

## Mark Wise

---

**From:** Jenkins, John <JJenkins@ngnlaw.com>  
**Sent:** Tuesday, February 11, 2014 11:27 AM  
**To:** Mark Wise; Jeff Littrell  
**Cc:** Garner, Bill  
**Subject:** Okaloosa County - Shoal River Acquisition; Mineral Rights  
**Attachments:** Title Insurance Policy.pdf

Attached please find the Title Insurance Policy covering the 353 acres by the County in 2007. Schedule B, paragraph 7 identifies certain instruments that reserve mineral rights on the property. In looking into these mineral rights we reviewed the online records, and the only deed that comes after the 1983 deed from International Paper to Triad Timber is a 1988 quit claim deed from Triad to Haiseal Timber, Inc., the County's seller. That makes the 1983 International Paper deed the property's root of title (i.e., the most recent deed that is at least 30 years old), and it clearly contains both the mineral rights reservation and the rights of ingress, egress, and use of the surface for exploring, drilling, etc. We are not aware of any other statutory provisions that would extinguish either the rights themselves or the right of entry to exercise them, based on this chain of title.

The 1983 deed says that International Paper shall have no rights that would lapse or terminate by operation of adverse possession, prescription, or similar laws unless it has perfected those rights prior to September 30, 1982. However, based on these deeds, the Florida Marketable Records Title Act (MRTA) would not have operated to extinguish any of International Paper's rights prior to 1982. The language is unusual for a deed, so there may have been some concern in 1983 as to adverse possessors or some other factual situation, but what that was can't be determined from the deeds.

Rather than a one-time reservation, we have a chain in which each prior owner reserved a piece of the mineral rights, therefore requiring releases from multiple parties. Looking at the deeds alone, the ownership of the mineral rights would be as follows:

- The Duggans et al. (O.R. Book 232/326) reserved a 49% interest.
- W.C. Rasberry (464/334) reserved ½ of what he owned (he presumably owned the other 51% not reserved by the Duggans, so his reservation was for 25.5%).
- The Stacks (919/171) reserved ½ of what *they* owned (presumably the remaining 25.5% not reserved by the Duggans or Rasberry, so their reservation was for 12.75%).
- Then there is a gap in title between ITT Rayonier which took title from the Stacks in 919/171, and International Paper which deeded out to Triad in 1983. We have no information on what ITT Rayonier might have reserved.
- International Paper (1190/1526) reserved its entire mineral interest when deeding to Triad in 1983, so, assuming that ITT Rayonier reserved no mineral rights to itself, then International Paper would have owned and reserved the remaining 12.75% interest (the portion not previously reserved by the Duggans, Rasberry or the Stacks).

However, because MRTA extinguishes rights-of-entry for mineral rights that pre-date the root of title, it is possible that right of entry (though not the mineral rights themselves) for all the holders except International Paper could be considered barred. In that case the holder of the mineral rights may be entitled to royalties from any mining, but may not initiate mining on the property, and the County could place restrictions on the property accordingly. A further search has been initiated to determine if there have been any assignments from the

original holders that occurred after the root of title, in which case the right of entry would be preserved, even for the older interests.

Any use by the County is going to be subject to the mineral right interests of International Paper for which right of entry is not barred, unless a release of those rights is obtained. The owners in the chain prior to International Paper also have interests in the minerals (unless they have been assigned to third parties), but right of entry by those prior owners to exercise their rights may be barred by MRTA.

I hope this explains the issue and as always, feel free to call with any questions.

**John R. Jenkins**



1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
(850) 224-4070 Tel.  
(850) 224-4073 Fax

*The information contained in this e-mail message is intended for the personal and confidential use of the recipient(s) named above. This message and its attachments may be an attorney-client communication and, as such, is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or e-mail and delete the original message. Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein. Thank you.*

Clint



# MADISON LAND & TITLE, LLC

The Madison Building  
1020 Ferdon Boulevard South  
Crestview, Fl 32536

*Blessed is the man that  
walketh not in the counsel of  
the ungodly. But his delight  
is in the Law of the Lord.  
Psalms 1:1,2*

Mark H. Welton, Closing Attorney  
A. Wayne Williamson, Closing Attorney  
Kristen D. Ellis, Closing Manager  
Brandy Adams, Closing Agent  
John R. Gordon, Closing Agent

April 23, 2007

Telephone: (850)682-2120  
Telecopier: (850)689-0706  
[kristen@welwill.com](mailto:kristen@welwill.com)  
[brandy@welwill.com](mailto:brandy@welwill.com)  
[JohnG@welwill.com](mailto:JohnG@welwill.com)

Okaloosa County Water and Sewer  
Attention: Jeff Littrell  
1804 Luis Turner Blvd., Suite 300  
Fort Walton Beach, Fl 32547

RE: Property purchased from Haiseal Timber

Dear Mr. Littrell,

Enclosed with this letter is the original Owners Policy for the property that Okaloosa County just purchased from Haiseal Timber, Inc.

Please feel free to contact me if you have any questions.

Sincerely,

Kristen D. Ellis  
Closing Manager for  
Madison Land & Title



ALTA - OWNER'S POLICY (10/17/92)  
FLORIDA MODIFIED

OP-1-FL1055-37

OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY  
**WESTCOR LAND**  
**TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, WESTCOR LAND TITLE INSURANCE COMPANY, a Florida corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

*IN WITNESS WHEREOF WESTCOR LAND TITLE INSURANCE COMPANY* has caused this policy to be signed and sealed as of the Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

Issued By:

**WESTCOR LAND TITLE INSURANCE COMPANY**

Madison Land & Title, LLC  
1020 S. Ferndon Blvd.  
Crestview, FL 32536



By: *Mary O'Donnell*  
President

Attest: *R. Peter Stevens*  
Secretary

# OWNER'S FORM

## Schedule A

State: **Florida** County: **Okaloosa**

Agent File No. #: **FL1055 \* M07-0066**

Plant File No.	Policy Number	Effective Date	Effective Time	Amount of Policy
<b>07-0705</b>	<b>OP-1-FL1055-37</b>	<b>March 15, 2007</b>		<b>\$1,050,000.00</b>

or the date of recording of the insured  
Warranty Deed, whichever is later.

Simultaneous #:

Reinsurance #: **RI-07-054**

1. Name of Insured:

**OKALOOSA COUNTY, FLORIDA, a political subdivision of the State of Florida**

2. The estate or interest in the land described herein and which is covered by this policy is:

**Fee Simple**

3. The estate or interest referred to herein is at Date of Policy vested in the insured.

4. The land referred to herein is described as follows:

**See Attached Schedule A, Continuation Page**



Countersigned Authorized Signatory

Issued By: **FL1055 \*M07-0066**  
**Madison Land & Title, LLC**  
**1020 Ferdon Blvd.**  
**Crestview, Florida 32536**

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference.

# OWNER'S FORM

## Schedule B

This policy does not insure against loss or damage by reason of the following exceptions:

1. **Rights or claims of parties in possession not shown by the Public Records.**
2. **Encroachments, overlaps, boundary lines disputes, and other matters which would be disclosed by an accurate survey and inspection of the premises.**
3. **Easements or claims of easements not shown by the Public Records.**
4. **Taxes or special assessments which are not shown as existing liens by the public records.**
5. **Taxes and assessments for the year 2007 and subsequent years, which are not yet due and payable.**

**\*\*\* The following items, as listed above, are hereby deleted: Items 1 and 4 \*\*\***

6. Anything to the contrary notwithstanding, this policy does not attempt to set out in the manner in which all the oil, gas and minerals in, on or under the property described in Schedule A are now vested, and this policy does not insure any oil, gas or minerals in, on or under the property described in Schedule A, nor any rights or easements in connection therewith. Element of coverage 3b of the Florida Form 9 comprehensive Endorsement issued herewith, if any, shall not apply with respect to this item.
7. Reservations affecting rights in Oil, Gas or any other Minerals, lying upon or beneath the lands insured hereby, pursuant to that instrument recorded in Official Records Book 232 at Page 326, Official Records Book 464, Page 334, Official Records Book 919, Page 171 and Official Records Book 1190, Page 1526, of the Public Records of Okaloosa County, Florida. (No determination has been made as to the current record holder of such mineral interest). Element of coverage 3b of the Florida Form 9 comprehensive Endorsement issued herewith, if any, shall not apply with respect to this item.
8. Easement recorded in Official Records Book 919, at Page 171, of the Public Records of Okaloosa County, Florida.
9. Terms and conditions as recorded in Official Records Book 1190, Page 1526, of the Public Records of Okaloosa County, Florida.
10. Riparian rights and littoral rights, if any, incident to the land.
11. The rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary line separating the publicly used area from the upland private area.
12. Easement in favor of American Telephone & Telegraph Company recorded in Official Records Book 1374, at Page 1240, of the Public Records of Okaloosa County, Florida.

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference.

# OWNER'S FORM

13. Subject to the rights of others in and to the stream or waterway as reflected on tax assessor's map, or otherwise located thereon, and any portion of captioned lands lying beneath the mean or ordinary high water line of the stream or waterway is neither insured nor guaranteed.
14. Gulf Power Company Easement as recorded in Official Records Book 137, Page 352, of the Public Records of Okaloosa County, Florida.

Note: This Policy consists of insert pages labeled Schedule A and B. This policy is of no force and effect unless all pages are included along with any added pages incorporated by reference.

# Westcor Land Title Insurance Company

## Schedule A, Continuation Page

### Parcel A – Section 26, Township 3 North, Range 23 West

Commencing at a concrete monument marking the Northwest corner of Section 26, Township 3 North, Range 23 West, Okaloosa County, Florida, proceed South 88 degrees 41 minutes 05 seconds East 1425.00 feet along the North line of said Section 26 to the point of beginning; thence continue South 88 degrees 41 minutes 05 seconds East 1000.00 feet; thence departing section line proceed South 03 degrees 41 minutes 05 seconds East 1000.00 feet; thence South 16 degrees 18 minutes 55 seconds West 1500.00 feet; thence South 04 degrees 34 minutes 54 seconds East 811.86 feet to a point on the Northerly right of way line of Interstate 10; thence North 88 degrees 56 minutes 08 seconds West 999.82 feet along said right of way line; thence departing said right of way line proceed North 04 degrees 33 minutes 46 seconds West 816.23 feet; thence North 16 degrees 18 minutes 55 seconds East 1500.00 feet; thence North 03 degrees 41 minutes 05 seconds West 1000.00 feet to the Point of Beginning. Said parcel containing 74.72 acres, more or less.

### Parcel B – Section 26, Township 3 North, Range 23 West

Commencing at an iron pipe marking the Southwest corner of Section 26, Township 3 North, Range 23 West, Okaloosa County, Florida, proceed South 89 degrees 00 minutes 40 seconds East 1071.08 feet along the South line of said Section 26 to the Point of Beginning; thence continue South 89 degrees 00 minutes 40 seconds East 1000.00 feet; thence departing section line proceed North 14 degrees 47 minutes 48 seconds East 1138.86 feet; thence North 04 degrees 34 minutes 54 seconds West 595.51 feet to a point on the Southerly right of way line of Interstate 10; thence North 88 degrees 52 minutes 07 seconds West 1000.05 feet along said right of way line; thence departing said right of way line proceed South 04 degrees 33 minutes 46 seconds East 597.99 feet; thence South 14 degrees 47 minutes 48 seconds West 1138.86 feet to the Point of Beginning. Said parcel containing 39.02 acres, more or less.

### Parcel C – Section 35, Township 3 North, Range 23 West

Commencing at an iron pipe marking the Northwest corner of Section 35, Township 3 North, Range 23 West, Okaloosa County, Florida, proceed South 89 degrees 00 minutes 40 seconds East 1071.08 feet along the North line of said Section 35 to the Point of Beginning; thence continue South 89 degrees 00 minutes 40 seconds East 1000.00 feet; thence departing said section line proceed South 08 degrees 13 minutes 50 seconds East 1544.29 feet; thence South 22 degrees 17 minutes 20 seconds West 573.22 feet; thence South 61 degrees 11 minutes 24 seconds West 1144.06 feet to a point on the South line of the Northwest quarter of said Section 35; thence North 88 degrees 52 minutes 45 seconds West 1034.75 feet along said line to the Southwest corner of the Northwest quarter of said Section 35; thence North 00 degrees 49 minutes 01 second West 216.91 feet along the West line of said Section 35; thence departing section line proceed North 32 degrees 41 minutes 42 seconds East 1115.11 feet; thence North 00 degrees 00 minutes 00 seconds East 982.72 feet; thence North 42 degrees 47 minutes 25 seconds East 639.22 feet to the Point of Beginning. Said parcel containing 92.43 acres, more or less.



# Westcor Land Title Insurance Company

## Parcel D – Section 35, Township 3 North, Range 23 West

Commencing at the Southwest corner of Section 35, Township 3 North, Range 23 West proceed North 00 degrees 49 minutes 01 seconds West 892.18 feet along the West line of said section to the Point of Beginning; thence continue North 00 degrees 49 minutes 01 seconds West 483.81 feet; thence departing section line proceed South 88 degrees 48 minutes 35 seconds East 867.00 feet; thence South 00 degrees 49 minutes 01 seconds East 483.81 feet; thence North 88 degrees 48 minutes 35 seconds West 867.00 feet to the Point of Beginning. Said parcel contains 9.62 acres, more or less.

## Parcel E – Section 34, Township 3 North, Range 23 West

Beginning at the Southeast corner of Section 34, Township 3 North, Range 23 West, Okaloosa County, Florida proceed North 88 degrees 38 minutes 53 seconds West 2399.84 feet along the South line said section; thence departing section line proceed North 40 degrees 24 minutes 15 seconds East 3259.83 feet; thence North 00 degrees 49 minutes 01 seconds West 300.00 feet; thence North 89 degrees 10 minutes 59 seconds East 250.00 feet to a point on the East line of said Section 34; thence South 00 degrees 49 minutes 01 seconds East 2842.78 feet along said East line to the Point of Beginning. Said parcel contains 78.75 acres, more or less.

## Parcel F – Section 3, Township 2 North, Range 23 West

Beginning at the Northeast corner of Section 3, Township 2 North, Range 23 West, Okaloosa County, Florida proceed North 88 degrees 38 minutes 53 seconds West 2399.84 feet along the North line of said Section 3; thence departing section line proceed South 40 degrees 24 minutes 15 seconds West 890.14 feet; thence South 01 degrees 56 minutes 31 seconds East 838.73 feet; thence North 90 degrees 00 minutes 00 seconds East 641.30 feet; thence North 57 degrees 40 minutes 30 seconds East 2729.40 feet to the Point of Beginning. Said parcel contains 58.62 acres, more or less.

## CONDITIONS AND STIPULATIONS - CONTINUED

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

### 7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) *(This paragraph dealing with Coinsurance was removed from Florida policies.)*

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

### 8. APPORTIONMENT

If the land described in Schedule [A] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

### 9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it

shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

### 11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

### 12. PAYMENT OF LOSS

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

### 13. SUBROGATION UPON PAYMENT OR SETTLEMENT

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

### 14. ARBITRATION

*(This paragraph was modified for Florida policies.)*

*Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be determined if agreed to by both Company and the insured. Arbitrable matters may include, but are not limited to, any controversy or claim between Company and the insured arising out of or relating to this policy, and service of Company in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof*

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.