

**Joint Legislative Committee on Performance  
Evaluation and Expenditure Review (PEER)**

Report to  
the Mississippi Legislature

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# **A Review of Mississippi's Public Trust Tidelands Program and Selected Areas of Operation of the Department of Marine Resources**

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In Mississippi, title to the tidelands is vested in the state in trust for the benefit of the people of Mississippi. The Secretary of State may lease tidelands to private parties and use a portion of the revenues derived from these leases to defray administrative costs associated with administering the tidelands program. The remaining funds are disbursed to the Commission of Marine Resources for programs of tidelands management, criteria for which are set in state law.

PEER found that the Department of Marine Resources approved \$781,000 in FY 2002 tidelands projects that did not meet the statutory criteria for use of tidelands funds and \$482,000 in FY 2002 projects that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds. Also, the department issued \$4.7 million to grant recipients without prior documentation of completed project work.

The Secretary of State's Office paid \$1,927 in tidelands funds during FY 2002 for administrative expenditures not related to the tidelands program. Also, the office should have allocated \$149,504 in expenditures between the tidelands programs and other programs.

In response to specific complaints regarding the Department of Marine Resources, PEER found that the department does not:

- collect fines for wetlands permit violations as authorized by state law;
- collect public notice fees from all individual permit applicants; or,
- routinely review actual public notice costs to ensure that fees cover costs.

Also, the department does not maintain complete usage records on its non-law enforcement vehicles. While not required by state law, such records are critical in documenting need.

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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January 6, 2003

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Members of the Mississippi State Legislature

On January 6, 2003, the PEER Committee authorized release of the report entitled **A Review of Mississippi's Public Trust Tidelands Program and Selected Areas of Operation of the Department of Marine Resources.**

A handwritten signature in cursive script that reads "Mary Ann Stevens".

Representative Mary Ann Stevens, Chair

**This report does not recommend increased funding or additional staff.**

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# A Review of Mississippi's Tidelands Trust Fund Program and Selected Areas of Operation of the Department of Marine Resources

## Executive Summary

PEER sought to determine the Department of Marine Resources' and Secretary of State's compliance with state laws governing the tidelands trust fund program, including the Department of Marine Resources' administration of the tidelands grants and the Secretary of State's expenditures for the administration of the Public Trust Tidelands funds.

PEER also addressed the following specific concerns relative to the Department of Marine Resources (DMR)--i.e., whether DMR is:

- assessing and collecting fines for coastal wetlands permit violations as authorized by the Mississippi Code and whether the department is collecting appropriate fees for individual coastal wetlands permits;
- attempting to bypass the state personnel system by hiring full-time employees on a contractual basis; and,
- operating efficiently in its purchase and use of non-law enforcement motor vehicles.

## The Public Trust Tidelands Program

### The Department of Marine Resources' Administration of the Public Trust Tidelands Grants

The Department of Marine Resources approved \$781,000 in FY 2002 tidelands projects that did not meet the statutory criteria for use of tidelands funds and \$482,000 in FY 2002 projects that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds. Also, the department issued \$4.7 million to grant recipients without prior documentation of completed project work.

### ***Administration of FY 2002 Tidelands Grant Projects***

The Department of Marine Resources received 123 applications for FY 2002 tidelands grants, including eighty-six applications for tidelands management projects totaling \$10 million and thirty-seven applications for public access projects totaling \$11.6 million. With approximately \$5 million to distribute, the department approved eleven tidelands management projects totaling \$1.5 million and twenty-four public access projects totaling \$3.5 million. The Legislature funded these thirty-five projects as separate line items in DMR's FY 2002 appropriations bill. Also, the Legislature added one project totaling \$50,000.

In FY 2002, the Department of Marine Resources approved six management projects totaling \$681,000, or 45% of funds allocated for tidelands management projects, that did not meet statutory requirements for use of tidelands funds. The department also approved two management projects totaling \$232,000 that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds.

The department approved one FY 2002 public access project totaling \$100,000 that did not meet statutory requirements for use of tidelands funds. DMR also approved two public access projects totaling \$250,000 that were originally proposed as management projects, but were included in the FY 2002 appropriations bill as public access projects. Neither of the projects contained sufficient documentation to show whether they met the criteria for either a tidelands management project or a tidelands public access project.

### ***Payment of Tidelands Grants***

The Department of Marine Resources issued checks for \$4.7 million to FY 2002 grant recipients prior to performance of the grant projects and without performance reports, which describe project goals and objectives, milestones, and proposed benefits. Good management principles require documentation of completed project work prior to receiving tidelands funds.

## **The Secretary of State's Administrative Expenses**

**During FY 2002, the Secretary of State's Office paid \$1,927 in tidelands funds for administrative expenditures not related to the tidelands program. Also, the office should have allocated \$149,504 in expenditures between the tidelands programs and other programs.**

State law provides that funds derived from tidelands lease rentals be used to pay only those administrative costs related to the tidelands program. The Secretary of State's

Office divides its administrative expenses into four categories: operating, equipment, legal, and contract. PEER found that the Secretary of State's Office has paid expenses from the operating and contract categories with tidelands funds, although these expenses were not related to the tidelands program.

### ***Operating Expenses***

In FY 2002, the Secretary of State's Office paid office rent and travel expenses not related to administration of the tidelands program from tidelands funds. Also, because the Secretary of State's office does not have records to show the portions of other expenses that relate to the tidelands program versus other programs, the Secretary of State cannot properly allocate operating expenses among programs.

### ***Contract between the Secretary of State and the Department of Marine Resources for the Coastal Preserves***

The Secretary of State includes as an administrative expense the amount paid for its contract with the Department of Marine Resources for the management of the Coastal Preserves (\$93,917 in FY 2002), even though the boundaries of the Coastal Preserves are not restricted to Public Trust Tidelands.

PEER does not question the economic and ecological value of the property within the Coastal Preserves. However, it is clear that all of the funds paid to the Department of Marine Resources by the Secretary of State are not administrative costs incurred by the Secretary of State for administration of the Public Trust Tidelands Fund or lands acquired in exchange for tidelands.

### ***Collection of \$150 Application Processing Fee for Public Trust Tidelands Applications***

The Secretary of State collects \$150 from each Public Trust Tidelands lease applicant, but does not apply this amount to the costs incurred for administration of the Public Trust Tidelands Fund. The fee is incident to tidelands leases and should be deposited into the Public Trust Tidelands fund to offset administrative costs.

## **The Secretary of State's Transfer of State-Owned Public Trust Tidelands to Private Entities**

The 1996 transfer of tidelands to the Mirage Corporation through court order was a valid transfer under law. PEER would, however, note that absent a transfer of tidelands needed to settle claims under MISS. CODE ANN. Section 29-15-7 (1972), all



**transfers should comply with the historical two-step process requiring a higher public purpose and legislative approval customarily applied to tidelands and as affirmed by the Mississippi Supreme Court.**

In 1996, the Mirage Corporation planned to construct a casino on the Mississippi Gulf Coast. The casino ultimately developed is known as the Beau Rivage. Mirage wanted to own title to approximately 6.73 acres of tidelands property for the hotel site rather than enter into tidelands leases with the Secretary of State. Approximately 4.03 acres of this land had been filled since World War II and was state-claimed land. However, the remaining 2.7 acres was undisputed tidelands trust property. The 2.7 acres was to be used, along with the other property, for the hotel site and would ultimately be filled to meet the needs of casino development. To compensate the state for a transfer of title to the above-described lands, the developer proposed to transfer title to 4,225 acres of wetlands held that could be placed in the Coastal Preserves Program. Because of their location in an area covered by the Coastal Preservation Act, the wetlands to be exchanged were worthy of preservation.

To expedite the transfer of title to the state property, the Secretary of State petitioned the Chancery Court for the Second Judicial District of Harrison County for authority to complete the exchange. The court found the transfer to be legal and authorized the Secretary of State to proceed with the transfer.

Although PEER does not question the legality of the transfer of the tidelands to the Mirage Corporation, transfers without a specific legislative authorization, except for those necessary to settle claims to tidelands, deprive the Legislature of its traditional authority over the exchange of public lands.

## **Status of Specific Complaints Concerning the Department of Marine Resources**

As previously noted, when conducting this review, PEER also addressed the following specific allegations by complainants:

- the Department of Marine Resources does not assess and collect fines for coastal wetlands permit violations or fees for individual coastal wetlands permits;
- the department does not operate efficiently in its purchase and maintenance of non-law-enforcement vehicles; and,

- the department attempts to bypass the State Personnel Board by hiring full-time employees on a contractual basis.

## **Wetlands Permitting**

**The Department of Marine Resources' Coastal Wetlands Permitting Bureau does not collect fines for wetlands permit violations as authorized by MISS. CODE ANN. § 49-27-51 (1972), does not collect public notice fees from all individual permit applicants as required on the wetlands permit application, and does not routinely review actual public notice costs to ensure that the public notice fees cover these costs.**

### ***Assessment and Collection of Fines for Wetlands Permit Violations***

The Department of Marine Resources' Coastal Wetlands Permitting bureau is responsible for issuing wetlands permits. The purpose of the permitting process is to regulate those activities that might adversely impact coastal wetlands in order to preserve and protect these sensitive habitats.

In FY 2002 the Department of Marine Resources issued five after-the-fact authorizations and collected no fines for work performed without a permit. Simply allowing a violator the opportunity to submit an after-the fact application for activities that are governed by state law without imposing a penalty does not serve as a deterrent to future violations. Without a deterrent to wetlands permitting violations, they are likely to continue, thus increasing the opportunity for damage to Mississippi's coastal wetlands and their ecosystems.

### ***Public Notice Fees***

State law requires that for individual wetlands permit applications, the department must run a public notice for three consecutive weeks in at least one general circulation newspaper in the county. The newspapers charge for the ads by the number of words included, so the costs of these notices vary.

The Department of Marine Resources' Coastal Wetlands Permitting Bureau does not collect public notice fees sufficient to cover the costs of issuing required public notices for individual wetlands permits. The department has charged \$50 for the public notices; however, in FY 2002, DMR's actual public notice costs ranged from \$75 to \$328. Also, the department does not collect fees from all applicants.

This has resulted in the department's using special funds to pay the difference between the amount collected from

the wetlands permit applicants and the actual cost for public notice fees in FY 2002.

### **Use of Non-Law-Enforcement Motor Vehicles**

**DMR does not maintain complete usage records on any of its twelve non-law-enforcement vehicles. While not required by state law, such records are critical to documenting the need for state-owned vehicles.**

DMR does not consistently maintain trip destination, mileage, and purpose records on its non-law-enforcement vehicles. Of particular significance is the lack of trip records on the eight vehicles that DMR permits staff to take home overnight. Sixty percent of the mileage driven on these vehicles is for commuting between home and work.

### **Hiring of Contract Employees**

**Complainants alleged that the Department of Marine Resources routinely fills multiple positions with contract employees to bypass the state personnel system. PEER did not find this to be a widespread problem. Of the department's 149 employees, six are contract workers; two fill full-time positions for which the agency has documented a need.**

These two contract workers occupy positions for which the agency has documented a need. The department has not formally requested the Legislature to appropriate funds and position identification numbers for these positions. This failure to address a full-time continuing staffing need by hiring contract employees bypasses the competitive nature of the merit selection process of the state personnel system.

## **Recommendations**

1. The Department of Marine Resources should create two separate tidelands grant applications, one for management projects and one for public access projects. The department should require the applicant to describe in detail how the project will meet the requirements of the Public Trust Tidelands Act (MISS. CODE ANN. 29-15-1 et seq. [1972]) and the potential benefits that would be derived from receipt of such funds.
2. Should tidelands management or public access projects that are not included on DMR's comprehensive list be considered for funding during the appropriations process, the Legislature should refer such projects to DMR. The department should evaluate the merits of such projects in accordance with the same evaluation

criteria used to compile the list initially submitted to the Legislature and report the results of the evaluation to the Legislature prior to the conclusion of the legislative session. The Legislature should ensure that all projects receiving tidelands funds have been objectively and equally evaluated and are in compliance with statutory provisions for the use of such funds.

3. The Secretary of State should develop written procedures to ensure that tidelands funds are only being expended on administrative expenses associated with the tidelands program. The Secretary of State should prorate expenditures of tidelands and other programs so that tidelands funds are only used to pay that portion of the expenses related to administration of the tidelands program.

If the Secretary of State's Office wishes to argue that the term "ecosystem" as used in the state's Public Trust Tidelands law is equivalent to the land included in the current boundaries of the Coastal Preserves, it should consider requesting the Legislature to include this definition in state law before expending any more tideland trust fund money on Coastal Preserves lands that are not either tidelands as defined by state law or lands acquired through tidelands boundary settlements.

4. The Appropriations committees of the House and Senate should create a tidelands program within the appropriations bill of the Office of Secretary of State. This would add line items that could be monitored and would increase accountability for funds.
5. The Secretary of State's Office should apply the \$150 it collects from each Public Trust Tidelands lease applicant to the costs incurred for the administration of the program, rather than depositing these funds into the Secretary of State's general operating fund.
6. Except in cases where a transfer of title is necessary to settle a tidelands claim, the Secretary of State should only convey Public Trust Tidelands where such satisfies a higher public purpose and is specifically authorized by the Legislature.
7. The Department of Marine Resources should increase the fees for public notice from \$50 to the actual cost of running a public notice in order to reduce or eliminate the amount of special funds spent on this service. DMR should determine the actual costs of the public notice (based on the number of words) and require wetlands permit

applicants to pay the actual costs of public notice fees prior to running the public notice. The Department of Marine Resources should include this requirement in its coastal wetlands policies and procedures. The requirement should include government entities that have not been charged a public notice fee in the past.

8. In order to protect Mississippi's coastal resources, the Department of Marine Resources should develop a routine inspection process with a proactive approach for identifying wetlands permit violations. The Department of Marine Resources may want to consider re-allocating a vacant PIN, when one becomes available, and locating it within the Coastal Wetlands Permitting Bureau as an additional resource to assist in handling inspections of coastal wetlands.
9. The Department of Marine Resources should enforce wetlands permitting regulations and utilize the enforcement tools available under MISS. CODE ANN. § 49-27-51 (1972). The agency should actively use fines to deter individuals from violating the wetlands permitting regulations.
10. DMR should require its employees who drive vehicles to complete legible daily mileage logs, including details of destination and purpose, and show clearly who drove the vehicle each time. If writing is illegible, they should have to submit typed logs. The utilization of motor pools should be the policy for all vehicles, unless it is proven through documentation on the mileage logs that employees need individually assigned vehicles on a daily basis.
11. DMR should require on-call logs to be documented for all employees who work off-duty hours. Also, the department should require an employee who responds to a call to document what circumstance arose that necessitated the employee being called in after hours.

The vehicles that are presently being driven home for the purpose of answering calls should be left at the DMR offices to improve efficiency of use unless the mileage log documentation can prove that the need is valid.
12. The department should conduct breakeven or other needs analyses to determine whether to purchase vehicles and if so, what type to purchase.
13. If the need for a full-time licensing support employee and mitigation expert continues, the Department of Marine Resources should request the Legislature to appropriate funds and PINS for

these positions and the agency should select persons competitively to fill these positions.

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# A Review of Mississippi's Public Trust Tidelands Program and Selected Areas of Operation of the Department of Marine Resources

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## Introduction

### Authority

The PEER Committee authorized a review of Mississippi's Public Trust Tidelands Program and selected areas of operation of the Department of Marine Resources. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972)

### Scope and Purpose

PEER sought to determine the Department of Marine Resources' and Secretary of State's compliance with state laws governing the Public Trust Tidelands Program, including the Department of Marine Resources' administration of the tidelands grants and the Secretary of State's expenditures for the administration of the Public Trust Tidelands funds.

PEER also addressed the following specific concerns relative to the Department of Marine Resources--i.e., whether DMR is:

- assessing and collecting fines for coastal wetlands permit violations as authorized by the Mississippi Code and the Mississippi Coastal Program and whether the department is collecting appropriate fees for individual coastal wetlands permits;
- attempting to bypass the state personnel system by hiring full-time employees on a contractual basis; and,
- operating efficiently in its purchase and use of non-law enforcement motor vehicles.

## Method

In conducting this review, PEER:

- reviewed state law and regulations governing the Department of Marine Resources and the Secretary of State's responsibility for the administration of the Public Trust Tidelands Fund;
- interviewed staff at the Department of Marine Resources and the Secretary of State's Office;
- reviewed FY 2002 Public Trust Tidelands grant proposals, grant review criteria, grant agreements, and performance reports;
- reviewed the Secretary of State's lease revenues and administrative expenditures associated with the administration of the Public Trust Tidelands Fund;
- reviewed FY 2002 Coastal Wetlands Permitting statistics;
- reviewed FY 2002 Department of Marine Resources contracts for all contractual employees; and,
- reviewed inventory lists, mileage logs, and fuel and maintenance records for FY 2002 for all Department of Marine Resources' vehicles, excluding the Marine Patrol Division.



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# Background

## State's Ownership of Tidelands

Upon entry into the union in 1817, Mississippi received title to tidelands from the federal government for the use and enjoyment of its citizens. The common law understanding of what lands were to be considered tidelands was perhaps best stated in a 1967 Mississippi Supreme Court decision *Treuting v. Bridge and Park Commission of the City of Biloxi*, 109 So2d 6227 (Miss, 1967). In *Treuting*, the Mississippi Supreme Court noted that as a matter of common law, the state held title to the submerged coastal lands lying below the high water mark. This property was held in trust for the people's use and enjoyment for purposes such as navigation, fishing, swimming, and similar uses. (See *Treuting*, supra at 632.)

While the common law established a general principle that the state owned tidelands, little effort was made prior to the 1970s to determine exactly where the high tide line was, thereby defining the exact boundary of the tidelands.

Following the passage of the Coastal Wetlands Protection Act of 1973 (see MISS. CODE ANN. Section 49-27-1 et seq. [1972]), the Mississippi Marine Resources Council (now the Department of Marine Resources) began the process of developing maps to determine which lands lay below the high tide lines. While the commission had some doubts regarding the accuracy of its maps, the Mississippi Mineral Lease Commission (whose functions are now carried out by the Department of Environmental Quality) made use of the maps to make claims to certain lands wherein oil and gas might be discovered. In response to this, the Cinq Bambini partnership brought suit to confirm its title to 600 acres of land and claimed to be the rightful owner of this land, and traced its title back to a Spanish land grant from the early 1800s.

**The landmark case of *Cinq Bambini v. State* affirmed that the state of Mississippi holds the tidelands in trust for the state's citizens.**

This set of facts gave rise to the landmark case of *Cinq Bambini v. State*, 491 So. 2d 508 (Miss, 1986), aff'd *Phillips Petroleum Co. v. Mississippi*, 484 U. S. 469 (1988). With respect to defining the tidelands, and the state's property rights in the tidelands, *Cinq Bambini* did the following:

- It affirmed that the state holds title in property below the mean high tide line along the coastline.
- It affirmed that the state holds the land in trust for its citizens.
- It affirmed that title to such property can be conveyed for higher public purposes with the consent of the Legislature.
- It made clear that the state may not lose its title as the result of adverse possession, waiver, or estoppel.

While making clearer that the line of demarcation for tidelands is the mean high tide line, *Cinq Bambini* did not completely eliminate confusion as to where the state had an interest in property. To eliminate confusion, the Legislature enacted Chapter 495, *Laws of 1989*, codified as MISS. CODE ANN. Section 29-15-1 et seq. (1972). (For definitions of “tidelands” and related terms, see the Glossary in the report Appendix, page 41.)

## Tidelands Legislation

Tidelands legislation made it a duty of the Secretary of State to develop a map of the tidelands. The act defines tidelands as “those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides” (MISS. CODE ANN. § 29-15-1 [1972]).

To be included in the map are those undeveloped coastal lands below the mean high tide line. For developed lands and those on which there have been man-made encroachments, the mean high tide land nearest the date of the enactment of the Coastal Wetlands Protection Act serves as the boundary between the tidelands and other lands.

Title to tidelands and submerged lands below these mean high tide lines is vested in the state in trust for the benefit of the people of Mississippi (see MISS. CODE ANN. Section 29-15-5 [1972]).

**The Secretary of State is responsible for administering the leasing of state-owned tidelands to private parties and for administering the funds derived from such leases.**

The act further made the Secretary of State responsible for administering the leasing of state owned tidelands to private parties and administering funds derived from leases of tidelands to private entities. Revenues derived from leasing activities may be used to defray the Secretary of State’s administrative costs associated with administering the tidelands program. Remaining funds shall be disbursed to local entities to assist in recouping the loss of any local ad valorem taxes, if any. (Leasehold

interest holders must pay ad valorem taxes; see MISS. CODE ANN. Section 29-15-11 [1972].) Remaining funds are to be disbursed to the Commission of Marine Resources for funding new and extra programs of tidelands management.

## Management of Tidelands Funds

The Office of the Secretary of State collects tidelands lease revenues, the majority of which is forwarded to DMR to distribute as designated by the Legislature in DMR's annual appropriation.

### Role of Secretary of State's Office

As noted above, any individual or organization building on or utilizing the tidelands must enter into a lease agreement with the state.

As administrator of the state's public trust lands, the Secretary of State oversees management of tidelands. MISS. CODE ANN. Section 29-1-107 (2) (1972) provides that the Secretary of State, with the consent of the Governor, may lease or rent public tidelands. These leases or rentals may not exceed a period of forty years, with the state collecting annual lease payments. The Secretary of State establishes a lease payment amount based on fair market rental values as determined by an assessment by a certified appraiser.

As opposed to its statutory responsibilities in the administering of sixteenth section lands for maximum revenue, the Secretary of State is charged in MISS. CODE ANN. Section 29-15-3 (1972) to "favor the preservation of the natural state of the public trust tidelands."

**Tidelands lease revenues increased from \$22,335 in FY 1992 to \$5,966,406 in FY 2002.**

The Secretary of State deposits revenues from tidelands leases into the Public Trust Tidelands Fund. After recovering any administrative costs incurred in the office's administering of the fund, the Secretary of State disburses any remaining funds derived from lease rentals pro rata to local taxing authorities for the replacement of all lost ad valorem taxes. (Since 1995, the Secretary of State has paid Harrison County \$260,872 in lost ad valorem taxes.) The Secretary of State then disburses, usually in September or October, the remaining funds in the Public Trust Tidelands Fund to DMR in accordance with legislative appropriations made during the previous legislative session. During FY 2001 the Secretary of State collected \$5,579,650 from tidelands leases and retained \$345,010 for administrative expenses related to the administration of the tidelands fund. The Secretary of State forwarded the remaining balance of \$5,234,640 to the Department of Marine

Resources to be used for tidelands management projects in FY 2002. Tidelands lease revenues increased from \$22,335 in FY 1992 to \$5,966,406 in FY 2002.

## **Role of the Commission on Marine Resources**

MISS. CODE ANN. Section 29-15-9 (1972) provides for the disbursement of tidelands funds to the Commission on Marine Resources to be expended on new and extra programs of tidelands management, such as conservation, reclamation, preservation, acquisition, education or the enhancement of public access to the Public Trust Tidelands or public improvement projects as they relate to those lands.

The commission approved a fifteen-year strategic plan in 1995, with revisions adopted in 1997 and 2000, to establish an equitable and fair manner of meeting the objectives of MISS. CODE ANN. Section 29-15-9 (1972) regarding tidelands management.

**The Commission on Marine Resources uses a two-step process to evaluate applications for tidelands funds. Subsequent to approval, the commission annually provides the Legislature with its recommended funding distribution plan for tidelands projects.**

The Commission on Marine Resources uses a two-step procedure in evaluating applications for tidelands funds. The first level of review is the Compliance Review to determine whether the application is complete, accurate, and legible and whether the project complies with the provisions of MISS. CODE ANN. Section 29-15-9 (1972). DMR's Tidelands Program personnel conduct this review. Applications that successfully complete this level of review advance to the second level of review, the Merit Review. Members of the Merit Review Team score and rank the applications according to weighted criteria. Members of this team include representatives of the DMR, the Office of the Secretary of State, Mississippi State University's Coastal Extension Service, University of Southern Mississippi's Gulf Coast Research Laboratory, and the Department of Environmental Quality. The Merit Review Team provides a ranked list of these projects with recommended funding amounts to the Commission on Marine Resources. Subsequent to approval, the commission annually provides the Legislature with its recommended funding distribution plan for management projects, as well as public access projects.

## Role of the Legislature

**The Legislature appropriates funds to the Department of Marine Resources to fund projects that have been recommended by the department and, in some cases, adds specific projects to the appropriations bill.**

In appropriating funds to DMR during each legislative session for the next fiscal year's operations, the Legislature designates projects to be funded with tidelands funds. Upon receiving the tidelands funds from the Secretary of State in September or October, DMR enters into grant agreements with each entity designated by the Legislature and distributes the appropriated amount of funds to each.

MISS. CODE ANN. Section 29-15-9 (1972) establishes the purposes for which the Department of Marine Resources may make grants of tidelands funds. These funds, like other public funds, are subject to legislative appropriation. The Legislature generally appropriates funds to the Department of Marine Resources to fund projects that have been reviewed and recommended by the department for funding. The Legislature also has, in some cases, added specific projects to the appropriations bill.

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# The Public Trust Tidelands Program

## The Department of Marine Resources' Administration of the Public Trust Tidelands Grants

The Department of Marine Resources approved \$781,000 in FY 2002 tidelands projects that did not meet the statutory criteria for use of tidelands funds and \$482,000 in FY 2002 projects that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds. Also, the department issued \$4.7 million to grant recipients without prior documentation of completed project work.

### Administration of FY 2002 Tidelands Grant Projects

The Department of Marine Resources received 123 applications for FY 2002 tidelands grants, including eighty-six applications for tidelands management projects totaling \$10 million and thirty-seven applications for public access projects totaling \$11.6 million. With approximately \$5 million to distribute, the department approved eleven tidelands management projects totaling \$1.5 million and twenty-four public access projects totaling \$3.5 million. The Legislature funded these thirty-five projects as separate line items in DMR's FY 2002 appropriations bill. Also, the Legislature added one project totaling \$50,000.

#### *FY 2002 Management Projects*

***In FY 2002, the Department of Marine Resources approved six management projects totaling \$681,000, or 45% of funds allocated for tidelands management projects, that did not meet statutory requirements for use of tidelands funds.***

MISS. CODE ANN. § 29-15-9 (1972) states the following about how tidelands lease revenues should be spent:

*... funds derived from lease rentals may be used to cover the administrative cost incurred by the Secretary of State. Any remaining funds derived from lease rentals shall be disbursed pro rata to the local taxing authorities for the replacement of lost ad valorem taxes, if any. Then, any remaining funds shall be disbursed to the commission for new and extra programs of tidelands management, such as*

***conservation, reclamation, preservation, acquisition, education or the enhancement of public access to the public trust tidelands or public improvement projects as they relate to those lands.*** [Emphasis added.]

**State law requires that tidelands management projects must conserve, reclaim, preserve, or acquire Public Trust Tidelands or they must educate the public about Public Trust Tidelands.**

In the Commission on Marine Resources' Fifteen-Year Tidelands Plan, the commission identifies management projects as those related to the conservation, reclamation, preservation, acquisition, and education relative to Public Trust Tidelands. The tidelands grant application, which is the same for management projects and public access projects, only includes a checklist for the applicant to select which of the categories the project falls under (e.g., conservation, preservation) and does not ask the applicant to justify the importance of this project and its relationship to the management of tidelands.

MISS. CODE ANN. §29-15-9 (1972) specifically states that management projects must conserve, reclaim, preserve, or acquire Public Trust Tidelands or they must educate the public about Public Trust Tidelands.

The Department of Marine Resources approved eleven management projects out of eighty-six applications to receive tidelands funds in FY 2002. Of these eleven projects, one project was reallocated for the following fiscal year. Based on a strict reading of MISS. CODE ANN. Section 29-15-9 (1972), six of these management projects did not fully comply with the above criteria and therefore should not have received tidelands funds. These projects include:

- *Department of Marine Resources, Seafood Marketing Program: \$50,000*

The purpose of this project is to promote the state's commercial fishing industries, including processors, wholesalers, distributors, packagers, seafood market suppliers, and aquaculture to include shrimp, oysters, crab, and finfish.

PEER questions the applicability of this project to the management of Public Trust Tidelands. Marketing seafood at the Neshoba County Fair, printing a cookbook for the Department of Marine Resources, and printing potholders for promotions and other exhibits do not meet the criteria established in the Mississippi Code.

- *Department of Marine Resources, Recreational Fishing Marketing Program: \$45,000*

This project promotes the state's recreational finfish activities and related industries to include marinas, fishing gear and equipment, charter boats, and bait shops.

The funds for this project are earmarked for DMR staff to attend various sporting expos and for the development of a saltwater sport-fishing pamphlet. While PEER does not question the importance of recreational fishing, it does question the relationship of producing a saltwater sport fishing pamphlet and travel expenses for promotional activities to Public Trust Tidelands conservation, reclamation, preservation, acquisition, or education.

- *Department of Marine Resources, Public Affairs sponsorship of a Science Fair and Marine Science Workshop: \$3,000*

The Department of Marine Resources sponsors the Hurricane Bowl, which is a regional competition for the National Ocean Sciences Bowl. The department uses tidelands grant funds for this sponsorship as well as for scholarship awards to science fair winners and future workshop sponsorships.

If the department chooses to continue to sponsor this program, it should do so with funds other than tidelands grants. The sponsorship of a science fair does not meet the statutory criteria for receipt of tidelands grants. While this project may serve to educate students and the public about marine resources, it does not specifically provide for education on Public Trust Tidelands.

- *Department of Marine Resources, Office of Fisheries, Artificial Reef Program: \$500,000*

These funds are for the construction of in-shore and off-shore artificial reefs in Harrison, Hancock, and Jackson counties. The purpose is to diversify the habitat and increase quality fishing sites. Although some of the in-shore artificial reefs may be located on or near Public Trust Tidelands, diversifying the habitat and increasing quality fishing sites do not conserve, reclaim, preserve, or acquire Public Trust Tidelands, nor do they educate the public on Public Trust Tidelands.



- *Department of Marine Resources, Office of Fisheries, Sportfish Restoration Act: \$60,000*

These funds are used as matching funds for construction and maintenance of sportfishing access points, new artificial reef development and the acquisition of data on various fish. These activities do not meet the criteria established for tidelands projects.

- *Department of Marine Resources, Shellfish Program: \$23,000*

The purpose of this project is to remodel the cabin in the Conservationist, an oyster lugger. The Conservationist is used to collect data on seasonal predators, pests, competitors, and diseases present on Mississippi's oyster reefs. Management projects must conserve, reclaim, preserve, or acquire Public Trust Tidelands or educate the public on Public Trust Tidelands. Remodeling a boat that collects data on oyster reefs does not meet the criteria for use of tidelands funds.

***In FY 2002, the Department of Marine Resources approved two management projects totaling \$232,000 that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds.***

PEER identified two projects that may partially meet the criteria for a tidelands management project, but their tidelands grant applications do not contain sufficient information to determine how these projects may conserve, reclaim, preserve, acquire, or educate the public on Public Trust Tidelands.

- *Department of Marine Resources, Public Affairs Outreach: \$32,000*

The purpose of this project is to provide awareness materials, photo guides of wetland plants, and a video series on the Mississippi Sound. Funds are specifically earmarked for the advertising costs for the Mississippi Coastal Clean-Up, Celebrate the Gulf Marine Festival, DMR educational calendar, printing of fish measuring ruler stickers, copier leases to support printing and distribution of public education and outreach materials such as state saltwater fishing records, boat and water safety courses, shark identification flyers and Marine Resources coloring books, as well as exhibitor registration for the Mississippi Deep Sea Fishing Rodeo.

With the exception of the coastal clean-up expenses, none of these tasks meet the criteria for tidelands

grants. The Coastal Clean-Up project may assist in the conservation and preservation of Public Trust Tidelands by removing debris and trash that could be harmful to the tidelands, but no information is contained on the grant application verifying this.

- *University of Southern Mississippi, Cedar Point Nature and Wildlife Preserve and Public Interpretation Center: \$200,000*

The purpose of this project is to construct a nature trail, an observation pavilion, and observation platform and an outdoor amphitheatre at Cedar Point. The funds will help preserve the wildlife in this area as well as the wetlands and associated ecosystems. Information will be provided to the public about wetlands and the interpretive center will inform the public about the Native American site contained within this area.

This project does not conserve, reclaim, or acquire Public Trust Tidelands, However, the project does seek to conserve wetlands and educate the public about wetlands, which may include Public Trust Tidelands, but there is no justification contained on the application explaining whether Public Trust Tidelands are contained within this preserve.

#### ***FY 2002 Public Access Projects***

***In FY 2002, the Department of Marine Resources approved one public access project totaling \$100,000 that did not meet statutory requirements for use of tidelands funds.***

**State law requires public access projects to enhance the public's access to tidelands.**

MISS. CODE ANN. §29-15-9 (1972) includes language that allows for projects to be funded with Public Trust Tidelands funds that enhance the public's access to Public Trust Tidelands. The Commission on Marine Resources' Fifteen-year Tidelands Plan states that public access projects include the construction, repair or enhancement of boat ramps, breakwaters, marinas, piers, or harbor repairs.

PEER identified the following project that does not meet the statutory requirements for use of tidelands funds:

- *City of Biloxi, Biloxi Lighthouse Restoration and Interpretation: \$100,000*

The purpose of this project is to restore the lighthouse and add interpretive panels at the base of the

lighthouse. The project also includes an audio presentation, a video tour of the lighthouse to be shown off site, and an educational outreach program. The restoration of the lighthouse is intended to provide the public with the history of the lighthouse, the role it has played in the maritime history of the Mississippi Sound, and its role in the development of the City of Biloxi. As a designated public access project, the purpose of this project does not meet the criteria of the Mississippi Code for use of tidelands funds, which is to enhance the public's access to Public Trust Tidelands.

***In FY 2002, the Department of Marine Resources approved two public access projects totaling \$250,000 that were originally proposed as management projects, but were included in the FY 2002 appropriations bill as public access projects. Neither of the projects contained sufficient documentation to show whether they met the criteria for either a tidelands management project or a tidelands public access project.***

According to the Department of Marine Resources, the Merit Review Committee reviewed and evaluated the following two projects as management projects; however, the Legislature included them in the 2002 appropriations bill as public access projects.

Neither of the projects contained sufficient documentation to show whether they conserved, reclaimed, preserved, acquired or educated the public on Public Trust Tidelands, or whether they enhanced the public's access to Public Trust Tidelands.

- *Maritime and Seafood Industry Museum, Museum Educational Package with Sail Training: \$200,000*

The project includes exhibits in the museum that must be designed, constructed, and illustrated. Exhibits include information on the barrier islands, recreational fishing, the charter boat industry, wetlands, and a hurricane exhibit. The exhibits include artwork, graphics, and interpretive texts. Funds are also used to increase Sea-n-Sail Adventure Camp attendance, to maintain a library that supports the purpose of the museum, and to expand sail training opportunities to adults and children.

- *Mississippi Maritime Historical Foundation, Community Sail-Training Program: \$50,000*

Funds for this project are allocated for the preservation and total renovation of the former Carnegie Library Building in downtown Gulfport. The goal is to establish and operate an accredited historical

museum to “preserve the heritage of the Mississippi Sound and tributaries and expand the Community Sail training Program emphasizing traditional sailing craft and skills.”

## **Subjecting Projects to Review Prior to Appropriation**

***One FY 2002 public access project totaling \$50,000 was not submitted to the DMR review process.***

The McCleod Park project in Hancock County included the construction of a boat launch at McCleod Park and the construction of a comfort station with restroom and shower facilities for the boating public and campers. The project received its tidelands grant appropriation but was never reviewed by DMR’s Merit Committee in accordance with H.B. 1569, 2001 Session, (the DMR appropriations bill for FY 2002), which states: “*All [grant] proposals submitted shall be reviewed and evaluated by the Department of Marine Resources in accordance with department plans and procedures.*”

In its 1998 report, *A Review of the Use of Tidelands Funds*, PEER recommended that if management or public access projects not included on DMR’s comprehensive list are considered for funding during the appropriation process, they should be referred to DMR for evaluation prior to appropriation. PEER still maintains that these project proposals should be reviewed for compliance with state law prior to appropriation of funds.

## **Payment of Tidelands Grants**

***The Department of Marine Resources issued checks for \$4.7 million to FY 2002 grant recipients prior to performance of the grant projects and without performance reports. Good management principles require documentation of completed project work prior to receiving tidelands funds.***

Historically, each tidelands grant recipient has received the full amount of the tidelands grant prior to submitting documentation for work completed. If the grant recipient submits a proposal that comes in under the cost of the project, the department has no way to recoup the overpayment from the grant recipient. By allowing each entity to receive funds up front, the Department of Marine Resources has lost its ability to ensure that the money is spent efficiently and as required in the grant agreement.

The Department of Marine Resources requires all grant recipients to submit performance reports at intervals specified in each grant agreement. The performance report template includes a narrative description of the project, including objectives and goals, as well as project design, milestones for completion, and benefits to the

**Beginning with FY 2003 tidelands projects, the Department of Marine Resources will pay grants in installments and will require detailed reporting before the grant recipient receives any tidelands funds.**

community and the public. The grant recipient is also required to attach an expenditure report including tidelands funds and matching funds expended and any photos documenting work completed on the project. In FY 2002, eight grant recipients did not submit performance reports as required by their grant agreements.

Additionally, two grant recipients did not begin work on their projects due to their dependency on the completion of other projects. For example, Phase II of the Courthouse Road Boat Launch project has not begun because Phase I has not been completed. As of June 2002, eight grant recipients had not even initiated the bid process or were still in the planning and design phase of the project and therefore did not have a reasonable estimate of the required costs for the project.

Subsequently, during the 2002 Regular Session, the Mississippi Legislature passed House Bill 1331 requiring that the Department of Marine Resources not issue payment to tidelands grant recipients without verification of the work completed. The bill states:

*The Department of Marine Resources shall make progress payments in installments based on the work completed and material used in the performance of a tidelands project only after receiving written verification from the political subdivision or agency. The political subdivision or agency shall submit verification of the work completed or materials in such detail and form that the department may require.*

Beginning with FY 2003 tidelands projects, the Department of Marine Resources will pay the grants in installments and will allow the grant recipients the flexibility in determining at what frequency they would like to be paid (e.g., weekly, monthly, quarterly). The FY 2003 tidelands grant agreements will also require detailed reporting before the grant recipient receives any tidelands funds, including documentation of the work completed to date and the amount of associated costs.

## The Secretary of State's Administrative Expenses

During FY 2002, the Secretary of State's Office paid \$1,927 in tidelands funds for administrative expenditures not related to the tidelands program. Also, the office should have allocated \$149,504 in expenditures between the tidelands programs and other programs.

### Statutory Limitations for the Expenditure of Tidelands Funds for Administrative Expenses

*State law provides that funds derived from tidelands lease rentals be used to pay only those administrative costs related to the tidelands program.*

MISS. CODE ANN. Section 29-15-9 (1972) does not specify what the Secretary of State may include as an administrative expense, only that the "funds derived from lease rentals may be used to cover the administrative cost incurred by the Secretary of State." However, this section is included in the chapter that addresses the administration of the state's tidelands and therefore should be read as applying to administration expenses of the tidelands program *only*. Thus, the administrative expenses charged to the tidelands funds should be only for administration of the tidelands program.

### The Secretary of State's Categories of Administrative Expense

The office divides administrative expenses into four categories:

- *operating*--includes building rent, salaries and benefits, contractual services (e.g., copier and postal machine leases), office supplies, travel, membership dues, and training;
- *equipment*--includes purchases of equipment (e.g., video equipment, cellular telephone);
- *legal*--includes expenses incurred as a result of litigation involving the Public Trust Tidelands (e.g., boundary disputes, lawsuits for issues such as denial of tidelands leases or disagreements regarding tidelands rent determinations, fees paid to the Attorney General's Office, appraiser fees, expert witness fees and expenses); and,
- *contract*--the Secretary of State pays the Department of Marine Resources for management of the Coastal Preserves (see page 22). The contract is for actual costs incurred by DMR. The Secretary of State's Office requires quarterly performance reports and expenditure reports to verify expenses.

Exhibit 1, below, reflects the Secretary of State's administrative expenses for the past five fiscal years.

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**Exhibit 1: The Secretary of State's Administrative Expenses for FY 1998 through FY 2002**

<i>Category</i>	<i>FY 1998</i>	<i>FY 1999</i>	<i>FY 2000</i>	<i>FY 2001</i>	<i>FY 2002</i>
Operating Expenses	\$227,142	\$215,431	\$171,742	\$195,088	\$204,533
Equipment	28,560	22,396	0	1,087	267
Legal Expenses	138,703	208,274	62,530	67,328	*275,535
DMR Contract	240,000	240,000	64,198	81,507	**93,917
Total	\$634,405	\$686,101	\$298,470	\$345,010	\$547,252

\*FY 2002 legal expenses include costs of Imperial Palace litigation, which involved a casino trying to claim ownership interest in Public Trust Tidelands.

\*\* This amount includes \$59,553 in FY 2002 expenses that DMR submitted in September and October of 2002.

SOURCE: Secretary of State's Office.

PEER found that the Secretary of State's Office has paid expenses from the operating and contract categories with tidelands funds, although these expenses were not related to the tidelands program.

### **Operating Expenses**

*In FY 2002, the Secretary of State's Office paid office rent and travel expenses not related to administration of the tidelands program from tidelands funds. Also, because the Secretary of State's office does not have records to show the portions of other expenses that relate to the tidelands program versus other programs, the Secretary of State cannot properly allocate operating expenses among programs.*

The operating expenses that the Secretary of State includes as administrative expenses related to the administration of the tidelands fund include building rent, salaries and benefits, contractual services, travel, membership dues, and training. However, many of these expenses were for purposes other than administration of the tidelands program.

#### ***Rent for Gulf Coast Office***

The Secretary of State maintains a full-service satellite office on the Gulf Coast. Staff at this office include a Senior Attorney, a Special Projects Officer IV, a student intern, and the Director of State Agency Lands. The

**Although the majority of work performed at the Gulfport office is related to Public Trust Tidelands, it is a full service office that assists the public with services that are not specific to the tidelands program. Rent costs should be allocated among the Secretary of State's divisions that operate out of the Gulfport office.**

student intern provides administrative support on a part-time basis.

The Secretary of State pays annual rent of \$18,600 for office space on the first floor of the Hatten Building in Gulfport. This office space houses the three full-time employees and intern. Only the Senior Attorney and the Special Projects Officer perform services related to the leasing of Public Trust Tidelands and management of the Public Trust Tidelands leases and the student intern provides administrative support related to tidelands as requested. According to the Assistant Secretary of State for Public Lands, the Director of State Agency Lands has no formal responsibilities related to the Public Trust Tidelands, but may perform limited work on tidelands issues on an as-needed basis. Therefore, the Secretary of State should not pay the entire rent amount from the tidelands lease revenues. The office of the Director of State Agency Lands is 171 square feet in size and if broken down by the per square foot cost of the building, results in a prorated amount of \$1,840 per year that is paid from tidelands funds for this office space. Although the majority of work performed at the Gulfport office is related to Public Trust Tidelands, the Gulfport Office is a full service office that assists the public with services that are not specific to the tidelands program. The payment of rent should be allocated among the divisions that are operating out of the Gulfport office.

### ***Salaries***

**The Secretary of State's office does not have a time management system to verify the amount of time the Special Projects Officer IV devotes to tidelands duties.**

The Senior Attorney and the Special Projects Officer are responsible for processing new tidelands lease applications, making determinations about whether land is a public trust land, obtaining appraisals, negotiating leases and collecting rent, and completing a review and adjustment of lease fees every five years. (See Exhibit 2, page 19, for workload statistics related to the Secretary of State's Office's administration of tidelands.)

The Secretary of State uses tidelands funds to pay 100 percent of the salaries for the Senior Attorney and the Special Projects Officer IV. The responsibilities of these two employees are directly related to the administration of the Public Trust Tidelands Fund. However, in addition to the duties relating to Public Trust Tidelands, the Special Projects Officer IV also serves as the office manager for the Gulfport office.

The Secretary of State's office does not have a time management system to verify the amount of time the Special Projects Officer IV devotes to tidelands duties and other Secretary of State duties not related to the administration of the Public Trust Tidelands program. The Secretary of State should prorate the \$32,870 salary of the



Special Projects Officer IV, based on the duties and responsibilities of the position and the time spent on each. This would ensure that the administrative expenses retained by the Secretary of State are for actual work on tidelands matters. and allowable under MISS. CODE ANN. § 29-15-9 (1972).

**Exhibit 2: Secretary of State Tidelands Workload Statistics, Gulf Coast Office, FY 2000-2002**

Description of Action	Volume
New Tidelands Lease Applications Reviewed	32
Lease Applications Approved	18
Total Leases Managed	227
Active Lawsuits <sup>1</sup>	64
Lawsuits Settled	1
Boundary Certificates <sup>2</sup>	6
Coastal Preserves Tracts Acquired	21

SOURCE: PEER analysis of Secretary of State's tidelands workload statistics.

<sup>1</sup> Active lawsuits include those involving tidelands boundary disputes and lawsuits pertaining to other tidelands issues, such as denial of tidelands leases or disagreements regarding tidelands rent determinations.

<sup>2</sup> The Secretary of State assists the public in determining whether property is a public trust tideland by reviewing public trust tidelands maps.

***Contractual Services***

*Student Intern*

**The Secretary of State's Office should pay from tidelands funds only those portions of costs for contractual services (e.g., student intern wages, office equipment leases, and office supplies) and travel that relate to the tidelands program.**

The Secretary of State pays the student intern from Public Trust Tidelands funds, even though his responsibilities include those not for Public Trust Tidelands. The student intern assists all Secretary of State employees in the Gulf Coast office with clerical duties. The Secretary of State paid the entire \$8,976 salary in FY 2002 from lease revenues collected. The wages earned by the student intern should be paid according to the responsibilities that are performed and not strictly from Public Trust Tidelands funds.

### *Leasing of Office Equipment*

The Secretary of State paid \$4,985, the entire amount paid for office equipment leases, with Public Trust Tidelands funds in FY 2002. This includes a postal machine with an annual lease of \$1,084 and a copier with an annual lease of \$3,901 per year. As previously stated, the Secretary of State has a staff of four in the Gulf Coast Office, all of which do not have duties specifically related to the administration of the Public Trust Tidelands program. The costs for leasing office equipment should be prorated among the Secretary of State's divisions represented in that office.

### *Supplies*

The Secretary of State paid \$3,940 for office supplies for the Gulf Coast office in FY 2002. These include \$3,081 in duplication and reproduction supplies, \$148 in office supplies and materials, and \$711 in paper supplies. The Special Projects Officer orders supplies as needed for the Gulf Coast Office and is not required to break down those supplies by requestor. The supplies for the Gulf Coast Office should be prorated among the Secretary of State's divisions represented in that office.

### *Travel*

The Secretary of State included \$87 in travel expenses in FY 2002 that were not related to tidelands administration and approximately \$2,416 that could have included a portion related to tidelands, but the entire amount was charged to the Tidelands Trust Fund.

- \$87 for car rental and fuel so that the Senior Attorney for the Executive Division of the Secretary of State's office could accompany the Secretary of State to Charleston for a speech at the Lion's Club as well as mileage to and from the airport for a trip to attend a swearing-in ceremony for public officials at an undisclosed location. This expense was unrelated to the tidelands program.
- \$768 for travel for the Senior Attorney for Public Lands to the Western State Land Commissioners' Association Conference in January 2002 in Phoenix, Arizona. The benefits of this conference are not restricted to the area of Public Trust Tidelands and therefore should have been prorated among the departments of the Public Lands Division.
- \$806 for the Assistant Secretary of State for Public Lands' trip to the same conference. The Director of

State Agency Lands listed the justification for this conference on the travel authorization as “work on public lands issues common with other states, education, information, represent the State of Mississippi.” The benefits of this conference are not restricted to the area of Public Trust Tidelands and therefore should have been prorated among the departments of the Public Lands Division.

- \$841 for the Assistant Secretary of State for Public Lands’ trip to the Western State Land Commissioner’s Association Conference in July 2002 in Bryce, Utah. The Director of State Agency Lands listed on the travel authorization form that he was representing the Mississippi Land Office at the meeting and attending for educational purposes. The benefits of this conference are not restricted to the area of Public Trust Tidelands and therefore should have been prorated among the departments of the Public Lands Division.

### ***Membership Dues***

The Secretary of State pays 100 percent of the agency’s membership dues for the Eastern Lands and Resources Council (ELRC) and the Western States Land Commissioners’ Association (WSLCA) with Public Trust Tidelands funds, although these memberships are for the agency as a whole and not strictly for Public Trust Tidelands personnel.

The Eastern Lands and Resources Council is an organization that strives to enhance land stewardship and conservation through improving practices in management and administration of public lands, records and natural resources. Annual dues are \$500 per year and the agency has two representatives in this organization.

The Western State Land Commissioners’ Association is an organization formed to provide more coordinated management of federal and state trust lands. Membership consists of those states that manage lands, mineral right properties and land beneath navigable waterways. These lands include school trust lands, sovereign lands, and management of fire control on state and private lands. The agency’s representatives for this organization include the Secretary of State, the Director of State Agency Lands, and the Senior Attorney for Public Lands. Annual dues for this organization in FY 2002 were \$1,650.

These dues should be prorated among the departments within the Public Lands division that benefit from this membership instead of paying the membership dues from the revenue collected from Public Trust Tidelands leases. Payment of these membership dues solely with Public

**The Secretary of State’s Office should prorate membership dues and training expenses among the departments within the Public Lands Division that receive benefit, instead of paying these expenses solely from Public Trust Tidelands funds.**

Trust Tidelands revenues does not comply with MISS. CODE ANN. § 29-15-9 (1972).

### ***Training Expenses***

Of the \$1,105 expended for employee training, PEER identified \$250 that should not have been paid completely from Public Trust Tidelands funds.

The Secretary of State paid a registration fee of \$250 for the Assistant Secretary of State for Public Lands to attend the Summer 2002 Western State Land Commissioners' Association Conference. As previously stated, this organization focuses on improving public land management and its functions are not limited to Public Trust Tidelands. Therefore, the registration fee should not have been paid solely by Public Trust Tidelands funds. The fee should have allocated among the departments that would receive benefit from the Director of State Agency Lands' attendance at this conference.

### **Contract between the Secretary of State and the Department of Marine Resources for the Coastal Preserves**

***The Secretary of State includes as an administrative expense the amount paid for the contract with the Department of Marine Resources for the management of the Coastal Preserves (\$93,917 in FY 2002), even though the boundaries of the Coastal Preserves are not restricted to Public Trust Tidelands.***

#### ***The Coastal Preserves Program and Its Management***

The Coastal Preserves Program, established in the 1973 Coastal Wetlands Protection Act (MISS. CODE ANN. Section 49-27-1 et seq. [1972]), was designed to consolidate existing deeds to state-owned coastal wetlands, set priorities and acquire additional sensitive coastal wetlands habitats, and ensure that the ecological health of these selected areas is maintained through appropriate resources protection and coordinated management efforts.

The Coastal Preserves Program supports the State of Mississippi's public policy declaration for the preservation of the natural state of the coastal wetlands and their ecosystems as stated in MISS. CODE ANN. Section 49-27-3 (1972):

*It is declared to be the public policy of this state to favor the preservation of the natural state of the coastal wetlands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific coastal wetlands would serve a higher public interest in compliance with the public*

*purposes of the public trust in which coastal wetlands are held.*

The Department of Marine Resources and the Secretary of State are partners in the administration of the Coastal Preserves Program. The DMR Coastal Preserves Bureau is responsible for program operations such as developing boundary surveys and maps, conducting biological surveys and environmental assessments. The Secretary of State is responsible for program functions such as assisting the department in identifying available land within the Coastal Preserves boundaries for purchase and assisting the agency in the management of acquired lands.

### ***Contract for Administration of the Coastal Preserves***

*In justifying the expenditure of Public Trust Tidelands funds on management of property within the Coastal Preserves that is not tidelands, the Secretary of State argues that he has the legal responsibility to protect the Public Trust Tidelands **and their ecosystems** [emphasis added] and that further, because the state acquired significant portions of land in the Coastal Preserves through the settlement of tidelands boundary disputes, his office has the responsibility of managing lands so acquired.*

In FY 2002 the Secretary of State paid the Department of Marine Resources \$93,917 for the Coastal Preserves contract. Since 1997, the Secretary of State has paid the Department of Marine Resources \$831,418 for the administration of the Coastal Preserves.

**All of the funds paid to the Department of Marine Resources by the Secretary of State for the Coastal Preserves Program are not for administrative costs incurred for administration of the Public Trust Tidelands Fund.**

PEER does not question the economic and ecological value of the property within the Coastal Preserves. However, it is clear that all of the funds paid to the Department of Marine Resources by the Secretary of State are not for administrative costs incurred by the Secretary of State for administration of the Public Trust Tidelands Fund. According to the Coastal Preserves Bureau Management Plan, the properties that are managed are not only tidelands, but consist of selected coastal wetlands ecosystems and associated uplands.

PEER believes that the Secretary of State's argument for using tidelands funds to manage those lands within the Coastal Preserves that the state acquired through settlement of tidelands boundary disputes has merit. Because these settlements involved a sale of tidelands in return for an acquisition of specified wetlands within the Coastal Preserves, it is logical that the Secretary of State could use tidelands funds to meet the legal responsibility of managing the land so acquired.

**To expend tidelands funds to protect an undefined ecosystem is to open the door to expenditures on lands clearly not contemplated by the Legislature.**

PEER rejects the Secretary of State's argument that because all of the land in the Coastal Preserves is part of the tidelands "ecosystem," the entire cost of the contract for administering the Coastal Preserves should be paid out of tidelands funds. PEER takes the position that while there is a clear definition of "tidelands" in state law, the term "ecosystem" is not defined in statute. PEER suggests that to allow expenditure of tidelands funds to protect an undefined ecosystem is to open the door to expenditures on lands clearly not contemplated by the Legislature.

*The Secretary of State has no formal criteria or evaluation procedures for reviewing the expenses submitted by the Department of Marine Resources for the Coastal Preserves contract.*

**The Secretary of State does not have written definitions of what are allowable expenditures for the Department of Marine Resources' role in the Coastal Preserves contract.**

The Secretary of State does not have written definitions of what are allowable expenditures for the Department of Marine Resources' role in the Coastal Preserves contract. Without written definitions, neither the Department of Marine Resources nor the Secretary of State can identify those costs that should be allowable under the Coastal Preserves contract. Thus they cannot determine what portion of administrative expenses should properly be allocated to the tidelands program.

*The Secretary of State does not enforce the reporting requirements of the Coastal Preserves contract with the Department of Marine Resources that require detailed expenditure data.*

In FY 2000, the Secretary of State included language in the Coastal Preserves contract that required the Department of Marine Resources to provide detailed expenditure data in its quarterly reports. The Secretary of State strengthened the reporting requirements in an effort to control costs and require the Department of Marine Resources to justify those costs.

**In the twelve quarterly reports submitted from FY 2000 to FY 2002, the Department of Marine Resources summarized expenditure data by category and did not include details on expenditures.**

In the twelve quarterly reports submitted from FY 2000 to FY 2002, the Department of Marine Resources summarized expenditure data by category and did not include details on expenditures. Without reviewing specific expenditures, the Secretary of State cannot determine whether these expenses are specific to the administration of the Coastal Preserves program.

## Collection of \$150 Application Processing Fee for Public Trust Tidelands Applications

*The Secretary of State collects \$150 from each Public Trust Tidelands lease applicant, but does not apply this amount to the costs incurred for administration of the Public Trust Tidelands Fund. The fee is incident to tidelands leases and should be deposited into the Public Trust Tidelands Fund to offset administrative costs.*

The Secretary of State collects \$150 from each Public Trust Tidelands lease applicant and deposits the fees into Fund 3111, the Secretary of State's general operating fund. The application fees collected by the Secretary of State have not been included with the revenue collected from tidelands leases, thereby reducing the amount of funds received by the Department of Marine Resources for new and existing tidelands projects as stated in MISS. CODE ANN. §29-15-9 (1972).

**Because the application fee is collected as part of the tidelands leasing process, the fee should be considered a form of tidelands lease revenue.**

For the past three fiscal years, the Secretary of State processed thirty-two Public Trust Tidelands leases and collected \$4,800 in applications fees, which was deposited into Fund 3111. The Secretary of State stated that the office is not allowed to retain the application fee because MISS. CODE ANN. § 29-15-9 (1972) only allows the Secretary of State's Office to retain funds from tidelands leases and the office does not consider the application fee to be a lease revenue. The Secretary of State is not required by law to collect the application fee of \$150.

In view of the fact that the fee is assessed and collected as part of the tidelands leasing activity of the Secretary of State's Office, and application for a lease is a condition precedent to the leasing of tidelands, PEER contends that the fee should be considered a form of lease revenue to be treated as other tidelands lease revenues.

## The Secretary of State's Transfer of State-Owned Public Trust Tidelands to Private Entities

**The 1996 transfer of tidelands to the Mirage Corporation through court order was a valid transfer under law. PEER would, however, note that absent a transfer of tidelands needed to settle claims under MISS. CODE ANN. Section 29-15-7 (1972), all transfers should comply with the historical two-step process requiring a higher public purpose and legislative approval customarily applied to tidelands and as affirmed by the Mississippi Supreme Court.**

In 1996, the Mirage Corporation planned to construct a casino on the Mississippi Gulf Coast. The casino ultimately developed is known as the Beau Rivage. Mirage wanted to own title to approximately 6.73 acres of tidelands property for the hotel site rather than enter into tidelands leases with the Secretary of State. Approximately 4.03 acres of this land had been filled since

World War II and was state-claimed land. However, the remaining 2.7 acres was undisputed tidelands trust property. The 2.7 acres was to be used, along with the other property, for the hotel site and would ultimately be filled to meet the needs of casino development. After being filled, the property would no longer be below the mean high tide line and would not be available for the traditional tidelands uses of boating, swimming, and fishing as it would be simply filled land. To compensate the state for a transfer of title to the above-described lands, the developer proposed to transfer title to 4,225 acres of wetlands held that could be placed in the Coastal Preserves Program. Because of their location in an area covered by the Coastal Wetlands Protection Act, the wetlands to be exchanged were worthy of preservation.

**To compensate the state for a transfer of title to 2.7 acres of tidelands for casino development, the developer proposed to transfer title to 4,225 acres of wetlands that could be placed in the Coastal Preserves Program. Because of their location in an area covered by the Coastal Wetlands Protection Act, the wetlands to be exchanged were worthy of preservation.**

To expedite the transfer of title to the state property, the Secretary of State petitioned the Chancery Court for the Second Judicial District of Harrison County for authority to complete the exchange. The Secretary of State took this approach after first asking the Attorney General for an opinion on the Secretary of State's powers under the tidelands legislation. The Attorney General suggested that the Secretary of State seek an *ex parte* order regarding the transfer of property and did not issue an opinion. The court ruled on May 2, 1996, that the property to be developed would lose its characteristics as tidelands through development and that the conveyance and transfer was in the best interest of the public. Further, the state would be receiving property of at least equal value that would be located in the coastal preserves area.

In ruling, the Chancery Court interpreted the 1989 tidelands legislation as authorizing the Secretary of State to transfer title of the 2.7 acres of tidelands and 4.03 acres of adjacent lands in exchange for the above-described 4,225 acres of wetlands. Specifically, the court found that:

- the wetlands were at least equal in value to the tidelands that were exchanged;
- the wetlands exchanges are a sensitive environment that serves as a spawning ground for marine life;
- the exchange of the wetlands is consistent with the purposes of the public trust; and,
- the exchange is a reasonable and prudent act of stewardship by the Secretary of State as trustee of the Public Trust Tidelands.

In granting relief to the Secretary of State, the chancellor specifically authorized the Secretary of State to transfer title to Public Trust Tidelands property in exchange for the



**PEER acknowledges that the Secretary of State has the authority to settle disputed claims regarding tidelands, but questions the wisdom of any public policy allowing the alienation of additional tidelands without specific legislative authority.**

wetlands property. Thus the court found the transfer to be legal and authorized the Secretary of State to proceed with the transfer. As no party objecting to the transfer sought to intervene, the judgment is final and PEER does not question the legality of the transfer.

While the chancellor's decision to grant relief eliminates doubt as to the binding character of the exchange and PEER acknowledges that the Secretary of State has the authority to settle disputed claims regarding tidelands, PEER questions the wisdom of any public policy allowing the alienation of additional tidelands without specific legislative authority.

The historical understanding of the state's interest in the tidelands was that the lands were to be held in trust for the citizens of the state. Alienation of such lands could occur when a transfer of title to property served a higher public purpose and the transfer was approved by the Legislature. In reviewing decisions of the Mississippi Supreme Court, this two-step process is still considered to be the law of the state with respect to alienation of the tidelands. See *Weisenberg v. State*, 633 So 2d 983 (Miss., 1994).

Such a restriction on administrative power is not unique to the tidelands. Generally, public lands are sold or leased by a legislative enactment specifically authorizing a sale or lease or by general authority to sell property (e.g., see MISS. CODE ANN. Section 29-1-1 [1972] regarding the terms under which the Secretary of State may sell state-owned lands; Section 29-1-33, sale of tax-forfeited lands; and Section 8, Chapter 541, *Laws of 2000*, regarding the sale of certain property in Marion County).

Although PEER does not question the legality of the transfer of the tidelands to the Mirage Corporation, transfers without a specific legislative authorization, except for those necessary to settle claims to tidelands, deprive the Legislature of its traditional authority over the exchange of public lands.

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## Status of Specific Complaints Concerning the Department of Marine Resources

As noted on page 1, when conducting this review, PEER also addressed the following specific allegations by complainants:

- the Department of Marine Resources does not assess and collect fines for coastal wetlands permit violations or fees for individual coastal wetlands permits;
- the department does not operate efficiently in its purchase and maintenance of non-law-enforcement vehicles; and,
- the department attempts to bypass the State Personnel Board by hiring full-time employees on a contractual basis.

### Wetlands Permitting

**The Department of Marine Resources' Coastal Wetlands Permitting Bureau does not collect fines for wetlands permit violations as authorized by MISS. CODE ANN. § 49-27-51 (1972), does not collect public notice fees for individual permit applicants as required on the wetlands permit application, and does not routinely review actual public notice costs to ensure that the public notice fees cover these costs.**

#### Coastal Wetlands Permitting Bureau

The Department of Marine Resources' Coastal Wetlands Permitting Bureau is responsible for issuing wetlands permits. Twelve staff members are responsible for reviewing wetlands permit applications, conducting site visits, and making recommendations to the Commission on Marine Resources as to whether permits should be issued or denied based on criteria contained in the Coastal Wetlands Protection Act (MISS. CODE ANN. §49-27-1 et seq. [1972]).

Coastal wetlands permitters spend approximately fifty percent of their time conducting site visits. The Coastal Wetlands Permitting Bureau has additional responsibilities outside the permitting process. The Department of Marine Resources Annual Report states that the Wetlands Permitting Bureau is responsible for identifying potential wetlands permit violations, although it has no formal process for detecting permitting violations.

**The Department of Marine Resources does not aggressively pursue coastal wetlands permit violators.**

With the expansion of dockside gambling on the Mississippi Gulf Coast, and the resulting economic development, as well as residential development, the coastal wetlands permit violations are not as isolated along Highway 90 as they once were. The Department of Marine Resources does not aggressively pursue coastal wetlands permit violators. Wetlands permitting violations are identified in the following ways:

- bureau staff in the field on other bureau business note and report possible violations;
- Marine Patrol staff identify violations while fulfilling their patrol responsibilities; and,
- the general public makes complaints concerning possible violations.

## **Wetlands Permitting Process**

**The purpose of the wetlands permitting process is to regulate activities that might adversely impact coastal wetlands in order to preserve and protect these sensitive habitats.**

The Department of Marine Resources is responsible for managing the state's coastal wetlands. This includes managing those activities within the coastal areas that could result in adverse environmental impacts to coastal resources. The 1973 Mississippi Coastal Wetlands Protection Act, as stated in MISS. CODE ANN. §49-27-1 et seq. (1972), prompted the agency to develop the Mississippi Coastal Program, which serves as the departmental and state policy regarding regulation of development within the coastal zone consisting of Hancock, Harrison, and Jackson counties and the adjacent coastal water, including the barrier islands. The agency is the point of contact in Mississippi for wetlands permits in the Mississippi Coastal Zone.

The purpose of the permitting process is to regulate those activities that might adversely impact coastal wetlands in order to preserve and protect these sensitive habitats.

There are two types of coastal wetlands permits, general and individual. A general permit is one issued based on criteria pre-determined by the United States Army Corps of Engineers. Examples of general permits include the construction or modification of boat slips and boat berths, debris removal, maintenance dredging, and construction and modification of boat ramps and marine ways. Generally if an activity exceeds the criteria for a general permit, an applicant must apply for an individual permit. Costs for coastal wetlands permit applications are \$50 for a residential regulated activity and \$500 for commercial- and industrial-related activity. In FY 2002, the Coastal Wetlands Permitting Bureau issued 389 individual and general permits.

## Assessment and Collection of Fines for Wetlands Permit Violations

*In FY 2002 the Department of Marine Resources issued five after-the-fact authorizations and collected no fines for work performed without a permit.*

MISS. CODE ANN. § 49-27-51 (1972) provides for the Commission on Marine Resources to assess a fine of not less than \$50 nor more than \$1,000 for residential regulated activity and a fine of not less than \$1,000 and no more than \$10,000 for commercial- and industrial-related activity for conducting work without first obtaining a current, valid permit. In these instances, the violator is allowed to submit an after-the-fact application for a coastal wetlands permit and the commission reviews it. If the commission finds the application is within permit requirements, the Department of Marine Resources issues a permit. If the commission finds the application is not within the permit requirements, the commission can refer the case to the Attorney General's Office for legal action.

**Simply allowing a violator the opportunity to submit an after-the-fact application for activities that are governed by the Mississippi Code without imposing a penalty does not serve as a deterrent to future violations.**

In FY 2002, the Department of Marine Resources issued five after-the-fact authorizations, including one after-the-fact individual permit and four after-the-fact general permits. Of these authorizations, three were residential permits and two were commercial permits. At the statutory minimum, the commission could have fined these violators a total of \$2,100. Simply allowing a violator the opportunity to submit an after-the-fact application for activities that are governed by the Mississippi Code without imposing a penalty does not serve as a deterrent to future violations.

Mississippi's coastal wetlands serve as a critical habitat for many fish, shellfish, bird, and other animal species. Coastal wetlands are the nursery ground for many marine species. Wetlands also serve an important role by removing pollutants and toxicants from nonpoint source pollution along the Gulf Coast. The surge in economic and residential development in the Gulf Coast region has placed great strain on Mississippi's marine resources, including coastal wetlands. Without a deterrent to wetlands permitting violations, they are likely to continue, thus increasing the opportunity for damage to Mississippi's coastal wetlands and their ecosystems.

## Public Notice Fees

*The Department of Marine Resources' Coastal Wetlands Permitting Bureau does not collect public notice fees sufficient to cover the costs of issuing required public notices for individual wetlands permits. This has resulted in the department's using \$4,513 of special funds to pay the difference between the amount collected from the wetlands permit applicants and the actual cost for public notice fees in FY 2002.*

MISS. CODE ANN. §49-27-15 (1972) requires that for individual permit applications, the department must run a public notice for three consecutive weeks in at least one general circulation newspaper in the county in which the affected wetlands are located. According to the agency, the newspapers charge by the number of words included in the public notice, so the costs of these notices vary.

In the past, the department has charged \$50 to individual permit applicants to help cover the costs of the public notice charges. However, the department does not collect the fee from all applicants and the cost of all public notices is greater than \$50. In FY 2002, DMR's actual public notice costs ranged from \$75 to \$328.

**The Coastal Wetlands Permitting Bureau has no formal process for routinely reviewing the actual costs of running a public notice and comparing it to the amount collected from the applicant.**

In FY 2002, the Coastal Wetlands Permitting Bureau collected \$900 in public notice fees to cover the costs of twenty-three public notices that were run in local Gulf Coast newspapers. The actual public notice costs totaled \$5,413, resulting in the use of \$4,513 of special funds to cover the difference between the amount collected from the individual permit applicants and the actual costs of running the public notice.

Even though the Coastal Wetlands Permitting Bureau receives copies of all invoices from the newspapers in which a public notice has run, it has no formal process for routinely reviewing the actual costs of running a public notice and comparing it to the amount collected from the applicant.

## Use of Non-Law-Enforcement Motor Vehicles

**DMR does not maintain complete usage records on any of its twelve non-law-enforcement vehicles. While not required by state law, such records are critical to documenting the need for state-owned vehicles.**

PEER reviewed DMR's vehicle usage records for the twelve motor vehicles assigned to non-law-enforcement staff in FY 2002 (refer to Exhibit 3 on page 32 for a description of the vehicles). While DMR assigns the majority of its motor vehicles to marine law enforcement officers (seventy-three vehicles in FY 2002), PEER excluded these vehicles from analysis because the focus of this review is on DMR administration rather than law enforcement.

### Exhibit 3: DMR Non-Law-Enforcement Vehicles Profile, FY 2002

Make and Year of Vehicle	Cost of Vehicle when Purchased	Commute to and from Work (miles)	<sup>7</sup> Approximate FY '02 Commuting Miles	<sup>8</sup> FY '02 Miles Driven	Approx. Travel Less Commuting Miles	<sup>9</sup> Break-Even Mileage
1991 Mid-Size Ford Aerostar Van	\$12,394.47	N/A (does not commute)	N/A (does not commute)	10,213	N/A (does not commute)	3,099
1992 Mid-Size GM 2500 Pickup	11,806.32	N/A (does not commute)	N/A (does not commute)	12,864	N/A (does not commute)	10,333
<sup>1</sup> 2002 Mid-Size Ford F250 Pickup (3/4 ton 4x4 crew cab)	21,090.00	N/A (does not commute)	N/A (does not commute)	2,149	N/A (does not commute)	20,158
<sup>2</sup> 2002 Dodge Durango	27,453.00	61	5,795	12,795	7,000	23,190
<sup>3</sup> 2002 Ford Crown Victoria	19,989.00	61	5,795	22,748	16,953	19,004
<sup>4</sup> 1994 Mid-Size GMC Safari Van	14,189.42	41.4	3,850	4,097	247	15,272
<sup>5</sup> 2002 Ford F150 Pickup (1/2 ton 4x2 king cab-long bed)	17,498.00	41	4,674	4,968	294	15,283
2000 Ford Explorer (SUV)	24,914.00	59	10,443	14,371	3,928	30,662
2001 Dodge Ram 2500 Pickup (3/4 ton 4x2 King cab-Quad cab)	20,193.00	12.2	2,684	12,490	9,806	18,514
<sup>6</sup> 1999 Jeep Cherokee (SUV)	18,246.00	20.6	4,099	8,012	3,913	16,399
2001 Dodge Ram 2500 Pickup (3/4 ton 4x2 king cab)	20,193.00	N/A (does not commute)	N/A (does not commute)	15,262	N/A (does not commute)	20,301
1999 Expedition (SUV)	28,863.00	68	13,532	23,204	9,672	30,065
<b>Total</b>	<b>\$236,829.21</b>	<b>364.2</b>	<b>50,872</b>	<b>143,173</b>	<b>51,813</b>	

<sup>1</sup>Wasn't driven the entire FY - vehicle purchased in April 2002

<sup>2</sup>Wasn't driven the entire FY - vehicle first driven in January 2002

<sup>3</sup>Wasn't driven the entire FY - vehicle replaced in January 2002

<sup>4</sup>Wasn't driven the entire FY - vehicle wasn't driven at times during the months of July - August 2001 or October 2001 through January 2002

<sup>5</sup>Wasn't driven the entire FY - vehicle first driven December 2001

### Exhibit 3: DMR Non-Law-Enforcement Vehicles Profile, FY 2002

<sup>6</sup>Vehicle was not driven during May 2002 and was involved in an accident, so was not driven the majority of June 2002

<sup>7</sup>These figures based on 365 days during FY 2002, less 105 weekend days, 30 days leave and 10 holidays. For those vehicles that were driven only partially during the FY, the approximate days the vehicles were not driven, based on FuelMan reports, were subtracted from the 220 work days in calculating mileage. Vacation, personal and sick days were not subtracted since PEER staff did not know exactly when or for how long leave occurred.

<sup>8</sup>This figure based on mileage reported on FuelMan reports.

<sup>9</sup>A reimbursement rate of .365¢ per mile and a liability insurance cost of \$175 per vehicle were used to calculate the break-even mileage.

SOURCE: Department of Marine Resources (DMR), [www.maps.yahoo.com](http://www.maps.yahoo.com), and DMR FuelMan reports.

## Establishing Need for State-Owned Vehicles

MISS. CODE ANN. § 25-1-77 (1972) states that it is the intent of the Legislature to:

*. . . regulate the purchase [of motor vehicles] so that the vehicle is the most appropriate type for its intended use. Further, it is the intent of the Legislature that any motor vehicle purchased shall be made with due concern for economical and efficient use, but shall also meet the needs of the department, institution or agency.*

An agency can establish the need for a state-owned vehicle by demonstrating that: (1) employees drive sufficient miles while performing work duties that it is less expensive for the state to purchase a vehicle than to reimburse the employees on a per-mile basis for using their own private vehicles (roughly 20,000 miles per year); (2) the agency has a need to purchase vehicles for special work-related uses, such as a truck to haul oyster monitoring equipment and samples; or (3) an employee must be on twenty-four hour call to respond to issues relating to the general public in a state marked vehicle.

**Of the eight DMR on-call employees who are assigned non-law-enforcement vehicles, six put more miles on the vehicles for commuting than for work-related travel.**

As shown in Exhibit 3 on page 32, only two of the twelve DMR non-law-enforcement vehicles reviewed by PEER are justified strictly on the basis of work mileage driven. Eight of the vehicles are assigned to “on-call” employees who take the vehicles home and none of these vehicles met break-even mileage. Six of these employees put more miles on the vehicles commuting than for work-related travel. DMR claimed that it purchased ten of the twelve vehicles for “special use,” such as towing boats and carrying equipment.

## Vehicle Records

While DMR maintains mileage and maintenance records on the twelve vehicles reviewed by PEER, in order to document the need for its on-call and special use vehicles, the department should also be collecting the following information on each of the vehicles on a per-trip basis:

- destination;
- purpose of trip;
- name of driver and number of passengers (for the large vehicles purchased to transport passengers, such as the Expedition); and,
- mileage driven.



**DMR does not consistently maintain trip destination, mileage, or purpose records on its non-law-enforcement vehicles.**

PEER determined that DMR does not consistently maintain trip destination, mileage, and purpose records on its non-law-enforcement vehicles.

Of particular significance is the lack of trip records on the eight vehicles that DMR permits staff to take home overnight. While DMR claims that these employees need the vehicles because they are on twenty-four-hour call, there is no record of the number of times that the employee assigned the vehicle was required to perform a work assignment in a state-owned marked vehicle after normal working hours. DMR's on-call employees live an average of twenty-three miles from the DMR office (forty-six miles round trip). As shown in Exhibit 3 on page 32, 60% of the mileage driven on these vehicles is for commuting between home and work.

During the course of PEER's review, DMR issued a policy removing the GMC Safari van from "on-call" status. PEER noted during its review that the van was being used to perform activities such as setting up meetings, delivering mail, and picking up office supplies, and, on an undocumented but reportedly infrequent basis, to turn off an alarm after hours at the Department's Grand Bay National Estuarine Research Reserve facility.

## Hiring of Contract Employees

**Complainants alleged that the Department of Marine Resources routinely fills multiple positions with contract employees to bypass the state personnel system. PEER did not find this to be a widespread problem. Of the department's 149 employees, six are contract workers; two fill full-time positions for which the agency has documented a need. Continuing to fill full-time positions with contract employees bypasses the competitive nature of the merit selection process of the state personnel system.**

Complainants alleged that the Department of Marine Resources routinely fills multiple positions with contract employees to bypass the state personnel system. Of the 149 Department of Marine Resources employees (as of September 1, 2002), six are contract workers, two of which are full-time employees. Exhibit 4, page 36, describes the duties of DMR's contractual workers.

**Merit selection is a principle of good personnel administration and is to be encouraged whenever possible.**

These contract workers occupy positions for which the agency has documented a need. The Department of Marine Resources has not formally requested the Legislature to appropriate funds and position identification numbers (PINS) for the two full-time positions (licensing support and mitigation expert). This failure to address a full-time continuing staffing need by hiring contract employees bypasses the merit selection process of the state personnel system. Merit selection is a principle of good personnel administration and is to be encouraged whenever possible (see MISS. CODE ANN. Section 25-9-103 [1972]).

**Exhibit 4: Description of the Department of Marine Resources Contractual Workers**

<b>Position Title</b>	<b>Description of Work Performed</b>	<b>Full-Time or Part-Time</b>	<b>Funding Source</b>
Licensing Support	Provides assistance in writing commercial and recreational fishing and seafood licenses; provides other duties related to license sales.	FT	General Funds
Mitigation Expert	Develops comprehensive mitigation assessment and compliance program for coastal Mississippi to include monitoring mitigation activities, refining mitigation policy, evaluating success of mitigation efforts; establishes and characterizes wetland habitat types in coastal Mississippi for the purposes of mitigation; standardizes the functional assessment methods to be used in mitigation monitoring activities and assessment of wetland impacts associated with proposed projects; develops and maintains a database to track required mitigation for wetlands permits.	FT	Federal Funds
Marine Patrol Dispatch	Staffs the Marine Patrol Dispatch on the weekends and on holidays. The Marine Patrol Dispatch is required to be operational 24 hours.	PT	Special Funds
Marine Recreational Fisheries Statistical Survey Support Staff (2 positions)	Conducts a coast-wide field intercept sampling of recreational fishermen; conducts interviews of fishermen; collects specific data to include the number of species composition of catch, sizes, fishing mode, fishing area, deposition of catch, primary and secondary target species.	FT – short term  Contracts will expire in December 2002.	Federal Funds
Oyster Station Monitor	Assists the Fisheries Office by staffing oyster check stations as directed, collecting oyster harvest information, issuing oyster tags, collecting shell tax monies for the tags issued.	PT	General Funds

SOURCE: PEER analysis of Department of Marine Resources' Contractual Concurrence Worksheet and Contract Agreements.

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## Recommendations

### Administration of Tidelands Grants

1. The Department of Marine Resources should create two separate tidelands grant applications, one for management projects and one for public access projects. The department should require the applicant to describe in detail how the project will meet the requirements of the Public Trust Tidelands Act (MISS. CODE ANN. Section 29-15-1 et seq. [1972]) and the potential benefits that would be derived from receipt of such funds.

### Payment of Tidelands Grants

2. Should tidelands management or public access projects that are not included on DMR's comprehensive list be considered for funding during the appropriations process, the Legislature should refer such projects to DMR. The department should evaluate the merits of such projects in accordance with the same evaluation criteria used to compile the list initially submitted to the Legislature and report the results of the evaluation to the Legislature prior to the conclusion of the legislative session. The Legislature should ensure that all projects receiving tidelands funds have been objectively and equally evaluated and are in compliance with statutory provisions for the use of such funds.

### The Secretary of State's Administrative Expenses

3. The Secretary of State should develop written procedures to ensure that tidelands funds are only being expended on administrative expenses associated with the tidelands program. The Secretary of State should prorate expenditures of tidelands and other programs so that tidelands funds are only used to pay that portion of the expenses related to administration of the tidelands program.

If the Secretary of State's Office wishes to argue that the term "ecosystem" as used in the state's

Public Trust Tidelands law is equivalent to the land included in the current boundaries of the Coastal Preserves, it should consider requesting the Legislature to include this definition in state law before expending any more tideland trust fund money on Coastal Preserves lands that are not either tidelands as defined by state law or lands acquired through tidelands boundary settlements.

4. The Appropriations committees of the House and Senate should create a tidelands program within the appropriations bill of the Office of Secretary of State. This would add line items that could be monitored and would increase accountability for funds.
5. The Secretary of State should apply the \$150 it collects from each Public Trust Tidelands lease applicant to the costs incurred for the administration of the program, rather than depositing these funds into the Secretary of State's general operating fund.

## **The Secretary of State's Transfer of State-Owned Public Trust Tidelands to Private Entities**

6. Except in cases where a transfer of title is necessary to settle a tidelands claim, the Secretary of State should only convey Public Trust Tidelands where such satisfies a higher public purpose and is specifically authorized by the Legislature.

## **Wetlands Permitting**

7. The Department of Marine Resources should increase the fees for public notice from \$50 to the actual cost of running a public notice in order to reduce or eliminate the amount of special funds spent on this service. DMR should determine the actual costs of the public notice (based on the number of words) and require wetlands permit applicants to pay the actual costs of public notice fees prior to running the public notice. The Department of Marine Resources should include this requirement in its coastal wetlands policies and procedures. The requirement should include government entities that have not been charged a public notice fee in the past.

8. In order to protect Mississippi's coastal resources, the Department of Marine Resources should develop a routine inspection process with a proactive approach for identifying wetlands permit violations. The Department of Marine Resources may want to consider re-allocating a vacant PIN, when one becomes available, and locating it within the Coastal Wetlands Permitting Bureau as an additional resource to assist in handling inspections of coastal wetlands.
9. The Department of Marine Resources should enforce wetlands permitting regulations and utilize the enforcement tools available under MISS. CODE ANN. § 49-27-51 (1972). The agency should actively use fines to deter individuals from violating the wetlands permitting regulations.

## Use of Non-Law-Enforcement Motor Vehicles

10. DMR should require its employees who drive vehicles to complete legible daily mileage logs, including details of destination and purpose, and show clearly who drove the vehicle each time. If writing is illegible, they should submit typed logs. The utilization of motor pools should be the policy for all vehicles, unless it is proven through documentation on the mileage logs that employees need individually assigned vehicles on a daily basis.
11. DMR should require on-call logs to be documented for all employees who work off-duty hours. Also, the department should require an employee who responds to a call to document what circumstance arose that necessitated the employee being called in after hours.

The vehicles that are presently being driven home for the purpose of answering calls should be left at the DMR offices to improve efficiency of use unless the mileage log documentation can prove that the need is valid.
12. The department should conduct breakeven or other needs analyses to determine whether to purchase vehicles and if so, what type to purchase.

## Hiring of Contract Employees

13. If the need for a full-time licensing support employee and mitigation expert continues, the Department of Marine Resources should request the Legislature to appropriate funds and PINS for these positions and the agency should select persons competitively to fill these positions.

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## Appendix: Glossary

**Coastal Preserves**--specific coastal and private wetlands set aside as estuarine sanctuaries within the Mississippi Coastal Zone. The Commission on Marine Resources has identified those areas that should be included in the Coastal Preserves. The Department of Marine Resources and the Mississippi Secretary of State jointly manage the coastal preserves and identify tracts of lands within the coastal preserves boundaries that may be purchased by the state for their preservation.

**Coastal Wetlands Protection Act**--also referred to as the Wetlands Act. It established the public policy of preserving coastal wetlands in their natural state, except where an alteration of a specific coastal wetland serves a higher public interest. (MISS.CODE ANN. §49-27-1 [1972])

**Mississippi Coastal Zone**--refers to Mississippi's coastal counties (Hancock, Harrison and Jackson).

**Tidelands**--those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides (MISS. CODE ANN. § 29-15-1 [1972]).

**Submerged Lands**--lands that remain covered by waters, where the tides ebb and flow, at ordinary low tides (MISS.CODE ANN. §29-15-1 [1972]).

**Wetlands**--all publicly owned lands subject to the ebb and flow of the tide; which are below the watermark of ordinary high tide; all publicly owned accretions above the watermark of ordinary high tide and all publicly owned submerged water-bottoms below the watermark of ordinary high tide. (MISS.CODE ANN. §49-27-5 [1972])





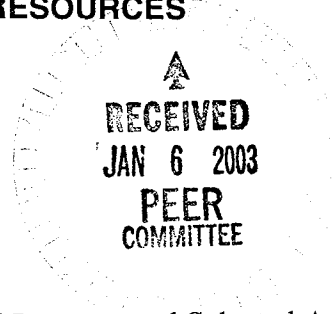
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# Agency Responses

## MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

January 3, 2003

Dr. Max K. Arinder, Executive Director  
P.E.E.R.  
P.O. Box 1204  
Jackson, MS 39215-1204



Re: A Review of Mississippi's Tidelands Trust Fund Program and Selected Areas of Operation of the Department of Marine Resources

Dear Dr. Arinder:

On December 20, 2002, I met with Kelly Kuyrkendall and Linda Triplett of your staff who presented me with the PEER Draft Report referenced above, allowed me to review the document, and provided me with a hard copy of the Executive Summary of the Review. I appreciate the opportunity to review the draft, and I commend your staff for their thoroughness through the review process.

As a result of my review, I present the Department of Marine Resources (DMR) response to the draft review.

**PEER Report Issue: The Department of Marine Resources' Administration of the Public Trust Tidelands Grants. DMR approved \$781,000 in FY 2002 tidelands projects that did not meet the statutory criteria for use of tidelands funds and \$482,000 in FY 2002 projects that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds. Also, the department issued \$4.7 million to grant recipients without prior documentation of completed project work.**

DMR Response: The Department of Marine Resources is charged with the task of disbursing Public Trust Tidelands Funds to approved programs of tidelands management and or the enhancement of public access to the public trust tidelands or public improvement projects as they relate to such lands. We use a merit review process through which a merit review committee and the Commission on Marine Resources recommend prioritized projects to the Mississippi Legislature where the final decisions are made. Mississippi Law defines Public Trust Tidelands as "the beds and shores of the sea and its tidally affected arms and tributaries for the purposes defined by common law and statutory law" (§ 29-15-5). Public Trust Tidelands and submerged lands are lands lying under waters naturally subject to tidal influence. The inland boundary is the line of mean high tide and the seaward boundary is the State boundary, three miles south of the barrier islands.

PEER's finding that a significant number of funded projects did not meet statutory criteria may be due to PEER's use of a more restrictive definition of Public Trust Tidelands. Many of the projects identified by PEER as not meeting statutory criteria, while being physically separated from "the shores of the sea," are certainly located in or affect the sea's "tidally affected arms and tributaries."

As recommended in the PEER Committee September 29, 1998 Report to the Mississippi Legislature, DMR has developed a process by which each application for Tidelands Trust Fund support is subjected to the scrutiny of a thorough merit review and ranked by a multidisciplinary merit review committee. The resulting ranking recommendations are then forwarded to the Legislature for final action. Projects found to not meet eligibility requirements are also provided to the Legislature which ultimately selects projects for approval using the DMR ranking recommendations as a point of reference. The merit review committee in FY 2002 was comprised of 14 members – 3 Commission on Marine Resources members, 1 attorney, 1 policy analyst, and 9 coastal/marine resource scientists representing not only the Department but also the University of Southern Mississippi's College of Marine Sciences and Mississippi State University. These members ranked the projects using set rating criteria. To avoid introduction of any bias, committee members refrain from ranking projects submitted from their respective member institutions. Integral to that process is the identification of any projects not meeting the strict requirements of the Tidelands Act. All projects listed in the PEER draft report as not meeting statutory criteria were found eligible by the merit review committee.

**The PEER draft report indicates that DMR approved \$781,000 for seven projects that did not meet statutory requirements.** A strong case can be made that the Seafood Marketing Program, the Recreational Fishing Marketing Program, the Artificial Reef Program, the Sportfish Restoration Act Grant Match, and the Shellfish Program met the statutory criteria "public improvement projects as they relate to such lands." These programs clearly support each of the referenced tidelands dependent activities. They are also public improvement projects in the areas of economics, public enjoyment, and public safety. The sponsorship of Science Fairs and Marine Science Workshops under DMR's Public Affairs Outreach application which promotes new and innovative research and problem resolution relating to our coastal environment, and the Biloxi Lighthouse Restoration Project, which has an interpretive aspect, met the education criteria and consequently also qualified for Tidelands funding. The influx of casino employees and their children has resulted in an increase in the level of participation in science fairs and related educational activities. Support of these educational programs to promote excellence in marine sciences is clearly within the intent of the Tidelands Trust Act legislation. DMR and other applicants applying for tidelands trust fund support can and will do a better job of demonstrating the linkage of their projects to the public trust tidelands.

**The PEER draft report indicates that DMR approved \$482,000 for four projects that did not contain sufficient documentation to show whether they met the criteria for use of tidelands funds.** These projects clearly met the educational component of the

Public Trust Tidelands Act as stated in the applications. One application, the USM Cedar Point Nature and Wildlife Preserve and Interpretation Center, satisfied the Public Access as well as the educational component of the Tidelands mandate. The two museum projects totaling \$250,000 met the education and conservation criteria and were consequently classified as Management Projects by the Merit Review Committee. The Legislature ultimately decided that these projects were more appropriately placed in the Public Access category. DMR accepts the responsibility of providing better explanations of how project applications meet statutory requirements, and we will strive to provide clear and more direct linkages in the future.

**The PEER draft report indicates that DMR issued checks for \$4.7 million to FY 2002 grant recipients prior to performance of the grant projects.**

In Fiscal Year 2002, all Tidelands payments were issued on passage of the Department of Marine Resources appropriations bill in which these payments were specified as line items. Not until the passage of Section 29-15-9 of the Mississippi Code of 1972 was the department authorized to make payments based on work completed.

DMR did issue checks in the amount of \$3,710,000 to fund specific line item projects listed in the FY 2002 DMR Appropriations Bill prior to the performance of these grant projects. The remaining \$990,000 is being used for specific DMR marine studies and project initiatives, and these dollars are extended after work is completed or items are purchased. At that time, there was no statutory requirement that work be in progress or completed before payment was issued.

Beginning in FY 2003, as authorized in Mississippi Code §29-15-9, all Tidelands Trust Funds that are appropriated to DMR will be extended after work has been completed. DMR will make progress payments in installments based on the work completed and materials used in the performance of a Tidelands Trust Fund project only after receiving written verification from the recipient agency or political subdivision that work has been completed or materials purchased.

**PEER Report Issue: Wetlands Permitting. The Department of Marine Resources' Coastal Wetlands Permitting Bureau does not collect fines for wetlands permit violations as authorized by Mississippi Code Ann. § 49-27-51, does not collect public notice fees from all individual permit applicants as required on the wetlands permit application, and does not routinely review actual public notice costs to ensure that the public notice fees cover these costs.**

DMR Response: The Department's mitigation compliance program is still very much in its infancy, and specific protocols for determining appropriate penalties in that regard are currently under development. It is anticipated that this developing program will help shape the methodology for determining wetlands permit violations and resulting penalties.

DMR's Bureau of Wetlands Permitting supports collection of fines for permit violations and after-the-fact-permits. We will work with DMR legal staff and the Commission on Marine Resources to determine appropriate fines and penalties and collect such fines for any permitting violations that are brought to our attention.

The Bureau of Wetlands Permitting collects public notice fees in accordance with policies set forth in the Mississippi Coastal Program. The Mississippi Coastal Program excludes 19 specific activities or entities from permit requirements, and hence public notice fees are not collected from those activities and entities. The Mississippi Coastal Program is presently being revised and rewritten, and particular attention will be given to addressing PEER recommendations regarding collection of public notice fees. DMR presently collects \$50 for each non-exempt residential permit application and \$500 for each commercial/industrial permit application to cover public notice costs. We agree that we should, to the extent practicable, cover actual public notice costs with fees associated with permit applications. We will work to increase fees through appropriate methods.

**PEER Report Issue: Use of Non-Law-Enforcement Motor Vehicles. DMR does not maintain complete usage records on any of its twelve non-law-enforcement vehicles. While not required by state law, such records are critical to documenting the need for state-owned vehicles.**

DMR Response: As stated in the PEER Draft Report, DMR is in compliance with all statutory requirements pursuant to usage records for its twelve non-law-enforcement vehicles. Nonetheless, we will consider the value of maintaining these usage records. We do agree that we need to consistently enforce whatever decision we make in this regard.

**PEER Report Issue: Hiring of Contract Employees. Complainants alleged that the Department of Marine Resources routinely fills multiple positions with contract employees to bypass the state personnel system. Of the Department's 149 employees, six are contract workers; two fill full-time positions for which the agency has documented a need.**

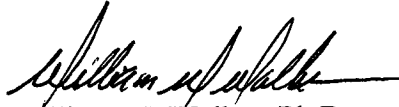
DMR Response: We agree that the two contract employees who fill full-time contract positions should be moved to non-contract positions. On December 21, 2002, we formally requested that a non-state service position be escalated by DFA and SPB for the position of Mitigation Expert. This request has been approved. We intend to move the Licensing Support position into an existing vacant non-state service position as soon as possible. We believe the allegation that DMR routinely fills multiple positions with contract employees to circumvent the state personnel system is absolutely incorrect. As pointed out in the Draft PEER Report, we have only two questionable contract positions, and we have taken steps to move these employees into non-state service positions.

## **DMR Responses to Specific PEER Recommendations**

1. We agree with this recommendation and will work toward this end in the next Tidelands Trust Fund cycle.
2. We agree with this recommendation and will work with the Legislature to ensure that all projects that receive tidelands funds have been objectively and equally evaluated and are in statutory compliance.
- 3-6. We have no comments on these recommendations as they are directed to either the Office of the Secretary of State or to the Mississippi Legislature.
7. We agree that special funds should not be used to pay public notice fees associated with permit applications, and we will work with the Commission on Marine Resources to reduce or eliminate this practice.
8. We agree that we need to more aggressively identify permit violations. Historically, Marine Patrol officers and Fisheries personnel would report permit violations as they observed them in the conduct of their daily duties. We will likely return to a system of this type. We will also consider dedicating a PIN to this task, although in times of budgetary shortfalls, this may be difficult to do.
9. We agree that fines can often serve as deterrents to permit violations, and we will work with our legal staff and with the Commission on Marine Resources to implement appropriate fines for permit violations.
10. We will continue to ensure that DMR policies and practices relative to the operation of motor vehicles comply with all state statutes.
11. We will consider developing some type of record-keeping system for employees who work off-duty hours.
12. We will continue to conduct needs analyses to determine whether to purchase vehicles and if so, what type to purchase.
13. We agree that the positions of Licensing Support and Mitigation Expert should not be contract positions. We have requested and received approval from DFA and SPB to escalate a non-state service position for our Mitigation Expert. We anticipate completing this move in January 2003. We will move the Licensing Support person into a vacant non-state service position as soon as possible.

Thank you for the opportunity to review and comment on the subject report. If we can be of any further assistance to you, please do not hesitate to contact us at (228) 374-5000, ext. 5010.

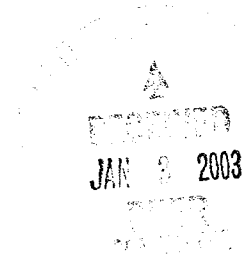
Sincerely,

A handwritten signature in black ink, appearing to read "William W. Walker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William W. Walker, Ph.D.  
Executive Director



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January 3, 2003

Dr. Max Arinder  
Executive Director  
PEER Committee  
501 North West Street  
Woolfolk Building, 3<sup>rd</sup> Floor  
Jackson, Mississippi 39201

Re: Response to Report

Dear Dr. Arinder:

I appreciate the opportunity to address some of the issues that are set out in the PEER Committee Report. Initially, I would like to thank the Committee and it's staff for the professionalism and thoroughness of this review. I believe state government should be open for public inspection at all times, and I hope the Secretary of State's Office has done everything possible to help PEER assess this agency's responsibilities related to Mississippi's Tidelands Trust Fund Program.

I have discussed the recommendations of this Committee with my staff, and have drafted responses to each of the recommendations, as noted below.

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**Recommendation #3**

The Secretary of State should develop written procedures to ensure that tidelands funds are only being expended on administrative expenses associated with the tidelands program. The Secretary of State should prorate expenditures of tidelands and other programs so that tidelands funds are only used to pay that portion of the expenses related to administration of the tidelands program. If the Secretary of State wishes to argue that the term "ecosystem" as used in the state's public trust tidelands law is equivalent to the land included in the current boundaries of the Coastal Preserve, it should consider requesting the Legislature to include this definition in state law before expending any more tideland trust fund money on Coastal Preserve lands that are not either tidelands as defined by state law or lands acquired through tidelands boundary settlements.

## **Response**

The Secretary of State's Office will develop written procedures to ensure that tidelands funds are only being expended on administrative expenses associated with the tidelands program. The Secretary of State's Office has and will expand the prorating of expenditures between tidelands and other programs so that tidelands funds are only used to pay that portion of the expenses related to administration of the tidelands program. This office has endeavored to pay only tidelands expenses from the tidelands fund, to prorate appropriate expenses between funds, and at the same time not increase expenses by adding accounting staff or contractual employee assistance.

Given the Secretary of State's total working budget of more than \$12.8 million this past year and an Accounts Payable staff of only one person, this office acknowledges that \$1,927 (or .02%) was accidentally, not purposefully, misallocated. In addition, on page 17 of the report, it seems to be suggested that the Secretary of State's Office should have allocated \$151,431 in expenditures between the tidelands program and other funds. While we acknowledge that improvements can be made, we would note that \$151,431 is an all-inclusive dollar amount of contracts and salaries, and not the actual amount that PEER suggests should be prorated. The Secretary of State's records show that less than \$10,000 of the \$151,431 noted above might properly have been allocated to a fund other than the tidelands fund.

MISS. CODE ANN. Section 29-15-3(1) specifically provides as follows:

*It is declared to be the public policy of this state to favor the preservation of the natural state of the public trust tidelands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alternation 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.*

It is agreed that "ecosystems" as used in the statute is not clearly defined, and if a further definition is needed, the Secretary of State and/or the Department of Marine Resources will seek further clarification.

## **Recommendation #4**

The Appropriations Committees of the House and Senate should create a tidelands program within the appropriations bill of the Office of the Secretary of State. This would add line items that could be monitored and would increase accountability for funds.

## **Response**

The Secretary of State's Office accepts this recommendation. However, it should be noted that people seeking to take the State's property and challenging the validity of State law have repeatedly sued the State. Depending on the specificity of the line items, the responsibilities of defending Public Trust Tidelands by this office might be seriously impaired in any given year. For example: If a line item such as Legal Fees in the amount of \$50,000 were to be added to the



Dr. Max Arinder  
January 3, 2003  
Page Three

tidelands appropriation budget and actual legal fees in a fiscal year amount to more than \$50,000, this office would be unable to continue defending the State's land and the income stream from the land. This type of situation could jeopardize the revenue stream of more than \$5 million which the State receives as a 'turnback' each year. Expenses related to tidelands litigation (travel, contractual services, and commodities) can fluctuate dramatically from one year to the next, and this office has little, if any, control over the amount of expenses spent by it in defending against these lawsuits. Please note that detailed accountability of the tidelands fund is provided each year in the Secretary of State's annual budget request, which includes the actual, estimated, and requested fiscal year expenses.

**Recommendation #5**

The Secretary of State's Office should apply the \$150 it collects from each public trust tidelands lease applicant to the costs incurred for the administration of the program, rather than depositing these funds into the Secretary of State's general operating fund.

**Response**

The Secretary of State's Office accepts this recommendation. Previously, our office has interpreted MISS. CODE ANN. Section 29-15-9 to specify lease rentals as the only source of revenue for the tidelands fund. The \$150 lease application fee has, prior to this time, been viewed as a lease fee and not a lease rental.

**Recommendation #6**

Except in cases where a transfer of title is necessary to settle a tidelands claim, the Secretary of State should only convey public trust tidelands where such satisfies a higher public purpose and is specifically authorized by the legislature.

**Response**

The Secretary of State's Office agrees completely with this policy, has in every instance heretofore complied with it, and will continue to uphold and support it.

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Again, thank you for kindness and consideration. If I can answer any additional questions, please feel free to call me.

Sincerely,



ERIC CLARK  
Secretary of State

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