

## **PUBLIC TRUST DOCTRINE & PUBLIC ACCESS IN ALABAMA**

The ancient laws of the Roman Emperor Justinian held that the seashore (defined as waters affected by the ebb and flow of the tides) not appropriated for private use was open to all. This principle became the law in England as well. In the Magna Carta in England centuries later, public rights were further strengthened at the insistence of the nobles that fishing weirs which obstructed free navigation be removed from rivers.

These rights were further strengthened by later laws in England and subsequently became part of the public trust doctrine in the United States as established in *Illinois Central Railroad vs. Illinois*. In that case, the Illinois Legislature had granted an enormous portion of the Chicago harbor to the Illinois Central Railroad. A subsequent legislature sought to revoke the grant, claiming that original grant should not have been permitted in the first place. The court held that common law public trust doctrine prevented the government from alienating the public right to the lands under navigable waters.

The public trust applies to both waters influenced by the tides and waters that are navigable in fact. The public trust also applies to the natural resources (mineral or animal) contained in the soil and water over those public trust lands. The public trust doctrine provides that the public trust lands, waters and living resources of the state are held by the state in trust for the benefit of all of the people and establishes the right of the public to fully enjoy public trust lands.

Currently, in the United States there are 35 states with coastal areas that the public trust doctrine applies to. Each state has the authority and responsibility for applying the Public Trust Doctrine to trust lands and waters within its borders according to its own views, justice and policy. As a result, there is really no single "Public Trust Doctrine." Rather, there are over fifty different applications of the doctrine, one for each state, territory or commonwealth, as well as the federal government.

In Alabama, submerged lands are owned by the State and held in trust for the benefit of the public. The mean high tide line is the boundary between state-owned submerged lands and upland property owners along tidal waters. According to the Alabama State Code (§ 9-12-22), "All the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets within the jurisdiction of the State of Alabama are the property of the State of Alabama to be held in trust for the people thereof." In addition, the Alabama Coastal Area Management Program (ACAMP) policy is to safeguard public access to and use of coastal lands and waters such as beaches and shoreline, boat landings and fishing grounds.

In Alabama, private property upland owners do not own the submerged lands below the mean high tide. However, they do retain special rights to the adjacent tidal area, known as riparian rights. These rights include the right to build a pier or dock, to harvest oysters and to access the water. While private property rights are important and must be recognized, so are the public's right to access the water and use the water resources. There is increasing demand for both private and public access to coastal waters. This is evidenced by the increasing demand for recreational activities, including increased numbers of boater registrations, permits for waterfront developments and the demand for permit request for private docks, harbors and marinas. As these demands are accommodated, the areas for public access and use are decreased. As Alabama's coastline is rapidly developed and held in private ownership, the right of Alabama's citizens to have access to coastal waters is challenging.

The Mobile Bay National Estuary Program (MBNEP), along with the ACAMP, recognizes that people value access to the coastal resources, and public access to coastal waters is extremely important. Ten years ago, the MBNEP addressed access in the Comprehensive Conservation Management Plan (CCMP). Originally, it was part of the "Human Uses" section of the plan. The original focus was to expand camping and recreational facilities and the awareness of these sites. Now in the revised CCMP, the strategies to address access need to be expanded to include actions that will improve access in the coastal area. The 2013 CCMP addresses expanding access to include a broader range of natural experiences, while securing funding sources of new, and the maintenance and improvements to existing access points. Increases in public access, while achieving a delicate balance with nature, will require adequate funding, commitment and implementation of fair and reasonable regulatory and conservation practices. The new CCMP sets forth clear actions to address these issues based on successful models already in practice in other areas.

Some of these actions include:

- Conduct periodic monitoring of access points to evaluate condition of infrastructure and associated shorelines where applicable.
- Conduct a Comprehensive Public Access Needs Assessment (existing inventory and type/opportunities for expansion, user groups, inventory of kind and amount of usage, citizen awareness of access issues and stressors, best practices elsewhere, other) to inform future access planning.
- Create a greenspace mitigation and acquisition bank for use by industry and others.
- Protect/conservate priority habitats for public benefit through land acquisition (Forever Wild, Coastal land trusts).
- Restore living shorelines at current/future access points to mitigate the impacts of boat/other wakes.
- Restore working waterfronts (repair launches and others for access use, identify and inventory potential/existing waterfront sites, identify existing/future funding sources.)
- Diversify the ecotourism industry through the provision of technical assistance, business support and environmental education training.
- Update habitat mapping tool with enhanced GIS and CMSP data to inform development of access points.
- Develop conservation easement/incentive program to expand key access points in partnership with private property owners/businesses.
- Develop and install interpretive signage at access points to educate users on living shorelines, other access points, bird migration, etc.
- Develop promotional campaign to showcase the diverse opportunities to access the estuary for recreational enjoyment. Promote the availability of public access maps.

Just as it was important 10 years ago in the CCMP, so it is today that having access to our coastlines is something people care deeply about. A recent preliminary inventory of coastal public access sites revealed 140 sites in Baldwin County and 38 sites in Mobile County. While this may seem like a large number, with the increase in population and development in the coastal area, we need to encourage additional recreational opportunities and public access to enhance the wellbeing and quality of life of Alabama citizens and visitors. It is our job to work with our federal partners, state and local governments and non-profits to obtain additional public access for preservation and enhancement of public access opportunities.

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