement of all the field studies that have occurred since 1973.

BY MR. SAUSE:

Q. You have worked generally in this area?

A. Yes.

Q. Since 1973?

A. Yes. That is true.

Q. You didn't come on Kent Island cold with reference to this case?

A. That is correct.

Q. Now, what is your particular work with Dapilonia?

A. I am a geologist with a strong background in geomorphology, which is classification and delineation of land forms both coastal and others, that is, glacial and arid.

MR. ALTMAN: Your Honor, I don't ask to object. I assume Mr. Sauer has qualified this witness generally and I would rather have the experience of his trade rather than generally of the film.

MR. SAUER: No. This is what he has done.

THE WITNESS: This is my involvement.

MR. SAUER: This is what we are talking from.

MR. ALTMAN: When he says, "We are", he is speaking of the film.

MR. SAUER: Go ahead.

THE WITNESS: Sir, I have been involved in the film industry per se on a personal involvement of all the field studies that have occurred since 1971.

BY MR. SAUER:

Q You have worked generally in this area?

A Yes.

Q Since 1971?

A Yes. That is true.

Q You didn't come on here island rule with reference to this case?

A That is correct.

Q Now, what is your particular work with negotiations?

A I am a geologist with a strong background in geomorphology, which is classification and delineation of landforms both coastal and inland, that is, riverine and arid.

Also an engineering geology.

THE COURT: Also an engineering what?

THE WITNESS: Engineering geology.

THE COURT: I didn't hear the last word?

THE WITNESS: Geology.

BY MR. SAUSE:

Q. Do you want to tell His Honor what your educational background was that qualifies you for this particular job with reference to this case?

A. I hold a Bachelor of Science Degree at the University of Massachusetts where my academic training was heavily emphasized in geomorphology again, which is the definition and classification of land forms and the sedimentation of stratigraphy, which is the study of sediments and geologic time.

During that period I worked three summers with the U.S. Geological Survey mapping these types of deposits in central Massachusetts. These deposits were related to the glacial epic that occurred in that area.

A number of these deposits were coastal in the sense that they were beaches, deltas and other land forms associated with the shoreline.

In addition, I was involved in a study on the coast of New Hampshire and Massachusetts wherein we surveyed beaches periodically to determine what would be called the sand budget.

also in engineering geology.

THE COURT: Also an engineering what?

THE WITNESS: Engineering geology.

THE COURT: I didn't hear the last word?

THE WITNESS: Geology.

BY MR. RAUSS:

Q. Do you want to tell His Honor what your educational background was that qualifies you for this particular job with reference to this case?

A. I hold a Bachelor of Science Degree at the University of Massachusetts where my academic training was heavily emphasized in geomorphology, which is the description and classification of land forms and the sedimentation of stratigraphy, which is the study of sediments and geologic time.

During that period I worked three summers with the U.S. Geological Survey mapping these types of deposits in central Massachusetts. These deposits were related to the glacial epoch that occurred in that area.

A number of these deposits were coastal in the sense that they were beaches, dellas and other land forms associated with the shoreline.

In addition, I was involved in a study on the coast of New Hampshire and Massachusetts where I, a surveyor beaches periodically to determine what would be called the sand budget.

1 The work was done for the Corps of Engineers and
2 it was to aid the Corps of Engineers in determining how much
3 fill material they should deposit on their beaches in order
4 to maintain commercially valuable and aesthetic summer beaches.
5 THE COURT: Commercially valuable to what?
6 THE WITNESS: Relative to the community. These
7 were beaches in Hampton Beach, New Hampshire, in northern
8 Massachusetts where the majority of industry was related to
9 summer traffic and very much as in the case to Ocean City,
10 Maryland.
11 It is a recreation area. Subsequent to that I
12 obtained a Masters of Science Degree from the University of
13 Vermont. During that period I taught a section in a course
14 of coastal processes.
15 I was involved in a number of projects that sampled
16 bottom sediments and defined land forms in Lake Champlain,
17 which is a very large -- approximately 120 miles long and as
18 much as 8-mile wide lake, defining the border Vermont and
19 New Hampshire -- I am sorry, Vermont and New York.
20 In addition to that, I was involved in lumenalogical
21 studies on several lakes in Northern Vermont. Lumenology
22 is the study of physical, biological, and chemical aspects of
23 the lake waters.
24 As part of my discertation work or thesis work, I
25 did a fair amount of mapping several tens of square miles of

The work was done for the dunes of Ipswich and the dunes of Duxbury understanding how much sand material they should dispose on their beaches in order to maintain commercially valuable and aesthetic summer beaches.

The author: Commercially valuable to whom?

The speaker: Relative to the community. There were beaches in Hampton Beach, New Hampshire, in northern Massachusetts where the majority of industry was related to summer traffic and very much as in the case to Ocean City, Maryland.

It is a tourist oriented area. Subsequent to that I obtained a Masters of Science degree from the University of Vermont. During that period I taught a section in a course of coastal processes.

I was involved in a number of projects that as with bottom sediments and defined land forms in Lake Champlain, which is a very large -- approximately 120 miles long and as much as [illegible] wide lake, defining the border Vermont and New York, Massachusetts I am sorry, Vermont and New York.

In addition to that, I was involved in inventory of shoreline material lines in northern Vermont. Limnology is the study of physical, biological, and chemical aspects of lake ecosystems.

In part of my dissertation work or thesis work, I [illegible] of mapping several ten of square miles of

1 mapping in the Champlain Valley of glacial and marine related
2 deposits. At some time in the past, approximately 12,000
3 years ago, Lake Champlain was much larger and it was believed
4 that it was connected with the Atlantic Ocean and a number of
5 beaches and coastline features were deposited during that time
6 and it was these deposits and features that I mapped in
7 addition to others for my Masters thesis.
8 Since working with Dapilonia, which has been
9 approximately five and one half years, I have been involved
10 in several projects on the Eastern Shore both in Maryland and
11 Virginia.
12 I have provided testimony at public hearings and
13 prepared, co-authored or authored a number of technical
14 publications supporting publications to applications for wet-
15 land alterations, for dredging permits.
16 I have been involved in actual title measurements,
17 that is, setting up tide gauges for the purpose of defining
18 tidal data plains such as mean low water and mean high water.
19 I have also been involved in defining unmarsh,
20 where these tidal down plains are located based on surveys,
21 based on mapping of vegetation and tracing the land forms over
22 a period -- over a historical period using aerial photography.
23 Again, I have been involved on Kent Island for
24 approximately three years.
25 Q What degrees do you hold?

mapping in the Champlain Valley of Vermont and earlier relict deposits. At some time in the past, approximately 12,000 years ago, Lake Champlain was a marine inlet and it was believed that it was connected with the Atlantic Ocean and a number of beaches and coastline features were deposited during that time and it was these deposits and features that I mapped in addition to others for my Masters thesis.

Since working with Dapionix, which has been approximately five and one half years, I have been involved in several projects on the Eastern Shore from Maryland and Virginia.

I have provided testimony at public hearings and prepared, co-authored or endorsed a number of technical publications supporting applications to applications for water alterations, for dredging permits.

I have been involved in actual field measurements, that is, getting to tide gauges for the purpose of deriving tidal data plains such as mean low water and mean high water.

I have also been involved in the mapping of the quantity where these tidal dom plains are located based on surveys, based on mapping coverages and examining the land forms over a period - over a historical period using aerial photography.

Again, I have been involved on Tangier Island for approximately three years.

Q. Mr. Hughes do you claim

A. Bachelor of Science Degree in Geology and a Master of Science Degree in Geology.

Q. The work which you are testied to is your profession, if you will call it, or what you do to earn a living?

A. Yes, sir.

Q. Do you belong to any professional societies related to Geology or in work that you testified to?

A. Yes, sir. I belong to a number of societies, the one that is primarily pertinent to this project and to this case is the Society of Economic Paleontologists and Mineralogists.

That society is basically a forum of four sedimentologists who publish literature and to maintain knowledge of up-to-date topics, theories and concepts of sedimentology.

I am also a member of American Society of Photogrammetry. This society deals with the medium involved with aerial photographs and satellite photographs, acquisitions and also all spectrums through the interpretations.

My main interest and expertise or continued area of knowledge is in the area of interpretations.

MR. SAUSE: Your Honor, I wonder if the Court or Mr. Altwater would have any questions of the witness as to his qualifications?

THE COURT: You can see that he is qualified to

A. Bachelor of Science degree in Geology, and a Master of Science Degree in Geology.

Q. The work which you are testified to is your profession, if you will call it, or what you do to earn a living?

A. Yes, sir.

Q. Do you belong to any professional societies related to Geology or in work that you testified to?

A. Yes, sir. I belong to a number of societies, the one that is primarily pertinent to this project and to this case is the Society of Economic Paleontologists and Mineralogists.

That society is basically a forum of top research scientists who publish literature and to maintain knowledge of or to share topics, theories and concepts of sedimentology.

I am also a member of American Society of Photogrammetry. This society deals with the taking involved with aerial photographs and acquiring photographs, mapping and also all operations through the interpretations.

My main interest and expertise or continued study knowledge is in the area of interpretations.

MR. BAKER: Your Honor, I wonder if the Court or Mr. Alvarez would have any questions of the witness as to his qualifications.

THE COURT: You mentioned that he's qualified to

express an expert opinion in the matters pertaining to Geology.

MR. ALTWATER: Yes, sir. I can see that.

THE COURT: Is that what you are qualifying the man as, a geologist?

MR. SAUSE: As a geologist and also particularly with regard to sedimentology and the use -- is that right, sir?

THE WITNESS: Yes, sir.

MR. SAUSE: And the use of aerial photographs and relating to doing that, yes, sir.

THE COURT: Very well, we will accept you as an expert in those fields.

BY MR. SAUSE:

Q. Mr. Mullen, addressing yourself to this case, and you have heard my opening statement --

Mr. Altwater, if I am leading too much, I just want to try to get to the point, you can stop me at any time. You are familiar with the area involved in this case, Tolsons Creek, are you?

A. Yes.

Q. You have been to that spot with me on one occasion, is that correct?

A. Yes, sir.

Q. You have also been there at other time or times on

a more accurate opinion in the matters pertaining to

geology.

MR. ALEXANDER: Yes, sir. I can see that.

THE COURT: Is that that you are qualifying the

man as a geologist?

MR. CAUSER: As a geologist and also particularly

with regard to seismology and the use -- is that right,

sir?

THE WITNESS: Yes, sir.

MR. CAUSER: And the use of aerial photography and

relating to oil, that, you, sir.

THE COURT: Very well, we will accept you as an

expert in those fields.

BY MR. CAUSER:

Q. Mr. Alexander, referring yourself to exhibit, and

you have heard my opening statement --

A. Alexander, if I am leading too much, I just want

to try to get to the point, you can stop me at any time.

You are familiar with the area involved in this case, Talpona

Creek, are you?

A. Yes.

Q. You have been to that spot with me on one occasion,

have you?

A. Yes, sir.

Q. Do have also been there at other time or times on

your own, is that correct?

A. Yes. One other time.

Q. Now, at the request of my client and me, did you make a study of what we called the subject area, that is, the peninsula of land or that piece of land lying between Tolsons Creek and the Chesapeake Bay?

A. Yes. I did.

Q. Would you tell His Honor, what you did and how you did it and the result of your findings?

If you want your papers, I will bring them over to you?

A. I think I can properly explain what I did first and proceed with the exhibits. There are a number of aerial photographs dating pretty far back and pretty far back as 1937 that are available for this area.

These aerial photographs were available from private companies that fly aerial photographs. They were available from the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service. Their offices that are used were located both here in town and in Salt Lake City, Utah.

The Agricultural Stabilization and Conservation Service has, over the years for its agricultural purposes, maintained or flown aerial photographs through much of the United States.

This information is used for farming and soil

your own, is that correct?

A. Yes. One otherwise.

Q. Now, at the conference between and me, did you make a study of what we called the subject area, that is the boundaries of land or that piece of land lying between Tiaona Creek and the Ghassa-ke Bay?

A. Yes. I did.

Q. Would you tell His Honor, what you did and how you did it and the result of your findings?

If you want your pieces, I will bring them over to you?

A. I think I can properly explain what I did first and proceed with the exhibits. There are a number of aerial photographs dating pretty far back and pretty far back as 1937 that are available for this area.

These aerial photographs were available from private companies that fly aerial photographs. They were available from the U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service. The offices that are here are located both here in town and in Pago Pago City. Dennis

The Agricultural Stabilization and Conservation Service has, over the years, for its agricultural purposes, maintained or flown aerial photographs throughout much of the United States.

This information is used for farming and ag

1 conservation related activities.

2 I have also obtained photographs that are often --

3 at times are also available from the U.S. Geological Survey

4 who maps or are responsible for mapping a number of areas in

5 this vicinity.

6 THE COURT: U.S. Geodetic Survey?

7 THE WITNESS: U.S. Geological Survey. They are --

8 I am unsure of the relationship between the U.S. Geological

9 and U.S. Coast and Geodetic. The U.S. Coast and Geodetic, I

10 think has since been called NOAA, National Oceanic and

11 Atmospheric Administration. NOAA, as it is called, also main-

12 tains or performs -- has aerial photographing flown for the

13 coastal areas to delineate the coastal line and prepare the

14 navigation charts that many of us are probably familiar with.

15 One other source for very old aerial photographs

16 are the National Archives in Washington, D.C.

17 THE COURT: Did you avail yourself of that source?

18 THE WITNESS: Yes, sir. As part of this project,

19 I obtained aerial photographs for 1937, 1952, 1957, 1964, and

20 1973. I obtained charts or mappings for the years 1933, 1940

21 and 1942.

22 These were coastal, in two cases, the case of the

23 1933 chart and 1940 chart, they were prepared by the U.S.

24 Coast and Geodetic Survey.

25 In the case of the 1942 chart, it was prepared by

conservation related activities.

I have also obtained photographs that are of the at times are also available from the U.S. Geological Survey who page or are responsible for mapping a number of areas in this vicinity.

THE COURT: U.S. Geodetic Survey?

THE WITNESS: U.S. Geological Survey. They are -- I am aware of the relationship between the U.S. Geological and U.S. Coast and Geodetic. The U.S. Coast and Geodetic point has since been called NOAA, National Oceanic and Atmospheric Administration. NOAA, as it is called, also maintains or performs -- has aerial photographing flown for the coastal areas to delineate the coastal line and process the navigation charts that many of us are probably familiar with.

One other source for very old aerial photographs are the National Archives in Washington, D.C.

THE COURT: Did you avail yourself of that source?

THE WITNESS: Yes, sir. As part of this project I obtained aerial photographs for 1957, 1952, 1947, 1942 and 1945. I obtained charts or mappings for the years 1873 and 1912.

These were coastal. In two cases, the case of the 1873 chart and 1912 chart, they were prepared by the Coast and Geodetic Survey.

In the case of the 1912 chart, it was prepared and

1 the Corps of Engineers. If you would like, Your Honor, I can
2 detail where each of the photographs came from of the years
3 that I gave. The 1937 aerial photograph was obtained by the
4 National Archives. The 1952, 1957 and 1964 aerial photographs
5 were obtained from the U.S. Department of Agricultural,
6 Stabilization and Conservation Service.
7 THE COURT: Now, let's go back on that.
8 THE WITNESS: Yes, sir.
9 THE COURT: From the National Archives.
10 THE WITNESS: The 1952, 1957 and 1964 aerial
11 coverage is from the Agricultural Stabilization and Conserva-
12 tion Service.
13 The 1973 aerial photograph was obtained from
14 Potomac Aerial Survey.
15 THE COURT: That is private?
16 THE WITNESS: Yes, sir. The private company is
17 located in Rockville, Maryland.
18 BY MR. SAUSE:
19 Q. Tell His Honor in connection with what they survey
20 had been done, that photographing had been done for anything
21 specific, would you, Mr. Mullen?
22 A. The 1973 photograph?
23 Q. Yes, sir.
24 A. That was done in relation to the work we were doing
25 further to the north.

the Corps of Engineers. If you would like, your Honor, I can detail where each of the photographs came from of the years that I gave. The 1937 aerial photograph was obtained by the National Archives. The 1952, 1957 and 1964 aerial photographs were obtained from the U.S. Department of Agricultural Stabilization and Conservation Service.

THE COURT: Now, let's go back on that.

THE WITNESS: Yes, sir.

THE COURT: I on the National Archives.

THE WITNESS: The 1952, 1957 and 1964 aerial coverage is from the Agricultural Stabilization and Conservation Service.

The 1973 aerial photograph was obtained from Potomac Aerial Survey.

THE COURT: That is private?

THE WITNESS: Yes, sir. The private company is located in Rockville, Maryland.

BY MR. SAUER:

Q. Was this done in connection with what the survey had been done, that photographs had been done for a specific, would you, Mr. Muller

the 1973 photograph?

A. Yes, sir.

Q. That was done in relation to the work we were doing before we did our work.

Q. Totally unrelated to this case?

A. Yes.

THE COURT: Which one was that, 1937?

THE WITNESS: 1973.

THE COURT: 1973.

THE WITNESS: That was the one provided by the Potomac Aerial Service flown for our client.

THE COURT: That has nothing to do with the land in question here?

THE WITNESS: Right. What it was was an overfly of the area we were investigating to the north.

MR. SAUSE: It shows this area, Your Honor, but it wasn't done for this case.

THE COURT: For this purpose.

MR. SAUSE: Yes.

THE WITNESS: Using the large scale aerial photographs, that is approximately one inch equal 400 feet, these photographs are approximately 36 by 36 in their original contents, and much smaller versions of these which are termed contact prints.

I interpreted the land forms -- on the changes that occurred to the land forms from the period 1933 to 1973 and I can say right up to the present, actually.

THE COURT: Just a moment. '33 to date?

THE WITNESS: Yes. Using both charts and aerial

photographs. The interpretation of the aerial photographs was done by using the contact prints and viewing them in stereo, that is three dimensional with a desk-top stereoscope.

Unfortunately, this is much bigger than I could conveniently transport. I have a pocket stereoscope if there is any interest in viewing these photographs in their three-dimensional perspective.

In order to view them in this manner, two aerial photographs are used and a particular device that separates the image and the mind in turn, records this image in a three-dimensional way as much as the same as we see three-dimensional objects about us.

Each of our eyes takes in a picture and the mind interprets it as a three-dimensional image. I used the larger scale photographs, that is contact prints, and I also used the blow-ups to perform the mappings of the materials and land forms that I will present, I guess at this time.

MR. SAUSE: Your Honor, because they are very large, do you have any objection as to him coming over and using the easel?

THE COURT: No. No objection.

THE WITNESS: They are on a 24 by 36 floormat. Before I start into the discussion of those particular placards, I would like to show the Court the original exhibits or documents from which I obtained the information.

photographs. The interpretation of the aerial photographs was done by using the contact prints and viewing them in stereo, that is three-dimensional with a desk-top stereoscope.

Unfortunately, this is much bigger than I could conveniently transport. I have a pocket stereoscope if there is any interest in viewing these photographs in their three-dimensional perspective.

In order to view them in this manner, two aerial photographs are used and a particular device that separates the image and the mind in turn, reconstructs this image in a three-dimensional way as much as the eyes as we see other dimensional objects around us.

Each of our eyes takes in a picture and the mind interprets it as a three-dimensional image. I used the larger scale photographs, that is contact prints, and I also used the blow-ups to portray the mapping of the materials and land forms that I will present. I guess at this time,

MR. SAUER: Your Honor, because they are very large, do you have any objection as to it coming over and using the easel?

THE COURT: No objection.

THE WITNESS: They are on a 24 by 36 diagram. Before I start into the dynamics of those particular phenomena, I would like to show the court the original exhibits or documents from which I derived the information.

These are rather large, if you don't mind I will just lay them out here. These are the originals, in back here of the charts, that will be in the discussions. What we have done is cut out this particular photograph or particular section that is pertinent for presentation and reduced them -- or not reduced them, but put them on a floormat which can easily be discussed with you in court here rather than have each one of these very large maps to deal with.

In addition, we have each of the aerial photographs for each of the years in question. This is a 1937 aerial photograph. This is the date on here, 8-6/24/37. It shows the area of concern, Tolsons Creek area.

This is the certification as to its authenticity provided by the National Archives. Here is their ribbon and seal. Using this print and these photographs which show at a much smaller scale, I mapped out the channel that was present during 1936.

I will show --

MR. ALTWATER: '37.

THE WITNESS: '37. I am sorry. Using a larger version of this device -- a much larger version, which is a very simple device in which two photographs are placed side-by-side and a particular area is looked at up close -- very close.

Each of these areas is looked at and a three-

These are rather large. If you don't mind, will just lay them out here. These are the original [illegible] of the charts. That will be in the discussion. [illegible] done is cut out this particular photograph or particular section that is pertinent for presentation and reduced them -- or not reduced them, but put them on a format which can easily be discussed with you in court here rather than have each one of these very large maps to deal with.

In addition, we have each of the aerial photographs for each of the years in question. This is a 1957 aerial photograph. This is the area on here, 3-5/24/[illegible]. It shows the area of concern, Tokyoma Creek area.

This is the certification as to its authenticity provided by the National Archives. There is [illegible] ribbon and seal. Using this print and these photographs which show at a much smaller scale, I mapped out the changes that was present during 1976.

I will show --

MR. ATWOOD: [illegible]

THE WITNESS: [illegible]. I am sorry. Using the [illegible] version of this device -- a much larger version, [illegible] very simple device in which two photographs are placed [illegible] bystate and a particular area is looked at up close [illegible] close.

Each of these areas is looked at and [illegible]

1 dimensional perspective is developed of the areas from this
2 and the larger floormat drawing. From the larger floormat
3 aerial drawing, I made an interpretation for each of the years
4 we had an aerial photograph for.
5 If you are interested, I have one of the 1964 aerial
6 photographs which is particularly conducive to reviewing the
7 stereo if Your Honor is interested in doing that.
8 THE COURT: Yes.
9 THE WITNESS: Well, it is not difficult. You either
10 get it or you don't get it. I have cut the photographs
11 because I believe it would be much easier to get the image.
12 With the larger instrument there is no need to cut them.
13 I think you can possibly view that, but if you have
14 any problem of getting the perspective -- it may be difficult
15 for the untrained eye.
16 My interpretation is a fully opened channel at the
17 southern end of that piece of land and the land is continuous.
18 I have noted that on Exhibit L to show and map that particular
19 type of materials.
20 THE COURT: Now, there is one to the north and one
21 to the south.
22 THE WITNESS: The one you are looking at right here
23 (indicating).
24 THE COURT: That is right. I can get a depth
25 perception. This shows a very narrow platform.

dimensional perspective is developed of the areas from this and the larger figures drawing. From the larger figures derived the line. I made an interpretation for each of the years. We had an aerial photograph for.

If you are interested, I have one of this land action photographs which is particularly conducive to reviewing the area if Your Honor is interested in doing that.

THE COURT: Yes.

THE WITNESS: Well, it is not difficult. You right out it or you don't see it. I have cut the photographs because I believe it would be much easier to see the lines with the larger instrument there as to need to cut them.

I think you can clearly view them, but if you have any problem of seeing the perspective -- it may be difficult for the untrained eye.

My interpretation is a fully opened channel at the southern end of that piece of land and the land is continuous. I have noted that on Exhibit 1 to each the partial pat (sic) type of material.

THE COURT: Now, there is one to the north and one to the south.

THE WITNESS: The one you are looking at right here. (indicating).

THE COURT: That is right. I see yet a dark [illegible] on. This appears a very narrow platform.

THE WITNESS: Yes.

MR. ALTWATER: May I see it, Judge?

THE COURT: Yes, indeed.

THE WITNESS: The device that I used was a magnified type of stereoscope. If you will first look at it in one eye -- look at the image in the right or the left and then look at it in the other eye, and then open both eyes, then if it is blurry, you want to match the images by moving the photograph.

MR. ALTWATER: I am getting two pictures.

THE WITNESS: What you want to do is to move --

MR. ALTWATER: I see.

THE WITNESS: First of all, some aerial photographs that I have taken from an airplane in 1973, they were unassociated with this project but with the other project that I was involved in.

I was interested in viewing the inlets up and down the coast with these photographs that represent the two pictures at various scales of the inlets in question or the area in question.

THE COURT: Let me come down where I can see that better.

THE WITNESS: This area here is the constructed or new channel (indicating).

MR. ALTWATER: I wonder if we can have these marked.

THE WITNESS: Yes.

MR. ROBERTS: May I see it, Judge?

THE COURT: Yes, I would.

THE WITNESS: The device that I used was a modified type of stereoscope. If you will first look at it in one eye -- look at the image in the right -- the left and then look at it in the other eye, and then open both eyes, then it is binary, you want to bend the images by moving the motorboat.

MR. ALDERMAN: I am getting two pictures.

THE WITNESS: What you must do is be sure --

MR. ALDERMAN: I see.

THE WITNESS: Right at first, some people thought that I have taken from an airplane in 1971, they were unassociated with this project but with the other projects that I was involved in.

I was interested in viewing the tubers up and down the coast with these photographs that represent the top structure at various scales of the tubers in question or the in question.

THE COURT: Let me come down where I can see that better.

THE WITNESS: This was from the contracted or by channel (indicating).

MR. ALDERMAN: I wonder if we can have these

MR. SAUSE: That could be complainant's Exhibit 1, which would be the whole sheet there and the top photograph could be complainant's Exhibit 1-A and 1-B would be the photograph under it. Is that agreeable?

MR. ALTWATER: Yes. I just think for the record. I assume the identification at the moment should be introduced as soon as he explains them.

MR. SAUSE: I will introduce them now.

MR. ALTWATER: Let me get a little more explanation.

MR. SAUSE: All right.

THE WITNESS: This is the existing channel (indicating). This is the piece of ground or ground in question if possible (indicating).

THE COURT: There is the gut.

THE WITNESS: Yes. Now the existing gut does not go out to the Bay but appears that sand is plugged in the end of it as discussed from the 1973 aerial photograph. These are oblique and were taken out of the window of an airplane with a 35 millimeter camera with no interest in maintaining scale or concern about distortion.

From this I will go to the earliest information that we have and that is the chart, Coast and Geodetic Survey chart and topographic map. Here is the reference number (indicating) and the scale is one to ten thousand. That is one inch equals ten thousand inches and the date of the chart is November 28th,

Mr. SAUER: This would be compliance exhibit 1, which would be the whole exact chart and the top photograph could be compared. Exhibit 1-A and 1-B would be the photograph under it. Is that agreeable?

MR. ALTMATHER: Yes. I understand for the record I assume the identification of the woman should be introduced as soon as he explains them.

MR. SAUER: I will introduce them now.

MR. ALTMATHER: Let me get a little more explanation.

MR. SAUER: All right.

THE WITNESS: This is the existing channel (indicating). This is the place of ground or ground in question if possible (indicating).

THE COURT: There is the dot.

THE WITNESS: Yes. Now the existing pot does not go out to the bay but bypasses that and is placed in the end of it as measured from the 1971 aerial photograph. These are positive and were taken out of the window of a cessna with a 35 millimeter camera with no improper in maintaining scale or camera angle distortion.

From this I will take the earliest information that we have and that is the coast, Coast and Geodetic Survey chart and soundings are very. There is the reference number (indicating) and the scale is 1:20,000 (indicating). That is one inch equals 1,666 thousand inches and the date of the chart is November 26th

1933. Now, this is either the date the photography was taken or which the plane table survey was run.

The solid line shown along here represents mean high water, that is the Coast and Geodetic Survey's job is to define navigable waters and what is not. They indicate a fully continuous piece of land down to this area with the channel. They connected the channel with a solid line.

Their interpretation of the channel is continuous.

THE COURT: They don't have a double line all the way out?

THE WITNESS: No, sir. That is because of the scale. For the fact that the line is there --

THE COURT: Would it be visible for its proper scale or wouldn't they show anything but one line.

THE WITNESS: If it were properly blown up, it would show two lines. But the scale would be substantially large.

THE COURT: That is what I said. For the scale that they are using here, you can only show one line, one solid line.

THE WITNESS: Correct. Now, in my presentation, this is figure one and figure two is the 1937 aerial photograph. This was a copy done by my firm or we had it done for the purposes of presentation.

The interpretation that is presented here was developed from the originals that I have shown in court, both

1951. Now, this is either the date the photography was taken or when the plane table survey was run.

The solid line shown along here represents land in water, that is the Coast and Geodetic Survey's job is to define navigable waters and what is not. They indicate a fully continuous piece of land down to this area with the channel. They connected the channel with a solid line.

Their interpretation of the channel is continuous.

THE COURT: They don't have a double line all the way out?

THE WITNESS: No, sir. That is because of the scale for the face that the line is there --

THE COURT: Would it be visible for the proper scale or wouldn't they show anything but one line.

THE WITNESS: If it were properly blown up it would show two lines. But the scale would be prohibitively large.

THE COURT: That is what I said. For the scale that they are using here, you can only show one line, one solid line.

THE WITNESS: Correct. Now, in my presentation this is figure one and figure two is the 1917 series photograph. This was a map done by my firm or we had it done for the purpose of presentation.

The interpretation it is presented here was developed from the original that I have shown in court, both

the large scale and the smaller scale aerial photographs.

MR. SAUSE: Would you look at the photograph before we look at the others to see the definition of the photograph with respect to the channel.

THE WITNESS: The method of reproduction is a dot pattern and in many cases you lose the very distinct clarity of the original photographs. But for a convenient mode of presentation, we have gone this way.

THE COURT: What year is that?

THE WITNESS: This is the 1937 aerial photograph, June 24th, 1937.

THE COURT: Now, is this supposed to be water here (indicating).

THE WITNESS: No, sir. That is on the other aerial photograph, the one with the seal from the National Archives. You may be able to interpret that that is marsh or shrubs or grasses.

THE COURT: This light part would be water (indicating)?

THE WITNESS: I would like to compare that to my old -- yes, it is. This is the channel that I mapped during that period and the channel was continuous. This is the beach area that was shown (indicating). This was shrubs and grasses that were present (indicating). This was marsh grasses that were present through here (indicating). There is trees and shrubs

the large scale and the smaller scale aerial photographs.

MR. DAVIES: Would you look at the photograph before we look at the camera to see the definition of the photograph with respect to the channel.

THE WITNESS: The method of reproduction is a dot pattern and in many cases you lose the very definition clarity of the original photographs. Due to a convenient mode of presentation, we have gone this way.

THE COURT: What year is that?

THE WITNESS: This is the 1937 aerial photograph, June 14th, 1937.

THE COURT: Now, is this supposed to be water here (indicating).

THE WITNESS: No, sir. That is on the other aerial photograph, the one with the seal from the Federal Archives. You may be able to determine that that is marsh or shrubs or grasses.

THE COURT: This light part would be water

[illegible]?

THE WITNESS: I would like to compare that to my old -- yes, it is. This is the channel that I mapped during that period and the channel was continuous. This is the bend that was above. (Indicating). They too merge and grasses are present (indicating). This was marsh grasses that were present through here (indicating). There is trees and shrubs

here also (indicating).

There is sand beaches around this area (indicating). This beach area is above knee-high water however, it is subject to storm and wind related tides and features that are abnormal, storms. Large storms that come into the area is where you get large waves much higher energy than the normal everyday occurrence. And it is an active environment in that sense. But it is not -- the ones that I have shown to the best of my ability and knowledge, above knee-high water.

Anything else above is certainly above knee-high water. This is Tolsons Creek as shown.

MR. SAUSE: That is the 1937?

THE WITNESS: Yes.

MR. SAUSE: That would be our exhibit 2, Your Honor. I am offering that as Plaintiff's Exhibit 2.

THE COURT: Any objections?

MR. ALTWATER: No.

THE COURT: Let it be admitted.

(At which time, Court Reporter marks exhibit as Plaintiff's Exhibit 2 for identification.)

THE WITNESS: In 1940 the U.S. Coast and Geodetic Survey used the 1937 and 1940 aerial photography to develop this chart of the area and they also included on their original this note.

This note indicates a solid heavy line -- I would

here also (indicating).

There is sand beaches around this area (indicating). This beach area is above knee-high water however, it is subject to storm and wind related tides and tides that are abnormal, extreme. Large storms that come into the area where you get large waves much higher energy than the normal everyday occurrence. And it is an active environment in that sense. But it is not -- the ones that I have shown to the best of my ability and knowledge, above knee-high water.

Anything also above is certainly above knee-high water. This is Tolosa Creek as shown.

MR. SAUER: That is the last?

THE WITNESS: Yes.

MR. SAUER: That would be our exhibit 1, Your Honor. I am offering that as Plaintiff's Exhibit 1.

THE COURT: Any objections?

MR. ATTWOOD: No.

THE COURT: Let it be admitted.

(At which time, Court Reporter marks exhibit as Plaintiff's Exhibit 1 for identification.)

MR. ATTWOOD: If the U.S. Coast and Geode to survey used the 1971 and 1940 aerial photography to develop this chart of the area, they also included on it the original this note.

This note indicates a solid near, the -- it would

like to read it. It pertains to the fastlands.

MR. ALTWATER: Now, what are you reading from?

THE WITNESS: I am reading from figure number three.

MR. SAUSE: On complainant's Exhibit 1.

THE COURT: That exhibit has not been introduced.

MR. SAUSE: Mr. Altwater said he didn't want me to, except for identification. The whole card would be complainant's exhibit 1 for identification. He has already testified to the picture in the right-hand corner and to his figure number one.

THE WITNESS: Right.

MR. SAUSE: Now, he is moving to figure number three.

THE WITNESS: The note goes as follows, "The light line around the marsh defines the outer limits of vegetation visible above mean high water. The mean high water line (intersection of the plane of mean high water with the ground) is shown only on fastland and is represented by heavy solid lines." As you can see, that heavy solid line extends all the way down to the inlet area or the outlet area, whatever term you prefer and beyond.

BY MR. SAUSE:

Q. Now, is that what you just read or is that your language or interpretation?

A. No. That is the language and interpretation as presented on the original map. This note was just recopied.

like to read it. It pertains to the Las Vegas.

MR. ALTWATER: Mr. Chairman, reading from

THE WITNESS: I am reading from Exhibit Number three.

MR. SASSER: On complainant's exhibit 3?

THE COURT: That exhibit has not been introduced.

MR. SASSER: Mr. Altwater asks he doesn't want the to, except for identification. The whole card would be complainant's exhibit 3 for identification. It has already been filed to the account in the right-hand corner and to his figure number one.

THE WITNESS: Right.

MR. SASSER: Now, he is moving to figure number three.

THE WITNESS: The note goes as follows. The line line around the map defines the outer limits of vegetation visible above mean high water. The area high water line intersection of the plane of mean high water with the ground is shown only on Sheet and is represented by heavy solid lines. As you can see, that heavy solid line goes all the way down to the inlet area or the outlet area, whatever term you prefer and beyond.

BY MR. SASSER:

Q. Now, is that what you just read is the text language of stipulation?

A. No. That is the language and [illegible] on presented on the old map. This note was [illegible]

THE COURT: Where does it show? Is this to show the course of the cut? Right there?

THE WITNESS: Yes. The solid line is the line they designated as the mean high water line.

THE COURT: They couldn't break that line, I guess, because of scales?

THE WITNESS: Yes, sir.

THE COURT: To show this went through there (indicating)?

THE WITNESS: Yes, sir. Right.

MR. ALTWATER: I don't want to interrupt, but just for clarity, you are saying this line that is solely part of the area in question or approximately there indicates the stream?

THE WITNESS: Yes, sir.

MR. ALTWATER: What are the other solid lines?

THE WITNESS: The other solid lines are marsh and nearby vegetation, shrubs.

THE COURT: All right. Proceed.

THE WITNESS: Figure four on Exhibit 1 --

MR. SAUSE: However you want to do that. That is Exhibit 1.

THE WITNESS: That is a 1942 map prepared by the Corps of Engineers. It too shows the inlet or outlet, whatever your terminology may be, approximately in the same place.

THE COURT: Where does it show? Is this to show the course of the over? Right there?

THE WITNESS: Yes. The solid line is the line they designated as the mean high-water line.

THE COURT: They couldn't break that line, I guess, because of scale?

THE WITNESS: Yes, sir.

THE COURT: To show this goes through there (indicating)?

THE WITNESS: Yes, sir. Right.

MR. ARTHATAN: I don't want to interrupt, but just for clarity, you are saying this line that is solely part of the area in question or approximately there indicates the stream?

THE WITNESS: Yes, sir.

MR. ARTHATAN: What are the other solid lines?

THE WITNESS: The other solid lines are marsh and partly vegetation, shrubs.

THE COURT: All right. Proceed.

THE WITNESS: Figure four on Exhibit 1 --

MR. GUNN: However you want to do that. Just 4, Exhibit 1.

THE WITNESS: That is a map prepared by the Corps of Engineers. It shows the inner or outer, whatever your interpretation, may be approximately in the same place.

You might notice in figures one, three and four, there is a slight change in the piece of land just south of the inlet in question or the inlet -- due to erosion and changes along that coastline.

BY MR. SAUSE:

Q. You mean that would be the Benton Farm?

A. Yes.

MR. SAUSE: Now, at this time we would like to formally introduce Plaintiff's Exhibit 1.

THE COURT: Any objections?

MR. ALTWATER: No objections.

THE COURT: Let it be admitted.

(Court Reporter marks exhibit as Plaintiff's Exhibit 1)

MR. ALTWATER: These are copies made of those maps?

THE WITNESS: Of these maps, yes. The original of the map over here.

MR. ALTWATER: Are these drawn copies or photographs?

THE WITNESS: These are photographs and reproduced. In this case, these three exhibits, there is nothing presented other than the notes and the title blocks that were put in.

These major portions of the area have not been altered in any way or drawn.

MR. ALTWATER: They are simply photographs and reproduced.

ion right notes in figures one, three and four, like in a pilot chamber in the place of lack one mouth of the inlet in question or the inlet -- due to erosion and damage also that occasions.

BY MR. ADAMS:

Q You mean that would be the Tarrou Farm?

A Yes.

MR. SAUER: Now, at this time we would like to formally introduce plaintiff's exhibit 1.

THE COURT: Any objections?

MR. ALDWAGER: No objections.

THE COURT: Let it be admitted.

(Court supplier marks exhibit as Plaintiff's Exhibit 1)

MR. ALDWAGER: There are copies made or there?

THE WITNESS: Or there, yes, yes. The original is the one over here.

MR. ALDWAGER: Are these drawn copies or photographs?

THE WITNESS: These are photographs and reproduced in this case, these three exhibits, there is nothing showing other than the area and the tile block that were put in.

These major portions of the area have not been altered in any way or form.

MR. ALDWAGER: They are simply photographs and reproduced.

THE WITNESS: Right.

MR. SAUSE: This is plaintiff's Exhibit 1 which the gentleman has already marked.

THE COURT: Are these all the exhibits that you are going to talk about (indicating)?

THE WITNESS: Right. Figure five is a June 6th, 1952 aerial photograph or copy on which I made my mappings. This again, shows the ventricular piece of ground continuous with the northern properties. It shows the channel, however, the channel is dotted in the area on which I could not discern on the photographs because either of quality or overhanging vegetation of whether the channel is opened.

It is very possible that the channel was plugged at the time as I had found to be the case for many of the channels along this coast.

THE COURT: You are speaking of being plugged by natural forces?

THE WITNESS: Yes, sir. On a seasonal basis, oftentimes these small inlets or outlets, whatever term you prefer, are blocked by natural processes, accumulation of sand. Many times either related to storms, particular storm events or related to the early spring when heavy precipitation occurs and there is no vegetation, these haunted areas build up in terms of elevation or head and force their way through these inlets, clean them out and the everflow of the tide will then

THE WITNESS: Right.

MR. ROGERS: This is plaintiff's exhibit 1 which the gentleman has already marked.

THE COURT: Are these all the exhibits you are going to ask about (indicating)?

THE WITNESS: Right. Figure five is a June 6th 1971 aerial photograph or copy on which I made by mapping this again, shows the vertical piece of ground continuous with the northern properties. It shows the channel, however, the channel is dotted in the area on which I could not discern on the photographs because either of quality or overhanging vegetation of whether the channel is open.

It is very possible that the channel was piped at the time as I had found to be the case for many of the channels along this coast.

THE COURT: You are speaking of being piped by nature, for sa?

THE WITNESS: Yes, sir. On a seasonal basis, oftentimes these small inlets or outlets, whatever term you or ter. are blocked by natural processes, accumulation of sand. Many times since, related to storms, particular storm events or related to the early spring when heavy precipitation occurs and there is no vegetation, there develop sand bars and in some of situations, the head and force their way through these outlets. Depending on the and the exactness of the tide will also

maintain them for a period of time, until the amount of sand coming across the little inlet's channel is sufficient enough to block it again.

In this case, it appears to be an equilibrium condition for the inlets along the western side of Kent Island. It is a condition that I have observed elsewhere.

THE COURT: What do you mean by equilibrium?

THE WITNESS: It is a condition -- equilibrium would be a condition of long-termed duration. These closings and openings as opposed to total closings or maintaining open all the time.

THE COURT: What is the keeping of equilibrium by doing that?

THE WITNESS: I guess the phse of development, if I can use that word, I view the channel itself as being established and being opened only seasonally and with that in mind, that condition appears to have extended over a number of years.

In that sense, I say it is an equilibrium because the environment all along the coast there is very dynamic, very changing. This is one of the few things that has maintained itself for a period of time. Particularly a relationship and with that sense, it is an equilibrium.

THE COURT: It is stable you mean in a sense that it follows a pattern?

maintain them for a period of time, until the amount of sand drifting across the little ditch channel is sufficient enough to block it again.

In this case, it appears to be an equilibrium condition for the inlet along the western side of Long Island. It is a condition that I have observed elsewhere.

THE COURT: What do you mean by equilibrium?

THE WITNESS: It is a condition -- equilibrium would be a condition of long-termed duration. These closings and openings as opposed to total closings or maintaining open all the time.

THE COURT: What is the length of a closing on the going chart?

THE WITNESS: I guess the phas of development, if I can use that word, I view the channel itself behind material used and being opened only seasonally and with that in mind, that condition appears to have extended over a number of years.

In that sense, I say it is an equilibrium condition the environment all along the coastline is very dynamic, very changing. This is one of those things that has maintained itself for a period of time, relatively speaking and with that sense, it is an equilibrium.

THE COURT: Is it a coincidence that it seems that it follows a pattern?

THE WITNESS: Right. It is a predictable pattern but the tides cannot be predicted. It is a response to seasonal events.

MR. SAUSE: That would be plaintiff's Exhibit 3.

THE COURT: You are offering it?

Any objections?

MR. ALTWATER: No.

(At which time, the Court Reporter marks exhibit as Plaintiff's Exhibit 3.)

THE WITNESS: Next is figure six which is an aerial photograph marked on October 22, 1957. Again, on this photograph the ventricular piece of ground attached to the northern properties, a channel was distinctive for most of the area -- I am sorry, let me rephrase that.

The channel was present or evident in the aerial photographs for a good part -- a distinctive channel was present for part of the area. There wasn't a very distinctive channel either for reasons of poor photography or overhanging vegetation in the area shown by the dashed marks.

It is my opinion though, since the inlet was open to the beach and out into the bay that this was a continuous channel throughout at this time.

MR. SAUSE: Plaintiff's Exhibit 4, Your Honor.

THE COURT: Any objections?

MR. ALTWATER: No objections.

THE WITNESS: Right. It is a predictable pattern

that the tides cannot be predicted. It is a response to

seasonal events.

MR. SAUSE: That would be plaintiff's Exhibit 3.

THE COURT: You are offering it?

Any objections?

MR. ALTWATER: No.

(At which time, the Court Reporter marks exhibit as Plaintiff's Exhibit 3.)

THE WITNESS: Next is figure six which is an aerial photograph marked on October 12, 1972. Again, to take photograph the ventricular plane of ground attached to the northern properties, a channel was dredged in the west of the area -- I am sorry, let me rephrase that.

The channel was present or evident in the aerial photographs for a good part -- a distinctive channel was present for part of the area. There wasn't a very distinctive channel either for reasons of poor photography or overhanging vegetation in the area shown by the dashed lines.

It is my opinion though, since the inlet was open to the beach and out into the bay that there was a continuous channel throughout its this time.

MR. SAUSE: Plaintiff's Exhibit 4, Your Honor.

THE COURT: Any objections?

MR. ALTWATER: No objections.

THE COURT: Let it be admitted.

(At which time, the Court Reporter marks the exhibit as Plaintiff's Exhibit 4.)

MR. ALTWATER: May I ask if you are making these interpretations from this print or from the original photographs?

THE WITNESS: As I indicated earlier, I was making my interpretations from the large originals and also from the small originals that I was viewing from the stereoscope.

In many cases, the quality of the basis of the base maps as presented as exhibits does not meet the quality of the originals that I worked from. For this reason this is just a presentation.

MR. ALTWATER: I just find it difficult on this to see the channel path anywhere from -- I am not even sure where the channel path is in this area. It seems to be an overlay of red lines.

MR. SAUSE: Mr. Altwater, we will have time to do that in a few minutes.

MR. ALTWATER: I just want to get this clear. Your are not interpreting this as such, your overlay is based on, in part, on this as a location but based on your interpretation of the original photographs.

THE WITNESS: That is correct.

MR. ALTWATER: Are they the ones that you have up

THE COURT: Let it be admitted.

(At which time the court Reporter marks the exhibit as Plaintiff's Exhibit 1.)

MR. ALTWATER: May I ask if you are making these interpretations from this print or from the original photographs?

THE WITNESS: As I indicated earlier, I was making my interpretations from the large originals and also from the small originals that I was viewing from the stereoscope.

In many cases, the quality of the basic of the base maps as presented on exhibits does not meet the quality of the originals that I worked from. For this reason this is just a generalization.

MR. ALTWATER: I just find it difficult to this to see the channel path anywhere from -- I am not even sure where the channel path is in this area. It seems to be an overlay of red lines.

MR. SAUER: Mr. Altwater, we will have time to do that in a few minutes.

MR. ALTWATER: I just want to get this clear. You are not interpreting this as such, your overlay is based on, in part, on this as a location out based on your interpretation of the original photograph.

THE WITNESS: That is correct.

MR. ALTWATER: Are they the same that you have up

there?

THE WITNESS: Yes, sir. Figure seven is an aerial photograph of May 2, 1964. This is a photograph that is looked at in stereo at the bench. That again, shows the piece of ventricular ground associated with the northern property and in this case the channel was continuous at the southern end of this ventricular piece of ground and it was opened to the advent flow of the Chesapeake Bay into Tolsons Creek.

THE COURT: Does the word "ventricular", in your discipline, have any special meaning?

THE WITNESS: Its meaning ventricular in terms of more quality shape. It is a less deposit.

THE COURT: What kind of deposit?

THE WITNESS: It is elongated. As opposed to being square. That is the only connotation.

MR. SAUSE: That would be Exhibit 5.

THE COURT: Any objections?

MR. ALTWATER: No objections.

THE COURT: Let it be admitted.

(At which time, the Court Reporter marks for identification Plaintiff's Exhibit 5.)

THE WITNESS: The next is figure eight, this is an aerial photograph taken on February 5, 1973. The mappings on this show a new inlet present. They show a quantity of

[illegible]

MR. WITNESS: Yes, sir. Flight seven taken earlier approach on May 7, 1964. This is a photograph that is looked at in stereo at the bench. That again, shows the trace of ventricular ground associated with the northern departure and in this case the channel was continuous at the southern end of this ventricular trace of ground and it was opened to the ahead flow of the Chesapeake Bay into Tangier Sound.

THE COURT: Does the word "ventricular", in your description, have any special meaning?

THE WITNESS: It's meaning ventricular in terms of core quality above. It is a less [illegible].

THE COURT: What kind of deposit?

THE WITNESS: It is clonquard. As opposed to [illegible] word, that is the only connotation.

MR. SAUER: That would be [illegible].

THE COURT: Any objections?

MR. [illegible]: No objection.

THE COURT: Let it be admitted.

(At which time, the court Reporter marks not admitted Plaintiff's Exhibit [illegible].)

THE WITNESS: The next is flight eleven, which is a natural departure taken on February 5, 1967. The engine on this shows a very light ground. They show a quality of

1 material, which my visit on sight and other aerial photographs
2 make what it appears to be dredge spoiled.
3 This material was deposited on vegetation or on
4 ground that was there previously in many cases, possibly not
5 everywhere. It also shows the old channel inlet or the old
6 inlet channel, present and continuous up to the beach. There
7 is no connection between Chesapeake Bay and Tolsons Creek
8 from the old inlet channel.
9 It is my opinion that this was caused by natural
10 sedimentation process. It is possible that it was caused by
11 other means. But remove these, I would suspect it is within
12 the scope of the natural processing to close the inlet.
13 That inlet with the present inlet open will probably
14 maintain itself closed. The reason being is that the cross-
15 sectional area of the new inlet is much larger than the old
16 inlet.
17 There are no heads, or no floods, changes in
18 elevation will maintain themselves or establish themselves at
19 Tolsons Creek as long as that inlet remains open.
20 THE COURT: In other words, it will the pressure
21 off of this gut here?
22 THE WITNESS: Yes. So, unless this new inlet were
23 closed, this old inlet would probably not open by natural
24 processes. If it were closed it would be probable after a
25 period of time it would open or continue to open and close as

it has done prior to this new inlet's construction.

BY MR. SAUSE:

Q. Does that indicate that that is all reclaimed area and made from the core of the earth up of the dredge spoiled or overlay or what is it?

A. I am not taking any measurements but from the review of the other photographs I would suspect that a good bit of the dredge spoiled was deposited on ground above mean high water.

It may be that some of the dredge spoiled was deposited in ground that was below that. From the ground it was secreted to that, but I would suspect that the major portion of the dredge spoiled as shown was put on ground that was above mean high water.

MR. SAUSE: This would be Exhibit No. 7.

THE COURT: Any objections.

MR. ALTWATER: No objections.

THE COURT: Let it be admitted.

(At which time, Court Reporter marks for identification Plaintiff's Exhibit No. 7.)

BY MR. SAUSE:

Q. Mr. Mullen, during the period stand by your survey which I suppose we can say covered from 1933 to what was it? Was it '33?

A. Yes. '33.

it was done prior to this new inlet's construction.

BY MR. SAUSER:

Q. Does that indicate that in all reclaimed areas made from the core of the earth on of the dredge material or overlay or what is it?

A. I am not taking any measurements but from the photos of the other photographs I would suggest that a good bit of the dredge spoiled was deposited on ground above mean high water.

It may be that some of the dredge spoiled was deposited in ground that was below that. For the ground is very sandy, so that, but I would suspect that the major portion of the dredge spoilage or whom was not on ground that was above mean high water.

MR. SAUSER: This would be helpful to. I.

THE COURT: Any objections.

MR. ALTMAIER: No objections.

THE COURT: Now it be admitted.

(The photo view report marked for identification Plaintiff's Exhibit No. 74)

BY MR. SAUSER:

Q. Mr. Holian, during the period stated by your attorney which suppose we can say covered from 1931 to when was it 1972

A. Yes, 1972.

Q. Up to the present time, was there ever any time that the peninsula running from the large mass of the Kent Island Estates Farm was not composed of fastland?

A. Based on the photographs that we have and to my knowledge, they represent the majority of the photographs that are available, I might note at this point there are a couple of other photographs available for 1970, 1972.

These have not been purchased because of time constraints. Based on the knowledge of the photographs we have is my opinion that the ground has been continuous from the northern piece of property on down to the old natural inlet, if I can use that term, for that period.

These photographs were spaced not for any particular benefit or relative to this case, obviously. Just based on their haphazard -- or the occurrence of them in a haphazard way, I have to believe that that peninsula of ground was continuous for that period of time.

Q. It was by fastland, I mean that it was not subject to the ebb flow or average of mean tide, is that right?

A. It was not. It was above mean high water.

Q. Now, this pattern which we find during this time span with reference to Tolsons Creek that is having a -- let's take it prior to 1970 when the new opening was made of having a opening at the southern end of the creek along Kent Island, was that at all an unusual pattern or placement of the location?

Q. Do to the present time, is there any time that the peninsula running from the large mass of the Xenia Island Estates farm was not composed of Coastland?

A. Based on the photographs that I have seen to my knowledge, they represent the majority of the photographs that are available. I might note at this point there are a couple of other photographs available for 1970, 1971.

These have not been purchased because of time constraints. Based on the knowledge of the photographs I have is my opinion that the strand has been continuous from the northern piece of property on down to the old natural water, if I can use that term, for this period.

These photographs were shaded not for any particular benefit or relative to this case, obviously. Just based on their behavior or the occurrence of them in a day-to-day, I have to believe that the peninsula or ground was continuous for that period of time.

Q. It was by Lakeland, I mean that it was not subject to wave flow or average of mean tide, as that matter is very rare. It was above mean high water.

A. Yes, this picture which he rind during that time period with reference to Indian Creek that is having a [illegible] period to 1970 when the new dredging was made of having a cut-off at the northern end of the creek along the island, was that as all in natural harbors or placement of the dredging

MR. ALTWATER: Your Honor, I don't want to object to Mr. Sause's cross-examination, but sometimes he goes just a little too far. If he can keep it down.

MR. SAUSE: When I get to cross-examination you can find it objectionable but --

MR. ALTWATER: I don't mean cross-examination, I mean leading the questions. He is leading this witness on the questions.

BY MR. SAUSE:

Q. Taking the pattern which you found from 1933 up to 1970 when insofar as we know things were left to nature, was there anything unusual about the development of this creek during that period, this peninsula? Atypical is what I mean of other creeks on Kent Island?

A. I guess I would say no, it is very similar to other creeks, another creek that I have studied intensively. It is very similar to a number of other creeks that I have looked at superficially on the west side of Kent Island. There seems that in these creeks or in these inlets -- there seems to be a tendency to locate them in a natural sense further to the south than further to the north.

That tendency is probably due to a strong current running lateral to the beach in a southerly direction. This current may only be seasonal. It may only occur in the winter period. It is apparently the dominant factor that is shaping

MR. ALDERMAN: Just second, I don't want to object to Mr. Jones's cross-examination, but sometimes he goes just a little too fast. If he can keep it down.

MR. JONES: When I get to cross-examination you can find it objectionable but --

MR. ALDERMAN: I don't mean cross-examination, I mean leading the questions. He is leading this witness on many occasions.

BY MR. JONES:

Q. Taking the numbers which you found from 1913 up to 1970 mean insofar as we know things were left to nature, was there anything unusual about the development of this beach during that period, the 57 months? Anybody isn't as I mean of other creeks on Kure Island?

A. I guess I would say no, it is very similar to other creeks, another creek that I have studied intensively. It is very similar to a number of other creeks that I have looked at superficially on the west side of Kure Island. There seems that the bigger creeks or the bigger valleys -- there seems to be a tendency to locate them in a natural sense further to the south than further to the north.

That tendency is due to a strong current running laterally to the beach and a strong wave direction. This current may only be seasonal. It may only occur in the winter months. It is temporarily the dominant factor that is shaping

1 the shoreline in that area.

2 THE COURT: You mean deserting this western shore-

3 line of Kent Island and plugging up these outlets from these

4 creeks?

5 THE WITNESS: The waves and storms or the waves

6 caused by storms and wind are doing the erosion. Now, the

7 transportation is occurring in this current that is running

8 parallel to the shore.

9 Now, the direction of this current of where it takes,

10 whether it be to the north or to the south, is dependent on

11 the predominant wind direction -- let me just back up a little

12 bit.

13 The land forms on the island or on the west side of

14 the island are the result of a dominant long shore current,

15 that is a current running parallel to the coast. In the case

16 or in this particular area of the west side of Kent Island,

17 that current appears to be going in a southerly direction.

18 Therefore, the pieces of ground that have been built

19 or sedimentation that is occurring occurs from the north to

20 the south so that many of the inlets that are present on these

21 formally open embayments are situated on the southern because

22 the sand bodies have built out from the northern end at some

23 time in the past.

24 BY MR. SAUSE:

25 Q. Is there anything atypical about the fact that some

the shoreline in that area.

THE COURT: You mean describing that western shore line of Kent Island and pointing to these outlets in the overlay?

THE WITNESS: The waves and storms or the waves caused by storms and wind are doing the erosion. Now, the transportation is occurring in this current that is running parallel to the shore.

Now, the direction of this current of water is taking whether it be to the north or to the south, is dependent on the predominant wind direction -- let me just back up a little bit.

The land form on the island or on the west side of the island are the result of a dominant long shore current, that is a current running parallel to the coast. In the case or in this particular area of the west side of Kent Island, that current appears to be going in a southerly direction.

Therefore, the pieces of ground that have been built or sedimentation that is occurring occurs from the northern the south so that many of the inlets that are present on the formal open embayments are situated on the southern [illegible] the sand bodies have built out from the northern end in some time in the past.

BY MR. [illegible]

Q. Is there anything atypical about the last [illegible]

points you found before 1970, you found that the actual opening to the natural outlet might have been blocked. Was that a typical or unusual thing for nature to do was to block off the opening from time to time?

A. Again, as per detailed study of one other inlet or superficial study of other inlets on the west side of Kent Island, that is not as typical as probably the standard situation for natural inlets.

Q. This would be, you referred to a plug, I am trying -- now that everybody is back in their seats -- I am trying to recapitulate some of the things that were mentioned before. Sometimes this would take the form of a plug, is that right? Like a stopper on the Chesapeake Bay side of the outlet, was that what I understood you to say?

A. The word plug, when I use it, would be implied to a sand deposit. It would be impeding the exchange of waters between Tolsons Creek, this inlet and Chesapeake Bay. It would be a segment just for dimension purposes, 15 feet long of sand that has filled in the old channel of the inlet.

Q. Which end of the inlet would this plug most likely occur?

A. The plug would most likely occur on the Bay end of the inlet because of the greater amount of energy associated with the Bay as opposed to the Tolson Creek side where there is much less energy involved.

points you found before 1970, you found that the actual pro-
ing to the natural ability might have been blocked. Was that
a typical or unusual thing for nature to do was to block off
the opening from time to time?

A. Again, as our detailed study of one other inlet or
superficial study of other inlets on the east side of Long
Island, that is not as typical as probably the standard
situation for natural inlets.

Q. This would be, you referred to a plug. I am trying
-- now that everybody is back in their seats -- I am trying to
recapitulate some of the things that were mentioned before.
Sometimes this would take the form of a plug. Is that right?
Like a stopper on the Chesapeake Bay side of the outlet, was
that what I understood you to say?

A. The word plug, when I hear it, would be typical to a
sand deposit. It would be impeding the exchange of water
between Tainors Creek, this inlet and Chesapeake Bay. It
would be a sediment that for dimensional purposes, is less long
of sand that was carried in the old channel of the inlet.

Q. Which end of the inlet would this plug most likely
occur?

A. The plug would most likely occur on the bay end of
the inlet because of the greater energy or energy associated
with the bay as opposed to the Tainors Creek side where there
is much less energy involved.

Q So the plug would ordinarily, if not always, be on the bay side?

A It should in most cases be on the Chesapeake Bay side, unless there are special circumstances or man-made activities that have come to bear.

Q Now, this was not an unusual situation for this plug to form?

A No. It was not.

Q Now, as you and His Honor were talking about equilibrium, I took it that there were times that this plug would break out or open. Was I correct in that?

A That is correct.

Q Tell me about that?

A Well, it would be a seasonal occurrence related to the runoff of precipitation; formerly snow or rain, without a heavy vegetation cover or a good lush green vegetation cover that is present during the growing months.

I guess from May to October. This water runs off more rapidly and it enters the creeks in greater amounts because it is not taken up by the vegetation or retained on the leaves or whatever.

For the fact that it runs off more rapidly causes the impounded body of water to rise in stage or elevation. At some point in this rise the plug is breached and at that point the inlet again, is renewed and maintained opened by the ebb

Q. Do the pine needs continuously, if not always, be on the day market?

A. It should in most cases be on the Christmas day. Now, unless there are special circumstances or management activities that have come to bear.

Q. Now, did there not an unusual situation for this year to form?

A. No. It was not.

Q. Now, as you and the Moyer were sailing along approximation, it look it that there were times that the pine would break out or open. Was I correct in that?

A. That is correct.

Q. Tell me about that?

A. Well, it would be a seasonal occurrence related to the timing of precipitation, torrently wood or rain. When heavy vegetation cover or a good tumbleweed vegetation cover that is present during the January months.

I guess from May to October. This water run off rate rapidly and it enters the ocean in greater amounts because it is not taken up by the vegetation or retained on the watershed.

For the last than it tend are more rapidly, cause the saturated body of water to rise in size or elevation. Soon tumbleweed rise the sand is breached and at that point the water is released and unimpeded causing the sand

1 and the flow of the tide until such time as the long shore
2 occurrence or the sediments that are being transported and
3 deposited overcome this inlet.
4 Again, this kind of operation of the sedimentation
5 would be associated with the seasonal phenomena. It would be
6 associated with a late fall or an early winter or early
7 summer. It has no particular time for everywhere, for this
8 sight I am sure there would be a specific time.
9 I would like to note that in other periods of the
10 year, let's say the plug would be in and you would get rain-
11 fall the relation between the rise in the pool or the level of
12 Tolsons Creek would not be sufficient to break the plug, over-
13 come it or flood over it.
14 Q. This channel in its natural form was not a very
15 reliable channel, was it?
16 A. For navigation purposes?
17 Q. Yes. Let's take navigation purposes first.
18 A. I suspect that it was not navigable to commercial
19 craft. I would fully suspect that it was not navigable to
20 commercial craft, i.e., a fishing type craft. It may have
21 been navigable to flat bottom boats or smaller bottom boats
22 when the plug was opened.
23 Q. When the plug was opened?
24 A. Yes. Otherwise it would not have been navigable.
25 Q. Do I take from what you say that in its natural

and the line of [illegible] such sites as the long shore concrete or the rock [illegible] that [illegible] crumpled and dogleg [illegible] [illegible].

Again, this kind of operation of the sedimentation would be associated with the seasonal phenomena. It would be associated with a late fall or early winter or early summer. It has no particular time for everywhere, for this sight I [illegible] there could be a specific time.

I would like to note that an other period of the year, let's say the plug would be in and you would not rain-fall the pulsation between the rise in the pool or the level of [illegible] would not be sufficient to break the plug, over-come it or flood over it.

Q. This channel in its natural form was not a very reliable channel, was it?

A. For navigation purposes?

Q. Yes. Let's take navigation purposes first.

A. [illegible] navigation to commercial crafts. I would [illegible] it was not available to commercial crafts i.e. a [illegible] type craft. It may have been available to [illegible] or smaller bottom boats when the plug was [illegible].

Q. When the plug was [illegible]?

A. Yes, [illegible] would have been available.

Q. Do [illegible] that in its natural

state, one could not always count on it being opened for any kind of a boat?

A. That is correct.

Q. Insofar as its purpose in draining the lake or subjecting the lake to the ebb flow of the tide that was not a matter on which one could rely with the same certainty that one could rely upon the sun rising in the morning?

A. That is correct.

Q. Now, in 1970, it has been stipulated in this case, you have been told that the opening was made which you found on your last presentation. What effect that had -- I think you said to His Honor that had the effect of relieving the pressure on the natural drains by opening the new one?

MR. ALTWATER: I am going to object to Mr. Sause's summarizing the prior testimony and then asking to repeat it. If you want to ask him about it again --

MR. SAUSE: I want to make sure I understood it, Mr. Altwater.

THE COURT: Sustain the objection. Repeat the question, Mr. Sause.

BY MR. SAUSE:

Q. What effect if any, in your opinion, did the opening of that new channel in 1970 have upon the natural drain?

THE COURT: What effect did it have upon the old outlet?

rate, one could not always count on it being proper to stay
ahead of a boat?

A. That is correct.

Q. Inasmuch as the purpose in maintaining the lake is
multiplying the lake to the one flow of the tide that was not
a matter on which one could rely with the same certainty that
one could rely upon the sun rising in the morning?

A. That is correct.

Q. Now, in 1970, it has been stipulated in this case,
you have been told that the opening was made which you found
on your last presentation. What effect that had -- I think
you said to Mr. Moore that had the effect of relieving the
pressure on the natural drains by opening his new one?

MR. ALTWATER: I am going to object to Mr. Sauer's
summarizing the prior testimony and then asking to cross it.
If you want to ask him about it again --

MR. SAUER: I want to make sure I understood it,
Mr. Altwater.

THE COURT: Sustain the objection. Rephrase the
question, Mr. Sauer.

BY MR. SAUER:

Q. What effect if any, in your opinion, has the opening
of that new channel in 1970 have upon the natural drains?

THE COURT: What effect did it have upon the
drains?

THE WITNESS: The effect on the old outlet would be that the old outlet would probably not open up again by natural forces, while the new inlet or new outlet, whatever, maintained open.

BY MR. SAUSE:

Q. What is your prognosis for that new opening without the intervention of man?

A. The new opening will, because of sedimentation, narrow and eventually become plugged and at that point it is possible that either the rise that would occur at Tolsons Creek, of the seasonal rise that I discussed earlier, would either break out at the location of the new inlet or may break out at the location of the old inlet depending on whichever was naturally easiest to get through.

Q. Have you been in the vicinity of the old drain or outlet recently?

A. I have been in the vicinity, by vicinity, I mean probably 100 feet, I have not been directly at the old inlet.

Q. Tell us what you saw with reference to the old inlet? Tell us first of all when you were in the vicinity?

A. I was in the vicinity in early May.

Q. Of this year?

A. Of this year.

Q. What if anything did you see at that time with reference to the inlet?

THE WITNESS: The effect on the old outlet would be that the old outlet would probably not open up against natural forces, while the new inlet or new outlet, whichever, maintained open.

BY MR. CAUSEY:

Q. What is your proposal for that new opening without the intervention of man?

A. The new opening will, because of sedimentation, narrow and undoubtedly become closed and at that point it is possible that either the rise that would occur a Salmons Creek, or the seasonal rise that I discussed earlier, would either break out at the location of the new inlet or new break out at the location of the old inlet depending on wherever it was naturally easiest to get through.

Q. Have you been in the vicinity of the old drainage outlet recently?

A. I have been in the vicinity, by proximity, I mean probably two feet, I have not been directly at the old outlet.

Q. Tell me what you may mean reference to the old inlet? Tell us first of all when you were in the vicinity?

A. I was in the vicinity in early May.

Q. Of this year?

A. Of this year.

Q. When it occurring did you see at that time with reference to the tides?

A. The new inlet was opened and flowing at that time and the old inlet, in examining the beach area from the northern side of the new inlet, I was able to see that the old inlet was not flowing. I was also able to see that the Tolson Creek side of the old inlet was somewhat pronounced at least from what I could see from the northern side of the new inlet and it had water in it.

Q. The old drain?

A. The old inlet, yes.

Q. That is topographically different than the land on its south side, is that correct?

MR. ALTWATER: I am going to object. He is constantly leading.

BY MR. SAUSE:

Q. What if any differentiations between the topography on the north side of the old channel and that on the south?

A. Both the north and the south side of the old channel were vegetated. The old channel itself had water in it. Open water for a period of several feet, I would say.

Q. What was the relationship of that water with the level of the land or vegetation on either side of it?

A. The water was at the same level as Tolsons Creek --

MR. ALTWATER: I am going to object. I do not think that the witness, on his own statement, got closer than a hundred feet. He is now testifying as to the topography on

A. The new inlet was cut and flowing at that time and the old inlet, in examining the beach area from the northern side of the new inlet, I was able to see that the old inlet was not flowing. I was also able to see that the Nixon Creek side of the old inlet was somewhat pronounced at least from what I could see from the northern side of the new inlet and it had water in it.

Q. The old drainf

A. The old inlet, yes.

Q. That is topographically different than the land on its south side, is that correct?

MR. ALTMEIER: I am going to object. Being constantly leading.

BY MR. SMOSE:

Q. What is any differentiation between the topography on the north side of the old channel and that on the south?

A. Both the north and the south side of the old channel were vegetated. The old channel itself had water in it. The water for a period of several feet, I would say.

Q. What was the relationship of that water with the level of the land or vegetation on either side of it?

A. The water was at the same level as the land.

MR. ALTMEIER: I am going to object. I do not think that the witness, on his own statement, put almost than a hundred feet. He is now testifying as to the topography on

both sides of it from his observation. I question it.

THE COURT: Well, that is a matter, if you wait for cross-examination. Overruled.

BY MR. SAUSE:

Q. You may answer.

A. I am sorry. Will you repeat the question.

Q. The question was, what was the relationship of the level of the water to the level of the land on either side of it, if you know?

A. By the presence of the vegetation I assume that the ground was above or that there was ground above the channel. I saw open water in the channel, itself.

Q. You saw open water in the channel, itself?

A. Yes. That portion adjacent to Tolsons Creek.

MR. SAUSE: Your witness, Mr. Altwater.

CROSS-EXAMINATION

BY MR. ALTWATER:

Q. What was the vegetation there when you were there, you say May of this year?

A. Yes, sir.

Q. What was the vegetation? Was it heavily vegetated with large grass or what?

A. It was more on the terms of types of vegetation. It was a combination of transitional vegetation from marsh to total upland vegetation. There were some shrubs. There was

both sides of it from his observation. I question it.

MR. LOUGH: Well, that is a matter, if you wait for cross-examination, overruled.

BY MR. BAUGHS:

Q. You may answer.

A. I do agree. Will you repeat the question.

Q. The question was, what was the relationship of the level of the water to the level of the land on either side of it, if you know?

A. By the presence of the vegetation I assume that the ground was above or that there was ground above the channel.

Q. Was open water in the channel, itself?

A. You saw open water in the channel, itself?

A. Yes. That portion adjacent to Toledo Creek.

MR. BAUGHS: Your witness, Mr. Ostwalt.

CROSS-EXAMINATION

BY MR. OSTWALT:

Q. What was the vegetation there when you were there, you say May of 1973?

A. Yes, sir.

Q. What was the vegetation? Was it heavily vegetated with large trees or what?

A. It was a combination of many of types of vegetation. It was a combination of traditional vegetation from grass to total marsh vegetation. Have you been there?

also some marsh grass involved in there also.

Q. I am speaking of the vegetation primarily in the area of the old channel?

A. At the time I did not make notice of whether it was cattails or whether it was cane or whether it was salt meadow grass or salt grass or any one of the number of the types of vegetation associated with both the marsh and the uplands.

Q. Mr. Mullen, this photograph will be identified later as this is a series of photographs put together. Looking to the south or southerly from the northerly side of the inlet, is that the type of vegetation that was there when you saw in May?

A. The vegetation I am referring to or I assume you were referring to is the vegetation associated with the old natural channel and that area adjoining Tolsons Creek, is that what you are asking me?

Q. This doesn't show too much inside Tolsons Creek, unfortunately, this obviously shows the Bay frontage. Now, is that what the Bay frontage looked like when you were there?

A. As I recall it, the vegetation seemed to be more dense. There seemed to be more vegetation there. However, the condition at the time I was there -- there was less sand on the beach. There was less sand in the new inlet itself and the perspective is difficult to ascertain on that bank area.

It is blurry. It is very difficult for me to identify

also some marsh grass involved in there also.

Q. I am speaking of the vegetation exactly in the area of the old channel?

A. At the time I did not make notes as whether it was cattails or whether it was cane or whether it was salt meadow grass or salt grass or any one of the number of the types of vegetation associated with both the marsh and the uplands.

Q. Mr. Mullen, this photograph will be identified later as this is a series of photographs put together. Looking to the south or southerly from the northerly side of the inlet, is that the type of vegetation that was there when you saw it (sic)?

A. The vegetation I am referring to or I assume you were referring to is the vegetation associated with the old natural channel and that area adjoining Tolmans Creek, is that what you are asking me?

Q. This doesn't show too much inside Tolmans Creek, unfortunately, this obviously shows the bay frontage, is that what the bay frontage looked like, then [illegible]

A. As I recall it, the vegetation seemed to be more dense. There seemed to be more vegetation there. However the condition at the time I was there -- there was less sand on the beach. There was less sand in the [illegible] and the photographs is difficult to ascertain [illegible]

Q. In hindsight, it is very difficult [illegible]

1 it exactly the same. I find it similar but not -- I cannot
2 state that it is the same.
3 Q. But the general impression is that the vegetation was
4 denser in May than it was in this picture, which was taken in
5 October of this year?
6 A. Yes. I would say that would be denser in the sense
7 that the vegetation would be healthy. It is robust as opposed
8 to brown.
9 Q. It was a rainy day which may make the color a little
10 difficult. May we have this marked for identification at
11 this time in view of the fact that there are three photographs
12 pasted together, maybe we better mark them A, B and C.
13 (At which time the Court Reporter
marks for identification
14 Defendant's Exhibits 1-A, B and
C.)
15
16 MR. ALTWATER: Mr. Sause, do you have any objection
17 to me showing this to the Court? This has not been officially
18 identified into evidence, but I want to ask the witness about
19 it.
20 MR. SAUSE: If it has not been identified into
21 evidence, I guess it cannot be admitted to court.
22 MR. ALTWATER: Do you object to my asking the Court
23 ruling? If you do, I won't do it, John.
24 MR. SAUSE: I am sure of that. If it is accepted
25 by the Court, it is all right with me.

is exactly the same. I find it similar but not -- I cannot state that it is the same.

But the general impression is that the vegetation was denser in May than it was in this picture which was taken in October of this year?

A. Yes. I would say that would be denser in the summer that the vegetation would be healthy. It is robust as opposed to brown.

Q. Is there a rainy day which may make the color a little different. May we have this marked for identification at this time in view of the fact that there are three photographs pasted together, maybe we better mark them A, B and C?

(At which time the Court reporter marks for identification Defendant's Exhibits 1-A, B and C.)

MR. ALTMAIER: Mr. Suarez, do you have any objection to my showing this to the Court? This has not been officially identified into evidence, but I want to ask the witness about it.

MR. CLUSKY: If it has not been identified into evidence, I guess it cannot be admitted in court.

MR. ALTMAIER: Do you object to my asking the Court anyway? If you do, I won't do it, then.

MR. CLUSKY: I am sure of that. If it is accepted by the Court, it is all right with me.

MR. ALTWATER: I think it will make the witness' testimony a little more intelligent.

THE COURT: I will permit it, Mr. Altwater.

BY MR. ALTWATER:

Q. That is taken from the northerly side of the new inlet on October the 8th of this year. Looking southerly to the parcel that they claim we have mapped in our property.

Mr. Mullen, was there any evidence of a break in the sand or in the vegetation of the Bay side when you were there in May at the location of the old creek?

A. As I recall it, yes.

THE COURT: What did you say there? I am not too sure I got that correct.

THE WITNESS: This would be on the Tolsons Creek side?

BY MR. ALTWATER:

Q. No. I am talking about on the Bay side. Was there any break in the sand or vegetation on the Bay side in the location of the old creek?

A. When I viewed it from the northern side of the new channel, there was not evidence of such a break in the location of the old inlet channel.

Q. In other words, there is none shown on this photograph, is it?

A. Not that I can discern.

MR. ALTWATER: Which is all make the witness testifies a little more intelligent.

THE COURT: I will permit it. Mr. Altwater.

BY MR. ALTWATER:

Q. Just as taken from the northerly side of the new inlet on October the 8th of this year. Looking southerly to the point that they claim to have mapped in our property.

Mr. Mulvey, was there any evidence of a break in the sand or in the vegetation of the bay side when you were there in May as the location of the old creek?

A. As I recall it, yes.

THE COURT: What did you say there? I as not too sure I got that correct.

THE WITNESS: This would be on the Torsons creek side?

BY MR. ALTWATER:

Q. No, I am talking about on the Bay side. Was there any break in the sand or vegetation on the Bay side in the location of the old creek?

A. When I viewed it from the northern side of the new channel, there was not evidence of such a break in the location of the old inlet channel.

Q. In other words, there is none shown on this photograph, is it?

A. Not that I can discern.

MR. SAUSE: Charlie, that is unfair. I am going to object. He can't even see the old channel there.

THE COURT: How deep was the channel in the new inlet, if you know?

THE WITNESS: When I was there -- the two times I was there this year, the tides were different in this area and to the best of my knowledge and also according to who you go on to your tidal reference, the tidal range is about 1.1 to 1.7 each.

Again, that number varies with whoever you are referencing. The Corps of Engineers tends to reference 1.7 and the Coast and Geodetic Survey --

THE COURT: You could have gone down and looked at the old channel?

THE WITNESS: Yes, sir. At the time I had street clothes on. I didn't have boots, but it was probably on the order of six inches to a foot, maybe a foot and a half for the most part in the channel.

THE COURT: You could have taken your pants off and gone down there; couldn't you?

THE WITNESS: That could have been done if I seen the need, sir.

BY MR. ALTWATER:

Q. I will hand you another photograph which shows more of the inside of Tolsons Creek.

Mr. Dean - Direct. There is water. I am going to object. He hasn't ever met the old channel that.

THE COURT: The deep water channel in the gas tanker, if you know?

THE WITNESS: When I was there -- the last time I was there this year, the tides were different in this area and on the basis of my experience and also according to what you go on your final reference, the tidal range is about 1.1 to 1.4 feet.

Again, that number varies with wherever you are referencing. The zones of alternate bands in reference 1.7 and the coastal and geodetic survey --

THE COURT: You could have gone down and looked at the old channel?

THE WITNESS: Yes, sir. At the time I had set on clothes on. I didn't have waders, but it was probably on the order of six inches in a foot, maybe a foot and a half for the most part in the channel.

THE COURT: You could have taken your waders off and gone down and looked?

THE WITNESS: That could have been done if I saw the need, sir.

BY MR. ROSENBERG:

Q. I will ask you another observation which above more of the tanker's [illegible] tread.

MR. SAUSE: Will you show it to me first too?

MR. ALTWATER: I would gladly.

If you could mark this for identification as Defendant's Exhibit 2.

(Court Reporter marks for identification Defendant's Exhibit 2.)

BY MR. ALTWATER:

Q. Now, referring to the exhibit marked for identification, Defendant's Exhibit 2 and looking generally southeasterly from the northerly side of the new inlet, can you identify there the location where you say the old stream bed would cut through?

A. I can identify it on this photograph, sir. I might add that my identification when I was there -- my identification occurred much farther into Tolsons Creek on that sand body.

THE COURT: Your identification occurred what?

THE WITNESS: My identification of the channel opening occurred when I went further out into Tolsons Creek on an existing sand body. Again, looking at this, it is a two-dimensional image and it is very difficult for me to pick out where that would be considering that the marsh would weave in and out, it is difficult to determine whether it is continuous or whether it is weaving in or out.

MR. SNOOPS: Will you show it to the first jury?

MR. ALTWATER: I would qualify.

If you could mark this for identification as Defendant's Exhibit 2.

(Same Rubber marks for identification Defendant's Exhibit 2.)

BY MR. ALTWATER:

Q. Now, referring to the exhibit marked for identification, Defendant's Exhibit 2 and looking generally southeasterly from the northerly side of the dam, can you identify there the location where you say the old stream bed would cut through?

A. I can identify it on this photograph, sir. I might add that my identification when I was there -- my identification occurred much farther into Dolores Creek on that sand body.

THE COURT: Your identification occurred where?

THE WITNESS: My identification of the channel opening occurred when I went further out into Dolores Creek on an existing sand body. Again, look at this. It is a two-dimensional image and it is very difficult to tell one where that would be considering both the water coming in and out. It is difficult to determine whether it is coming towards or whether it is weaving in or out.

BY MR. ALTWATER:

Q. I won't press the question anymore. Did you see any evidence of deposits of spoil anywhere else on that sand bar or where you've shown on your prints which are in evidence?

A. Both on the on-sight inspection which confined itself to the north of the new channel and the aerial photography which allows me some leeway in terms of accuracy, I can discern contacts within several tens of feet.

No. That would be my answer, no. The area that I mapped was the only area that I was either able to verify in the field or pick up in the aerial photograph that was spoiled.

It is possible that it is or isn't other spoil there. It may have been too small for me to pick up on the aerial photographs. So, I would like to say, I am not sure that there is not spoiled or dredge spoiled elsewhere in the vicinity.

Q. I will hand you another photograph that is looking northerly from that inlet, doesn't that show a lot of the big chunks of concrete on the entire length of the bar from the inlet north right on the beach?

A. That shows rocks and based on -- that shows something that looks like rocks and based on my times out there, much of that rock is concrete, yes.

Q. There is no natural rock of that kind on that beach; is there?

BY MR. FITZGERALD:

Q. I won't press the question anywhere. Did you see any evidence of deposits of sand anywhere else on that sand bar or where you've shown on your prints which was in evidence?

A. Both on the on-shoth inspection which confined itself to the beach of the new channel and the aerial photography which allows me some leeway in terms of accuracy I saw absolutely nothing within several tens of feet.

No. That would be my answer, no. The area that I happen was the only area that I was either able to verify in the field or pick up in the aerial photograph that was applicable.

It is possible that it is or isn't other spoil areas, it may have been too small for me to pick up on the aerial photographs. So, I would like to say, I am not sure that there is not spoils or dredge spoilsd elsewhere in the vicinity.

Q. I will hand you another photograph that is looking northerly from that site, doesn't that show a lot of the big chunks of concrete on the south - larger of the bar from the later north right on the beach?

A. That shows rocks and based on -- that shows some-thing that looks like rocks and based on my time out there, much of that rock is concrete, yes.

Q. There is no natural rock of that kind on that beach in there?

A. Not naturally, no.

Q. This is on the area of the sand beach itself, is that correct?

A. Let me look at it again, sir?

THE COURT: Which beach are you talking about, the beach on the Bay or the beach on the creek?

MR. ALTWATER: On the Bay side of this bar, north of the inlet.

THE WITNESS: North of the new inlet.

MR. ALTWATER: On both inlets.

THE WITNESS: Going north of the Kent Island Estates is the subject in question. Based on my recollection of that tree and that house and that pier, I would say, yes, that is, if this was your question, that is the beach north of the new inlet.

BY MR. ALTWATER:

Q. Now, isn't that evidence that somebody spoiled right -- or made deposits right on what is now that sand beach of something?

A. Yes. That is correct. That is not dredged spoiled.

THE COURT: What is that?

THE WITNESS: That is not dredge spoiled. That is more of a riprap nature of shore protection type as opposed to dredge spoiled.

A. More naturally, yes.

Q. This is on the area of the sand beach itself, is that correct?

A. Let me look at it again, sir.

THE COURT: Which beach are you talking about, the beach on the Bay or the beach on the creek?

MR. ATTWATER: On the Bay side of the bar, north of the inlet.

THE WITNESS: North of the new inlet.

MR. ATTWATER: On both sides.

THE WITNESS: In the north of the Kent Island Estates is the subject in question. Based on my recollection of that area and that house and that pier, I would say, yes, that is it. Is this your question, that is the beach north of the new inlet.

BY MR. ATTWATER:

Q. Now, isn't that evidence that somebody applied fill -- or made deposit, fill on what is now that sand beach or accretion?

A. Yes. That is correct. That is not dredge spoil.

THE COURT: What is that?

THE WITNESS: That is not dredge spoil. That is more of a natural accretion of shore protection than of deposit to dredge spoil.

BY MR. ALTWATER:

Q Now, could you make any estimate based on the constant view of these photographs and what you saw on the land as to what depth that spoiled has been deposited on that bar?

A It would be difficult to make that assessment unless I would say conduct hand alterables and test bits.

THE COURT: How is that?

THE WITNESS: Conduct test bits or dig a hole and map it with hand holders that would give you the current thicknesses or current locations much of this material. It would show how much spoil was put on. It would, I would like to note to indicate where the old ground surface was, however. The reason being oftentimes deposits of this nature sometimes peaty or sometimes rich in vegetation matter and the placement of spoil material on a compacting layer oftentimes does compact these and reduce their previous elevation to something less.

For example, if you were to take ten feet of peak and put it into a container -- a cylindrical contrainer and then load it with a one-ton weight, it would over a period of time consolidate that peak layer from X number of feet to something much less than that.

BY MR. ALTWATER:

Q When you look at the wetlands map that Mr. Sause filed as stipulation Exhibit S, which is an aerial photograph made of the wetlands or on behalf of mapping wetlands in 1971?

MR. ATWATER:

Q. Can you make any estimate based on the conditions you saw in the underground and what you say on the film as to what depth that spoilage has been deposited on that part?

A. It would be difficult to make such measurements unless I would say conduct bore sinkholes and test pits.

THE COURT: How is that?

THE WITNESS: Conduct test pits or dig a hole and may it with sand holders that would give you the surface discontinuities or surface locations such of this material. It would show how much spoil was put on. It would, I would think to note to indicate where the old ground surface was, however, the common being alternations deposits of this nature resulting peats or sometimes rich in vegetation matter and the placement of spoil material on a compacting layer alternation does compact these and reduce their previous elevation to something less.

For example, if you were to take ten feet of peat and put in lots of rock fragments or a cylindrical compaction and then load it with a heavier weight, it would over a period of time consolidate that peat layer from X number of feet to something much less than that.

BY MR. ATWATER:

Q. When you look at the photographs that Dr. Dames filed as exhibits 2, which is an aerial photograph made of the Wyandotte on behalf of Mr. Wyandotte in 1972

A. I have reviewed it in a cursory sense. I have not studied it in detail.

Q. Is it possible to tell from that map, what is new sand, bare sand as opposed to old sand or old material there?

A. Let me answer it in this way. The problem that we encounter with the exhibits that I presented, that is one of the exhibits themselves, not the originals but the reproductions of being lesser quality than the originals.

I think it is probably the case with this exhibit that you are referring to. It may be possible. I have not yet made such a determination. If it is possible, I am sure with viewing the originals of the photography one could make a determination of what was relatively new as opposed to being old.

Q. Have you looked at this copy which is in evidence? In looking at the area of this bar from the north side of the inlet up, does this very white nature indicate that this was bare ground?

A. The exposure on this particular exhibit -- well, the exhibit is a little overexposed. It appears that based on an interpretation I would suspect that much of the area shown in white is, in fact, bare ground.

The actual contents may not be accurate because of the overexposure.

Q. This would indicate the subject of looking at the

A. I have reviewed it in the ordinary sense. I have not studied it in detail.

Q. Is it possible to tell from looking, what is new sand, bare sand as opposed to old sand or old material there?

A. Not in answer to in this way. The problem that we encounter with the exhibits that I presented, that is one of the exhibits themselves, not the originals but the reproductions of being lesser quality than the originals.

I think it is probably the case with some exhibits that you are referring to. It may be possible. I have not yet made such a determination. If it is possible I am sure with viewing the originals of the photography one could make a determination of what was relatively new as opposed to being old.

Q. Have you looked at this map which is in evidence? In looking at the area of this bar from the north side of the inlet up, does this very white region indicate that this was bare ground?

A. The exposure on this part is just white -- well, the exhibit is a little overexposed. It appears that based on an interpretation I would suspect that much of the area shown in white is, in fact, bare ground.

The actual concerns may not be accurate because of the overexposure.

Q. This would indicate the erosion of the

original, that this is probably not vegetated, except the dark spots that are shown?

MR. SAUSE: I object, Your Honor. He says that it is impossible because of the quality of the photograph.

THE COURT: I think it is proper cross-examination. Overruled.

THE WITNESS: The darker areas certainly, in my opinion, they represent vegetation or possibly vehicles that may have been out there. Again, the exact line between these dark spots and the white area is difficult to determine.

They certainly do represent something different than the white area.

BY MR. ALTWATER:

Q. When we look at the south side of the inlet back on the lines marking the edge of the wetlands, which are the heavy blue lines, isn't that area through there completely vegetated? In the area where you would say the old channel had been located?

A. Well, I think for the fact that they have drawn over or they have placed the lines over there or the fact that it is dark, doesn't allow me to discern whether it is all vegetation or not.

It appears that a major part of it is vegetation. Although, the major part of my ability to say what scale or what accuracy is vegetated to or how big an area, I couldn't

optical, but this is probably not vegetated, except the dark spots that are above?

MR. SABOE: I object, Your Honor. He says that it is impossible because of the quality of the photography.

THE COURT: I think it is proper cross-examination. Overruled.

THE WITNESS: The darker areas certainly, in my opinion, they represent vegetation or possibly vehicles that may have been out there. Again, the exact line between these dark spots and the white area is difficult to determine.

They certainly do represent something different than the white area.

BY MR. ALTMAYER:

Q. When we look at the south side of the bridge and the lines marking the edge of the wetlands, which are the heavy blue lines, isn't that area through there completely vegetated? In the area where you would say the old channel had been located?

A. Well, I think for the fact that they have drawn over or they have placed the lines over there or the fact that it is a ... doesn't allow me to discern whether it is a vegetation or not.

It appears that a majority of it is vegetation. Although, the major part of my ability to say that areas or what appears is vegetated or not, has to do with ...

pick -- let me rephrase this. If I picked an area 10 by 10 it would be difficult for me to ascertain on that photograph of whether it was vegetation or whether it was a tree or a stump or open water. You know, in that general area.

Q. All right. Then looking into Tolsons Creek or the lake part of Tolsons Creek, what does the white area on the southerly side inside the new opening indicate?

A. That represents what would be termed a flood delta. A delta is developed by the flood tide. The material is derived from, more than likely, the beach area as the tide comes in the transporting or has sufficient velocity of transporting some sand from the shoreline with the Bay into Tolsons Creek and deposited in the form of a fan.

This is much the same of an interpretation that I would give to much of the area that was developed with or associated with the old natural inlet.

Q. So, the light fan-shaped area there indicates deposits of sand being made probably of the flood tide bringing them in?

A. Very possibly.

Q. Those are the sand deposits on the south side of that new inlet; are they not?

A. Yes. They are sand deposits. It is difficult to determine of whether they are above high water at this time or whether they are below it. It is difficult to determine that.

side -- for the sequence lines. If I picked an area 10 by 10 it would be difficult for me to ascertain on that photograph whether it was water or whether it was a swamp or a stump or open water. You know. In that general area.

All right. When looking into Tolsons creek or the new pond or Tolsons creek, what does the white area on the photograph with the[illegible] new opening indicate?

A. That sequence mark would be caused a flood radius delta is developed by the flood tide. The material is derived from, more often than likely, the bank, area as the tide comes in the transportation of the sufficient velocity of transporting sand sand from the [illegible] with the bay into Tolsons Creek and deposited in the form of a fan.

This is much the same of an interpretation that I could give to much of the area that was developed with or associated with the old natural inlet.

So, the light tan-shades area there indicates deposits of sand being made probably of the flood side building down out.

A. Very possibly.

Q. Those are the sand deposits on the south side of this new inlet, are they not?

A. Yes. They are sand deposits. It is difficult to determine of whether they are above high water or. This same or whether they are below it. It is difficult to determine that.

Q. Would that indicate to you or wouldn't that indicate to you that one of the results of the new channel is that sand deposits are being made in this area of the fan-shaped light color?

A. On that photograph, yes, they are being made there. But based on my visits earlier this year, that whole configuration has changed in the sense that this area of the channel also has a counterpart in here on this portion (indicating).

So, this piece of ground is separate.

MR. SAUSE: So you are indicating another opening to the south?

MR. ALTWATER: I object. He did not say opening, Mr. Sause.

MR. SAUSE: Well, let's see what he did say.

MR. ALTWATER: He is indicating an area to the south.

MR. SAUSE: Indicating what? The record doesn't show what he was showing.

THE WITNESS: If I could clarify?

THE COURT: You may.

THE WITNESS: The channel as I saw it earlier this year has two branches or has a branch with a number of other channels going further to the south cutting through the sand deposits.

This channel is shown as being substantial on this

1 photograph and less substantial than now than it was then.

2 BY MR. ALTWATER:

3 Q. You are indicating the channels that you are

4 speaking of are cutting through the fan-shaped area?

5 A. Sand deposits, yes. The flood delta, as I recall

6 it.

7 Q. What is the effect of the stones which have been

8 piled out at the mouth of this inlet on both sides; that is

9 stone muggings or bulkheads, whatever you want to call it,

10 on both sides of the new inlet?

11 A. They are a common form of shoreline protection and

12 inlet stabilization.

13 Q. Do you recall how far out into the water, into the

14 Bay they run?

15 A. A number of feet. I did not assess when I was there

16 how many feet. They do go out somewhat into the Bay, whether

17 it is five or 25 feet. I could not say.

18 Q. What is the effect along that bayfront shoreline

19 of Kent Island of building a jetty out into the water, by

20 effect, I mean with reference to buildup or erosion of the

21 beach itself?

22 A. Jetties can have a number of effects. They can

23 accumulate sand, cause the beach to agrade.

24 THE COURT: Cause what?

25 THE WITNESS: Accumulate sand and cause the beach

photograph and less substantial than it was in 1964.

BY MR. ALTMAIER:

Q. You are indicating to the jury that you are speaking of the writing through the tarpaulin area?

A. Sand dropcloths, yes. The field bell, as I recall it.

Q. What is the effect of the stones which have been piled upon the mouth of the inlet on both sides that is where mudflats or sandbeds, whatever you want to call it, on both sides of the new inlet?

A. They are a common form of shoreline protection and inlet stabilization.

Q. Do you recall how far out into the water, into the bay they run?

A. A number of feet. I did not measure when I was there how many feet. They go out somewhat into the bay, whether it is five or 25 feet. I could not say.

Q. What is the effect along that particular shoreline of some island or building a jetty out into the water, by effect, I mean with reference to buildup or erosion of the beach itself?

A. Jetties can have a number of effects. They can accumulate sand, cause the beach to erode.

THE COURT: Cause what?

THE WITNESS: Accumulate sand and cause the beach

to agrade; build up. Also, they can cause erosion by their presence. I guess I don't understand your question.

BY MR. ALTWATER:

Q. All right. You said that apparently the prevailing strong currents or winds along this area were from the northerly side of the northern end south?

A. That is correct.

Q. That the transportation of sediment in the waters was from north to south; is that correct? Primarily, I don't mean all the time?

A. Yes. That is correct.

Q. The primary transportation of sediment along that shoreline is from north to south in the waters of the Bay?

A. I agree with what you are saying in essence. If I can state it in my own words.

Many of the land forms that are present suggest a strong influence from the north to south flowing current.

Q. If you put a jetty out, isn't the sand going to be deposited more in the northerly side or aren't you going to have erosion on the southerly side of this jetty in this area?

A. Well, that varies on a number of things. In many cases, if the jetty is heavily fortified and extending out substantially into the Bay, you can accumulate on one side and erode heavily on the other.

However, if I might add, I will just say that many

to attack build up. Also, they can cause erosion by their presence. I guess I don't understand your question.

BY MR. ANTHONY:

Q All right. You said that apparently the prevailing ocean current or tide along this area is from the northerly side of the northern end south?

A That is correct.

Q That the transportation of sediment in the waters was from north to south. Is that correct? Certainly it didn't mean all the time?

A Yes. That is correct.

Q The primary transportation of sediment along that shoreline is from north to south in the waters of the bay?

A I guess with what you are saying in essence, if I can state it in my own words.

Many of the land forms that are predominantly a strong influence from the north to south flowing current.

Q If you put a jetty out, isn't the sand going to be deposited more in the northerly side or aren't you going to have erosion on the southerly side of this jetty in this case?

A Well, that varies on a number of things. In many cases, if the jetty is heavily fortified and extending out substantially into the bay, you can accumulate on one side and erode heavily on the other.

However, if I might add, I will just say that a

of the homeowners or residences and businesses, marinas along the western side of Kent Island jetty or groin, whatever the term is locally, their shorelines.

Q. Now, did you make any determination as to how much that shoreline has washed or eroded from the location in 1933 until the time 1973?

A. No. I didn't make any determinations. I assumed, based on my past knowledge of the area or the knowledge that I developed from the information developed for this case, there has been erosion in the past and present; that is why people have the jetties and groins.

And, there will continually be erosion on the western side of Kent Island.

Q. In the course of your studies on this location and the one to the north of a three-year period as I understand, did you make any computation as to how much erosion there was over any period of time?

A. In the area to the north we had determined, using very old charts; mid-1800's and later charts of the 1940's that two to three hundred feet or the numbers on that magnitude have been eroded from the old shoreline.

Q. You mean that is about from the mid-1800's to about early 1972?

A. The 1940's is the comparison that we made.

Q. It was about a hundred year period and how much

of the Hudson in its residences and businesses, mainly along the western side of Rent Island Center or south, whenever the town is locally, shall shoreline.

Q. Now, did you make any determination as to how much that shoreline has receded or eroded from the location in 1933 and the time 1973?

A. No, I didn't make any determinations. I assumed based on my past knowledge of the area or the knowledge that I developed from the information derived for this case, there had been erosion in the past and present, that is why people have the jetties and groins.

And, there will continually be erosion on the western side of Kent Island.

Q. In the course of your studies on this location and the one to the north of a three-year period, as I understand, did you make any determination as to how much erosion there was over any period of time?

A. In the area to the north we had determined, using very old charts, mid-1800's and later charts of the 1910's that two to three hundred feet on the average on that mainland had been eroded from the old shoreline.

Q. You mean that is about from the mid-1800's to present date 1973?

A. The 1910's is the comparison that we made.

Q. In less than a hundred year period and how much

estimate was that?

A. It obviously varied along the coastline but two to three hundred feet probably from the west to the east in some areas. Other areas were not quite affected and other areas may have been affected more. I do not have the numbers as to what the two end points would be; the minimum and the maximum.

Q. You don't know how much erosion along this area of the Kent Island Estates property or the southerly farm; the Benton Farm?

A. I have not made any measurements or done any investigation to determine that, no.

Q. Would it be fair to say that in that general area, particularly the farm to the north that two to three hundred feet that this would probably be a similar erosion?

MR. SAUSE: Your Honor, I don't know what all this relevance has as to the talk about on direct. Now, if Mr. Altwater wants to find out about these questions, he can pay the witness but I think this is far beyond the scope of direct.

THE COURT: I sustain the objection.

THE WITNESS: Your Honor, may I speak to the Court's ruling on that?

THE COURT: You may speak to it but it would be an exercise in futility.

MR. ALTWATER: With the Court's permission, I would

what was that?

A. It obviously varies along the coastline but to the boundary that probably from the west to the east in some areas. Other areas were not quite affected and such a area may have been affected here. I do not have the numbers on to what the two end points would be the minimum and the maximum.

Q. You don't know how much erosion along this area of the Kent Island Estates property or the Southerly farm the Burton Farm?

A. I have not made any measurements or done any investigation to determine that.

Q. Would it be fair to say that in the general area, particularly the farm to the north that two to three hundred feet that this would probably be a similar erosion?

MR. RUSSE: Your Honor, I don't know what all this relevance has as to the talk about on direct. Now, if Mr. Alvarez wants to find out about these questions, we can put the witness but I think this is far beyond the scope of direct.

THE COURT: I sustain the objection.

THE WITNESS: Your Honor, may I speak to the Court's ruling on that?

THE COURT: You may speak to it but it would be speculation initially.

MR. ALVAREZ: With the Court's permission, I would

1 like to show why it is relevant to his testimony.

2 THE COURT: It might be relevant, but it wasn't

3 gone into in examination in chief and therefore if you want to

4 get at it from this witness, you will have to make him your

5 witness.

6 The Court will see that he remains here to await

7 your pleasure.

8 BY MR. ALTWATER:

9 Q. It was your testimony on direct that during the

10 period from 1933 to 1976 this peninsula was not below mean

11 high tide during that entire period; wasn't it?

12 A. I guess I am concerned about the question a little

13 bit.

14 Q. Answer it however you want to.

15 A. As I mapped this peninsula, it is an elongated

16 feature, all the evidence that I have come up with from my

17 investigation in the case is that this land was above mean

18 high water.

19 Substantially above -- not substantially above, but

20 a substantial portion of the ground of interest was above

21 mean high water, yes. If that is answering your question.

22 Q. Well, if that shoreline has eroded back from the

23 Chesapeake Bay for as much as 50 feet, wouldn't the bar during

24 that period of time have moved 50 feet to the east?

25 A. The bar like the shoreline would respond to erosion

like to show why it is relevant to his testimony.

THE COURT: I have to relevant, but he wants your time in examining in chief and therefore if you want to get at it from this witness, you will have to make him your witness.

The Court will see that he testimony here to avail your pleasure.

BY MR. ALTMAYER:

Q. It was your testimony on direct that during the period from 1931 to 1936 this peninsula was not below mean high tide during that entire period; wasn't it?

A. I guess I am concerned about the addition a little bit.

Q. Answer it however you want to.

A. As I mapped this peninsula, it is an elongated tongue, all the evidence that I have come up with from my investigation in the case is that this land was above mean high water.

Substantially above, not substantially above, but a substantial portion of the ground of interest was above mean high water, yes. Is that interpretation your question?

Q. Well, if that shoreline has eroded back from the Chesapeake Bay for as much as 50 feet, wouldn't the bay during that period of time have moved inland to the east?

A. The bay into the shoreline would have moved to eastward

and would be moved back. I am not sure if I am anticipating what you are getting at.

Q. What I am getting at is this. If the shoreline is eroded even 50 feet, wouldn't the bar be in a different location and be a different bar than the one that was there previously?

A. It would be the same land form. The only difference would be that the land form itself has migrated to the east.

Q. You mean it would be the same form?

A. Correct.

Q. It would have been migrated to the east and would have been the Tolsons Creek Lake; wouldn't it?

A. Yes. As I think I understand your question, yes.

THE COURT: You say a substantial portion of the peninsula was above mean high water and for how long did you say?

THE WITNESS: Based on my information, I would say from the period of 1933 to the present. A substantial portion of that piece of ground in terms of area was above mean high water.

THE COURT: Very well.

BY MR. ALTWATER:

Q. If that land formation were in a different location in 1933, you don't mean that the same area that was above mean high tide in 1933 is now above mean high tide there?

and would be moved back. I am not sure if I am understanding what you are getting at.

Q. When I compared at 1a price, if the elevation is roughly even 30 feet, wouldn't the fill be in a different location and be a different box than the one that was moved vertically?

A. It would be the same land form. The only difference would be that the land form itself has migrated to 88th street.

Q. You mean it would be the same form?

A. Correct.

Q. It would have been dredged to the east and would have been the Tijeras Creek today modified.

A. Yes. As I think I understand your question, no.

THE COURT: Can you say a substantial portion of the open canals was above mean high water at for how long did you say?

THE WITNESS: Based on my information, I would say from the period of 1933 to the present, a substantial portion of that place of water on an area of acre was above mean water.

THE COURT: Very well.

Mr. McKAYHAN:

Q. If that land formation were in a different place in 1933, you don't remember the area that was above mean high tide in 1933 is now above mean high tide today?

MR. SAUSE: Objection. It assumes a predicate than if it was in a different place in 1933. There has been no testimony that that land form was in a different place in 1933. I don't think that is fair to oppose that question to the witness.

THE COURT: I think the question would be very easily answered and I could answer it myself, so I will overrule the objection.

MR. ALTWATER: Would the Court Reporter read back the question?

(At this time the Court Reporter reads back the question as follows:)

"Question. If that land formation were in a different location in 1933, you don't mean the same area that was above mean high tide was in '33 now above mean high tide there?"

THE WITNESS: I think the answer is no. Physically or spatially it may have moved. I don't think -- I hadn't determined if it had. Does that answer your question sufficiently?

THE COURT: But the point is that there has been erosion going on during all this time in the past so this is what is left as land forms, so it would have been to be above mean high water 50 years ago, right?

THE WITNESS: In 1933 it was above mean high water.

Mr. EVANS: Objection. It assumes a predicate that it was in a different place in 1973. There has been no testimony that that land form was in a different place in 1973. I don't think that is fair to impose that question to the witness.

THE COURT: I think the question would be very easily answered and I could answer it myself, so I will overrule the objection.

Mr. ATTWATER: Would the Court Reporter read back the question?

(At this time the Court Reporter read back the question as follows:)

"Question: If that land formation were in a different location in 1973, you don't mean the same area that was above mean high tide was in 1973 now above mean high tide there?"

THE WITNESS: I think the answer is no. Probably or possibly it may have moved. I don't think -- I hadn't determined if it had. Does that answer your question sufficiently?

THE COURT: Are the point is that there has been erosion going on during all this time in the past so this is not in fact as land forms, so it would have been to be above mean water 50 years ago, right?

THE WITNESS: In 1973 it was above mean high water.

THE COURT: It had to have been if the erosion process had been going on all through the years prior to '33 to be above water now, it had to be above water then.

THE WITNESS: Well, it is very possible. I am getting a little unsure of how to handle this. Let's just state that in response to erosion you get secretion. You can get secretion of land forms.

Once that land form is secreted, it will respond as a shoreline of the fastland. Just the same way that the shoreline and the fastland does. If it had already been eroded, it will degrade or be deposited on. I am not sure what the question is, I guess.

BY MR. ALTWATER:

Q. I am not sure you answered my question or the Court's. If we assume from your testimony that along this area particularly to the farm immediately to the north of Kent Island Estates place, the erosion was between two and three hundred feet of shoreline and had been washed away so that the present bank along there was two to three hundred feet back from the Chesapeake Bay a hundred years ago; was that your testimony?

A. Yes. On the northern farm.

Q. Well, if during that period of time there had been half that erosion on this location immediately to the south, that would mean a hundred feet; correct?

THE COURT: It has to have been if the erosion

process had been going on all through the years prior to 32 to

put above water now, it had to be above water then.

THE WITNESS: Well, it is very possible. I am

getting a little unsure of how to handle this. I don't just

state that in response to erosion you get accretion. You can

get accretion of land forms.

Once that land form is accreted, it will respond as

a shoreline; not the foreshore. Right, the same way that the

shoreline and the foreshore does. If it had already been

eroded, it will degrade or be deposited on. I am not sure

what the question is, Q. Sorry.

BY MR. ARTAGER:

Q. I am not sure you answered my question or the

court's. If we assume from your testimony that about this

area particularly to the land immediately to the north of

Long Island Sound's place, the erosion was between two and

three hundred feet of shoreline and the data would have to

take the present configuration change was two to three hundred

feet back from the Chesapeake Bay a hundred years ago; was

that your testimony?

A. Yes. Where the northeast form.

Q. Well, if during that one of the times there had been

that erosion on this location immediately to the south,

you would mean a hundred feet; correct?

A. If what you are saying is true, yes.

Q. Do you not believe or don't you have sufficient evidence to know whether the shoreline has roughly moved in the same direction at the same rate?

MR. SAUSE: I am going to object again, again. We are getting into something that is beyond the scope of direct.

THE WITNESS: It may be that I could clear this up if I could refer to one of the exhibits in that book that Your Honor has; 1843 Coastline.

MR. SAUSE: That is No. T. I am handing the witness Exhibit T.

THE WITNESS: If I could, I would like to point out to the Judge and the attorneys that I am afraid to because it is very small --

THE COURT: Counsel may approach the bench.

THE WITNESS: On this view of Tolsons Creek it shows a hook or a spit type of deposit present during this time; that was 1877. What is the reference on the map?

MR. SAUSE: There is none.

THE WITNESS: So, it is at least 1877. There is a land form very similar to what we presently have in the existing coastal creek. And if I understand what everybody is trying to get at, the question is whether that land form could have migrated eastward to Tolsons Creek and be the land form

Q. Do you not believe or don't you have sufficient evidence to show that the shoreline has roughly moved in the same direction at the same rate?

MR. SAUSER: I am going to object again, again. We are getting into something that is beyond the scope of direct.

THE WITNESS: It may be that I could clear this if I could refer to one of the exhibits in this book that your Honor has, 1843 can't tell.

MR. SAUER: That is No. 7. I am handing the witness Exhibit 7.

THE WITNESS: If I could, I would like to point out to the Judge and the accuracy that I am afraid to because it is very small --

THE COURT: Counsel may approach the bench.

THE WITNESS: In this view of Jetsam Creek it shows a dock or a pile type of structure present during this time that was 1977. What is the reference on the map?

MR. SAUSER: There is none.

THE WITNESS: No, 1979 or 1980. There is a land form very similar to what we presently have in the existing coastal cross section. I understand what everybody is trying to get at. The question is whether that land form could have migrated eastward from Jetsam Creek and be the land form

of what we are talking about or the land form in question.

THE COURT: What the first question asked was whether or not the land form was above mean high water in 1937 or prior there too, or '33.

THE WITNESS: This land form, Your Honor? (Indicating.)

THE COURT: Yes. This particular --

THE WITNESS: Yes. It is shown in this map, whatever this source is, as being above water.

BY MR. ALTWATER:

Q. My question really was, was it in the same location or has it been moved completely to the east?

A. Well, if it was the same deposit, it would have had to move to the east.

Q. And the east at that time had to be the open waters of Tolsons Creek, where it now is?

A. Well, assuming everything that we said before is true, yes. That would be the mouth of Tolsons Creek. To say again, this piece of land here (indicating) is the same piece of land that we were contesting.

Q. But in a different location?

A. Yes.

Q. That is all I was trying to get to.

MR. ALTWATER: Your Honor, I would like to take a look at those original photographs upon which his plats are

of what we are talking about of the land that is question.

THE COURT: What the first question asked was whether or not the land form was above mean high water in 1972 or prior there to, or 30.

THE WITNESS: This land form, here lower? (indicating.)

THE COURT: Yes. This particular.

THE WITNESS: Yes. It is shown in this map, what ever this notice is, as being above water.

BY MR. MATHEWS:

Q. My question really was, was it in the same location or has it been moved completely to the east?

A. Well, if it was the same deposit, it would have had to move to the east.

Q. And the east as that time had to be the open water of Folsom Creek, where it now is?

A. Well, assuming everything that we said before is true, yes. That would be the mouth of Folsom Creek. To say again, this piece of land here (indicating) is the same as or land that we were considering.

Q. Due in a different location?

A. Yes.

Q. That is all I was trying to get to.

MR. CLIVE: Your Honor, I would ask to have to look at those original photographs upon which

1 based?

2 THE COURT: Well, you can do that during the lunch

3 and recess. It is long past that time and we will take it

4 now until quarter of two.

5 MR. SAUSE: Judge, do you think that perhaps we

6 should go down and have Your Honor look at this area? I

7 mean, this business of trying to describe it to you. It

8 might be if Your Honor could go down and see it for himself

9 of the old opening and the new opening, it might permit you

10 to review the case a little easier and you might be able to

11 facilitate our presentation because we wouldn't have to

12 present all of these predicates to Your Honor.

13 THE COURT: Do you have any objections to that,

14 Mr. Altwater?

15 MR. ALTWATER: I have no objections at all, Your

16 Honor.

17 MR. SAUSE: Let me also make note of the fact that

18 you could both help me because Mr. Mullen's time is extremely

19 expensive and he came down from Pittsburgh last night and I

20 would like this to be done now, then this afternoon if we do

21 need him any more or if the Court needs him to clarify any

22 questions that you might see, he is the closest thing to an

23 expert you are ever going to see in this case.

24 And I think we ought to avail ourselves as much as

25 we can.

heard?

THE COURT: Well, you can do that during the lunch and recess. It is long past that time and we will take it now until quarter of two.

MR. SAUSER: Judge, do you think that perhaps we should go down and have Your Honor look at this area? I mean, this business of trying to describe it to you. It would be if Your Honor could go down and see the layout of the old opening and the new opening, it might permit you to review the case a little easier and you might be able to facilitate our presentation because we wouldn't have to present all of these pleadings to Your Honor.

THE COURT: Do you have any objections to that, Mr. Alvarez?

MR. ALVAREZ: I have no objections at all, Your Honor.

MR. SAUSER: Let me also make note of the fact that you could help me because Mr. Malinda's case is extremely complicated and be sure down from Fairbanks that that could take this to be done now. Then this afternoon if we do need his any more or if the Court needs him to clarify any questions that you might have, he is the closest thing to an expert you are ever going to see in this case.

MR. I think we could do avail ourselves of such a person.

(Off-the-record discussion was held.)

(A recess was taken.)

THE COURT: Do you want to call Mr. Mullen back to the stand?

MR. SAUSE: Yes.

(John C. Mullen, having been previously sworn, was examined and testified as follows:)

BY MR. ALTWATER:

Q. Mr. Mullen, I have the photograph which I believe you said were some of the basic photographs used in the preparation of the large plats and drawings which are between exhibits 1 through 7.

Now, looking at this photograph of 10/22/57 AHW5282, is there any indication to you looking at the bar that we have all been talking about of the opening in the approximate middle of that bar. And I am pointing my pencil on it at this point?

A. Based on my previous -- I am not going to interpret that now, it has been interpreted previously.

Q. There will be testimony and you probably won't be around after that. In 1955, an opening was made through that bar in approximately the center.

Now, that is 1955 and this is two years later in '57. I am asking you if you can see any indication or have

(At the record, a question was read.)

(A recess was taken.)

THE COURT: Do you want to recall Mr. Miller back to the stand?

MR. SAYER: Yes.

(John C. Miller, having been previously sworn, was examined and testified as follows:)

BY MR. ASHCRAFT:

Q. Mr. Miller, have the photographs which I gave you said were some of the basic photographs used in the preparation of the large plats and drawings which are between exhibits 1 through 7.

Now, looking at this photograph of 10/23/57 marked, is there any indication to you looking at the area that we have all been talking about of the opening in the approximate middle of that bar. And I am pointing my finger at this point?

A. Based on my previous -- I am not going to interpret what now, it has been interpreted previously.

Q. There will be testimony and you probably won't be around after that. In 1958, an opening was made through that bar in approximately the center.

Now, look at 1957 and then at 1958 three later in 59. I am asking you if you can see any indication or more

you in examining magnifications of this seen any indication of that 1955 channel cut?

A. I have not seen any indications on the upland or the fastland part of the area during that '57 period. There are deposits in Tolsons Creek which I haven't been able to explain or which I don't know where they came from. They may have come from washovers where you may have had excessively heavy wave action associated with a storm where the waves went over this higher ground and washed the fanned area behind.

Q. Looking at this photograph again, wouldn't an explanation or a probable explanation, if you heard testimony that there was a 1955 cut made in the middle, wouldn't the apparent soaking inside of the bar be the probable result of such a cut?

THE COURT: Where is that cut supposed to have been made?

MR. SAUSE: May I see it?

MR. ALTWATER: I will show it to Mr. Sause and then take it up and show it to the Judge so we can see it all at the same time.

I am talking about this spot (indicating). Maybe we had better have this photograph marked since we are commenting on it.

THE COURT: Very well.

THE WITNESS: May I suggest that we take a look at

you in examining photographs of this been any indication of that kind of change at all?

A. I have not been any indication on the mainland or the Indian part of the area during that 157 period. There are deposits in Tolmons Creek which I have not been able to explain or which I don't know where they came from. They may have come from washovers where you may have had excessively heavy wave action associated with a storm where the waves went over this higher ground and washed the island area behind.

Q. Looking at this photograph again, would it be explanation or a reasonable explanation if you said basically that there was a 1955 cut made in the radio, would the apparent soaking inside of water be the probable result of such a cut?

THE COURT: Where is that cut supposed to have been made?

MR. GAUSER: May I see it?

MR. [illegible]: I will show it to Mr. Gauser and then take it up the aisle. Let the court reporter see the same thing.

I am [illegible] this age (indicating). [illegible] have had [illegible] that occurred marked alongside the commercial [illegible].

THE COURT: [illegible]

THE [illegible]: May I suggest that we take a look at

the larger version because it may be clearer or it may not be also.

MR. SAUSE: What year is that?

MR. ALTWATER: '57.

MR. SAUSE: That then is the same as Plaintiff's Exhibit 4.

MR. ALTWATER: I know, but it is not as clear as this, to my understanding.

BY MR. ALTWATER:

Q. Now, looking at Plaintiff's Exhibit 4, Mr. Mullen.

A. I guess the feature --

MR. ALTWATER: Now, let's get this photograph marked, or we won't know what we commented on.

(At which time, Court Reporter marks for identification Defendant's Exhibit 2.)

MR. ALTWATER: Your Honor, what I am asking the witness is about an area shown here (indicating). Is this indication on this bar.

THE COURT: Yes.

MR. ALTWATER: Is this indication in the middle of this bar and perhaps it does show up on this larger photograph.

In fact, it does show up clearer on this one (indicating). May I show the Judge?

THE COURT: Yes, please.

the larger version because it may be so much or it may not be also.

MR. RAUSH: What is that?

MR. ALTWATER: 52.

MR. RAUSH: Then there is the same no plaintiff's exhibit.

MR. ALTWATER: I know, but it is more as clear as this, by understanding.

BY MR. ALTWATER:

Q. Now, looking at Plaintiff's Exhibit 49, Mr. Allen,

A. I guess I'm lazy --

MR. ALTWATER: Now, let's get this photograph marked, so we won't know what we remember so.

(At which time, Court Reporter marks for identification Calomar's Exhibit 53.)

MR. ALTWATER: Your Honor, what I am saying the address is about an area shown here (indicating). Is this an image on this map.

THE COURT: Yes.

MR. ALTWATER: Is this indication on the plaintiff's map and pointing it does show up on this larger photograph.

In fact, it does show up clearer.

(Indicating.) May I show the Judge?

THE COURT: Yes, please.

MR. ALTWATER: This is the area I am asking the question about (indicating).

THE COURT: That is a different cut tha what is present.

MR. ALTWATER: Yes, sir.

BY MR. ALTWATER:

Q. Mr. Mullen, looking at the enlargement of that same photograph marked Defendant's Exhibit 2, you haven't heard the testimony yet, but if that testimony were in evidence now, that in 1955 a cut was made in approximately the center of that bar, would that be consistent with the pattern shown of the dark and white lines which I assume would vary in depths of Tolsons Creek inside that bar?

A. Those deposits that are shown or those total differences could represent deposits associated with flood tide related occurrences. If what you are saying is that somebody will testify there was an opening there, I could say, associated with that, there could be possibly associated with such an opening.

Q. Well, I don't want to have to hold you here or bring you back after the other witnesses testify. So, I am asking you about it now. If you assume there will be testimony to the effect that in 1955 a cut was made in that location, is this photograph consistent that was taken approximately two years later with such an indication?

MR. ADAMSON: This is the area I am making the

question about (indicating).

THE COURT: That is a different cut the area is

present.

MR. ADAMSON: Yes, sir.

BY MR. ADAMSON:

Q. Mr. Matson, looking at the enlargement of that same photograph marked Underhill's Exhibit 2, you haven't heard the testimony yet but if that tract of water in evidence, came in 1921 and we made it approximately the depth of that bar, would that be consistent with a pattern of the dark and white lines which I assume would vary in depth or fathoms creek inside that bar?

A. Those deposits that are shown on those total differences could represent deposits associated with flood related occurrences. If what you are saying is that somebody with reality there was an opening there, I could say associated with that, there could be possibly associated with such an event.

Q. Well, I don't want to have to hold you here or bring you back after the other witnesses testify. So, I am asking you about it now. If you assume there will be testimony to the effect that in 1921 a dam was made in that location in this photograph consistent that was taken approximately two years later with such an indication?

MR. SAUSE: Your Honor, the witness has answered the question. The witness has very clearly testified that it is consistent with tidal action and could also be consistent with the cut.

THE COURT: Let him answer it again.

THE WITNESS: Those deposits -- if I might answer it this way, those deposits could either be associated with washover from a large storm and a fan developed from washover or could be associated with flood tide deposits.

MR. SAUSE: Mr. Altwater, you called for it and used it.

MR. ALTWATER: Suppose we mark this 2-A. It is an enlargement of the same photograph that has been marked Defendant's Exhibit 2.

(Court Reporter marks for identification Defendant's Exhibit 2-A.)

(Off-the-record discussion was held.)

BY MR. ALTWATER:

Q. Mr. Mullen, looking at the photograph of 1957 now marked Defendant's 2, and then looking at the photograph on September 10, 1972, again from your file --

A. Are those photographs from any of the exhibits, the reason being I didn't have a larger scale.

Q. Well, looking at these two photographs and comparing

MR. BURSTS: Your Honor, the witness has answered the question. The witness has very clearly testified that it is consistent with tidal action and could also be consistent with the sun.

THE COURT: Let him answer it again.

THE WITNESS: These deposits -- if I might answer, if this say, these deposits could either be associated with washover from a large storm and a tide developed from washover or could be associated with flood tide deposits.

MR. BURSTS: Mr. Alexander, you called for it and used it.

MR. ATTWATER: Suppose we mark this 24a. It is an enlargement of the same photograph that has been marked Defendant's Exhibit 2.

(Four photos marks for identification Defendant's Exhibit 24.)

(Off-the-record discussion was held.)

BY MR. ATTWATER:

Q. Mr. Bailey, looking at the photograph of 1957 now marked Defendant's 2, and then looking at the photograph on September 10, 1972, again from your file --

A. Are those photographs from any of the exhibits, the reason being I didn't have a larger scale.

Q. Well, looking at these two photographs and comparing

1 the one of September 10, 1972 with the one of '57, can you
2 state what changes have been made in that bar apparent from
3 the '72 photographs as contrasted with the '57 photograph?
4 A. I would have to examine these in detail. They were
5 not examined in detail of four of the other presentations
6 because I did not have the larger base on which to do the
7 mapping.
8 I could do that but it would take some time.
9 Q. Well, you compared the '73 photograph with the --
10 A. Correct. The '73 photograph is only available in
11 the large scale.
12 MR. ALTWATER: May we have this photograph marked?
13 It is an aerial photograph of February 5, 1973.
14 (At which time, the Court
Reporter marks for identifica-
15 tion Defendant's Exhibit 3.)
16 BY MR. ALTWATER:
17 Q. Mr. Mullen, I will ask you to make a comparison
18 between the 1973 photograph now marked Defendant's 3 and the
19 1957 photograph which is 2-A?
20 A. I would like to make that comparison using the
21 placards. If possible, that has already been laid down in
22 terms by mapping.
23 Q. Well, I will ask the question this way, doesn't it
24 appear between '57 and '72 there has been a substantial amount
25 of fill easterly of the beach which is shown on the 1957

the one case, number 10, 1972 with the one of 1971, can you state that changes have been made in that bar apparent from the 72 photograph as contrasted with the 71 photograph?

A. I would have to examine them in detail. They were not examined in detail in some of the other presentations because I did not have the latent base on which to do the mapping.

I could do that but it would take some time.

Q. Well, you compared the 73 photograph with the --

A. Correct. The 72 photograph is only available in the large scale.

MR. ALTMAN: May we have this photograph marked as an aerial photograph of February 5, 1971.

(At which time, the court reporter marked for identification Petitioners' Exhibit 3.)

BY MR. ALTMAN:

Q. Mr. Mellen, I will ask you to make a comparison between the 1971 photograph you marked Petitioners 1 and the 1972 photograph which is 1-A.

I would ask you to make that comparison using the microscope. As I recall, this has already been laid down in terms by Mr. Mellen.

A. Yes, I did use the magnifier this way. It seems to appear that there has been a substantial amount of sand erosion on the beach which is shown on the 1972

photograph?

A. This fill that you are referring to is occurring all along the coast in this area and it is a seasonal phenomena. This photograph was taken in February and the other photograph you are referring to was taken later in the year more in the order of May, June, July. Something along that area.

This represents more of a winter beach profile. To me, it does not represent artificial filling along this coastline. It represents a natural winter relationship or winter condition.

Q. Well, isn't this the area that you showed on your prior chart as filled area or to get the exact words --

A. Dredge spoiled.

Q. Dredge spoiled area?

A. Yes.

Q. So, that would be the area running from a little easterly of the big tree, that is on the north side of the Tolsons Creek area. Are you familiar with that tree?

A. I am familiar with it but it has been a while since I have been there. My geometry and relationships aren't exactly up to date.

Q. Then, you couldn't place that tree with reference to where you have shown dredge spoiled?

A. I can't locate that tree exactly, no.

photograph?

A. Note fact that you are looking at a coastline at along the coast in this area and it is a seasonal phenomena. This photograph was taken in February and the other photograph you are referring to was taken later in the year, more in the order of May, June, July. Everything along that area.

While represents more of a winter beach profile, it may, it does not represent artificial filling along this coastline. It represents nature, there relationship or winter condition.

Well, isn't this the area that you showed on your prior chart as filled area or to get the exact words --

A. Probably so.

Q. Across spotted area?

A. Yes.

Q. So, that would be the area running from a little westerly of the big tree, that is on the northside of the houses facing north. Did you know or see that tree?

A. I am familiar with it but it has been a while since I have been there. My recovery and review of area's exactly up to date.

Q. Then, the reading's pinpointing the with reference to where you have shown arrows applied.

A. I can't locate that tree, sir.

MR. ALTWATER: No further questions, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. SAUSE:

Q. Mr. Mullen, just one or two.

Defendant's Exhibit 3, which you examined, is the original large photograph that you used in preparing Exhibit No. 6; is that correct?

Let me hand it to you.

A. That is correct.

Q. So, your interpretation of the defendant's exhibit 3 is that which you gave with reference to complainant's Exhibit No. 6, including the overlay which shows your findings; is that correct?

A. That is correct.

Q. The same is true --

MR. ALTWATER: Your Honor, I am going to object to his leading the witness this much.

THE COURT: Well, we will allow this attitude when a jury is not involved, Mr. Altwater.

BY MR. SAUSE:

Q. I am handing you Exhibit 4 and I have plenty of time. What, if any relation does this have, Mr. Mullen, to any of the questioning that Mr. Altwater directed to you?

A. I am sorry, I don't know what you are getting at.

MR. ALTWATER: No further questions. Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. BAISER:

Q Mr. Mullen, just one or two.

Defendant's Exhibit 1, which you examined, is the original large photograph that you made in preparing Exhibit No. 6; is that correct?

Let me hand it to you.

A That is correct.

Q So, your interpretation of the defendant's exhibit 3 is that which you gave with reference to complainant's Exhibit No. 6, including the overlay which shows your findings; is that correct?

A That is correct.

Q The same is true --

MR. ALTWATER: Your Honor, I am going to object to his leading the witness this much.

THE COURT: Well, we will allow this criticism when a jury is not involved, Mr. Altwater.

BY MR. BAISER:

Q I am handing you Exhibit 4 and I have marked it. Sir, if any relation does this have, Mr. Mullen, to any of the questioning that Mr. Altwater directed to you?

A I am sorry, I don't know what you are getting at.

Q. What relation does that have, if any, to Defendant's Exhibit 2 and 2-A?

Here is No. 2 and here is 2-A.

A. My interpretation shows an indentation in the --

Q. I am not asking you to give your interpretation again. What relation if any has Plaintiff's Exhibit 4 to Defendant's Exhibits 2 and 2-A?

A. They are the same with my interpretation

Q. With reference to all three of those exhibits, that is, complainant's Exhibit No. 4 and respondent's or defendant's 2 and 2-A. What if any difference is there between your testimony with regard to Exhibit 4 and your testimony with regard to Exhibit 2 and 2-A?

Is there any difference?

A. Well, the land forms are not different on the basis of the information that Mr. Altwater supplied.

THE COURT: What is that?

THE WITNESS: The interpretation is the same based on the information he provided. Everything that is interpreted is above mean high water.

The comment that Mr. Altwater made were of land forms, subaqueous land forms, which are in Tolsons Creek property. That would be the only difference. The testimony related to that.

Q. When you identified Exhibits 4 and 6, which are

Q. What relation does this have, if any, to defendant's exhibit 2 and 2-A?

A. Here is No. 2 and here is 2-A.

Q. By interpretation above an indentation in the --

I am not asking you to give your interpretation again. What relation if any has Plaintiff's Exhibit 4 to defendant's exhibits 2 and 2-A?

A. They are the same with my interpretation.

Q. With reference to all sides of these exhibits, that is, complainant's Exhibit No. 4 and respondent's or defendant's 2 and 2-A. What if any difference is there between your testimony with respect to Exhibit 4 and your testimony with regard to Exhibit 2 and 2-A?

Is there any difference?

A. Well, the land forms are not different to the best of the information that Mr. Alkwier supplied.

THE COURT: What is that?

THE WITNESS: The interpretation is the same, based on the information he provided. Everything that is improvement is above mean high water.

The comment that Mr. Alkwier made was of land, particularly submerged land forms, which are in Texas a fresh property that would be the only difference. The testimony related to that.

Q. When you identified Exhibits 2 and 2-A, which are

these large exhibits from which you testified when you were first being examined by me, you indicated, I believe, that you used certain large photographs in order to make those exhibits.

What if any relationship is there between the large photographs introduced by Mr. Altwater and the photographs to which you refer to as having been used in making your exhibits and presentation?

A. The photographs introduced by M. Altwater, both this 2 and 2-A were used to develop plaintiff's Exhibit 4. The large map is referenced on Exhibit 4. It is the map that was used to do the photography work to provide Exhibit 4.

Q. A few final questions.

You were shown before Exhibit T, which is an 1877 survey, do you recall that? From the 1877 Atlas?

A. Yes. I do recall that.

Q. You are familiar with the fact at least, insofar as that Atlas shows there was a rather wide opening or mouth of the Creek in 1877 or whatever that is dated?

A. I am familiar with that, yes.

Q. Having been acquainted with that Atlas by Mr. Altwater, does that change your testimony in any way with regard to plaintiff's Exhibits 1 through 6?

A. No.

Q. Now, there was some discussion before about a

creeping piece of land, I thought I'd seen everything on science fiction, but this has got me, confining yourselves to the period of your Exhibits 1 through 6, is the land mass or what if any change was there in the location, basic location of the land mass which is the subject of this matt conversation?

A. Again, I didn't make any detailed measurements. But it was obvious to me going through the exhibits in their prepartion, that major changes had not occurred except up to the piint at which the new inlet was installed.

Other than that, the land form has the same shape. It is roughly the same position right now as it was in 1933 or 1937.

MR. ALTWATER: I have no further questions.

THE COURT: Any recross?

MR. ALTWATER: Your Honor, just one on that last bit of testimony.

THE COURT: I take it, Mr. Altwater, you are not going to introduce these exhibits or attemptto introduce them until you reach another witness?

MR. ALTWATER: Which?

THE COURT: You just had them marked for identification.

MR. ALTWATER: Oh, I thought these were put into evidence. The copies from Mr. Mullen's file.

MR. SAUSE: 2, 2-A and 3, I think were in evidence. I understood them to be in evidence.

THE COURT: I haven't ruled on any of them.

MR. ALTWATER: I am sorry, Your Honor.

While the man from whose file they came is here, I would like to move the introduction of 2, 2-A and 3.

THE COURT: Do you have any objections?

MR. SAUSE: No objections.

THE COURT: Let it be admitted.

MR. ALTWATER: I have no further questions.

THE COURT: Well, you may step down, Mr. Mullen.

Gentlemen, I have in mind to adjourn this trial to another date at this time if you haven't any emergency witnesses that you feel must be heard today.

So, we will adjourn in this subject to the assignment to be made for the mutual convenience of both sides at a later date.

(Off-the- record discussion was held.)

(The hearing was adjourned to a further date.)

CERTIFICATE OF COURT REPORTER

I, Joseph Mc Grath, Court Reporter, do hereby certify that the witnesses whose testimony appears in the foregoing pages were duly sworn by the Clerk of the Court; that the testimony of said witnesses was duly recorded stenographically by me and thereafter reduced to typewriting by me, or under my direction; and further, that the transcript of said witnesses testimony and other proceedings herein contained is a true and accurate record.

Joseph Mc Grath, Court Reporter

IN THE CIRCUIT COURT FOR QUEEN ANNE S COUNTY, MARYLAND

- x

KENT ISLAND ESTATES, CORPORATION :
Plaintiffs :

-vs- : Equity Number 5766

EAST BAY COLONY ASSOCIATES :
Defendants :

- x

December 8, 1976

Circuit Courtroom
Easton, Maryland

A partial transcript on the above matter came on for hearing at 10:00 a.m., Wednesday.

BEFORE: HONORABLE HARRY E. CLARK, Judge

APPEARANCES:

For the Plaintiff

JOHN W. SAUSE, JR., Esquire
204 North Commerce Street
Centreville, Maryland 21617

For the Defendant

CHARLES C. W. ATWATER, Esquire
1211 Grace Building
Baltimore, Maryland 21202

C O N T E N T S

AFTERNOON SESSION

Whereupon,

J. TILLMAN DOWNEY

having been previously sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: Do you have any redirect, Mr. Atwater?

MR. ATWATER: I don't think Mr. Sause was through.

MR. SAUSE: I wanted to ask him about one thing.

THE COURT: All right.

CROSS EXAMINATION

BY MR. SAUSE:

Q Do you have the bill that I asked you about?

A Yes, sir, I have.

Q Is that the only thing in your file that you have in relation to your bill?

A Yes, sir, this is what we billed for the survey of the Aaron property in Queen Anne's County, Maryland.

Q That is an original bill. Are you in the habit of keeping the original in the file?

A No, sir, I am not in the habit of keeping the original. We keep them accordingly. We may send a blue copy and keep the original, and we may send the original and keep the blue copy, or we may send the white one and keep the blue one.

This is not sent out of the office here. This is sent out of the office in Hartford County.

Q Where did you physically obtain this?

A Where did they physically obtain this?

Q Where did you -- where did you go get it from?

A I got this out of my paid bills file.

Q Your paid bills file, where?

A In the office, from 1973.

Q In Easton?

A Yes, sir.

MR. SAUSE: All right. This would be exhibit number 11.

THE WITNESS: Yes, sir. I sent them out a bill and they send me a copy of it, and when the check came in it was marked on there when it was paid.

MR. SAUSE: I offer this as Plaintiff's Exhibit Number 12.

THE COURT: It will be admitted.

(Whereupon, the document referred to was marked as Plaintiff's Exhibit Number 12, for identification, and received into evidence.)

BY MR. SAUSE:

Q What did you indicate the hourly rate was?

A I believe, at that time, I said the hourly rate was about $22.50 an hour for a three-man field party, $10 an hour for drafting, and I think that's approximately as far as I went.

Q Well, isn't almost $4,000 an awful lot of money for

that little job?

A I think you will find out, on that little job it came out to less than $14 per acre for the survey.

Q I thought you said you did it by the hour?

A No, sir, you are saying that little job. There is 289 acres of tract. There is a State road that goes through the tract.

Q That is just more than I was accustomed to paying?

A I believe you will find, sir, that getting boundary surveys today for less than $20 an acre, you are doing very well.

Q All right. Do you have any correspondence in your file with respect to this tract?

A Yes, sir, I do.

Q Do you have any correspondence from anyone, or from Mr. Aaron?

A No, sir, I do not.

Q Do you have any correspondence from Mr. Dixon, or anyone associated with East Bay Colony Associates?

A Yes, sir, I have some correspondence from Mr. Dixon. I say I do, now whether it is in here or not, I don't know, but I received a letter from Mr. Dixon, and this would have been after all of this work was done. It was where he had stated that he had received -- here you are.

Q All right. Now, this is a letter from me, which

1 asked that you reply in writing. Did you reply in writing?

2 A No, sir, I did not.

3 Q Why not?

4 A Because I called Mr. Dixon.

5 MR. SAUSE: This will be Plaintiff's Exhibit Number

6 13.

7 MR. ATWATER: I object, Your Honor. This is a letter

8 from Mr. Sause. It is self-serving and it was written in

9 anticipation of litigation from counsel for the Plaintiff.

10 MR. SAUSE: I will take off all of those. I will

11 only offer the letter from Mr. Dixon.

12 THE COURT: Any objection to the Exhibit as deleted?

13 MR. ATWATER: No, Sir, no objection.

14 THE COURT: It will be admitted.

15 (Whereupon, the document referred

16 to was marked as Plaintiff's Exhibit Number 13, for

17 identification, and received into evidence.)

18 BY MR. SAUSE:

19 Q Is there any other correspondence there from

20 Mr. Dixon, or anyone associated with Mr. Dixon or East Bay

21 Colony Associates?

22 A No, sir, there is not.

23 Q There is not?

24 A No, sir.

25 Q Is there any correspondence or any communications

1 there from you or any firm within which you are associated, to
2 Mr. Dixon or any of his associates?
3 A Yes, sir, there is.
4 Q May I see them, please?
5 A Surely.
6 MR. SAUSE: This would be Exhibit Number 14.
7 MR. ATWATER: No objection, Your Honor.
8 THE COURT: It will be admitted.
9 (Whereupon, the document referred
10 to was marked as Plaintiff's Exhibit Number 14, for
11 identification, and received into evidence.)
12 BY MR. SAUSE:
13 Q Is there any other correspondence in that file?
14 A No, sir, not to my knowledge. If you would give me
15 a moment, I will look throught once again.
16 Q All right. Take your time.
17 A I appreciate that. I have a transmittal that was
18 sent to Mr. Dixon about some other property on the Aaron farm.
19 Q This has nothing to do with this --
20 A No, sir, I believe this has to do with the mortgage
21 releases.
22 Q Mortgage releases?
23 A Yes, we wanted a description of the land zoned as
24 B-1 and some of the land that this road cuts through.
25 Q I see. But it has nothing to do with over there?

1 A No, sir, it has nothing to do with any of that.

2 Q Now, since we have your file here, what meats, or

3 plats do you have in there that you are provided with in your

4 daily work?

5 A The certificate of survey done by Mr. Metcalf,

6 MBW1 --

7 Q 47?

8 A No, 471.

9 Q Isn't that certificate an Exhibit in this case?

10 MR. SAUSE: That would be H, Your Honor.

11 THE WITNESS: MBW7564.

12 BY MR. SAUSE:

13 Q MBW7564?

14 A The deed of agreement --

15 Q Woe, there we are, that is our deed. That is the

16 Kent Island Estates deed.

17 A The deed of agreement between Kent Island Estates

18 and --

19 Q That would be Exhibit D. Now, that has the space

20 amounts and the descriptions of the Kent Island Estates

21 property?

22 A Yes, sir, it does.

23 THE COURT: Is that the deed from Romco Holding

24 Company to Kent Island Estates?

25 THE WITNESS: No, Sir, this is the Kent Island

1 Holding Company, Chesapeake Bay Corporation.

2 BY MR. SAUSE:

3 Q Chesapeake Bay Corporation was the grantor of

4 Romco Holding Company.

5 THE COURT: Yes, and this is the Kent Island Holding

6 Company.

7 THE WITNESS: There is a sketch of part of Kent

8 Island Estates where it comes down and meets Tolson Creek.

9 BY MR. SAUSE:

10 Q Did you sketch that?

11 A I didn't. That's not my sketch, but someone in the

12 office did.

13 Q Was it done from somebody in the office?

14 A Yes, sir. It would have been done from the plat

15 record in Queen Anne's County.

16 Q How far down does it proport to go? May I see it?

17 A Surely. This is the part where you would leave the

18 road, come down Kent Island Estates, and this is where you

19 would meet the waters of Tolson Creek.

20 Q I am lost.

21 A That is what we sketched off so we knew where we

22 were and we would have the adjoining line, there.

23 Q That is up by the road?

24 A Yes, sir, then we hit the Creek at this point.

25 There is some State road plats that are traced off.

There is a handwritten part of MBW2 folio 4, which was made, and I had that deed --

Q That is MBW2-4?

A Yes, sir, 1948 convalence.

Q That is a 1948 convalence?

A Yes, sir.

Q From Nichols and White, and that is Exhibit K?

A Which refers to the Metcalf survey.

Q Which is the plat?

A It is also the deed of the --

Q MBW2-4. That is the deed from Nichols and White to Aaron and White?

A Here is your beach area, and this is MBW1 folio 11, Tower Gardens. Here is the deed that I believe we referred to in the Bean Clause, July 31st, 1939. John C. Benton --

THE COURT: Who?

THE WITNESS: John C. Benton and George R. Benton, Statin, and so forth and so on, and I think this is the Bean Clause, and I think it has the metas and bounds in it. This is from MBW2 folio 4, and the same as referred under Bryan, Courtney, Benton and John C. Benton by deed on July 31st, 1939, and recorded May, F. G. Jr., No. 1, folio 411.

THE COURT: That is not an exhibit?

THE WITNESS: No, Sir.

BY MR. SAUSE:

Q There was nothing prior, that it gave --

A Other than it gave metes and bounds.

Q Except that we didn't use those metes and bounds, we used the ones that were in the Metcalf survey?

A That is correct, sir.

Q The '37 deed didn't have the '48 survey?

A That is correct.

Q What is this to?

A This is Romco Holding Company, and so forth and so on. This is a 53 acre tract of land that I would imagine is on the far side of the road, sir, the other side of the State road.

This is a 1965 deed of the Tower Gardens on the Bay.

Q Tower Gardens is the next one to the south of the Aaron farm?

A Yes, sir.

Q Is that about it?

A Yes, I believe it is, sir.

Q There is no other plats or deeds that are title work other than the ones you mentioned?

A That is correct.

Q I don't know whether that is peach or passionate pink, but that color in there, what is that?

A That surves the plotting of the deed.

Q Of what deed?

A That is as it is described.

Q You might explain that to me?

A What do you mean by explain that to you?

Q Well, you started to say what all that was.

A Oh, this is where somebody took a copy of the deed and they take the lines, and say this is north, and they put their protractor on here and they start plotting the courses and distances that are as called for in the deed.

So we have a picture of what it looks like.

Q Which deed?

A I would have to check the deed.

Q I wish you would do that.

A That is the plotting of an old deed, sir, that was done in 1939. Beginning at a point at the head of the Creek where the land is conveyed and Gibson's Corner, where the Gibson and Moore farm meet, and there are so many courses and perches --

Q Give me the courses and distances?

A About 68 degrees east, 338, about 65 degrees east -- well, about 75.2 perches, if you want the perches, to a stone on the south side of the east road, to a stone on the east side of said road --

Q That is which description?

A That is the description that was mentioned in MBW2, I believe it was.

THE COURT: When was that?

THE WITNESS: In 1939.

BY MR. SAUSE:

Q You are certain that was the one, in the '39 survey?

A Yes, sir, I am sure. If you would like for me to check it out against the other one, I would do so.

Q Since you are doing the '48 description, which was the latest description, why would you apply to the one that has been superceded?

A I wanted to see how much Bay front was on it, and all the other courses that were on it. I wanted to see why the stuff agrees and why it doesn't agree. It has been a long time ago. It may have been the first deed that we had that had the description in it, for all I know.

It says, being the same in all the land, so he may have gone back to that one and copied that before they got the newer one. That didn't have the description before we got the Metcalf certificate. Conveyed Bryan, Courtney, Benton and John C. Benton.

Q So that is --

A Conveyed unto them. 1939.

Q That is the earlier survey; is that correct?

A Yes, sir.

Q How much frontage does that show on the Bay?

A I am very happy you asked that. If someone could

total this, please, 808 and a-half, 264, 280.5, and I think it is 99, sir.

THE COURT: What?

THE WITNESS: 99 or 98.

THE COURT: 99.98?

THE WITNESS: No, Sir, it is either 99 -- let me look at the deed. I am trying to read these small numbers on here. I don't know whether it's 99 feet or 98 feet.

Anyway, it would be 99 feet, 6 perch.

I think if you total them and total the ones against the '48 survey, I think there would be a big discrepancy.

THE COURT: Totals up to 1,452.0.

THE WITNESS: Yes, Sir, and I think if you look at the Metcalf survey in '48, I think that is 1,800 feet. That is a straight line pull now. That is not totaling up the distances. That is totaling up the breaks.

If you were to take the Metcalf survey and take the breaks that he calls for and pull a straight line from the two end points of where he hits the Bay and leaves the Bay --

THE COURT: That is a straight line?

THE WITNESS: No, Sir, that is with the breaks. That is going the way the shoreline goes.

THE COURT: Measuring the contours?

THE WITNESS: Yes, Sir.

THE COURT: The 1,400 feet is?

THE WITNESS: Yes, Sir.

THE COURT: How about the Metcalf survey?

THE WITNESS: They are on a base line from point to point, which would be 1,791 feet, Sir.

BY MR. SAUSE:

Q What is yours?

A 2,019 feet, sir.

Q Yours is 2,019?

A Yes, sir. On a straight line pull.

Q Of course, it all depends on where you plug into the creek on the south?

A That is a possibility, yes, sir. That could have moved, also. The opening down there could have been moved. You would not know if it had.

THE COURT: Isn't the difference between yours and Metcalf's the 227 feet you said that you included in your survey the old inlet?

THE WITNESS: That is a difference, yes, Sir. That is a straight line pull. Assuming that the inlet was still in the same place, and when Metcalf did it, I would be 227 feet up along the Bay front.

BY MR. SAUSE:

Q One last question. I think it is the last question.

That peach thing that you just testified to, why did you do that?

A Why did I do it, sir?

Q Yes?

A I didn't draw it. Someone else plotted it and they plotted it, you know, when they got the deed, or sometime I would imagine during the time that they were working on it.

Q Did you utilize that in comparing the plots?

A Did I utilize it? No, sir, I didn't utilize any of it, any of the plots as such, other than to see how they hit the reef. Just to overlay it, to see if you are in the ball park. No, we didn't hold this.

My God, if we would have held this I would have been 1,400 feet up the Bay instead of 2,000 feet, and I know there is no gut through there. It is a bank.

MR. SAUSE: No further questions.

THE COURT: Any redirect?

MR. ATWATER: Just one question.

REDIRECT EXAMINATION

BY MR. ATWATER:

Q Looking at Exhibit R, I thought the original was here.?

A I know, but that is my copy.

Q Mr. Downey, referring to Exhibit R on the stipulation of the Exhibits --

THE COURT: What does that depict?

MR. ATWATER: This is a comparison by Mr. Nuttle.

THE COURT: Oh, yes.

MR. ATWATER: Of the three surveys.

BY MR. ATWATER:

Q Looking at the line of the Aaron farm, how did you characterize the changes in that line, regardless of the north-south distance, with reference to the Bay side?

A I would say you have lost, it is a 200 scale, so I would say you would have lost, at one point there, well over a hundred feet, at this point you are at least a hundred feet. The two circles shown on the Bay side, you would be averaging better than a hundred feet.

Q So that the Bay line itself, there, it is eroded upwards of 200 feet?

A Yes.

Q So it doesn't surprise you if --

MR. SAUSE: I object. He is leading and he is answering the question.

THE COURT: We have been very liberal about that, Mr. Sause. Go ahead and ask the question.

BY MR. ATWATER:

Q Mr. Downey, does it surprise you to find in boundaries, along properties, by water?

A No, sir, it doesn't. From the '39 survey to the '48 survey was a nine year period, shows a 400 foot difference along there as such. The survey from '48 to '73 shows a 220-

1 some difference in it. So either one or both of the outlets
2 could have moved, or could have been moved. There is no way of
3 knowing if they were moved.
4 MR. ATWATER: No further questions.
5 MR. SAUSE: No questions.
6 THE COURT: You may step down.
7 Call witness.
8 MR. ATWATER: Samuel Aaron.
9 Whereupon,
10 SAMUEL AARON
11 having been first duly sworn by the Clerk of the Court, was
12 examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. ATWATER:
15 Q Mr. Aaron, I hand you --
16 THE COURT: You'd better identify him.
17 MR. ATWATER: What is that?
18 THE COURT: You'd better identify him.
19 MR. ATWATER: All right. Would you mark this for
20 identification.
21 THE COURT: I mean the witness.
22 MR. ATWATER: I am sorry, Judge.
23 BY MR. ATWATER:
24 Q Would you give your name and address, sir?
25 A My name is Samuel J. Aaron, my business office is

1 416 North Charles Street, Baltimore, Maryland. I have been a
2 member of the Bar of Baltimore City since 1922.
3 Q You are a practicing law at the present moment,
4 though, are you Mr. Aaron?
5 A Well, according to the way my health is, I am doing
6 the best I can.
7 Q Mr. Aaron, you are one of the Defendants in this
8 matter and you hold a mortgate on what is called the East Bay
9 Property, the Dixon, the Aaron Farm, and to what we have
10 referred to. Do you hold a mortgage on that?
11 A Yes.
12 Q You are the Samuel J. Aaron mentioned in the various
13 deeds and titles that we have had in this Court?
14 A Yes, sir.
15 Q All right. Now, Mr. Aaron, in 1955 you owned the
16 farm which has been referred to as the Tolson Farm or the
17 Benton Farm, owned by the East Bay Colony Associates; did you
18 not, sir?
19 A Now owned by East Bay Colony. I owned it prior to
20 that.
21 Q You owned it previous to that. You acquired this
22 deed -- just to lead these questions, if you do not mind,
23 Mr. Sause.
24 MR. SAUSE: I don't mind.
25

BY MR. ATWATER:

Q You acquired it by deed in 1948 and you conveyed it out in 1964 -- wait a minute. You conveyed it out in 1973?

A I put the deed in the name of Nichols and one of his companies, and then he conveyed it to me, I put up all of the money, he had nothing to do with it --

THE COURT: Speak a little louder, Mr. Aaron.

THE WITNESS: I put the deed in the name of Nichols and one of his companies and I put up the money. Howard Wood, an attorney in Centerville, searched the title and subsequently Mr. Nichols deeded it in my name and my wife's name, under an agreement that I had that I would deed the adjoining farm to either him or one of his companies, and I put up all of the money on the other farm. He had no monetary interest in it at all.

It was just a gentlemen's agreement that I would do what I did.

BY MR. ATWATER:

Q All right. Now, Kent Island Holding Company acquired the property that is now owned by Kent Island Estates, in 1950. Who were the principals in the Kent Island Holding Company?

A Mr. Nichols, his brother, my son and myself. I think that was known as the long form, it had three different names.

1 Q Sometimes referred to as the Gibson Farm?

2 A Gibson, Moore, I put up all the money and he put it

3 in one of the companies' names, and I subsequently deeded it to

4 him after he was able to get a mortgage.

5 Q All right. Now, in 1950, Kent Island Holding

6 Company conveyed it to Chesapeake Bay Corporation?

7 A That is correct.

8 Q Who was the Chesapeake Bay Corporation?

9 A The Chesapeake Bay Corporation was a holding

10 company, he had various companies for different things, and I

11 deeded to that company, but I didn't take any stock in it, but

12 I had a control of the company.

13 THE COURT: You say the Chesapeake Bay Corporation

14 was solely owned by Nichols?

15 THE WITNESS: Either Nichols or some of his

16 relatives. He held the stock. I held the money. In other

17 words, he had no money in it, but I put up all the money and he

18 made arrangements with me to pay me and I think I had the last

19 payment in 1957.

20 BY MR. ATWATER:

21 Q All right. In 1951 he was conveyed to the Romco

22 Holding Company. Who was the Romco Holding Company?

23 A That was Nichols.

24 Q So, in 1955, Nichds was in control of, or the owner

25 of the corporation owning the property now in Kent Island

1 Estates Corporation?

2 A All of the land except that strip that separated the

3 Creek. I had an agreement --

4 MR. SAUSE: I object. These are verbal agreements.

5 THE COURT: At this point I will sustain the

6 objection.

7 MR. SAUSE: Plus, there is no question pending at

8 the moment.

9 BY MR. ATWATER:

10 Q Mr. Aaron, in 1955, did you reach an agreement? I

11 am not asking what agreement, did you reach an agreement with

12 Mr. Nichols, in reference to this sand bar?

13 A The agreement --

14 Q Wait a minute. Did you reach an agreement or not,

15 sir?

16 A Prior to and in 1955.

17 MR. ATWATER: Would you mark these for identification.

18 (Whereupon, the documents referred
19 to were marked as Defendant's
Exhibits Number 4, 5, 6 and 7,
for identification.)

20

21 MR. SAUSE: These are being marked for identification

22 only?

23 MR. ATWATER: Yes, sir.

24 BY MR. ATWATER:

25 Q Now, Defendant's Exhibit Number 4 bears the date of

1 June 3, 1955, of which appears to be a letter addressed to you,
2 Mr. Aaron, from David M. Nichols. What is that letter, sir?
3 MR. SAUSE: I object.
4 THE COURT: What are your grounds to the objection?
5 MR. SAUSE: Your Honor, there is no indication that
6 there is any relevance at all to this. It is from somebody who
7 is not even a party of this proceedings. There is no
8 indication of any relevance whatsoever.
9 THE COURT: Well, I will have to admit it, subject
10 to exception. I will have to see if it is relevant or not.
11 BY MR. ATWATER:
12 Q Can you identify that letter, sir?
13 A Yes, sir.
14 Q Did that letter come from your file in reference to
15 your properties on the eastern shore?
16 A Yes, sir.
17 THE COURT: From you to Nichols?
18 THE WITNESS: It is from Mr. Nichols, addressed to
19 me, Sir.
20 BY MR. ATWATER:
21 Q You received that letter from Mr. Nichols?
22 A Yes, sir.
23 MR. SAUSE: Your Honor, I object, unless he can show
24 how he did receive it. It could have been from anybody.
25 THE COURT: He said it came from his file, and

1 apparently it is addressed to him. You can make a rational
2 assumption that he did receive it.
3 BY MR. ATWATER:
4 Q All right. I would like you to identify Defendant's
5 Exhibit 5, which bears the date of June 8th, 1955, which
6 appears to be a file copy of a letter signed by you. What is
7 that letter?
8 A This is a letter addressed to Mr. Nichols, by me.
9 In reference to his letter of June 3rd, 1955.
10 THE COURT: Overrule the objection.
11 BY MR. ATWATER:
12 Q And the letter which has been marked for
13 identification as Defendant's Exhibit Number 6, dated June 9,
14 can you identify that letter, sir?
15 MR. SAUSE: Objection.
16 THE COURT: Overruled.
17 THE WITNESS: That is a letter from Mr. Nichols,
18 addressed to me, dated June 9th, 1955. I received that letter
19 from Mr. Nichols.
20 BY MR. ATWATER:
21 Q I hand you a copy of a letter which, again, appears
22 to be a file copy, from you to Mr. Nichols, marked Defendant's
23 Exhibit Number 7. Can you identify that letter?
24 MR. SAUSE: Objection.
25 THE COURT: Overruled.

THE WITNESS: That is a letter dated June the 10th, 1955, addressed to Mr. Nichols in answer to a letter dated June the 5th, 1955.

BY MR. ATWATER:

Q Now, these letters refer to certain properties. In particular, what is the location of that property?

A Well, when the property was owned by Kent Island Company --

THE COURT: The holding company?

THE WITNESS: The original company, yes, Sir.

THE COURT: Kent Island Holding Company?

THE WITNESS: Yes, Sir. My son, Jerry Shuman, the accountant, and Mr. Nichols was present. An agreement was entered into.

THE COURT: I understood that company was composed of Dave Nichols, his brother, you and your son?

THE WITNESS: Yes, Dave Nichols and his brother had stock, and myself and my son had stock, and Jerry Shuman was the accountant.

THE COURT: But Shuman had no other interest --

THE WITNESS: He was the accountant. He was setting up the company.

Now, we had this meeting. The meeting was to decide on a sand bar.

MR. SAUSE: Now, Your Honor, I object to this. There

is nothing in the record. How can we be bound by a secret meeting that these people had, that we are in no way privy to.

MR. ATWATER: Well, let me approach it a little differently, Mr. Sause.

BY MR. ATWATER:

Q Mr. Aaron, do these letters all refer to a location on that sand bar?

A Yes, sir.

Q And as to certain action you proposed to take in 1955?

A Yes, sir.

MR. ATWATER: Now, at this point I would like to offer these letters into evidence.

MR. SAUSE: Objection.

THE COURT: Let me see them.

Where is the relevance to this, Mr. Atwater?

MR. ATWATER: Your Honor, there has been a question mark as to what channels have and have not been cut through this sand bar, and I have asked several witnesses whether any work was done in 1955, whether they saw any evidences of it. This is the man who was there at that time and can testify as to the facts of what was done in '55.

THE COURT: Well, what was done? I mean what variances would it have on the present situation?

MR. ATWATER: Well, Sir, to this extent. That in

1955 a channel was cut through at a time through corporate ownerships. Mr. Nichols owned the land to the north of this sand bar, Mr. Aaron owned the land to the south of the sand bar. Both of them owning the land binding on Tolson's Creek, and this was a joint action of the two people and a particular location in '55 to open a channel through this sand bar for their joint use of Tolson's Creek, of what we call the lake now behind the sand bar.

And as a part of a history of this bar, and the action of the owners, this was an apparent attempt, at that time, to locate the opening by mutual agreement between the parties. The evidence of it has almost disappeared, but were still apparent on the photograph in evidence, Defendant's Exhibit -- how did it get to be Defendant's 2-A, which is the large scale photograph made in 1957.

I asked the witness about it when he was identifying the photograph. This is Tolson's Creek, and I proposed to ask the witness whether or not the indication in the middle of that sand bar was the location of the opening made by agreement made between Mr. Nichols and Mr. Aaron.

THE COURT: I don't see where it would hurt you if I let him do it, but if you insist I am inclined to not let him do it.

MR. SAUSE: Your Honor, may I just speak to that for a moment. Mr. Mullin did not say that that was an opening on

1 that plat.

2 MR. ATWATER: I did not say that he did.

3 MR. SAUSE: On that Exhibit, Mr. Atwater is

4 characterizing. I think that there is definitely a question of

5 relevancy. There are several problems for which I am faced.

6 For one thing, by not objecting to that correspondence

7 which I think frankly says nothing, I don't want Your Honor to

8 feel that I know what is coming, and I don't want Your Honor to

9 look at me later and say to me that You opened the door for

10 this because it all follows as a logical objection.

11 I am not trying to be instructionist about it, but

12 that, per say, I think we are right with our objection, but I

13 don't press it too verbally, except for other matters which I

14 am afraid will take place.

15 THE COURT: Unless you show me some relevancy,

16 Mr. Atwater, I am going to sustain the objection.

17 MR. ATWATER: Your Honor, there is the further fact

18 that Mrs. Quarndt said that at some time, she did not know when,

19 a couple of men had dug, with shovels, I gathered, something

20 through the sand bar, but she never remembered in spite of the

21 fact that she was down there, an opening being dug in the middle

22 of that sand bar, or in any location at all.

23 I think the fact that such an opening was dug, one

24 goes to her recollection, and for us would be rather strongly,

25 if she was there as much as she said she was during that

1 precise period of time, and two, it shows also that this sand
2 bar has been traded at least one time in its previous history
3 of ownerships, and something that the owners could agree on, a
4 new outlet as a new boundary line, or whatever, but as a new
5 outlet at least.

6 THE COURT: If I recall, all they said was that they
7 were trying to relocate it, or agree upon a new boundary line,
8 there was simply an agreement of the opening up of another
9 outlet to the Bay, and obviously they were going to do it at
10 the narrowest part of the Peninsula, from the standpoint of
11 economy.

12 I don't think there is anything really to be derived
13 as a bearing on the location of the boundary by their joint
14 efforts to open up a connection between the Creek and the Bay
15 for the purpose of small craft to have access to the Bay from
16 the Creek.

17 That was their purpose. To make the lots more
18 attractive and more navigable by having an outlet to the Bay.
19 Actually, they were going to locate that outlet at a point of
20 the least resistance to the sand bar from the standpoint of
21 economy.

22 I don't think they were trying to re-establish a
23 boundary line, or try to demoralize the boundary line, not from
24 these letters.

25 You want to put it in to reflect on her credibility?

1 MR. ATWATER: Her credibility, and also the fact
2 that this channel was cut through in '55, and we have a lot of
3 expert testimony that there was no indication of any location
4 of this channel except in the diagram, the old channel.
5 THE COURT: I will let you put it in for the
6 limited purpose to reflect on her credibility, but as I recall
7 the testimony, the project was undertaken and shortly there-
8 after Gwenlyn's act came into play, and they did not proceed to
9 carry it any further, or to keep it maintained, and it plugged
10 up like the stream that is alleged to be the original boundary.
11 MR. ATWATER: Your Honor, I think it goes a little
12 further in that it showed the nature of this sand bar, and this
13 Creek, and the basic principle of where a stream meanders back
14 and forth between two properties. The boundary line normally
15 changes with it.
16 THE COURT: Caused by natural causes.
17 MR. ATWATER: Yes, Sir, but also the parties could
18 change that boundary line themselves, and open a new channel if
19 they so wished to do. This sand bar never was the fixed
20 monument that it is today, whereby it has been filled several
21 feet and widened to approximately 40 feet. That, at that time,
22 was a relatively thin sand bar.
23 The channel, as from the testimony of the Plaintiff's
24 own witnesses, shows that it was constantly blocking up in the
25 other location and would open up with freshness and springtime.

1 So it just shows that the natural condition of the
2 stream as a boundary, that the sand bar is not as such the
3 changing of the boundary. It is a shifting sand bar itself.
4 The stream is the boundary. Whether that appeals to Your Honor
5 or not, I don't know. It is part of the history, and we have
6 had a lot of speculating, an aerial photograph interpretation
7 testimony, but I thought the testimony of one man who was there
8 in 1955 and seen what was actually done, would be relevant in
9 the history of this boundary and stream location.
10 I won't argue any further, Your Honor.
11 THE COURT: I will put it in for the limited
12 purpose of reflecting on Mrs. Quarndt's testimony.
13 BY MR. ATWATER:
14 Q Mr. Aaron, was the work done that is referred to in
15 the correspondence in the letters between you and Mr. Nichols?
16 A Yes, sir, the work was done, and before it was done
17 we contacted the surveyor, Mr. Metcalf.
18 Q Wait a minute. The work was done?
19 A Yes, sir.
20 Q And it was done approximately at that time, 1955?
21 A Yes, sir.
22 Q Did you pay your half and Mr. Nichols pay his half?
23 A I paid my half, but in addition to that we wanted it
24 to make a boundary between --
25 THE COURT: Just don't answer the questions that

arent' before you.

BY MR. ATWATER:

Q Now, I will hand you a copy of Defendant's Exhibit 2-A, which is a large scale photograph, and in the approximate center of it is Tolson's Creek.

MR. ATWATER: Mr. Sause, would you mind if I put a mark in the water opposite to the point in which I want to call his attention to?

MR. SAUSE: No, not as long as you tell the record what the mark is.

BY MR. ATWATER:

Q Mr. Aaron, I call your attention to Tolson's Creek, as shown on this Exhibit. Now, looking at that photograph, can you locate where the 1955 cut was made?

A It was right about here.

Q You put an "X". Suppose I put an "A" beside it?

A It was done by Fountain Davis. He lives here in Stevensville, or Centerville. I am almost sure it is Stevensville.

MR. ATWATER: Your witness.

CROSS EXAMINATION

BY MR. SAUSE:

Q Mr. Aaron, did you take a boat in there after he finished that work?

A Fountain Davis did all the work and took a rowboat in

there. It was a rowboat, whether it was his or not, I don't remember, but there was a boat that went in there. It filled up almost immediately.

Q It filled up almost immediately?

A Of course, there was no jettys on the side. They claim that we should get jettys.

Q What about bulkheads?

A Bulkheads or jettys. For instance, there was a marina down below us and they had these old scobs on each side to stop the sand from filling in, but the way people talked to us, that thing was always filling in. There was nothing you could do about it.

THE COURT: So it was an exercise in futility?

THE WITNESS: Yes, sir. Prior to that we had an estimate of $15,000 in 1950, but we had no lots sold and we had nothing, and we didn't want to do anything about it. We just prolonged it.

THE COURT: What do you mean by an estimate of $15,000? Investiment in what?

THE WITNESS: In the opening up of the Creek. An estimate.

THE COURT: Oh, estimate.

THE WITNESS: Yes, they wanted $15,000 for the opening of the Creek. I got a letter from a man that wanted it and we didn't do it.

BY MR. SAUSE:

Q Mr. Aaron, $15,000 was a lot of money in those days, I mean in 1950; wasn't it?

A In those days, yeah.

THE COURT: There wasn't any boat traffic through that cut at all, was there?

THE WITNESS: No, Sir. It was sort of an experiment.

MR. SAUSE: No further questions.

THE WITNESS: Your Honor, can I be excused, to get back in this terrible weather?

THE COURT: If it is agreeable with the attorneys, it is most agreeable to me.

MR. SAUSE: Fine with me. Thank you, Mr. Aaron.

MR. ATWATER: Thank you, Mr. Aaron.

I call Mr. William Dixon.

Whereupon,

WILLIAM E. DIXON

having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ATWATER:

Q Give your name and address, sir?

A William E. Dixon, Monumental Title Building, Severna Park, Maryland.

Q You are a member of the Bar, Mr. Dixon?

A Yes, sir.

Q I believe you are President of the Monumental Title Company?

A Chairman of the Board.

Q And you are a general partner in the partnership known as East Bay Colony Associates?

A I am the general partner.

THE COURT: I don't think I ruled on these. I am admitting them for the sole purpose of reflecting on the recollection of Mrs. Quarndt.

MR. ATWATER: Your Honor, that is Exhibits 4, 5, 6 and 7.

THE COURT: Defendant's Exhibits 4, 5, 6 and 7, that is correct.

(Whereupon, Defendant's Exhibits Number 4, 5, 6 and 7 were received into evidence.

THE COURT: Mr. Dixon, I am sorry, I didn't get your first name?

THE WITNESS: William E. D-I-X-O-N.

THE COURT: All right.

BY MR. ATWATER:

Q Mr. Dixon, Mr. Downey has testified that that firm was employed and he did the work of the survey of this property in 1973. Did you employ him?

A I did.

Q For what purpose was he employed?

A To make an outline survey for purposes of acquisition and then later to be used for development purposes.

Q Was that outline survey used for the title description and the deed to your partnership, and in the mortgage?

A Yes.

Q Did you have any personal knowledge of any relocation of the outlet of Tolson's Creek to the Chesapeake Bay?

A None whatsoever.

Q Did you ever see where the outlet was in 1973, immediately before you purchased the property?

A Yes, I was told --

MR. SAUSE: Your Honor, I object. He can't tell what he was told. I don't think Mr. Dixon should tell what he was told.

THE COURT: Sustain the objection. What he saw and not what he was told.

BY MR. ATWATER:

Q What you saw in 1973, Mr. Dixon?

A I saw an opening between the Tower Gardens subdivision and the subject property, and another opening between the subject property and the property to the north, known as

Kent Island Estates.

Q Do you know where the locations were, of the openings you saw in 1973?

A To the best of my recollection, it is exactly as it is today.

Q Mr. Dixon, were you present in 1976 when certain photographs were taken, three of which have been marked for identification, that is Defendant's 1-A, B and C?

A Yes, I was present.

Q Does that show the condition of that property on that date?

A Yes, it does.

Q I will hand you two other photographs, which I will have marked. Were these photographs taken the same day?

A Yes, sir.

MR. ATWATER: Your Honor, at this point I would like to move the admission of Defendant's 1-A, B and C.

MR. SAUSE: Your Honor, subject to the infirmities noted by our witness, Mr. Mullin, I have no technical objections to that photograph. Mr. Mullin said that the angle was confusing and so forth, and I think that goes rather to its weight than to its admissibility.

THE COURT: It will be admitted.

(Whereupon, Defendant's Exhibits 1-A, B and C were received into evidence.)

MR. ATWATER: Perhaps the photographer was not an expert photographer, Mr. Sause.

MR. SAUSE: May I see the other two?

MR. ATWATER: Yes.

THE COURT: We are going to have to suspend for a couple of minutes.

(Whereupon, a recess was taken.)

BY MR. ATWATER:

Q Mr. Dixon, I hand you another photograph, was that taken the same day?

A Yes.

Q Is that looking from the Bay side in, in an easterly direction?

A Yes, it is.

MR. ATWATER: May I have this marked, and I will offer it into evidence at the same time.

MR. SAUSE: Again, Your Honor, no objection to its admissibility.

THE COURT: It will be admitted.

(Whereupon, the document referred to was marked as Defendant's Exhibit Number 8, for identification, and received into evidence.)

BY MR. ATWATER:

Q All right, Mr. Dixon. I hand you another photograph. Was that taken on the same date?

A Yes, it was.

Q Is that looking northerly, up the beach from the northern jetty of the present inlet?

A Yes, sir.

MR. ATWATER: I will offer this as Defendant's 9.

MR. SAUSE: No objection to its admissibility.

THE COURT: It will be admitted.

(Whereupon, the document referred to was marked as Defendant's Exhibit Number 9, for identification, and received into evidence.)

THE COURT: Is Defendant's 8 looking from the Bay towards the inlet?

MR. ATWATER: Is that the one Mr. Dixon identified?

THE COURT: Yes.

MR. ATWATER: Yes, it is.

BY MR. ATWATER:

Q Mr. Dixon, did you have any information brought to your attention concerning any discrepancies in the outlying description of the property when Mr. Downey made the survey?

A Yes.

Q Was there anything in those discrepancies in reference to this boundary line on the northerly side of the property adjacent to the Chesapeake Bay?

A Yes, there was discrepancies in the distances and the calls to the Bay, and then there were discrepancies in the

1 meats and bounds call along the Bay, between the two streams.
2 The stream at the Tower Gardens and the subject stream.
3 Q Did he tell you, at that time, what he used as the
4 northern boundary of your property?
5 A No, he had not completed his survey. I had a copy
6 of the, I think, the record deed at that time, and a certificate
7 of title, and we discussed the fact that all the calls ran from
8 the center line of the stream of the Tower Gardens to the center
9 line of the stream opening into Tolson Creek.
10 I told him to hold to the center line of the stream,
11 as they were monuments, and I know through all the law that I
12 have been taught, that a call to a monument prevails over a
13 metas and bounds call. So I told him to hold to the call of
14 the monuments.
15 Q In the preparation of the deeds and the mortgage
16 to the financing company financing this project, was there
17 reliance upon that survey?
18 A There was, certainly.
19 Q Incidentally, is this little piece of land included
20 in your property for tax purposes?
21 A It certainly is. That is part of the acreage and the
22 description in my deed, and the assessment is based upon my
23 acreage and my deed.
24 Q Mr. Dixon, did you have any information at all which
25 would have led you to believe that this location of the stream

was other than the natural location?

A None whatsoever.

MR. ATWATER: Your witness.

CROSS EXAMINATION

BY MR. SAUSE:

Q Mr. Dixon, at any time, did you ever discuss this matter with any officer, director, stockholder, servant, employee, attorney or anyone in the Kent Island Estates Corporation?

A Why would I have reason to discuss it with them.

THE COURT: Just answer the question.

THE WITNESS: No.

BY MR. SAUSE:

Q Did there ever come a time when it was brought to your attention that one of those class of people wanted to discuss this with you?

A I think sometime after I took title, Mr. Walter Lippencott said something to me about having representative Quandts and that there was some question about dredging out for a marina, and also there was a question that there was an argument between the Quandts, or Kent Island Estates and Mr. Sam Aaron, who owns, still owns the first two lots, and Kent Island Estates.

I said I would be more than happy to discuss any joint venture of utilizying and dredging out the lake once I

1 get to the point that I have recorded plats, but I was not
2 interested in discussing it at that time because I was too far
3 from a record plat.
4 THE COURT: What do you mean you were too far from
5 the recorded plat?
6 THE WITNESS: Your Honor, it takes, even today, Sir,
7 I haven't even gotten the preliminary approval because one of
8 the big drawbacks is perculation. Mr. Snyder, who is one of the
9 earlier witnesses here today, performed about 100 perculation
10 tests on the subject property, and I got about 13 lots
11 approved.
12 THE COURT: I see. You mean a recorded plot of the
13 subdivision.
14 THE WITNESS: A subdivision.
15 THE COURT: But you did have the plat that Mr.
16 Downey's firm had?
17 THE WITNESS: Yes, Sir, but that was not a recorded
18 plat. I never did record that plat. That was in my deed by
19 meats and bounds, and I described the plat. In fact, most
20 places, I know in Anne Arundel County, we could not record such
21 a plat. To record a plat you have to go through the sub-
22 division regulations, and it is a rather long, drawn-out affair.
23 THE COURT: If you buy a farm and you have it pre-
24 surveyed pending the transfer of title.
25 THE WITNESS: They will not allow you to record that

1 plat, Sir.

2 THE COURT: Why not?

3 THE WITNESS: Because they have subdivision

4 regulations, and it is a long, drawn-out affair. There is no

5 provision.

6 THE COURT: No, but if there is no intent on your

7 part to subdivide, you certainly can record that plat?

8 THE WITNESS: No, they will not allow you to record

9 a plat with the deed. The plat must be recorded among the plat

10 records, and to do that you have to come in and get planning

11 and zoning approval.

12 So it is not the practice to record the plats with

13 the metas and bounds description. It must be done on special

14 type of paper.

15 THE COURT: It is very discouraging in recording a

16 plat.

17 THE WITNESS: It is very much discouraging recording

18 a plat, Sir.

19 BY MR. SAUSE:

20 Q That is a public local law, or public general law?

21 A I think it comes under both -- I think the annotated

22 code delegates to the local municipalities and certainly to

23 Anne Arundel County, which is a charter form of government,

24 the right to control of the recording of plats.

25 Q About when was this that you had the conversation

with Mr. Lippencott?

A I would say that was about two years ago.

Q About two years ago, so that would have been the fall or early winter of 1974?

A Yes.

Q Did you have any contact about this with any representative of Kent Island Estates Corporation, subsequent to that?

A No.

Q Do you know if they have any fears or reservations about your survey?

A No.

Q I call your attention to Plaintiff's Exhibit 14, which proports to be a letter from your witness to you, dated February 19th, 1974, a full six months, probably nine, of the time that you are referring to. Did you receive the original of that letter?

A I think I did.

Q What, if anything, did you do about it, Mr. Dixon?

A I think I did nothing.

Q Was there any particular reason why you did nothing about it?

A Yes, if someone has a claim against our property, I don't think that I should have to take the affirmative action.

Q Not even to discuss it?

1 A No, they know from the record that I am the owner,
2 and they have the right to contact me, which you eventually did
3 do.
4 Q May I ask you this, then. Would it not be the case,
5 if our deed, which the record shows indicated at least paper
6 ownership of the whole point, were we not right in doing the
7 same thing, in not contacting anybody, or anything else, and
8 the affirmative, as you put it, was on the other person who is
9 claiming something that we felt belonged to us. Is that what
10 you are trying to say?
11 A No, I think everything of record, both the deed of
12 the adjoining property and our deed called for the mouth, the
13 center for the mouth of the stream emptying Tolson Lake into
14 the Bay.
15 I didn't see any discrepancies.
16 Q You didn't see any discrepancies?
17 A None whatsoever.
18 Q Did you ever search the title, Mr. Dixon?
19 A Oh, yes.
20 Q When you searched the title, did you ever stretch
21 this out to see how it worked, is that part of what you did?
22 A Oh, yes, surely.
23 Q Did you do any title searching here?
24 A No, I had an engineer do it, a surveyor, Mr. Downey.
25 Q A survey. And you did nothing, yourself, to verify

1 or check what Mr. Downey did?

2 A Yes, he sent to me his description, his plat, and I

3 checked it against my deed, and adjoining deed, and all of them

4 called to the center of the stream emptying into the Bay at

5 Tolson Lake.

6 Q Are you suggesting that there is no discrepancy

7 there?

8 A I called it a single monument from two directions,

9 which would not indicate to me that there is a discrepancy, but

10 it more affirms that everything is correct.

11 Q I see. And there was nothing on the land to

12 indicate to you that there was a discrepancy?

13 A No, sir.

14 Q When were the times that you were on this property

15 prior to the time that you acquired title to it?

16 A I think it was sometime in the spring of '73.

17 Q Incidentally, you never seen Mrs. Quarndt, her son,

18 her husband, or anyone connected with Kent Island Estates that

19 may have said nothing or indicated nothing to you, which led you

20 to believe that the opening was in the place where your

21 surveyor placed it to be?

22 A There was only one opening.

23 MR. SAUSE: I have no further questions. Thank you.

24 MR. ATWATER: No redirect, Your Honor.

25 THE COURT: Mr. Dixon, you were never made aware of

1 the discrepancy of the plat prepared for you by Mr. Downey and
2 the 1948 plat by Mr. Metcalf, where he used one stream as your
3 northwestern corner, and the first surveyor uses another one?
4 THE WITNESS: Your Honor, let me answer that by
5 saying this. Mr. Downey said there was a discrepancy in the
6 distances between the two streams. Mr. Downey, nor I ever knew
7 that there were two streams, that there were two openings.
8 The only two streams was the stream at the Tower Gardens, which
9 was the southern boundary of the property that I thought I was
10 buying, and the stream emptying Tolson Lake, which I considered
11 the northern boundary.
12 The fact that there was a difference in distance, to
13 me, was very plausible. There were great distances running in a
14 westerly direction from the road to the knee-high water mark.
15 So with such discrepancies it was only natural that
16 the description in 1948 along the beach could not possibly be
17 the same as it was in 1973, because that description was some,
18 I would say 100 or more feet in an easterly direction, than the
19 description in the 1948 deed.
20 So always on waterfront, particulary on Bay front,
21 you are going to have a lot of discrepancies and a lot of
22 changes.
23 THE COURT: Now, my point is that it was a fairly
24 recent survey, 1948, showing the northwestern boundary follow-
25 ing a stream that was some 200 and some feet south of where

1 Mr. Downey had located it. Aren't you aware of that?

2 THE WITNESS: No, Sir, I was aware that there was

3 some 200 and some feet differences between the two streams.

4 THE COURT: But you were not aware that the '48 deed,

5 the '48 plat, followed the course of the stream some 225 feet

6 south of where your surveyor had followed it?

7 THE WITNESS: No, Your Honor, I was aware that there

8 was a discrepancy of some 200 and some feet between the two

9 streams. But as I say, also, there was a discrepancy in the

10 quantity of land, so I did not see anything unusual about that at

11 all.

12 Now, also, I felt, and I know that the law says that

13 when the stream changes, the boundaries change. So if there

14 had been a change in the streams, I still followed to that

15 stream. It's not to where it was, but to where it is now.

16 So I saw nothing unusual about that at all, Sir.

17 THE COURT: So you were aware that there was a stream

18 225 feet south?

19 THE WITNESS: No, Sir, I was not. I could not see

20 the stream when I walked along the beach.

21 THE COURT: I mean on the '48 Metcalf survey?

22 THE WITNESS: In the Metcalf survey I was aware of

23 the discrepancies of the length along the beach, not the fact

24 that there was another stream, or another stream other than the

25 one that I saw. It certainly was not apparent by walking along

1 the beach.

2 THE COURT: No, but by looking at the plat you could

3 see that the stream was practically hugging the bank in the

4 northwest corner of your property, leaving no projection out

5 there, peninsular projection out there about almost up to the

6 mid-line of the sand bar that separates the Bay from the Creek.

7 THE WITNESS: Under Mr. Metcalf's description there

8 was a tip of land that went out into the Bay that disappeared

9 completely, it was not all prevelant, and that tip of land is

10 about where I now find that this stream came out.

11 So there were many discrepancies. Now I was not

12 aware that there was another entrance into the Bay at that

13 time.

14 THE COURT: Any other questions?

15 MR. ATWATER: No further questions.

16 MR. SAUSE: I have one question, in view of the

17 Court's questions.

18 RECROSS EXAMINATION

19 BY MR. SAUSE:

20 Q Mr. Dixon, you indicated that, I believe, you see

21 nothing unusual about the distances being greater than

22 Mr. Metcalf's survey. Is that what you are saying?

23 A Yes.

24 Q What if it had been shorter, would your attitude

25 have been quite as cavalier and unconserved?

1 A Absolutely.

2 Q Absolutely. Now, my second question, you have
3 testified on cross examination before and since then I have
4 learned something else.

5 Do you recall a discussion with Mr. Quarndt, Sr.,
6 at the real estate hutch after receiving that letter from
7 Mr. Downey?

8 A I recall, yes, I think I do. And the nature of
9 it was, fine, if you get in touch with me I will be more than
10 happy to discuss it with you.

11 Q Is there any reason why you didn't recall the letter,
12 prior to this conversation, until I showed it to you?

13 A I didn't say I didn't recall the letter.

14 Q Well, the record will show that. Is there anything
15 else?

16 A My meeting with Mr. Quarndt, I spoke before a meeting
17 with the Talbot, Kent and Queen Anne Real Estate Board, and
18 after the meeting he came up and said something to me, and it
19 was maybe a one or two minute conversation, and I had
20 completely forgotten it until you reminded me of it.

21 Nothing that I would put any importance to. If it
22 was anything that important, he would have followed it up, but
23 he did not.

24 Q Well, this was exactly the same time that you had
25 gotten the letter? When you got the letter from Mr. Downey?

1 A I am not sure. I don't remember exactly when it
2 was.
3 Q He done all he could, he'd seen you personally and
4 he recorded your survey. What more could he have done?
5 A Well, I think your actions speak very well, but you
6 contacted me and brought suit. He could have contacted me, he
7 could have sat down and brought his plat and said this is where
8 we have our discrepancies. I think that would be the normal
9 method of operating. Why put the burden on me when he is the
10 one who has a complaint.
11 MR. SAUSE: All right. I have no further
12 questions.
13 THE COURT: You may step down.
14 MR. ATWATER: No further testimony, and that is
15 the testimony for the Defendant, Your Honor.
16 THE COURT: Any rebuttal?
17 MR. SAUSE: That is it.
18 THE COURT: I will hear you, Mr. Sause.
19 MR. ATWATER: Your Honor, I prepared a pre-trial
20 memorandum which I did not complete in time to get to the
21 Court before this. I would like to present it to the Court
22 now, which analyzes what I thought was going to be today's
23 testimony, as well as the testimony of the previous hearing.
24 The fact limitation of what is in it, and commenting
25 among the testimony, I will read to Your Honor as to what actually

took place today. I would like to give you a copy of that memorandum now. And I will give a copy to Mr. Sause.

THE COURT: If you want to submit this case on these memoranda, it is agreeable with the Court. I am just giving you an opportunity to mentalate your thoughts orally.

MR. SAUSE: Your Honor, there is one thing that I would like to mention, that I would like to have an opportunity to file a memorandum, and that would seem perfectly okay with me. We did submit this on agreed issues and some of the issues never came up, and I think that while everybody is here we might as well just strike those out.

There is no sense with Your Honor concerning Himself with something that Mr. Atwater and I thought was going to be an issue and it didn't turn out to be.

THE COURT: I quite agree. What are the issues that are to be deleted?

MR. SAUSE: Your Honor, issue number 1 was " from the standpoint of both legal and equitable title, including estoppel, what is the legal effect of us cutting a channel through with respect to ownership south of the channel, acquisition by East Bay Colony and if that was the only issue.

So, number 1-a, b and c to submit Your Honor a brief is still in.

Two, is the instrument dated September 30, 1951, and recorded in Liber T.S.P. 4, folio 52, admissible to evidence

1 a valid grant from Chesapeake Bay Corporation to Samuel J. Aaron
2 and wife.
3 That was the deed for the lot B, lots 1 and 2. That
4 was never offered in evidence, so it certainly is not an issue.
5 I thought it was going to be. So I think we can strike out issue
6 number 2 altogether.
7 Three, was dependent upon two. Three says " If the
8 answer to #2 is yes, did Aaron and wife acquire title to any
9 part of the subject area by virtue of the riparian rights ap-
10 purtenant to the ownership of Lots 1 and 2, Block B. There is
11 no evidence here that they ever owned lots 1 and 2, block B.
12 "Did the subject area become apart of the lots by
13 accretion", that is 3b.
14 So it would seem to me that 2 and 3 are out altogether.
15 Four, "Whether the same deed, have Aaron and wife
16 acquired any rights in the subject area by adverse possession."
17 There was no testimony here that they have. So I
18 think that number 4 is out.
19 Question 5, " Did Aaron and wife convey any part of the
20 subject area to East Bay Colony Associates by Exhibit G?"
21 Again, that was predicated somewhat on the others, I
22 can't--
23 THE COURT: What is that again?
24 MR. SAUSE: Did Aaron and wife convey any part of the
25 subject area to East Bay Colony by their deed to East Bay Colony.

1 Again, that was predicated on these other theories that they had
2 something that they had gotten by adverse possession and some-
3 thing to convey. There being no testimony to that. I don't
4 think 5 is really an issue either.
5 MR. ATWATER: Isn't that the basic issue to this case?
6 Didn't we get title from Sam Aaron on these parts?
7 MR. SAUSE: Well, possibly, but I am not going to
8 quible about 5. I think one is the real issue here. Two, Three
9 and four are clearly irrelevant because there was no testimony
10 to adduce those facts.
11 MR. ATWATER: If I may coment for just a moment, Mr
12 Sause.
13 MR. SAUSE: Yes, sir.
14 MR. ATWATER: I must have misunderstood. I thought
15 that deed was one of the stipulated documents and you and I
16 were going over the deed to Sam Aaron.
17 MR. SAUSE: Oh no, we absolutely did not.
18 MR. ATWATER: As I reviewed it in the title deeds, it
19 said that all title deeds and relevance were in evidence.
20 MR. SAUSE: Two said is the instrument admissible to
21 evidence a valid grant. The whole question is as to it's admis-
22 sibilty. That is what you and I disputed.
23 MR. ATWATER: I thought you were questioning his title.
24 You hadn't put any evidence in to question his title. As to
25 lots 1 and 2--

MR. SAUSE: I borrowed a page from Mr. Dixon. I don't have to question his title until he aserts it.

Anyway, I just don't think 2, 3 and 4 are in and that is all I have to say.

THE COURT::Do you wish to be heard, Mr. Atwater?

MR. ATWATER: You mean my closing argument?

THE COURT: Yes.

MR. ATWATER: Well, Your Honor, I have tried to cover in the memorandum the cases we could find bairing on this change of a stream not only by natural means, but by evolsion or by acts of parties or third parties. We have sited in the memorandum not only the Bosley verses Grand Lodge, which dealt with an act of evolsion-- well, both evolsion and possession for twenty years actually, in which a stream by testimony was shown to have suddenly changed as a result of a storm and cut off a triangular piece of land lying between the old bed which went around the cornor and the new bed which cut across.

The Court of Appeals affirmed the instructionsto the jury in that subjective case, that evolsion would not change the tidal line.

Quoting from the Supreme Court opinion, these sitations all being in the brief, the Bosley case being noted in our brief on page four and quoting from Justice Brewer in Nebraska verses Iowa. In tracing the law down we have sited Thompson on real property, that where stream changes made not by natural forces

1 but by the acts of third parties or by the other party, that the
2 tidal line still changes.
3 Two of the cases are ones in New York, one was one
4 that went up to the Supreme Court of the United States or by
5 actions by New York in one case in dredging cannals and putting
6 up blocks has changed the entire boundary of the stream and
7 extended one lot to what had been watered, New York was claiming
8 title to that as the owner of the bed and the stream.
9 The Court said no, you changed the land by your own
10 actions, you can not deprive the riparian owner of his riparian
11 rights to that water front when you by your own actions caused
12 the change in the stream bed. There are two or three cases
13 of that type sited in our memorandum, which are directly in
14 point to this case and where the Plaintiff by his own actions
15 had caused the stream bed to change. We have the benefits of
16 the laws of justice if it were done by natural means and the
17 normal evoltion rule does not apply because they, by their own
18 action, have changed the boundary and if their treory were correct
19 deprive us of our riparian right to the mouth of that stream,
20 which has an riparian right, is a valuable right on any water
21 front property.
22 Then, we have at the present time the Whitman's Act
23 on the development of marinas and any dredging is very different,
24 but it is still a valuable right subject to control under the
25 Whitman's Act as to whether or not this stream or the lake be

1 developed for the joint ownership of both properties.

2 Now, we have the further fact in this case that when

3 this new cut was made by the Plaintiff the natural result of that

4 was the closing of the old stream outlet. So it was not apparent,

5 it was not known to the surveyor who went out on the survey in

6 1973.

7 There was nothing put on record, there was no notice

8 given to the owners of this property at the time and that they

9 were doing this without intending to change the boundary and

10 whether they had or not, did they actually cut a new opening,

11 the result of which was that the old opening clogged up, which

12 had done periodically for years anyway, but the spring freshness

13 no longer washed it clear because water follows the path of

14 least resistence and this new channel carried the water so that

15 the old channel was never gouged out from the spring freshness

16 of 1970 to 1976, the day of the Court's inspection.

17 So that a person who buys in reliance upon a stream

18 boundary, in reliance upon a survey description by a surveyor

19 made in accordance with the standard surveying principles, can

20 he be deprived of that present stream location, is he, indeed,

21 justified reling upon the physical facts, particularly when those

22 facts were as a result of the Plaintiff's own actions in this

23 case.

24 They didn't fill up the old stream bed, but as a result

25 of their digging the new stream bed, the old stream bed not only

1 closed up, but stayed closed and has not opened up from that day
2 to this. So we bought in reliance, we issued a deed or our
3 predecessor of the title issued a deed in accordance with
4 that survey, we mortgaged this property through a mortgagee
5 on that survey, with that survey plat, all based upon the
6 physical conditions existing in '73 without any notice of any
7 claim that the present stream bed is not the boundary between
8 the properties.
9 As far back in the chain of title as one must carry
10 this case, Tolson Creek has been the boundary between these two
11 farms. The opening in Tolson Creek in 1948 undoubtedly was
12 where Metcalf put it, but in 1973 it was not there.
13 I don't see how anyone is charged with notice that
14 an artifical change has been made in the location of the stream
15 bed, which has been his boundary.
16 Further, that the Plaintiff can not rely upon his
17 own actions to deprive us of our right to direct access to that
18 stream mouth from our own property, which we had before the
19 Plaintiff's took the action in this case.
20 So that under those principles, we believe, based upon
21 the facts that have been adduced in the Plaintiff's own case,
22 that in this case the title to all land south of the present
23 opening as it existed in 1973 is the land of the Defendant's,
24 East Bay Colony.
25 THE COURT: You say you were going to file a memorandum,

how much time would you like?

MR. SAUSE: I would like the oppurtunity to file a memorandum.

THE COURT: How much time do you want?

MR. SAUSE: Your Honor, I have two briefs due in the Court of Special Appeals, one in the Court of Appeals and another three day trial this month, saying nothing of the holidays.

THE COURT: How about thirty days?

MR. SAUSE: How about you?

MR. ATWATER: I have no objection to thirty days, he is getting my memorandum today and as long as I have time to reply.

THE COURT: Yes, you may. I will say that you will have fifteen days to reply.

MR. ATWATER: Thank You, Sir.

MR. SAUSE: Thank You, Your Honor.

THE COURT: Court will stand adjourned.

(At which time this case was concluded)

1 C E R T I F I C A T E

2

3 I, Joseph Mc Grath, Court Reporter/Notary Public,
4 do hereby certify that the testimony of the witnesses and all
5 other proceedings contained in pages 1 through 59 was taken
6 stenographically by me and reduced to typewriting under my
7 control and direction; that the transcript of said witnesses'
8 testimony and all other proceedings herein contained is a true
9 and accurate record.

10

11 WITNESS my hand this 30 day of March
12 1978 A.D.

13

14

15 Joseph Mc Grath

16 Joseph Mc Grath
Court Reporter/ Notary Public

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STATEMENT OF COSTS:

Queen Anne's County Costs	$120.00
Preparation of Record	25.00
Stenographer	322.00
Total	$467.00

STATE OF MARYLAND, QUEEN ANNE'S COUNTY, to wit:

I HEREBY CERTIFY that the aforegoing are all the original papers of record in "Kent Island Estates Corporation, Inc. vs. East Bay Colony Associates, et al.", being Chancery No. 5766, in the Circuit Court for Queen Anne's County.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the Seal of the Circuit Court for Queen Anne's County this 31st day of March, 1978.

Charles H. Cecil

Clerk of the Circuit Court for Queen Anne's County

THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

KENT ISLAND ESTATES	:	
v.	:	Equity #5766
EAST BAY COLONY ASSOCIATES ET AL	:	

: : : : :

NOTICE REGARDING CONTEMPLATED DESTRUCTION OF EXHIBITS

In accordance with Rule 16-306 d 2, you are hereby notified that all exhibits connected with this action and now in the custody of the Clerk will be destroyed or disposed of in some other appropriate manner, unless written request for withdrawal is filed within 30 days of the date of this Notice. "Exhibits" include all items introduced or marked for identification at any trial or hearing of this action and/or not filed with a pleading, motion or other paper noted on the docket.

Exhibits may be picked up at any time between 8:30 a.m. and 4:30 p.m. Proper identification and receipt will be required.

SCOTT MACGLASHAN, CLERK

Deputy Clerk.

February 19, 2009

Rule 16-306. Filing and removal of papers.

d. Removal of papers and exhibits.-

2. Exhibits filed during trial.- All exhibits introduced in evidence or marked for identification during the trial of a case, and not filed as a part of or with the pleadings, shall be retained by the clerk of court or such other person as may be designated by the court. After either (i) the time for appeal has expired, or (ii) in the event of an appeal, the mandate has been received by the clerk, the clerk shall send written notice to all counsel of record advising them that if no request to withdraw the exhibits is received within 30 days from the date of the notice, the exhibits will be disposed of. Unless a request is received by the clerk within 30 days from the date of notice, or unless the court within that period shall order otherwise, the clerk shall dispose of the exhibits in any manner, including destruction, as may be appropriate.

MAILED 2/19/09 John Sause Charles Atwater Esq

Court Copy

Queen Anne's County Circuit Court
100 Court House Square
Centreville MD 21617

Exhibits Returned Form

Case # Chancery #5766

Case Title:
KENT ISLAND ESTATES CORPORATION INC VS EAST BAY COLONY ASSOCIATES ET AL

Items Returned: X (PLT) _____ (DEF)

XXX Complaints Exhibits
2. #12 Receipt from Frederick Ward Assoc Inc
3 #13 Letter from William E Dixon P.A.
4. #14 Letter from J Tilghman Downey
5.
6.
7.
8.
9.
10.

Exhibits Returned To: The Honorable John W Sause Jr

Signature:

As: ____ Party X Counsel ____ Agent ____ Representative

Returned By: _____ Deputy Clerk Date: 3/13/09