

Mississippi Secretary of State's Office

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Public Trust Tidelands



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Topics

- Public Trust Tidelands.
- The Public Trust Tidelands Map /
Public Trust Submerged Land Map.
- The Tidelands Lease and Lease Income.



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Public Trust Tidelands

Public Trust Tidelands are lands:

- Naturally subject to tidal influence.
- Water ward of the Mean High Water Mark.
- Seaward to the State boundary three miles south of the barrier islands.
- Held by the State for use by its citizens.
- The Secretary of State acts as trustee.



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Public Trust Tidelands

Public Trust Tidelands include:

- Tidelands – daily covered / uncovered by tidal action.
- Submerged lands – remain covered by waters.
- Fast lands – filled Tidelands or Submerged Lands.



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Public Trust Tideland

Public Trust Tideland Related Definitions:

- Dry lands – naturally above the mean or ordinary high tide line.
- Mean high water line or mark (MHWL)– intersection of the tidal datum plane of mean high water with the shore.
- Littoral – pertaining to property abutting an ocean, sea or lake.
- Riparian – pertaining to property abutting a river or stream.



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History - Roman

- The Tidelands public trust doctrine dates back to the sixth century in Roman law and the Code of Justinian.
- Assured Roman citizens that “by the law of nature these things are common to all mankind – the air, running water, the sea, and consequently the shore of the sea.”

Putting The Public Trust Doctrine To Work, Second Edition (Coastal States Organization) 1997



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History - English

- The Roman civil law public trust doctrine was adopted in substance by English common law.
- English common law recognized the special nature of the tidelands, giving them protection in the king's name for all English subjects.

Ibid, p. 5, citing MacGrady, *The Navigability Concept in the Civil and Common Law: Historical Development, Current Importance, and Some Doctrines that Don't Hog Water*, 3 Fla. State University L. Rev. 511 (1975).



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History – United States

- The tidelands public trust doctrine came from England to the Colonies.
- When the Colonies became the original thirteen States, each continued the tidelands public trust doctrine.

Ibid, p. 5, citing MacGrady, *The Navigability Concept in the Civil and Common Law: Historical Development, Current Importance, and Some Doctrines that Don't Hog Water*, 3 Fla. State University L. Rev. 511 (1975).



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History – Equal Footing

- When the original States formed the Union they withheld their tidelands from the United States or federal ownership.
- New States entered the Union on equal footing with existing States.
- So the United States created similar trusts for each new State.



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History – Mississippi Supreme Court

The Mississippi Supreme Court has reviewed the doctrine:

- In 1857 the Court recognized “The shores of the sea below the high water mark belong to the state as trustee for the public.”

Martin v. O'Brien, 34 Miss. 21 (1857)

- Again in 1986 the Court held “Title to all lands naturally subject to tidal influence, inland to today’s mean high water mark, is held by the State of Mississippi in trust.”

Cinque Bambini Partnership v. State, 491 So.2d 508 (Miss. 1986)



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History – United States Supreme Court

The United States Supreme Court held in 1988 in an appeal of a Mississippi case that “The State of Mississippi owns in trust for the public all land subject to the ebb and flow of the tide, up to the line of mean high tide, and regardless of the navigability of the waters over them.”

Phillips Petroleum Company v. Mississippi 98 L.Ed. 277, 108 S.Ct. 791 (1988)

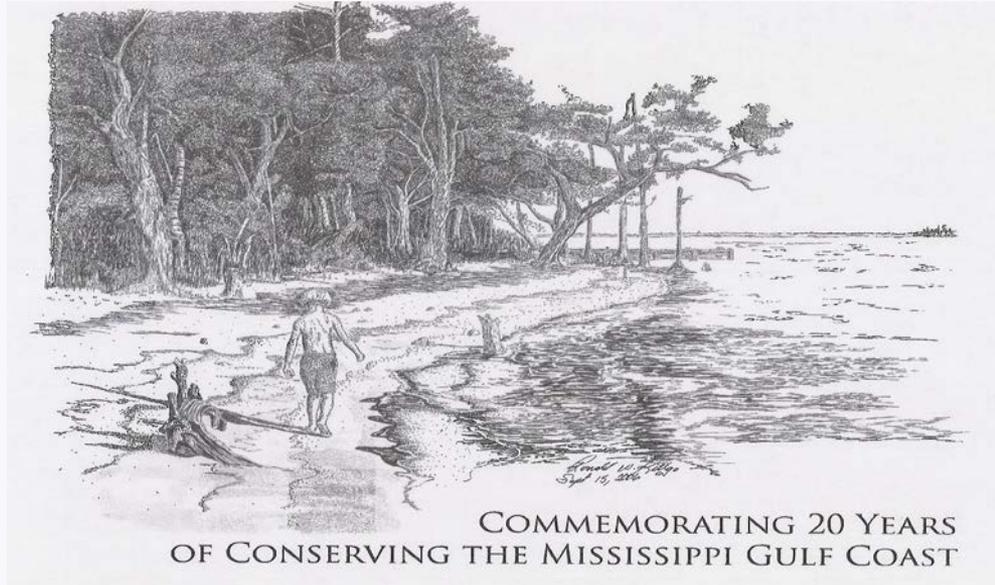


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The Tidelands Public Trust Doctrine

The Legislature codified the Mississippi Tidelands Public Trust Doctrine in the 1989 Public Trust Tidelands Act

- Found at Mississippi Code Title 29, Chapter 15



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Tidelands Public Trust Doctrine

Tidelands Act provides:

The Doctrine applies to the waters south of the shore and the tidally affected arms & tributaries.

- The Tidelands are held by the State in trust for use of all the people, and
- The Tidelands are held for the purposes defined by common law and statutory law (water related activities: recreation, swimming, fishing, boating and commercial use when required).



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Tidelands Public Trust Doctrine

Tidelands Act provided the Mississippi Public Policy is:

- To prevent the misuse and destruction of the public trust tidelands, and
- To preserve natural state of the public trust tidelands & their ecosystems:
- Unless a specific alteration of specific public trust tidelands would serve a higher public interest in compliance with the purposes for which the trust is devoted.

Miss. Code Ann. Section 29-15-3(1)



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Tidelands Public Trust Doctrine

The State holds the Tidelands as Trustee with responsibilities:

- To littoral and riparian (upland) property owners.
 - Common Law Littoral and Riparian rights: access the water thru the adjacent upland property for water related activities.
 - Statutory rights: Build piers and to plant, cultivate and harvest oysters within 750 yards of the shoreline.
- To members of the public.
 - The Trust is held for the benefit of the public.



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Public Trust Tidelands Map

Final, December 1994

STATE OF MISSISSIPPI

OFFICE OF SECRETARY OF STATE



PUBLIC TRUST TIDELANDS MAP



INDEX TO MAPS



FINAL
DECEMBER, 1994



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Public Trust Tidelands Map

- The 1989 Public Trust Tidelands Act directed the Secretary of State to develop & publish a Public Trust Tidelands Map.
- The process included a preliminary map, public hearings, written comments, publication of the Final Map, and a process to resolve boundary disputes.
- The process, map, and the Secretary's authority to resolve boundary disputes were held constitutional. *Secretary of State v. Weisenberg*, 633 So. 2d 983 (1994).
- Final Map published December 1994.



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Public Trust Tidelands Map

The Tidelands Map:

- Consist of Quadrangles based on the U.S. Geological Survey maps.
- Concerns the boundary between privately held uplands and the State held Public Trust Tidelands.
- Is used to determine the upland extent of the State held Public Trust Tidelands.



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Public Trust Tidelands Map

The Tidelands Map:

- Is a representation of the Public Trust Tidelands boundary.
- Uses symbols defined in the Legend to represent how to find the location of the Public Trust Boundary.
- A tool to determine the boundary location.



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Public Trust Tidelands Map Notes

- Depicts the location of the inland boundary of the public trust tidelands.
- Boundary Line designates either the present day high water line or the determinable historic mean high water line prior to filling tidelands and/or submerged lands.
- Does not represent a survey of the depicted lands or the mean high water line.
- The location of the mean high water line should be considered as approximate.



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Public Trust Tidelands Map Legend

LEGEND

-  Denotes approximate location of mean high water line in areas where the current location of said line (or the toe of the seawall in areas where beach renourishment has occurred) is the boundary of public trust lands.
-  Denotes approximate location of current mean high water line in areas where the boundary of public trust lands is inshore of the mean high water line.
-  Denotes approximate location of historic mean high water line in areas where the historic mean high water line is the boundary of public trust lands and is inshore of the current mean high water line.
-  Denotes approximate location of the mean high water line where it is upland of the boundary of public trust lands which is denoted by a solid line in such cases.
-  Denotes approximate location of tide station.

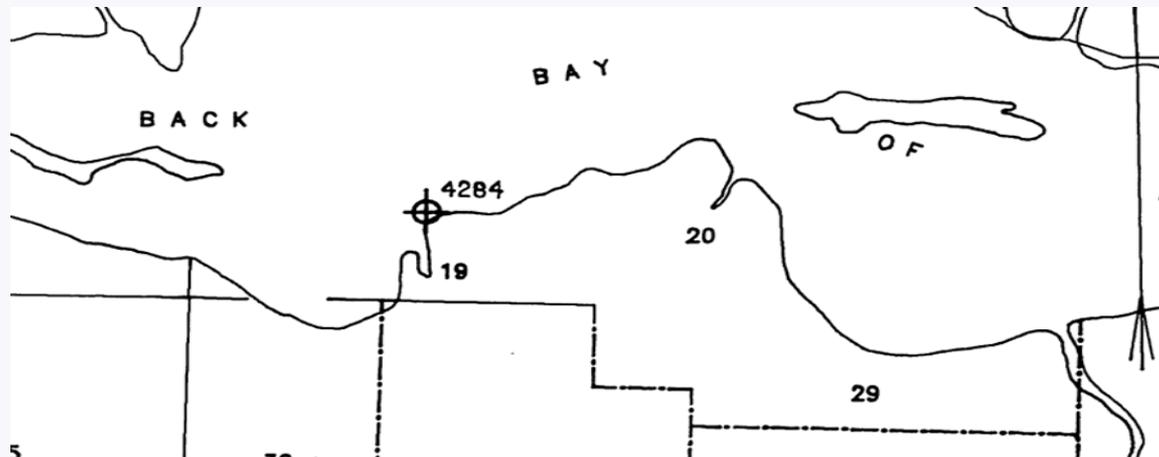


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Solid Line (_____)

Approximate location of the MHWL where the current location is the Public Trust Tideland boundary.

Example: undeveloped areas.

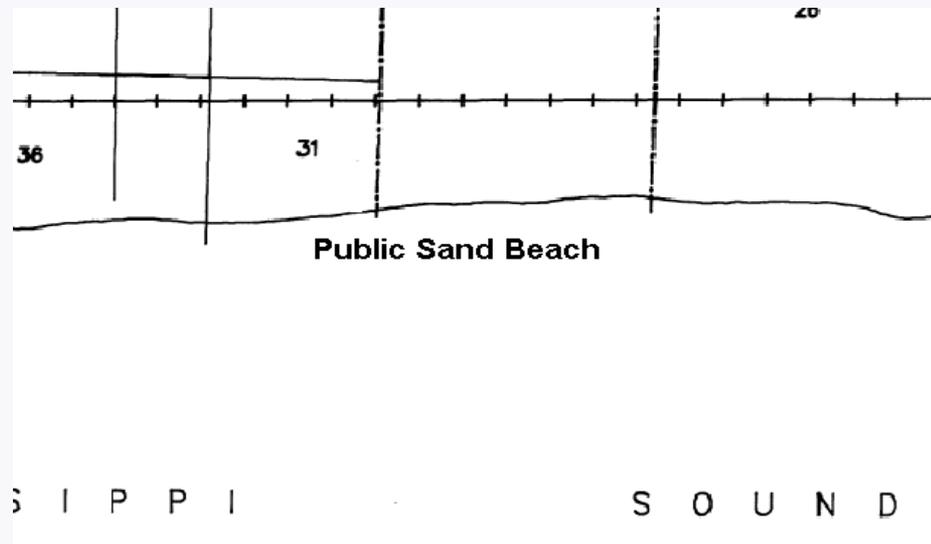


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Solid Line (_____)

ALSO:

The toe of the seawall where beach nourishment has occurred.

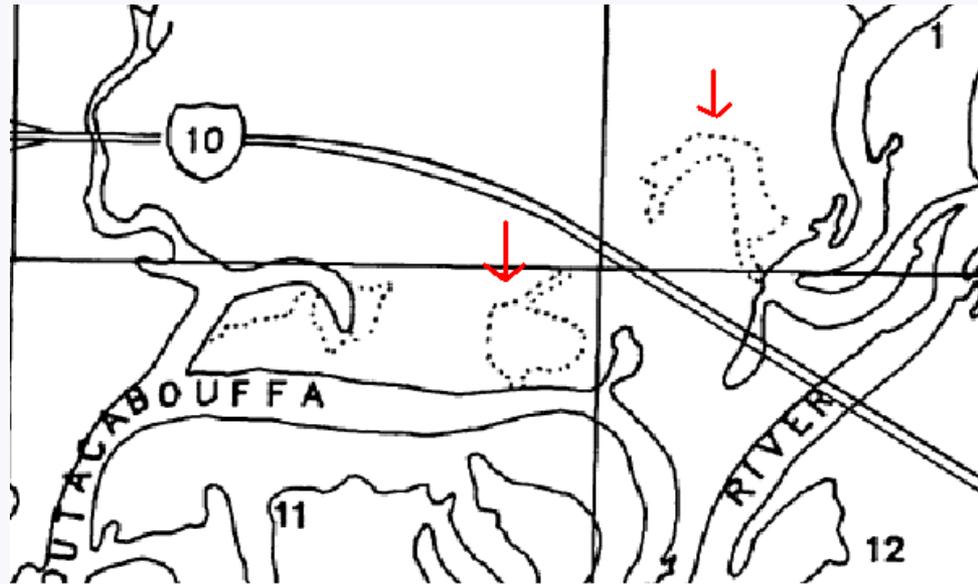


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Dotted Line (. . . .)

The approximate location of the MHWL that is upland of the Public Trust Tidelands boundary (solid line).

Example: excavated waterways.



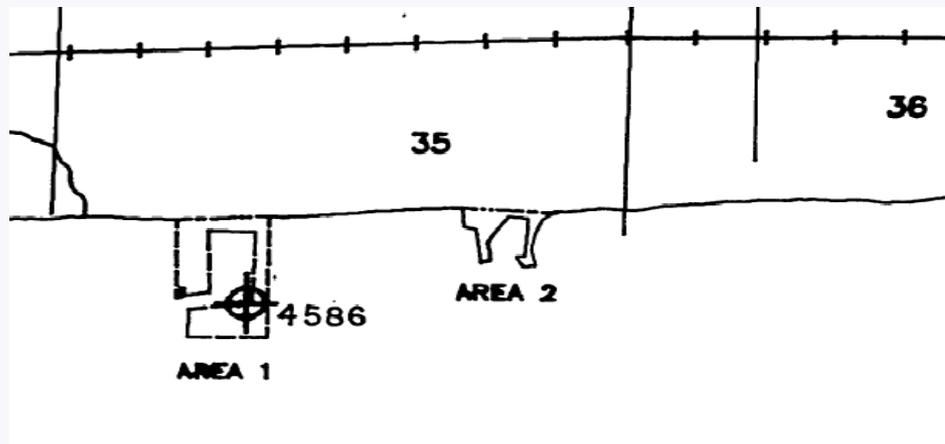
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Dash / Dot (__ . __) AND Dash (- - - -)

Approximate location of:

- Historic MHW as the Public Trust Tideland boundary inshore of current MHW. (Dash / Dot)
- Current MHW where the Public Trust Tideland boundary is inshore of MHW. (Dash)

Example: filled areas



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Public Trust Tidelands Boundary

- In natural areas a Mean High Water Survey is required to determine the location of the MHW as the Public Trust Tidelands boundary.
- In manipulated areas (i.e., excavation or fill), other tools, including historic surveys and photographs, are used to determine the location of the historic MHW as the Public Trust Tidelands boundary.



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Boundary Changes

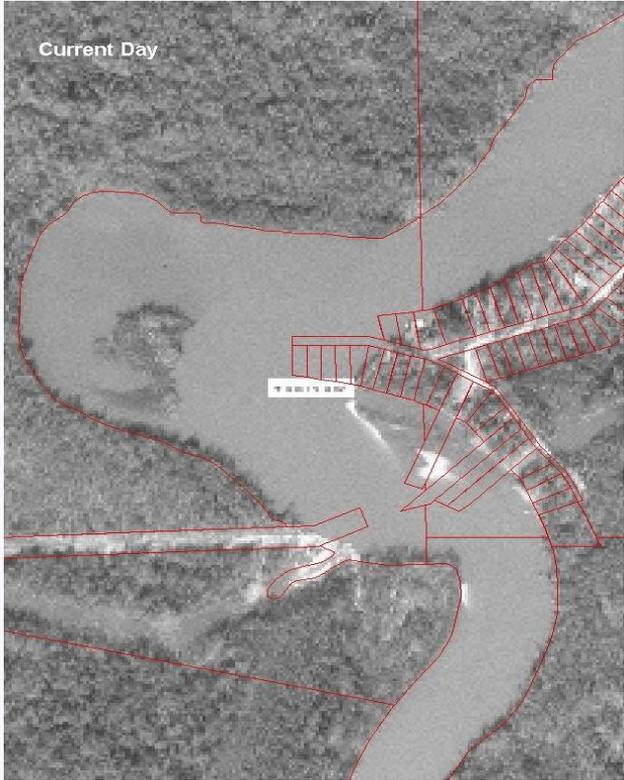
The Public Trust Tidelands boundary is subject to change due to:

- Natural and gradual processes recognized under common law.
- Erosion, Accretion, etc.



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Boundary Changes



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Boundary Changes

The Public Trust Tidelands boundary is not subject to change due to:

- Man-made or non-natural changes.
 - Fill or excavation.
 - Sand Beach creation and renourishment.
- Sudden avulsive changes.
 - Storms.
 - Sudden erosion or collapse.



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Public Trust Tidelands Lease



A Public Trust Tidelands Lease is required:

- By any person or entity occupying the Public Trust Tidelands
AND
- whose activities are not eligible for a lease exemption.



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Public Trust Tidelands Lease

- Required for commercial and industrial use.
- Required for gaming use.
- Required for federal, state, and local projects supporting the public use of the Tidelands; but lease is rent exempt.
- Not required for residential use.



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Public Trust Tidelands Lease

Public Trust Tidelands are leased:

- By the State of Mississippi.
- Thru the Secretary of State.
- With approval of the Governor.

The Lease is recorded in the county land records.



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Public Trust Tideland Lease

SCANNED



2nd Judicial District
Instrument 2008 3032 D -J2
Filed/Recorded 9 8 2008 4 30 P
Total Fees 13.00
15 Pages Recorded

PUBLIC TRUST TIDELANDS LEASE
TO ROBERT LANCE JOHANSEN
(Tchoutacabouffa River)

STATE OF MISSISSIPPI
COUNTY OF HARRISON

THIS AGREEMENT, made and entered into this the 11th day of April, 2008, by and between the SECRETARY OF STATE, with the approval of the GOVERNOR, for and on behalf of the STATE OF MISSISSIPPI, hereinafter referred to as "LESSOR," and ROBERT LANCE JOHANSEN, hereinafter referred to as "LESSEE."

WITNESSETH:

THAT FOR THE TERM and in consideration of the rentals hereinafter set forth, and covenants, conditions, and obligations to be observed and performed by LESSEE, LESSOR does hereby lease and rent unto LESSEE, pursuant to the authority of MISS. CODE ANN. § 29-1-107 (Supp. 2007), the following described submerged land or tideland, hereinafter referred to as LEASE PREMISES, to-wit:

A parcel of submerged land in Section 15, Township 7 South, Range 10 West, in the County of Harrison, State of Mississippi, containing 2,016 square feet. This parcel located adjacent to 2330 North Country Club Lane, Biloxi, MS, is shown on Exhibit 1 attached hereto and supports piers, dock and boathouse as depicted thereon. (See Exhibit 1, Mississippi Department of Marine Resources Permit No. DMR-03728, dated March 7, 2007, attached hereto.)

1. TERM.

The primary term of this lease shall be for Forty (40) years, beginning on the 1st day of December, 2007, and terminating on the 30th day of November, 2047. If LESSEE has complied with all terms, covenants, conditions, and obligations of this lease, as of the expiration of the primary term, LESSEE shall have the option to extend this lease for a renewal term of Twenty Five (25) years on such terms and provisions as may then be agreed upon by LESSOR and LESSEE, subject to the renegotiation of annual rental based on appraisal obtained by the LESSOR.



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Public Trust Tidelands Lease

Application for a Lease can be obtained:

- From the Gulfport office.
- On the Secretary of State's web site:

www.sos.ms.gov

Application Information:

1. Identification of applicant / agent.
2. Location of riparian/ littoral property.
3. Proposed use of tidelands / improvements.
4. Evidence of riparian / littoral privileges.
5. Survey.



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Public Trust Tidelands Lease

- Public Trust Tidelands Fund.
 - Rents for structures over / uses of the Tidelands.
 - Commercial Leases.
 - Dockside Gaming Leases.
- Public Trust Assessment Fund.
 - Statutory Assessments in lieu of Tidelands Lease.
 - On Shore Gaming Operations.



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Public Trust Tidelands Income

- Annual Total: Approximately \$10 million.
- Used for Public Tidelands projects in the three coastal counties
 - Access Projects
 - (Boat Launches, Piers)
 - Management Projects
 - (Fishery Studies, Coastal Preserves)



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Public Trust Boundary Agreement

- Prior to adoption of Final Map.
- Resolution of a Map Dispute prior to / during Lawsuit.
- Recorded in Land Records.



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Sources:

- Public Lands;

Miss. Code Ann. Section 29-1-107.

- Public Trust Tidelands;

Miss. Code Ann. Sections 29-15-1 thru 23.

- Coastal Wetlands Protection Act;

Miss. Code Ann. Sections 49-27-1 thru 27.

- 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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