

CHAPTER XXIV

SUBMERGED LAND, NAVIGATIONAL SERVITUDE AND RIPARIAN RIGHTS



STANDARD 24.1

TITLE TO GREAT LAKES BOTTOMLANDS

STANDARD: TITLE TO GREAT LAKES BOTTOMLANDS LYING WITHIN THE BOUNDARIES OF THE STATE OF MICHIGAN IS HELD BY THE STATE IN FEE SIMPLE AND IN TRUST FOR THE PEOPLE OF THE STATE EXCEPT LAND PATENTED OR LAWFULLY CONVEYED OR CONFIRMED BY THE UNITED STATES BEFORE STATEHOOD OR THEREAFTER BY THE STATE OF MICHIGAN.

Problem: Richard Roe owned Blackacre, which had Lake Michigan water frontage. Private title to Blackacre originated with a U.S. patent in 1840. Roe constructed a wharf on Lake Michigan submerged land contiguous to Blackacre. Roe deeded Blackacre together with the wharf and the submerged land to Simon Grant. Did Grant acquire title to the submerged land?

Answer: No.

Authorities: *Illinois Central R Co v Illinois*, 146 US 387, 13 S Ct 110, 36 L Ed 1010 (1892); *People v Silberwood*, 110 Mich 103, 67 NW 1087 (1896); *People v Warner*, 116 Mich 228, 74 NW 705 (1898); *State v Lake St Clair Fishing & Shooting Club*, 127 Mich 580, 87 NW 117 (1901); *Nedtweg v Wallace*, 237 Mich 14, 211 NW 647 (1927); and *Obrecht v National Gypsum Co*, 361 Mich 399, 105 NW2d 143 (1960).

Comment A: The principle stated in the Standard has also been applied to Lake St. Clair. *Nedtweg v Wallace*, *supra*.

- Comment B:** The character of the State's title in trust is discussed in *Nedtweg v Wallace, supra*, which upheld the constitutionality of a Michigan statute that authorized the State to lease lake bottomlands to private parties for private uses.
- Comment C:** The Great Lakes Submerged Lands Act, MCL 322.701 *et seq.*, now codified as Part 325 of the Natural Resources and Environmental Protection Act, MCL 324.32501 *et seq.*, adopted after the decision in *Nedtweg v Wallace, supra*, required the Michigan Department of Environmental Quality to make certain findings in addition to those required under *Nedtweg*, before disposing of any Great Lakes bottomlands or permitting use of the waters of the Great Lakes. Both before and after the adoption of 1955 P.A. 247, the Legislature by public act and joint resolution authorized certain conveyances of State-owned Great Lakes bottomlands. Those conveyances lawfully disposed of the State's title to such land. See, for example, 1907 JR 15, 1913 P.A. 326 (now codified as Part 339 of the Natural Resources and Environmental Protection Act, MCL 324.33901 *et seq.*), 1954 P.A. 41, 1955 (Ex Sess) P.A. 8, 1956 P.A. 36, 1959 P.A. 11, 1959 P.A. 31 and 1962 P.A. 84.
- Comment D:** Certain Great Lakes bottomlands were patented by the United States before the admission of Michigan as a State. Title to such land did not vest in the State upon its admission to the Union. *Klais v Danowski*, 373 Mich 262, 129 NW2d 414 (1964). See also, 43 USC 1301.
- Comment E:** The United States has a navigational servitude over the waters of the Great Lakes which arises under the Commerce Clause of the U. S. Constitution. The servitude is not affected by the State's ownership of the Great Lakes bottomlands. Such ownership was confirmed in *Illinois Central R Co v Illinois, supra*, and by the Submerged Lands Act, 43 USC 1301, *et seq.*
- Comment F:** There is no statute of limitations barring the State from taking legal action regarding possession of unpatented Great Lakes bottomland or made land formerly submerged by the waters of the Great Lakes. MCL 317.294. Title to the land cannot be acquired by adverse possession. *State v Venice of America Land Co*, 160 Mich 680, 125 NW 770 (1910). There are circumstances, however, in which the State may be estopped from asserting title. *Oliphant v Frazho*, 381 Mich 630, 167 NW2d 280 (1969).

Comment G: Part 325 of the Natural Resources and Environmental Protection Act, MCL 324.32501 *et seq.*, governs, *inter alia*, the use and occupancy of lake bottomland and made land in the Great Lakes lying within the boundaries of the State of Michigan. Part 325 permits the sale, lease or other conveyance of Great Lakes bottomlands by the Department of Environmental Quality.

Note: See Standard 24.2 concerning title to land submerged by waters other than those of the Great Lakes.

STANDARD 24.2

TITLE TO LAND SUBMERGED BY WATERS OF NATURAL WATERCOURSES OTHER THAN GREAT LAKES

STANDARD: TITLE TO LAND SUBMERGED BY WATERS OF NATURAL WATERCOURSES OTHER THAN THE GREAT LAKES IS VESTED IN THE ABUTTING LANDOWNERS.

Problem: Brown owned Blackacre, which abutted Muskegon Lake. White took sand and gravel from the submerged land abutting Blackacre without Brown's consent. Is White liable to Brown for damages?

Answer: Yes.

Authorities: *Lorman v Benson*, 8 Mich 18, 77 AD 435 (1860); *McMorran Milling Co v D H Little Co*, 201 Mich 301, 167 NW 990 (1918); *Hall v Wantz*, 336 Mich 112, 57 NW2d 462 (1953).

Comment A: This Standard concerns title to land submerged by waters of naturally-occurring inland watercourses, i.e., inland lakes, rivers, streams and ponds, although the courts have applied the same analysis to land submerged by artificial impoundments on natural streams. *Hartz v Detroit, P & N Ry*, 153 Mich 337, 116 NW 1084 (1908); *Moore v Provost*, 205 Mich 687, 172 NW 410 (1919). Note, however, that Part 301 of the Natural Resources and Environmental Protection Act, MCL 324.30101 *et seq.*, includes both natural and artificial watercourses in the definition of a regulated "inland lake or stream."

Comment B: Watercourses which empty into or connect the Great Lakes are considered inland waters. *Lorman v Benson*, 8 Mich 18 (1860) (Detroit River); *Rice v Ruddiman*, 10 Mich 125 (1862) (Muskegon Lake); *Ryan v Brown*, 18 Mich 196, 100 AD 154 (1869) (St. Mary's River); *Pere Marquette Boom Co v Adams*, 44 Mich 403, 6 NW 857 (1880) (Pere Marquette Lake); *Webber v The Pere Marquette Boom Co*, 62 Mich 626, 30 NW 210 (1886) (Pere Marquette Lake); *Jones v Lee*, 77 Mich 35, 43 NW 855 (1889) (Muskegon Lake); *Hall v Wantz*, 336

Mich 112, 57 NW2d 462 (1953) (White Lake). See Standard 24.1 for the rule regarding Lake St. Clair.

Comment C: Title to land submerged by natural watercourses other than the Great Lakes is subject to the riparian rights of owners of other riparian or littoral property. *Hilt v Weber*, 252 Mich 198, 233 NW 159 (1930); *Thompson v Enz*, 379 Mich 667, 154 NW2d 473 (1967).

In addition, title to land submerged by waters of navigable watercourses is subject to a navigational servitude in favor of the public.

Comment D: For cases addressing the division of submerged land, see *Clark v Campau*, 19 Mich 325 (1869); *Grand Rapids Ice & Coal Co v South Grand Rapids Ice & Coal Co*, 102 Mich 227, 60 NW 681 (1894); *Hanson v Way Estate*, 25 Mich App 469, 181 NW2d 537 (1970). For cases addressing the division of accreted or relicted land, see *Cutliff v Densmore*, 354 Mich 586, 93 NW2d 307 (1958); *Weisenburger v Kirkwood*, 7 Mich App 283, 151 NW2d 889 (1967); *Booker v Wever*, 42 Mich App 368, 202 NW2d 439 (1972); and *Gregory v LaFaive*, 172 Mich App 354, 431 NW2d 511 (1988).

STANDARD 24.3

NAVIGATIONAL SERVITUDE

STANDARD: A NAVIGATIONAL SERVITUDE FOR THE BENEFIT OF THE PUBLIC EXISTS AS TO:

- (A) A RIVER OR STREAM THAT HAS BEEN USED FOR OR IS CAPABLE OF SUPPORTING COMMERCIAL BOATING OR THE FLOTATION OF LOGS FOR COMMERCIAL PURPOSES;**
- (B) AN INLAND LAKE THAT HAS BOTH A NAVIGABLE INLET AND A NAVIGABLE OUTLET; AND**
- (C) THE GREAT LAKES.**

WHEN A BODY OF WATER IS SUBJECT TO A NAVIGATIONAL SERVITUDE, THE PUBLIC, HAVING GAINED LAWFUL ACCESS, HAS THE RIGHT OF REASONABLE USE OF THE WATERS FOR CERTAIN PURPOSES INCIDENT TO NAVIGATION.

Problem A: Wilma White owned all of the real property surrounding Clear Lake. There was no public access to Clear Lake except via the Red River, which flowed both into and out of the lake. The Red River was historically used to float logs both above and below the lake. White sought a court order to prevent the public from using the Red River as access to Clear Lake for fishing. Is White entitled to the order?

Answer: No. The Red River, which serves as both inlet and outlet to Clear Lake, is navigable. Therefore, Clear Lake is subject to a navigational servitude which permits the public to enter the lake from the navigable river and to fish in the lake.

Problem B: Same facts as in Problem A, except that the Red River was historically capable of floating logs only below Clear Lake. Is White entitled to the order?

Answer: Yes. The Red River is navigable only as an outlet to Clear Lake. Therefore, Clear Lake is not subject to a navigational servitude in favor of the public.

Problem C: Same facts as in Problem A, except that White sought a court order to prevent the public from trapping muskrat on Clear Lake. Is White entitled to the order?

Answer: Yes. The rights to hunt, trap and gather ice for commercial purposes are riparian rights vested in the owners of bottomlands under the waters of the State, regardless of whether the waters are subject to a navigational servitude.

Authorities: Problem A: *Collins v Gerhardt*, 237 Mich 38, 211 NW2d 115 (1926); *Attorney General ex rel Director of Conservation v Taggart*, 306 Mich 432, 11 NW2d 193 (1943); *Bott v Natural Resources Comm'n*, 415 Mich 45, 327 NW2d 838 (1982).

Problem B: *Michigan Conference Assoc of Seventh Day Adventists v Natural Resources Comm'n*, 70 Mich App 85, 245 NW2d 412 (1976).

Problem C: *Lorman v Benson*, 8 Mich 18, 77 Am Dec 435 (1860) (harvesting ice); *Sterling v Jackson*, 69 Mich 488, 37 NW 845 (1888) (hunting); *Grand Rapids Ice & Coal Co v South Grand Rapids Ice & Coal Co*, 102 Mich 227, 60 NW 681 (1894) (harvesting ice); *Johnson v Burghorn*, 212 Mich 19, 179 NW 225 (1920) (trapping); *St Helen Shooting Club v Mogle*, 234 Mich 60, 207 NW 915 (1926) (hunting).

Comment A: The right to use navigable waters of the State was reserved to the public by the Ordinance of 1787 for the government of the territory northwest of the Ohio River, and was originally intended to promote commerce and industry, as opposed to recreational uses. *Moore v Sanborne*, 2 Mich 519 (1853). In later cases, the servitude was expanded to include recreational fishing. *Collins v Gerhardt*, *supra*; *Att'y Gen'l v Taggart*, *supra*. In *Bott v Natural Resources Comm'n*, *supra*, the Michigan Supreme Court in *dicta* stated that recreational fishing was the only non-commercial right which had been specifically recognized as an incident of the navigational servitude. The Court was not called upon to decide, and did not decide, whether recreational boating and other recreational uses were included in the

navigational servitude. Later, in *Thies v Howland*, 424 Mich 282, 380 NW2d 463 (1985), the court (also in *dicta*) stated that under the navigational servitude the public has the right to use the surface of the water in a reasonable manner, and gave as examples boating, fishing, swimming and temporary anchorage. *Thies v Howland, supra*, at 288.

Comment B: The Great Lakes are by definition navigable. *Illinois Central R Co v Illinois*, 146 US 387, 13 S Ct 110, 36 L Ed 1018 (1892). Public rights with respect to the Great Lakes include, but are broader than, those under the navigational servitude. These rights include rights under the public trust doctrine, rights resulting from the State's riparian ownership, rights reserved under the federal navigational servitude (see, Standard 24.1), and rights arising out of the State's ownership of the bottomlands.

Caveat: Michigan courts have addressed the issue of navigability of inland lakes in three situations. First, if both the inlet and outlet to the lake are navigable, the lake is subject to a navigational servitude. *Bott v Natural Resources Comm'n, supra*. Second, if there is neither a navigable inlet nor outlet to the lake, the lake is not subject to a navigational servitude. *Winans v Willetts*, 197 Mich 512, 163 NW 993 (1917); *Pigorsh v Fahner*, 386 Mich 508, 194 NW2d 343 (1972); *State of Michigan v The Summer School of Painting of Saugatuck, Inc., on remand*, 126 Mich App 81, 337 NW2d 322 (1983). Third, if there is only a navigable inlet or a navigable outlet (but not both) and the real property surrounding the lake is owned entirely by a single owner, the lake is not subject to a navigational servitude. *Michigan Conference Assoc of Seventh Day Adventists v Natural Resources Comm'n, supra*. Michigan courts have not addressed the question of whether there is a navigational servitude as to a lake which has only a navigable inlet or a navigable outlet (but not both) and which either (a) is surrounded by real property owned by multiple owners or (b) has historically been used for commercial transportation of passengers or goods.

STANDARD 24.4

RIPARIAN RIGHTS

STANDARD: LAND ABUTTING A NATURAL WATERCOURSE IS RIPARIAN WITH RESPECT TO THAT WATERCOURSE, AND THE LANDOWNER HAS THE RIGHT TO ACCRETIONS AND RELICTIONS. THE OWNER OF LAND ABUTTING A NATURAL LAKE OR POND OR A NAVIGABLE STREAM HAS THE RIGHT TO THE REASONABLE USE OF THAT WATERCOURSE, IN COMMON WITH OWNERS OF OTHER RIPARIAN LAND, FOR:

- (A) GENERAL PURPOSES SUCH AS FISHING, BOATING, BATHING, IRRIGATION AND DOMESTIC USES;
- (B) WHARFING OUT TO NAVIGABLE WATERS; AND
- (C) TRANSIT ACROSS INTERVENING SHALLOWS TO OBTAIN ACCESS TO NAVIGABLE WATERS.

Problem A: Wilma White and Brenda Brown each owned a parcel of land abutting Gun Lake. White sought to enjoin Brown from placing a dock on the shoreline of Brown's parcel. Is White entitled to the injunction?

Answer: No. As a riparian owner Brown is entitled to reasonable use of Gun Lake, including the placing of the dock on her land.

Problem B: Lake View Land Holdings, LLC, owned land abutting Gun Lake. Lake View proposed to develop a subdivision of non-waterfront single family homes on its land and to grant access to the lake to all lot owners in the subdivision by vesting ownership of the lakefront land in a homeowners association consisting of all lot owners. Wilma White, who owned riparian land elsewhere on the lake, sought to enjoin Lake View from granting lake access to all lot owners. Is White entitled to the injunction?

Answer: White's right to an injunction depends on whether the court determines the use of Gun Lake by the lot owners is unreasonable.

Authorities: Problem A: *Hilt v Weber*, 252 Mich 198, 233 NW 159 (1930); *Thompson v Enz*, 379 Mich 667, 154 NW2d 473 (1967); *McCardel v Smolen*, 404 Mich 89, 273 NW2d 3 (1978); *Thies v Howland*, 424 Mich 282, 380 NW2d 463 (1985).

Problem B: *Opal Lake Association v Michaywe Limited Partnership*, 47 Mich App 354, 209 NW2d 478 (1973); *on remand* 63 Mich App 161, 234 NW2d 437 (1975); *Pierce v Riley*, 81 Mich App 39 (1978), 264 NW2d 110, *lv den*, 403 Mich 818 (1978); *Three Lakes Association v Kessler*, 91 Mich App 371, 285 NW2d 300 (1979).

Comment A: Although riverfront property is riparian and lakefront property is littoral, the rights associated with ownership of either are commonly referred to as “riparian” rights.

Comment B: An owner’s riparian rights are subject to the correlative rights of other riparian owners, the police power of the state, and, if the land abuts a navigable watercourse, the public’s rights in the watercourse. The same riparian rights attach to ownership of riparian land whether located on the Great Lakes or on inland lakes or streams. *Hilt v Weber*, 252 Mich 198, 233 NW 159 (1930). However, no riparian rights attach to land abutting artificial bodies of water. *Goodrich v McMillan*, 217 Mich 630, 187 NW 368 (1922); *Ruggles v Dandison*, 284 Mich 338, 279 NW 851 (1938); *Thompson v Enz*, *supra*.

Comment C: “Reasonable use” of riparian rights is decided on a case-by-case basis, by applying such factors as the size of the watercourse, the amount of riparian frontage, current uses of the watercourse, and the character of the watercourse. See, Authorities for Problem B.

Comment D: The Committee expresses no opinion as to the extent of the correlative rights of riparian owners on non-navigable watercourses.

STANDARD 24.5

OWNERSHIP OF RIPARIAN RIGHTS

STANDARD: RIPARIAN RIGHTS ATTACH ONLY TO LAND WHICH ADJOINS A NATURAL WATER-COURSE AND MAY NOT BE SEVERED FROM THAT LAND.

Problem: Wilma White was the owner of Blackacre which adjoined Gun Lake. Brenda Brown was the owner of Greenacre, which was adjacent to Blackacre but had no frontage on the lake. White constructed a channel across Blackacre connecting Gun Lake to Greenacre. Does Brown have riparian rights because of her ownership of Greenacre?

Answer: No. Because Greenacre does not adjoin Gun Lake, its owner has no riparian rights. Greenacre does not acquire riparian rights by virtue of the channel constructed across Blackacre because the channel is not a natural waterway.

Authorities: *Ruggles v Dandison*, 284 Mich 338, 279 NW 851 (1938); *Thompson v Enz*, 379 Mich 667, 154 NW2d 473 (1967).

Comment A: A riparian owner may grant to one or more non-riparians the right to exercise that owner's riparian rights. The exercise of such granted rights is subject to: (a) any limitations the riparian owner imposes on the non-riparian; and (b) any existing limitations on the rights of the riparian owner, including the restriction that the cumulative exercise of rights relating to the riparian parcel not be unreasonable. Thus, in the Problem, if White permits Brown to use the channel to cross Blackacre to gain access to Gun Lake, Brown may exercise White's riparian rights in the lake, to the extent granted by White. However, Greenacre remains non-riparian land, and the rights Brown may exercise are limited by the reasonableness standard applicable to Blackacre (See, Standard 24.4, Problem B).

Comment B: A parcel of land separated from a natural watercourse by a highway or walkway, where the highway or walkway is contiguous to the watercourse, is riparian, unless a contrary intention appears in the chain of title. *Croucher v Wooster*, 271 Mich 337, 260 NW 739 (1935); *Meridian Twp v Palmer*, 279 Mich 586, 273 NW 277 (1937); *Thies v*

Howland, 424 Mich 282, 380 NW2d 463 (1985). If a dedicated highway or walkway parallels and is contiguous to a natural watercourse, the rights (if any) of the public for access to and use of the watercourse from the highway or walkway are determined by the scope of the dedication. *Thies v Howland*, *supra*; *Meridian Twp v Palmer*, *supra*; *McCardle v Smolen*, 404 Mich 89, 273 NW2d 3 (1978). If a highway or walkway (whether public or private) terminates at a natural watercourse, the way is generally deemed to provide access to the water for the use of those persons entitled to use the highway or walkway. *Backus v City of Detroit*, 49 Mich 110, 13 NW 380 (1882); *Thies v Howland*, *supra*.

Comment C: Riparian rights are not alienable, severable, divisible or assignable apart from the land that includes or is bounded by a natural watercourse. *Thompson v Enz*, *supra*. However, riparian rights may be subject to easements, licenses, and similar interests. *Little v Kin*, 468 Mich 699, 664 NW2d 746 (2003).

Comment D: Michigan courts have not addressed the question of how far from the water's edge a riparian parcel may extend. It is unclear whether a riparian parcel may extend beyond the watershed or whether non-riparian land becomes riparian when added (by common ownership) to a riparian parcel. See, 1 Beck, *Waters and Water Rights*, § 7.02(a)(2), (2001 Replacement Vol); Tarlock, *Law of Water Rights and Resources*, § 3.47 (Release 18, 2006).

Caveat: In *Newaygo Portland Cement Co v Sheridan Twp*, 137 Mich 475, 100 NW 747 (1904), a property tax case, the court approved separate assessment of bottomlands and riparian rights severed from the upland. The court did not address the propriety of the severance of riparian rights. All later cases follow the holding in *Thompson v Enz*, *supra* that riparian rights are not severable.

STANDARD 24.6

BOUNDARY OF REAL PROPERTY ABUTTING GREAT LAKES

STANDARD: THE WATERFRONT BOUNDARY LINE OF REAL PROPERTY ABUTTING THE GREAT LAKES IS:

- (A) THE GOVERNMENT LAND OFFICE MEANDER LINE, IF TITLE ORIGINATED WITH A SWAMP LAND PATENT AND THE WATER'S EDGE IS LANDWARD OF THE MEANDER LINE;**
- (B) THE GOVERNMENT LAND OFFICE MEANDER LINE OR THE NATURALLY OCCURRING WATER'S EDGE, WHICHEVER IS FURTHER LAKEWARD, IF TITLE ORIGINATED WITH EITHER A BRITISH OR FRENCH LAND GRANT CONFIRMED BY THE UNITED STATES OR A PATENT THAT PREDATES STATEHOOD; OR**
- (C) THE NATURALLY OCCURRING WATER'S EDGE, IF TITLE ORIGINATED WITH A PATENT THAT POST DATES STATEHOOD AND IS NOT A SWAMP LAND PATENT.**

Problem A: Mike White conveyed a government lot abutting Saginaw Bay to Brenda Brown. Private title to the lot originated with a patent from the State under the Swamp Land Patent Act of 1850. In 1997 the water's edge was 100 feet landward of the meander line shown on the original government land office survey. Does Brown's title to the lot extend to the meander line?

Answer: Yes.

Problem B: Mike White conveyed a parcel of land abutting Lake St. Clair to Brenda Brown. Private title to the land originated with a land grant from the British Crown, confirmed by the United States in 1811. In 1997 the water's edge was 100 feet landward of the meander line

shown on the original government land office survey. Does Brown's title to the land extend to the meander line?

Answer: Yes.

Problem C: Mike White conveyed a parcel of land abutting Lake Michigan to Brenda Brown. Private title to the land originated with a patent in 1840. In 2002 the water's edge was approximately 100 feet lakeward of the meander line shown on the original government land office survey. Does Brown's title extend to the water's edge?

Answer: Yes.

Problem D: Same facts as in Problem C, except that in 1997 the water's edge was 100 feet landward of the meander line shown on the original government land office survey. Does Brown hold title to that part of the land lying lakeward of the water's edge?

Answer: No.

Authorities: Problem A: *Sterling v Jackson*, 69 Mich 488, 37 NW 845 (1888); *Brown v Parker*, 127 Mich 390, 86 NW 989 (1901).

Problem B: *Klais v Danowski*, 373 Mich 262, 129 NW 2d 414 (1964).

Problems C and D: *Hilt v Weber*, 252 Mich 198, 233 NW 159 (1930).

Comment A: A land patent is an instrument issued by a government to convey public land. Black's Law Dictionary (8th ed), p 1156. A meander line is a survey line that is intended to approximate the location of the water's edge at the time of the survey. *Pere Marquette Boom Co v Adams & Lord*, 44 Mich 403, 6 NW 857 (1880).

Comment B: *Hilt v Weber*, *supra*, holds that the lakeward boundary of title to land abutting the Great Lakes moves with the naturally-occurring water's edge, if title originated with a post-statehood patent. However, the Court expressly distinguished the analysis of title under a swamp land patent from the analysis of title under a U.S. patent of public land. 252 Mich at 210-212. The courts have not addressed title under a swamp land patent to exposed land lying between the meander line and the water's edge of the Great Lakes.

- Comment C:** The State and federal governments exercise regulatory authority over the area below the ordinary high water mark and over the area below the water level of the Great Lakes. Rivers and Harbors Act, §10, 33 USC 403; Clean Water Act, 23 USC 1251, *et seq.*; Part 325 of the Natural Resources and Environmental Protection Act, MCL 324.32501 *et seq.*, (formerly the Great Lakes Submerged Lands Act, 1955 P.A. 247).
- Comment D:** Littoral land on the Great Lakes is subject to a public trust extending to the ordinary high water mark, a line that lies “where ‘the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic.’” *Glass v Goeckel*, 473 Mich 667, 674, 703 NW2d 58 (2005), *cert den*, 546 US 1174, 126 S Ct 1340, 164 L Ed 2d 54 (2006). The public trust includes the right of the public to walk on the beach below the ordinary high water mark. The ordinary high water mark for public trust purposes is different from the regulatory ordinary high water mark under Part 325 of the Natural Resources and Environmental Protection Act, MCL 324.32501 *et seq.* (formerly the Great Lakes Submerged Lands Act, 1955 P.A. 247). Part 325 establishes a regulatory boundary at a defined elevation (“ordinary high water mark”) for each Great Lake. For regulatory purposes, this artificial boundary avoids uncertainty arising from a boundary line that changes with the water level of the Great Lakes. This regulatory boundary does not, however, determine the lakeward extent of the title to privately-owned land abutting the Great Lakes. *Glass v Goeckel*, *supra*, at 682.

