NOTICE REGARDING ORAL PROCEEDING SCHEDULED
ON PROPOSED RULE ADOPTION

STATE OF MISSISSIPPI
Secretary of State
Public Lands Division

An oral proceeding was scheduled for Friday, September 28, 2007 at the Secretary of State's Coast Office, 1701 24th Avenue, Gulfport, from 9:30 to 11:00 a.m. as set forth in the attached Notice.

No written requests to be heard and present evidence were received prior to the scheduled proceeding.

No persons arrived at the appointed place during the scheduled proceeding time requesting to be heard.

There being no comments or objections, the Rule will be adopted as proposed.

Margaret Bretz

Margaret Bretz
Senior Attorney
September 28, 2007

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.