



THE PUBLIC TRUST DOCTRINE



November 1, 2009

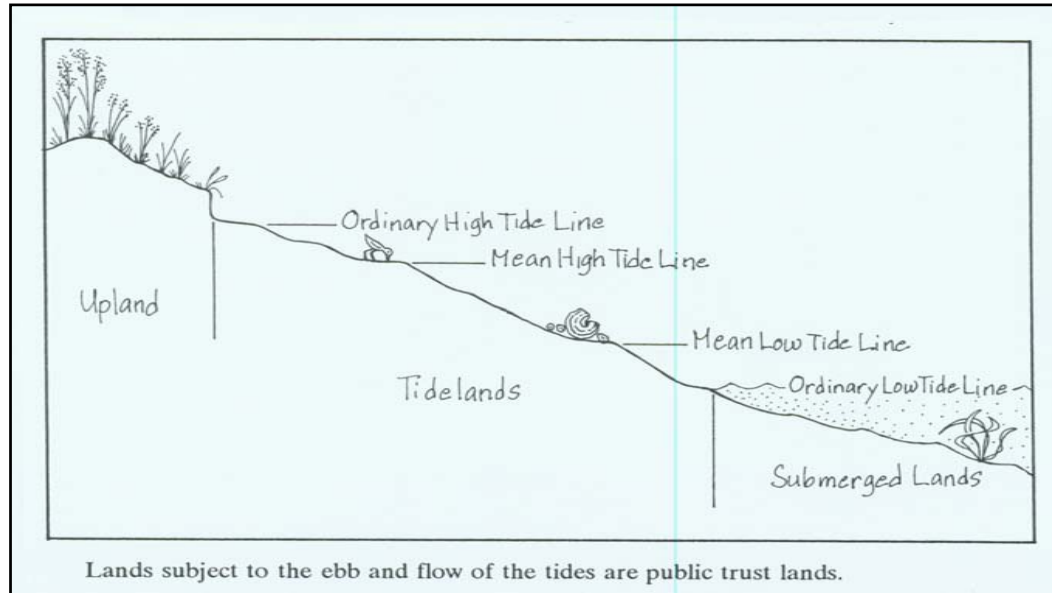
Susan Shipman, Director

A Legal Trust



- Assets
- Beneficiaries
- Purpose
- Trustee

Public Trust Assets



The corpus or body of the trust consists of its assets, which are ***public trust lands*** subject to the ebb and flow of the tides, up to the **ordinary high water mark**, ***public trust waters***, which are the “navigable waters” of the state and the ***living resources*** therein.

Beneficiaries of the Public Trust Doctrine



Public trust **lands**,
waters and **living**
resources are held by the
State in trust for the
common **benefit** of ***all***
people.



Photo courtesy of the Georgia Department of Economic Development

Purpose of the Public Trust Doctrine



The public has the right to ***fully enjoy*** public trust lands, waters and living resources for a variety of recognized public uses, such as commerce, navigation, fishing, and other related purposes.



Purpose of the Public Trust Doctrine



Traditionally, public trust uses were limited to water-related **commerce, navigation, and fishing.**



Trustee/Administrator



Governors or State Legislatures

In Georgia, the **Governor** has general supervision over all property of the State including tidal lands. ***Georgia Code: 50-16-61, Official Code of Georgia Annotated Section 50-16-61***

The **Governor** has ***delegated*** the responsibility of protecting the public's interest in tidal lands, waters and living resources to the **the Department of Natural Resources**.

The principle ***duty*** of a trustee is to **PRESERVE** the trust's assets.

State Powers as Trustee



- **PROTECT and SUPERVISE the public's interest, and EXERCISE DOMINION and CONTROL** over the trust lands, waters, and living resources.
- **DEFINE its jurisdiction over the land and the navigability of the public trust waters.**
- **CONVEY the *jus privatum* title** from public trust land.
- **REVOKE conveyances** that unduly diminish or destroy a State's *jus publicum* dominion and control.
- **REQUIRE LEASES** for a private beneficial use of public trust lands like marinas and aquaculture.
- **RESTRICT, ALLOCATE, or PROHIBIT** fishing and harvesting.

Unique Title: Public Trust Real Estate



Unlike most other property, public trust lands are vested with **TWO LEGAL TITLES**:

The **DOMINANT** title is in the *JUS PUBLICUM*, or the “**Public Property Rights**” to fully use and enjoy trust lands and waters for commerce, navigation, fishing, bathing, and other related public purposes.

The **SUBSERVIENT** title is in the *JUS PRIVATUM*, or the “**Private Property Rights**” of an owner to use and possess lands.

Inalienability of the State's *Jus Publicum*



- While a state can convey the subservient *jus privatum* title to public trust lands, it **CANNOT CONVEY** the dominant *jus publicum* title into private ownership.
- In very *limited* circumstances a state can **TERMINATE** the *jus publicum* in small parcels of trust land.

LIMITATIONS on conveying private interests in trust lands



- A State must act through its **Legislature** to authorize a conveyance.
- A conveyance must be described in **clear and definite language**, with all ambiguities construed in favor of the state and against the grantee. The grantee takes nothing by implication.
- A conveyance must **primarily benefit the public**. Any benefit to a private party is secondary or corollary.
- There must be **no substantial impairment of the public interest in the remaining land and water**.
- The *jus privatum* interest can be **restricted or revoked if the *jus publicum* interests are frustrated, diminished, or damaged**.

Illinois Central R.R. v. Illinois, 146 U.S. 387, 452 (1892)

Marks v. Whitney (Cal. 1971), City of Los Angeles v. Venice Peninsula Properties (Cal. 1982)

History of Public Trust Doctrine



The origins of the public trust doctrine are traceable to Roman law concepts of common property.

Legal scholars during the reign of Emperor Justinian codified laws including the provision that “**by the law of nature these things are common to all mankind; the air, running water, the sea and consequently the shores of the sea.**”

Institutes of Justinian 2.1.1.



Roman Emperor Justinian

Reign 527-565



Evolution of the Public Trust Doctrine



The **geographic scope** of the Public Trust **extends beyond tidelands**. **Navigable freshwaters** are also assets under the Public Trust Doctrine.

The Public Trust Doctrine and the United States of America



In the landmark decision of Illinois Central R.R. Co. v Illinois, the United States Supreme Court has found that a state's title to its tide and submerged lands is different from that to the lands it holds for sale. "It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing" free from obstruction or interference from private parties.

See Illinois Central R.R. Co. v Illinois (1892) 146 U.S. 387, 452.



Evolution of the Public Trust Doctrine



As **societal needs** have changed, States have recognized the Public Trust Doctrine must remain **flexible to address changing public needs**, such that outdated uses are not favored over more modern one.



Evolution of the Public Trust Doctrine



In more recent decades, the **dynamic common law principle** has expanded to the **current recognition of uses** protected by the Public Trust Doctrine to include **recreation, environmental protection, preservation of scenic beauty, etc..**



View of Emerald Bay and Fannette Island, Lake Tahoe's only island. Photographer: Will Hart
Photo courtesy of : Lake Tahoe Visitors Authority

Public Trust Doctrine and Wildlife



An aspect of **doctrine of state ownership** of wildlife is the concept of the **state as trustee** of the wildlife within its borders. The state supervises wildlife as the trustee is citizens.



Public Trust Doctrine and Wildlife



State statutes and legal decisions assert **ownership of wildlife**. This authority is exercised under a state's **police powers**.

Conservation laws and regulations controlling the harvest of wildlife are designed to **sustain** a renewable resource.



Challenges to the Public Trust: Societal Changes



The Public Trust Doctrine is being eroded due to **societal changes**. **Lack of connectivity to nature** results in **less consumptive or non-consumptive** uses. Beneficiaries in turn lose their connection to the trust's assets.



Example of Private Property Owner Encroachment



**Eleventh Street, East Beach
St. Simons Island**



**Georgia Department of Natural Resources
Coastal Resources Division**

Challenges to the Public Trust: Privatization



Privatization of wildlife is a threat to the public trust.

Distinction between privatization of wildlife and its **commercialization** can become blurred when commercialization is permitted. Agency **management jurisdiction** can present challenges.



Sea Level Rise and Its Effects on the Public Trust



Sea level has been **rising** at a rate of a foot or more per century, and is predicted to rise another **foot** over the next **50 years**.





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