

CIRCULAR LETTER NO. 470

(This letter supersedes Circular Letter No. 334)

June 30, 2016

TO ALL BRITISH COLUMBIA LAND SURVEYORS

**Re: Ambulatory Natural Boundaries and Artificial High Water Marks –
Effects on the Extent of Ownership**

When conducting surveys under the *Land Title Act*, of properties that have a natural boundary, it is important to understand the extent of ownership under common law. When lawful accretion and erosion occur, the extent of ownership changes and will no longer be represented by the plan on which title is based. The determination of the true extent of ownership at any given time requires both research and site evaluation.

This Circular Letter looks at a few different scenarios with respect to natural boundaries, which can affect the determination of the extent of ownership.

- A. Accretion and Erosion
- B. Artificial Changes
- C. Natural Boundary Shown Inaccurately on Registered Plan

A. Accretion and Erosion

In accordance with principles of common law, a parcel having a natural boundary continues to be bound by that natural boundary as new land lawfully accretes or lawfully erodes. A certificate of title to a parcel is most commonly based upon the survey plan that created the parcel. As such, where a parcel is bound by a natural boundary, the older the plan, the more likely it is that the extent of ownership is no longer accurately captured by the registered plan. Depending on the dynamics of the water body, a survey plan of a parcel having a natural boundary serves to provide a true and accurate account of the land within the parcel, perhaps, only briefly.

Where the land surveyor finds that lawful accretion has occurred, the owner of the parcel may wish to have ownership of the new land reflected in their certificate of title. In these circumstances, the land surveyor can proceed with an application to the Surveyor General in accordance with section 94(1)(c) of the *Land Title Act*.

.../2

On titled lands where slow and imperceptible erosion has occurred along a natural boundary, ownership of the land below the natural boundary has been lost and, if the foreshore is provincial Crown land, the eroded land is provincial Crown land. In these situations, the land surveyor must return the eroded areas to the Crown on his or her survey plan to ensure that the extent of land reflected in the new certificate of title properly reflects the true extent of ownership. Lands labelled as being returned to the Crown will vest in the Crown pursuant to section 107(1) or 108(1) of the *Land Title Act*.

B. Artificial Changes

In some situations, the task of determining the location of the present natural boundary is complicated by flooding, by excavation or by the placement of fill.

In situations where a body of water has been artificially raised and the adjacent lands have been flooded, the location of the present natural boundary will generally be as it was located immediately prior to the flooding activity. Similarly, where an excavation has occurred or fill has been placed the present natural boundary will generally remain at its location immediately prior to the excavation of material or the placement of fill. It is the responsibility of the land surveyor to employ the best forensic means to determine where the present natural boundary was located immediately before flooding, excavation or filling occurred. Although the choice of forensic tools is site specific, land surveyors might consider the use of historical ground or air photographs, trenching or coring. In some situations, it may be concluded that the plan upon which title is based provides the best evidence of the location of the present natural boundary.

C. Natural Boundary Shown Inaccurately on Registered Plan

Where a land surveyor concludes that the location of a natural boundary has not changed since the date of deposit of the plan upon which a certificate of title is based, but that the depiction of the location of the natural boundary on the plan is incorrect, the land surveyor should proceed with an application to the Surveyor General in accordance with section 94(1)(d) of the *Land Title Act*.

To provide clarity in the land title records it is essential that the location of the natural boundary upon which the existing title is based and the location of the present natural boundary both be shown on *Land Title Act* plans. General Survey Instruction Rule 3-4(2)(a) exists to ensure this fundamental requirement is met.

So that land title records best reflect the current extent of ownership of waterfront parcels land surveyors are encouraged to proceed pursuant to section 94 of the *Land Title Act* where lawful accretion exists or where the depiction of the location of the natural boundary on the plan upon which title is based is incorrect. [Circular Letter No-449](#)* provides guidance on accretion and natural boundary adjustment applications pursuant to section 94 of the *Land Title Act*.

Yours sincerely,



Mike Thomson, BCLS
Surveyor General of British Columbia

* Original Circular Letter contained a typo here and referred incorrectly to Circular Letter No-449, this should actually read **459**.