



DEPARTMENT OF THE NAVY  
OFFICE OF THE GENERAL COUNSEL

(804)444-9507  
A/V 564-9507  
O9CA:RMR:bs:0802c  
5800  
28 AUG 1985

COUNSEL FOR THE  
ATLANTIC DIVISION  
NAVAL FACILITIES ENGINEERING COMMAND  
NORFOLK, VIRGINIA 23511

MEMORANDUM FOR CODE 241

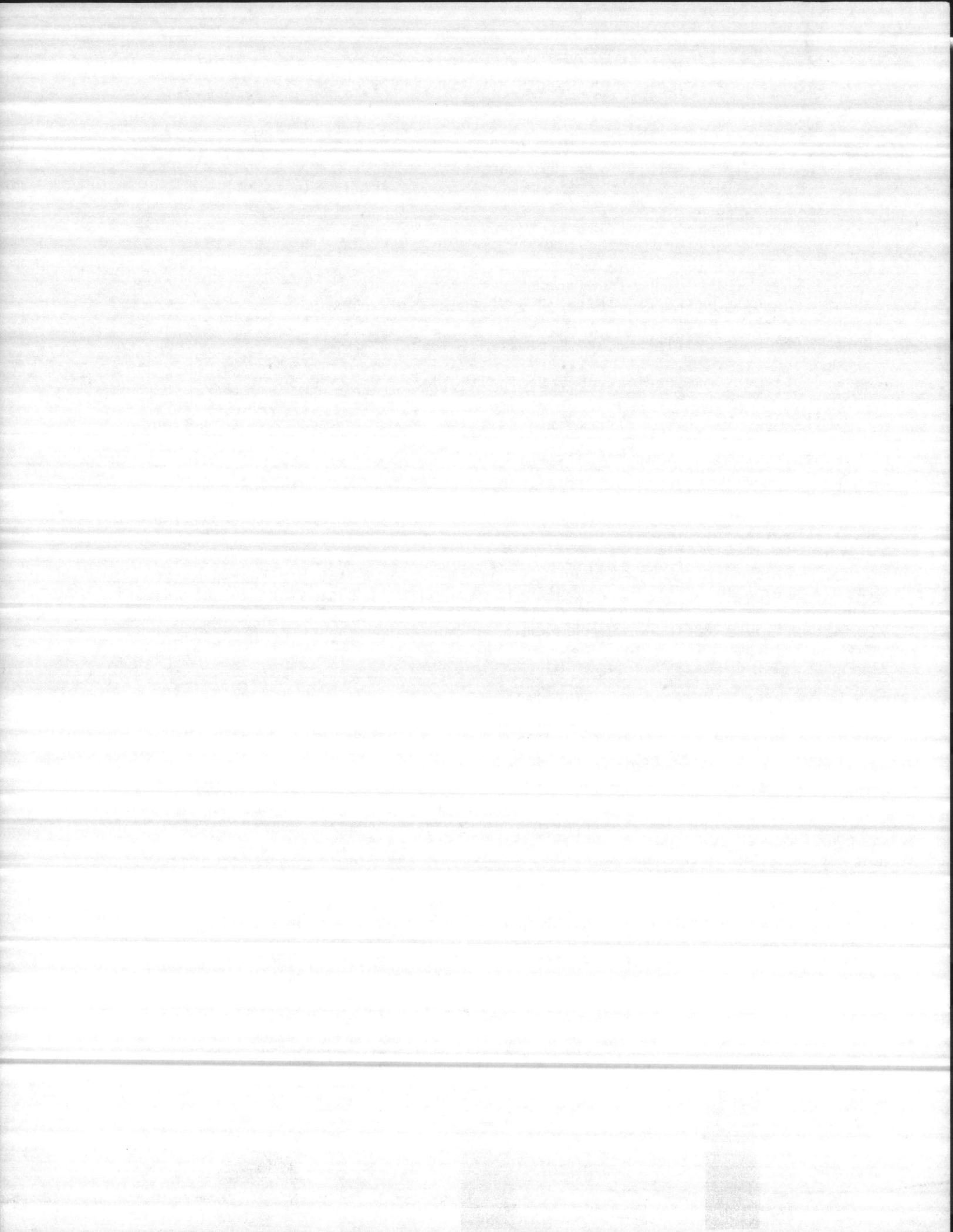
Subj: CHANGES IN PROPERTY LINES DUE TO ACCRETION/AVULSION

Ref: (a) Code 241B1 Memorandum of 21 May 1985

Encl: (1) Copy of Section 146-6 North Carolina State Code

1. Reference (a) requested an opinion as to ownership of newly formed land created by natural relocation of the inlets at Marine Corps Base, Camp Lejeune, North Carolina.
2. The common law with regard to ownership of new property created along navigable waterways by natural accretion or avulsion is somewhat unsettled. Generally speaking, however, property which is added to riparian land by accretion belongs to the riparian land owner. In North Carolina this principle has been recognized by the legislature and is expressed in Section 146-6 (a) of the State Code. In the case of Camp Lejeune since the boundary runs to the high water mark any gradual change in that high water mark due to accretion would result in the accumulated land belonging to Camp Lejeune. This would also be the case where the entire mouth of the inlet was shifted by natural causes.
3. With regard to newly formed islands such as would be the case if the New River inlet was suddenly shifted by a storm, the common law is again somewhat unsettled, depending on whether or not the new land was created gradually or suddenly. Generally speaking, such islands become the property of the owner of the bed of the navigable water, in this case, the state of North Carolina. This principle has also been codified in Section 146-6 (d) of the North Carolina State Code. In the case of Camp Lejeune it would appear that any new island created from what was once Government property would become the property of the State.
4. A question was also raised as to the jurisdictional status of new land created as outlined above. In the case of land added by accretion, the jurisdiction would be proprietary since existing law requires that the United States affirmatively accept jurisdiction. In the case of a newly created island, since it would become the property of the state, federal jurisdiction is not in question.

ROBERT M. ROYLANCE  
Assistant Counsel



transaction. (R.C., c. 66, s. 12; 1872-3, c. 194, s. 2; Code, ss. 2514, 2515, 2529; 1889, c. 243, s. 4; Rev., s. 4049; C.S., s. 7621; G.S., s. 146-94; 1959, c. 683, s. 1.)

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

### § 146-5. Reservation to the State.

In any sale of the vacant and unappropriated lands or swamplands by the State, the following powers may be expressly reserved to the State, to be exercised according to law:

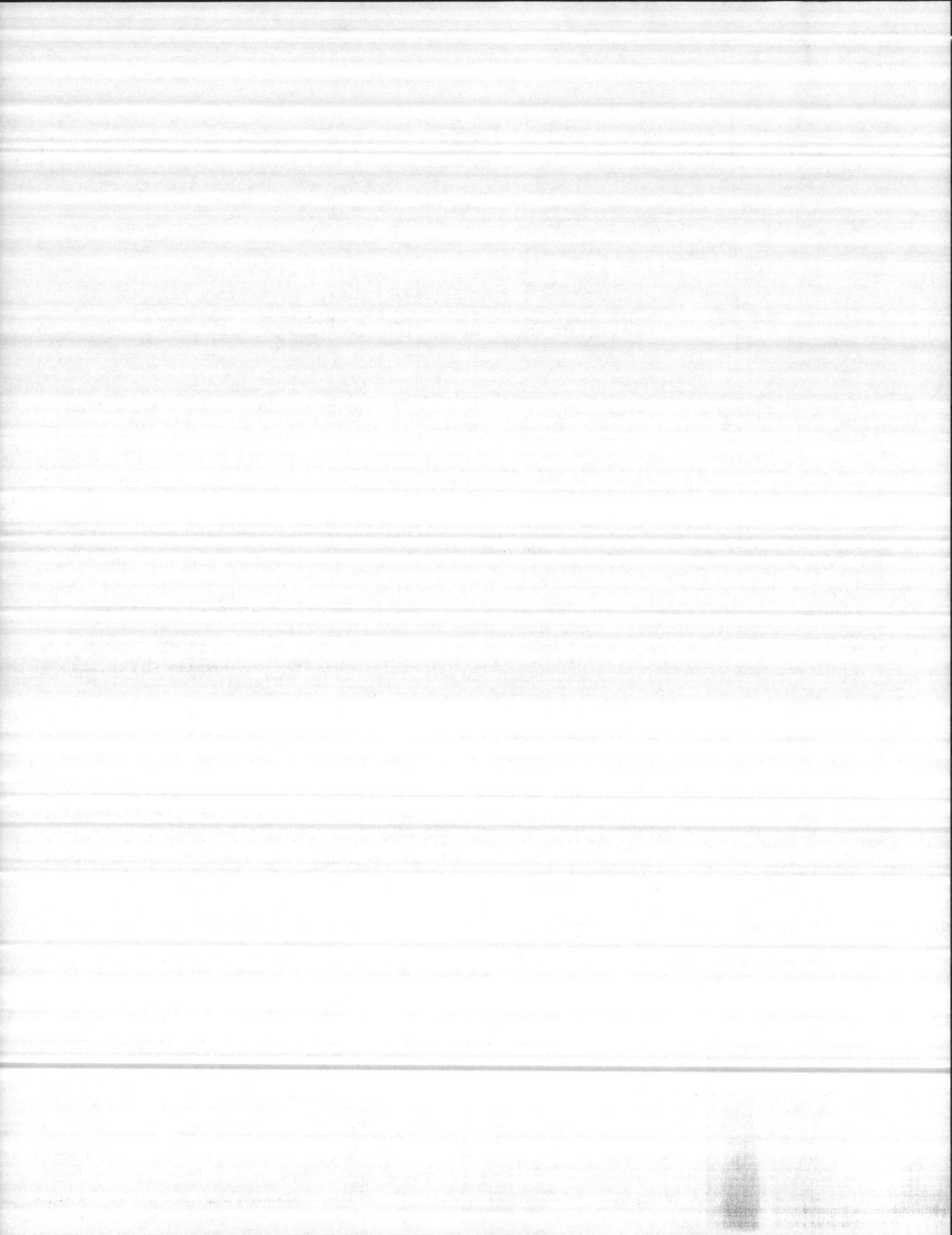
- (1) The State may make any reasonable and expedient regulations respecting the repair of the canals which have been cut by the State, or the enlargement of such canals.
- (2) The State may impose taxes on the lands benefited by those canals for their repair, and they shall not be closed.
- (3) The navigation of the canals shall be free to all persons, subject to a right in the State to impose tolls.
- (4) All landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by law in such cases.
- (5) The roads along the banks of the canals shall be public roads. (1872-3, c. 118; Code, s. 2534; Rev., s. 4050; C.S., s. 7622; G.S., s. 146-95; 1959, c. 683, s. 1.)

### § 146-6. Title to land raised from navigable water.

(a) If any land is, by any process of nature or as a result of the erection of any pier, jetty or breakwater, raised above the high watermark of any navigable water, title thereto shall vest in the owner of that land which, immediately prior to the raising of the land in question, directly adjoined the navigable water. The tract, title to which is thus vested in a riparian owner, shall include only the front of his formerly riparian tract and shall be confined within extensions of his property lines, which extensions shall be perpendicular to the channel, or main watercourses.

(b) If any land is, by act of man, raised above the high watermark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the provisions of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the commission of the act which caused the raising of the land in question shall have been previously approved in the manner provided in subsection (c) of this section.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such person shall have 30 days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural causes, no easement to fill shall be required. In such a case the Department shall give the applicant written permission to proceed with the project. If the purpose of the proposed fill is not to reclaim lands lost by natural causes and the Department finds that



the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the written permission or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such written permission or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(d) If an island is, by any process of nature or by act of man, formed in any navigable water, title to such island shall vest in the State and the island shall become a part of the vacant and unappropriated lands of the State. Provided, however, that if in any process of dredging, by either the State or federal government, for the purpose of deepening any harbor or inland waterway, or clearing out or creating the same, a deposit of the excavated material is made upon the lands of any owner, and title to which at the time is not vested in either the State or federal government, or any other person, whether such excavation be deposited with or without the approval of the owner or owners of such lands, all such additions to lands shall accrue to the use and benefit of the owner or owners of the land or lands on which such deposit shall have been made, and such owner or owners shall be deemed vested in fee simple with the title to the same.

(e) The Governor and Council of State may, upon proof satisfactory to them that any land has been raised above the high watermark of any navigable water by any process of nature or by the erection of any pier, jetty or breakwater, and that this, or any other provision of this section vests title in the riparian owner thereof, whenever it may be necessary to do so in order to establish clear title to such land in the riparian owner, direct execution of a quitclaim deed thereto, conveying to such owner all of the State's right, title, and interest in such raised land. (1959, c. 683, s. 1; 1979, c. 414.)

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

#### CASE NOTES

Applied in *Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach*, 277 N.C. 297, 177 S.E.2d 513 (1970).

