Opponents' Exhibit 4: Case Law Re: Ownership of Land Ends at the Mean High Water Mark.

Connecticut law states that private property ends at the mean high water mark. *Simons v. French*, 25 Conn. 346, 351 (1856). The phrases "high water mark," "mean high water mark" and "ordinary high water mark" are all the same measurement. Private ownership of land extends from the mean high water mark landward. In Long Island Sound from the mean high water mark waterward, the State of Connecticut is the owner. *Michalezo v. Woodmont*, 175 Conn. 535, 538 (1978). "It is settled law in this State that the public, whose representative is the State, is the owner of the soil between high and low-water mark upon navigable water where the tide ebbs and flows." *State v. Knowles-Lombard Co.*, 122 Conn. 263, 265 (1936). (Long Island Sound of Madison, CT,) "In this state, the owners of land bounded on a harbor own only to the high-water mark . . ." *Poneleit v. Dudas*, 141 Conn. 413, 419 (1954). The Department of Environmental Protection of the State of Connecticut has published the attached Public Trust Fact Sheet which outlines this statement of the law. "In Connecticut, a line of state Supreme Court cases dating back to the earliest days of the republic confirm that private ownership ends at mean high water line, and that the state holds title to the lands waterward of mean high water subject to the private rights of littoral or riparian access."

The property located at 89 Saddle Rock Road only agreed to the Zoning Application if their property did not become nonconforming. Without a survey the Board of Representatives will in essence, if it approves this Zoning Application, be cramming the Zoning Application down on this property owner, in addition to the owner at 102 Saddle Rock Road.

Connecticut Department of Energy & Environmental Protection

The Public Trust

What are the public's rights along Connecticut's shore?

Connecticut's shore belongs to the people--not just in terms of our environmental and cultural heritage, but in a specific legal sense as well. Under the common law public trust doctrine, a body of law dating back to Roman times, all coastal states as sovereigns hold the submerged lands and waters waterward of the mean high water line in trust for the public. The general public may freely use these lands and waters, whether they are beach, rocky shore, or open water, for traditional public trust uses such as fishing, shellfishing, boating, sunbathing, or simply walking along the beach. In Connecticut, a line of state Supreme Court cases dating back to the earliest days of the republic confirm that private ownership ends at mean high water line, and that the state holds title to the lands waterward of mean high water, subject to the private rights of littoral or riparian access.

1. What is the public trust area?

The public trust area comprises submerged lands and waters waterward of the mean high water line in tidal coastal, or navigable waters of the state of Connecticut. On the ground, the public trust area extends from the water up to a prominent wrack line, debris line, or water mark. In general, if an area is regularly wet by the tides, you are probably safe to assume that it is in the public trust. The public trust area is also sometimes referred to as tidelands, and is defined as "public beach" by the Connecticut Coastal Management Act, C.G.S. 22a-93(6).

2. What rights does the public have within the public trust area?

"Public rights include fishing, boating, hunting, bathing, taking shellfish, gathering seaweed, cutting sedge, and of passing and repassing. . ." *Orange v. Resnick*, 94 Conn. 573 (1920).

"It is settled in Connecticut that the public has the right to boat, hunt, and fish on the navigable waters of the state." *State v. Brennan*, 3 Conn. Cir. 413 (1965). The public has the right to fish and shellfish over submerged private lands, *Peck v. Lockwood*, 5 Day 22 (1811).

The public has the right to pass and repass in navigable rivers, *Adams v. Pease* 2 Conn. 481 (1818) .

The public may gather seaweed between ordinary high water and low water, *Chapman v. Kimball* 9 Day 38 (1831).

3. Where does private property end?

In almost every case, private property ends, and public trust property begins, at the mean high water line (often referred to as "high water mark" in court decisions). Mean high water is the average of high tides over a defined period, and its elevation can be obtained from standard references, including the U.S. Army Corps of Engineers Tidal Flood Profile charts.

The public owns up to "high water mark," *Simons v. French,* 25 Conn. 346 (1856).

Title of riparian proprietor terminates at ordinary high water mark, *Mather v. Chapman*, 40 Conn. 382 (1873).

"High water mark" = "mean high water mark" = "ordinary high water mark." Private ownership of submerged lands is possible, only when basins are dredged from upland, or from inland, non-navigable waters. *Michalczo v. Woodmont*, 175 Conn. 535 (1978).

4. What rights does the adjacent private landowner have within the public trust area?

The adjacent landowner has the exclusive riparian or littoral right of access to navigable water. This does not mean that the owner can exclude others from the adjacent waters, but that only the owner may get to the water from his or her upland, as by constructing a dock or other structures where appropriate and appropriately authorized. In terms of access, navigable waters are equivalent to a public road, and a dock serves the same purpose as a private driveway. A littoral landowner may not exclude the public from lawful uses of the public trust area, just as an upland owner cannot exclude the public from driving or walking on the street in front of his or her house. Of course, nuisance behavior in the public trust, such as littering, intoxication, etc. would constitute a breach of the peace, just as if done by neighbors on adjacent upland property.

5. How does the public trust doctrine relate to coastal regulation and permitting?

Both the U.S. Army Corps of Engineers and the Connecticut Department of Energy and Environmental Protection, Office of Long Island Sound Programs (OLISP) regulate activities such as dredging, filling, and construction waterward of the high tide line, and in tidal wetlands. The high tide line, defined by statute and often associated with the one-year frequency flood event, is **landward** of the mean high water line; thus, the area subject to coastal regulation is greater than the public trust area, and includes an area of private ownership between the two tide lines. Because OLISP considers public trust interests in the course of permit proceedings, it is sometimes a source of confusion that the State's permitting requirements overlap with its ownership interest. In practice, however, OLISP's single permit process coordinates both sources of legal authority.

6. How can I find out more?

There is considerable scholarly analysis of the public trust doctrine throughout the United States, mostly in legal and coastal management journals and conferences. A good place to start is the one-volume study Putting the Public Trust Doctrine to Work, a June 1997 report of the National Public Trust Study, or by contacting OLISP at (860) 424-3034.

--Remember, whether you are a waterfront property owner or simply a member of the general public, the Department of Energy and Environmental Protection is committed to protecting your rights on the shore.

Content Last Updated on April 24, 2012