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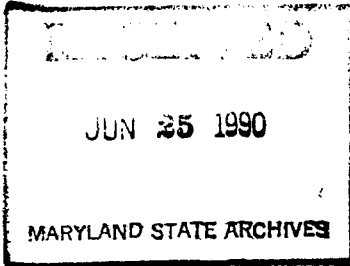
Mr. Richard H. Richardson  
Deputy Commissioner of Land Patents  
State Archives  
350 Rowe Boulevard  
Annapolis, Maryland 21401

Dear Mr. Richardson:

This is in response to your request for advice of counsel concerning the ownership of an accretion to the shoreline of navigable waters. You have also asked about the ownership of an eroded shoreline which has been submerged by navigable waters. The general rule is that an accretion becomes the property of the riparian owner and that submerged land reverts to the ownership of the State.

It is my understanding that this question has arisen in connection with the Marquardt land patent proceeding. In part, the Marquardts are claiming title to the land under certain navigable waters in Calvert County. There is also an issue concerning the ownership of land along the water of certain shoreline lots. As the shoreline has been altered over the years, you have asked about the ownership of accretions to the shoreline as well as the ownership of land which has become submerged.

Subject to certain exceptions, the navigable waters in Maryland and the lands under them are owned by the State for the benefit of the people. Harbor Island Marina v. Board of County Commissioners of Calvert County, 286 Md. 303, 314 (1979). The State's interest is based on its position as the successor to the proprietary government, see Md. Decl. of Rts., Art. 5, which had



been given the same interest in the charter granted by King Charles I. See Kerpelman v. Board of Public Works, 261 Md. 436, 445 (1971). Historically, this interest was subject to the public rights of fishing and navigation. Ibid. Since the adoption of the Federal Constitution, this interest has also been subject to the paramount power of the federal government to regulate navigation. Harbor Island, 286 Md. at 314. Moreover, the colonial government and the State granted patents to private parties in certain lands beneath navigable waters until this practice was forbidden in 1862. Ch. 129, Laws of Maryland, 1862.<sup>1/</sup> However, such grants are also subject to the public rights of navigation and fishing. Board of Public Works v. Lamar Corp., 262 Md. 24, 47 (1971).

Historically, in Maryland the test of navigability has been whether the waters are tidal waters, that is, whether they are subject to the ebb and flow of the tide. However, in more recent times, the navigability-in-fact test has also been recognized. Green v. Eldridge, 230 Md. 441, 446 (1963). It is my understanding that the waters over the land in question satisfies both tests so that there is no question that, in the legal sense, they are navigable waters. Where navigable waters are tidal waters, the boundary between the State's waterside interest and the riparian owner's interest is the mean high water mark. Caine v. Cantrell, 279 Md. 392, 396 (1977) and Lamar Corp., 262 Md. at 47. The implication is that where lands submerged by tidal waters have been patented to private parties, the boundary would ordinarily be the mean high water mark.

Under the common law, the rights of riparian owners are generally limited to accretion and reliction. Any gradual increase in the soil due to soil washing onto the shore (accretion) or the water receding to expose additional soil (reliction) is regarded as the property of the riparian owner. The rationale for this rule is to assure the riparian owner of access to the water. People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., 316 Md. 491, 501-502 (1989). However, where an accretion begins within navigable waters, it is the property of the State or the grantee of a land patent. Linthicum v. Coan, 64 Md. 439, 454 (1886), and see also Van Ruymbeke v. Patapsco Industrial Park, 261 Md. 470, 481-482 (1971). As to the erosion of the shoreline and the submergence of the land, the general rule is that land regularly inundated by tidal waters reverts to the State ownership. Department of Natural Resources v. Mayor and City Council of Ocean City, 274 Md. 1, 14-15 (1975). Again, the implication is that if the land under the navigable waters has been granted to a private party, this party would ordinarily become the owner of the newly submerged land.

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<sup>1</sup> This prohibition is now codified as part of the law governing the issuance of land patents. See Real Property Article, §13-101(e)(3).

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In conclusion, the general rule is that an accretion to the shoreline above the mean high water mark of navigable waters becomes the property of the riparian owner. However, the land along a shoreline which is submerged by navigable waters ordinarily becomes the property of the State.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Israel".

Richard E. Israel  
Assistant Attorney General

REI:maa