

**PRESS RELEASE**  
**February 16, 2018**

**INDIANA SUPREME COURT ISSUES HISTORIC RULING:  
LAKE MICHIGAN SHORE IS HELD IN TRUST FOR THE PUBLIC**

On February 14, 2018, the Indiana Supreme Court issued an historic opinion protecting the Lake Michigan shore for the public's use. This decision repudiates a private property owner's claimed ownership of the shore to the water's edge and claimed right to exclude others from the sandy beaches adjacent to the Town of Long Beach, Indiana.

In *Gunderson v. State of Indiana, et. al.*, No. 46S03-1706-PL-423, the Supreme Court recognized the public's inalienable rights on the Lake Michigan shore under the Public Trust Doctrine and also defined the precise boundary at which the State's ownership interest ends and private property interests begin, saying: "... the boundary separating public trust land from privately-owned riparian land along the shores of Lake Michigan is the *common-law ordinary high water mark* and that, absent an authorized legislative conveyance, the State retains exclusive title up to that boundary." [*emphasis added*]

The Long Beach Community Alliance ("LBCA") intervened in this case at the trial court level and has been an active participant on behalf of the public's rights in this case and related Lake Michigan beach litigation since 2012. According to LBCA Attorney Patricia Sharkey, "This clarification of the boundary of the public lands should end ambiguity and disputes on our Lake Michigan beach. The presence of terrestrial vegetation, such as trees and shrubs, is recognized as the primary indicator of the "natural Ordinary High Water Mark" ("OHWM") and has the advantage of being readily discernible by the public, adjacent property owners, and State enforcement officials."

As to the scope of public activities protected under the public trust, the Court noted the evidence of historic uses provided by LBCA, but neither prohibited nor enumerated any of those activities. Instead, the Court discussed a "minimum" of protected activities and deferred to the legislature to codify a more expansive list.

The LBCA Board issued the following statement:

"For LBCA and Long Beach residents, this is a long-awaited victory. We commend the Indiana Supreme Court for its careful analysis. In addition to protecting the rights of the public to use the beach, this decision protects the beach from the onslaught of private construction that has encroached on the public beach in recent years. This decision will be heralded for generations for saving the Indiana Lake Michigan beach from privatization."

LBCA was represented in this case by Patricia Sharkey of Environmental Law Counsel, P.C. and Kurt Earnst of Braje, Nelson & Janes, LLP.

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## **BACKGROUND**

In 2014, the owner of a lakefront home in the beach community of Long Beach, the Co-Trustees of the Don H. Gunderson Living Trust, filed a law suit against the State of Indiana seeking a declaratory judgment that it owned the Lake Michigan beach down to the water's edge, and had the right to exclude members of the public from using that portion of the beach.

In 2015, the Indiana Superior Court in Michigan City ruled that the beach was owned by the State of Indiana and held in trust for use by the public, but only up to a fixed elevation on the beach established by a 1995 Indiana Department of Natural Resources (DNR) rule.

On December 7, 2016, the Indiana Court of Appeals upheld the Superior Court's ruling that the Lake Michigan beach is subject to the public trust, but reversed the Superior Court determination that the DNR fixed elevation was the boundary of the public trust. Striking down the DNR rule, the Court of Appeals and held that the boundary of the public trust is the common law "ordinary high water mark" ("OHWM") determined by physical characteristics which are readily discernible on the beach, such as dune "shelving" and terrestrial vegetation. But the Court of Appeals also held that the Gunderson's owned the land subject to the public trust down to the "low water mark."

The Indiana Supreme Court on February 14, 2018 held that the public trust extends to the "natural OHWM ", i.e., the "common law OHWM" as found by the Court of Appeals. The Court also found that the State is the exclusive owner of the land up to the natural OHWM, not the adjacent property owner.