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FEATURE: MURKY BOTTOMS: SOVEREIGN SUBMERGED LAND, RIPARIAN RIGHTS, AND LOCATING THE HIGHWATER LINE

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Text

[*9] Imagine you are sitting in your law office one afternoon when an old client calls and he's upset. He just received a cease-and-desist letter in the mail commanding him to remove a dock he constructed for a lakefront property recently purchased as a vacation home. One of his new neighbors believes the construction of the dock violates Florida law and is threatening to sue if it is not immediately removed. You continue to discuss the matter with your client and learn that prior to starting construction, he inquired with the Florida Department of Environmental Protection and the regional water management district who informed him that construction of the dock would not require a permit from either agency. The dock is also not significant enough in size or scope to require a building permit from the local government. Your client asks you: What basis does the neighbor have for sending the demand letter?

Eager to help an old client, you take on the matter. You conduct some research and learn that the neighbor owns the land submerged beneath the water immediately bordering your client's property. The neighbor claims that the construction of the dock trespasses onto his land and your client must first purchase an easement from him before construction may proceed. Moreover, the price of the easement demanded by the neighbor is hefty. You start brainstorming what options your client might have and an idea pops into your head: riparian rights. You don't really know what they are, but you know they exist. You also know that they are appurtenant property rights to upland properties bordering navigable waters and have something to do with sovereign submerged land. Your client owns uplands bordering waters capable of navigation (hence his construction of the dock), and it occurs to you that he may have a case. After a few more unsuccessful phone calls with the neighbor haggling over the price of an easement, you prepare a complaint for declaratory and injunctive relief and explain to your client that if any progress is to be made on construction of the dock, he will need to sue.

Legal disputes concerning riparian rights often include murky legal issues such as sovereign submerged land, the public trust doctrine, and the location of the highwater line that can lead to what may appear to be contradictory results to the greenhorn. Depending on the circumstances, your client may have riparian rights to the waterbody. This article explains key legal concepts associated with riparian rights, as well as how riparian rights can depend on whether the waterbody was artificially created or navigable in its natural state. Exploring the legal basis for this distinction in the analysis below could benefit both you and your client in contemplating whether to sue the neighbor.

What is Sovereign Submerged Land?

Sovereign submerged land lays beneath navigable waters and is owned by the state for use by the public, primarily for the purposes of navigation and commerce, but other public uses are also included. ¹Title to this land vested in the state when Florida became a state in 1845 under what is known as the "equal footing" doctrine of the U.S. Constitution. ²Sovereign submerged land is encumbered by the public trust doctrine whereby the state holds title to the land in trust for the people of the state, and the state may only dispossess such land when it furthers the public interest. ³

Under the English Common Law, title to the land beneath tidally influenced waterbodies was held by the King. ⁴The public could access these waters for purposes of navigation, fishing, and commerce subject to the King's law. ⁵Upon the conversion of the American colonies to states, this facet of the English Common Law became a background principle of state property law with the state replacing the King as sovereign. ⁶American courts would extend the scope of submerged land encumbered **[*10]** by the public trust doctrine beyond tidally influenced waterbodies to naturally navigable fresh waterbodies that are not subject to the ebb and flow of the tide. ⁷Waterbodies that are subject to the public trust doctrine, particularly those that are fresh waterbodies, are referred to as "navigable" waters. ⁸To be "navigable," a particular waterbody must have been susceptible to navigation in its ordinary condition at the time of statehood. ⁹

Based upon the "equal footing" doctrine of the U.S. Constitution, when a new state enters the union, it does so on the same terms and with the same benefits as the original 13 colonies. ¹⁰Thus, upon statehood, all submerged land beneath navigable waters within Florida become *sovereign* submerged land and encumbered by the state's public trust doctrine. However, because the public trust doctrine is a creature of state law, states are free to change its scope and may limit the extent of submerged land subject to the doctrine. ¹¹Such determinations frequently occur in state courts through judicial decisions interpreting the doctrine's scope and application to specific parcels of submerged land that are the subject of litigation. One such example is the Florida Supreme Court's decision in *Clement v. Watson*, 58 So. 25 (Fla. 1912), which could be argued to have made a narrow interpretation of the

¹ [Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.](#), 560 U.S. 702, 707 (2010) (citing [FLA. CONST. art. X, § 11](#)); [Broward v. Mabry](#), 50 So. 826, 829 (Fla. 1909).

² [PPL Montana, LLC v. Montana](#), 565 U.S. 576, 591-592 (2012); [Odom v. Deltona Corp.](#), 341 So. 2d 977, 981 (Fla. 1976).

³ [FLA. CONST. art. X, § 11](#).

⁴ [Odom](#), 341 So. 2d at 981.

⁵ *Id.*; 5F, [LLC v. Dressing](#), 142 So. 3d 936, 939-40 (Fla. 2d DCA 2014) (quoting [Brickell v. Trammell](#), 82 So. 221, 226 (Fla. 1919)).

⁶ *Id.*

⁷ [Phillips Petroleum Co. v. Mississippi](#), 484 U.S. 469, 478-79 (1988).

⁸ [FLA. CONST. art. X, § 11](#); [Odom](#), 341 So. 2d at 988.

⁹ *Id.*

¹⁰ 5F, [LLC](#), 142 So. 3d at 940.

¹¹ [PPL Montana, LLC](#), 565 U.S. at 604.

public trust doctrine's scope. ¹²Close to a century after the opinion was issued, *Clement* would prove to be a seminal example of state prerogative over the scope of submerged land subject to the public trust doctrine.

The waterbody at issue in *Clement* was a cove of shallow water adjacent to the New River Sound in Dade County. This cove was influenced by the ebb and flow of the tides but only due to an artificial improvement -- the dredging of a channel -- to allow for small craft access. Even with this improvement, a sand bar blocked access to the cove during low tides. Clement was a fisherman who filed suit to recover damages from an alleged assault after Watson excluded Clement from fishing in the cove, presumably by force. Under the facts presented in this case, the Florida Supreme Court found the cove was not navigable in its natural state (*i.e.*, when Florida became a state in 1845) and, therefore, not subject to the public trust doctrine even though it was capable of tidal influence. ¹³Besides affirming that Watson did not unlawfully assault Clement for fishing in his cove, the opinion in *Clement* also sets an early and definitive boundary on the scope of Florida's public trust doctrine. The decision holds that waters merely affected by the tides have never been considered "navigable" in Florida and explicitly excepts from the public trust doctrine privately owned land: that do not immediately border on the navigable waters, and that are covered by water not capable of navigation for useful public purpose, such as mud flats, shallow inlets, and lowlands covered more or less by water permanently or at intervals, where the waters thereon are not in their ordinary state useful for public navigation. ¹⁴

Key to the court's decision in *Clement* is the rationale that "[t]he fact that a part of the cove was made navigable by artificial means after it became private property did not take away the right of the owner to control the fishing privileges therein subject to law." ¹⁵The presence of an artificial improvement impacting navigability was, thus, an influencing factor in the Florida Supreme Court's decision to limit the scope of submerged land subject to Florida's public trust doctrine. While the court could have fashioned a favorable outcome for Watson on narrower grounds by focusing on the presence of an artificial improvement to navigability, the opinion in *Clement* set forth a definitive boundary for all submerged land within the state that might be subject to Florida's public trust doctrine. This definitive boundary is the holding that the scope of submerged lands subject to Florida's public trust doctrine lay somewhere seaward of mere tidal influence.

Clement would come to be viewed as an excessively narrow interpretation of Florida's public trust doctrine. More than 70 years after *Clement*, the U.S. Supreme Court issued a landmark decision concerning the scope of submerged land subject to the public trust doctrine in [Phillips Petroleum Company v. Mississippi, 484 U.S. 469 \(1988\)](#). The decision in *Phillips* acknowledged that several of its prior decisions "recognized that the States have interests in lands beneath tidal waters which have nothing to do with navigation." ¹⁶While bottoms of fresh waterbodies were owned by the state so far as they were navigable, this "does not indicate that navigability is or was the prevailing test for state dominion over tidelands." ¹⁷Instead, the appropriate test for tidelands was the "ebb and flow rule" that subjected all land beneath tidally influenced waters to state ownership regardless of whether or not it could be used for navigation. ¹⁸The U.S. Supreme Court's interpretation of the scope of the public trust doctrine in *Phillips*, at least as it pertains to tidelands, is both broader and more recent than the Florida Supreme

¹² See [Lee v. Williams, 711 So. 2d 57, 59-60 \(Fla. 5th DCA 1998\)](#).

¹³ *Clement v. Watson*, 58 So. 25, 27 (Fla. 1912).

¹⁴ *Id.* at 26.

¹⁵ *Id.* at 27.

¹⁶ [Phillips Petroleum Co., 484 U.S. at 476](#).

¹⁷ *Id.*

¹⁸ [Id.](#) at 480.

Court's decision in *Clement*. As you can probably surmise, it would only be a matter of time before a case would come along advancing the argument that it was time for Florida to recede from *Clement* based upon *Phillips*.

This case presented itself in [Lee v. Williams, 711 So. 2d 57 \(Fla. 5th DCA 1998\)](#). In *Lee*, two neighbors disputed whether one of them could build a boatlift on a canal bordering each of their properties. Although the genesis of the lawsuit was a property boundary spat between neighbors, the state of Florida, through the Board of Trustees of the Internal Improvement Fund (trustees), saw an opportunity for a larger goal: an end to *Clement*. Arguing as amicus curiae, the trustees prevailed upon the district court of appeal that *Phillips* superseded *Clement*. Furthermore, because the canal was dredged from a former tidally influenced creek, the trustees argued that Florida's public trust doctrine should allow the construction of the boatlift even if the exact location of the boatlift would be on what had once been dry land and not within the submerged land of the former creek bed.¹⁹

The undisputed facts of *Lee* turned out not to be a winning case in the trustee's bid to recede from the narrow interpretation handed down in *Clement* as to the scope of Florida's public trust doctrine. Instead, the district court of appeal rejected the trustee's arguments and affirmed the trial court's decision based on the precedent established by *Clement*.²⁰ However, in its opinion, the court did acknowledge that what may appear to be a mere spat between neighbors could have profound implications for statewide policy.²¹ The decision in *Lee* shows that despite the public trust doctrine becoming part of a state's background principles of property law upon its admission into the union under the "equal footing" doctrine of the [*12] U.S. Constitution, the scope of submerged land within the state encumbered by the public trust doctrine (and, therefore, "sovereign") is a matter of state law, which, for the most part, may be customized by the state to meet the needs of its own individual circumstances and preferences.²²

Can Sovereign Submerged Land be Sold to Private Owners?

Yes, but there are some strings attached. [Fla. Const. art. X, § 11](#), authorizes the state to sell sovereign submerged land to private owners but only when such sale is *in the public interest*.²³ While the state has the power to sell its fee simple interest in sovereign land, the land continues to be encumbered with an easement allowing uses consistent with Florida's public trust doctrine.²⁴ One recent opinion demonstrating this principle is *5F, LLC v. Dressing, 142 So. 3d 936 (Fla. 2d DCA 2014)*.

In *5F*, the plaintiffs owned title to former sovereign submerged land, while the defendants sought to construct a pier from their property that extended onto the former sovereign submerged land. The central issue before the district court of appeal was whether the defendants possessed the riparian right to "wharf out" from their property to construct the pier that extended onto the former sovereign submerged land.²⁵ The court found that despite *5F*'s ownership of the fee simple absolute interest in the former sovereign submerged land, the defendants continued to possess riparian rights to wharf out and build their pier over those submerged lands.²⁶

¹⁹ [Lee, 711 So. 2d at 59-60](#).

²⁰ [Id. at 62-64](#).

²¹ [Id. at 57](#).

²² [PPL Montana, LLC, 565 U.S. at 604](#).

²³ [FLA. CONST. art. X, § 11](#).

²⁴ *Id.*; [5F, LLC, 142 So. 3d at 946](#).

²⁵ [5F, LLC, 142 So. 3d at 945](#).

²⁶ [Id. at 947](#).

The continuing applicability of Florida's public trust doctrine to 5F's submerged land under the requirements of [Fla. Const. art. X, § 11](#), was central to the district court of appeal's holding.²⁷ While the state is vested with the legal authority to manage and control sovereign submerged land, this authority is rigidly circumscribed by Florida's public trust doctrine under the express provisions of the Florida Constitution in art. X, § 11.²⁸ In short, the state does not own sovereign submerged land for the purpose of sale or conversion into money. Instead, the Florida Constitution requires that the state devote sovereign submerged land to fulfilling the purposes of the public trust doctrine, which includes facilitating the public right to access and use navigable waterbodies.²⁹ Thus, the real property interest that 5F obtained in the former sovereign submerged land continues to be encumbered by the public trust doctrine even after its conversion to privately owned property.³⁰ The defendants possessed riparian rights in 5F's privately owned submerged land, thereby allowing the defendants to build their pier and "wharf out," despite 5F's claims that such actions constituted an unlawful trespass on its privately owned property.³¹

What Do Riparian Rights Have to Do with Sovereign Submerged Land?

Riparian rights are the entitlement to make use of navigable waters by abutting upland real property owners.³² Such uplands can be referred to as "riparian land" due to the inclusion of riparian rights in the abutting navigable waters.³³ Pursuant to [F.S. § 253.141](#), all upland property abutting sovereign submerged land comes with a presumption of riparian rights to access and use those waterbodies. Like all property interests, riparian rights can be understood as a bundle of sticks. Some of the sticks in the riparian rights bundle are held by the state in trust for public use under the public trust doctrine.³⁴ These "public" riparian rights include the rights of navigation, fishing, and swimming.³⁵ Other sticks may be held exclusively by private owners of riparian land. Such "private" riparian rights include the rights of access, reasonable use of water for irrigation, wharfing out, and the right of access to the entire surface of the waterbody.³⁶ Like other property interests, the bundle of sticks that make up "private" riparian rights may be conveyed to others through written instrument. Examples of contracts conveying riparian rights would be a lease over abutting upland to members of a boating club, an assignment, a dedication or easement contained in a subdivision plat, or a deed restriction.³⁷

Likewise, owners of submerged land beneath non-navigable waters that, under *Clement*, are not subject to Florida's public trust doctrine, may also convey riparian rights to others through written contract.³⁸ However, property owners

²⁷ [Id. at 946-947](#).

²⁸ [Id. at 945](#).

²⁹ *Id.*

³⁰ [Id. at 947](#).

³¹ *Id.*

³² *5F, LLC, 142 So. 3d at 940*.

³³ [Little v. Kin, 644 N.W.2d 375, 378 \(Mich. App. 2002\)](#).

³⁴ *5F, LLC, 142 So. 3d at 940*.

³⁵ *Id.*

³⁶ *Id.*; [FLA. STAT. § 253.141 \(2021\)](#); see also [Anderson v. Bell, 433 So. 2d 1202, 1203 \(Fla. 1983\)](#).

³⁷ See [FLA. STAT. § 253.141\(1\) \(2021\)](#); [Goldman v. Lustig, 237 So. 3d 381, 384-385 \(Fla. 4th DCA 2018\)](#); [Little, 644 N.W.2d at 380](#).

³⁸ [Silver Blue Lake Apartments, Inc. v. Silver Blue Lake Home Owners Association, Inc., 245 So. 2d 609 \(Fla. 1971\)](#).

who do not abut sovereign submerged land have no inherent riparian rights, and in the absence of a contractual right, likely have no right to access or use the abutting waterbody.³⁹ This may at first appear to be an easy concept to grasp, but when considering the nuanced, legal definition for "navigable" waters governing the designation of sovereign submerged land, it can become murky to those unfamiliar with these legal concepts

Recall that inherent in the definition of "navigable" waters under the public trust doctrine is their susceptibility to navigation in their natural condition at the time of statehood.⁴⁰ Waterbodies that became susceptible to navigation through artificial means after Florida achieved statehood in 1845 would not come within this definition of "navigable."⁴¹ The key to this test is determining whether the waterbody in question was navigable *at the time of* Florida's statehood in 1845. An inquiry into whether a particular waterbody is "navigable," therefore, inevitably involves an inquiry into its history.

Under Florida law, property owners who abut artificially created waterbodies are generally presumed to not have any riparian rights in those waterbodies regardless of whether such waterbodies are susceptible to navigation.⁴² Instead, rights to access and use of an artificial waterbody are determined by either ownership of the submerged land beneath the artificial waterbody or a contractual right conveyed by such an owner.⁴³ Two cases that illustrate this point are [Publix Super Markets, Inc. v. Pearson, 315 So. 2d 98 \(Fla. 2d DCA 1975\)](#), and [Anderson v. Bell, 433 So. 2d 1202 \(Fla. 1983\)](#). Both cases concern the "private" riparian right to access the entire surface water of the waterbody.

In *Publix*, the appellant sought to fill 10 acres of former phosphate pits that were filled with water to build a grocery store. Altogether, the phosphate pits comprised an artificial waterbody of approximately 47 acres of interconnected pits with the eastern-most pit owned by the appellees. Due to the proposed construction, the southern portion of four westerly pits would be dredged and filled, thereby cutting off appellees' access to those portions of the artificial waterbody. The circuit court entered an injunction against the grocery store prohibiting the filling of the phosphate pits on the grounds that it would significantly impair the appellees' riparian rights to use and enjoyment of the entire surface water of the phosphate pits.⁴⁴

[*13] The district court of appeal reversed the injunction thereby allowing the filling of the submerged land on the basis that riparian rights ordinarily do not attach to artificial waterbodies such as the phosphate pits at issue in the case.⁴⁵ In explaining its rationale for the reversal, the appellate court distinguished a prior Florida Supreme Court decision in [Silver Blue Lake Apartments, Inc. v. Silver Blue Lake Home Owners Association, Inc., 245 So. 2d 609 \(Fla. 1971\)](#), that similarly concerned the rights of abutting landowners to use an artificial lake created through limerock excavations. The key distinction was that the artificial lake in *Silver Blue Lake* had been specifically incorporated into a subdivision plat with the deeds of conveyance to abutting property owners including provisions expressly allowing the use of the artificial lake. In contrast, the appellees in *Publix* had no deed nor other contractual conveyance granting them the right to use the portions of the phosphate pits proposed to be filled for construction of the grocery store. The district court of appeal, thus, concluded the appellees had "no greater rights

³⁹ See [Fla. Dep't of Transp. v. Lauderdale Boat Yard, LLC, 336 So. 3d 28, 33-34 \(Fla. 4th DCA 2022\)](#).

⁴⁰ [Odom, 341 So. 2d at 988](#).

⁴¹ See *id.*; see also [Fla. Dep't of Transp., 336 So. 3d at 33-34](#).

⁴² [Fla. Dep't of Transp., 336 So. 3d at 33](#).

⁴³ See [id. at 35](#) (reversing trial court's finding that appellee possessed an implied easement to use privately owned sovereign submerged lands that were artificially created).

⁴⁴ [Publix Super Markets, Inc. v. Pearson, 315 So. 2d 98, 98-99 \(Fla. 2d DCA 1975\)](#).

⁴⁵ [Id. at 101](#).

to the waters of the phosphate pits than an owner of land whose dominion over the fee is confined within his legal boundaries." ⁴⁶In sum, if you own a portion of the land beneath an artificial waterbody, you may access your submerged property and make beneficial use of it just like an upland parcel of real property. However, mere ownership of some submerged land beneath an artificial waterbody does not make you a riparian owner or give you the right to access or use the entire waterbody in the absence of a conveyance of those rights from the owner of the artificially submerged land.

The holdings of *Publix*, would be confirmed a few years later by the Florida Supreme Court in *Anderson*. In this case, Anderson created an artificial lake by constructing an earthen dam across a small non-navigable creek on his property. The construction of the artificial lake resulted in partial flooding to several abutting properties, one of which was owned by Bell. To recover damages to his property due to the flooding, Bell sued Anderson, and Anderson ultimately purchased a flowage easement on a portion of Bell's property. Not long thereafter, Anderson sued Bell and two of his guests to enjoin them from fishing and boating upon the surface waters that lay above the submerged land owned by Anderson. The circuit court found for Bell and refused to enter the injunction. ⁴⁷The district court of appeal also ruled for Bell, holding that there is no distinction between natural or artificial lakes for purposes of determining the respective rights of adjoining landowners thereby placing its decision in express and direct conflict with *Publix*. ⁴⁸Upon review, the Florida Supreme Court reversed the holding that an abutting property owner to an artificial waterbody is entitled to access and use of the entire waterbody when they own a portion of the submerged land beneath the artificial waterbody. ⁴⁹

Bell could, thus, require Anderson to purchase a flowage easement from him for flooding a portion of this property, but Bell still needed Anderson's permission to fish that part of the artificial lake laying above Anderson's property. Rather than incur the costs of litigation, Bell alternatively could have secured the right to use and access Anderson's portion of the artificial lake when negotiating the price of the flowage easement. Whether such negotiations occurred between Bell and Anderson is not reported in the opinion. However, the Florida Supreme Court justified its holding in *Anderson* due to concerns that a contrary ruling would create an unequal bargaining position with respect to flowage rights sought by an adjoining landowner constructing an artificial lake. ⁵⁰Under this circumstance, the seller would be in a position to set exorbitant prices for the flowage rights on their land knowing that they would receive full beneficial use of the artificial lake irrespective of their price. ⁵¹Such a scenario was undesirable because it could frustrate owner's ability to improve and develop their real property, which the Florida Supreme Court found it "should not discourage." ⁵²

What Does the Highwater Line Have to Do with Riparian Rights?

The highwater line is the landward extent of sovereign submerged land beneath a navigable waterbody. ⁵³It marks the boundary between submerged land encumbered by the public trust doctrine and other land that is not so encumbered. ⁵⁴ [*14] There are two methods for locating this boundary depending on whether the waterbody is

⁴⁶ *Id.*

⁴⁷ [Anderson, 433 So. 2d at 1203.](#)

⁴⁸ [Id. at 1202.](#)

⁴⁹ [Id. at 1207.](#)

⁵⁰ [Id. at 1206.](#)

⁵¹ *Id.*

⁵² *Id.*

⁵³ [Stop the Beach Renourishment, Inc., 560 U.S. at 707-08; Fla. Dep't of Transp., 336 So. 3d at 33.](#)

tidally influenced. If tidally influenced, the boundary of sovereign land is the mean highwater line that is located using a statutory definition found in [F.S. § 177.27\(14\)](#). This statute uses the average height of high tides over the past 19 years to determine what is called the "mean" highwater line. Alternatively, if the waterbody is not tidally influenced, then the boundary is located by applying jurisprudential standards to the proven facts of the waterbody and surrounding land. ⁵⁵This boundary is referred to as the "ordinary" highwater line, and its location may be proven through a myriad of different evidence such as historical maps and aerial photographs, the character of vegetation located on banks, watermarks on docks and trees, title determinations by the Division of State Lands, and through expert witness testimony. ⁵⁶

The boundaries of "navigable" waterbodies subject to Florida's public trust doctrine are also ambulatory and may change over time under Florida law. Where the change is gradual and occurs imperceptibly over time, the doctrines of accretion and reliction apply in locating the boundary between private and sovereign land. ⁵⁷Accretion means the gradual addition, and reliction is the gradual erosion of uplands abutting the shoreline of navigable waters that occurs, imperceptibly, over time. ⁵⁸But the doctrines of accretion and reliction are not applicable when a sudden, immediate, and very perceptible change in the location of shoreline occurs, either through natural forces or artificial means. ⁵⁹In these instances, the doctrine of avulsion applies and, contrary to accretion and reliction, it fixes the boundary where it was before the avulsion event occurred. ⁶⁰

An application of the avulsion doctrine can be found in the U.S. Supreme Court decision in [Stop the Beach Renourishment v. Florida Department of Environmental Protection, 560 U.S. 702 \(2010\)](#), which applied the doctrine in the context of artificial improvements to an eroded shoreline made during a beach nourishment project. The *Stop the Beach* opinion pertains to Florida's Beach and Shore Preservation Act, which since the 1960s has provided procedures for beach restoration and nourishment projects within the state. Once a beach restoration project is undertaken under the act, the state may fix an "erosion control line" at the location of the mean highwater line before the project. ⁶¹The erosion control line then replaces the ambulatory mean highwater line as the boundary between private uplands and sovereign land, thereby ending the potential of upland property to increase through accretion. ⁶²

In 2003, the Florida Department of Environmental Protection sought to undertake a beach restoration project under the act for 6.9 miles of beach in Walton County that was severely eroded. The project would add around 75 feet of dry sand to the beach seaward of the existing mean highwater line. Further, the project would invoke the act to fix the boundary between private and sovereign land at the existing mean highwater line's location even though the actual shoreline would be located around 75 feet seaward the beach restoration was completed. The plaintiffs in

⁵⁴ *Id.*

⁵⁵ See [Fla. Dep't of Transp., 336 So. 3d at 32](#) (quoting [Briggs v. Jupiter Hills Lighthouse Marina, 9 So. 3d 29, 32 \(Fla. 4th DCA 2009\)](#)).

⁵⁶ [Tilden v. Smith, 113 So. 708, 712 \(Fla. 1927\)](#); [Martin v. Busch, 112 So. 274, 283 \(Fla. 1927\)](#); [Fla. Dep't of Transp., 336 So. 3d at 31](#).

⁵⁷ [Stop the Beach Renourishment, Inc., 560 U.S. at 708](#).

⁵⁸ *Id.*

⁵⁹ [Id at 709](#).

⁶⁰ *Id.*

⁶¹ [Id. at 710](#).

⁶² *Id.*

Stop the Beach were a collection of property owners who sued the state alleging that establishment of the erosion control line and corresponding loss of their right to accretions was a taking of their property without compensation.

Both the Florida Supreme Court and the U.S. Supreme Court found that due to Florida's avulsion doctrine, no property interest was taken from the *Stop the Beach* plaintiffs in setting the erosion control line, even though those property owners could no longer receive accretions to their land.⁶³ After examining decisions from the Florida Supreme Court spanning a century before the *Stop the Beach* decision, the U.S. Supreme Court found that Florida law supported the application of the avulsion doctrine to the case, and the right to accretions was subordinate to the state's right to fill submerged land.⁶⁴ The key take-away from *Stop the Beach* is that sudden and perceptible, artificial changes in the shoreline may not change the existing location of the boundary between private and sovereign land despite its ambulatory nature.

Another recent example is [*Florida Department of Transportation v. Lauderdale Boat Yard, LLC*, 336 So. 3d 28 \(Fla. 4th DCA 2022\)](#). In this case, the Department of Transportation planned the construction of a bridge project to add travel lanes to I-595 in

Broward County where it crosses the New River. As part of the project, new bridge supports were to be constructed for I-595 that Lauderdale contended would cut off its riparian access from a boatlift on its property to the New River. As a defense to this claim, the Department of Transportation contended that although the boatlift was located on submerged land that could be used for navigation, Lauderdale was not a riparian owner because Lauderdale's predecessor had dredged the area around the boatlift from uplands thereby altering the amount of land above and below the water on Lauderdale's property. Further, a portion of the artificially submerged land located between the boatlift and the New River was owned by a non-party to the lawsuit, thereby requiring Lauderdale to cross over submerged land owned by the non-party before entering the I-595 right-of-way or the New River. Because of this, the district court of appeal found that Lauderdale had no riparian rights of access to the New River from the boatlift because it would imply that the area between the boatlift and the New River at some point was sovereign submerged land.⁶⁵ Such an implication would encumber the parcel of privately owned submerged land owned by the non-party with the public rights of Florida's public trust doctrine under 5F.⁶⁶ However, the state never held title to the artificially submerged land, and the district court reasoned that the land could not now be treated as such simply because it was artificially submerged.⁶⁷

The takeaway is that simply because Lauderdale's boatlift was located on land susceptible to navigation, it does not mean that Lauderdale had riparian rights in all the submerged land between its boatlift and the New River irrespective of who owned the submerged land. Like the decision in *Stop the Beach*, the boundary of private and sovereign land in *Lauderdale Boat Yard* remained in its original location prior to the artificial improvements. Thus, while sudden and perceptible artificial changes to the shoreline of a navigable waterbody may alter the physical location of the boundary between dry and submerged land, such artificial changes, under Florida law, don't necessarily result in a corresponding alteration to the location [*15] of the highwater line (*i.e.*, the legal boundary between private and sovereign land). In what first may appear to be a contradictory ruling, the district court of appeal in *Lauderdale Boat Yard* found that the highwater line for the New River was not located at the boatlift's seawall where the dry land became submerged.⁶⁸ Instead, the legal location of the highwater line would be where

⁶³ [*Id* at 731](#).

⁶⁴ *Id.*

⁶⁵ [*Fla. Dep't of Transp.*, 336 So. 3d at 34](#).

⁶⁶ *See id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

the original shoreline of the New River had been prior to the dredging that created the artificially submerged land around Lauderdale's boatlift. ⁶⁹The decisions in *Stop the Beach* and *Lauderdale Boat Yard* both stand for the proposition that the legal location of the highwater line for a navigable water is not necessarily the place where dry land becomes submerged and can be more dependent on historical circumstances than whatever conditions may presently exist. ⁷⁰

What Does This Mean for My Client's Case?

In summary, you and your client would be well served to investigate whether the neighbor's property is former sovereign submerged land or whether the property was submerged through artificial means. If the neighbor's property is former sovereign submerged land, then it continues to be encumbered by the public trust doctrine, and your client should have no need to purchase an easement to build his dock because he owns riparian rights of access and to wharf out. Alternatively, if the neighbor's submerged land was artificially created or made navigable through artificial means, then the public trust doctrine would not encumber the submerged land, and your client does not have any riparian rights except those he might obtain through purchase from his neighbor. ⁷¹

As the analysis of the legal concepts above make clear, riparian rights cases can at times become murky with what presently may seem to be a good set of facts giving way to historical circumstances that are not readily apparent to the untrained eye. Because private ownership of submerged land does not conclusively resolve the issue, the practitioner should be prepared to employ methods beyond simply ordering a survey and title search report. Before taking the plunge on asserting riparian rights, it is always prudent to remember to research the history of the site in question with an eye towards determining whether navigability was created through artificial means. Reviewing historical aerials, ordering a title determination from the Division of State Lands, and discussing the site with your client or persons familiar with its history may prove to be a good starting point for collecting evidence. Such an investigation will help keep you from finding yourself "high and dry" when it comes to locating the highwater line boundary between private and sovereign submerged land. It may also help you avoid expensive and unnecessary litigation that may only add to the price ultimately paid to purchase a riparian easement over artificially submerged land.

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⁶⁹ See *id.*

⁷⁰ See *id.*; [Stop the Beach Renourishment, Inc., 560 U.S. at 710.](#)

⁷¹ [Odom, 341 So. 2d at 981](#); [Fla. Dep't of Transp., 336 So. 3d at 33](#); [Publix Super Markets, Inc., 315 So. 2d at 99.](#)