

Rule 4. Management Policies, Standards and Criteria
(Section C. amended effective November 17, 2000)

The following management policies, standards and criteria shall be used in determining whether to approve, approve with conditions or modifications, or deny requests for leases of public trust tidelands.

A. General Propriety

- (1) For approval, all new activities on public trust tidelands must not be contrary to the public interest and must be found to promote some higher public purpose.
- (2) For approval, all new activities on public trust tidelands must provide public access. In instances where existing activities provide public access at the time a lease is contracted, such access may not be withdrawn during the term of the lease. Qualified industrial applicants who must restrict access for safety reasons may request a waiver.
- (3) All leases of public trust tidelands shall contain such terms, conditions or restrictions as deemed necessary to protect and manage public trust tidelands.

B. Resource Management

- (1) Public trust tidelands which are at the time of the adoption of these rules in their natural state shall be managed primarily for the maintenance or enhancement of essentially natural conditions; fishing, bathing, swimming and other recreation activities; environmental protection and preservation; the enhancement of aquatic, avian and marine life; and sea agriculture.
- (2) Compatible secondary purposes, uses which will not detract from or interfere with the primary purpose, and higher public purpose projects may be allowed provided they do not result in net adverse impact to public trust tidelands and adequate mitigation procedures are accomplished or ensured if necessary to avoid net adverse impact.
- (3) Biological assessments, pollution control evaluations, environmental impact studies and reports of other agencies with related statutory management or regulatory authority may be considered in evaluating specific requests to occupy public trust tidelands.

C. ~~Littoral/Riparian Rights~~

- ~~(1) A public trust tidelands lease shall not be required for structures built pursuant to General Permits MSG0795 and MSG0895 so long as said structures are not used for, or in association with, commercial purposes. (See Public Notice NOS. MSG0295—MSG2795, Public Notice MDG1395, Joint Public Notice, U.S. Army Corps of Engineers, and Mississippi Department of Environmental Quality, Office of Pollution Control, and Mississippi Department of Marine Resources, issued 26 June 1995.)~~
- ~~(2) Leases are required of commercial and industrial applicants and for commercial and industrial use of littoral or riparian rights.~~
- ~~(3) No leases of public trust tidelands in littoral/riparian areas shall be contracted except to the littoral/riparian owner or his assignee, unless the express written consent of the littoral/riparian owner or his assignee is given.~~
- ~~(4) 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 4. Management Policies and Evaluation Criteria

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.
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.)
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.