



Submerged Lands Newsletter

A yearly update of developments in the Submerged Lands Program for submerged lands lessees, easement holders and other interested parties.

January 2014

Maine Waters Belong to Everyone

Lakes, rivers, and tidal waters in Maine are held in trust for all citizens to use. The land beneath these waters, however, may be owned publicly or privately. Underwater, or “submerged”, land that is owned publicly is held in trust by the State for the people of Maine and certain State agencies have management authority for a variety of uses. For example, the Bureau of Parks and Lands, within the Department of Agriculture, Conservation, & Forestry, grants limited term leases and easements for private docks, marinas, and submarine cables, among other uses. The Department of Marine Resources issues leases for aquaculture projects. Where does this “public ownership” come from and how does the State manage private use of the public’s land and water?

The Public Trust Doctrine

The public trust doctrine dates back to ancient Roman times where it was declared that “By the law of nature these things are common to all mankind; the air, running water, the sea, and consequently the shores of the sea.” They were essential to maintain free trade and commerce. Subsequently, much of the Roman law was adopted into the laws of England, where it was recognized that free use of the rivers, bays and ocean were critical to the inhabitants’ survival as well as for commerce and navigation. This concept came to America with the colonists and was later expanded to inland waters. In the case *Shivley v. Bowlby*, 152 U.S. 1, 11 (1894), the United States Supreme Court affirmed the common law principle that submerged lands “are incapable of ordinary and private occupation, cultivation and improvement; and their natural and primary uses are public in their nature, for highways of navigation and commerce, domestic and foreign, and for the purpose of fishing....” The state holds its submerged lands in trust for the benefit of the general public.

Public vs. Private Ownership of

Submerged Lands

In most states, public ownership begins at the high water mark. However, in our early colonial history, the Massachusetts Bay Colony decided that in order to foster trade and growth it needed to grant private ownership in the tidal flats between high and low water. The Colonial Ordinances of 1641-47 established that private ownership would extend to the low water mark but not farther than “100 rods”, or 1,650 feet, from the high water mark. It also established public rights to use great ponds and to gain access to great ponds over private undeveloped land. When Maine became a state, the Colonial Ordinances were included in the body of common law that is used today.

Therefore, public ownership in submerged lands begins at the mean, or average, low-water mark (or 1,650 feet from the mean high water mark, whichever is less) and extends to the 3-mile territorial sea boundary, including the land in tidal rivers upstream to the furthest extent of tidal influence. Although shorefront owners own to the low-water mark, the public retains the historic public trust rights of fishing, fowling (waterfowl hunting) and navigation on and over the land between the high and low water marks.

On great ponds, which are ponds larger than 10 acres in their natural state, the lake bottom beyond the **natural** low-water mark is publicly owned. Land that is covered by water as the result of a dam or other impoundment is privately owned. On non-tidal rivers and streams, except those that form Maine’s boundary with Canada, the abutting land owners, or riparian owners, own the bottom. The beds of the boundary rivers, i.e. the St. John, St. Francis and St. Croix, are publicly owned. The public retains the rights to boat on rivers and streams that are navigable.

Renewals

Most leases and easements are issued for a 30-year term. Several months prior to the end of the term, the Bureau sends notice that you will need to apply for a new 30-year conveyance. This is sent during the summer months when it is easier to check measurements and take photographs. The renewal process includes sending notification to the municipality and, in certain situations, to others within close proximity to the site, informing them that a renewal application is being reviewed by the Bureau.

Contacting Us

The Department of Agriculture, Conservation & Forestry offices are located in the Harlow Building on the East Side Campus, off Hospital Street (Route 9) in Augusta. The address is 18 Elkins Lane. We advise you to call ahead if you would like to meet with the Submerged Lands Staff.

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Annual Reminders

Sale of Property

If you have sold or are planning to sell your property, please remember that your submerged lands lease or easement must be transferred or assigned to the new owner. To transfer a lease, please send us a written request, including the new owner's name and address. There is also a \$100 processing fee that can be paid by either party. Notification may be provided by an attorney or real estate broker involved in the transaction, or even the new owner, provided they submit a copy of the new deed and transfer fee.

If you hold an easement, please provide the name and mailing address of the new owner. They will need to provide us with a copy of their deed to the property so that the easement can be assigned to them.

Thank you for your cooperation.

Modifications

Please keep in mind that any changes to your structure, including the addition of floats (seasonal or permanent), may require your lease or easement to be updated. If you are planning any changes, please contact us.

2013 SUBMERGED LANDS PROGRAM ACTIVITY SUMMARY

The Bureau of Parks and Lands processed 170 applications in 2013. Ninety-five (95) new leases and easements were granted, including 16 amendments to existing conveyances and 17 renewals of expiring conveyances. The Bureau also reviewed 75 applications and determined that no conveyance was required. The following list indicates the types of leases and easements approved (or amended) in 2013 and the total number of leases and easements in the Submerged Lands Program.

	Leases	Easements
Private residential piers/floats	14	11
Private recreational facilities	17	9
Utility cables and pipelines	10	3
Commercial marine facilities	8	6
Public service or public facilities	8	4
Dredging (including one log salvage lease)	5	NA
TOTALS	62	33

PROGRAM TOTALS: LEASES - 1,181 EASEMENTS - 779 DREDGING LEASES - 13