

“Levels and Ownership of Submerged Lands in the Great Lakes”

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Generally, the land under navigable waters in lakes and streams is publicly owned below the high water mark. The Environmental Law Clinic has taken a proactive approach to submerged lands of interest. In the Great Lakes area, this means dealing with eight state governments who have ownership to the international boundary with Canada.

Submerged lands are held in public trust. The limited privatization that has occurred favors economic development. Public rights include navigation, fishing, and swimming, except in NY, where most non-tidal and non-Great Lakes submerged lands are privately held.

When water levels change, property boundaries move with these results:

- Avulsion – shoreline suddenly moves; no change in title, upland owner can fill
- Accretion – land gradually grows; added to upland owner’s property
- Erosion – land slowly washed away; added to public trust
- Reliction – water level gradually falls; added to upland owner property

Shoreline owners have riparian rights, such as: reasonable use of waters, and reach to navigable waters (which implies construction of infrastructure over formerly or shallowly emerged lands).

Ms. Vallone then reviewed the possible legal system responses to changed water levels, which include:

- Modify deed recording system
- Property tax system respond
- Coast land use P&X updates
- Adjust to federal navigation servitude
- Possible alteration or acquisition of riparian rights
- Potential revisiting of laws re water use

Impacts on the private conservation of submerged lands result. Conservation easements are typically applied to permanent property interests, with the following results:

- Courts can refuse to enforce covenants
- Lease contracts may be terminated
- Lease contract may be rescinded

If the government conveys a conservation easement and reliction occurs, does the conservation easement convey to the new owner? It is time to start planning a coordinated response in the Great Lakes!

Do we have adequate baseline information on current conditions? Can we predict habitat shifts? What new resources need to be protected? How should legal and management agencies respond?

Current legal research at the law clinic is focused upon:

- Miles of coastline and acreage of submerged lands
- Agencies managing water quality and related resources
- Public trust boundaries
- Ownership of reliction lands
- State laws and policies on conservation leasing of submerged lands
(See handout; looking for feedback)