

**RULES  
OF THE SECRETARY OF STATE  
FOR THE  
ADMINISTRATION, CONTROL AND LEASING  
OF  
PUBLIC TRUST TIDELANDS  
(Revised Effective October 5, 2007)**

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OF  
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**Rule 1. Intent**

The intent and purpose of these rules is:

- A. To aid in fulfilling the public trust responsibilities of the State of Mississippi for the administration, control and leasing of public trust tidelands;
- B. To ensure maximum benefit of public trust tidelands for all citizens of the State of Mississippi;
- C. To ensure public access to public trust tidelands;
- D. To administer, manage, protect, enhance and restore public trust tidelands so that the public purposes to which they are devoted can be accomplished. These purposes include, but are not limited to, navigation; transportation; commerce; industry; fishing; bathing, swimming and other recreational activities; development of mineral resources; environmental protection and preservation; the enhancement of aquatic, avian and marine life; and sea agriculture;
- E. To ensure that all public and private occupants of public trust tidelands who are not statutorily exempt provide adequate compensation for the privilege of such occupancy.

**Rule 2. Definitions.**

As used in these rules, the following terms shall have the definitions indicated.

- A. Activity:** (i) the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any public trust tideland; (ii) the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind of garbage, either directly or indirectly, on or in any public trust tideland; (iii) killing or materially damaging any flora or fauna on or in any public trust tideland; (iv) the erection on public trust tideland of structures which materially affect the ebb and flow of the tide; (v) the erection of any structure or structures on suitable sites for water dependent industry; (vi) any exclusive use of the public trust tidelands by anyone for some benefit; (vii) any use that alters the character and, therefore, the value of the public trust tidelands; (viii) any commercial use of the public trust tidelands (excluding commercial fishery operations); (ix) any construction of buildings or wharves, docks, or permanent or semi-permanent structures; and any exclusive economic use of riparian/littoral public trust tidelands by the upland property owner not specifically defined or "granted" as riparian/littoral "rights" pursuant to M.C.A. § 49-27-7(e).
- B. Applicant:** Any person making application for a lease of public trust tidelands.
- C. Aquaculture:** The rearing of any plant or animal during all or any part of its life cycle in an aquatic environment.
- D. Assignee:** A person to whom a transfer or assignment of some interest in property is made.
- E. BMR:** Mississippi Department of Wildlife, Fisheries & Parks, Bureau of Marine Resources.
- F. Claimant:** Any person who asserts an ownership interest in public trust tidelands adverse to the State of Mississippi as Trustee.
- G. Coastal Wetlands Law:** Mississippi Coastal Wetlands Protection Law, M.C.A. § 49-27-1 et seq., effective from and after July 1, 1973.
- H. Dry land:** Land which is above the mean or ordinary high tide line; fast lands or uplands.

- I. **Easement:** A nonpossessory interest in public trust tidelands created by a grant or agreement which confers the limited right, liberty and privilege to use said public trust tidelands for a specific purpose and during a specific time.
- J. **Ecology:** Living things in relation to each other and to their environment.
- K. **Lease:** An interest in public trust tidelands designated by a contract creating a landlord-tenant relationship between the State of Mississippi as landlord or lessor and the applicant as tenant or lessee whereby the Secretary of State, with the approval of the Governor, grants and transfers to the applicant the use, possession and control of specified public trust tidelands, for a determinate number of years, with conditions attached, at a specified rental.
- L. **Leaseholder:** Person who has an estate in public trust tidelands from the State of Mississippi through an instrument of lease executed with the Secretary of State; lessee.
- M. **Leasehold interest:** The interest which the leaseholder has in the value of the lease itself.
- N. **Leasehold value:** The value of the leasehold interest.
- O. **Littoral:** Pertaining to property abutting an ocean, sea or lake rather than a river or stream (see riparian).
- P. **Market value:** The most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.
- Q. **Mean High Water:** The arithmetic mean of all the high waters occurring in a particular nineteen-year tidal epoch period or for a shorter period of time after corrections are applied to the short term observations to reduce these values to the equivalent nineteen-year value.
- R. **Net adverse impact:** Any degree of overall reduction or loss of public trust tidelands and/or tidelands functions after mitigation is completed.
- S. **Occupancy:** Any act of possession.
- T. **Person:** A natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or

any county, municipality, or political subdivision, or any other corporation of any character whatsoever.

- U. Public access:** Direct and free access by members of the general public to the lands and waters and their waterbottoms which constitute the public trust tidelands, or the portion thereof which is the subject of a lease.
- V. Reclamation:** The process of restoring land which has become submerged or artificially altered fast land to its original botanic and/or geological condition.
- W. Riparian:** Pertaining to property abutting a river or stream rather than the ocean or sea (see littoral).
- X. Submerged land or submerged waterbottoms:** Lands which remain covered by waters, where the tides ebb and flow, at ordinary low tides.
- Y. Tidelands:** Those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides.
- Z. Upland:** Land which is above the mean high tide line; dry land or fast land.
- AA. Use:** To serve for any purpose of an occupant or lessee.

**Rule 3. Scope and Effective Date**

- A. These rules apply only to the administrative control and leasing responsibilities of the Secretary of State regarding public trust tidelands. They do not apply to activities under the respective jurisdictions of the Department of Environmental Quality and/or the Department of Wildlife, Fisheries & Parks. These rules are considered cumulative; a person desiring a lease or affected by an administrative decision pursuant to these rules should consult other applicable federal, state and local laws and/or rules and regulations.
  
- B. These rules are prospective in their application and shall not affect previously issued easements or leases concerning public trust tidelands. Fees and lease fees required under existing leases are not subject to the lease fee calculations set forth in these rules until the expiration(s), termination(s) and/or cancellation(s) of those leases, unless otherwise set forth in the existing lease contract.

**Rule 4. Management Policies and Evaluation Criteria**  
*(Amended effective October 5, 2007)*

Evaluations of proposed activities on public trust tidelands, and applications to approve, approve with modifications or conditions, or deny applications to lease public trust tidelands will be based on the provisions of the Public Trust Tidelands Act (MCA §29-15-1 through 23, MCA §29-1-107), and the following management policies and evaluation criteria.

A. Management

- (1) All activities must comply with the public policy of this state which favors the preservation of the natural state of the public trust tidelands and their ecosystems and prevents the despoliation and destruction of them, except where a specific alteration of specific public trust tidelands would serve a higher public interest in compliance with the public purposes of the public trust in which such tidelands are held.
- (2) In deciding whether to lease for a proposed commercial or industrial project, the Secretary of State will favor the location of such projects in existing, developed commercial or industrial sites in urban settings over their location in rural, residential and/or environmentally sensitive sites.
- (3) In order to protect public beaches and public access to public beaches and adjoining tidelands, the Secretary of State will not grant a lease for any commercial or industrial activity adjacent to (south or waterward of) public beach areas or areas used by the public for swimming, bathing or fishing, where there exists a public seawall but no beach. Public Access to Public Trust Tidelands will be a high priority in the consideration of any new lease request.
- (4) The ability of Keesler Air Force Base to conduct its mission is a vital public interest to the State of Mississippi and the Mississippi Gulf Coast. It is the policy of the Secretary of State to protect the base from any action that could diminish its ability to conduct its mission. No lease will be granted if associated structures and/or activities would encroach on the designated air space or threaten the viability of the base. The Secretary of State may consult with military, federal, state and local officials, as appropriate, to make that determination.

- (5) In order to protect the integrity of the ecosystems of the Mississippi Coastal Preserves, the Secretary of State will not favor a lease for any commercial or industrial activity in any of the Mississippi Coastal Preserves areas as depicted by that certain map of estuarine preserves delineated by the Department of Marine Resources in cooperation with the Mississippi Natural Heritage Program in August, 1994 as found at [http://www.dmr.state.ms.us/Coastal-Ecology/GEMS/Gems-Images/Gems\\_map1.gif](http://www.dmr.state.ms.us/Coastal-Ecology/GEMS/Gems-Images/Gems_map1.gif).
- (6) Upon a showing of extraordinary circumstances or extraordinary benefit to the public in accordance with MCA § 29-15-1, et seq., the Secretary of State, as trustee of the public trust tidelands, may determine that a lease of specific public trust tidelands serves a higher public interest in compliance with the public purposes of the public trust than would the application of the policies set forth in Rule 4.A.1 or 5.
- (7) Existing structures or activities which, if proposed as new activities, would require a tidelands lease shall be brought under lease in accordance with these rules.

B. Littoral/Riparian Rights

- (1) The state's responsibilities to manage the public trust tidelands extend to littoral and riparian property owners who have common law and statutory rights, chiefly the right of access, as well as to the other members of the public. The Secretary of State recognizes the special position of the upland owner and, except as set forth in part (2) below, will not lease in the littoral or riparian area to parties other than the riparian or littoral owner without the riparian or littoral owner's permission. Evidence of permission may take the form of a lease, assignment, or other written form satisfactory to the Secretary of State.
- (2) Pursuant to MCA §29-1-107(4)(b)(ii), in the event the holder of a lease of public trust tidelands who is a person possessing a license under the Mississippi Gaming Control Act does not elect to either remain bound by the original term of the lease or to convert the lease to a thirty-year term, the Secretary of State may lease the state public trust tidelands that are subject of the lease to any other person or entity.

C. Leasing in Littoral and Riparian Areas

- (1) A public trust tidelands lease shall not be required for structures built in the riparian or littoral area pursuant to General Permits MS-GP-02 or MS-GP-04 provided that the combined area of structures (excluding access piers) and berthing areas does not exceed 1,000 square feet and so long as said structures are not used for, or in association with, commercial purposes. (See Mississippi General Permits for Minor Structures and Activities within the Coastal Counties of the State of Mississippi, Located within the Regulatory Boundaries of the Mobile District of the U.S. Army Corps of Engineers, issued Jan.5 2007 and found at [http://www.sam.usace.army.mil/RD/reg/ms\\_gen.pdf](http://www.sam.usace.army.mil/RD/reg/ms_gen.pdf).)
- (2) Leases are required of commercial and industrial applicants and for commercial and industrial use of littoral and riparian rights.
- (3) Nothing in these rules, however, shall be interpreted to preclude the State from imposing an additional public use on a littoral/riparian area provided such use serves a higher public purpose and has been approved by the Legislature.

**Rule 5. Lease Procedure**

*(Sections A. and C. amended effective March 12, 2001)*

- A. Any person who occupies public trust tidelands and whose activities thereon are not eligible for a lease exemption pursuant to Rule 4.C.(1), or statutorily exempt, must obtain a lease from the State of Mississippi.
- B. Leases are divided into two categories: Standard leases and Aquaculture leases. Submerged lands, tidelands and fast lands ("reclaimed" or filled tidelands) are leased under a Standard Lease. Aquaculture activities require an Aquaculture Lease.
- C. Standard Lease
  - (1) Applications for standard leases shall include the following information:
    - a. Name, address, telephone number and social security number of applicant and applicant's authorized agent, if applicable.
    - b. Location of property to be leased including county, section, township and range; affected waterbody; vicinity map, preferably a reproduction of the appropriate portion of the current United States Geological Survey quadrangle map.
    - c. Satisfactory evidence of title in applicant's upland riparian property or assignment to applicant from owner of upland riparian property of riparian rights together with satisfactory evidence of title of assignor's upland riparian property, if parcel sought to be leased abuts on property which is outside the public trust.
    - d. (1) Two prints of a survey prepared, signed and sealed by a person properly registered as a land surveyor by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors with the following requirements:
      - (i) Utilizing an appropriate scale on paper of a size adequate to provide sufficient clarity and detail;
      - (ii) Showing the line of mean high tide, if any;

- (iii) Showing water depths;
  - (iv) Showing the location of shoreline and submerged vegetation, if any;
  - (v) Showing the location of any proposed structures and all existing structures, if any;
  - (vi) Showing the applicant's or assignor's upland parcel property lines, if property to be leased abuts on property which is outside the public trust;
  - (vii) Showing the primary navigation channels or direction to the center of the affected waterbody; and
  - (viii) Including a legal description for area to be leased.
- e. A non-refundable application processing fee in the amount of \$150.00.
- (2) Terms and conditions of a standard lease in addition to those set forth above, shall include, but not be limited to:
- a. Except as provided in Rule 5.C.(2)c.(iii)(c) of these rules, the term of the lease, which shall not exceed the statutory maximum (currently 40 years). An option to renew for an additional period not to exceed 25 years may be granted.
  - b. A provision granting the lessee a prior right, exclusive of all other persons, to re-lease as may be agreed upon between the lessee and the Secretary.
  - c. The amount of the annual rent which shall be based on the following:
    - (i) Leases to pre-1973 occupants of public trust tidelands (Category 1 Standard Lease) will require an annual rental payment which is equal to the ad valorem taxes on the value of the land, excluding the value of any privately owned improvements thereon, at the time the

lease is executed.

- (a) If the lessee expands his use by more than 50%, then he will automatically and immediately become a Category 2 Standard Lease lessee and will be required to make annual rental payments according to Category 2 Standard Lease computation.
  - (b) Category 1 Standard Leases are freely transferable for a period of 15 years or until July 1, 2003, whichever period is less. After the expiration of said lesser period, the lease becomes a Category 2 Standard Lease and the lessee must make annual rental payments according to that calculation.
  - (c) In the event that the public trust tidelands to be leased, or any portion of them, are not on the tax rolls, the lessee must make annual rental payments for such portion according to Category 2 Standard Lease rental calculation.
  - (d) Category 1 Standard Leases shall be effective December 31 of the year in which they are negotiated; ad valorem property taxes must be paid for that year to the appropriate taxing authority.
- (ii) Leases to post-1973 occupants of public trust tidelands will require an annual rental payment which shall be negotiated but which in no event shall be less than 3.3% of market value for fast lands and 7¢ per square foot for submerged lands or tidelands.
- (a) The market value of fast lands is the appraised value of the property as shown on the tax rolls of the county or other taxing authority. Tidelands which are fast lands and which do not appear on the tax rolls will be appraised and added to the county's tax roll by the county tax assessor.

- (b) If the tax roll shows the parcel as a combination of public trust tidelands and privately owned land, market value of the public trust tidelands is that percentage of the appraised value of the parcel as a whole that equals the ratio of public trust acreage to the acreage of the parcel as a whole.
- (iii) Leases for structures built prior to March 31, 1989, by residential condominium associations shall be exempt from the payment of annual rent provided the following conditions are met.
  - (a) The structure or facility shall be used only for non-commercial or residential boating, bathing or fishing in association with the condominium's non-commercial or residential activities, and shall be limited to uses for which the structures or facility was originally built.
  - (b) If repaired, rebuilt or improved, the structures or facility may be no larger than that which existed prior to March 31, 1989.
  - (c) Notwithstanding the provisions of Rule 5.C (2) a., the term of the lease shall not exceed 15 years, and an option to renew for an additional period not to exceed 10 years may be granted.
  - (d) Notwithstanding the provisions of Rule 5.C (2) h., sublease and assignment shall be prohibited.
- d. A provision for review and rent adjustments at each five year anniversary, based upon updated county or municipal tax rolls for Category 1 Standard Leases, and based upon the All Urban Consumer Price Index - All Items (CPI), or an appraisal paid for by the lessee, whichever would indicate the greater increase for Category 2 Standard Leases. Said appraisal must deduct the value of any improvements belonging to the lessee which substantially enhance the value of the property.

- e. A casualty clause providing that in the event of destruction by natural causes of improvements on the leased premises, the lessee may opt to terminate the lease agreement, provided he leaves the property in a condition equal to or better than its condition at the inception of the lease.
- f. A provision requiring the lessee to maintain a policy of liability insurance and to indemnify and hold harmless the lessor from and against all claims for damages or injuries, no matter how caused.
- g. A provision that in the event of the death of the lessee, the lease shall descend to his heirs at law who may assume the lease, its rights, duties and obligations.
- h. Except as provided in Rule 5.C.(2)c.(iii)(d) of these rules, the right to assignment or sublease, upon written approval of the Secretary of State, which approval shall not arbitrarily be withheld. (Cf. Rule 5.C.(2)c.(i)(b).
- i. A provision guaranteeing public access during the term of the lease if public access is afforded at the time the lease is contracted or if the lease is for a new activity, unless the lessee is a qualified industrial applicant. Industrial applicants who are unable to afford meaningful public access to the premises may seek a waiver of this requirement. However, leases which fail to provide such public access are to be discouraged.

D. Aquaculture Lease

- (1) Applications for aquaculture leases shall include the following:
  - a. Name, address, telephone number and social security number of applicant;
  - b. Legal description and acreage of parcel sought to be leased;
  - c. Two prints of a survey of the parcel sought to be leased prepared, signed and sealed by a person properly registered by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors or an agent of the federal

government acceptable to the Secretary of State;

- d. Description of the aquaculture activities to be conducted, including whether such activities are to be experimental or commercial, and an assessment of the current capability of the applicant to conduct such activities;
  - e. Statement setting forth the reasons such a lease would be in the public interest;
  - f. A list of the names and addresses of all claimants of littoral or riparian rights in or adjacent to the parcel to be leased, and all lessees of adjacent or contiguous properties;
  - g. Statement of the impact of the proposed use of the public trust tidelands sought to be leased on the ecology of the area;
  - h. A \$150.00 non-refundable application processing fee.
- (2) Each aquaculture lease shall include the following terms and provisions, but not in limitation thereof:
- a. The term of the lease which shall not exceed the statutory term, with an option to renew.
  - b. The amount of the annual rent which shall be negotiated but which in no event shall be less than \$25.00 per acre to be paid at the time of the execution of the lease and on each successive anniversary date thereof.
  - c. A provision for payment of the variable portion of lease fee, if any, at the end of lessee's fiscal year.
  - d. The disposition to be made of all improvements and animal and plant life upon the termination or cancellation of the lease.
  - e. The right to assignment or sublease, upon approval of the Secretary of State.
  - f. Casualty clause providing that in the event of destruction by natural causes of the aquaculture venture on the leased

premises, the lessee may opt to terminate the lease agreement, provided he leaves the property in a condition acceptable to the lessor, or in its natural state.

- g. A clause assuring that lessee will maintain adequate casualty insurance, the proceeds of which will be used for salvage operations in the event of catastrophic destruction.
- (3) The parcel leased shall be identified, well marked and shall have, except when it will interfere with the development of the animal and plant life being cultivated by the lessee, reasonable public access for boating, swimming and fishing. All limitations on the public use of the parcel leased as set forth in the lease shall be clearly posted in conspicuous places by the lessee. Each parcel leased shall be marked in compliance with the rules and regulations of the U.S. Coast Guard and the U.S. Army Corps of Engineers.