

## **FORT MORGAN PENINSULA GUIDELINES FOR ACCESS TO AND PROTECTION OF OUR BEACHES**

Nearly half of Alabama’s Gulf beaches lie along the 14-mile stretch of Fort Morgan Peninsula. From the west end of Laguna Key Subdivision—the eastern boundary of Bon Secour National Wildlife Refuge—to the west end of the peninsula next to Fort Morgan at Mobile Point, there are five separate types of beach access. Each type has its own guidelines for usage, its own dos and don’ts, its allowed and prohibited activities, and its legal jurisdictions.

Residents and visitors who wish to enjoy, appreciate and respect the beaches of the Peninsula would be wise to follow the guidelines for each type of beach access. Not all property at ‘The Beach’ is public property. Much of it is privately owned and some is owned by various government entities. All beachfront property deserves the same respect as property anywhere else in Alabama.

The Baldwin County online map of Fort Morgan Peninsula beaches in most cases will show where public beaches were dedicated and where private beaches still exist. See the **Baldwin County District 25 Zoning Map** on our Links page. You’ll need to enlarge/zoom in on the map by mousing over the prompter in the lower middle portion of the page. You also need to read the ‘key’—at the top left corner of the map—to interpret the type of zoning and its regulations and allowed activities. **NOT ALL BEACHFRONT PROPERTY SHOWN ON THE COUNTY ZONING MAP AS LIGHT AQUA/BLUE IS ACTUALLY OPEN TO THE GENERAL PUBLIC; SOME IS OWNED BY THE FEDERAL GOVERNMENT, SOME BY DEVELOPERS, AND SOME BY INDIVIDUALS.**

Following is an attempt to define those beaches and provide visitor and property owner alike a better understanding of the public’s rights to access Alabama’s waters and shoreline and the property owner’s rights to privacy and peace of mind. What follows is the best summary we have been able to construct and should not be used as the basis for any legal action.

According to Alabama law, waterfront private property owners have riparian [bank or shoreline of a natural body of water] rights. Their property line on the Gulf-front lots extends south to the mean high tide line. Therefore, the area from their beach-side steps to the mean high tide line is theirs—privately owned. On Fort Morgan Peninsula, there are only a few exceptions—those beach access points which have been designated as public beach. In these cases, the property owner’s rights extend to their south property boundary line, usually the foot of their beach-side steps, not to the mean high tide line. In all Gulf-front property, the State owns the property from mean high tide line up to three miles into the Gulf. A layperson’s definition of “mean high tide line” might be: the moveable, seasonal line on the beach which marks the average high tide. Storm surges are not considered part of the ‘average’ high tide. For the citizen hiker, this moveable line can sometimes be estimated by the “wrack line,” a string of seaweed or debris that changes throughout the month’s tides. To learn more about riparian rights and public access rights, go to our Links page and click on **Public Trust Doctrine and Public Access in Alabama.**



## GENERAL BEACH RULES

A few general guidelines will help you enjoy the beaches in Fort Morgan. Public Access Beach locations are shown below in the next section—

- **CAMPING**—None of the Fort Morgan Peninsula beaches allow camping [or sleeping on the beach] overnight.
- **FIRES**—During summer months, bonfires usually are not allowed. Small cooking fires may be permitted but may be prohibited in certain seasons by the Alabama Department of Conservation burn bans. Check with the Fort Morgan Volunteer Fire Department for current guidance.
- **FIREWORKS**—Fireworks, if allowed, should be placed as far out onto the beach as possible—away from houses. A small spark or ember could start a serious fire. The Fort Morgan Volunteer Fire Department will respond whenever fires are reported and may cite the fire starter.
- **TENTS, SUN SHELTERS**—Water Access Only beaches prohibit pitching shelters or sun-bathing on the sand *outside* the access right of way, which is private property. Tents cannot be left overnight on any public beach.
- **SHORTCUTS THROUGH PRIVATE PROPERTY**—Regarding walking through property to get to the beach: the rule of thumb is to walk to the water at the access sign; Don't veer off that access-way or you may be trespassing on private property. Do not erect sun shelters or barbeques or sun bathe or conduct any activity on private property—it is trespassing.
- **DUNE BOARDWALKS**—Use board walkways (boardwalks) to cross over the dunes to the beach whenever available. Walking on dunes destroys beach vegetation and allows high tides to wash away the dunes. Loss of dunes equals destruction of property during storms. Loss of property equals increases in home insurance rates for all Alabamians.
- **DOGS**—The Federal Wildlife Refuge properties do not allow dogs at any time. Baldwin County public access beaches allow dogs as long as they are under proper control of the owner. The Fort has a slogan—'DOGS WELCOME; BE SURE YOUR OWNER IS ATTACHED TO YOU BY A LEASH.' Be considerate and "Scoop the Poop" after your dog. You wouldn't want to step in someone else's poop.
- **TRASH**—Public beaches usually do not have trash bins, so like a thoughtful hiker anywhere else, whatever you bring in, **PACK OUT**. Do your part in helping to keep our beaches clean. Private property trash bins along the beach exits are not public garbage removal systems.





## PUBLIC ACCESS LOCATIONS

Following are the public water access points on the Peninsula, from east to west, the conditions and some of the rules governing them. See the next section for all rules and regulations—

1. Mobile Street ~ Federal Bon Secour National Wildlife Refuge. Not allowed—dogs, camping, nudity, illegal substances, alcohol, fireworks or firearms. Parking area is a gravel lot near the end of Mobile St. on the right (west) side. Open daylight hours only—half-hour before sunrise to half-hour after sunset and only south of the dunes (toward the Gulf). From the dunes northward is closed to the public to protect endangered wildlife. “No Entry” signs are posted on the dunes. Beach is patrolled by U.S. Fish and Wildlife enforcement officer. For more information visit [www.fws.gov/bonsecour](http://www.fws.gov/bonsecour)

2. Morgantown ~ The only official Baldwin County Beach Park. Large parking lot available. Entry through Cortez Road [6-mile marker], left at Pizarro, right at County parking area; or through Morgantown Blvd., west to beach park sign. *The boardwalk access to the beach is only 10 feet wide.* To either side of that 10-foot wide boardwalk is private property. Follow the rules posted on the large brown county park sign--*No Open Fires; No Camping or Overnight Stays; No Alcohol, Drugs or Firearms, etc. [SEE THE SIGN FOR ALL RULES.]*



3. Cortez Road ~ (6-mile marker), Water Access Only. End of road sign "Water Access." Limited road-side parking next to the sign. [50-foot access right of way—not a ‘public beach’ except 50-foot access lane]  
At left, the Public County Park at West Morgantown

4. Our Rd. ~ Water Access Only. Limited roadside parking next to sign. [50-foot access right of way, not ‘public beach’ except 50-foot lane]

5. Ponce de Leon Blvd. ~ Water Access Only. Four or five access points along Ponce de Leon at the ends of streets. Signage says either ‘Water Access’ and/or ‘Share the Beach’ (sea turtle conservation program). [not public beach except 50-foot access lane]

6&7. Bernard Court East & Bernard Court West ~ End of street. Public County access. Only 2 parking spaces per street. No turn-around area. Private property on both sides of street with no public parking.

8&9. Buchanan Court East & Buchanan Court West - same as Bernards

10. Boykin South is NOT a ‘water access’ point or public beach. The beach is owned jointly by owners of the lots along the street. [Same holds true for ‘Bay to Breakers’, just west of Boykin.]

11. “No-Name” Rd. ~ Bon Secour Refuge manages this State-owned property just east of Fort Morgan. Road is not maintained; risky sand alongside the road and sand too deep to turn around. It does not have a name. Turtles call it "No Name Road." Follow Refuge regulations in #1 above [Bon Secour Refuge].



## FIVE SEPARATE TYPES OF WATER ACCESS POINTS ON THE PENINSULA EACH WITH SPECIFIC RULES AND REGULATIONS

There are five types of water access on Fort Morgan Peninsula, only four of which are public—

(1) *Private Subdivisions' Beaches* ~ Not open to the public The private subdivisions take responsibility for enforcement by calling the Sheriff if polite requests are ineffective. To split a fine frog's hair—the public legally can walk in the water or wet sand at the water's edge, up to the mean high tide line, crossing the beach in front of a private subdivision. However, there is no legal access to [or from] the beach from any point in the subdivision. [e.g., *Martinique, Cabana Beach Estates, Beach Club, Plantation, Kiva Dunes, Surfside Shores, Morgantown, Boykin, Bay to Breakers, Dunes, Indies, etc.*].

(2) County—"Water Access Only" Beaches ~ These access points are simply extensions of the south-bound street right-of-way off Highway 180. These points allow access to the water only via the width of the street's end, generally 50 feet wide. Private property is located on either side of this access 'lane.' If you stay within this lane, you will not invade private property. Pitching shelters or sun-bathing on the sand outside the access right of way may be considered trespassing onto private property. [e.g., Cortez/Beach Blvd., Our Rd., Ponce de Leon]

(3) Public Baldwin County Beach Park ~ *There is only one County Beach Park on the peninsula*, located at the west end of Morgantown subdivision. [Please note that Morgantown has its own private access points which are open only to property owners.] *This park's boardwalk access to reach the beach is only 10 feet wide! Outside the 10 feet is private property.*

There are two routes to the County Park beach access—one is down Cortez Road, east on Pizarro to the sign; the other is through Morgantown all the way to the west end. *The County has posted this beach with several prohibited activities such as:* If you visit this beach, please peruse the signs posted and approach the beach via the boardwalk only, since private property is adjacent. [Morgantown]

(4) West End Public Beach Access ~ Via Bernard East and West and Buchanan East and West. These access points are county extensions of the street's right-of-way. Once on the beach, the area is open to the public up to approximately the beach-side steps of privately owned lots. Use boardwalks where available. Only 2 public parking spaces are available with no legal turn-around area. [Bernard Cts., Buchanan Cts.]

(5) Federal Bon Secour National Wildlife Refuge ~ Refuge properties are closed north of the primary dune line for protection of endangered wildlife species present. You will see signs posted at intervals. There are two refuge public beaches—one at the end of Mobile Street and one just east of Fort Morgan State Historic Site. Refuge beaches have many regulations, so familiarize yourself at their website on our Links page. [Mobile St., No-Name Rd.]

To learn more about public access to all Alabama beaches, as well as waterfront property owners' riparian rights and responsibilities, go to our Links Page or check the website <http://www.accessingthecoast.masgc.org>

Owners of private property bordering bodies of water in Alabama have riparian rights. On the Gulf coast, they own the property north of the mean high tide line. This is the case in areas such as the beachfront lots down Cortez Road and along Ponce de Leon Court and access points with a sign saying "Water Access." While there is beach access, the public does not have the right to pitch shelters or sun-bathe outside that 50-foot wide access. However, very few public visitors are aware of this; and even when informed of it by adjacent property owners, some deny belief and violate the owners' requests.

If you own beachfront property and are in doubt, you can check your deed or plat map provided at time of closing, examine the County's public property records (at their offices or on-line), or request help from a county commissioner. One commissioner is usually designated in charge of beach issues.



## OWNER'S RIGHTS ON BEACHFRONT PROPERTY

*An FMCA member with gulf-front property who has experienced many problems due to the confusion between what is publicly accessible property and what is privately owned property, researched the issue and provided the following information and pertinent case citings. The case law excerpts might be of help to others with beachfront property and to visitors wanting clearer definitions of where access is legal.*

Last summer was an unpleasant one for us. We had to ask many people to move their tents and chairs from our yards. Most were accommodating but none were happy, and some were belligerent. They all insisted it was public beach. Since so many people were telling us that our property was public beach, we decided to research the issue and find information that we could document and pass on. We believe that the general public visiting our community honestly believe all beaches on the Fort Morgan peninsula are public. They are not. Following is information about the status of privately owned beach front property on Fort Morgan and the rest of Alabama. Excerpts from the documentation appear at the end.

1. In Alabama the beachfront property owners own the beach to “the mean high tide line” except where zoning maps and property plat maps show that it is public beach. [See the Baldwin County zoning map at their website, link below.] *On property that is not designated as public beach, you will see that the lot line goes to the water’s edge.*
2. The gulf and the land under the water are held by the state in trust for the public under the Public Trust Doctrine. In Alabama, except where designated on zoning maps as public beach, the property boundary line extends to the mean high tide line. Upward of the wet sand is private property.
3. The mean high tide line is not affected by storms or storm surges. It is where the water naturally recedes to its normal level. The tides are predictable. If this were not so, then all of Gulf Shores would be considered in the public trust after the last major hurricane.
4. In order to comply with the Public Trust Doctrine, the state must supply access for the public to get to the water below the mean high tide line. Alabama has complied via the Baldwin County access points along the Peninsula.
5. The public is trespassing on private property if they deviate outside of this 50-foot access before they reach the mean high tide line. After the public passes the mean high tide line they can walk in the wet sand, fish, swim etc. The water is part of the public trust, but the beach is not.

Most beachfront property owners don’t mind the public walking on the dry beach close to the water or children chasing sand crabs wherever they run on the beach. Trespassers become a problem when they take over the private beach and deprive the owners, and their renters, of the use of their beach by setting up umbrellas, chairs and shade awnings in the owners’ yards.

We respectfully suggest that property owners who rent—and rental agents—avoid telling people and advertising that the entire beach is public. It is only the 50-foot wide access areas that could be considered public beach.

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Baldwin County Zoning Map District 25—Fort Morgan Peninsula Unincorporated:  
<http://www.co.baldwin.al.us/uploads/District%2025%202009.pdf>

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*The following is an excerpt from a definitive Alabama case which, while dealing with several other contractual issues, does recognize the rule pertaining to the limits to public access to a beach. Essentially, it says (1) if there is an access easement, you can traverse that easement and use so much of the beach as lies between the water and the MHT (mean high tide) line, and (2) there is no right to get off the easement and use property above the MHT line. There is no link to this case. Ask your lawyer for a copy. They can pull it up on Lexus.*

**FOUTS V. BEALL 86-30 ~ Supreme Court of Alabama ~ December 4, 1987**



The trial court defined “beach” as that word is used in the document creating the easement to mean the soft sandy area between the mean high tide line and the vegetation line, which area is privately owned by Beall and is not subject to use by the public. The trial court determined that Beall’s west property line extends to the mean high tide line of Mobile Bay.

Considering this definition of the word “beach” in this particular document, the trial court held that Fouts was entitled to use any portion of the soft sandy area of Mobile Bay that lay between the waters of the bay and the mean high tide line, which area was not owned by Beall, in the same manner as any member of the public. The trial court also held that Fouts was entitled to the complete use of the area within the 10-foot beach access easement, including that area between the mean high tide line and the vegetation line, but could not use any portion of the area between the mean high tide line and the vegetation line that lay outside the 10 feet.

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*The following Michigan case note contains a foundation definition. However, it is already settled law in Alabama that the littoral (waterfront) property owner owns to “the mean high tide line.” [ Volume 53:753 of The Wayne Law Review, Section II.A; The History of the Public Trust Doctrine, and II. B. Activities Allowable Under the Public Trust Doctrine]*

The public trust doctrine originated in English common law. At that time, preserving clear and free navigable waters as a public right was central to maintaining a prosperous and sovereign nation. When Congress enacted the Commerce Clause, they considered the importance of the country’s navigable waterways. By creating the power to regulate navigable waters, the Commerce Clause was the federal government’s first step toward adopting the English public trust doctrine. Case law soon followed by officially incorporating the doctrine, initially applying the doctrine only to tidal waters. However, the Court later extended the doctrine to include non-tidal, but nevertheless navigable, waters. This step included the waters of the Great Lakes. The public trust includes more than simply the waters themselves and the right to navigate. The trust also encompasses the land beneath those waters. With time, the precise amount of land below the waters varies.

As a result of the public trust doctrine, “the land beneath” the water was extended to include any land affected by the “ebb and flow” of the tide. The Michigan Supreme Court followed the United States Supreme Court’s lead in its decision in *Glass*.

*Glass* clarified that the public “may walk the shores of the Great Lakes below the ordinary high water mark.” Analysis of like cases helps to determine what activities, other than walking, a member of the public may engage in under the public trust doctrine. Originally, the trust existed to protect natural resources. In the case of the Great Lakes, this included the waters and their submerged lands. As the trust evolved, the right to fish, hunt, and navigate for commerce or pleasure was also allowed by courts. Likewise, activities required to exercise these traditional rights were safeguarded by the public trust doctrine.

Although the rule adopted by the Court is very broad, the Court has imposed certain limitations to prevent abuse. Every plausible public use is not necessarily justifiable. However, the indicia of the exact use which surpasses the purpose of the public trust and is unjustifiable is unclear. The extremes of the spectrum are easier to identify. That is, walking along the shoreline is relatively unobtrusive and is likely not the concern of most littoral property owners. More troubling circumstances arise when the public stands to occupy an area of the beach for more than a few moments. From passive sunbathing to active beach sports, the result is an activity creating more than a temporary presence. The littoral landowner’s rights are increasingly strained as beach use multiplies either temporally or in quantity.

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## VANDALISM AND TRESPASSING ON PRIVATE BEACHFRONT PROPERTY

Another gulf-front property owner provided a recent



example of beach-front vandalism on their property—the extreme example of the public violating private property owners' rights. Following is an excerpt of the owner's account with photos of the damages.

We have a beach house on a beach-front road. We have posted private property signs on both the Gulf side and the street side. Every year we are faced with trash and leftover beach tents, furniture, toys, and game nets that have to be removed. This year when we arrived on July 3<sup>rd</sup>, we found that not only had intruders set up a tent and volleyball net, but on the evening of July 2<sup>nd</sup>, someone also chopped down a good portion of our sand fencing, dragged it some distance away, and set a bonfire. *East of gate—fence vandalism & drag marks to bonfire pit*

*West of gate—fence vandalism*



Current neighbors caught the vandals and ran them off. They were angry that our effort and expense to restore the dunes and vegetation had been destroyed. The Sheriff's deputy said it was a misdemeanor and suggested that we investigate it ourselves. We are extremely hesitant to cause a disagreement with neighbors. But with our primary home in another state, we can't stand guard over our Fort Morgan property 24/7.

I thought you'd like to see what happens when people don't believe beachfront property is private property.

