

Richard,

Thank you again for taking the time to discuss these concepts with me. Below is a summary of our conversation that will be presented to our group for their discussion. Please feel free to provide further clarification. Also, I would like confirmation that the ordinary high water line in Lake Washington is 15.3 ft. We use the elevation of **15.3 feet National Geodetic Vertical Datum 1929 (NGVD29) as the Safe Upland Line (SUL), not the ordinary high water line, for Lake Washington, Brevard County. The safe upland line will be at or above the true boundary which is the ordinary high water line.**

Ordinary high water line (OHWL) – This is the line used for tidally influenced areas. This line is a boundary line and establishes sovereign submerged lands (SSLs). **The ordinary high water line is the boundary line between private and sovereign lands on navigable **non-tidal** waters of the state, i.e., usually inland lakes and streams. The mean high water line is the tidal boundary.**

Mean high water line (MHWL) – This is the line used for non-tidally influenced areas. This line is a boundary line and establishes SSLs. **The mean high water line is the boundary line between private and sovereign lands on navigable **tidal** waters of the state.**

Safe upland line (SUL) – This is the line where the State feels confident that any work upland of this line would not result in any impacts to SSLs. This line is used strictly to expedite the permitting process with the State. **Yes. The SUL is a line established at, or, above the mean/ordinary high water line and is sufficient to use for permitting purposes.**

Because NRMO is not attempting to establish any sovereign boundaries, we can pick any number or line we want. However, we want to avoid any situations where the application of our line may cause an applicant to impact sovereign lands (with the understanding that an applicant can apply for a permit to impact sovereign lands – e.g., dock permit).

### **Indian River Lagoon system**

The 0.4/0.5/0.6 ft MHWL elevations that were previously established have been determined to be irrelevant. These numbers were established by NOAA National Ocean Service (NOS) by placing gauges in the IRL system for ~30 days. There was no tidal signal. It was determined that there was a problem with these numbers in the late 1990s. The State is currently collecting its own data. The preliminary result of this data is that elevations of 0.9 – 1.1 ft are actually very close to a MHWL. Therefore, the State has adopted the use of 1.1 ft SUL. **Since this area is non-tidal it would be the OHWL/SUL. The 1.1 ft Safe Upland Line for most of the Indian/Banana River system is a line at, or, above the ordinary high water line. The areas that are tidal, our LABINS.ORG website provides the mean high/mean low data at various points. We caution people to call us to verify the SUL for their particular site and purpose, because other variables may render different methods.**

An applicant can apply to establish an alternate elevation (tidal study option). A surveyor can submit to FDEP to certify the procedure by which they will determine a MHWL. Depending on the location and the purpose of the line, this may require up to three tidal cycles. Once FDEP approves the procedure, the surveyors establishes and certifies the line. Yes, this is for tidal areas only. **Most of the Indian/Banana river system is non-tidal. (The bureau of survey and mapping approves the procedures and the surveyor uses those procedures to establish the tidal datum for the site and he will locate it on the ground.) Since it is a non-tidal water body there are no formal procedures, however we will work with private sector surveyors to establish the OHWL/SUL.**

The Labins website - <http://data.labins.org/2003/> - will help us to determine the location of tidal/non-tidal areas. Clicking on the yellow dots (tidal areas) on the map will reveal the MHWL and other survey data. Purple dots indicate areas that need more study to determine the tidal influence (if any). Black dots are non-tidal areas that should use 1.1 ft. **The black dots instruct the user to contact Richard Malloy for further information. Depending on the circumstances a tide study may be appropriate. The LABINS website is a great tool and the bureau is here for support for any questions concerning the data.**

Bottom line: An elevation of 1.1 ft NGVD29 is very close to what could be considered a MHWL in non-tidally influenced portion of the IRL. MHWL data is available for many tidally influenced areas. Tidal studies can be conducted if an applicant wants to propose an alternate sovereign line elevation. **The 1.1 ft. NGVD29 elevation is very close to the ORDINARY high water line. There is no alternate sovereign line elevation. The ordinary/mean high water line is the sovereign boundary. The SUL is an approximate line and is not a boundary.**

### **Lake Washington**

The OHWL is 15.3 ft NGVD29 (subject to your confirmation). OHWL is lower than the mean annual flood. (I had asked about this because the mean annual flood elevation is 17 ft, higher than the OHWL). The OHWL elevation is a boundary line and not a flood elevation. **We have not determined an elevation for the ordinary high water line of Lake Washington. An elevation of 15.3 feet NGVD29 is what we are currently using for the SUL. True, it definitely is not a flood elevation.**

### **Lake Poinsette**

The Smith case resulted in the establishment of an OHWL elevation of 12.1 ft. However, an important point is that this 12.1 elevation is only valid for the Smith property. While your attorneys have not given you specific direction as to how to apply the OHWL on any other portions of Lake Poinsette, we should assume 13 ft or consult with your office. **The Judge first ruled that the boundary was 12.1 feet. In a second ruling he reversed his first ruling and adopted a survey but not an elevation. The Smith case resulted in the court accepting the survey provided by Mr. Dan Gentry as the boundary between sovereign lands and Mr. David Smith's property. The line by Mr. Gentry is not a contour line at a set elevation and this applies only to the Smith property. The SUL for the rest of**

Lake Poinsett may be 13.0 feet NGVD29. Again, an approximation of the SUL using an elevation.

I think I covered everything. Again, Thank You!! **My pleasure. Good work.**

Darcie

*Darcie McGee*

*Environmental Permitting Section*

*Natural Resources Management Office*

*2725 Judge Fran Jamieson Way, Bldg. A, Room 219*

*Viera, FL 32940*

*Phone (321) 633-2016 , Fax (321) 633-2029*

*darcie.mcgee@brevardcounty.us*

*<http://natres.brevardcounty.us>*