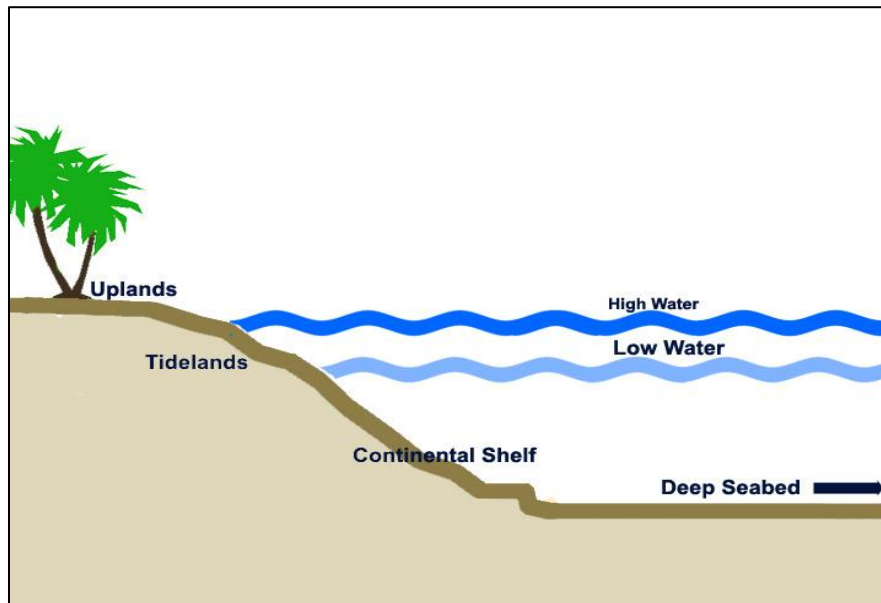


Private Property vs State Owned Submerged Lands



State Owned Submerged Lands

- Submerged lands are owned by the state and held in trust for the benefit of the public (public trust doctrine).
- In Alabama, the mean high tide line is the boundary between state owned submerged lands and upland property owners along tidal waters.
- “All the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets within the jurisdiction of the state of Alabama are the property of the state of Alabama to be held in trust for the people thereof.” (Ala. Code § 9-12-22).

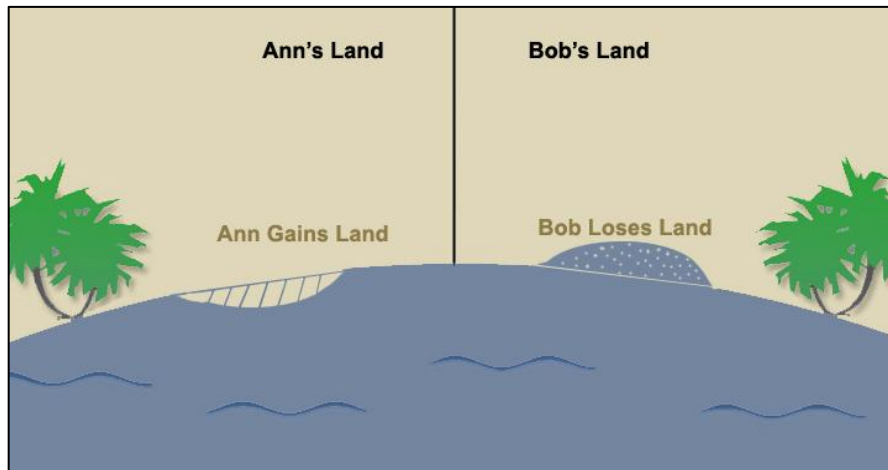
Riparian Rights

- Although the upland owners do not own the submerged lands, they do retain special rights to the adjacent tidal area, known as riparian rights.
- In Alabama, these rights include the right to build a pier or dock, to harvest oysters, and to access the water.

Ambulatory Property Lines

- The boundary between upland property owners and the state generally shifts with the natural changes in the shore.
- The following examples discuss this concept in more detail, as well as instances when the property lines may become fixed.

Naturally Occurring Accretion and Erosion



In this scenario, Ann and Bob are both riparian property owners along Alabama's coastal shore. Ann gains land as a result of naturally occurring accretion while Bob loses land because of naturally occurring erosion.

Who owns the newly gained and lost land?

General Rule: Shorelines naturally shift and shoreline property boundaries (between the upland owner and the state-owned submerged lands) shift with the natural processes.

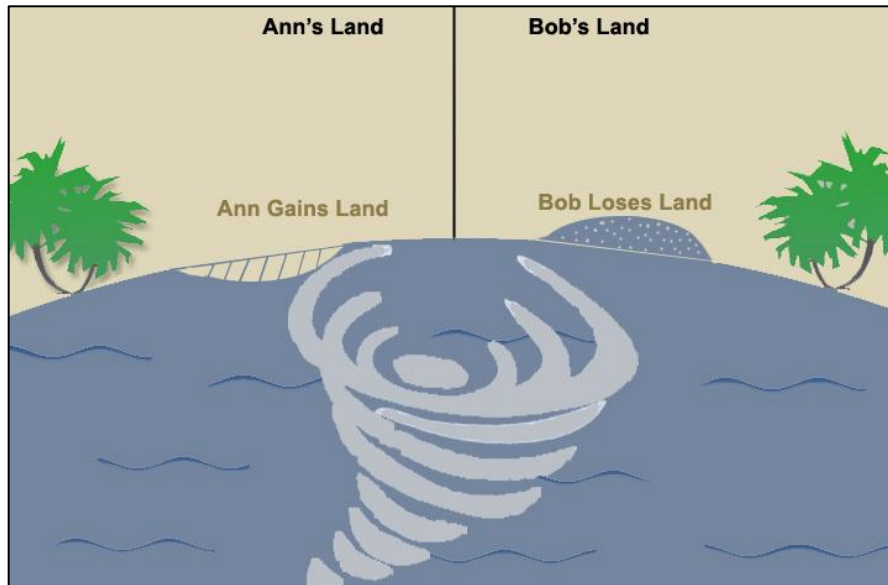
Ann – Natural Accretion

- Accretion refers to the process of gaining sediment or sand along the shoreline by natural deposition of the sediment.
- Because Ann gained her land through naturally occurring accretion, Ann now owns the new land.
- Naturally occurring means that no person, including Ann, caused the land to grow. The accretion happened because of natural shoreline processes.

Bob – Natural Erosion

- Because Bob lost his land through naturally occurring erosion, these lands are now state owned submerged lands. Alabama now owns the newly submerged lands.
- Bob cannot reclaim these lands from Alabama.
- Again, naturally occurring means that no person's activities caused the land to erode. The erosion occurred naturally as a result of shoreline processes.

Avulsion



In this scenario, an avulsive event occurs (for example, a hurricane). As a result of avulsion, Ann gains land and Bob loses land.

Who owns the newly created and lost land resulting from the avulsion?

Avulsion

- Avulsion means the sudden or perceptible loss or addition to land by the action of water. (Ala. Admin. Code r. 220-4-.09).
- Avulsion differs from naturally occurring erosion/accretion because it happens suddenly.
- An avulsive event does not change property boundaries.

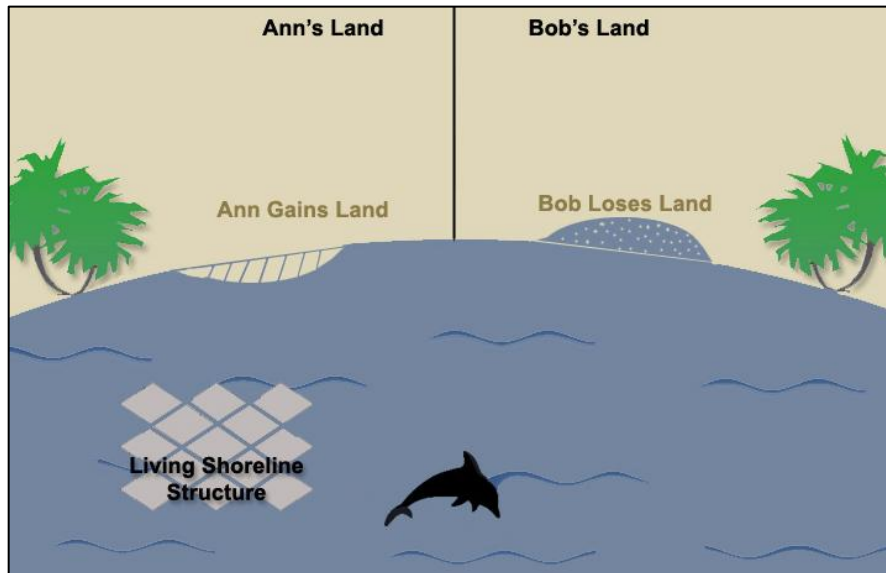
Bob – lost land through avulsion

- Bob may reclaim the land he lost because of avulsion.
- But:
 - Bob is responsible for proving that the land was lost by avulsion (as opposed to erosion or some other means).
 - Bob must make his claim in a timely manner.
- Bob may seek a permit from Alabama Dept. of Conservation and Natural Resources to refill the lost land.
- Reclamation activities on state owned submerged lands shall be approved only if avulsion or artificial erosion is affirmatively demonstrated. (Ala. Admin. Code r. 220-4-.09(4)(b)(5)).

Ann – gained land through avulsion

- Ann does not own the newly exposed land. Because avulsive events do not change the property boundaries, Alabama continues to own the new dry land even though it is no longer submerged.
- The avulsion does not change Ann’s riparian rights. She will still have the right to access the water, including the right to cross over the newly exposed land.
- If Ann and the state dispute ownership of the land, Alabama may bring a legal action to “quiet title” over the new land. In that instance, a court would examine the facts to determine if the new land occurred as a result of avulsion.

Living Shorelines & Artificial Erosion/Accretion



In this scenario, Ann has installed a living shoreline structure off of her shoreline while Bob has not. Over time, Ann's land has accreted and Bob's land has been eroded.

Who owns the newly gained and lost land?

Artificial Erosion and Accretion – any gains or losses of land resulting from a living shoreline structure are considered artificial. Property ownership of artificially accreted or eroded lands differs from naturally occurring accreted or eroded land discussed in the first scenario.

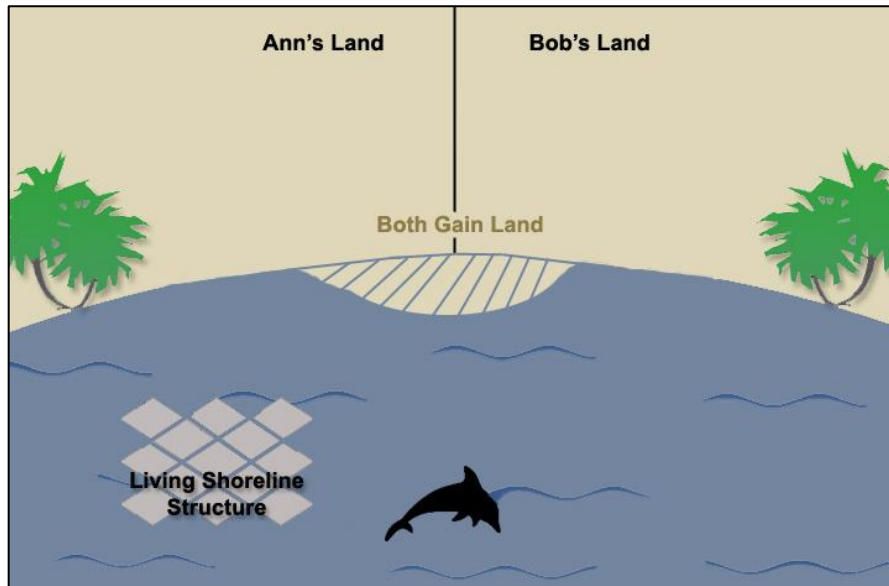
Bob – land lost by artificial erosion

- Bob's rights are similar to his rights when land was lost by avulsion.
- Bob may reclaim the lost land.
- General Rule: If you (nor anyone else who ever owned your land) are not responsible for the cause of the eroded land, you may reclaim the lost land.
- But:
 - Bob must prove that the living shoreline caused the erosion (as opposed to natural erosion or some other means).
 - To reclaim the land, Bob must seek permit for reclamation activities from Ala. DCNR. (Ala. Admin. Code r. 220-4-.09)
- This applies to living shorelines and any other man-made projects that cause erosion.

Ann – gained land by artificial accretion

- Because Ann authorized the living shoreline, she cannot claim ownership of the new land. The new land belongs to Alabama.
- General Rule: Where the upland property owner (Ann) is responsible for the artificial accretion (she installed the living shoreline), the State owns the newly created land.

Living Shorelines & Artificial Accretion



In this scenario, both Ann and Bob have accreted land as a result of the living shoreline structure Ann installed.

Who owns the artificially accreted land?

General Rule: The landowner has a right to new land created by artificial accretion that is adjacent to his property if neither the landowner (nor any previous owner of his parcel of property) caused, consented to, or participated in making the artificially accreted lands.

Ann – artificially accreted land because of Ann’s actions

- Ann does not own the new land in front of her property because the land accreted as a result of Ann’s installation of a living shoreline structure.
- Alabama owns the new land in front of Ann’s property.

Bob – artificially accreted land because of neighbor’s actions

- Bob does own the new land in front of his property because Bob is not responsible for the living shoreline structure that caused the artificial accretion.
- Bob is responsible for proving that he was not responsible for the accretion occurring.