



ITEM NO. H.1

## PACIFIC LEGAL FOUNDATION

November 26, 2008

RECEIVED DEC - 1 2008

Mr. Donal S. Russell  
General Manager  
Capistrano Bay District  
35000 Beach Road  
Capistrano Beach, CA 92624

Re: Accretion Information

Dear Mr. Russell:

I am an attorney at Pacific Legal Foundation (PLF) and am writing to respond to your November 20, 2008, letter in which you requested information regarding ownership changes as a result of accretion. First I would like to thank you on behalf of the Foundation for your organization's generous contribution. Donors like you make our work possible! And now let me say a few words about how the Foundation works, and our role in providing you additional information; then I will address your inquiry.

As I am sure you are aware from our previous involvement with your residential community, PLF is funded entirely by donations. In addition, we litigate very few of the cases brought to our attention both because of our limited resources and because of our desire to pursue cases that are most likely to result in successful published decisions. This both benefits our clients and ensures that our wins help others who may be similarly situated in the future. As a result, we receive far more requests for information and for representation than we can possibly undertake.

Therefore, I must state that in replying with the information you requested, the Foundation has not agreed to represent you in this matter. Because we do not represent you, we cannot provide any legal advice to you or your members. We hope that the factual information we share will help you and the Capistrano Bay District decide on a course of action. But, because the situation involves ownership rights and obligations, PLF recommends that you and your members seek consultation of a private attorney to determine what specific legal rights and obligations are at stake.

From your letter, I understand that there are some areas of Sandy Beach where, due to accretion, it is unclear who owns the land. According to the California Supreme Court, accretion is "the gradual and imperceptible accumulation of land due to the action of a boundary river, stream, lake, pond or tidal waters." *State of Cal. ex rel. State Lands Comm'n v. Superior Court*, 11 Cal. 4th 50, 63 n.1

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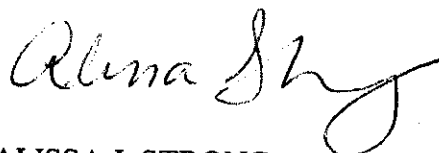
(1995) (*Lovelace*). Thus, in California, the “general rule” is that “accretion goes to the upland owner.” *Lovelace*, 11 Cal. 4th at 78. In this case, the Court explains that it uses the term “upland property” to reference what is more properly called “littoral property,” property that borders an ocean, sea, or lake. *Id.* at 63 n.1. This means, therefore, that the extra land yielded by accretion belongs to the party who owned the littoral or upland property before the accretion began.

There are some exceptions to the general accretion rule. First, sudden natural disasters that drastically change boundaries of waterways do not change the ownership of the land in question. This is called “avulsion” and occurs when a substantial piece of shoreline or riverbank is removed or moved by “sudden violence.” *Id.* at 65 n.2; *see also* Cal. Civ. Code § 1015. In that case, if the piece of land is relocated to where a new upland owner may claim it, the former owner of that land may claim it for up to one year. *Lovelace*, 11 Cal. 4th at 65 n.2. Therefore, accretion must happen gradually over a long period of time for it to yield legal boundary changes.

Further, in the *Lovelace* case, the California Supreme Court also explained that there is another exception to the general rule of accretion for what is called “artificial accretion.” 11 Cal. 4th at 78. Artificially accreted land does not become the property of the upland owner. What makes accretion artificial is when it is “directly caused by human activities, such as [] dredging, wing dams or levees . . . that occurred in the immediate vicinity of the accreted land.” *Id.* at 79-80. Consequently, the Court ruled that because the accreted land in that case was due to artificial, human activities, it did not belong to the owners of the river bank. It is somewhat difficult to know without going through litigation whether accretion will be deemed artificial or not. This is because the standard does not have a precise dividing line. The decision in *Lovelace* says that such cases will be determined on a “case-by-case basis,” but that the artificial or human activity must have been the “direct cause of the accretion” to be considered artificial and it is not “artificial merely because human activities far away contributed to it.” *Id.* at 80.

There are many other cases in California dealing with accretion, avulsion, and the redrawing of property lines as a result of such processes. There are even cases that have held that some artificial accretion still resulted in ownership to the upland owner. However, the *Lovelace* case does a fairly complete job of explaining and summarizing the current law in California. We hope this information will help you as you seek to understand the boundary lines in your residential community. If you have any questions about the information in this letter, please feel free to contact me at PLF via telephone (916-419-7111) or e-mail ([ajs@pacificlegal.org](mailto:ajs@pacificlegal.org)). Again, thank you for your questions and for your donations to PLF.

Sincerely,



ALISSA J. STRONG  
Attorney