

MLTA Education

Michigan Water Law

Maura A. Snabes
Jerome E. Jelinek

November 10, 2021

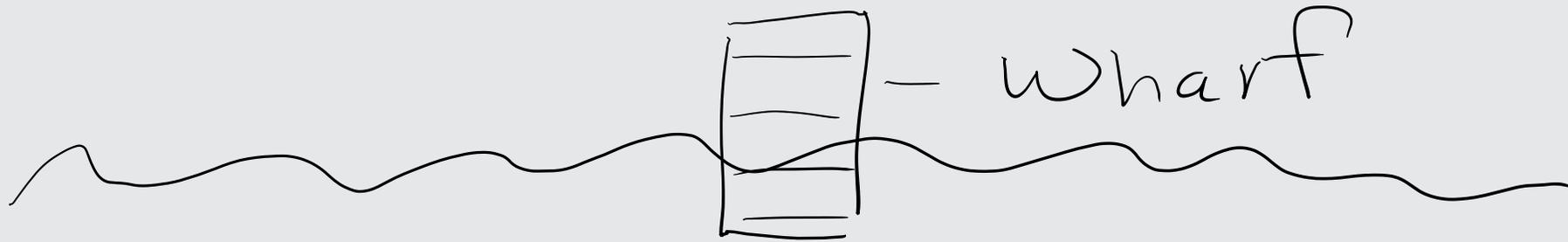


Agenda

- Ownership of Bottomlands
- Riparian Rights
- Division of Bottomlands
- Use of Water Surface
- Boundary of the Great Lakes
- Commitment Exceptions

OWNERSHIP OF BOTTOMLANDS

Lake Michigan



Blackacre
(Roe)

OWNERSHIP OF BOTTOMLANDS

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 Grant. Did Grant acquire title to the submerged land?

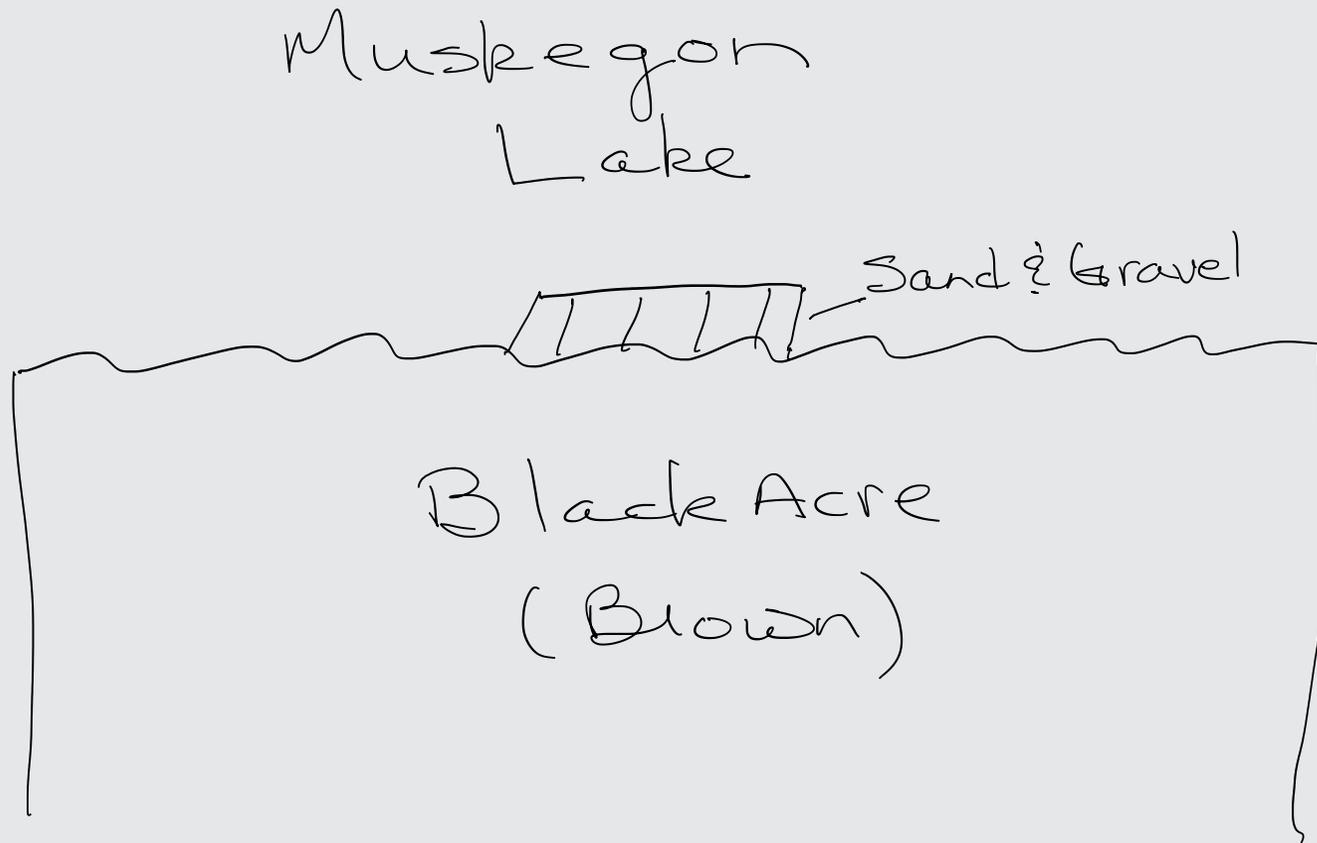
OWNERSHIP OF BOTTOMLANDS

No.

TITLE TO GREAT LAKES BOTTOM LANDS 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 (APPLIES TO LAKE ST. CLAIR ALSO).

TS 24.1

OWNERSHIP OF BOTTOMLANDS



OWNERSHIP OF BOTTOMLANDS

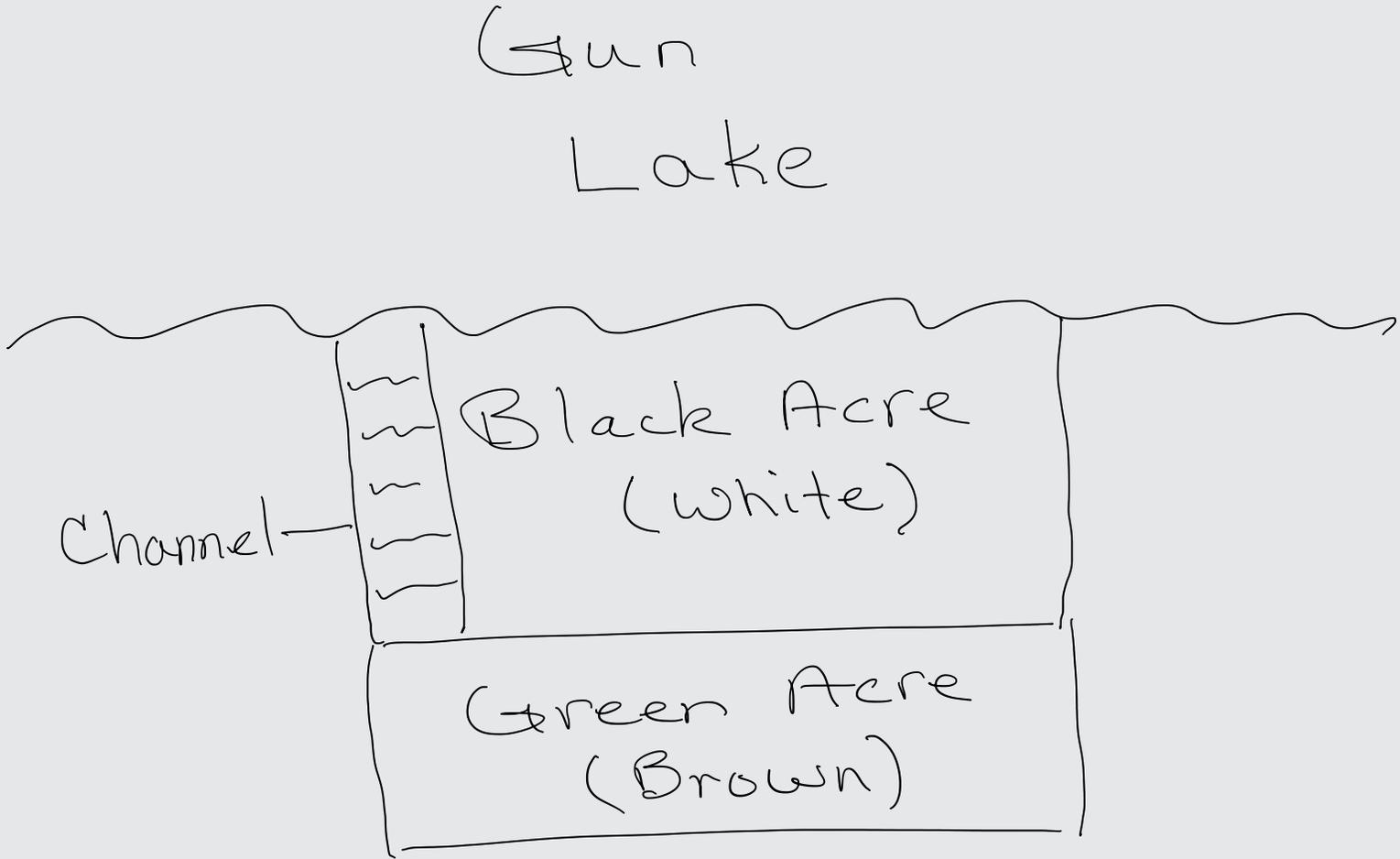
Brown owned Blackacre, which abutted Muskegon Lake. White took sand and gravel from the submerged land abutting Blackacre without Brown's consent. Is White liable to Brown for damages?

OWNERSHIP OF BOTTOMLANDS

Yes.

**TITLE TO LANDS SUBMERGED BY WATERS OF NATURAL WATERCOURSES
OTHER THAN THE GREAT LAKES IS VESTED IN THE ABUTTING
LANDOWNERS. TS 24.2**

RIPARIAN RIGHTS



RIPARIAN RIGHTS

White was the owner of Blackacre which adjoins Gun Lake. 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?

RIPARIAN RIGHTS

No. Because Greenacre does not adjoin Gun Lake, its owners have no riparian rights. The channel constructed across Blackacre is not a natural waterway.

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

(TS 24.5)

RIPARIAN RIGHTS

Same facts. May White permit Brown to use the channel to cross Blackacre to gain access to Gun Lake?

Yes. A riparian owner may grant to non-riparian owners the right to access the owner's riparian rights. However, the cumulative rights exercised relating to the owner's parcel must not unreasonably burden the other riparian owners.

RIPARIAN RIGHTS

Same Gun Lake facts,

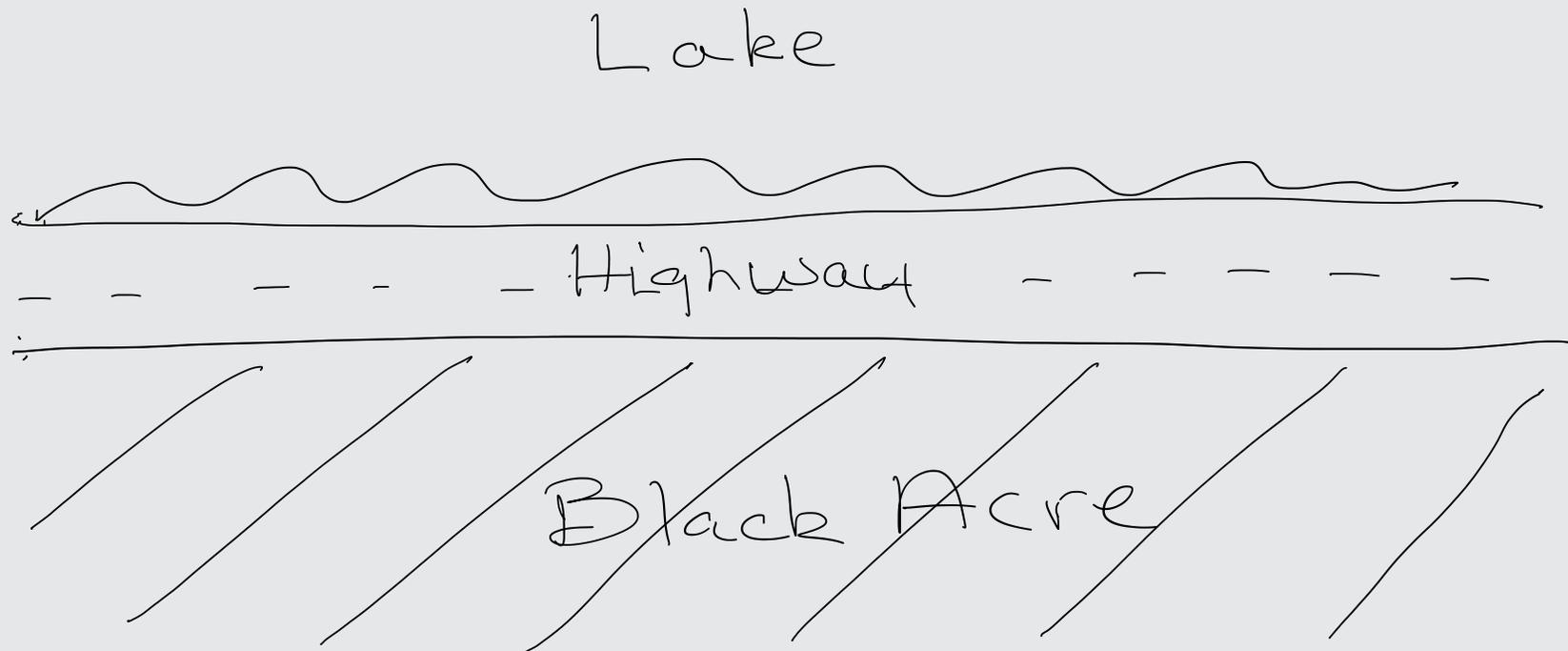
May White convey her riparian rights associated with Blackacre to a 3rd party?

RIPARIAN RIGHTS

No.

Riparian rights are not alienable, severable, divisible or assignable apart from the land that includes or is bounded by a natural watercourse.

RIPARIAN RIGHTS



RIPARIAN RIGHTS

Blackacre is separated from a natural watercourse by a highway. The highway is contiguous to the watercourse. Is Blackacre riparian?

RIPARIAN RIGHTS

Yes, unless a contrary intention appears in the chain of title.

RIPARIAN RIGHTS

Rights and Limitations

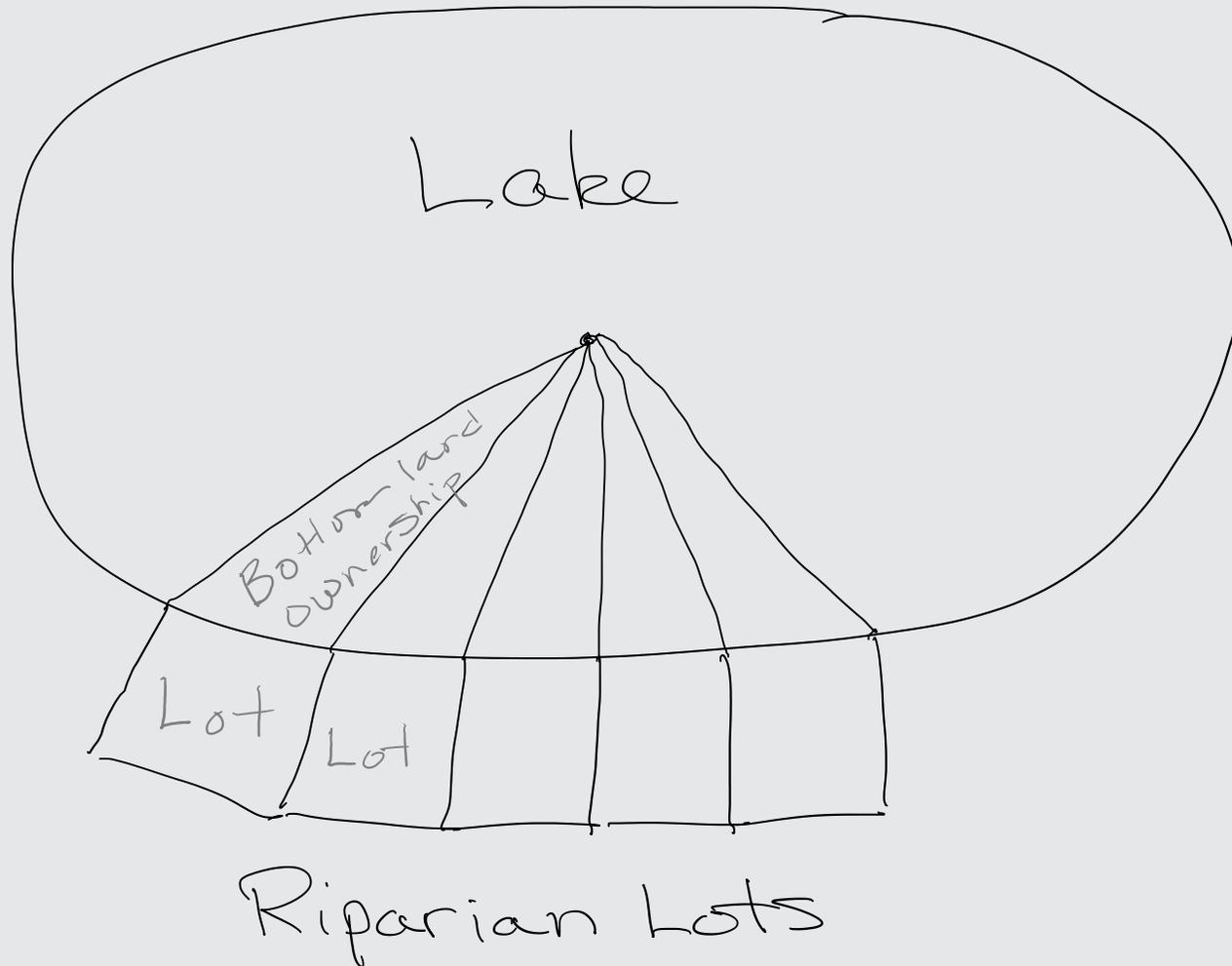
Rights:

- Access to the water of an inland lake or stream upon which they own riparian property
- Installation of a dock anchored to their riparian bottom land
- Anchorage of a boat on their bottom land and/or secure mooring to their dock
- Reasonable use of water from the lake or stream for strictly domestic purposes
- The right of accretions: meaning ownership of the gradual accumulation of sand, silt or organic matter on riparian owned shorelines

Limitations:

- Anchor a raft or moor a boat on or above the bottom lands of another riparian owner
- Install a dock of an unreasonable length and/or at an angle that interferes with or limits the navigability of the water body or the riparian rights of neighboring property owners
- Dedicate the surface or any portion thereof of a lake/stream; alter or modify their riparian shoreline or remove aquatic plants or dredge or place fill in a lake/stream without a permit from the DEQ/EGLE
- Transfer riparian rights to another person
- Restrict the use of the surface of a lake or stream by members of the public
- Build a seawall or jetty closer to the water's edge than at the ordinary high-water mark

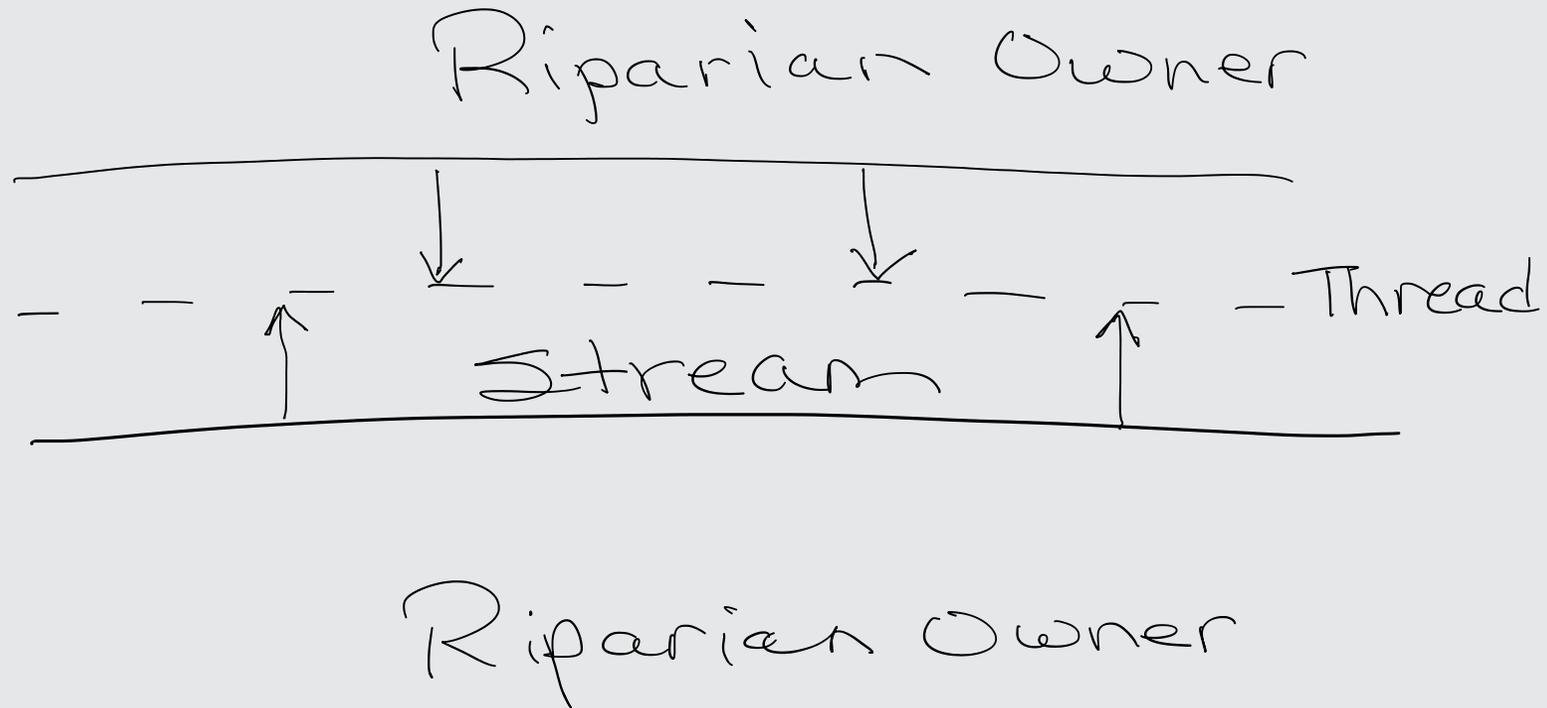
DIVISION OF BOTTOMLANDS



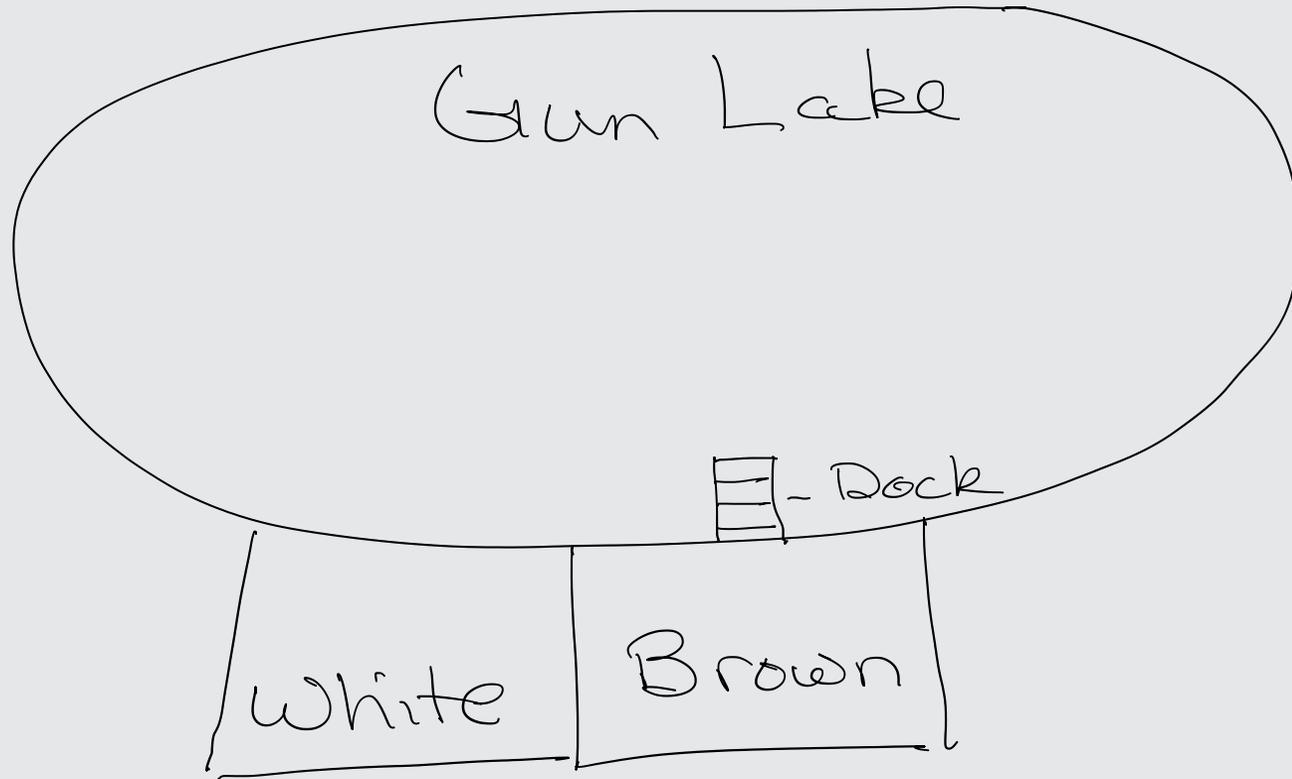
DIVISION OF BOTTOMLANDS

- **Inland Lakes:** Center of the lake
- **Watercourses:** The thread of the watercourse

DIVISION OF BOTTOMLANDS



DIVISION OF BOTTOMLANDS



DIVISION OF BOTTOMLANDS

White and 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?

No.

As a riparian owner, Brown is entitled to reasonable use of Gun Lake, including placing a dock on her land.

GENERAL DEFINITIONS

- **Littoral Land:** Abuts (to the water's edge) natural lake
- **Riparian Land:** Abuts (to the water's edge) natural river or stream
- Practically: "Riparian" term used for both in Michigan law (TS 24.4)

GENERAL DEFINITIONS

Add Land:

- **Accretion** in real estate, is the increase of the actual land on a stream, lake or sea by the action of water which deposits soil upon the shoreline. Accretion is Mother Nature's little gift to a landowner.
- **Reliction** is the gradual change of the water line on real property, which gives the owner more dry land.

Lose Land:

- **Erosion** is the wearing away of land or soil by the action of wind, water, currents, or ice.
- **Avulsion** is the sudden tearing away of land by violent action of natural causes, such as a river or other watercourse.

GENERAL DEFINITIONS

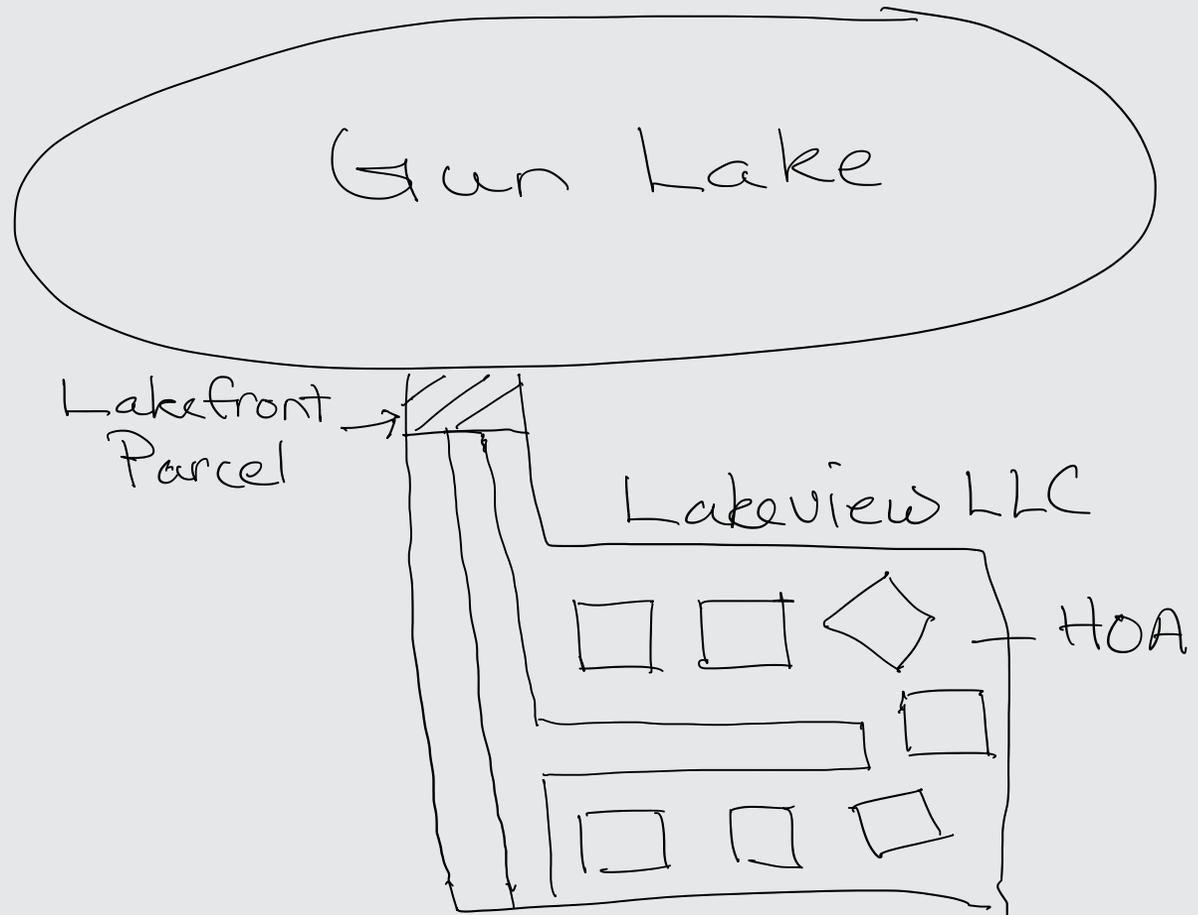
- **Watercourses:** A natural stream of water fed from a permanent or periodical natural sources and usually flowing in a particular direction in a defined channel, having a bed and banks or sides, and usually discharging itself into some other stream or body of water.
- **Surface Waters:** Waters on the surface of the ground, usually created by rain or snow, which are of a casual or vagrant character, following no definite course and having no substantial or permanent existence.

GENERAL DEFINITIONS

Riparian rights apply to Watercourses. Those rights do not apply to Surface Waters. No riparian rights attach to land abutting artificial bodies of water.

(TS 24.4)

USE OF WATER SURFACE



USE OF WATER SURFACE

Lakeview, LLC owned land abutting Gun Lake. Lakeview 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 homeowner's association consisting of all lot owners.

White, who owned riparian land elsewhere on the lake, sought to enjoin Lakeview from granting lake access to all lot owners. Is White entitled to the injunction?

USE OF WATER SURFACE

Maybe.

White's right to an injunction depends on whether the use of Gun Lake by the lot owners is deemed unreasonable. "Reasonable" use is determined on a case-by-case basis, 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.

USE OF WATER SURFACE

Examples of “reasonable uses” include: boating, fishing, swimming and temporary anchorage.

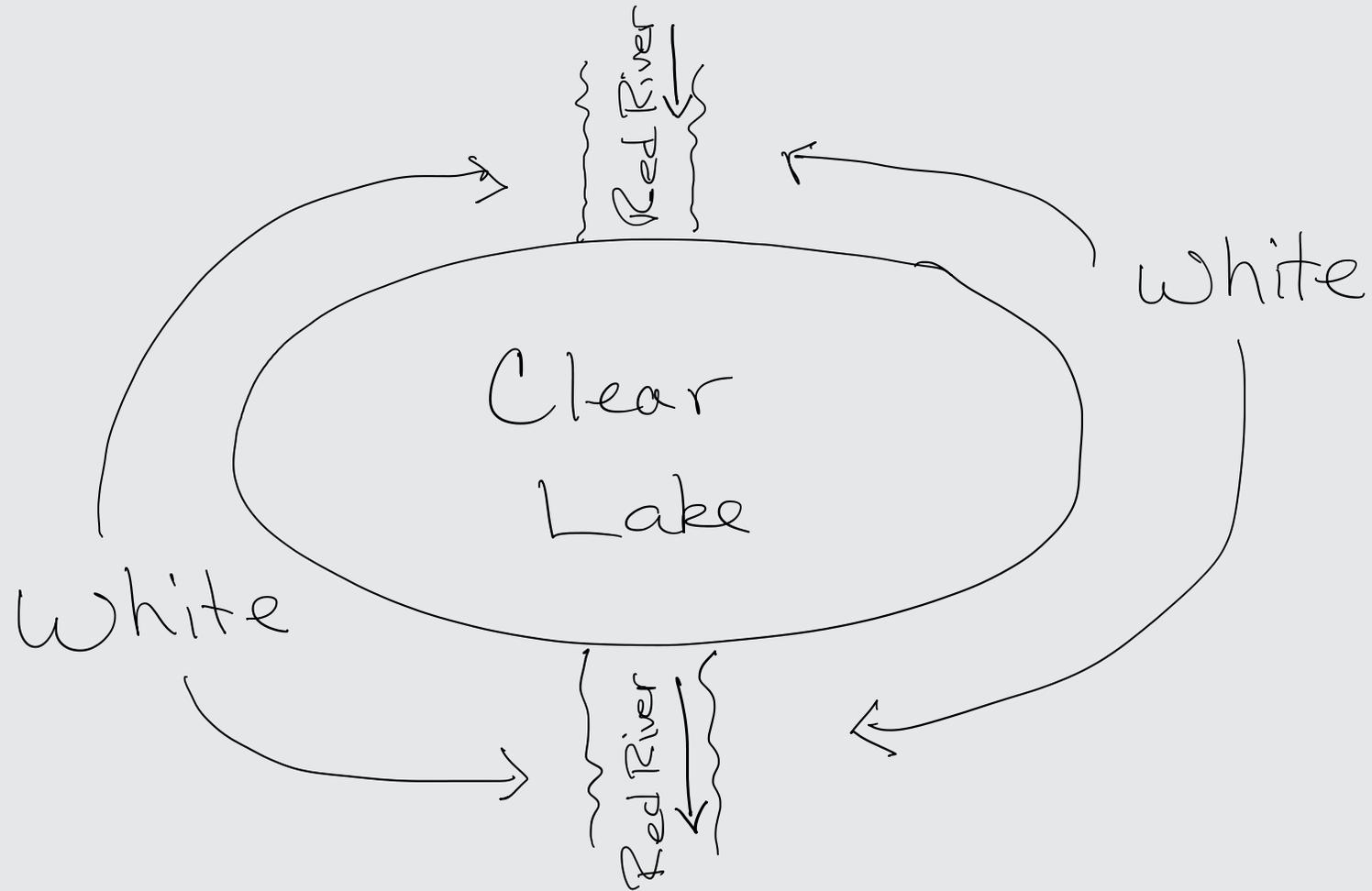
Public rights in the Great Lakes are broader than this “navigational servitude”, and include: rights under the public trust doctrine, rights resulting from the State’s riparian ownership, rights reserved under the federal navigational servitude, and rights arising out of the State’s ownership of the bottomlands.

USE OF WATER SURFACE

THE OWNER OF LAND ABUTTING A NATURAL LAKE OR POND OR NAVIGABLE STREAM HAS THE RIGHT TO THE REASONABLE USE OF THAT WATERCOURSE, IN COMMON WITH OWNERS OF OTHER RIPARIAN LAND, FOR:

GENERAL PURPOSES SUCH AS FISHING, BOATING, BATHING, IRRIGATION AND DOMESTIC USES (TS 24.4)

USE OF WATER SURFACE



USE OF WATER SURFACE

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?

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.

USE OF WATER SURFACE

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

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.

USE OF WATER SURFACE

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.

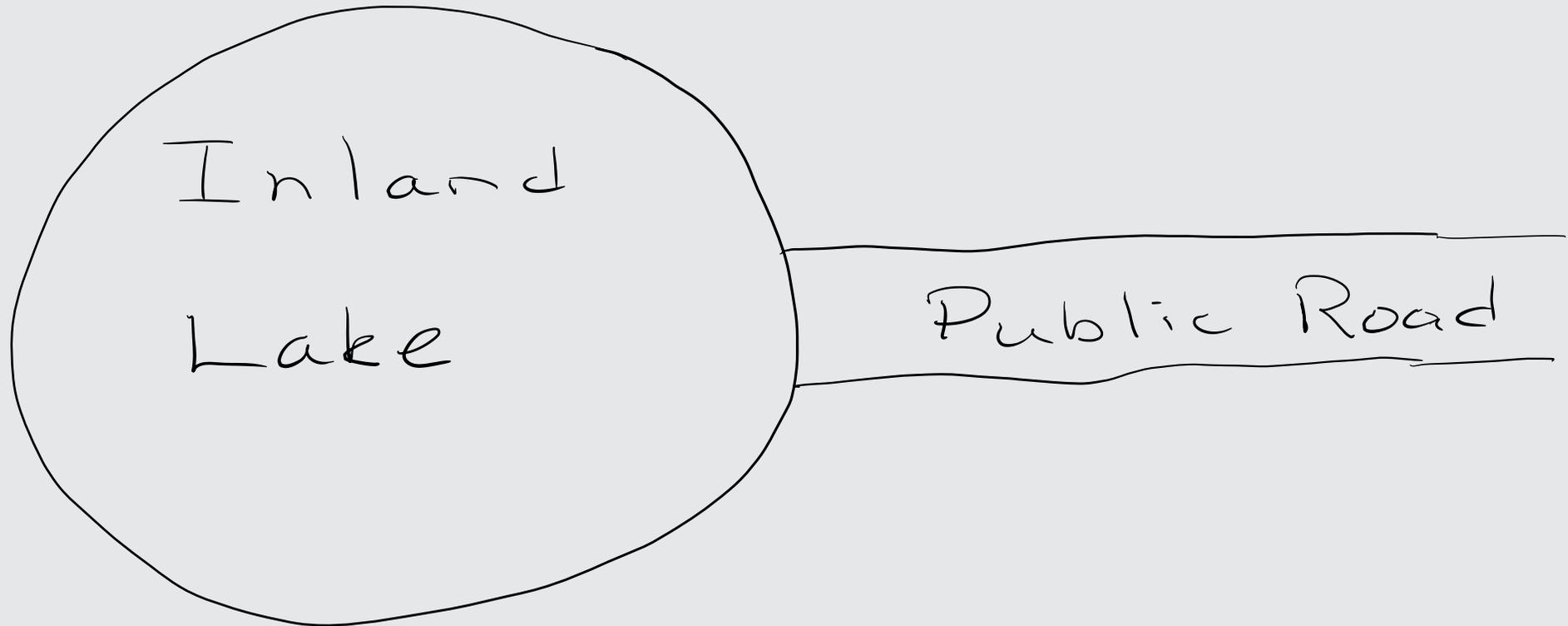
(TS 24.3)

USE OF WATER SURFACE

A navigator may not, however, use the watercourse as a parking lot to permanently moor his or her vessel.

By contrast, regardless of whether the waters are subject to a navigational servitude, the rights to hunt, trap and gather ice for commercial purposes are determined by the ownership of the bed of the waters. For inland lakes and streams, these are riparian rights vested in the riparian owners, not the public.

USE OF WATER SURFACE



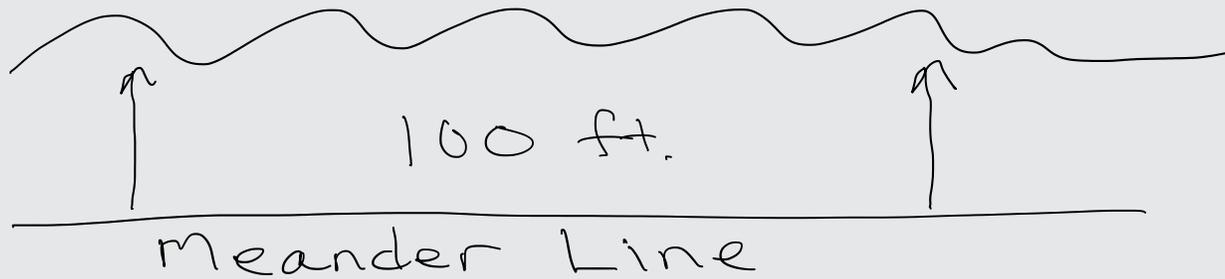
USE OF WATER SURFACE

Inland Lake Public Road End Use

PA 56 of 2012: prohibits the use of public road ends for construction, installation, maintenance, or use of boat hoists or boat anchorage devices, mooring or docking of a vessel between 12 midnight and sunrise or any activity that obstructs ingress to or egress from the inland lake or stream. A public road end shall not be used for construction or use of a dock or wharf other than a single permanent or seasonal public dock or wharf that is owned by the local unit of government and authorized by the DEQ/EGLE.

BOUNDARY OF THE GREAT LAKES

Lake Michigan



Subject Property

BOUNDARY OF THE GREAT LAKES

White conveyed a parcel of land abutting Lake Michigan to Brown. Private title to the land originated with a patent in 1840 (Michigan statehood 1837). 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?

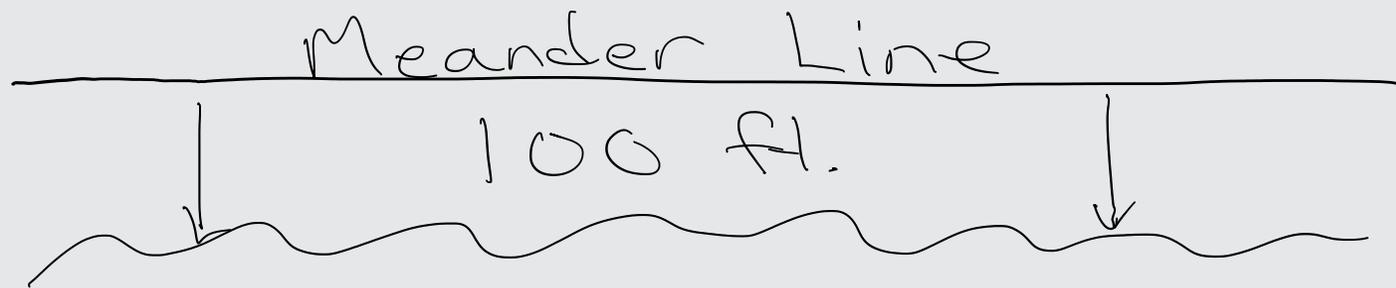
BOUNDARY OF THE GREAT LAKES

Yes.

Same facts, except 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?

BOUNDARY OF THE GREAT LAKES

Lake Michigan



Subject Property

BOUNDARY OF THE GREAT LAKES

No.

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

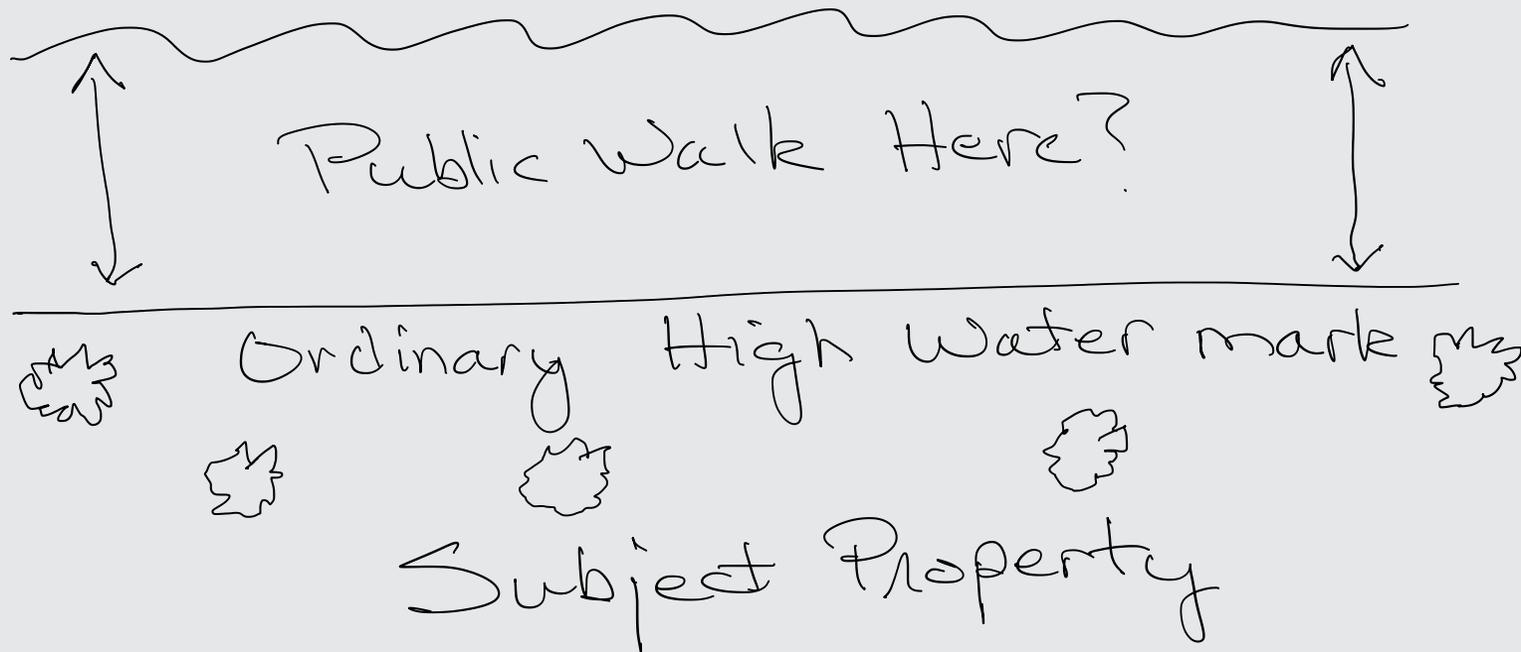
- A. THE GOVERNMENT LAND OFFICE MEANDER LINE, IF TITLE ORIGINATED WITH A SWAMP LAND PATENT AND THE WATER'S EDGE IS LANDWARD OF THE MEANDER LINE.**
- B. THE GOVERNMENT LAND OFFICE MEANDERLINE OR THE NATURALLY OCCURRING WATER'S EDGE, WHICHEVER IS FURTHER LAKEWARD, IF THE TITLE ORIGINATED WITH EITHER A 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. (TS 24.6)**

USEFUL DEFINITIONS

- **Meander Line:** A survey line that is intended to approximate the location of the water's edge at the time of the survey.
- **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."

BOUNDARY OF THE GREAT LAKES

Lake Michigan



BOUNDARY OF REAL PROPERTY ABUTTING THE GREAT LAKES

May the public walk on the beaches abutting the Great Lakes even though we now know title to post-statehood patented land extends to the naturally-occurring water's edge?

Yes.

Littoral land on the Great Lakes is subject to a public trust extending to the ordinary high water mark. The public trust includes the right of the public to walk on the beach **below** the ordinary high water mark.

COMMITMENT EXCEPTIONS

Rivers and Streams Exceptions

- Rights, title and interest of the State of Michigan in the bed and waters of [] including land which was formerly the bed of [] and was created by fill or artificial accretion.
- The nature, extent or lack of riparian rights or the riparian rights, of other riparian owners and the public in and to the use of the waters of [].

COMMITMENT EXCEPTIONS

Great Lakes Exceptions

- Rights, title and interest of the State of Michigan in the bed and waters of [] including land which was formerly the bed of [] and was created by fill or artificial accretion.
- Rights of the United States, State of Michigan and the public for commerce, navigation, recreation and fisheries in any portion of the land comprising the bed of [], or land created by fill or artificial accretion.
- The nature, extent or lack of riparian rights or the riparian rights, of other riparian owners and the public in and to the use of the waters of [].

QUESTIONS & ANSWERS?

THANK YOU!

Maura & Jerome

