STATE OF WISCONSIN COURT OF APPEALS
DISTRICT III

APPEAL NO. 17-AP-000800

FRIENDS OF THE STURGEON BAY PUBLIC WATERFRONT, SHAWN M. FAIRCHILD, CARRI ANDERSSON, LINDA COCKBURN, RUSS COCKBURN, KATHLEEN FINNERTY AND CHRISTI WEBER,

Plaintiffs-Respondents,

v.

CITY OF STURGEON BAY, a Wisconsin municipal corporation, and WATERFRONT REDEVELOPMENT AUTHORITY OF THE CITY OF STURGEON BAY, a municipal redevelopment authority,

Defendants-Appellants

AMICUS BRIEF OF NONPARTY FLOW (FOR LOVE OF WATER) IN SUPPORT OF PLAINTIFFS-RESPONDENTS

On Appeal from the Judgment of the Door County Circuit Court, Honorable Raymond Huber, Presiding, Case No. 16-CV-000023, Dated March 8, 2017

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INTRODUCTION AND SUMMARY

Nonparty For Love of Water ("FLOW") submits that as a matter of law, the legal and equable rights of the State and of Plaintiffs-Respondents in the artificially filled state-owned bottomlands below the ordinary high water mark ("OHWM") of Parcel 92 are not subject to the Notice of Claim statute, Wis. Stat. 893.80(1d), or the Statute of Limitations.[1] The City Defendants' argument that this suit should be barred based on these general laws ignores the requirements of an (1) *express legislative grant* and an (2) *explicit finding* of public purpose that apply when a State seeks to transfer or use state-owned bottomlands of the Great Lakes. The State's title in the lakebeds of the Great Lakes and its obligations under the public trust doctrine are rooted in Art IX, Section 1 of the Wisconsin Constitution.

ARGUMENT

Upon statehood on May 29, 1848, absolute title to the lakebeds and overlying waters below the OHWM of the Great Lakes vested in Wisconsin, as sovereign, under the "equal footing doctrine." *Shively v. Bowlby*, 152 U.S. 1, 26 (1894). *See also Martin v. Lessee of Waddell*, 41 U.S. (16 Pet.) 367, 410 (1842) ("[T]he people of each state became themselves sovereign, and in that character held the absolute right to all

[1] Wis. Stat. 893.33(2) provides for a 30-year marketable title based on recorded document or event memorialized by a recorded document. The Wisconsin legislature has not expressly authorized the acquisition of title to the State's sovereign bottomlands of the Great Lakes through adverse possession.

their navigable waters, and the soils under them…."); *PPL Montana, LLC v. Montana*, 565 U.S. 576, 589–591 (2012); *McLennan v. Prentice*, 85 Wis. 427, 55 N.W. 764, 769–770 (1893).

The sovereign title to navigable waters and the lakebeds below the OHWM are held in a perpetual public trust for the benefit of each citizen. *See Shively*, 152 U.S. at 15–17, 24, 46, 49. Because of the sovereign and public trust nature of navigable waters and the soils under them, title is inalienable, and the State "cannot … make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right." *Illinois Central R. Co. v. Illinois*, 146 U.S. 387, 456 (1892) (quoting *Martin*, 41 U.S. at 418).

In what Professor Joseph Sax described in 1970 as the "lodestar" of public trust jurisprudence,[2] the United States Supreme Court in *Illinois Central* upheld the legislature's repeal of a prior legislative grant of state-owned bottomlands on Chicago's waterfront to a private railroad company: "[A] state can no more abdicate its public trust property than it can abdicate its police powers in the administration of government." *Illinois Central*, 146 U.S. at 453. As the Court explained, it is "hardly conceivable that the legislature can divest the state of the control and management of this harbor, and vest it absolutely in a private corporation." *Id*. at 454–55.

[2] Joseph Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471, 489 (1970).

Wisconsin adopted the principles of sovereign ownership and the public trust in the lakebeds of navigable waters shortly after its inception. Wis. Const., Art. IX, Sec. 1; *McLennan*, 55 N.W. at 769–770. The State has vigorously adhered to the public trust principles of *Illinois Central* for more than 100 years. As the Wisconsin Supreme Court explained,

> The right of which the state holds in these lands is in virtue of its sovereignty and in trust for public purposes of navigation and fishing. The state has no proprietary interest in them, and cannot abdicate its trust in relation to them, and, while it may make a grant of them for public purposes, it may not make an irrepealable one; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation.

McLennan, 55 N.W. at 769–770 (adopting *Illinois Central* analysis). *See also Illinois Steel Co. v. Bilot*, 109 Wis. 418, 84 N.W. 855 (1901) (citing, *inter alia*, *McLennan* and *Illinois Central*). Wisconsin has vigorously followed the following public trust principles:

1. The State holds a "legal title" and Wisconsin citizens have an "equitable title" in the public trust bottomlands and waters of the Great Lakes. *See City of Milwaukee v. State*, 193 Wis. 423, 241 N.W. 820, 821–32 (1927); Wis. Const. Art. IX, Section 1. Whether filled or unfilled, the bottomlands of the Great Lakes are considered to be fully vested in and owned by the State as sovereign. *See id.*

2. Control and uses of state-owned bottom lands cannot be transferred except by express legislative grant. *See, e.g.*, *Muench v. Pub. Serv. Comm'n*, 261 Wis. 492, 55 N.W.2d 40, 45–48 (1952).[3]
3. If there is an express legislative grant, state-owned bottomlands cannot be conveyed or transferred to private owners or for private purposes. *See Priewe v. Wis. State Land Improvement Co*., 103 Wis. 537, 79 N.W. 780, 781–782 (1899); *McLennan*, 85 Wis. at 443. Any transfers of control or authorized uses must achieve a public purpose consistent with the public trust. *See, e.g.*, *State v. Pub. Serv. Comm'n*, 275 Wis. 112, 81 N.W.2d 71, 73–74 (1957).
4. Any express legislative grant must be based on explicit determinations that establish a primary public purpose (such as public access and uses including navigation, fishing, boating, and recreation) and no impairment of the State's legal and public's equitable title in the waters, bottomlands, and public trust uses. *See, e.g.*, *McLennan*, 85 Wis. at 443; *Pub. Serv. Comm'n*, 81 N.W.2d at 73–74*; City of Milwaukee*, 241 N.W. at 821–32.
5. Courts have fashioned a five-factor test to measure the validity of an express grant to ensure it explicitly delineates a lawful transfer of control or use without violating the State's title and limitations

[3] *See also* Sax, *supra* note 2*,* at 491–493, 509–512.

imposed by the public trust doctrine. *See Pub. Serv. Comm'n*, 81 N.W.2d at 72–75; *City of Madison v. State*, 1 Wis. 2d 252, 83 N.W.2d 674, 678 (1957) (filled bottomlands for *public civic building*). Any transfer of control or use of state-owned bottomlands to a municipality is limited by the State's title and the public trust doctrine. *See, e.g.*, *State v. Town of Linn*, 205 Wis. 2d 426, 443–446, 556 N.W.2d 394 (Ct. App. 1996).[4] Even when use of a lakebed complies with this test, sovereign public trust title and control cannot transfer. *See City of Madison*, 83 N.W.2d at 678.[5]

I. The Notice of Claim Statute Does Not Apply to Actions Seeking to Prevent an Unlawful Transfer of Artificially Filled State-Owned Lands Held in Public Trust.

The Notice of Claim statute, Wis. Stat. 893.80(1d), requires a written notice and itemization of a claim before a party can bring a civil action against a municipality. Nothing in the statute remotely suggests that the legislature intended to authorize courts to bar actions to protect the sovereign title of the State and of the citizens under the public trust doctrine

[4] "[T]he regulation and enforcement of the public trust doctrine has been reposed with the legislature and the DNR, and occasionally in cooperation with municipalities." *Id.* at 447. There is no legislative grant or delegation of power to the DNR or the City to use public trust bottomlands for a public purpose, and certainly not for a private hotel development.

[5] *See also* Melissa K. Scanlan, *Implementing the Public Trust Doctrine: A Lakeside View into the Trustee's World*, 39 Ecology L. Q. 123, 143 (2012). Similarly, the bulkhead line established for the City of Sturgeon Bay authorized use of the bottomlands landward of the bulkhead, but it did not authorize a transfer or convey the state-owned sovereign title. Wis. Stat. 30.11 (4) (City Defendants Brief at 23) authorizes placement of fill up to such line, to use the bottomland, but clearly is not a transfer or conveyance of title statute. The authorized use of bottomlands with fill for a public or navigational purpose related to a

and Art. IX, Section 1 of the Constitution. *See Illinois Central*, 146 U.S. at 452–456; *Muench*, 55 N.W.2d at 45–48; *Town of Linn*, 205 Wis. 2d at 443–446. Because the public trust and sovereign title of the lakebeds of Lake Michigan are rooted in the Wisconsin Constitution, neither the city nor the courts can infer from the Notice of Claim Statute an express grant of the sovereign title of State bottomlands. *See McLennan*, 55 N.W. at 769–770; *Pub. Serv. Comm'n*, 81 N.W.2d at 72–75.

The Notice of Claim statute cannot be construed to grant express authority to the City Defendants to transfer filled bottomlands to a private person; nor can it be construed to block a citizen's claim to protect equitable title and rights of public use against the alienation of public trust bottomlands by the city. Attempts by municipalities to interfere with citizen access and use of public trust land and waters are prohibited. *See Town of Linn*, 205 Wis. 2d at 443–446 (holding that town could not enact parking ordinance to prohibit nonresidents from parking at public boat ramp that provided access to navigable public trust waters).

Moreover, an action for declaratory judgment and injunction to nullify government action, such as the City Defendants' development contract to transfer state-owned public trust bottomlands to a private developer for a private purpose, is consistent with the holdings of this Court

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dock cannot constitute a conveyance of title or authorization to claim title based on adverse possession.

that such actions fall outside the notice provisions of Wis. Stat. 893.80(1d).[6] *See, e.g.*, *Nicolet v. Village of Fox Point*, 177 Wis. 2d 80, 501 N.W.2d 842 (1993); *Harkness v. Palmyra-Eagle School Dist.*, 157 Wis. 2d 567, 460 N.W.2d 769 (Ct. App. 1990), *review denied*, 464 N.W.2d 423; *Oliveira v. City of Milwaukee*, 2001 WI 27, 242 Wis. 2d 1, 624 N.W.2d 117; *Gillen v. City of Neenah*, 291 Wis. 2d 806, 822–823, 580 N.W.2d 628 (1998) (Section 893.80(1) does not apply to actions to prevent public trust violation) (cited in *E-Z Roll Off, LLC v. City of Oneida*, 2011 WI 71, ¶ 26, 335 Wis. 2d 720, 754–755, 800 N.W.2d 421 (2011)).

Accordingly, this Court should affirm the trial court holding that Section 893.80(1d) does not bar Plaintiffs-Respondents' claim.

II. The Statute of Limitations Does Not Apply to Artificially Filled State-Owned Bottomlands that Are Below the OHWM of Lake Michigan.

The statute of limitations[7] and related defenses of adverse possession, laches or estoppel do not apply to sovereign public trust bottomlands. First, nothing in the statutes of limitations grants express authority to bar Plaintiffs' action or transfer title based on adverse

[6] It should also be noted that the DNR informed the City Defendants in 2014 that there was a "strong likelihood" that most of Parcel 92 fell below the OHWM and belonged to the state as sovereign under the public trust doctrine. (Tr. Ex. 57; App. R. 87:4). Actual knowledge defeats the application of the Notice of Claim statute. *See State ex rel. Kuehne v. Burdette*, 2009 WI App 119, 320 Wis. 2d 784, 772 N.W.2d 225.

[7] While Defendants-Appellants list several sections from Wisconsin's statutes of limitations, it is assumed that Defendants-Appellants claim adverse possession under Section 893.33(2) because "fill activity occurred more than a half-century ago." City Defendants' Br. at 2.

possession. Second, under Wisconsin case law (like the majority of States), the State's sovereign title in public trust lakebeds of the Great Lakes cannot be conveyed to the city or private owner. *Bilot*, 844 N.W. at 857.

Section 893.33 of Wisconsin's statute of limitations does not mention actions to quiet title in state lands.[8] Even if it did, the law does not expressly authorize adverse possession of state-owned bottomlands below the OHWM that are held in or subject to the public trust of the State. The State holds public trust bottomlands as sovereign, and not in its proprietary capacity. Because of this, it would take an express legislative grant authorizing adverse possession of public trust bottomlands; in any event, the legislature as sovereign does not have the authority to grant adverse possession and title to for a private purpose, because it would contravene the basic principles of public trust law.

In *Illinois Steel Co. v. Bilot,* the Court distinguished the sovereign bottomlands of Lake Michigan from lands covered by water that were essential for exercise of riparian rights attached to the shore, *Bilot*, 844 N.W. at 857, and held that bottomlands that were part of Lake Michigan below the OHWM were not subject to adverse possession. *Id*.

This is in accord with the common law that public purpose lands, including public trust bottomlands, are not subject to adverse possession

[8] On the contrary, Section 893.29 indicates that the statute cannot be applied to state, school or other special lands.

under statutes of limitations.[9] This rule however is subject to the caveat that state lands may be subject to statutes of limitations and adverse possession where the state legislature has *expressly* waived the common-law rule.[10] However, even where States expressly authorize adverse possession against state lands, courts generally ignore the statute of limitations for adverse possession where the state land is held for a specific public purpose or sovereign public trust lands.[11]

For example, in a recent Michigan case, *Mackinac Island Ferry Capital v. Department of Environmental Quality*, the plaintiff who acquired filled lands beneath a more than 100-year old commercial dock claimed title by adverse possession, laches and estoppel. The court rejected the claim and held that historical filled bottomlands were not subject to adverse possession under Michigan's statute of limitations.[12] The court stated, flatly, that "the state may not lose its title to Great Lakes bottomlands by adverse possession,"[13] citing *Kavanaugh v. Rabior,* 192 N.W. 623 (Mich. 1923), which relied on *State v. Venice of America Land Co,* 125 N.W. 770

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[9] Paula R. Latovick, *Adverse Possession Against the States: The Hornbooks Have it Wrong,* 29 U. Mich J.L. Reform 939, 945–947 (1996).
[10] *Id.* Wisconsin expressly exempted state, school, college and university lands. Wis. Stat. 893.29.
[11] Latovick, *supra* note 11, at 952–953, 963–966.
[12] *Mackinac Island Ferry Capital v. Dep't of Envt'l Quality*, Case No. 16-000056-MZ, Order & Opinion (Mich. Ct. of Claims June 23, 2016) (A copy of this unpublished order and opinion is attached as required under Wis. Stat. 809.23(c)).
[13] *Id.* at 4. See also *Vermont v. Cent. Vermont R. Co.,* 571 A.2d 1128 (Vt. 1989); *N. Dakota v. Andrus, Secretary of Interior,* 671 F.2d 271, 276 (8th Cir. 1982); *Capruso v. Vill. of Kings Point*, 16 N.E.3d 527 (N.Y. 2014) (rejecting laches and statute of limitations where city converted parkland into a waste treatment facility).

(Mich. 1910) for the proposition that it "clearly appears from an abundance of authority that title to submerged lands in the Great Lakes held by the state cannot be devested [sic] by adverse possession; it being held in trust for the public, according to the original cession from Virginia and the ordinance of 1787." *Id.* at 779 (citations omitted).

Given the sovereign nature of the State's and public's title to state-owned bottomlands under Art. IX, Section 1, of the Wis. Constitution, the City Defendants or their predecessors did not and cannot claim title to the filled bottomlands below the OHWM based on adverse possession or the statute of limitations.

III. The City Defendants' Arguments Would Undermine the Longstanding Title to Hundreds of Miles of Public Trust Bottomlands in Wisconsin and Other Great Lakes States.

There are fifty-three cities,[14] twenty-three of them in Wisconsin alone,[15] on Lake Michigan with historical harbors and waterfront, many with vacant or industrial filled bottomlands. From Bayview to Marinette, Green Bay and Sturgeon Bay, to Oconto, Milwaukee, and Racine, the long-term stability of state-owned title, public trust access, public uses for future boating, swimming, fishing, and recreation would be seriously threatened.

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[14] https://en.wikipedia.org/wiki/List_of_cities_on_the_Great_Lakes, List of Cities on the Great Lakes, pp. 1–3.

[15] *Wisconsin Harbor Towns*, (2017, Wisconsin Harbor Association) www.wisconsinharbortowns.net. The Harbor Town Association is supported by grants from the State's Coastal Management Program, established in 1978, to preserve, protect, and manage the resources of Wisconsin's Great Lakes for current and future generations. *Ports and Harbors* (University of Wisconsin Sea Grant Institute, 2013).

Preserving and restoring these state-owned bottomlands is critical for the redevelopment of Wisconsin and Great Lakes cities.

Significant investment and planned investment in public infrastructure, such as the State's hundreds of marinas[16] and parks, piers, and other places that are available to the public in the nineteen major harbor cities and towns on Lake Michigan and Lake Superior,[17] would be cut off or lost to private development that would otherwise occur on nearby private property through the plans and forces for private development of property available for acquisition on the open market. The same is true for parallel efforts to protect filled and other state-owned bottomlands and waters along the hundreds of other Great Lakes towns and cities, such as Milwaukee, Chicago, Detroit, Cleveland, and Buffalo.

Conclusion

For the foregoing reasons, Nonparty FLOW submits that because of the sovereign and constitutional nature of the public trust artificially filled state-owned bottomlands under Parcel 92, this Court should reject City Defendants' arguments concerning the Notice of Claim statute and Statute of Limitations, laches, or equitable estoppel.

[16] *Id.* at 40.
[17] *Id*. at 3.

Date: October 2, 2017

Respectfully submitted,

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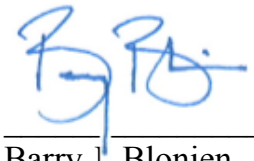
CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. 809.19(8)(b) and (c) for a brief produced with proportional serif font. The length of this brief is 2,889 words.

I further certify that the text of the electronic copy of this brief filed pursuant to Wis. Stat. 809.19(12)(d) is identical to the text of the paper copy of the brief.

I have caused ten copies of this brief to be deposited in the United States mail for delivery to the clerk by first-class mail. I have also caused three copies of this brief to be served on each party by first-class mail.

DATE: October 2, 2017



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STATE OF MICHIGAN

COURT OF CLAIMS

MACKINAC ISLAND FERRY CAPITAL, LLC,

Plaintiff,

v

DEPARTMENT OF ENVIRONMENTAL QUALITY and STATE OF MICHIGAN,

Defendants.

OPINION

Case No. 16-000056-MZ

Hon. Michael J. Talbot

Before the Court is Defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). For the reasons discussed below, the motion is GRANTED pursuant to MCR 2.116(C)(8).

According to Plaintiff's complaint, Plaintiff's action "seek[s] to quiet title to uplands and filled bottomlands adjacent to the historic Coal Dock, and obtain a lease from [Defendant] to submerged bottomlands beneath the Coal Dock . . . ." Plaintiff's complaint explains that "[t]he Coal Dock and aforementioned submerged bottomlands are located lakeward of" various parcels situated on Mackinac Island. Plaintiff's complaint names several defendants, some of which come within this Court's jurisdiction and some that do not. Only the Department of Environmental Quality and the State of Michigan ("Defendants") are currently before this Court, the claims against these Defendants having been transferred to this Court by operation of MCL 600.6404(3). Thus, only those counts raising claims against Defendants are presently before the Court, more specifically, Counts I, II, III, IV, and IX.

In Count I, Plaintiff seeks to quiet title to "any and all leasable interest in the Coal Dock bottomlands . . . ." The count contends that Plaintiff has adversely possessed this interest, and "demand that any current leasable interest [in] the bottomlands beneath the Coal Dock should be conveyed to [Plaintiff] by [Defendant.]" Count II similarly seeks to quiet title "to filled bottomlands adjacent to" a portion of "Lot 133 through adverse possession . . . ." In Count III, Plaintiff seeks to quiet title as against a defendant who is not before this Court, Mackinac Island, to a parcel identified as the "Astor Parcel," again based on adverse possession. As to Defendants, Plaintiff requests that the Court compel "MDEQ to issue a use/lease agreement for the submerged bottomlands lakeward of the Astor Parcel . . . ." In Count IV, plaintiff similarly seeks to "quiet title to filled bottomlands adjacent to [the] Astor Parcel . . . ." Plaintiff requests an order "[c]ompelling MDEQ to issue a bottomlands deed for the filled bottomlands adjacent to" the parcel. In Count IX, Plaintiff requests a preliminary injunction preventing the MDEQ from granting a conveyance application "for bottomlands lakeward" of its claimed interest in Lot 133 submitted by two other companies.[1]

In lieu of an answer to the complaint, Defendants have filed the present motion for summary disposition. Relying on caselaw going back for more than a century, Defendants explain that bottomlands in the Great Lakes may not be acquired by adverse possession. Defendants also explain that in order to acquire a deed or lease to bottomlands, an administrative review process must be followed. Thus, it would be improper for this Court to simply order any conveyance of an interest in these bottomlands. Finally, while Defendants do not object to the

[1] Other counts of the complaint not before this Court dispute ownership of Lot 133 as between these other companies.

issuance of an injunction, they argue that one is unnecessary, as MDEQ has already informed Plaintiff that it will not issue any deeds or leases to the disputed bottomlands until the underlying property dispute between Plaintiff and the other companies is resolved in the Circuit Court.

Plaintiff does not dispute that it may not acquire bottomlands through adverse possession. But despite describing all of the relevant areas as bottomlands in its complaint, Plaintiff contends that there is a factual dispute regarding whether the areas adjacent to the northern end of Lot 133 and the Astor Parcel are actually bottomlands, or should properly be considered uplands. In this regard, plaintiff notes that these areas fall within areas that have been given tax identification numbers and that plaintiff or its predecessor have paid property taxes on these areas for a number of years. Plaintiff acknowledges that conveyances of bottomlands must be obtained through the process identified by Defendants. Plaintiff also notes that it filed an application for such a conveyance, which was subsequently denied because of the existing ownership disputes between Plaintiff and the other companies. Plaintiff states that it will amend or remove the request for such relief if deemed necessary. With respect to its request for an injunction, Plaintiff explains that MDEQ's actions to this point "do not inspire [Plaintiff's] confidence . . . ." Plaintiff maintains that an injunction would be appropriate to prevent MDEQ from issuing any deeds, leases, or permits until the related Circuit Court matter is resolved.

Defendants' motion has been brought pursuant to MCR 2.116(C)(8) and (C)(10). With respect to Counts I through IV, the Court grants summary disposition pursuant to MCR 2.116(C)(8). As explained in *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999):

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed

> in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." When deciding a motion brought under this section, a court considers only the pleadings. [(citations omitted).]

With respect to Counts I through IV, plaintiff's complaint clearly asks this Court to conclude that it is entitled to possession of Great Lakes bottomlands through adverse possession. As Defendants argue, and Plaintiff concedes, the State may not lose title to Great Lakes bottomlands by adverse possession. *Kavanaugh v Rabior*, 222 Mich 68, 71-72; 192 NW 623 (1923). In addition, to the extent Plaintiff seeks an order compelling MDEQ to issue deeds or leases to these areas, this Court may not grant any such relief. Rather, as Defendants contend, and as Plaintiff also acknowledges, such conveyances may occur only through an administrative process. See MCL 324.32503. Accordingly, on the face of the complaint, Counts I through IV fail to state a claim against Defendants.

Attempting to save these claims, Plaintiff now contends that at least some of the areas at issue may not be bottomlands. This argument flies in the face of the allegations of Plaintiff's complaint, which identifies all of the areas as bottomlands. Nor would it make any sense for Plaintiff to seek conveyances from MDEQ pursuant to MCL 324.32504, as Plaintiff requests in its complaint, if these areas were not bottomlands. Considering only the pleadings, Plaintiff clearly fails to state a claim against Defendants in Counts I through IV of its complaint. Accordingly, Defendants are entitled to summary disposition with regard to these counts pursuant to MCR 2.116(C)(8).

Turning to Count IX, the Court finds summary disposition appropriate pursuant to MCR 2.116(C)(10). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted

by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden*, 461 Mich at 120.

An injunction is an extraordinary and drastic remedy, one that "should be employed sparingly and only with full conviction of its urgent necessity." *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012). Here, it is plain that there is no urgent necessity for an injunction. The record establishes only that MDEQ has no intention of issuing any deeds or leases to the disputed bottomlands areas until the underlying dispute between Plaintiff and the other companies claiming interests is resolved in the Circuit Court. Plaintiff presents no compelling reason why an injunction should issue, and thus, the Court finds summary disposition in Defendants' favor appropriate with regard to Count IX of the complaint.

Dated: JUN 23 2016

Hon. Michael J. Talbot
Court of Claims Judge