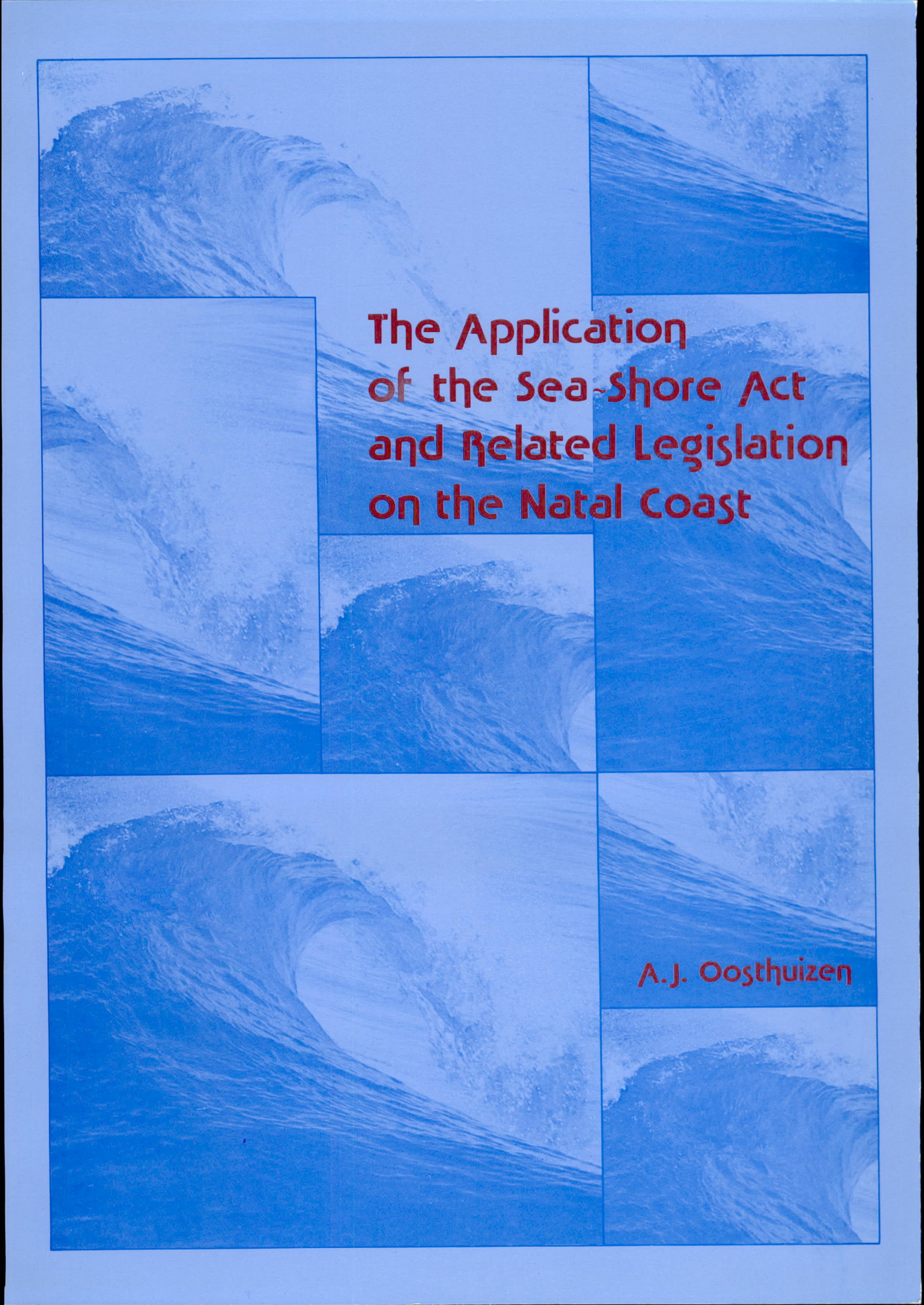




The Application of the Sea-Shore Act and Related Legislation on the Natal Coast

A.J. Oosthuizen

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FOREWORD

This work is about the law relating to land ownership in the Coastal Zone - that narrow, highly sensitive, highly prized, strip of territory straddling the interface between land and sea.

To understand the reason for commissioning this study it is necessary to know something of the events leading up to it.

In 1978 the Town and Regional Planning Commission published Volume 41 of its Town and Regional Planning Reports entitled "The Estuaries of Natal" by Dr G. Begg. This signalled the culmination of the initial phase of an intensive research effort carried out by Dr Begg on behalf of the Commission and represents the first, and only, definitive work on the physical and biological conditions of what must be regarded as a most valuable and important natural resource.

The research revealed that, out of a total of seventy-one estuaries studied, no more than twenty could be regarded as being in anything better than a grossly degraded state.

Faced with these disturbing facts the Commission was prompted forthwith to set up an "Estuary Action Committee" whose principal object was to "troubleshoot"; i.e. to identify sources of pollution and siltation and to bring these pertinently, if not persistently, to the attention of the agencies responsible.

In carrying out its "mission", however, the E.A.C. soon realised that it was essential to understand the rights of private land owners and the State where property boundaries abut tidal waters and lagoons or shifting river boundaries or where boundary descriptions may be vague or ambiguous.

With this in mind the Commission was fortunate to secure the services of Mr A.J. Oosthuizen, Senior Lecturer, Department of Private Law of the University of Durban-Westville to:

- (a) study and analyse South African law relating to the sea and seashore and relevant case history; and
- (b) endeavour to furnish criteria with which to judge the ownership pattern of land within the Coastal Zone.

This Volume embodies the essence of Mr Oosthuizen's findings and, it is suggested, should be required reading for all those professions or callings whose endeavours impinge either directly or indirectly upon the coastal environment.



D.V. HARRIS
CHAIRMAN, TOWN AND REGIONAL PLANNING COMMISSION

TERMS OF REFERENCE:

To enable the Sponsor to obtain a better understanding of the ownership of land within and bordering estuaries on the Natal coast, the Research Fellow was requested :

(a) to investigate the relevant legislation and court cases in order to identify general principles concerning :

(i) what is State-owned and what is private land,

(ii) who exercises control over these types of land;

and

(b) to indicate how these principles would be applied in case studies of two estuaries.

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A GLOSSARY
OF TERMS USED IN THE REPORT

Admiralty Reserve	...	a narrow strip of land lying between the high-water mark and land held in private ownership
alluvio	...	the imperceptible deposition of silt by the action of water on a river or oceanic boundary
ager limitatus	...	a plot of land enclosed on all sides by artificial (rectilinear) boundaries and demarcated by such
ager non limitatus	...	a plot bounded on one side or more by some natural feature such as a river or the sea-shore
curvilinear boundary	...	a sinuous boundary formed by some natural feature such as a river or the sea-shore
Government Reserve	...	(see 'Admiralty Reserve' above)
navigable river	...	one that affords conveyance for useful commerce
rectilinear boundary	...	an artificial straight-line boundary between corner beacons
regalia of State	...	the privileges and property of the Crown
res publicae	...	public property, ie. property vested in the State for the benefit of the public

PART A : WHAT IS STATE-OWNED LAND AND WHAT IS PRIVATE LAND ?

1. The Sea and Sea-Shore

- 1.1 In Roman-Dutch law the sea, the sea-shore and navigable rivers were regarded by jurists as part of the regalia of the State and therefore inalienable. For a variety of reasons it was always considered desirable that the ownership of such property should be vested in the State for the benefit of the public.

Although there are no navigable rivers in South Africa in the generally accepted sense of affording conveyance for useful commerce, there are certain river mouths and lagoons which are navigable in this sense. It was for this reason that the legislature, in seeking to give effect to the Roman-Dutch concept of res publicae, decided to classify all tidal waters and their beds as part of the sea in the Sea-Shore Act, No. 21 of 1935.

This attempt to equate 'tidal waters' with 'navigable rivers' has introduced an element of uncertainty and confusion into our law, as will become evident from what follows in sections 4 and 10 of this report.

- 1.2 In terms of section 2 of the Sea Shore Act, 1935, the State President is declared to be " .. the owner of the sea-shore and the sea, except of any portion thereof which was lawfully alienated before the commencement

of this Act or may be alienated hereafter under this Act or under any other law."

Any portion of the sea-shore and the sea which was alienated before the commencement of the Act is deemed to have been lawfully alienated -- Sect. 2(2).

In addition, section 2(3) lays down that the sea-shore and sea of which the State President is the owner ... "shall not be capable of being alienated or let except as provided by this Act or by any other law, and shall not be capable of being acquired by prescription."

- 1.3 In order to understand the extent of the ownership conferred upon the State President by section 2, it is necessary to consult the following definitions set out in section 1 of the Sea-Shore Act :

-- "sea" means the water and the bed of the sea below the low-water mark and within the territorial waters of the Republic, including the water and bed of any tidal river and of any tidal lagoon;

-- "sea-shore" means the water and the land between the low-water mark and the high-water mark;

-- "high-water mark" means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

-- "low-water mark" means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

-- "tidal lagoon" means any lagoon in which a rise and fall of the water-level takes place as a result of the action of the tides;

-- "tidal river" means that part of any river in which a rise and fall of the water-level takes place as a result of the action of the tides.

Moreover, by section 2 of the Territorial Waters Act No. 87 of 1963, the territorial waters of the Republic is the sea within a distance of twelve nautical miles from the low water mark.

All of the waters and the land encompassed by the above definitions are the property of the State President, except, of course, for any portion which has been lawfully alienated.

Generally speaking, therefore, the State has control of all water that could possibly be navigable and over all approaches to and exits from the country via the highway of the sea.

2. "Government" or "Admiralty" Reserve

- 2.1 In addition to the sea-shore, early colonial Governments sometimes, but not invariably, reserved to themselves narrow strips of land which lay between property granted in private ownership and the high-water mark.

Such strips exist along much of the Natal and Cape coasts and are known in different places as "Government Reserve", "Beach Reserve", "Admiralty Reserve", Coastal Forest Reserve" or "Forest Reserve", and are commonly referred to in Natal as "Admiralty Reserve".

- 2.2 In Natal, the reserve is usually 150 feet wide, but north of the Tugela River privately owned and unalienated State land is separated from the sea by a Coastal Forest Reserve 250 yards wide. Most KwaZulu territory bordering on the sea-shore also has a 150-foot Forest Reserve.

- 2.3 Although most town and regional planners, ecologists and environmentalists of the 1980's can doubtless think of many good reasons why a seaside reservation should exist, the origin of the practice is obscure and there appears to be no documentary record of the specific purposes it was originally designed to serve.

The existence of a "Government" or "Admiralty" reserve is nevertheless reflected on many of the original

diagrams and general plans prepared when the farms and town lots along the Indian Ocean were surveyed and taken up by the early settlers in Natal. The reserve is also mentioned in many of the deeds of grant as well as in subsequent transfers and subdivisional transfers with their appurtenant diagrams.

- 2.4 The following extract from "History of Old Durban" by George Russell, an 1850 immigrant who quotes extensively from the records of Surveyor G.C. Cato, is interesting in this context. Referring to the survey of certain lots along the north-eastern beach of the estuary of Port Natal, Russell says :

"The Surveyor-General, when surveying the lots, preferred to bound them by solid ground instead of the doubtful mud and mangrove swamp that constituted High Water Mark, so cut off from their Beach frontages an area which he marked on their diagrams "Government Reserve". No measurement of the width reserved is indicated, but time and rumour have named this space "Admiralty Reserve", and fixed the width as 150 feet from High Water Mark. Those who know declare this reservation to be one of the "Rights of the Crown", universally applied in British Dominions."

- 2.5 Cato's survey of central Durban in about 1840 was followed by others, culminating in Surveyor Okes' General Plan of Durban, drawn in 1849, which formed the basis of the Durban Grant No. 1737, dated 27 July 1855, covering 6096 acres of town lands extending from the bay to the Umgeni River. Okes' plan shows a "Government Reserve 150 feet wide" along the town lots facing the

bay and also along the beach front from Bell Street to the Umgeni River.

- 2.6 Aspects of the history of Lot 21 Bluff, situate on the shore of Durban Bay, are also relevant here.

The first surveys of Bluff lots on the eastern side of the Bay were made by a surveyor named Baker in 1851. Baker's instructions from the Acting Surveyor-General, John Bird, included a memorandum which stated, inter alia : " .. on either shore a reserve of 150 feet from high water mark is to be kept."

The grant of Lot 21 Bluff, which followed Baker's survey, accordingly described the bay-side boundary as: "North by a Government Reserve", and the diagram showed the northern boundary of the property as a straight line, separated by a space of varying width from a wavy line which was apparently intended to indicate the high-water mark of the bay.

Owing to inaccuracies, the Bluff lots were re-surveyed by Okes and Cooke in 1853. Thereafter, by agreement between the parties, the 1851 grant of Lot 21 was cancelled and substituted by a new grant in 1854, based on Cooke's re-survey, and the area was amended, after an application to court, to agree with Cooke's diagram which was substituted for that of Baker. Once again the surveyor had been instructed to demarcate and

maintain a Government Reserve of 150 feet from the high-water mark, but the new grant simply described the property as: "bounded northward by the Bay".

In Karim & Others v Union Government 1933 NLR 168, the court was concerned with the true area of Lot 21. The details of the dispute need not be canvassed here, but what is of importance is the following finding of the court :

It was held that although the 1854 grant, which made no mention of the reserve, had validly cancelled and replaced the grant of 1851,

".. the words "bounded northward by the Bay" while prima facie clear, had nevertheless in 1851 and thereafter acquired by common use a secondary meaning implying the reservation of a Government Reserve 150 feet from high-water mark, and that this interpretation reconciled the description of the Northern boundary contained in the grant, with that shewn on the diagram, and so outweighed the other features of the grant and diagram which were apparently inconsistent with it; viz., the area of the Lot as stated, and the measured length of the eastern and western sides."

- 2.7 The effect of the judgment in Karim's case on the interpretation of deeds of grant issued in Natal in the early 1850's and thereafter, appears to be that in such instances the existence of an Admiralty Reserve 150 feet wide is implied even though not specifically mentioned in the grant, because such terms as "bounded by the Ocean" or "bounded by the Sea" had by then acquired a secondary meaning implying a reserve of 150 feet from the high-water mark.

The courts have not been called upon to decide how long before 1851 this secondary meaning was implicit in the description of the seaward boundaries of alienated land. The question thus remains an open one.

2.8 What does clearly emerge from this brief historical survey is that the practice of designating a narrow strip of land above the high-water mark as "Government" or "Admiralty" Reserve was firmly established by the early administrators of Natal and subsequently confirmed by the courts.

2.9 The existence of a Government Reserve along parts of the Cape coast has also been confirmed by the courts in Milnerton Estates v The Colonial Government 16 SC 177, and Minister of Lands v Swart & Others 1957 (3) SA 508 (CPD).

In the latter case, the grant stated : "... that land within a distance of 120 feet above high-water mark is reserved to the Government." The beacons were close to the sea and the diagram did not in any respect indicate the 120-foot strip. The court held that the transfer was subject to the reservation stated in the grant.

2.10 On the Natal South Coast and north of the Tugela River the Government Reserve is clearly defined and its existence is apparently accepted by all parties.

- 2.11 The position along the North Coast, from Durban to the Tugela River is, however, not so clear.

North of the Umvoti River the existence of the Government Reserve is not in doubt. The original surveys and grants of farms in this area date from 1856 and 1857, but some farms were re-surveyed towards the end of the 19th Century and new grants were issued in 1906 and 1907. These grants, as well as subdivisional diagrams in the area, all reflect the existence of a Government Reserve 150 feet wide above the high-water mark.

But for some reason the farm Addington, immediately south of the Umvoti River, which was also surveyed in 1856 by the same surveyor (ie. Cooke) was treated differently from those north of the river when it was re-surveyed in 1930. The amended diagram designates the high-water mark as the seaward boundary. The same treatment was given to the adjoining farm Lot 1, No. 1672. The original survey and grant date from 1857, but upon re-survey in 1930, the high-water mark was shown as its seaward boundary.

The group of farms to the south of Lot 1, No 1672, was originally surveyed and alienated between 1849 and 1852. This stretch of coast contains the following resorts : Ballitoville, Compensation, Thompson's Beach, Shaka's Rock, Salt Rock, Sheffield Beach and Tinley Manor. The existence of the Government Reserve was apparently

accepted up to 1925, for numerous subdivisional diagrams made before that date show the reserve as the seaward boundary of the subdivisions. However, between 1932 and 1938 the Government conceded claims to the reserve made by the owners of the remainders of the farms. As a result, the reserve in this area was cut up and the portions were sold to the owners of the adjacent subdivisions.

On most of the sea frontage between Ballitoville and Durban, the existence of the reserve has not been tested. Nearly all the original grants in this area were made in 1850 and 1851, based on earlier surveys -- the only exception being Primary Lots 29, 36 and 37 of Lot 31 No. 1560 (at Umhlanga Rocks), for which separate grants were issued in 1888, following their repossession by the Crown and subsequent sale by public auction.

In short, it appears that along some stretches of the North Coast, notably north of the Umvoti River, it is accepted by all parties that the reserve exists; in others, such as most of the beach frontage between the Tongaat and Umvoti Rivers, the Government has abandoned its claim to the reserve; while on the remaining stretches the possible rival claims of the Government and the adjoining landowners are unresolved.

With regard to the last-mentioned, however, in the light of Karim's case, and having due regard to the dates of

all the original grants, it is submitted that any claims by the Government to the existence of a reserve on these stretches of the coast would probably be upheld by the courts.

2.12 Much of the historical information in this section of the report has been gleaned from Chapter 6 of Natal North Coast Survey by R.A. Pistorius (TRPC, 1962). For a more detailed treatment, the reader is referred to pages 49-53 of that work.

3. SUMMARY:

To briefly summarise what has been discovered thus far:

The sea within the territorial waters of the Republic, including the water and bed of tidal rivers and lagoons, and the sea-shore up to the high-water mark, is the property of the State President.

In addition, along much of the Natal Coast above the high-water mark there is a strip of land of varying width known as "Government" or "Admiralty" reserve. This is also State property.

Above the high-water mark, or inland of the Government Reserve where it exists, land may be held in private ownership.

4. ALIENATIONS OF THE SEA-SHORE AND THE SEA
PRIOR TO THE COMMENCEMENT OF ACT 21 OF 1935

- 4.1 Before proceeding further, it is necessary to make a few brief comments about alienations of the sea-shore and sea on the Natal Coast which took place before the commencement of the Sea-Shore Act, No. 21 of 1935. Subsequent alienations will be treated in Parts B and C of this report.
- 4.2 By agreement between the Government and the Durban Corporation in October 1916, the latter received freehold title to the beach front reserve and the sea-shore from Bell Street to the Umgeni River under Deed of Grant No. 9792, dated 12 November 1920, based on a survey by W.E. Robarts in 1903.
- 4.3 In a recent case, Durban City Council v Minister of Agriculture & Another 1982 (2) SA 361 (D), a dispute had developed between the owners and the State over the boundaries of five riverside plots flanking a part of the Umgeni River which was tidal.

Historically, the plots (before the present subdivision) had been established by two deeds of grant signed in 1847 and 1855 respectively. The diagrams attached to these deeds showed the Umgeni River as a boundary. Both boundaries had been drawn in freehand, and neither purported to be a precise presentation.

The owners contended that all the plots were agri non limitati and that they extended as a result to the centre of the river-bed.

The State disagreed. It contended that all the plots were agri limitati bounded not by the river but by artificial boundaries; alternatively, that if any plot was an ager non limitatus, it extended no further than the inner bank of the river. In either case, it concluded, no plot encroached upon the river-bed. The Umgeni River was tidal where it flowed past the plots and, consequently, its bed there was part of "the sea" in terms of the Sea-Shore Act 21 of 1935. Its tidal character also put it in the same category as a navigable river, though it was not actually one, and the river-bed was thus State property and inalienable.

The State subsequently abandoned the contention (for lack of supporting authority) that because the Umgeni River was tidal, its bed could not lawfully have been alienated. The result was that the Court did not need to decide this point.

Having considered all the evidence, the Court came to the conclusion that all the plots were agri non limitati and that their boundaries did in fact extend to the centre of the river.

In the course of his judgment, Didcott J. made it clear that he did not regard the beds of unnavigable tidal

rivers in South Africa as inalienable prior to the commencement of the Sea-Shore Act -- (see his remarks at 369G, 375E-H and 376A-E of the case report).

If the views expressed by the learned Judge are correct, and it is respectfully submitted that they are, it means that :

- (a) there may well be (and probably are) many properties flanking tidal portions of unnavigable rivers, estuaries and lagoons on the Natal coast which were established by deeds of grant in the 19th Century, and which, because of the language in which they are couched and the survey methods used in framing the diagrams, are open to the same interpretation as in the instant case, ie. that the properties are agri non-limitati extending to the centre of the river-bed;

and

- (b) where pre-1935 deeds of grant and diagrams clearly indicate that the boundaries of riverside properties include part (or all) of the bed of any tidal river, estuary or lagoon, these boundaries would be unaffected by the promulgation of the Sea-Shore Act, 21 of 1935.

In any event, section 2(2) of the Sea-Shore Act would appear to validate any alienation prior to the commencement of the Act which might otherwise be regarded as unlawful -- (see paragraph 1.2 above).

4.4 Without conducting an exhaustive study of all the original Government grants and surveyor's diagrams relating to properties bordering on tidal rivers, estuaries, lagoons and the sea-shore along the Natal coast, it is impossible to gauge to what extent inroads had been made into the traditional concept of the 'sea' and 'sea-shore' as inalienable State property, prior to the commencement of the Act.

4.5 As previously mentioned (see 1.1 above), much of the uncertainty and confusion surrounding the ownership of river-beds in the inter-tidal zone has arisen as a result of the attempt in the Sea-Shore Act to equate 'tidal waters' with 'navigable rivers', and some of the questions which need to be answered by our Courts are the following :

Is it correct to assert that the beds of unnavigable tidal rivers could be alienated prior to the commencement of the Sea-Shore Act ? Or is this incorrect ?

The state of a river at the commencement of the Act (ie. tidal or non-tidal) is a question of fact : but upon whom does the onus of proof rest ? Upon the riparian owners or the State ?

If a river, tidal in 1935, subsequently becomes non-tidal, is it thereby removed from the ambit of the Act with a consequent change in ownership of the water and bed ? And vice versa ?

It is submitted, with respect, that the inclusion of the water and bed of tidal rivers and lagoons in the definition "sea" in section 1 of the Act, was an ill-considered move on the part of the Legislature.

Perhaps a comprehensive Schedule of the tidal rivers and lagoons falling within the compass of the Act -- the remainder being excluded -- would have helped to resolve many of these issues.

(In its original form, the Sea-Shore Act did contain a Schedule, not of tidal rivers and lagoons which were to form part of the sea, but of those which were considered not to be part of the sea-shore, and it was a very short list. Section 2 also excepted portions of the sea-shore which had been transferred in terms of any law. The Schedule was then repealed and the present wording of Section 2 introduced in 1959.)

5. BOUNDARY PROBLEMS

5.1 Although the broad demarcation of coastal property into State-owned land and privately-owned land seems reasonably clear from the information set out in sections 1 & 2 of this report, in practice it is not always easy to determine precisely where the one type of property ends and the other begins, and there are various legal rules and principles to be taken into account in locating boundaries and settling boundary disputes.

5.2 The Interpretation of Deeds and Diagrams

5.2.1 The rules for construing documents of title were proclaimed by the Privy Council in Horne and Another v Struben and Another 1902 AC 454 (19 SC 317), an appeal from a decision of the Cape Supreme Court. Lord Robertson, who delivered the judgment, said (at 458) :

"Their Lordships consider that, assuming .. that the diagram contradicts the unambiguous text of the title, it must give way to the text. The words in the grant which introduce the diagram are 'as will further appear by the diagram framed by the surveyor'. Now, as a matter of construction, this is merely an appeal to the diagram for further elucidation of the text, and not a subordination of the text to the diagram. If in a matter not requiring elucidation the diagram is repugnant to the text, this merely shows .. that the diagram is not exact and affords only a rough delineation of the farm."

5.2.2 This dictum was endorsed by the Appellate Division in Surveyor-General (Cape) v Estate De Villiers 1923 AD

588. The judgment of Innes CJ contains this passage
(at 593) :

"The true view therefore in all these cases is that the grant sets out the transaction; the diagram is an elucidating picture which, however useful and important, must yield in the case of conflict to the clear language of the deed to which it is annexed."

5.2.3 On a later occasion, in Union Government (Minister of Lands) and Another v Lovemore 1930 AD 13, Wessels JA elaborated somewhat by saying (at 19) :

"The principle, as authoritatively laid down by this Court, is that in the case of conflict the description in the text of the grant, when clear and unambiguous, must prevail over the diagram attached to the grant. It does not mean that the diagram is not part of the grant, for it clearly is a part of it; but when we wish to construe the grant -- to find out what land was really given to the grantee -- then we must first look to the description in the text of the grant and, if this is clear and unambiguous, the fact that the diagram does not in some respects conform with the text must be disregarded, for the diagram must then be regarded as only illustrating the text. If, however, the words of the grant are ambiguous, then the diagram may become all-important."

A separate but concurring judgment came from Stratford JA, who declared (at 26-7) :

"When an annexed diagram could only be regarded as a pictorial representation of what had already been described in words -- a condition of things perhaps justly assumed by the Privy Council to exist in early colonial times -- there is sound reason for accepting the words in preference to the picture."

5.2.4 The application of these rules is illustrated by the three cases mentioned above :

In Horne's case, the deed described the land as "... extending west to the sea-shore as will further appear by the diagram", but the diagram showed the boundary as a line drawn some distance from the high-water mark. The court held the curvilinear high-water mark to be the western boundary.

In the De Villiers case, the diagram showed a straight line running not far from the inmost curve of Fish Hoek Bay. This 'hard line' connected two beacons but the grant described the land as "... extending S.E. to the sea coast". Again, the boundary of the property was held to be the curvilinear high-water mark.

The decision in the Lovemore case was virtually identical. The diagram showed the boundary as a hard line, but the grant described the land as "... situate on the sea shore .. as will further appear by the diagram .." and the Court held the curvilinear sea-shore to be the boundary.

In each of these examples the title deed description prevailed over the details reflected in the diagram.

In the case Reid v The Surveyor-General 14 SC 34, however, there were recognized beacons in agreement with the diagram of the land which if extended to the sea would be greatly in excess of the area given by

beacons, diagram and grant. Although the wording of the grant seemed to extend the land "to the sea", the Court held that the land was bounded rectilinearly in this instance. The language of the grant being ambiguous, the diagram became all important.

5.3 Agri Limitati and Agri Non Limitati

5.3.1 The next step is to decide from the title deed or grant whether the land conveyed is an ager limitatus or an ager non limitatus.

Three leading cases, two decided by the Appellate Division and one by the Full Bench of the Natal Provincial Division, have delved into the subject. The cases are Van Niekerk and Union Government (Minister of Lands) v Carter 1917 AD 359; Karim & Others v Union Government 1933 NLR 168; and Lange & Another v Minister of Lands 1957 (1) SA 297 (AD).

What the judgments teach is this :

An 'ager limitatus' is a plot of land enclosed on all sides by artificial boundaries and demarcated by such.

An 'ager non limitatus' is a plot bounded on one side or more by some natural feature, eg. a river or the sea-shore.

Irrespective of the sort of boundaries it has, a plot

defined by measurement is also an ager limitatus or, if not one in the pure sense, then tantamount at least to such and so to be regarded for all practical purposes.

In construing the language of the grant, the fact that an area is attributed to the lot moulded is insufficient to make it an ager limitatus. Feetham JP pointed out in the Karim case (at 232) that : "... land is not considered to be granted by measurement merely because the area is named in the deed of grant." The test, set by Innes CJ in Carter's case (at 375), was whether the measurement amounted to the "dominant feature of the grant". Only when it did was the property treated as an ager limitatus.

5.3.2 Carter's case concerned the remainder of a farm named De Bad. The grant of De Bad described it as an estate with an area of 9733 morgen which was :

"... bounded on the west by the Vaal River, as will more fully appear by the hereunto attached plan framed by the Government Surveyor."

The western boundary was drawn in the plan along the inner bank of the Vaal River.

Innes CJ said (at 376):

"Now the remaining extent of De Bad is, in my opinion, not an ager limitatus. Its boundary given in the grant is the river, and the line of the diagram follows the curves of the bank. There is no question of an artificial boundary. And the grant was a piece of land with-in certain limits; it was not a grant by measurement."

Agreeing, Solomon JA added (at 390) :

"Now in the present case the land is expressly granted up to the river and though the estimated area is given it was a grant not of a fixed quantity of land but of land in the lump according to the boundaries described, one of which was the Vaal River."

Thus, the mere fact that a grant or diagram mentions an estimated area, as in the instant case, does not prevent land from being an ager non limitatus. The decisive question is whether land is granted 'by the lump' up to a public river or the sea-shore or whether measurement is the dominant feature of the grant.

5.3.3 Karim's case, as previously mentioned, concerned Lot 21 Bluff. According to its amended deed of grant, it was a plot of land ..

"measuring 22 acres and 27 perches, more or less, bounded northward by the Bay, southward by Lot 22, east by Lot 20, and west by the farm Wentworth, as will further appear from the diagram framed by the surveyor."

A note on the diagram repeated this, in almost the same wording.

Feetham JP dealt with it by saying (at 233) :

"The extent is stated in the form of an approximate estimate and not as a precise figure. In my opinion, the rule above quoted that measurements given in a grant normally yield to the description clearly applies."

The 'rule' referred to was Innes CJ's insistence (in the Carter case) on measurements as "the dominant feature of the grant" before they outweighed defined boundaries -- (see 5.3.1 above).

As for the diagram itself, it had shown the plot's

northern edge abutting the Government Reserve along the shore of Durban Bay. Boundary lengths were also given.

In that connection, Feetham JP held (at 234) :

"The figures given for the lengths of the sides cannot, in my opinion, be taken as anything more than estimates .. In any case, figures shown in this manner on a diagram and not actually incorporated in the description given in a grant, should not in my opinion, in the absence of any special circumstances which would justify attributing to them decisive importance, be regarded as overriding the description of the boundaries given in the grant."

Feetham JP thus concluded, in all the circumstances, that Lot 21 Bluff was an ager non limitatus.

5.3.4 Lange's case concerned a property called Water Erf 26, which lay next to the Orange River. Its owners had sought an order declaring the centre of the river-bed to be the boundary on that side. An exception to the declaration had been lodged on the ground that no cause of action was disclosed. The court of first instance had allowed the exception, and the decision was upheld on appeal.

The deed of grant establishing the plot described it as ".. a piece of land containing nine morgen, 247 square roods .. represented and described in the diagram hereunto annexed."

It will be observed that the text did not describe the land or its limits. It specifically declared that the description would be found in the diagram, which thus became not merely the primary source of information in reversal of the usual order, but the sole one.

The diagram depicted the plot and its boundaries. These were punctuated at intervals by letters which were used to trace the boundaries in a legend beneath the drawing that read :

"The figure marked 'A B C D d inner bank of Orange River a A' represents nine morgen, 247 square roods, being Water Erf 26, bounded north-westward by Erf 78, north-eastward by a road, south-eastward by inner bank of Orange River, south-westward by Erf 27."

Alongside the drawing, moreover, precise boundary lengths and corner angles were recorded, the former to the nearest hundredth of a foot, the latter to the nearest second.

Of the drawing itself, Centlivres CJ had the following to say (at 299 E-F) :

"The entire figure is not rectilinear; only that portion marked A B C D is rectilinear. The area of this portion is given as nine morgen, 152 square roods and 76 square feet. The point 'a' is stated as being 12 feet from point A and 'd' is also 12 feet from D. The line A to D is a straight line, but the line 'a' to 'd' appears to follow the sinuosities of the right bank of the Orange River, which is described in the diagram as the inner bank."

Later in his judgment (at 302 B) Centlivres CJ took this view of the diagram :

"In the present case it seems to me that Water Erf 26 is prima facie an ager limitatus. The south-eastern boundary is given as the inner bank of the Orange River, that bank being the curvilinear line 'a' to 'd' on the figure depicted on the diagram. The area comprised by A D d a was 94 square roods, 68 square feet, that being the difference between the total area of 9 morgen, 247 square roods, and the area of 9 morgen, 152 square roods and 76 square feet which is given as the area of the figure A B C D. This shows that Water Erf 26 was a measured piece of land and not an ager non limitatus.

5.3.5 It will be appreciated from these illustrative examples that the classification of a property as an ager limitatus or an ager non limitatus ultimately depends on the intention of the grantor as revealed in the deed of grant. Each case is thus dependent on its own facts.

5.4 Implications of the Classification

Having ascertained from the documents of title whether the property is ager limitatus or not, the next step is to decide what is the effect, in the particular circumstances, of the classification.

5.5 RIVER BOUNDARIES

5.5.1 Where an ager non limitatus is bounded by an un-navigable public river, this will normally have two important consequences :

(a) the property will be entitled to alluvio; and

(b) the riparian boundary will be presumed to extend to the centre of the river.

5.5.2 With regard to paragraph (a) above, alluvio is defined as ..

"a deposit of earth upon the bank of a non-navigable river so gradual that no one can perceive how much is added at any one moment of time; such deposit is inseparable from the native soil of the bank; and the owner of the latter acquires the former by right of accession" -- see Sisson, The South African Judicial Dictionary 40.

According to the doctrine of alluvion, as it is often called, the curvilinear boundary relating to a river is not fixed or static. Where there is erosion along one section of a river bank, there is usually accretion at another, and the water-facing boundary moves in sympathy with any movement of the river. The doctrine thus has the effect of taking soil from one riparian owner and bestowing it upon another by accession, wherein there is an even element of chance as to whether a particular owner will gain or lose land in the process.

This doctrine rests upon the principle that a riparian owner should not be cut off from his access to water, when or if the water line moves.

In an American case, Lamprey v State and Metcalf : 53 NW 1139, 1142 (1893) (Minnesota) U.S.A., the appellants argued against the application of this doctrine and the court said :

"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, and have frequently been animadverted upon by the courts .. If the rule contended for by the appellants is to prevail, it would simply open the door for prowling speculators to step in and acquire title .. to any relictions produced in the course of time by the recession of the water, and thus deprive the owner of the original shore estate of all riparian rights, including that of access to water. The endless litigation over the location of the original water lines, and the grievous practical injustice to the owner of the original riparian estate, that would follow, would, of themselves, be a sufficient reason for refusing to adopt any such doctrine."

Later in its judgment, in respect of accession by alluvion, the Court said :

".. it seems to us that the rule rests upon a much broader principle, and has a much more important purpose in view, viz. to preserve the fundamental riparian right -- on which all others depend, and which often constitutes the principle value of land -- of access to water."

Moreover, it is clear from the ruling of the Court in Riverton Diamond Syndicate Ltd. v Union Government & The Municipality of Windsorton 1921 GWLD 207, that the ancient doctrine of alluvion continues to apply in the case of river boundaries in modern South African law.

5.5.3 With regard to paragraph (b) above, where a riparian property is an ager non limitatus, Innes CJ, in Van Niekerk & Union Government (Minister of Lands) v Carter 1917 AD 359 (at 378), stressed for reasons of agricultural development the desirability wherever possible of so interpreting titles to riparian land or non-navigable rivers as to vest the ownership of the beds in the adjoining landowners. Holding that the adoption of the English rule would not violate any principle of our law, Innes CJ concluded :

"We should lay down, therefore, that a property bounded by a non-navigable stream, must be presumed to extend ad medium filum fluminis; and that though this presumption may be rebutted, the mere facts that the diagram does not extend beyond the bank, and that the measurement is complete without such extension, are not, either singly or together, sufficient to establish a rebuttal. If the Crown desires to exclude the bed of a stream, the proper course is to make that quite clear by the language of the grant."

The rule as stated by Solomon JA in his concurring judgment in the same case (at 391) is as follows :

"In the absence of any clear or authoritative rule in the South African Courts on this subject, I think we should be well advised to follow the English rule that the grant of a piece of land bounded by a river must be construed as conveying the land up to the middle of the stream unless it is shown that it was intended to exclude the bed from the grant. Such an intention may be shown either by the terms of the grant itself or by marking out the boundaries on the ground or perhaps in other ways. But the mere fact that the estimated area would be exceeded if the middle of the river was taken as the boundary, is not sufficient to rebut the presumption."

The rule is therefore given as a presumption of law that is rebuttable by evidence.

5.5.4 Where the riparian property is an ager non limitatus but ownership of the river-bed is expressly excluded by the language of the grant, it is submitted that the property will nevertheless be entitled to alluvio.

According to Prof. J.E. Scholtens in an article on 'Ager Limitatus and Alluvio' (1957 SALJ 272), the two issues are quite separate and distinct in our law. He says (at 274) :

".. some confusion seems sometimes to exist in our law with respect to the right to alluvio when considered in connection with the question of ownership of the bed of a public river. In the Roman-Dutch law, the right of alluvio is a form of accessio. The right to alluvio, however, is not dependent on a right to the river-bed itself. In Holland the bed of navigable rivers as well as the sea-shore vested in the province as the sovereign power. This applied also where the riparian property was an ager non limitatus. Nevertheless in the case of agri non limitati the right to alluvio might belong to the riparian owners.

Groenewegen in his note ad Grotius, 2.9.26, says : "Als het land opgedragen is tot de rivieren toe, zoo heeft de eigenaar mede recht van aanwas." On the other hand, islands which arose in a river itself vested in the province as the owner of the river-bed (see Schorer ad Grotius 2.9.24). The same applied where the river-bed had fallen dry (Bort, Tractaat van de Domeynen van Hollandt, V, 41). It follows that the expositions of the Roman-Dutch authors with regard to the right to alluvio attached to agri non limitati have no bearing at all on the question of the ownership of the river-bed. Here the right to alluvio derives from the fact that the property is bounded by the river and is not dependent on any right to the river-bed itself."

5.5.5 Where a property situated alongside an unnavigable public river is an ager limitatus and all its boundaries are artificial (rectilinear), the owner will have neither the right to alluvio nor any right to the river-bed -- unless, of course, the artificial boundaries include part of the river bed.

However, where such a property, although an ager limitatus, has a curvilinear boundary -- as, for example, in Lange & Another v Minister of Lands 1957 (1) SA 297 (AD), where the relevant boundary was described as 'bounded south-eastward by the inner bank of the Orange River' -- it may nonetheless be entitled to alluvio.

Prof. Scholtens, in the article cited above (1957 SALJ 272) makes the following additional comment (at 275):

".. there is nothing incongruous in a special grant of the right to alluvio to an ager limitatus. This entitles the ager limitatus to alluvio but does not extend it to the middle of the river."

It should be added that it was common cause between the parties in Lange's case that the appellant's property was entitled to alluvio.

5.5.6 Islands in Rivers

The ownership of islands existing or arising in un-navigable public rivers will follow the principles outlined above.

Where the terms of the grant include a clearly defined part of the river-bed, or the property is presumed to extend ad medium filum fluminis then ownership of the island will accrue to the riparian owners to the extent that it falls within the boundaries of their respective properties.

But where the terms of the grant excludes ownership of the river-bed, the island will remain the property of the State.

5.5.7 Static Boundaries / Abrupt Movement

It must be noted that according to the doctrine of alluvion, there can be no accession or erosion and consequent movement of a curvilinear boundary where a river changes course suddenly and perceptibly as a result of a flood or the diversionary works of man. In this event, the boundary would remain static, ie.

where it was before the river took a sudden change of course.

It can be readily understood that no man can be permitted to shift a boundary common with his neighbour and any such movement of a boundary, even by mutual consent, would constitute a transfer of land otherwise than in accordance with the law.

There does not appear to be a decided case on the question of a man-made diversion in relation to a river, but the matter of flood action was dealt with in Coetzee v Potgieter (1909) 26 SC 668. Maasdorp J said (at 676) :

"Any changes that took place in the river must have been the result of sudden inroads of water, because the ordinary flow of the river could not wear away the bank; it is therefore unnecessary to go into the question of accretion raised by the defendant. Now I come to the conclusion upon the evidence that the river changed its course considerably in 1885 and the plaintiff's predecessors in title were then entitled to claim the position of the former east bank as their boundary .."

The judgment of Maasdorp J also gives guidance (at 672) in the matter of relocating a river boundary when it has been moved by flood action or by human agency, but these guidelines have not been included in this report.

Water rights should, however, be mentioned briefly in this context. By an abrupt movement, the boundary and the river are now separated and unless there is a right of access the owner cut off from the water must trespass over the land of his neighbour in order to gain access

to the water. In the case of a private stream, the owner now cut off from it might be in a predicament, but in the case of a public river having abruptly changed course, the riparian owner is granted relief by the Water Act 54 of 1956. In terms of section 20 of this Act, he can either obtain the permission of the Water Court to divert the river to its former course, or else be granted a servitudal right of access across the intervening land of his neighbour.

5.5.8 Boundary Substitution

It is sometimes desirable to substitute a curvilinear boundary relating to a river with a rectilinear boundary or a boundary relating to a retaining wall -- eg. where an owner of riparian land has erected improvements on or near his bank and there is a likelihood of movement by decretion.

Section 18 bis (2) (iii) of the Land Survey Act No. 9 of 1927, as amended, provides the remedy in the case of "a curvilinear boundary which is ill-defined or unsatisfactory, and in respect of which the owners concerned have agreed upon its substitution by a boundary of another character."

For the procedure to be followed and the practical difficulties which may be encountered, the reader is referred to Simpson & Sweeney : The Land Surveyor and

the Law, University of Natal Press, 1973 (at 821-822).

5.6 SEAWARD BOUNDARIES

As in the case of riparian properties, the seaward boundary of a property is either rectilinear and fixed or it is curvilinear and moving. Broadly speaking, the legal principles applicable to rivers, outlined in 5.5 above, also apply to seaward boundaries, with certain differences which will become apparent from the discussion which follows.

Because tidal waters are classed as 'sea' (vide 1.3 above), the term 'littoral property' includes not only land above the high-water mark along the sea-shore proper, but also land bordering on tidal rivers and lagoons up to the dividing line where the tide ceases to act.

- 5.6.1 Where a littoral property is an ager non limitatus and the deed of grant contains a description such as "bounded by the sea" or "by the ocean" or "extending to the sea-shore", then the seaward boundary is the curvilinear high-water mark --(see Union Government (Minister of Lands) & Another v Lovemore 1930 AD 13) -- or an inland line at a given constant distance from the high-water mark, ie. where a Government Reserve exists --(see Karim & Others v Union Government 1933 NLR 168.

The property is treated as riparian and the doctrine of alluvion applies --(see Colonial Government v Town Council of Cape Town (1902) 19 SC 87; Cader Hoosen v Durban Corporation (1916) 37 NLR 115; and Karim's case). The seaward boundary thus advances on the land or recedes from it by accession of alluvion in sympathy with any movement of the high-water mark. By this means, the owner's right of direct access to the sea-shore is preserved.

5.6.2 In Karim & Others v Union Government 1933 NLR 168, Karim claimed the extension of his land by accretion caused by a substantial recession of the water in Durban Bay. It was pressed upon the Court (by the Minister of Lands) that there was no accession of alluvion due to the property being measured land and thus ager limitatus. Having examined the deed of grant and the related evidence (see 5.3.3. above), the Court came to the conclusion that the land was not an ager limitatus, with the result that its area became roughly doubled by the extension of its seaward boundary to the new curvilinear line 150 feet from the high-water mark.

5.6.3 Unlike riparian properties, the ownership of littoral properties which are agri non limitati is never presumed to extend beyond the high-water mark, because the sea-shore and the water and bed of tidal rivers and

lagoons are regarded as inalienable State property --
(see 1.1 above).

This statement must, however, be read subject to the comments made in section 4 of this report, in regard to alienations prior to the commencement of the Sea-Shore Act 21 of 1935. As mentioned, one of the problems surrounding this piece of legislation is that unnavigable tidal rivers and lagoons are treated on the same footing as navigable rivers at common law, and are now included amongst the regalia of State. As this historical development would not have been anticipated by the early colonial Governments, it seems highly likely that in some instances, parts of the beds of tidal rivers would have been lawfully included in grants of land and alienated.

5.6.4 Where a littoral property is an ager limitatus and all its boundaries are artificial (rectilinear), the owner will not be entitled to any addition to the land beyond its boundaries, ie. the doctrine of alluvion will not apply.

But where such a property, granted by exact measurement and thus treated as an ager limitatus, is bounded seawards by the curvilinear high-water mark, it is submitted that the owner will be entitled to the accession of alluvion. (See also 5.5.5 above).

5.6.5 Abrupt Movement

Where the sea or an arm thereof, including the tidal portions of rivers and tidal lagoons, is a boundary, changes brought about by accretion and decretion operate to change the boundary, as outlined above. This also happens by submergence which is not of a temporary nature. But the change must be gradual and imperceptible, otherwise the doctrine of alluvion does not apply -- (refer 5.5.2 above).

If, however, the high-water mark undergoes abrupt movement as a result of the diversionary works of man, -- (such as the building of bridges, jetties, or groynes; by sandwinning; or by reclamation) -- or by storm, the boundary remains where the high-water mark or a parallel inland line would otherwise have been located, alluvion included, had the sudden shift not taken place. (See also 5.5.7 above).

5.6.6 Artificial Reclamation

In terms of section 5 (2) of the Sea-Shore Act, 21 of 1935, the Minister may authorize the artificial reclamation of any land in the sea or on the sea-shore. Such reclaimed land automatically becomes State-owned land and may then be granted to the private reclaimer of it.

5.6.7. Boundary Substitution (Refer also 5.5.8 above)

At times, the doctrine of alluvion can be disadvantageous to an owner of littoral property whose improvements on the land are threatened by movement of the curvilinear seaward boundary. This fluid boundary can, however, be stabilized by substituting a rectilinear boundary for it in terms of the Sea-Shore Act, 1935.

The substitution procedure is set out in Section 9 of the Act as follows :

"(1)(a) -- If privately-owned land has a boundary extending to or to a stated distance from the high-water mark and it is in the public interest or in the interests of the owner of or the holder of the mineral rights in such land that the said boundary be replaced by another kind of boundary, the Surveyor-General may permit the first-mentioned boundary to be replaced by the last-mentioned boundary, provided the Minister, the owner of the land and the holder of the mineral rights have signed an agreement, as far as possible in accordance with Form B of the Second Schedule of the Land Survey Act, 1927 (Act No. 9 of 1927), whereby they accept the new boundary.

(b) -- If the Minister, the owner of the land or the holder of the mineral rights fails to sign the agreement referred to in paragraph (a), the provisions of subsections (4) to (8), inclusive, of section sixteen of the Land Survey Act, 1927, shall mutatis mutandis apply.

(c) -- As soon as the agreement referred to in paragraph (a) has been approved by the Surveyor-General, the new boundary shall, for the purposes of the Land Survey Act, 1927, be deemed to have been lawfully established in accordance with section thirty-one of that Act, and the boundary-line so established shall, in any case where the boundary extends to the high-water mark, be deemed to be the high-water mark as defined in this Act."

Section 9 (2) of the Sea-Shore Act contains similar

provisions permitting the substitution of rectilinear boundaries for the curvilinear seaward boundaries of State-owned land.

- 5.7 The legal rules and principles outlined in this section of the report in relation to the boundaries of littoral and riparian properties are, in themselves, reasonably clearcut, but the actual location or determination of such boundaries on the ground in order to establish the limits of ownership of a particular plot of land, will often require the expert services of a land surveyor.

PART B : WHO CONTROLS STATE-OWNED AND PRIVATELY-OWNED LAND ?

6. The Sea-Shore and the Sea

6.1 By definition, the sea-shore is 'the water and land between the low and high-water marks' both along the coastline and in tidal areas of rivers, estuaries and lagoons -- (see 1.3 above).

6.2 As stated in paragraph 1.1, in Roman-Dutch law the sea-shore was regarded as res publica or 'belonging to the State', but it was nevertheless for the general use of the public. This principle is exemplified by the general right of entry of the public to any part of the sea-shore (with the exception of certain security areas) between the high and low-water marks.

The Sea-Shore Act, 21 of 1935, upholds ..

"any rights of any member of the public to use the sea-shore or the sea, except in so far as such rights are inconsistent with the rights conferred by any title validated by this Act, or by any title, lease, permit, authority, delegation or regulation lawfully issued, entered into, granted or made by virtue of this Act.." -- Section 13 (c).

In Consolidated Diamond Mines of S.W.A. Ltd. v Administrator S.W.A. 1958 (4) SA 572 (AD) 621, the Appellate Division held that :

".. the public have certain simple rights to the fore-shore such as to go onto it, to bathe, to fish, to dry nets, to draw up boats ...(and) any substantial interference with these rights would be a wrongful act .."

6.3 When the Sea-Shore Act was promulgated in April 1935, it was administered for the Governor-General, and later for the State President, by the Land Tenure Section of the Department of Agricultural Credit and Land Tenure, the responsible official being the Minister of Agriculture.

But by Notice R2513 in the Government Gazette of 5 December 1980, the Department of Agricultural Credit and Land Tenure was abolished, and the Land Tenure Section became the Land Affairs Section of the Department of Community Development and Auxiliary Services -- later renamed the Department of Community Development.

Since 5 December 1980, therefore, the Sea-Shore Act has been administered by the Department of Community Development, the responsible official being the Minister of Community Development. (** see page 47)

It must be noted, however, that in relation to the sea-shore and the sea within any port or harbour which in terms of any law falls under the control and management of the South African Transport Services Administration, "Minister" means the Minister of Transport Affairs -- see section 1 of the Act.

6.4 Powers of the Minister of Community Development
(and/or the Minister of Transport Affairs) :

The Sea-Shore Act empowers the Minister :

- (1) to let, on such conditions as he may deem expedient, any portion of the sea-shore and the sea of which the State President is the owner for any of the following purposes :
- (a) the erection of bathing boxes or tents;
 - (b) the erection of beach shelters;
 - (c) the erection of tea rooms and refreshment places;
 - (d) the training of horses, the holding of races (including motor car and motor cycle races) and the provision of places for recreation, amusements or displays;
 - (e) the provision of landing sites for aircraft and the establishment of aerodromes;
 - (f) the construction or improvement of wharves, piers, jetties and landing stages;
 - (g) the construction of breakwaters, sea walls, promenades, embankments, esplanades, buildings or other structures;
 - (h) the construction of bathing pools and enclosures;
 - (i) the erection of whaling stations or fish-canning or other factories;
 - (j) to legalize any encroachments;
 - (k) the carrying out of any work of public utility;
 - (l) the laying of drainage or sewerage systems;
 - (m) the laying of water pipes or cables;
 - (n) the erection of boathouses;
 - (o) the carrying out of any work which in the opinion of the Minister serves a necessary or useful purpose.
- Provided that in the opinion of the Minister such letting either is in the interests of the general public or will not seriously affect the general public's enjoyment of the sea-shore and the sea.
- See section 3 (1).

- ② to permit, on such conditions as he may deem expedient and at such a consideration as he may determine, the removal of any material from the sea-shore and the sea of which the State President is the owner, except precious stones as defined in section 1 of the Precious Stones Act, 73 of 1964, natural oil, precious metals or any base mineral as defined in section 1 of the Mining Rights Act, 20 of 1967, or any aquatic plant, shell or salt as defined in section 1 of the Sea Fisheries Act, 58 of 1973. -- See section 3 (2), as amended.
- ③ to delegate to any local authority, by notice in the Government Gazette, subject to such conditions as he may deem expedient, any of the powers vested in him by section 3 of the Act, and he may by a like notice withdraw any such delegation. -- See section 3 (3).

In terms of section 1 of the Sea-Shore Act, "local authority" means any city council, municipal council, borough or town or village council, town board, local board, village management board, divisional council, local administration and health board, or health committee constituted in terms of any law, and includes the South African Development Trust referred to in section 4 of the Development Trust and Land Act, 18 of 1936, the Development and Service Board constituted under the Development and Services Board Ordinance, 20 of 1941, of Natal, the Natal Parks, Game and Fish Preservation Board constituted under the Nature Conservation Ordinance, 15 of 1974, of Natal, and the Department of Nature and Environmental Conservation constituted by the Nature and Environmental Conservation Ordinance, 19 of 1974, of the Cape of Good Hope.

(See definition as amended by Act 21 of 1984)

Section 3 of the Act also contains the following additional provisions in regard to any lease or permit referred to in the section :

"Whenever any portion of the sea-shore or the sea in respect of which it is proposed to enter into any lease under sub-section (1) or to grant any permit under sub-section (2) is situated within or adjoins the area of jurisdiction of a local authority, the Minister shall first consult that local authority." -- Section 3 (4).

"Before any lease is entered into under sub-section (1) or any permit is granted under sub-section (2), the Minister shall, at the expense of the person with or to whom it is proposed to enter into such a lease or to issue such permit, cause a notice to be published in the Gazette and in not less than one newspaper circulating in the neighbourhood wherein the portion of the sea-shore or the sea concerned is situated, wherein --

- (a) the proposal to enter into the lease or issue the permit is made known;
- (b) the place where and the times at which full particulars of the proposed lease or permit will be open for inspection are specified; and
- (c) it is specified that objections to the proposed lease or permit may be lodged with a person specified in the notice, before a date so specified, which shall be not less than 30 days after the date on which the notice is published."

Any objection in terms of paragraph (c) above must be considered by the Minister before he enters into a lease under sub-section (1) or issues a permit under sub-section (2). -- See sections 3 (5) & (6).

- ④ In terms of section 4 of the Act, the Minister may, on such conditions as he may deem expedient, let, sell or donate any portion of the sea-shore or the sea of which the State President is the owner to any local authority.

Any letting or alienation under this section is also subject to the following conditions :

- (a) that no right acquired with regard to the sea-shore or sea may be transferred to any person other than a local authority or the Government of the Republic unless the prior approval, by resolution, of the House of Assembly is obtained; and
- (b) that the Minister may at any time resume for Government or public purposes any right granted under this section of the Act subject to payment of such compensation for improvements as may be agreed upon or settled by arbitration.

The provisions of sections 3 (5) and 3 (6) apply mutatis mutandis to any letting or alienation under sections 4 of the Act -- (see above).

- ⑤ In terms of section 5 of the Act, the Minister may authorize the use of any portion of the sea-shore and the sea of which the State President is the owner, for Government purposes.
- ⑥ In terms of section 10 of the Act, the Minister may make regulations, or by notice in the Gazette authorize any local authority, in regard to any portion of the sea-shore and the sea situated within or adjoining the area of jurisdiction of such local authority, with his approval to make regulations, not inconsistent with the Act :

- (a) concerning the use of the sea-shore;
- (b) concerning bathing in the sea;
- (c) concerning the removal of any material from the sea-shore and the sea;
- (d) for the prevention or the regulation of the depositing or the discharging upon the sea-shore or in the sea of offal, rubbish or anything liable to be a nuisance or danger to health;
- (e) concerning the control, generally, of the sea-shore and of the sea;
- (f) prescribing fees for the doing of any act upon or in or in relation to the sea-shore or the sea;
- (g) providing for the seizure and disposal of anything:
 - (i) which is concerned in or is on reasonable grounds believed to be concerned in a contravention of or failure to comply with any provision of a regulation made under section 10;
 - (ii) which may afford evidence of such a contravention or failure; or
 - (iii) which is intended to be used or is on reasonable grounds believed to be intended to be used in such a contravention or failure.

-- (See section 10 (1), as amended by Act 21 of 1984).

The regulations may provide that any person contravening or failing to comply with any provision thereof shall be guilty of an offence and liable on conviction to a fine, not exceeding five hundred rand, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment -- Section 10 (2).

Any regulation may be declared to be applicable to the whole or to any defined portion of the sea-shore or sea -- Section 10 (3) (a).

The Minister may declare any regulation to be applicable to any State-owned land adjoining or situated near the sea-shore (eg. Government Reserve) and for the

purposes of the application of any such regulation the land shall be deemed to be portion of the sea-shore.

-- Section 10 (3) (b).

When any regulation applies to any portion of the sea-shore or the sea situated within or adjoining the area of jurisdiction of a local authority, the Minister may by notice in the Gazette and in not less than one newspaper circulating in the neighbourhood, confer powers or impose duties in relation to the administration of such regulation upon the local authority or upon any of its officers or upon any officer of the State.

-- Section 10 (3) (c).

Before any regulation is made under section 10, the Minister, or where a local authority desires to make a regulation, that local authority, must publish a notice in the Gazette and in not less than one newspaper circulating in the neighbourhood where the regulation will apply, wherein :

- (i) the intention to make the regulation is made known;
- (ii) the place where and the times at which the draft regulation will be open for inspection are specified; and
- (iii) it is specified that objections to the proposed regulation may be lodged with a person named in the notice, before a given date, which must be not less than 30 days after the date on which the notice is published:

Provided that, if the Minister or the local authority, as the case may be, thereafter decides on an alteration of the draft regulation as a result of the objections lodged, it is not necessary to publish a notice of the alteration or to make the amended draft available for inspection before the regulation is made. -- Section 10 (3) (d).

Before the Minister declares any regulation to be applicable to any portion of the sea-shore, or to any State-owned land referred to in section 10 (3) (b), situated within or adjoining the area of jurisdiction of a local authority, he must consult the local authority and submit to it a copy of the regulation.
-- Section 10 (3) (e).

When a local authority is responsible for the administration of any regulation under section 10, provision may be made for all fines and fees recovered to accrue to that local authority -- Section 10 (4).

- (7) In terms of section 11, the Minister may delegate the powers conferred upon him by sections 3 (1) or (2) or 9 of the Act, to any officer in the full-time service of the State, but is not thereby divested of his powers and may modify or withdraw any decision of such officer.

The Minister may also delegate to the executive committee of a province the power conferred upon him by section 10 to make regulations in respect of any part of the sea or the sea-shore in that province.

Note: The Minister's powers under the Act have been set out in some detail in this section of the report because of the recent amendments effected by Act 21 of 1984. -- See Annexure "B" pp. 83-88.

** Since the completion of this report the name of the Department has been changed again. It is now called The Department of Public Works and Land Affairs, the responsible official being the Minister of Communication and Public Works.

6.5 Delegation of Powers

In effect, most of the Ministers powers under section 10 of the Act have now been delegated to the following authorities in Natal :

- (a) the Executive Committee of the Province --
in terms of section 11 (2) of the Act;
- (b) Local Authorities, as defined in section 1
of the Act;
- (c) The Natal Parks Board; and
- (d) The South African Development Trust.

6.5.1 A set of general regulations controlling the use of the sea-shore and the sea along the whole of the Natal coast (excluding the section alienated to the City of Durban) was published by the Minister (of Agriculture) as Notice No. 168 in Government Gazette Extraordinary No. 169, dated 2 February 1962 -- see Annexure "C".

The administration of these regulations, as amended from time to time, was originally delegated direct to local authorities by the old Department of Agricultural Credit and Land Tenure -- see Annexure "D". But on 21 January 1980, this power was delegated to the Executive Committee of the Province of Natal. Since then control has been exercised by the Exco through its Departments of Local Government down to 'Local Authority' level as defined in the Act.

6.5.2 In terms of Ordinance 15 of 1974 (Natal), control over all biological life, pollution and motor vehicles on the sea-shore and in the inter-tidal zone of rivers, estuaries and lagoons on the Natal coast, including all fishing from the shore and all fish caught from boats leaving from or landing on the sea-shore, has been delegated to the Natal Parks Board -- (except in those areas controlled by the South African Development Trust, and along the beach front falling within the jurisdiction of the Durban Municipality).

6.5.3 The South African Development Trust, referred to in section 4 of the Development Trust and Land Act, No.18 of 1936, administers those sections of the coastline which fall within areas set aside for Black Homelands (viz. KwaZulu in Natal) until independence. Full control over the sea-shore is only obtained by the Homeland Government concerned at independence.

6.5.4 It should be noted that the power to make regulations governing the removal of any material from the sea-shore and the sea (Section 10 (1) (c) of the Act) and to declare any regulation applicable to State-owned land adjoining or situated near the sea-shore (Section 10 (3) (c) of the Act) has not been delegated but has been retained by the Minister of Community Development.

Moreover, as a matter of policy, all developments in

estuaries below the high-water mark (eg. dredging, filling, landing jetties, marinas, roads etc.) are controlled by the Department of Community Development, and in evaluating development proposals, the Department consults with all relevant Government Departments and other bodies, obtaining their views and comments.

6.6 Commercial Ports or Harbours

Harbours and ports, such as Durban and Richards Bay, are administered by the South African Transport Services Administration, in terms of the Railways and Harbours Control and Management (Consolidation) Act, No. 70 of 1957.

6.7 Approval of House of Assembly

Any alienation, letting or permission with regard to the sea-shore or the sea which is not authorized in the Sea-Shore Act or in any other law, may only take place with the approval by resolution of the House of Assembly. -- see Section 6 (1) of Act 21 of 1935, as amended by Act 21 of 1984.

The provisions of sections 6 (2) - (4) must also be complied with -- see Annexure "A" p.79.

6.8 Public Health Matters

In terms of the 1984 amendments to the Sea-Shore Act, (Act 21 of 1984) the power to authorize local authorities to exercise certain powers for the purposes of public health have been assigned to the Minister of Health and Welfare.

Section 7 of the Sea-Shore Act now reads as follows :

"(1) Notwithstanding anything contained in the Health Act 1977, the Minister of Health and Welfare may by notice in the Gazette declare that any local authority, as referred to in section 1 or 30 of the aforesaid Act, may exercise, in respect of the sea-shore and sea situate within its area of jurisdiction or adjoining such area, any of the powers which are conferred by or under that Act on a local authority.

(2) The power conferred by sections 31 and 50 of the Health Act, 1977, on the Minister of Health and Welfare, the Director General or a local authority as defined in section 1 of the Health Act, 1977, to delegate to certain persons or to a local authority a function or duty vested in or devolving upon him or it under the said Act, may be exercised as regards any function or duty which may vest in or devolve upon him or it under the said Act as regards any portion of the sea-shore or the sea."

6.9 Other Relevant Legislation

In addition to the Acts, Ordinances and Regulations mentioned above, a variety of other legislative enactments have a bearing on the use and control of the sea-shore and sea.

Pollution, use and control of waters in rivers, estuaries and the sea is controlled by a number of

Acts (and Departments) -- eg. the Water Act No. 54 of 1956; the Health Act No. 63 of 1977; the Mines and Works Act No. 27 of 1956; and the Soil Conservation Act No. 76 of 1969. Control of pollution which is detrimental to the marine habitat and its resources is also provided for in the Nature Conservation Ordinance No. 15 of 1974 (Natal) -- see 6.5.2 above.

The Physical Planning Act, No. 88 of 1967, controls various activities on the coast adjacent to and in estuaries, eg. land use and control, and the establishment of sand and gravel pits. These powers have largely been delegated to other Departments and the Province for implementation. Natural areas -- (eg. estuarine reserves) -- can also be declared in terms of this Act.

The management of State forests on the coast and adjacent to estuaries, and the fixing of dunes, is carried out according to the provisions of the Forest Act, No 72 of 1968. However, the Directorate of Forestry can also hand over dune coast areas to local authorities for administration.

In addition, the Department of Environment Affairs administers the Subsidiary Committee for the Coastal Zone of the Prime Minister's Planning Advisory Council with the objective of co-ordinating activities relevant

to the planning and development of the coastal zone. Within these terms of reference, specific attention is also given to the management of estuaries, and a national policy proposal for South African estuaries is currently under consideration.

- 6.10 The principal Acts and Ordinances relating to the management and control of the inter-tidal zone along the Natal Coast are summarized in Table "A" at the end of this section of the report -- see pp. 56-57.

7. The "Government" or "Admiralty" Reserve

The Government Reserve, where it exists along the Natal coast, is administered by the Land Affairs Branch of the Department of Community Development, which is its custodian on behalf of the State, and is treated as inalienable to private individuals -- (but see 2.11 above).

In some places, the administration of the reserve has been handed over to local authorities on certain terms and conditions. Private individuals may also apply to become caretakers of the portion of the reserve contiguous to their properties, and if their applications are successful, they become responsible for the prevention of abuses such as :

- (a) the cutting down, burning or damaging of trees, bush or other vegetation;
- (b) the removal of wood, stone or sand; and
- (c) the erection of any structures, temporary or otherwise, on the reserve.

The only special conditions which the Department normally imposes on a caretaker are that he shall not prevent or obstruct the public from enjoying free access to the Government Reserve and the sea-shore, and that he may not, under any circumstances, erect any fences on the reserve -- see R.A. Pistorius Natal North Coast Survey (TRPC 1962, p.50).

8. Private Property

The use and control of privately-owned land adjacent to the sea-shore, the Government Reserve, or tidal waters, is, of course, largely in the hands of the owners themselves. The exercise of their rights of ownership is, however, subject to such by-laws and regulations of local authorities and the provisions of the Town Planning Ordinance No 27 of 1949, as may be applicable in the area concerned. The provisions of the Water Act 1956, and the Soil Conservation Act 1969, may also be relevant in certain instances.

9. Some General Observations

Although there is a considerable measure of agreement between the various State and Provincial Departments about the need to protect the natural resources in the coastal zone, the vexed problem of divided control remains. Moreover, the situation changes continually as new regulations are proclaimed or old ones are revised.

There would appear to be a real need for a co-ordinated system of management and control for the coastal zone of the Republic of South Africa from Alexander Bay on the west coast, to Kosi Bay on the east coast. Various suggestions have been put forward as to how this could be accomplished --(refer eg. JCG Millar An Evaluation of Legislation Concerning the Sea-Shore in South Africa University of Stellenbosch 1981, pp.26-29) -- but there is still much to be done before the desired result is achieved.

This aspect has not been pursued, as it falls outside the terms of reference of this investigation.

TABLE "A"

A SUMMARY OF THE PRINCIPAL ACTS AND ORDINANCES RELEVANT TO
THE MANAGEMENT AND CONTROL OF THE COASTAL ZONE IN NATAL:

<u>Function</u>	<u>Act / Ordinance</u>	<u>Department / Agency</u>
1. Control over all developments below the high-water mark	Sea-Shore Act, 21 of 1935	Community Development (Land Affairs Branch)
Control over the Admiralty Reserve	State Land Disposal Act, 48 of 1961	" " "
2. Water Pollution	Water Act, 54 of 1956	Environment Affairs
Control of declared Forest Reserves adjacent to estuaries and the sea-shore	Forest Act, No. 72 of 1968	" "
3. Combating of Oil Pollution	Prevention and Combating of Pollution of the Sea by Oil Act, 67 of 1971	Transport Affairs (Marine Directorate)
4. National Roads and Bridges	National Roads Act, 54 of 1971	National Transport Commission
5. Public Health (pathogens)	Health Act, 63 of 1977	Health and Welfare
6. Sand & Gravel Extraction	Mines and Works Act, 27 of 1956	Mineral & Energy Affairs
	Mining Rights Act, 20 of 1967	
	Precious Stones Act, 73 of 1964	
	Delegated powers in terms of the Physical Planning Act, 88 of 1967	

<u>Function</u>	<u>Act / Ordinance</u>	<u>Department / Agency</u>
7. Soil Erosion	Soil Conservation Act, 76 of 1969	Agriculture and Fisheries
8. Land use planning and control adjacent to estuaries	Physical Planning Act, 88 of 1967 (These powers largely delegated to the Provinces for implementation -- see below)	Office of the Prime Minister (Physical Planning Branch) in consultation with Environment Affairs.
9. Control over all living resources in tidal waters along Natal coast	Ordinance No. 15 of 1974	Natal Provincial Administration (Natal Parks Board)
Land use control adjacent to the sea-shore and estuaries in Natal	Town Planning Ordinance No. 27 of 1949	Natal Town and Regional Planning Commission and the Private Townships Board
Roads and Bridges		Natal Roads Dept.
10. Water Sport control regulations	Delegated powers in terms of the Water Act, 54 of 1956	National Education

PART C : CASE STUDIES OF TWO ESTUARIES

10. STUDY NO.1 : ISIPINGO

10.1 The Sea-Shore

The sea-shore immediately north and south of the Isipingo River mouth has not been alienated. It is State-owned land administered by the Department of Community Development.

However, a small rectangular portion of the sea-shore adjacent to Lot 964 Isipingo Beach Township has been let to the Municipality for the purposes of a tidal pool, in terms of an Agreement of Lease signed by the Municipality and the Minister of Agriculture on 1st December 1939. A nominal rental of R20 per annum is payable by the Lessee for the use of the land.

The General Sea-Shore Regulations made in terms of section 10 of the Sea-Shore Act, 21 of 1935, are applicable to the whole of the coast of Natal -- see paragraph 6.5.1 above, and Annexures "C", "D" and "E". These Regulations are administered by the Isipingo Municipality south of the river mouth, and the Durban Municipality north of the river.

10.2 The "Government" or "Admiralty" Reserve

When the farm Isipingo No. 870 was originally surveyed and granted in private ownership to Richard King in 1849, the 150-foot Government Reserve above the high-water mark along the Indian Ocean frontage was clearly indicated on the surveyor's diagram.

The reserve is still shown on the Surveyor-General's map of the area north of the Isipingo River mouth, which falls within the jurisdiction of the City of Durban. The reserve is State-owned land administered by the Department of Community Development -- (see section 7 of this report).

Southwards, between the Isipingo and Umbogotwini Rivers, the Government Reserve has been transferred to the Borough of Isipingo in terms of Grant No. 12174, dated 24 March 1933. The long, narrow ribbon of land above the high-water mark was originally described as Isipingo Beach Seafront No. 12174, in extent 23 acres 17370 square feet. It is now known as Lot 964 Isipingo Township --(see Annexure "F").

Lot 964 was granted to the local authority subject to the Government's right of resuming any portion of the land at any time for public purposes, in which event

compensation would be payable for substantial improvements of a permanent nature. It would appear, however, that such a resumption is unlikely in view of the nature of the terrain. Lot 964 is, in the main, a barren, rocky outcrop, of little practical value.

10.3 The Isipingo River and Estuary

10.3.1 Prior to 1946, both the Isipingo and the Umlaas Rivers entered the sea through the same mouth. There was a good flow of water in the estuary and, according to Mr. Reddy (the present Town Clerk), who used to swim in the Isipingo River as a boy, the river was tidal for a considerable distance inland.

In 1946, the Umlaas River was diverted and canalized to permit the construction of Louis Botha Airport. The river now enters the sea several kilometres further north through a man-made cutting.

Later, part of the Isipingo River was also canalized and water diverted into the Umbogotwini River by means of a sluice gate, with the result that the flow to the Isipingo estuary has been greatly reduced. The river mouth has become silted and shallow and the estuary badly polluted.

In an attempt to improve the tidal flow in and out of

the lagoon area, a sea pipeline has been constructed at the river mouth, but this would appear to have effected only a marginal improvement in the situation.

Sandwinning operations are also being conducted in the estuary by an independent contractor, with the consent of the Department of Community Development, in an endeavour to maintain the water in the lagoon at a reasonable depth.

10.3.2 It seems to be generally accepted by all interested parties in Isipingo Beach Township that the riparian properties in the vicinity of the Isipingo estuary, whether agri limitati or non limitati, do not extend beyond their registered boundaries, because the water and bed of the river are the property of the State.

From enquiries made, it appears that the current diagrams of the registered subdivisions bordering on the river (see Annexure "F") were all prepared on the basis that the above assumption is correct, ie. they do not indicate any rights in the water and bed of the river. Most of these properties now have rectilinear boundaries.

(There are, however, anomalies in the diagrams of properties bordering on the opposite bank of the river. These will be discussed in 10.3.3 below.)

Two important points were made in discussion, by the Assistant Surveyor-General, Natal. He said :

(1) that it was definitely the policy of early Governments to exclude the water and bed of tidal rivers from all deeds of grant; and

(2) that if any barrier across the mouth of a river will yield to engineering skill or to flood action, it is to be regarded as tidal.

With regard to (1) above, it is submitted that if this were the case, evidence of such a policy would have been adduced in the Durban City Council case (1982 (2) SA 361). However, such evidence was not forthcoming ! In any event, instructions to surveyors or other evidence of a similar nature would not be admissible in contradiction of the clear and unambiguous terms of a deed of grant -- (see section 5.2 of this report).

With regard to (2) above, there would appear to be no persuasive authority for this statement. When pressed on this point, the Asst. Surveyor-General stated :

"I regret that I am unable to quote a case in which the point is made, and can only say that it appears in various correspondence in our files in statements made by Surveyors-General of the Cape and Natal, and in opinions given by Law Advisors."

It is submitted, with respect, that such a rule simply cannot be regarded as part of our law. It would only

serve to compound the confusion which has arisen as a result of the attempt in the Sea-Shore Act, 1935, to equate "tidal waters" with "navigable rivers" at common law, to which reference has already been made in this report. If the rule were admitted, all rivers in Natal would necessarily have to be classified as 'tidal', although many patently are not, because there is no barrier across a river mouth which would not yield to modern engineering skill; moreover, the extent to which many rivers were tidal would be hopelessly uncertain (with all the attendant ownership problems), because the rise and fall of the water level would not be a question of fact. It is submitted that such a state of affairs would be totally unacceptable.

10.3.3 The true position in regard to the ownership of the water and bed of the Isipingo River may well be very different from that outlined at the commencement of paragraph 10.3.2 above.

When the farm Isipingo No. 870 was originally granted to Richard King in February 1849, the property conveyed was described in the deed of grant as :

".. a piece of land containing 5816 acres situated in the district of Natal and named Isipingo extending northward to the Kaffir location, the Wentworth and Umlaas farms, southward and westward to the Kaffir location, and eastward to the Indian Ocean, as will further appear by the diagram framed by the surveyor.."

The diagram clearly shows the Isipingo and Umlaas

Rivers within the borders of the farm, and a Government Reserve 150' wide above the high-water mark along the eastern boundary. There is nothing, either in the grant itself or in the diagram, to suggest that the water and beds of the two rivers (or any portion thereof) were excluded from the terms of the grant.

As Innes CJ said in Van Niekerk's case : "If the Crown desires to exclude the bed of a stream, the proper course is to make that quite clear by the language of the grant" -- (see section 5.5.3 above).

According to a former member of the Surveyor-General's staff, this course was in fact adopted in the grants of certain farms along the Natal coast -- eg. in Grant No. 6014, relating to a farm on the north coast : " .. all roads, rivers and watercourses .." were specifically excluded from the land conveyed.

The conclusions to be drawn from the foregoing are :

(a) that the water and bed of both the Isipingo and the Umlaas rivers were included in Grant No. 870, and are not the property of the State;

(b) that the boundaries of subsequent subdivisions of this farm bordering on either of these two rivers or the estuary, in fact extended ad medium filum fluminis;

and

(c) that many of the current deeds and diagrams relating to riparian properties in this area are wrong (or, at least, ambiguous) and need to be corrected.

Support for this view is to be found in an interesting letter, dated 5 March 1980, addressed by the Surveyor-General, Natal, to the Department of Agricultural Credit and Land Tenure, Pietermaritzburg -- (see correspondence included as Annexure "G"). It is submitted that the opinion expressed in this letter is correct.

Moreover, on the north-eastern bank of the Isipingo River, the current diagram of the Remainder of Lot 409 Isipingo Township indicates the centre of the river-bed as the southern boundary of the property. This would seem to lend additional support to the view expressed above.

10.3.4 It is thus not possible to state with absolute certainty who owns the water and bed of the Isipingo river and estuary. The view expressed in 10.3.3 is preferred by the writer, but to resolve the problem once and for all, it may be necessary to approach the the Supreme Court for a declaration of rights, and, presumably, the only parties having the required 'locus standi' to make the application would be the riparian owners and the Department of Community Development.

Incidentally, the local Town Planner (Mr. Singh) advises that the Borough intends pursuing the matter raised in 1980 (Annexure "F"), and future developments are awaited with interest. The reason why this issue was not finalised in 1980 is not known to the writer.

11. STUDY NO. 2 : KINGSBURGH / ILLOVO

11.1 The Sea-Shore

As in the case of Isipingo, the sea-shore immediately north and south of the Illovo River mouth has not been alienated. It is State-owned land administered by the Department of Community Development.

There are one or two tidal pools within the area of jurisdiction of the Kingsburgh Municipality, but the Assistant Town Clerk was unable to recall whether Agreements of Lease had been concluded in respect of these amenities. It is submitted, however, that this was probably the case.

The General Sea-Shore Regulations -- (see Annexures "C" "D" and "E") -- are also applicable here, and are administered by the Kingsburgh Municipality within the limits of its area of jurisdiction.

11.2 The "Government" or "Admiralty" Reserve

The narrow strip of land above the high-water mark, comprising the Government Reserve along this section of the coast, has been transferred to the Borough of Kingsburgh. The relevant deed of grant is 91 of 1953, and the various properties comprising the "Admiralty Reserve" or "Beach Lands" as they are known in this area, are Lots 35, 194, 370 and 372 Kingsburgh.

The properties were conveyed to the Borough subject, inter alia, to the following conditions :

"(a) The Government shall at all times have the right of resuming, for any Government or public purpose, any portion of the land hereby granted. In the event of resumption as aforesaid, no compensation shall be payable except in respect of substantial improvements of a permanent nature which have lawfully been erected on the resumed land.

(b) The Grantee shall not permit soil erosion to take place on the land hereby granted nor drift sands to spread thereon, nor shall he permit the destruction of any natural vegetation thereon except when such is incidental to the effecting of improvements.

This condition shall be enforceable by the Minister of Lands.

(c) No portion of the land hereby granted shall be alienated hypothecated or leased without the consent of the Minister of Lands."

In addition, the Borough of Kingsburgh has passed various by-laws for the control of the 'Beach Lands' and 'Admiralty Reserve'. Copies of these by-laws are annexed marked "H".

These properties, with the curvilinear high-water mark as their seaward boundary, are, of course, entitled to alluvio.

11.3 The Illovo Estuary

11.3.1 Most of the properties bordering on the Illovo Estuary and registered in the name of the Borough -- eg. Lots 188, 189 and 194 Kingsburgh -- do not present any difficulties.

These properties were transferred to the Borough in 1953, ie. after the commencement of the Sea-Shore Act 21 of 1935, under Deed of Grant 91 of 1953.

In conformity with the modern method of conveying land, the property descriptions in the Grant omit all reference to the boundaries and rely on the surveyor's diagrams annexed, to indicate the precise limits of ownership. These diagrams all show the curvilinear high-water mark of either 'the right bank' or 'the left bank' of the Illovo River as the riparian boundary.

Thus although Lots 188, 189 and 194 are agri non limitati, the Borough, as owner, has no right to any part of the water and bed of the river itself, because of the terms of the Sea-Shore Act, 1935. The properties are, however, entitled to alluvio as the water-facing boundaries move in sympathy with any movement of the river.

It should perhaps be mentioned that Lots 188, 189 and 194 Kingsburgh (originally known as Illovo Lagoon Lands) were granted to the Borough on the same terms and conditions as the 'Admiralty Reserve' and 'Beach Lands' discussed in 11.2 above.

11.3.2. The problem area in the estuary is Lot 919 Kingsburgh -- (see Annexure "I")

The property was originally granted to the Trustees of the Illovo River Recreation Ground under Deed of Grant No. 10939 of 1927, subject to the following conditions:

(a) the Government shall at all times have the right of resuming for public purposes any portion or portions of the land hereby granted .. against payment of compensation for substantial improvements of a permanent nature;

and

(b) in the event of a statutory body being appointed for the area .. the Trustees shall transfer the land to such body .. subject to payment of compensation for improvements.

Lot 919 was subsequently transferred to the Kingsburgh Town Council under Deed of Transfer No. 8389/1956. The State later resumed the northern portion of the property (Sub 1 of Lot 919), leaving the Remainder owned by the Town Council. The western and northern borders of the said Remainder are rectilinear, but the remaining boundaries are curvilinear and present certain problems as dumping is currently taking place on this land.

The question which arises is this : is the Borough confined in its dumping activities to the registered boundaries of the Remainder of Lot 919, or is it entitled to extend these boundaries because it has a right to part of the water and bed of the river ?

The original Deed of Grant No. 10939/1927 reads as follows :

"WHEREAS .. the Governor-General of the Union of South Africa has authorised the free grant to the Trustees of the Illovo River Recreation Ground, of certain land lying between the Illovo River Railway Station and the sea, now known as "Illovo River Recreation Ground", in extent twenty-two acres, three roods, twenty-two perches.

NOW THEREFORE these presents witness that there is hereby granted, ceded and transferred by the Governor-General of the Union of South Africa, in freehold to and on behalf of William Pearce, Percy Saville and William Frederick Whitfield, in their capacity as Trustees of the Illovo River Recreation Ground .. in Trust for the inhabitants of the District comprising the area bounded on the North by the Northern boundaries of Lots T, T.47, T.46, T.45, T.28, T.29 and the farm "Kuroki", on the West by the Western boundaries of the farm "Kuroki", Lots 15 and 14, Southwards by the Umzimbazi River and Eastwards by the Indian Ocean, the said piece of land known as "Illovo River Recreation Ground" containing twenty-two acres three roods and twenty-two perches, more or less, without any liability or claim for greater or lesser contents or acreage, and bounded as will appear on reference to the diagram hereunto annexed."

The Diagram (SGO Vol. 624 Fol. 74) -- which is similar in appearance to the outline of Lot 919 in Annexure "I"

-- has the following description below the drawing :

".. the property lettered 'AB Inner Bank Illovo River F'."

D.A. McLean, in a memorandum on the subject dated 20.7.82

-- (see Annexure "J") -- argues that the description of

the property in the original Grant is demonstrably unreliable because the Umzimbazi is the next river southwards, and that the diagram describing the curvilinear boundary as 'Inner Bank Illovo River' must therefore be accepted in preference to the Grant.

The Surveyor-General: Natal, Mr. R.N. West, has pointed out that this conclusion is based on a misinterpretation of the wording of Deed of Grant No. 1039/1927, inasmuch as Mr. McLean has confused the District described in the Grant (about 7 square miles in extent) with the actual property conveyed (an area of less than 23 acres). The Grant description is thus not 'demonstrably unreliable'. Mr West is nevertheless of the firm opinion that Lot 919 Kingsburgh is bounded as indicated on the diagram.

If this view is correct, and the description 'Inner Bank Illovo River' is taken as clear evidence of the Crown's intention to exclude the water and bed of the river from the Grant, then it would mean that, although prima facie an ager non limitatus, Lot 919 is merely entitled to accretion in accordance with the doctrine of alluvion, and not to extended boundaries resulting from the works of man.

On the other hand, it might well be argued that, although the Grant and diagram must be read together in this instance to establish the intention of the grantor, there is insufficient evidence to rebut the presumption established by

Carter's case that land bordering upon an unnavigable river should be extended to midstream -- (see 5.5.3 on pp. 27-28). Measurement is not the dominant feature of this Grant, as it was in Lange's case. The property is described as "containing twenty-two acres three roods and twenty-two perches, more or less, without any liability or claim for greater or lesser contents or acreage", and in the words of Innes CJ: "... the mere facts that the diagram does not extend beyond the bank, and that the measurement is complete without such extension, are not, either singly or together, sufficient to establish a rebuttal." Intention to exclude the river-bed must be quite clear from the language of the Grant, and it is submitted that this is not the position here.

If the Court were to take this view, then, having regard to the date of the Grant (ie prior to the Sea-Shore Act, 1935) and the fact that the land was granted 'in the lump' according to the boundaries described, it would presumably treat the property as an ager non limitatus extending ad medium filum fluminis. This would entitle the Borough to extend its dumping activities beyond the registered borders of the Remainder of Lot 919.

Again, without testing the matter in court, it cannot be stated with certainty which view is correct.

12. Concluding Remarks

As anticipated, the whole question of the ownership of land within and bordering estuaries on the Natal Coast is fraught with difficulties.

No uniform policy is discernible on the part of early Governments in the issuing of pre-1935 grants of land falling wholly or partly within the coastal zone. In some instances the water and beds of tidal rivers appear to have been expressly excluded from the terms of the Grant; in others not, with the consequences already discussed in section 5 of this report.

It is thus no easy task to determine precisely what is State-owned land and what is private property, each case being dependent on its own particular facts and circumstances.

It is submitted, therefore, that the best method of resolving the problems of those concerned with estuarine conservation would be for Parliament to confer wide powers upon an appropriate Government Department or statutory body, thereby enabling it to take whatever action was deemed necessary to protect the environment in the coastal zone, notwithstanding any rights of ownership which local authorities or private individuals might have in the water and bed of any tidal river, estuary or lagoon.

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2. The Sea-Shore Amendment Act, No. 21 of 1984.
3. The Land Survey Act, No. 9 of 1927.
4. The Water Act, No. 54 of 1956.
5. The Territorial Waters Act, No. 87 of 1963.
6. The Development Trust and Land Act, No. 18 of 1936.

Ordinances

1. Town Planning Ordinance, No. 27 of 1949, Natal.
2. Nature Conservation Ordinance, No. 15 of 1974, Natal.

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1. Cader Hoosen v Durban Corporation, (1916) 37 NLR 115.
2. Coetzee v Potgieter, (1909) 26 SC 668.
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SA 572 (AD).
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(2) SA 361 (D).
6. Horne & Another v Struben & Another, 1902 AC 454 (19 SC 317).
7. Karim & Others v Union Government, 1933 NLR 168.
8. Lamprey v State and Metcalf, 52 NW 1139 (1893) (Minnesota) USA.
9. Lange & Another v Minister of Lands, 1957 (1) SA 297 (AD).
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11. Minister of Lands v Swart and Others, 1957 (3) SA 508 (C).
12. Reid v The Surveyor-General, 14 SC 34.
13. Surveyor-General (Cape) v Estate De Villiers, 1923 AD 588.
14. Union Government (Minister of Lands) & Another v Lovemore, 1930 AD 13.
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359.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — SEA AND SEA-SHORE

SEA AND SEA-SHORE

PRELIMINARY NOTE

This title contains statutes dealing with rights and obligations in relation to the sea and the shore. Statutes relating to shipping, however, appear in a separate title called SHIPPING.

Sea-Shore Act, No. 21 of 1935, as amended by Acts No. 60 of 1959, No. 2 of 1963, No. 45 of 1969, No. 38 of 1972 and No. 63 of 1977.—This Act provides that the State President is to be the owner of the sea-shore and the sea within the territorial waters of the Republic and provides for the grant of rights in respect of the sea-shore and the sea. It provides also for the alienation of portions of the sea-shore and the sea. By section 2 of the Territorial Waters Act, No. 87 of 1963, the territorial waters of the Republic is the sea within a distance of six nautical miles from low-water mark.

Cape Town Foreshore Act, No. 26 of 1950, as amended by Acts No. 41 of 1957, No. 17 of 1959, No. 38 of 1960, No. 1 of 1963, No. 32 of 1965, No. 70 of 1978 and No. 66 of 1982.—This Act provides for the management, control and development of the Cape Town foreshore. The Act established the Cape Town Foreshore Board.

Territorial Waters Act, No. 87 of 1963, as amended by Act No. 98 of 1977.—This Act determined and defined the territorial waters and fishing zone of the Republic and of South-West Africa. It provides for the exploitation of certain natural resources of the continental shelf of the Republic and of South-West Africa.

Prevention and Combating of Pollution of the Sea by Oil Act, No. 67 of 1971, as amended by Acts No. 92 of 1972 and No. 72 of 1973.—This Act provides for the prevention and combating of pollution of the sea by oil. This Act was repealed by Act. No. 6 of 1981.

Dumping at Sea Control Act, No. 73 of 1980.—This Act provides for the control of dumping of substances in the sea.

Prevention and Combating of Pollution of the Sea by Oil Act, No. 6 of 1981.—This Act provides for the prevention and combating of pollution of the sea by oil and determines liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers or offshore installations. This Act repeals Act No. 67 of 1971 with its amendments. The territorial waters of the Republic and the fishing zone as defined in the Territorial Waters Act, No. 87 of 1963, is stated to be a prohibited area and the master and owner of a ship which discharges oil in a prohibited area commits a criminal offence unless certain circumstances are present. Furthermore when oil is discharged in a prohibited area the owner of the ship is given certain duties to cause its removal. For the Territorial Waters Act, No. 87 of 1963, see title SEA AND SEA-SHORE.

The following provision is relevant to this title: General Law Amendment Act, No. 98 of 1965, section 20 (see under title GENERAL LAW AMENDMENT ACTS).

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — SEA AND SEA-SHORE

**SEA-SHORE ACT
NO. 21 OF 1935**

[ASSENTED TO 6 APRIL, 1935]

[DATE OF COMMENCEMENT: 10 APRIL, 1935]

(Signed by the Governor-General in Afrikaans)

as amended by

Sea-shore Amendment Act, No. 60 of 1959

Sea-shore Amendment Act, No. 2 of 1963

Sea-shore Amendment Act, No. 45 of 1969

Sea-shore Amendment Act, No. 38 of 1972

Health Act, No. 63 of 1977

[with effect from 1 September, 1977 — see title PUBLIC HEALTH]

ACT

To declare the State President to be the owner of the sea-shore and the sea within the territorial waters of the Republic; and to provide for the grant of rights in respect of the sea-shore and the sea, and for the alienation of portions of the sea-shore and the sea and for matters incidental thereto.

[Long title amended by s. 15 of Act No. 60 of 1959.]

1. Definitions.—In this Act, unless the context indicates otherwise—

“Administration” means the authority for the control and management of the railways, ports and harbours of the Republic as established under the South Africa Act, 1909;

“high-water mark” means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods;

“local authority” means any city council, municipal council, borough or town or village council, town board, local board, village management board, divisional council, local administration and health board or health committee constituted in terms of any law, and includes the South African Development Trust referred to in section four of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), the Local Health Commission constituted under the Local Health Commission (Public Health Areas Control) Ordinance, 1941 (Ordinance No. 20 of 1941) of Natal, and the Natal Parks, Game and Fish Preservation Board constituted under the Natal Parks, Game and Fish Preservation Ordinance, 1947 (Ordinance No. 35 of 1947) of Natal, and the National Parks Board of Trustees established under the National Parks Act, 1962 (Act No. 42 of 1962);

[Definition of “local authority” amended by s. 1 of Act No. 2 of 1963.]

“low-water mark” means the lowest line to which the water of the sea recedes during periods of ordinary spring tides;

“Minister” means the Minister of Agriculture, save that in relation to the sea-shore and the sea within any port or harbour which in terms of any law falls under the control and management of the Administration, “Minister” means the Minister of Transport;

[Definition of “Minister” substituted by s. 1 of Act No. 38 of 1972.]

“sea” means the water and the bed of the sea below the low-water mark and within the territorial waters of the Republic, including the water and the bed of any tidal river and of any tidal lagoon;

“sea-shore” means the water and the land between the low-water mark and the high-water mark;

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — SEA AND SEA-SHORE
ss. 1-3 *Sea-shore Act, No. 21 of 1935*

ss. 1-3

“tidal lagoon” means any lagoon in which a rise and fall of the water-level takes place as a result of the action of the tides;

“tidal river” means that part of any river in which a rise and fall of the water-level takes place as a result of the action of the tides.

[S. 1 substituted by s. 1 of Act No. 60 of 1959.]

2. **State President is owner of the sea-shore and the sea.**—(1) Subject to the provisions of this Act, the State President shall be the owner of the sea-shore and the sea, except of any portion thereof which was lawfully alienated before the commencement of this Act or may be alienated hereafter under this Act or under any other law.

(2) Any portion of the sea-shore and the sea which was alienated before the commencement of this Act, shall be deemed to have been lawfully alienated.

(3) The sea-shore and the sea of which the State President is declared by this section to be the owner, shall not be capable of being alienated or let except as provided by this Act or by any other law, and shall not be capable of being acquired by prescription.

[S. 2 substituted by s. 2 of Act No. 60 of 1959.]

3. **Letting of sea-shores and the sea.**—(1) The Minister may, on such conditions as he may deem expedient, let any portion of the sea-shore and the sea of which the State President is by section *two* declared to be the owner, for any of the following purposes:

- (a) The erection of bathing boxes or tents;
- (b) the erection of beach shelters;
- (c) the erection of tea rooms and refreshment places;
- (d) the training of horses, the holding of races (including motor car and motor cycle races) and the provision of places for recreation, amusements or displays;
- (e) the provision of landing sites for aircraft and the establishment of aerodromes;
- (f) the construction or improvement of wharves, piers, jetties and landing stages;
- (g) the construction of breakwaters, sea walls, promenades, embankments, esplanades, buildings or other structures;
- (h) the construction of bathing pools and enclosures;
- (i) the erection of whaling stations or fish-canning or other factories;
- (j) to legalize any encroachments;
- (k) the carrying out of any work of public utility;
- (l) the laying of drainage or sewerage systems;
- (m) the laying of water pipes or cables;
- (n) the erection of boathouses;
- (o) the carrying out of any work which in the opinion of the Minister serves a necessary or useful purpose:

Provided that in the opinion of the Minister such letting either is in the interests of the general public or will not seriously affect the general public's enjoyment of the sea-shore and the sea.

(2) The Minister may permit, on such conditions as he may deem expedient and at such a consideration as he may determine, the removal of any material from the sea-shore and the sea of which the State President is by section *two* declared to be the owner.

(3) The Minister may, by notice in the *Gazette*, delegate to any local authority, subject to such conditions as he may deem expedient, any of the powers vested in him by this section, and he may by a like notice withdraw any such delegation.

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ss. 3-6 *Sea-shore Act, No. 21 of 1935*

ss. 3-6

(4) Whenever any portion of the sea-shore or the sea in respect of which it is proposed to enter into any lease under sub-section (1) or to grant any permit under sub-section (2) is situated within or adjoins the area of jurisdiction of a local authority, the Minister shall first consult that local authority.

(5) Not less than one month before any lease is entered into under sub-section (1) or any permit is granted under sub-section (2), the Minister shall at the expense of the person with or to whom it is proposed to enter into such lease or to issue such permit, cause a notice wherein the proposal is made known, to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood wherein the portion of the sea-shore or the sea concerned is situated.

[S. 3 substituted by s. 3 of Act No. 60 of 1959.]

4. Letting or transfer of sea-shore and sea to local authority.—(1) The Minister may, on the conditions set out in sub-section (2) and such further conditions as he may deem expedient, let, sell or donate any portion of the sea-shore and the sea of which the State President is by section *two* declared to be the owner, to any local authority.

(2) Any letting or alienation under sub-section (1) shall take place subject to the conditions—

(a) that no right acquired under sub-section (1) with regard to the sea-shore or the sea may be transferred to any person other than a local authority or the Government of the Republic, unless the prior approval thereto by resolution of both Houses of Parliament is obtained; and

(b) that the Minister may at any time resume for Government or public purposes any right granted under sub-section (1), subject to payment of such compensation for improvements as may be agreed upon or settled by arbitration.

(3) The provisions of sub-section (5) of section *three* shall apply *mutatis mutandis* to any letting or alienation under sub-section (1).

[S. 4 substituted by s. 4 of Act No. 60 of 1959.]

5. Government may use the sea-shore and the sea.—(1) The Minister may authorize the use of any portion of the sea-shore and the sea of which the State President is by section *two* declared to be the owner, for Government purposes.

(2) The Minister may cause any land in the sea or on the sea-shore to be reclaimed and such reclaimed land shall be State-owned land.

[S. 5 substituted by s. 5 of Act No. 60 of 1959.]

6. Approval of Parliament.—(1) Any alienation, letting or permission with regard to the sea-shore or the sea which is not authorized elsewhere in this Act or in any other law, may only take place with the approval, by resolution, of both Houses of Parliament.

(2) If an alienation, letting or permission in terms of sub-section (1) is proposed with regard to any portion of the sea-shore or the sea situated within or adjoining the area of jurisdiction of a local authority, the Minister shall, before the proposal is submitted to Parliament, consult that local authority.

(3) Not less than one month before submitting to Parliament any proposal for an alienation, letting or permission in terms of sub-section (1), the Minister shall at the expense of the person in whose favour the alienation, letting or permission is proposed, cause a notice setting forth particulars of such proposal, to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood in which the portion of the sea-shore or the sea concerned is situated.

(4) Except where it is provided otherwise in the relevant resolution referred to in sub-section (1), the provisions of paragraphs (a) and (b) of sub-section (2) of section *four* shall apply *mutatis mutandis* to any alienation, letting or permission under sub-section (1).

[S. 6 substituted by s. 6 of Act No. 60 of 1959.]

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — SEA AND SEA-SHORE
ss. 7-9 *Sea-shore Act, No. 21 of 1935*

ss. 7-9

7. Exercise of powers for purposes of public health.—(1) Notwithstanding anything contained in the Health Act, 1977, the State President may by proclamation in the *Gazette* declare that any local authority, as defined in the aforesaid Act, may exercise, in respect of the sea-shore and the sea situate within its area of jurisdiction or adjoining such area, any of the powers which are conferred by or under that Act on a local authority.

(2) The power conferred by sections 31 and 50 of the Health Act, 1977, on the Minister of Health, the Secretary or a local authority, as defined in the Health Act, 1977, to delegate to certain persons a function or duty vested in or devolving upon him or it under the said Act, may be exercised as regards any function or duty which may vest in or devolve upon him or it under the said Act as regards any portion of the sea-shore or the sea.

[S. 7 amended by s. 7 of Act No. 60 of 1959 and substituted by s. 59 of Act No. 63 of 1977.]

8. Application of mining laws.—For the purposes of any law which is or at any time has been in force in any part of the Republic relating to the exploitation of metals, minerals, precious stones, coal or oil, the land of the sea-shore and the bed of the sea of which the State President is by section *two* declared to be the owner shall be deemed to be Crown land; and, in the application of any such law, this section shall be deemed to have been in operation as from the commencement of such law.

[S. 8 amended by s. 8 of Act No. 60 of 1959.]

9. Determination of position of high-water mark.—(1) (a) If privately-owned land has a boundary extending to or to a stated distance from the high-water mark and it is in the public interest or in the interests of the owner of or the holder of the mineral rights in such land that the said boundary be replaced by another kind of boundary, the Surveyor-General may permit the first-mentioned boundary to be replaced by the last-mentioned boundary, provided the Minister, the owner of the land and the holder of the mineral rights have signed an agreement, as far as possible in accordance with Form B of the Second Schedule of the Land Survey Act, 1927 (Act No. 9 of 1927), whereby they accept the new boundary.

(b) If the Minister, the owner of the land or the holder of the mineral rights fails to sign the agreement referred to in paragraph (a), the provisions of sub-sections (4) to (8), inclusive, of section *sixteen* of the Land Survey Act, 1927, shall *mutatis mutandis* apply.

(c) As soon as the agreement referred to in paragraph (a) has been approved by the Surveyor-General, the new boundary shall, for the purposes of the Land Survey Act, 1927, be deemed to have been lawfully established in accordance with section *thirty-one* of that Act, and the boundary-line so established shall, in any case where the boundary extends to the high-water mark, be deemed to be the high-water mark as defined in this Act.

(2) (a) The Minister may, in respect of any State-owned land, cause a diagram to be prepared on which the seaward boundary of that State-owned land is established as near to the high-water mark as is possible according to the natural indications, and as soon as the diagram has been approved by the Surveyor-General, the beacons indicating the seaward boundary of the State-owned land shall for the purposes of the Land Survey Act, 1927, be deemed to be lawfully established in accordance with section *thirty-one* of that Act, and the boundary-line so established shall be deemed to be the high-water mark as defined in this Act: Provided that if the boundary of any privately-owned land is affected by the establishment of the said boundary-line, the provisions of section *seventeen* of the said Act shall apply *mutatis mutandis* to such establishment.

(b) For the purposes of the application of section *seventeen* of the Land Survey Act, 1927, in terms of the proviso to paragraph (a), "owner" includes the holder of the mineral rights.

[S. 9 substituted by s. 9 of Act No. 60 of 1959.]

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — SEA AND SEA-SHORE
Sea-shore Act, No. 21 of 1935

s. 10

s. 10

10. Regulations.—(1) The Minister may make regulations, or by notice in the *Gazette* authorize any local authority, in regard to any portion of the sea-shore and the sea situated within or adjoining the area of jurisdiction of such local authority, with his approval to make regulations, not inconsistent with this Act—

- (a) concerning the use of the sea-shore;
- (b) concerning bathing in the sea;
- (c) concerning the removal of any material from the sea-shore and the sea;
[Para. (c) substituted by s. 10 (b) of Act No. 60 of 1959.]
- (d) for the prevention or the regulation of the depositing or the discharging upon the sea-shore or in the sea of offal, rubbish or anything liable to be a nuisance or danger to health;
[Para. (d) amended by s. 10 (c) of Act No. 60 of 1959.]
- (e) concerning the control, generally, of the sea-shore and of the sea;
[Para. (e) amended by s. 10 (d) of Act No. 60 of 1959.]
- (f) prescribing fees for the doing of any act upon or in or in relation to the sea-shore or the sea;
[Para. (f) amended by s. 10 (e) of Act No. 60 of 1959.]
- (g) prescribing the fees and expenses referred to in sub-section (15) of section nine.

[Sub-s. (1) amended by s. 10 (a) of Act No. 60 of 1959.]

(2) The regulations may provide that any person contravening or failing to comply with any provision thereof shall be guilty of an offence and liable on conviction to such fine, not exceeding two hundred rand, or to imprisonment for such period, not exceeding one year, as may be specified therein, or to both such fine and such imprisonment.

[Sub-s. (2) substituted by s. 2 of Act No. 38 of 1972.]

(3) (a) Notwithstanding the provisions of any other law, any regulation may be declared to be applicable to the whole of the sea-shore or to any defined portion thereof or to the whole of the sea or to any defined portion thereof.

(b) The Minister may declare any regulation to be applicable to any State-owned land adjoining or situated near the sea-shore, and for the purposes of the application of any such regulation, any State-owned land to which such regulation has been so declared to be applicable, shall be deemed to be a portion of the sea-shore.

(c) When any regulation applies to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority or to any portion of the sea adjoining such portion of the sea-shore, the Minister may, by notice in the *Gazette* and in not less than one newspaper circulating in the neighbourhood in which such area of jurisdiction is situated, confer powers or impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers.

(d) Not less than thirty days before any regulation is made under this section, the Minister, or where a local authority desires to make a regulation, that local authority, shall cause a copy of the proposed regulation to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood where the regulation will apply.

(e) Before the Minister declares any regulation to be applicable to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority, the Minister shall consult the local authority concerned and submit to it a copy of the regulation.

[Sub-s. (3) substituted by s. 10 (f) of Act No. 60 of 1959.]

(4) When a local authority is responsible for the administration of any regulation made under this section, such regulation, or any other regulation made under this section, may provide that all fees and fines recovered under that regulation, shall accrue to that local authority.

[Sub-s. (4) substituted by s. 10 (g) of Act No. 60 of 1959.]

(5) Nothing contained in this section or in any regulation made under this section shall affect any by-law lawfully made by a local authority under any law.

(6) A local authority in whom the ownership of any portion of the sea-shore is vested, may, with the approval of the Minister, make regulations for the control of that

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — SEA AND SEA-SHORE
s. 10-Sch. *Sea-shore Act, No. 21 of 1935* s. 10-Sch.

portion of the sea-shore and the sea adjoining that portion, for any of the purposes mentioned in sub-section (1).

[Sub-s. (6) substituted by s. 10 (h) of Act No. 60 of 1959 and amended by s. 2 (a) of Act No. 2 of 1963.]

(7) Any regulation made under sub-section (1) or (6) in regard to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority, may with the approval of the Administrator of the province in which such area of jurisdiction is situated, *mutatis mutandis* be applied also on land owned by that local authority and abutting on such portion of the sea-shore.

[Sub-s. (7) added by s. 2 (b) of Act No. 2 of 1963.]

(8) Any regulation made under subsection (1) or (6) may differentiate between different classes or kinds of users of the sea-shore or the sea, may prescribe different fees or conditions in respect of different classes or kinds of the said users and may prescribe that any local authority responsible for the administration of any such regulation, may grant any consent under such regulation on such terms or conditions as it may deem fit.

[Sub-s. (8) added by s. 1 of Act No. 45 of 1969.]

11. Delegation of powers.—(1) The Minister may delegate to any officer in the full-time service of the State, the powers conferred upon him by section 3 (1) or (2) or 9, but shall not thereby be divested of his powers so delegated, and may modify or withdraw any decision of such officer.

(2) The Minister may delegate to the executive committee of a province, in respect of the sea or the sea-shore or any part of the sea or the sea-shore in that province, any power conferred upon him by section 10.

[S. 11 repealed by s. 11 of Act No. 60 of 1959, inserted by s. 2 of Act No. 45 of 1969 and substituted by s. 3 of Act No. 38 of 1972.]

12. Authority to deal with certain piece of land.—The State President may deal with the piece of land described in item 20 of the Schedule to the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922), and which in terms of section *one* of that Act was transferred to the Government of the Republic, in accordance with the provisions of section *three* of that Act, notwithstanding the fact that a portion thereof consists of sea-shore.

[S. 12 amended by s. 12 of Act No. 60 of 1959.]

13. Savings.—Nothing contained in this Act shall affect—

(a) the provisions of the Simon's Bay Dockyard Port Regulation Statutes, 1898-1912.

[Para. (a) amended by s. 13 (a) of Act No. 60 of 1959.]

(b) any rights or powers conferred upon the Administration by or under any law relating to ports and harbours in respect of any portion of the sea-shore or the sea and in the event of any conflict between the provisions of this Act and any such law, the rights and powers of the said Administration shall be determined by the provisions of such law, and not by the provisions of this Act;

[Para. (b) amended by s. 13 (b) of Act No. 60 of 1959.]

(c) any rights of any member of the public to use the sea-shore or the sea, except in so far as such rights are inconsistent with the rights conferred by any title validated by this Act, or by any title, lease, permit, authority, delegation or regulation lawfully issued, entered into, granted or made by virtue of this Act or by virtue of any such title, lease, permit, authority, delegation or regulation;

[Para. (c) amended by s. 13 (c) of Act No. 60 of 1959.]

(d) the power of a provincial council to make ordinances conferred upon it by or under section *eighty-five* of the South Africa Act, 1909, or any other law, or the validity or operation of any ordinance lawfully made by any provincial council before or after the commencement of this Act; or

(e) any rights or powers conferred upon any person by any licence granted by the Postmaster-General in terms of section *eighty* of the Post Office Administration and Shipping Combinations Discouragement Act, 1911 (Act No. 10 of 1911).

14. Short title.—This Act shall be known as the Sea-shore Act, 1935.

Schedule

[Schedule repealed by s. 14 of Act No. 60 of 1959.]



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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No. 9120

CAPE TOWN, 14 MARCH 1984

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 473.

14 Maart 1984

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 21 van 1984: Strandwysigingswet, 1984.

No. 473.

14 March 1984

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 21 of 1984: Sea-shore Amendment Act, 1984.

SEA-SHORE AMENDMENT ACT, 1984

Act No. 21, 1984

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Sea-shore Act, 1935, so as to amend certain definitions; to curtail the power of the Minister of Community Development and the Minister of Transport Affairs to permit the removal of material from the sea-shore and the sea; to make different provision relating to the announcement of proposals to enter into certain leases of the sea-shore and the sea and issue certain permits; to assign the power of the State President to authorize local authorities to exercise certain powers for the purposes of public health to the Minister of Health and Welfare; to authorize the making of regulations which provide for the seizure and disposal of certain articles; to increase the fine which may be prescribed by regulation; to make different provision relating to the announcement of draft regulations; to make provision that local authorities be consulted before regulations are declared to be applicable to certain State-owned land situated in or adjoining their respective areas of jurisdiction; and to substitute or delete certain obsolete designations and references; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 24 February 1984.)

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 1 of the Sea-shore Act, 1935 (hereinafter referred to as the principal Act), is hereby amended—
 - 5 (a) by the substitution for the definition of 'Administration' of the following definition:

"Administration' means the South African Transport Services referred to in section 2 of the South African Transport Services Act, 1981 (Act No. 65 of 1981);";
 - 10 (b) by the substitution for the definition of 'local authority' of the following definition:

"local authority' means any city council, municipal council, borough or town or village council, town board, local board, village management board, divisional council, local administration and health board or health committee constituted in terms of any law, and includes the South African Development Trust referred to in section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), the **[Local Health Commission]** Development and Service Board constituted under the **[Local Health Commission (Public Health Areas Control)]** Development and Services Board Ordi-

Amendment of section 1 of Act 21 of 1935, as substituted by section 1 of Act 60 of 1959 and amended by section 1 of Act 2 of 1963 and section 1 of Act 38 of 1972.

SEA-SHORE AMENDMENT ACT, 1984

Act No. 21, 1984

5 nance, 1941 (Ordinance No. 20 of 1941), of Natal, **[and]** the Natal Parks, Game and Fish Preservation Board constituted under the **[Natal Parks, Game and Fish Preservation Ordinance, 1947 (Ordinance No. 35 of 1947)]** Nature Conservation Ordinance, 1974 (Ordinance No. 15 of 1974), of Natal, and **[the National Parks Board of Trustees established under the National Parks Act, 1962 (Act No. 42 of 1962)]** the Department of Nature and Environmental Conservation constituted by the Nature and Environmental Conservation Ordinance, 1974 (Ordinance No. 19 of 1974), of the Cape of Good Hope; and

10
15 (c) by the substitution for the definition of 'Minister' of the following definition:

"Minister' means the Minister of **[Agriculture]** Community Development, save that in relation to the sea-shore and the sea within any port or harbour which in terms of any law falls under the control and management of the Administration, 'Minister' means the Minister of Transport Affairs;"

2. Section 3 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

25 " (2) The Minister may permit, on such conditions as he may deem expedient and at such a consideration as he may determine, the removal of any material, except precious stones as defined in section 1 of the Precious Stones Act, 1964 (Act No. 73 of 1964), natural oil, precious metals or any base mineral as defined in section 1 of the Mining Rights Act, 1967 (Act No. 20 of 1967), or any aquatic plant, shell or salt as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), from the sea-shore and the sea of which the State President is by section 2 declared to be the owner.";

30
35 (b) by the substitution for subsection (5) of the following subsection:

"(5) **[Not less than one month]** Before any lease is entered into under subsection (1) or any permit is granted under subsection (2), the Minister shall, at the expense of the person with or to whom it is proposed to enter into such lease or to issue such permit, cause a notice **[wherein the proposal is made known]** to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood wherein the portion of the sea-shore or the sea concerned is situated, wherein—

(a) the proposal to enter into the lease or to issue the permit is made known;

50 (b) the place where and the times at which full particulars of the proposed lease or permit will be open for inspection are specified; and

(c) it is specified that objections to the proposed lease or permit may be lodged with a person specified in the notice, before a date so specified, which shall be not less than 30 days after the date on which the notice is published.";

55 (c) by the addition of the following subsection:

60 "(6) Any objection in terms of paragraph (c) of subsection (5) shall be considered by the Minister before he enters into a lease under subsection (1) or issues a permit under subsection (2)."

Amendment of section 3 of Act 21 of 1935, as substituted by section 3 of Act 60 of 1959.

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Act No. 21, 1984

3. Section 4 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

Amendment of
section 4 of
Act 21 of 1935,
as substituted
by section 4 of
Act 60 of 1959.

5 “(a) that no right acquired under subsection (1) with re-
gard to the sea-shore or the sea may be transferred
to any person other than a local authority or the
Government of the Republic, unless the prior ap-
proval thereto, by resolution, of **[both Houses of
Parliament]** the House of Assembly is obtained;
10 and”; and

(b) by the substitution for subsection (3) of the following
subsection:

15 “(3) The provisions of **[subsection]** subsections (5)
and (6) of section 3 with regard to a lease under subsec-
tion (1) of that section shall apply *mutatis mutandis* to
any letting or alienation under subsection (1).”.

4. The following section is hereby substituted for section 6 of the principal Act:

Substitution of
section 6 of
Act 21 of 1935,
as substituted by
section 6 of
Act 60 of 1959.

20 “Approval of
House of As-
sembly. 6. (1) Any alienation, letting or permission with
regard to the sea-shore or the sea which is not auth-
orized elsewhere in this Act or in any other law, may
only take place with the approval, by resolution, of
[both Houses of Parliament] the House of Assembly.

25 (2) If an alienation, letting or permission in terms
of subsection (1) is proposed with regard to any por-
tion of the sea-shore or the sea situated within or ad-
joining the area of jurisdiction of a local authority,
the Minister shall, before the proposal is submitted
to **[Parliament]** the House of Assembly, consult that
30 local authority.

35 (3) Not less than one month before submitting to
[Parliament] the House of Assembly any proposal
for an alienation, letting or permission in terms of
subsection (1), the Minister shall, at the expense of
the person in whose favour the alienation, letting or
permission is proposed, cause a notice setting forth
particulars of such proposal, to be published in the
40 *Gazette* and in not less than one newspaper circulat-
ing in the neighbourhood in which the portion of the
sea-shore or the sea concerned is situated.

45 (4) Except where it is provided otherwise in the
relevant resolution referred to in subsection (1), the
provisions of paragraphs (a) and (b) of subsection (2)
of section 4 shall apply *mutatis mutandis* to any alien-
ation, letting or permission under subsection (1).”.

5. The following section is hereby substituted for section 7 of the principal Act:

Substitution of
section 7 of
Act 21 of 1935,
as substituted by
section 59 of
Act 63 of 1977.

50 “Exercise of
powers for
purposes of
public health. 7. (1) Notwithstanding anything contained in the
Health Act, 1977, the **[State President]** Minister of
Health and Welfare may by **[proclamation]** notice in
the *Gazette* declare that any local authority, as
[defined] referred to in section 1 or 30 of the afore-
said Act, may exercise, in respect of the sea-shore
and the sea situate within its area of jurisdiction or
adjoining such area, any of the powers which are
55 conferred by or under that Act on a local authority.

(2) The power conferred by sections 31 and 50 of
the Health Act, 1977, on the Minister of Health and

SEA-SHORE AMENDMENT ACT, 1984

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5 Welfare, the **[Secretary]** Director-General or a local authority, as defined in section 1 of the Health Act, 1977, to delegate to certain persons or to a local authority a function or duty vested in or devolving upon him or it under the said Act, may be exercised as regards any function or duty which may vest in or devolve upon him or it under the said Act as regards any portion of the sea-shore or the sea."

10 6. Section 8 of the principal Act is hereby amended by the substitution for the words "Crown land" of the words "State-owned land".

Amendment of section 8 of Act 21 of 1935, as amended by section 8 of Act 60 of 1959.

7. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
- 15 "(g) providing for the seizure and disposal of any-thing—
- (i) which is concerned in or is on reasonable grounds believed to be concerned in a contravention of or failure to comply with any provision of a regulation made under this section;
- (ii) which may afford evidence of such a contravention or failure; or
- (iii) which is intended to be used or is on reasonable grounds believed to be intended to be used in such a contravention or failure.";
- 20
- (b) by the substitution for subsection (2) of the following subsection:
- 30 "(2) The regulations may provide that any person contravening or failing to comply with any provision thereof shall be guilty of an offence and liable on conviction to such fine, not exceeding **[two]** five hundred rand, or to imprisonment for such period, not exceeding one year, as may be specified therein, or to both such fine and such imprisonment."; and
- 35
- (c) by the substitution for paragraphs (c), (d) and (e) of subsection (3) of the following paragraphs, respectively:
- 40 "(c) When any regulation applies to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority or to any portion of the sea adjoining such portion of the sea-shore, the Minister may, by notice in the *Gazette* and in not less than one newspaper circulating in the neighbourhood in which such area of jurisdiction is situated, confer powers or impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers or upon any officer of the State.
- 45
- (d) **[Not less than thirty days]** Before any regulation is made under this section, the Minister, or where a local authority desires to make a regulation, that local authority, shall cause **[a copy of the proposed regulation]** a notice to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood where the regulation will apply, wherein—
- 50
- (i) the intention to make the regulation is made known;
- (ii) the place where and the times at which the draft regulation will be open for inspection are specified; and
- 55
- 60
- Amendment of section 10 of Act 21 of 1935, as amended by section 10 of Act 60 of 1959, section 2 of Act 2 of 1963, section 1 of Act 45 of 1969 and section 2 of Act 38 of 1972.

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- (iii) it is specified that objections to the proposed regulation may be lodged with a person specified in the notice, before a date so specified, which shall be not less than 30 days after the date on which the notice is published;

Provided that, if the Minister or the local authority, as the case may be, thereafter decides on an alteration of the draft regulation as a result of objections lodged in respect thereof, it shall not be necessary to publish a notice of the alteration or to make the amended draft available for inspection before the regulation is made under this section.

- (e) Before the Minister declares any regulation to be applicable to any portion of the sea-shore, or to any State-owned land referred to in paragraph (b), situated within or adjoining the area of jurisdiction of a local authority, the Minister shall consult the local authority concerned and submit to it a copy of the regulation.”.

8. Section 13 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (a);
- (b) by the substitution for paragraph (d) of the following paragraph:
- “(d) the power of a provincial council to make ordinances conferred upon it by or under section **[eighty-five]** 84 of the **[South Africa Act, 1909]** Republic of South Africa Constitution Act, 1961, or any other law, or the validity or operation of any ordinance lawfully made by any provincial council before or after the commencement of this Act; or”; and
- (c) by the substitution for paragraph (e) of the following paragraph:
- “(e) **[any rights or powers conferred upon any person by any licence granted by the Postmaster-General in terms of section eighty of the Post Office Administration and Shipping Combinations Discouragement Act, 1911 (Act No. 10 of 1911)]** the provisions of the Post Office Act, 1958 (Act No. 44 of 1958), or any powers or rights conferred upon the Postmaster-General by or under the said Act.”.

Amendment of
section 13 of
Act 21 of 1935,
as amended by
section 13 of
Act 60 of 1959.

9. This Act shall be called the Sea-shore Amendment Act, Short title.
1984.

C O P Y

ANNEXURE "C"

GOVERNMENT GAZETTE EXTRAORDINARY NO. 169 : 2 FEBRUARY 1962

(REGULATION GAZETTE No. 62)

GOVERNMENT NOTICES

DEPARTMENT OF LANDS

No. R. 168

2 February 1962

The Minister of Lands in consultation with local authorities along the whole of the coast of Natal having decided to make certain regulations in terms of section ten of the Sea-Shore Act, 1935 (Act No. 21 of 1935), which proposed regulations are subjoined hereto, the same to be applicable to that part of the sea-shore and sea mentioned in proposed regulation 2 hereunder and to any bathing pool constructed on or in the said part of the sea-shore or sea, notice of the Minister's intention to make the proposed regulations is hereby given in terms of paragraph (d) of sub-section (3) of section ten of the said Act :-

GENERAL SEA-SHORE REGULATIONS

MADE IN TERMS OF SECTION TEN OF THE SEA-SHORE ACT, 1935
(ACT NO. 21 OF 1935)

DEFINITIONS.

1. In these regulations --

- (i) "area of jurisdiction of a local authority" means the area defined by the Administrator by proclamation in the Official Gazette of the Province of Natal as the area in which such local authority has jurisdiction, and includes the sea-shore situated within or adjoining the area of jurisdiction of such local authority and the sea adjoining such portion of the sea-shore; (v)
- (ii) "life-saver" means any person employed or appointed in that capacity by a local authority or any member of the Surf Life-Saving Association of South Africa or of any affiliated life saving club or association of life savers; (iv)
- (iii) "notice in the Gazette and press" means a notice in both official languages published in the Gazette and in not less than one newspaper circulating in the neighbourhood of the area concerned; (i)
- (iv) "notice on the spot" means an adequate notice in both official languages erected or posted in a prominent position or

positions and maintained in a legible state; (ii)

- (v) "person" means any individual and includes any company, firm or body of persons; (iii)
- (vi) "sea" means the water and the bed of the sea below the low-water mark and within the territorial waters of the Republic including the water and the bed of any tidal river and of any tidal lagoon; (vi)
- (vii) "sea-shore" means the water and the land between the low-water mark and the high-water mark; (vii)
- (viii) any term defined in section one of the Sea-Shore Act, 1935, has the same meaning.

APPLICABILITY OF REGULATIONS.

2. These regulations shall --

- (i) save where the context otherwise requires; and
- (ii) with the exception of the area of jurisdiction of the Durban City Council;

apply to the sea-shore and the sea along the whole of the coast of the Province of Natal, and to any bathing pool constructed on the sea-shore or in the sea herein referred to.

OFFENCES RELATING TO PUBLIC HEALTH, NUISANCES, INDECENT OR OFFENSIVE BEHAVIOUR, ETC.

3. Any person shall be guilty of an offence who --

- (a) deposits or discharges upon the sea-shore or in the sea or in any bathing pool, any offal, rubbish or anything liable to be a nuisance or a danger to health; or
- (b) whilst suffering from any infectious or contagious disease enters or remains on the sea-shore or in the sea or in any bathing pool; or
- (c) whilst upon the sea-shore or in the sea or in any bathing pool
 - (i) uses any obscene, offensive or indecent language; or
 - (ii) behaves in an offensive, improper or disorderly manner; or
 - (iii) wilfully or negligently does any act which causes discomfort to any other users of the sea-shore or the sea or any bathing pool, or is likely to cause a breach of the peace.

PROHIBITION OF BATHING WITHIN AREAS CONSIDERED UNSAFE.

4. (1) Bathing within any part of the sea may be prohibited either as a permanent or as a temporary measure on the grounds that it is unsafe --
- (a) by the Minister or by his direction within an area not under the control of any local authority; or
 - (b) by a local authority within its area of jurisdiction.
- (2) Bathing within any part of the sea may be prohibited by a life-saver on duty, for so long as he may consider the condition of the sea unsafe.

Any permanent prohibition under this regulation shall be indicated by notice on the spot and any temporary prohibition by any other recognisable and intelligible marker at both ends of the prohibited area.

OFFENCES RELATING TO BATHING.

5. Any person shall be guilty of an offence who --
- (a) bathes in or from any area in which bathing has been prohibited in terms of regulation 4;
 - (b) bathes or sun-bathes in the nude or clad indecently. A local authority may by notice on the spot, specify which types of costume are indecent;
 - (c) hangs onto, sits upon or causes to sink any safety ropes provided for the protection of bathers, or in any way interferes with such safety ropes or other appliances provided for the assistance of bathers in distress;
 - (d) mounts, climbs upon, sits upon, hangs onto or in any way interferes with any shark preventive netting or appliance and/or any poles, uprights, structures, frames, barriers, cables and winch or winches all being ancillaries to such shark preventive netting or appliances;
 - (e) enters or remains in any bathing pool contrary to a reasonable prohibition by the person having authority over or placed in charge of such bathing pool as evidenced by a notice on the spot.

DAMAGE TO PROPERTY.

6. Any person who interferes with, misuses or damages any building closet, shelter, changing booth, or other amenity provided for the use of the public, or who disregards, or, in contravention of

directions as to the use to which the same may be put, fails to observe the terms of notices in both official languages, affixed to any such building, structure, or amenity by the Minister, any local authority or any person having authority to maintain such building, structure or amenity on the sea-shore, shall be guilty of an offence.

ANIMALS ON THE SEA-SHORE.

7. (a) Any person who, within the area of jurisdiction of a local authority, causes or allows any dog belonging to him or in his charge to enter or remain upon the sea-shore or in the sea or in any bathing pool whereon or wherein the local authority has by notice on the spot prohibited the presence of dogs, shall be guilty of an offence.

(b) Any dog not under control or apparently not under control of any person may, if found on the sea-shore or in the sea or in any bathing pool within the area of jurisdiction of a local authority contrary to paragraph (a) of this regulation, be impounded by any member, employee or servant of such local authority and may be removed to that local authority's pound, there to be dealt with in accordance with the by-laws or regulations relating to the keeping of dogs at such pound.

(c) Any person who causes or allows any horse, pony or other beast belonging to him or in his charge to enter or remain upon the sea-shore or in the sea within the area of jurisdiction of any local authority, except with permission given in writing and subject to such terms and conditions as such local authority may deem fit to impose, shall be guilty of an offence.

FIREARMS.

8. Any person who discharges a firearm from the sea-shore or the sea shall be guilty of an offence: Provided that it shall not be an offence if a firearm is used --

- (i) within the area of jurisdiction of a local authority by a member, employee or servant of such local authority or a life-saver to kill or repel sharks;
- (ii) in the vicinity of any bathing amenity, provided by any person on the sea-shore, by such person or his deputy to kill or repel sharks;
- (iii) during competitions organised by life-savers or during sportmeetings on the sea-shore, for the firing of blank cartridges;
- (iv) for the collection of specimen of marine life or birds or animals for scientific purposes;

- (v) in the authorised hunt for whales, fish or birds; or
- (vi) to signal distress.

INTERFERENCE WITH NOTICE BOARDS.

9. Any person, other than a life-saver or a person authorised to do so by the Minister or by a local authority, who moves, defaces or otherwise interferes with any notice board, notice or marker erected, posted or placed on the sea-shore by the Minister or by any local authority, or by either of their direction, or by any life-saver, in terms of these regulations, shall be guilty of an offence.

PROHIBITION OF ENTERTAINMENT AND TRADE.

10. Any person who, for reward or gain conducts an entertainment or business or trade of any sort on the sea-shore or in the sea, without the written permission given on such terms and conditions as in each case may be deemed fit by the Minister or any person acting for him, in an area which is not within the area of jurisdiction of a local authority, or by the local authority concerned where the area is within its area of jurisdiction, shall be guilty of an offence.

VEHICLES ON THE SEA-SHORE.

11. (a) Any person shall be guilty of an offence who --

- (i) within the area of jurisdiction of a local authority introduces into or rides or drives any motor vehicle, animal-drawn vehicle or bicycle onto the sea-shore except in the circumstances mentioned in paragraph (b) hereof;
- (ii) within an area which is not under the jurisdiction of a local authority, rides or drives any motor vehicle, animal-drawn vehicle or bicycle or any animal on the sea-shore in such a way as to endanger, discomfort or inconvenience any other user of the sea-shore.

(b) Sub-paragraph (i) of paragraph (a) of this regulation shall not apply in respect of any ambulance whilst lawfully in use as such, or in respect of any vehicle used in lieu of an ambulance in time of emergency, or in respect of any vehicle used within the area of jurisdiction of a local authority by any employee or servant of such local authority in the discharge of his duties or in respect of any vehicle, the driver of which carries with him the written permission thereto of such local authority.

LIFE SAVING DEVICES.

12. (a) Any person, other than a life-saver or, within the area of jurisdiction of a local authority, a member, employee or servant of that local authority, who, save in time of emergency, touches, handles or in any way makes use of or damages any life-line, life-buoy, or any other life-saving appliance, installed or maintained upon the sea-shore or in the sea, shall be guilty of an offence.

(b) Any person who impairs or impedes the operation of any life-saving appliance or device while it is in use on the sea-shore or in the sea shall be guilty of an offence.

CONTROL OF BOATS.

13. (1) Any local authority may within its area of jurisdiction --

- (a) set aside by notice on the spot, a place or places on the sea-shore for the launching, landing, beaching, keeping, letting or hiring of boats or craft;
- (b) set aside by notice on the spot, a place or places for the exclusive use of different types of boats or craft or for the use only of boats or craft belonging to members of boat clubs;
- (c) prohibit the use or operation of any boat or craft, or type thereof, from certain parts of the sea-shore, and may differentiate between boats or craft belonging to or used by members of boat clubs and those belonging to or used by non-members of such clubs; and
- (d) make the operation or use of boats or craft or certain types thereof, within or from any part of the sea-shore, the sea or any tidal lagoon, subject to its written permission granted on such terms and conditions as it may deem fit to impose.

(2) Any person who launches, lands, beaches, keeps, lets or hires any boat or craft contrary to paragraph (1) of this regulation shall be guilty of an offence unless such act is done in an emergency or in order to save life.

CONTROL OF CAMPING ON THE SEA-SHORE.

14. (1) The Minister may, by notice on the spot, prohibit camping on any part of the sea-shore which is not within the area of jurisdiction of any local authority.

(2) Any person who erects a tent or camps on the sea-shore, without the written permission of the Regional Representative of the Department of Lands at Pietermaritzburg in an area within which the Minister has prohibited camping, or of the local authority concerned within the area of jurisdiction of a local authority, shall be guilty of an offence.

CONTROL OF ANGLERS.

15. (a) No person shall fish or angle from any part of the sea-shore, which, if within the area of jurisdiction of a local authority, the local authority, or if not within the area of jurisdiction of a local authority, the Minister of Lands may by notice on the spot, declare to be an area in which fishing or angling is prohibited. Where fishing or angling is not so prohibited no person shall throw, cast or swing any line or gear in such a manner as to cause danger or annoyance to any other person.

(b) No person shall leave any bait, fish-hook or refuse on the sea-shore.

(c) Any person failing to abide by or comply with the foregoing shall be guilty of an offence.

CONTROL OF FIRES.

16. Any person who kindles a fire on the sea-shore within the area of jurisdiction of a local authority without obtaining the prior permission of such local authority, which permission shall be subject to such terms and conditions as the local authority may deem fit to impose, shall be guilty of an offence.

CONTROL OF PIERS, GROYNES, ETC.

17. Any person, other than a member, employee or servant of the local authority concerned whilst on duty, who enters upon any pier, groyne or other structure erected for the protection of the sea-shore within the area of jurisdiction of any local authority, except with the written permission of the local authority first had and obtained shall be guilty of an offence..

BATHING AREAS AND AREAS FOR DIFFERENT RACIAL GROUPS.

18. (a) The Minister may by notice in the Gazette and press set aside and reserve any area of the sea-shore or the sea exclusively for bathing or sun-bathing.

(b) The Minister may by notice in the Gazette and press set aside and reserve any part of the sea-shore or the sea or any bathing pool for the exclusive use of one or more racial group.

(c) The setting aside and reservation of any area or of any bathing pool under paragraph (a) or (b) of this regulation shall be clearly indicated by notice on the spot. In the case of a bathing area or an area reserved for the exclusive use of one or more racial group, a notice shall be erected or posted at both ends thereof and at all entrances thereto.

(d) The areas set aside and reserved for different racial

groups by the regulations not repealed by regulation 24 shall be deemed to have been set aside and reserved by the Minister in terms of paragraph (b) of this regulation.

OFFENCES RELATING TO AREAS SET ASIDE FOR DIFFERENT RACIAL GROUPS.

19. (a) Any person not being a member of the racial group for which an area or bathing pool is set aside and reserved in terms of paragraph (b) of regulation 18 hereof, who enters upon or remains in such area or bathing pool, shall be guilty of an offence.

(b) Paragraph (a) of the regulation shall not apply --

- (i) to any nursemaid or person bona fide in attendance of any child or any invalid or infirm person of the racial group permitted to be within that particular area or bathing pool;
- (ii) to any member of the medical or nursing profession whilst engaged upon professional duties;
- (iii) to any person administering first aid to a person in distress;
- (iv) to any bona fide lifesaver whilst on duty within such area or bathing pool;
- (v) to any person who in an emergency attempts to save life;
- (vi) to any driver of an ambulance or any vehicle used in lieu of an ambulance and any stretcher bearer accompanying such ambulance or vehicle whilst performing his duty;
- (vii) to any member, employee or servant of the local authority within whose area of jurisdiction such area or bathing pool falls, or any Government employee or any other person who, in the performance of his duty, is required to enter such area or bathing pool;
- (viii) to any waiter or steward in the employment of any person licensed to sell refreshments on the sea-shore or at any bathing pool or to let deck chairs or beach umbrellas or to provide other things normally required by users of the sea-shore or bathing pools, whilst engaged in his duties, or to such licensed person whilst engaged in or supervising his trade or business;
- (ix) to any person who is licensed to fish or gather oysters or crayfish and who shall first have obtained the written consent of the local authority having control of the area concerned, to enter such area on such terms and conditions as the local authority may impose and to employees of such person whilst so engaged under the personal supervision of licensee concerned.

APPOINTMENT OF OFFICIALS TO ENSURE OBSERVANCE OF REGULATIONS.

20. (a) A local authority may entrust one or more of its members, employees or servants with the duty of ensuring that these regulations are duly observed within its area of jurisdiction and of reporting any contravention thereof to the authorities charged with the prosecution of crime.

(b) Any person who obstructs or interferes with any such member, employee or servant of such local authority whilst lawfully engaged upon his duties in that behalf shall be guilty of an offence.

FINES TO ACCRUE TO LOCAL AUTHORITY.

21. Any fine recovered in respect of any offence committed under these regulations within the area of jurisdiction of a local authority, shall accrue to that local authority.

ERECTION AND MAINTENANCE OF NOTICES.

22. Unless and until notice in both official languages as required by any of these regulations be erected and maintained, no prosecution shall be instituted for any contravention of the regulation concerned.

PENALTY.

23. Any person who is convicted of any offence under these regulations, shall be liable to a fine not exceeding fifty rand (R50).

REPEAL OF REGULATIONS.

24. The sea-shore regulations published under the following Government Notices in respect of the areas of jurisdiction of the local authorities stated are hereby repealed to the extent shown in the final column hereunder :-

<u>Local Authority Area</u>	<u>Government Notice No.</u>	<u>Date</u>	<u>Extent of Repeal</u>
Amanzimtoti Town Council	1279	29/10/74	Whole with exception of Reg. No. 6.
Park Rynie Health Committee	2461	3/12/54	Whole with exception of Reg. No. 7.
Umhlanga Rocks Health Committee	343 332	2/3/56 11/3/60	Whole with exception of Reg. No. 11.
Scottburgh Town Board	1549 1876	24/10/58 12/12/58	Whole with exception of Reg. No. 4.

C O P Y

ANNEXURE "D"

GOVERNMENT NOTICES

DEPARTMENT OF AGRICULTURAL CREDIT AND LAND TENURE

No. R.2235

28 October 1977

GENERAL SEA-SHORE REGULATIONS -- PROVINCE OF NATAL

I, Hendrik Stephanus Johan Schoeman, Minister of Agriculture, by virtue of the powers vested in me by section 10 (3) (c) of the Sea-Shore Act, 1935, (Act 21 of 1935), hereby authorise all local authorities along the whole of the coast of Natal (exclusive of the Durban City Council) not previously authorised by me to do so to administer the regulations published in terms of section 10 (1) of the said Act in Gazette Extraordinary 169 of 2 February 1962 (Regulation Gazette 62), as amended by Correction Notice R.261 of 23 February 1962, published in the Gazette Extraordinary of the same date, and to exercise and perform the powers and duties therein conferred upon or entrusted to them.

H.S.J. SCHOEMAN, Minister of Agriculture.

C O P Y

ANNEXURE "E"

DEPARTMENT OF AGRICULTURAL CREDIT AND LAND TENURE

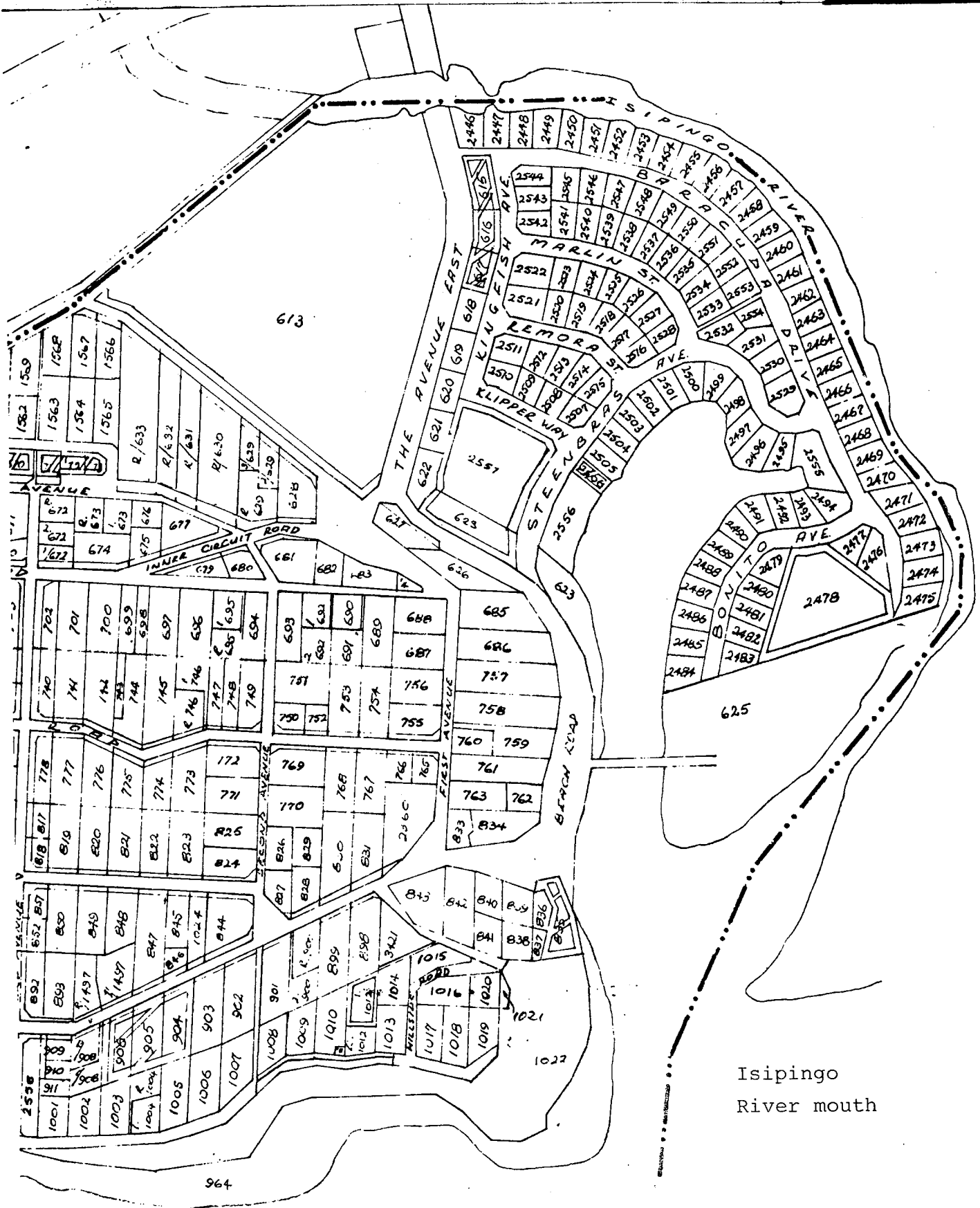
REGULATIONS RELATING TO THE CONTROL IN GENERAL
OF THE SEA-SHORE AND THE SEA

It is hereby notified that the Minister of Agriculture proposes to promulgate after the expiration of a period of 30 days from the date of publication hereof, the following regulations, which are hereby published in terms of Section 10 (3)(d) of the Sea-Shore Act, 1935 (Act 21 of 1935):

REGULATIONS

1. In these regulations, unless inconsistent with the context, "the Act" means the Sea-Shore Act, 1935 (Act 21 of 1935), and every word or expression to which a meaning has been assigned in the Act, shall have the same meaning.
2. No person shall, on the sea-shore or in the sea of which the State President is the owner in terms of Section 2(1) of the Act, erect or construct or use any building or structure of whatever nature or lay or use any cable or pipeline unless he leases the portion of the sea-shore or the sea upon which or wherein the building or structure is being erected or constructed or has been erected or constructed or the pipeline or cable is being laid or has been laid, for such purposes, or has received a concession in respect thereof in terms of the Act.
3. No person shall without the consent of the Minister -
 - (a) reclaim any portion of the sea-shore or the sea; or
 - (b) do any dredging on the sea-shore or in the sea; or
 - (c) subject to the provisions of sections 21 and 23 of the Water Act, 1956 (Act 54 of 1956), deposit on the sea-shore or in the sea any offal, refuse or anything which may be a nuisance or dangerous to health.
4. In the event of any building or structure of whatever nature or any cable or pipeline being erected, constructed or laid in conflict with these regulations the Minister or his assignee may serve a notice on the owner thereof to demolish or to dismantle and to remove it within such time as is specified in such notice.

5. Any person who contravenes regulations 2 and 3 or any person who fails to comply with a notice served on him in terms of regulation 4 shall be guilty of an offence and on conviction be liable to a fine not exceeding two hundred rand or to imprisonment not exceeding one year or to both such fine and such imprisonment.
6. Should the Minister in terms of Section 10(3)(c) of the Act confer powers or impose duties in relation to the administration of these regulations upon a local authority or upon any of its officers, any fine recovered in respect of any offence committed under these regulations on any portion of the sea-shore or in any portion of the sea which is situate within the area of jurisdiction of such local authority or on any portion of the sea-shore or in any portion of the sea opposite the seaward boundary of the area of jurisdiction of such local authority, but which is not situate within the boundary of another local authority, shall accrue to that local authority.



ADDRESS ALL COMMUNICATIONS TO
RIG ALLE BRIEWE AAN

The Town Planner



Isipingo

Enquiries/Navres

P.O. BOX/POSBUS 23148
ISIPINGO 4110
PHONE/FOON 92-2248

fee 28/8

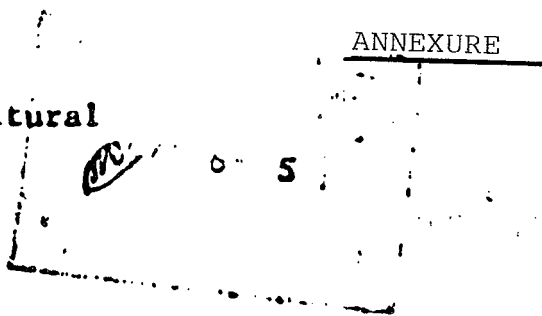
REF/VERW. ES/PC/Lot. 964

Mr. E. Singh

1 June 1979

ANNEXURE "G"

The Department of Agricultural
Credit and Land Tenure,
Private Bag X118,
PRETORIA
0001



Dear Sirs,

LAND ADJOINING LOT 964

My Council is the owner of Lot 964, Isipingo Township.
This land forms part of Isipingo Beach sea shore. (Refer
to Plan No. T.P. 42 with area shaded yellow).

The area shaded green on plan No. T.P. 42 is contiguous
to Lot 964 Isipingo. This area previously formed the
bed of the Isipingo Lagoon at the confluence of the
Umlazi and Isipingo Rivers. After the diversion of the
Umlazi River to enable the construction of the Louis
Botha Airport, the lagoon has silted and the area is in
a state of decay and neglect. (i.e. area shaded green in
Plan No. T.P. 42).

My Council is desirous to redevelop part of the lagoon
for aquatic sports and reclaim the remainder for use by
members of public as picnic areas and possibly a caravan
park.

I would be grateful if your Department can see its way
clear to alienate portion of the land shaded green on
Plan No. T.P. 42 to Council. I also enclose a detail
plan prepared by Council's Land Surveyors indicating
the area in question together with proposed development.

Yours faithfully,

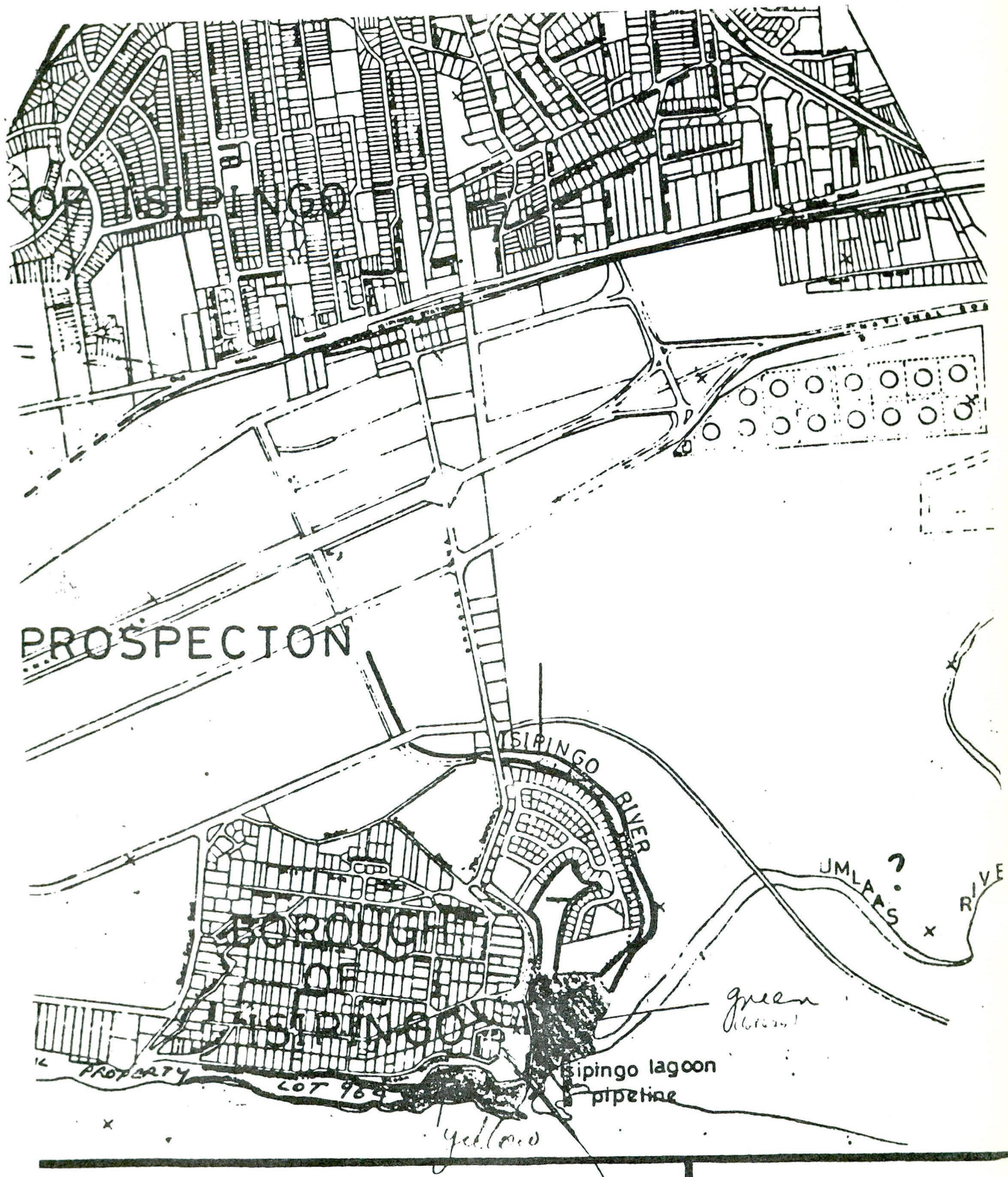
E. Singh
E. SINGH
TOWN PLANNER

Encl.

*The portion in green
is situated partly in
the municipal areas
of Isipingo and Awasizotole*

*This lot
was
and from
on 8/2/79
#121*

*see
SP
pl.
5*



ISIPINGO

PLAN NO.

C O P Y

ANNEXURE "G"

OFFICE OF THE SURVEYOR-GENERAL
PIETERMARITZBURG
3200

5 March 1980

The Liason Officer,
Department Agricultural
Credit & Land Tenure,
3200 PIETERMARITZBURG

DURBAN : LAND ADJOINING LOT 964 ISIPINGO TOWNSHIP

1. Your minute Misc/I/80/3 of 25 ultimo refers.
2. The enclosed plan is comprised of extracts from compilations FT8D24D and FT8D24C filed in this office and shows Lots 625 and 964 Isipingo Township in relation to the lagoon, the Isipingo River mouth and other properties.
3. A further enclosure is a print of a letter Isipingo/33 of 14 February 1964, wherein the opinion was expressed that the Isipingo River and the lagoon were considered tidal and that any land which resulted from reclamation works belonged to the State. This was in conformity with the opinion held at that time that tidal rivers and lagoons did not form part of an original grant. The possibility of such land having been included in the grant and, thus, legally alienated prior to the coming into force of the Sea-Shore Act, appears not to have been considered.
4. Evidence from survey records Nos. 8232 & 8749 filed in this office suggests that the lagoon, the Isipingo and Umlaas Rivers were included in the grant of the farm Isipingo No. 870. It must be emphasised, however, that the information available from survey records has never been accepted as admissible evidence in a Court of Law, and one must refer to the diagram and title deed and attempt to ascertain the intention of the grantor.
5. The diagram and grant which relate to the farm Isipingo No. 870 are not clear whether the lagoon and beds of the rivers were included or excluded but, as stated previously, the exclusion of tidal rivers and lagoons was, until fairly recently, never questioned.
6. Survey records No.8749 relate to the survey of Sub N of the farm Isipingo No. 870 (later to become Lot 1025 Isipingo Township). These records leave one in no doubt whatsoever that the lagoon and half the bed of the

Isipingo River were included in Lot 1025 Isipingo Township. However, the diagram and deed of transfer are ambiguous but, because of the generally held belief that tidal rivers and lagoons are State Land, the Isipingo River half-bed and lagoon were not considered to form part of Lot 1025.

This explains why, on the diagram of Lot 1029 Isipingo Township (of which 1025 is a component) and in the deed, no mention is made of the half river bed or lagoon. There is thus the possibility (but see ??? paragraph) that half the bed of the Isipingo River and the lagoon form part of Lot 1029 Isipingo Township, in which event the diagram and deed will have to be corrected.

Lot 1024 Isipingo Township, which abuts on the lagoon and Isipingo River, formed part of Lot 1025 prior to the consolidation of the latter with other properties to form Lot 1029. The survey records, S.R. 16220, which relate to the survey of Lot 1024 show that the lagoon and half the bed of the river were not included in Lot 1024. However, the diagram and deed of transfer of Lot 1024 are ambiguous and, bearing in mind the qualification concerning evidence available from survey records, there is, also, the possibility of the lagoon and half the bed of the Isipingo River forming part of Lot 1024 Isipingo Township.

The Remainder of Lot 1029, as well as the Remainder of Lot 1024 are owned by the Town Council of the Borough of Isipingo. This being so and, as it is now accepted in this office that the lagoon and river bed were alienated in the grant of the farm Isipingo No. 870, the Town Council should be informed that it is already the owner of the land. I would not want to commit myself, however, to say in terms of which deed.

7. It should be noted that the northern and eastern half of the bed of the Isipingo River is looked upon as being included in the Remainder of Lot 409 Isipingo Township. This is owned by Messrs. Illovo Sugar Estates Ltd. The Town Council's claim is, therefore, limited to the land hatched in blue on this plan.

Signed ????

for SURVEYOR GENERAL : NATAL.

Encl: Copy of Plan
" " Letter

DEPARTEMENT VAN GEMEENSKAPSBOU
DEPARTMENT OF COMMUNITY DEVELOPMENT



REPUBLIEK VAN SUID-AFRIKA
REPUBLIC OF SOUTH AFRICA

Tak : Grondseke (Voorheen komponent van Landboukrediet en Grondbesit)
Branch : Land Affairs (Formerly a component of Agricultural Credits and Land Tenure)

Privaatsek X9024, KAAPSTAD, 8000
Private Bag CAPE TOWN,

Telegramadres LANGRO
Telegraphic address

Telfoon (021) 21-2370
Telephone Doeanehuis
BANK BUILDING, KAAPSTAD
BANK BUILDING, CAPE TOWN
Customs House

Secretary
Town and Regional Planning
Commission
Private Bag 9038
PIETERMARITZBURG
3200

Rig briewe aan die Streekvertegenwoordiger.
Address letters to the Regional Representative.

Verwysing GD 207/90008
Reference
Navrae Cant/cyd
Enquiries
Bylyn 13
Extension

15 AUG 1980

Sir

LAND ADJOINING LOT 964 ISIPINGO

An application has been received from the Borough of Isipingo for the alienation of a portion of land which previously formed part of the bed of the Isipingo Lagoon. The required area is shaded green on the enclosed plan.

The Borough intends redeveloping part of the lagoon for aquatic sports and reclaiming the remainder for use by members of the public as picnic areas and possibly a caravan park.

In view of your Commission's recent report on the Estuaries of Natal I should be grateful for your comments and recommendations in this regard.

Yours faithfully

[Signature]

REGIONAL REPRESENTATIVE

Encl. Copy of plan
Copy of letters

OFFICER	DATE	INITIALS
EJF/	17.8.80	2/5
RT	21/8	
VCS	2/8	DB



Do you have somebody
who could comment
please?

17/8/80

Chris Smith

†*No. 602, 1968.

[5th December, 1968.]

THE Administrator, acting on the advice and with the consent of the Executive Committee, has been pleased under the authority of Section 200 of the Local Government Ordinance, 1942 (Ordinance No. 21 of 1942), to approve of the subjoined By-laws for the Control of Beach Lands and Admiralty Reserve for the Borough of Kingsburgh as made by the Town Council of the said Borough at its meeting held on the 24th July, 1968:—

BOROUGH OF KINGSBURGH.

BY-LAWS FOR THE CONTROL OF BEACH LANDS AND ADMIRALTY RESERVE.

1. These by-laws shall apply to the land known as Beach Lands and Admiralty Reserve, lying between the high water mark and the boundaries of private properties.

2. Any person who causes or allows any horse, pony, or other beast belonging to him or in his charge to enter or remain upon the Admiralty Reserve without the written permission given in writing, and subject to such terms and conditions as the Council may deem fit to impose, shall be guilty of an offence.

3. Any person who, for reward or gain conducts an entertainment or business or trade of any sort on the Admiralty Reserve without the written permission given on such terms or conditions as in each case may be deemed fit by the Council shall be guilty of an offence.

4. (a) Any person shall be guilty of an offence who introduces onto or rides or drives any motor vehicle, animal drawn vehicle or bicycle onto the Admiralty Reserve, except on such public roads as may be provided by the Council, and except in the circumstances mentioned in paragraph (b) hereof.

(b) Paragraph (a) of this by-law shall not apply in respect of an ambulance whilst lawfully in use as such, or in respect of any vehicle used in lieu of an ambulance in terms of emergency, or in respect of any vehicle used by any employee or servant of the Council in the discharge of his duties or in respect of any vehicle, the driver of which carries with him the written permission thereto of the Council.

5. Any person who erects a tent, or camps on the Admiralty Reserve except in such areas set aside by the Council for such purposes shall be guilty of an offence.

6. (a) The Council may entrust one or more of its employees or servants with the duty of ensuring that these by-laws are duly observed, and of reporting any contravention thereof to the Authorities charged with the prosecution of crime.

(b) Any person who interferes with or obstructs any such employee or servant of the Council whilst lawfully engaged on his duties in that behalf shall be guilty of an offence.

7. Any person who contravenes any of these By-laws shall be guilty of an offence and liable, on conviction, to a fine not exceeding Fifty Rand (R50.00) in the case of a first conviction or, in the case of a second or subsequent conviction for the same offence, a fine not exceeding One Hundred Rand (R100.00), or, in default of payment of any fine imposed in either case, to imprisonment, for any period not exceeding three months; provided that in the case of a continuing offence a fine not exceeding R5.00 (Five Rand) for each day upon which the contravention continued may be imposed, but no such fine shall in any one prosecution or within any one month exceed R100.00 (One Hundred Rand).

†*No. 602, 1968.

[5 December 1968.]

DIT het die Administrateur op raad en met die toestemming van die Uitvoerende Komitee behaag om ooreenkomstig artikel 200 van die Ordonnansie op Plaaslike Bestuur, 1942 (Ordonnansie No. 21 van 1942), sy goedkeuring te heg aan onderstaande Verordeninge vir die Beheer van die Strandgrond en Admiraliteitsreserwe vir die munisipaliteit Kingsburgh, soos deur die stadsraad van genoemde munisipaliteit aangeneem op sy vergadering gehou op 24 Julie 1968:—

MUNISIPALITEIT KINGSBURGH.

VERORDENINGE VIR DIE BEHEER VAN DIE STRANDGROND EN ADMIRALITEITSRESERWE.

1. Hierdie verordeninge is van toepassing op die grond bekend as die strandgrond en admiraliteitsreserwe geleë tussen die hoogwaterlyn en die grense van private eiendomme.

2. Indien iemand sonder toestemming wat skriftelik en behoudens sodanige voorwaardes en bedinge as wat die raad geskik ag, verleen is, 'n perd, ponie of ander dier wat aan hom behoort of waarvoor hy toesig het, die admiraliteitsreserwe laat binnegaan of daar laat bly of toelaat dat hy die admiraliteitsreserwe binnegaan of daar bly, is aan 'n misdryf skuldig.

3. Indien iemand sonder skriftelike toestemming wat behoudens sodanige bedinge of voorwaardes as wat die raad in elke geval geskik ag, verleen is, 'n vermaaklikheid of saak of ambag van enige aard teen vergoeding om wins op die admiraliteitsreserwe hou of dryf of uitoeven, is hy aan 'n misdryf skuldig.

4. (a) Enigeen wat 'n motorvoertuig, bespanne voertuig of fiets in die admiraliteitsreserwe inbring of daar bestuur, dryf of ry, behalwe op sodanige openbare paaie as wat die raad bepaal en onder die omstandighede vermeld in paragraaf (b) hiervan, is aan 'n misdryf skuldig.

(b) Paragraaf (a) van hierdie artikel is nie van toepassing op 'n ambulans wat wettiglik as sodanig gebruik word, of op 'n voertuig wat in geval van nood in die plek van 'n ambulans gebruik word, of op enige voertuig wat 'n werknemer of beampete van die raad by die uitvoering van sy pligte gebruik, of op enige voertuig waarvan die bestuurder/drywer die raad se skriftelike toestemming in sodanige bestuur/dryf by hom het nie.

5. Enigeen wat elders op die admiraliteitsreserwe as in sodanige gebiede as wat deur die raad vir sulke doeleindes opgesit is, 'n tent of kamp opslaan, is aan 'n misdryf skuldig.

6. (a) Die raad kan een of meer van sy werknemers of beampetes belas met die taak om toe te sien dat hierdie verordeninge behoortlik nagekom word en om enige oortreding daarvan aan te meld by die owerhede aan wie vervolging weens misdade opgedra is.

(b) Enigeen wat hom met enige sodanige werknemer of beampete van die raad bemoei of hom hinder wanneer hy sy pligte wettiglik in belang van die raad uitoefen, is aan 'n misdryf skuldig.

7. Enigeen wat enige van hierdie verordeninge oortree, is aan 'n misdryf skuldig en by veroordeling strafbaar met 'n boete van hoogstens vyfzig rand (R50.00) in die geval van 'n eerste veroordeling of, in die geval van 'n tweede of later veroordeling weens 'n dergelike oortreding, 'n boete van hoogstens eenhonderd rand (R100.00) of, by wanbetaling van 'n boete wat in enigeen van die gevalle opgelê is, gevangenisstraf vir 'n tydperk van hoogstens drie maande; met dien verstande dat daar in die geval van 'n voortdurende oortreding 'n boete van hoogstens vyf rand (R5.00) vir elke dag waarop die oortreding voortgeduur het, opgelê kan word, maar geen boete soos voornoemd mag in enige enkele vervolging of binne een maand eenhonderd rand (R100.00) te bowe gaan nie.

ANNEXURE "H"

***No. 628, 1981**

12 November 1981

THE Administrator has been pleased in terms of section 270 of the Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974), to approve of the following amending bylaw made by the Town Council of the Borough of Kingsburgh.

BOROUGH OF KINGSBURGH**BYLAWS FOR THE CONTROL OF BEACH LANDS
AND ADMIRALTY RESERVE: AMENDMENT**

The bylaws published on 5 December 1968 under Provincial Notice No. 602 of 1968 are hereby amended by the substitution for bylaw 7 of the following:

"7. Any person who shall contravene any of these by-laws shall be guilty of an offence and liable, upon conviction, to a fine not exceeding two hundred rand (R200) in the case

of a first conviction, or in the case of a second or subsequent conviction for the same offence, a fine not exceeding four hundred rand (R400) or, in default of payment of any fine imposed in either case, to imprisonment, for any period not exceeding three months; provided that in the case of a continuing offence a fine not exceeding ten rand (R10) for each day upon which the contravention continued may be prescribed, but no such fine shall in any one prosecution, or within any one month exceed four hundred rand (R400)."

13/3/2/1/64

***No. 628, 1981**

12 November 1981

DIT het die Administrateur behaag om ooreenkomstig artikel 270 van die Ordonnansie op Plaaslike Owerhede, 1974 (Ordonnansie No. 25 van 1974), sy goedkeuring te heg aan onderstaande wysigingsverordening soos deur die Stadsraad van die Munisipaliteit Kingsburgh aangeneem.

MUNISIPALITEIT KINGSBURGH**VERORDENINGE VIR DIE BEHEER VAN DIE STRAND-
GROND EN ADMIRALITEITSRESERWE:
WYSIGING**

Die verordeninge soos op 5 Desember 1968 by Provinsiale Kennisgewing No. 602 van 1968 gepubliseer, word hierby gewysig deur artikel 7 deur die volgende te vervang:

"7. Enigeen wat enige van hierdie verordeninge oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand (R200) in die

geval van 'n eerste skuldigbevinding of, in die geval van 'n tweede of daaropvolgende skuldigbevinding weens dieselfde oortreding, met 'n boete van hoogstens vierhonderd rand (R400) of, by wanbetaling van 'n boete wat in enigeen van die gevalle opgelê is, met gevangenisstraf vir 'n tydperk van hoogstens drie maande; met dien verstande dat daar in die geval van 'n woortdurende oortreding 'n boete van hoogstens tien rand (R10) opgelê kan word vir elke dag waarop die oortreding voortgeduur het, maar geen sodanige boete mag by 'n enkele vervolging of binne 'n enkele maand vierhonderd rand (R400) oorskry nie."

13/3/2/1/64

*No. 222, 1983

2 June 1983

BOROUGH OF KINGSBURGH
BYLAWS FOR THE CONTROL OF BEACH LANDS AND
ADMIRALTY RESERVE: AMENDMENT

THE Administrator has in terms of section 270 of the Local Authorities Ordinance, 1974 (Ordinance 25 of 1974), approved the amendment by the Town Council of the Borough of Kingsburgh of the bylaws published on 5 December 1968 under Provincial Notice 602 by the insertion after bylaw 2 of the following bylaw:

"2A. No person shall allow any dog being his property or in his charge to enter or remain upon the following areas of the Admiralty Reserve:

- (i) The area bounded in the north by the prolongation in an easterly direction of the northern boundary of Lot 73, Kingsburgh, to its point of intersection with the high water mark, and in the south by the prolongation in an easterly direction of the southern boundary of Lot 73, Kingsburgh, to its point of intersection with the high water mark.
- (ii) The area bounded in the north by the prolongation in an easterly direction of the southern boundary of Lot 362, Kingsburgh, to its point of intersection with the high water mark and in the south by the prolongation in an easterly direction of the northern boundary of Lot 225, Kingsburgh, to its point of intersection with the high water mark.
- (iii) The area bounded in the north by the prolongation in an easterly direction of the southern boundary of Lot 415, Kingsburgh, to its point of intersection with the high water mark and in the south by the prolongation in an easterly direction of the southern boundary of Lot 371, Kingsburgh, to its point of intersection with the high water mark."

13/3/12/8/64

*No. 222, 1983

2 Junie 1983

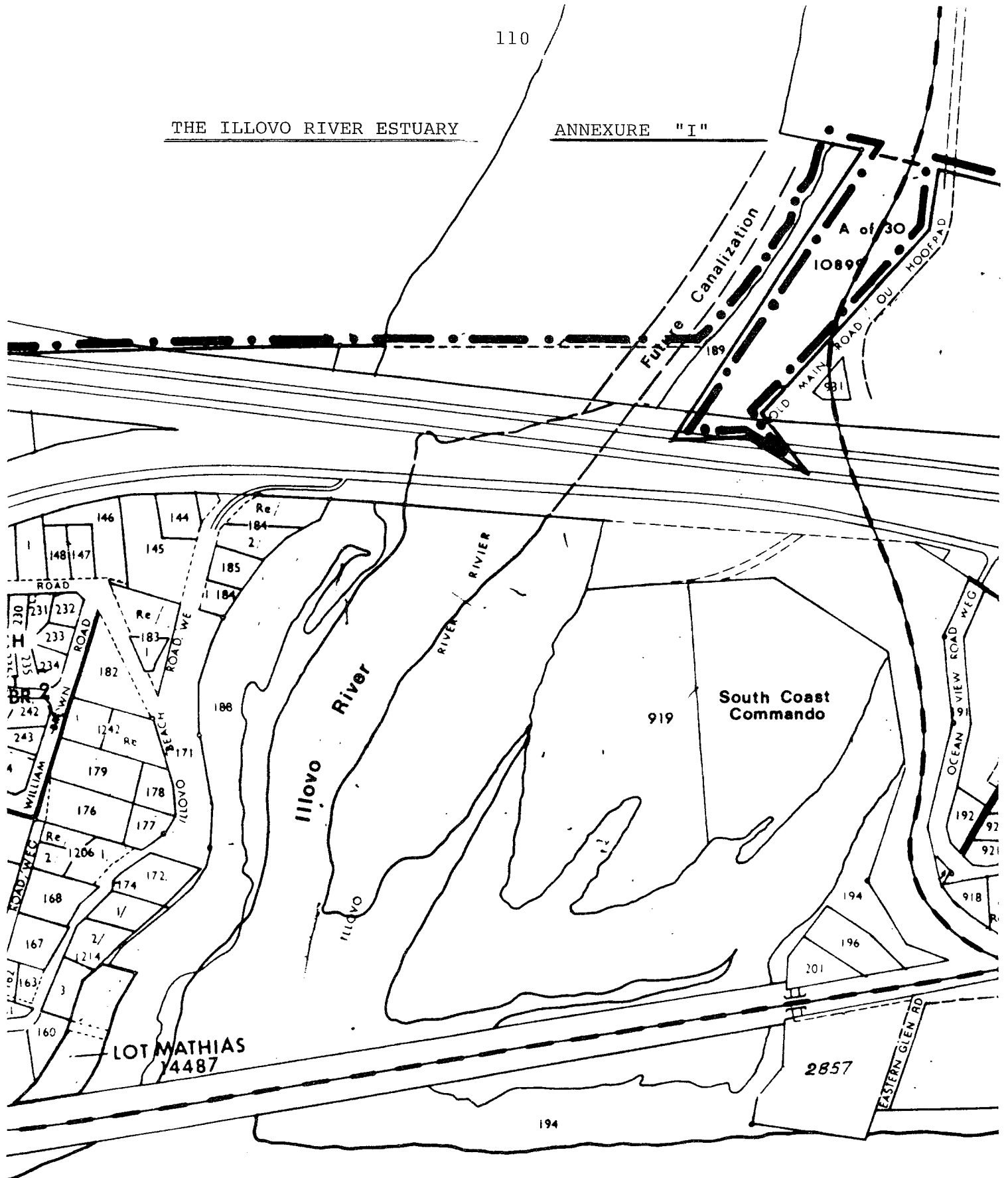
MUNISIPALITEIT KINGSBURGH
VERORDENINGE VIR DIE BEHEER VAN STRANDGROND
EN ADMIRALITEITSRESERWE: WYSIGING

DIE Administrateur het ooreenkomstig artikel 270 van die Ordonnansie op Plaaslike Owerhede, 1974 (Ordonnansie 25 van 1974), goedkeuring verleen aan die Stadsraad van die Munisipaliteit Kingsburgh se wysiging van die verordeninge, soos op 5 Desember 1968 by Provinsiale Kennisgewing 602 gepubliseer, deur die volgende artikel na artikel 2 in te voeg:

"2A. Niemand mag 'n hond wat sy eiendom of onder sy sorg is, toelaat om die volgende gebiede van die Admiraliteitsreserwe binne te gaan of daar te wees nie:

- (i) Die gebied begrens in die noorde deur die verlenging in 'n oostelike rigting van die noordelike grens van Lot 73 Kingsburgh, tot by sy kruisingspunt van die hoogwaterlyn en in die suide deur die verlenging in 'n oostelike rigting van die suidelike grens van Lot 73, Kingsburgh, tot by sy kruisingspunt van die hoogwaterlyn.
- (ii) Die gebied begrens in die noorde deur die verlenging in 'n oostelike rigting van die suidelike grens van Lot 362 Kingsburgh, tot by sy kruisingspunt van die hoogwaterlyn en in die suide deur die verlenging in 'n oostelike rigting van die noordelike grens van Lot 225 Kingsburgh, tot by sy kruisingspunt van die hoogwaterlyn.
- (iii) Die gebied begrens in die noorde deur die verlenging in 'n oostelike rigting van die suidelike grens van Lot 415 Kingsburgh, tot by sy kruisingspunt van die hoogwaterlyn en in die suide deur die verlenging in 'n oostelike rigting van die suidelike grens van Lot 371 Kingsburgh, tot by sy kruisingspunt van die hoogwaterlyn."

13/3/12/8/64



SOME NOTES ON PROPERTY BOUNDARIES IN RELATION TO TIDAL RIVERS
AND/OR LAGOONS WITH PARTICULAR REFERENCE TO LOT 919 KINGSBURGH :
D.A. McLEAN

1.0 The Sea Shore Act (No. 21 of 1935) provides the necessary definitions in considering this topic.

1.1 "sea" means the water and the bed of the sea below low-water mark including the water and the bed of any deep tidal river and of any tidal lagoon.

1.2 "tidal lagoon" and "tidal river" mean respectively any lagoon or that part of any river, in which a rise and fall of the water level takes place as a result of the action of the tides. (Case law indicates that if any barrier "will yield to engineering skill" or to flood action, the river/lagoon is tidal).

1.3 The State President is the owner of the sea and the sea shore (land and water between high and low water mark) except for any portion thereof alienated before the commencement of the Act or any portion subsequently alienated in accordance with certain provisions of the Act. Generalising, the consent of both Houses of Parliament is necessary before any permanent alienation may be made, excluding a lease.

2.0 Water facing boundaries are not fixed (notwithstanding their representation on a registered diagram) and in fact move, in accordance with the doctrine of alluvion as the river or sea, onto which they face, moves.

2.1 This doctrine rests upon the principle that a riparian owner should not be cut off from his access to water, when or if the water line changes.

2.2 On the same basis, a curvilinear boundary separated from the water resource by a line at a fixed distance from the latter (e.g. the "admiralty reserve") moves in sympathy with any movement of the water resource.

2.3 It must be stated that only accretion or erosion brought about by a gradual process are acceptable as causes for the movement of the water line. Movement due to violent natural phenomena or the works of man are excluded from the principle.

3.0 Case law is abundant in respect of curvilinear boundaries but decisions are naturally confined to the particular circumstances of each case.

3.2 However, certain principles emerge and may be broadly stated as according priority to the description of the boundary contained in the original deed or grant, failing which any description contained in the diagram is taken as indicating the intention.

4.0 Lot 919 Kingsburgh

4.1 Having established the broad principles it is appropriate now to consider the particular case of the above.

4.2 The property was originally granted as "Illovo River Recreation Ground No. 10939".

4.3 Subsequently the State resumed the northern portion as Sub 1 leaving the remainder owned by the Town Council of Kingsburgh which is the land on which dumping is currently taking place.

4.4 The western and northern boundaries of this remainder are hard or rectilinear and provide no problems; the remaining boundaries are soft or curvilinear and provide not only problems but anomalies.

4.5 The original grant (No. 10939) describes the soft boundaries as "bounded southwards by the Umzimbazi River and eastwards by the Indian Ocean".

4.6 Clearly the grant is not to be relied upon as current maps indicate the Umzimbazi as being the next river southwards; the Indian Ocean is acceptable and accords with 1.1 above.

4.7 The diagram describes the soft boundary as "Inner bank of Illovo River" and must be accepted as the grant description is demonstrably unreliable.

4.8 From the aerial photograph available it is apparent that human agencies have been at work which may well have influenced the southern boundary and more than probably the easterly boundaries, so that it is reasonable to assume that the Court would not uphold any application for extended boundaries resulting from accretion. The state of the tide when the air photo was taken is not known.

5.0 Beacons

5.1 Lastly it must be noted that the diagram of Sub 1 substituted hard boundaries for the poorly defined "Illovo River" boundary.

4.2 As to the remainder, since indicatory beacons were placed in the original survey, and replaced by a subsequent survey in 1972, these indicating beacons, though not defining any boundaries, must be taken into account in determining the extent of the property, that is to say that the relationship between the fixed points defined by the beacons ensure that curvilinear boundary can be recovered to plottable accuracy.

6.0 Conclusions

6.1 In the circumstances it would be reasonable to assume that any attempt to extend the boundaries of the Remainder is not justifiable and that the dumping problem will in all probability be confined to the registered boundaries.

6.2 On the general question of providing plans indicating estuarine high water marks, the records of the Surveyor-General's office can and do show high water marks where available, as interpreted from cadastral records. These records are however not particularly reliable as to soft boundaries, more particularly since the surveys relate to grants dating back as much as a hundred years or more.

6.3 Having regard to the principle that soft boundaries are not fixed but can move with the movement of the sea or river boundary, it is apparent that individual cases can only be dealt with on an ad hoc basis, taking into account all the information available in any particular case.

6.4 The determination of a high water mark by field measurement is a laborious and time consuming, not to mention expensive, task which it would be difficult to justify.

6.5 The possibility however exists that this line might be capable of establishment by photogrammetric techniques, but even so would be expensive.

7.0 Acknowledgements

7.1 The legal aspects of this Topic have been gleaned from discussions with the professional staff of the Surveyor General's office, from a paper by R.N. West, Surveyor General, read before CONSAS in 1978 and from "The Land Surveyor and the Law" by Messrs K.W. Simpson and G.M.J. Sweeney.

8.0 Plans

8.1 Copies of the survey diagram, and a working plan indicating the replaced indicatory beacons, are appended, in respect of Lot 919 Kingsburgh.

D.A. McLEAN
20.7.82

KB/ple