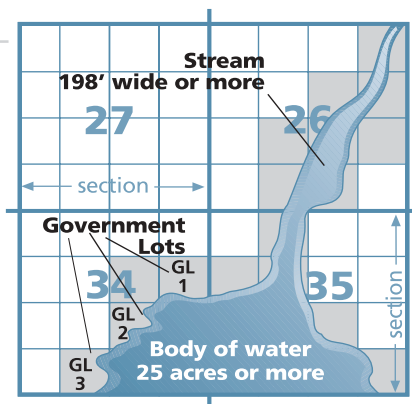


U.S. land patents

For many pre-statehood land “patents” (the way by which the U.S. government grants title to public land) in Washington, upland ownership may extend beyond ordinary high water out to a meander line, including aquatic lands. If the uplands abutting a navigable body of water were patented before statehood, the uplands ownership extends to whichever line is farther out — the ordinary high water line or the meander line. The two diagrams on this page help show the foundation for government ownership principles.

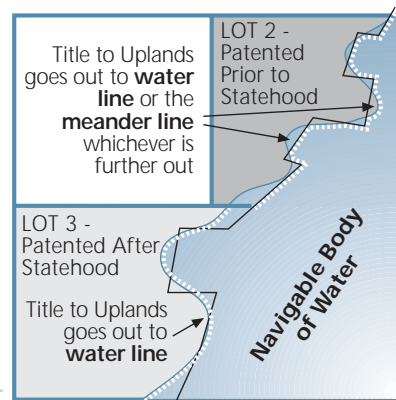
U.S. system of rectangular survey

This system, originated by President Thomas Jefferson in 1785, subdivided land into a grid to provide consistency for legally defining locations and ownerships across two thirds of the United States. Sections (1 mile X 1 mile), townships (36 sections) and ranges were established in relation to a baseline and major meridian. The baseline used in Washington is at a point near Portland, Oregon and runs east/west, parallel to latitude lines. The “Willamette Meridian” runs north/south through the western half of Western Washington.



▲ Government lots in sections 26, 34 and 35 are established because of the presence of a large body of water and wide stream.

Federal surveyors laid meander lines to approximate the shoreline of navigable bodies of water — lakes 25 acres or larger, and streams 198 feet or more in width. The surveyor assigned a parcel number called a government lot to subdivide an incomplete section, often created by the body of water.



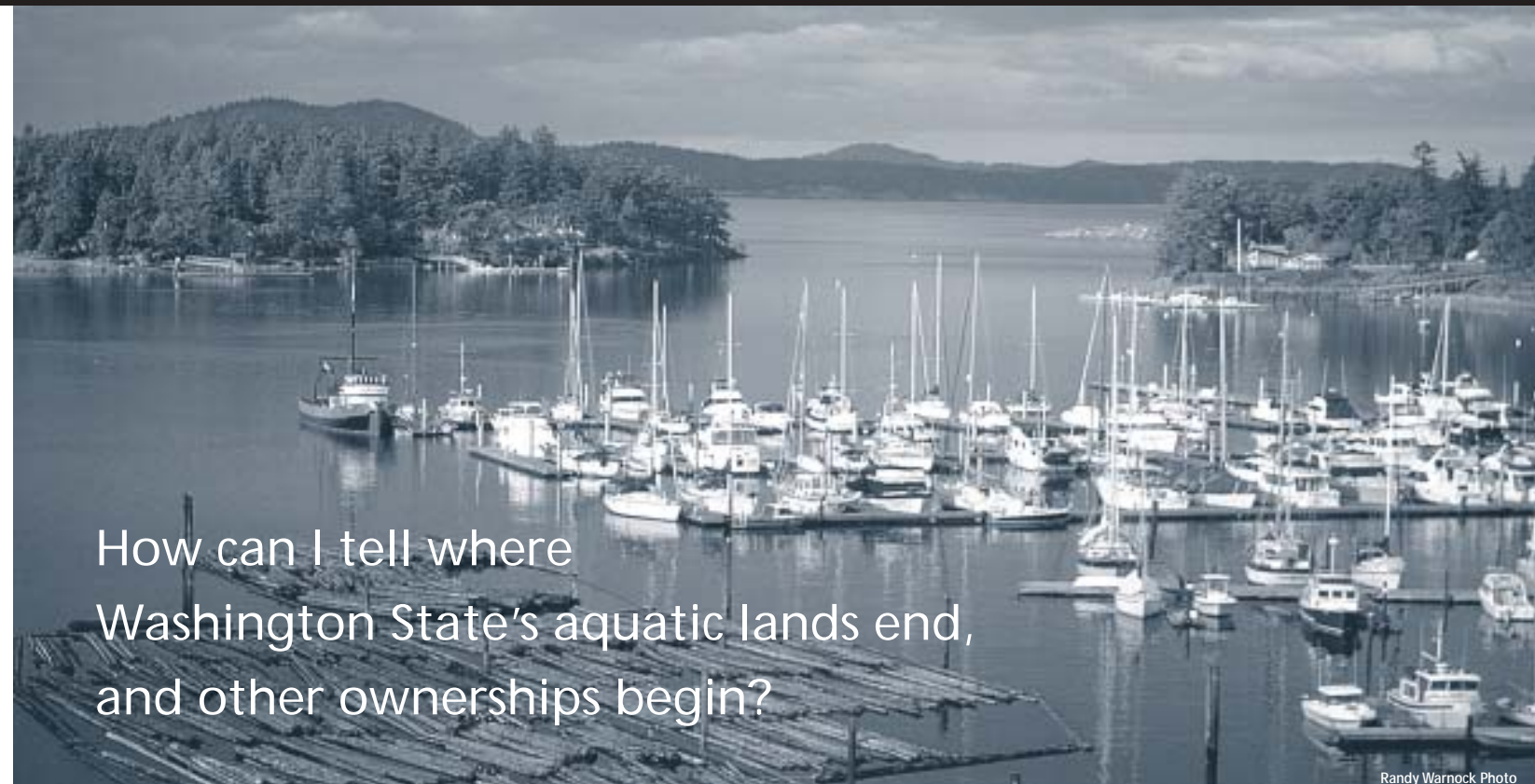
Comparison of pre- and post-statehood patents

Enlarged detail of Lots 2 and 3 in above diagram shows the difference between government lots patented before statehood and patented after statehood. Although the meander lines are similar, the outer boundary of a pre-statehood patented lot extends across an inlet out into the water body, whereas the patent after statehood puts the ownership only to the waterline.

For More Information

Statutes about meander lines and navigability are found in WAC 332-30-106 (37) and (41), respectively. For other information, contact:

- ▶ *DNR-managed state-owned aquatic lands* – website: www.dnr.wa.gov. Select ‘Aquatic Resources.’
- ▶ *Navigability* – DNR’s land manager in your area. See website.
- ▶ *Pre-1971 State aquatic land sales and deed information* – DNR Title Office at 360-902-1565.
- ▶ *Other ownership questions about DNR-managed aquatic lands* – 360-902-1100.
- ▶ *Privately owned aquatic lands* – Your county assessor’s office.



How can I tell where Washington State’s aquatic lands end, and other ownerships begin?



Randy Warnock Photo

The lakes, rivers and marine waters of Washington are a precious, irreplaceable resource. These water bodies provide a mix of benefits: They support myriad species of plants, fish, and other wildlife. They support navigation and commerce. And they provide opportunities for recreation.

The lands beneath these waters and along their shores are aquatic lands. The Washington Department of Natural Resources manages 2.4 million acres of state-owned aquatic lands for current and future generations of state residents. Other aquatic lands are privately owned. As a result, the question often comes up....

Who owns what?

And the answer is: It depends... Ownership varies by type of aquatic land and local history. To determine ownership, it’s necessary to understand the broader history and concepts that affect Washington’s aquatic lands.

General terms

Aquatic or submerged lands include both the marine “salt” waters (Hood Canal, Puget Sound, Grays Harbor, etc.) and fresh waters (rivers, lakes and streams). There are three categories of aquatic lands:

- ▶ **Bedlands** – those aquatic lands that are submerged at all times, and include navigable salt and fresh waters of the state;
- ▶ **Tidelands** – submerged lands and beaches that are exposed and submerged with the ebb and flow of the tides; and
- ▶ **Shorelands** – submerged lands lying along the edge of a river or lake.

Ownership History

Fresh water, such as in lakes or rivers, or marine waters, such as in Puget Sound, are not owned by individuals. Water is managed by the state and protected for the common good. Generally, aquatic lands beneath these waters have been managed that way, too – since statehood.

On November 11, 1889, at statehood, Washington’s aquatic lands became state-owned lands under the Equal Footing Doctrine, which guaranteed new states of the Union the same rights as the original 13. Washington State, through Article XVII of its constitution, asserted ownership to the “beds and shores of all navigable waters in the state...” so that no one could monopolize the major means of transportation, trade or fishing areas. Some other states gave adjacent upland owners a “riparian” right to build over navigable waters, but Washington chose to be a “nonriparian” state – that is, it did not grant that right. It held that aquatic lands are owned by all the people of the state, not individuals.

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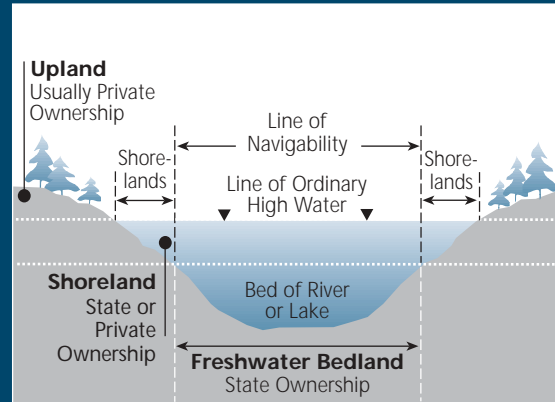
Although owners of lands abutting state-owned aquatic lands did not receive “riparian” rights at statehood, for more than 80 years they could purchase tidelands or shorelands from the state. In 1971, the sale of the state’s aquatic lands was stopped by the state Legislature. Today, virtually all the bedlands of navigable waters are state

owned, as are 30 percent of the tidelands and 75 percent of shorelands in the state. Non-navigable bodies of water are not owned by the state, and are likely to be connected in title to the abutting upland property.

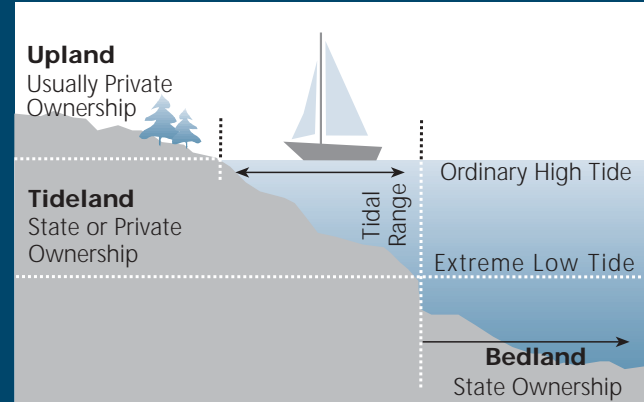


DNR Photo

Because constant change is inherent in lands along waterbodies, further research or surveys are needed to fully understand and settle ownership issues.



Shorelands



Tidelands

Key ownership concepts and how ownership is determined

When questions of ownership arise regarding aquatic lands, two basic time-honored principles are applied. The state’s ownership of aquatic (or submerged) lands is based on whether a specific water body is or was navigable or is influenced by tides. If the answer to either is yes, it may be, or at one time may have been, state-owned land.

Using these principles, ownership within marine water bodies of the state is relatively straightforward to establish. However, when it comes to locating specific boundary lines involving lakes, rivers and streams, ownership is more complex.

Surveys and meander lines

At statehood, federal uplands would not be conveyed without a survey. While carrying

out surveys of the uplands, the U.S. General Land Office identified important bodies of water — surveyors laid out “meander lines” that addressed the fluctuations of the shoreline (see back page diagram). Originally, ownership was defined using the natural condition of the navigable waterbodies at statehood in 1889. But because riverbanks and shorelines move over time, the ownerships also may move. Washington State considers those bodies of water that were meandered by government surveyors as navigable unless otherwise declared by a court.

Navigability-for-title

Concepts about navigability are used to guide a host of legal relationships covering maritime law, titles, and rights of use, to name a few. In this discussion the terms specifically represent navigability-for-title.

DNR follows the rule that “navigability or navigable” means that a body of water is ‘capable or susceptible’ of navigation — that is, that the water body has been, is now, or could be used for the transport of useful commerce.

Federal law governs ownership title based on navigability; and it is a question of law ultimately determined by federal court. But courts at all levels do consider title (by navigability) disputes and questions such as: What does ‘capable or susceptible’ mean — when did the lake, stream or river demonstrate that it was, or could be, navigable? What if a river, lake or stream was not meandered by the General Land Office surveys? The mere ability to float a log or canoe does not always meet the ‘transport of useful commerce’ test.

So, what types of uses for trade or travel support a finding of navigability? Considering these questions, navigability status and state ownership of aquatic lands are decided on a site-by-site basis, and ultimately may need to be determined by the U.S. Supreme Court.

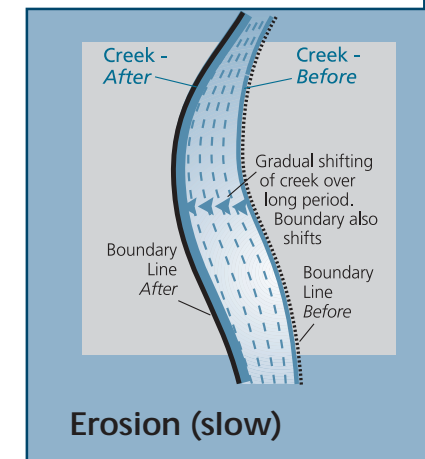
DNR continues to catalogue information on navigability of the state’s lakes, streams and rivers. Work entails research into U.S. General Land Office and other records, surveys, and geographic mapping.

Shoreline changes and ownership

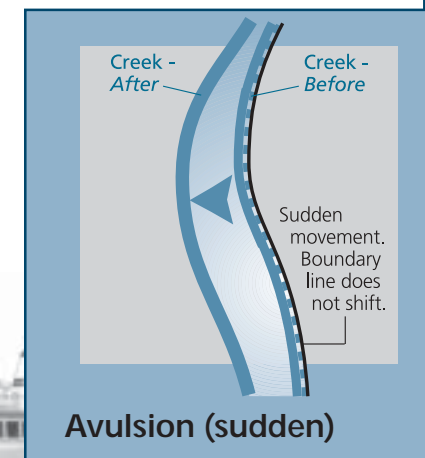
Where shoreline locations change, exactly how the build-up or erosion of land occurs helps determine ownership. In general, when shorelines change gradually (accretion, erosion, reliction), the ownership boundaries change.

However, when shorelines change rapidly through landslides, dredging and volcanic eruptions (avulsion), ownership boundaries do not change. This means that if an avulsive event occurs and aquatic lands become dry and have the characteristics of uplands, they still may be owned by the state and managed by DNR.

Because constant change is inherent in land along water bodies, further research or surveys are usually needed to fully understand and settle ownership issues in these dynamic situations.



Erosion (slow)



Avulsion (sudden)

How state-owned aquatic lands are to be managed

The Legislature recognized our state’s aquatic lands as a “finite natural resource of great value and an irreplaceable public heritage.” As steward of the 2.4 million acres of state aquatic lands, Washington’s Department of Natural Resources must consider the natural values and best use of these lands before issuing leases or authorizing changes to the lands, while also applying fundamental ownership principles.

DNR is to balance benefits for people of the state, while working with private individuals who desire to use aquatic lands for their particular purposes. Decisions must be in the long-term best interest of the public. Five broad guidelines for managing state-owned aquatic lands are to:

- ▶ encourage direct public use and access;
- ▶ foster water-dependent uses;
- ▶ ensure environmental protection;
- ▶ utilize renewable resources; and
- ▶ generate revenue consistent with those goals.

Land ownership is central to DNR’s Aquatic Resources programs, and sometimes conflicts arise over who has title to the lands and who controls their use. Laws that began at statehood help clarify ownership issues.



Randy Warnock Photo