

At Last: Development of Long Beach, Mississippi's First Casino May Proceed

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Following a dispute between the Mississippi Secretary of State and Long Beach Harbor Resort spanning several years, the Mississippi Supreme Court recently affirmed a trial court's grant of summary judgment allowing a Long Beach casino project to proceed.² The dispute centered around a relatively small parcel of land south of U.S. Highway 90. This parcel of land is crucial to the project because it serves to connect the proposed gaming operations located north of Highway 90 to the mean high water line, a regulatory requirement from the Mississippi Gaming Commission.³ The resort has leased the property at issue from the City of Long Beach since 2010; however, the Secretary of State argued that the city did not have the authority to lease the property at issue under the Public Trust Tidelands Act, so the resort's lease was therefore void. Accordingly, the state argued, the Mississippi Gaming Commission should not have approved the casino project for failure to comply with the commission's regulatory requirements.⁴

The Public Trust Tidelands Act

The Mississippi Public Trust Tidelands Act grants the Secretary of State authority over the state's tidelands. In 1988, the United States Supreme Court ruled that the State of Mississippi, upon entry into the Union, "received ownership of all lands under waters subject to the ebb and flow of the tide."⁵ One year later, in 1989, the Mississippi legislature enacted the Public Trust Tidelands Act.⁶ The legislative purpose of the Tidelands Act was to preserve the natural state of the public trust tidelands and resolve the uncertainty and disputes which have arisen as to the location of the boundary between the state's public trust tidelands and the upland property.⁷ The Secretary of State is designated as a trustee of the Public Tidelands Trust with the power to rent or lease surface land, tidelands, or submerged lands owned or controlled by the state.⁸ The Mississippi Supreme

Court has expressly acknowledged this legislative grant of authority,⁹ but has also stated that nothing prevents the legislature from creating an exception to the Secretary of State's authority over the tidelands.¹⁰

A Slew of Agreements

In February 2010, the City of Long Beach Port Commission and Long Beach Harbor Resort entered into a lease agreement that granted the resort the exclusive rights to two parcels of property along U.S. Highway 90 across from the Long Beach Harbor. The first parcel (Parcel A) is located north of Highway 90 where a building is to be constructed, and presumably where the gaming operations will be housed. The second parcel (Parcel B) consists of a parking lot located south of Highway 90. The lease expressly stated that it was the intention of the parties that the premises may be used in connection with a gaming establishment, provided that it was in compliance with the rules of the Mississippi Gaming Commission, and no gaming activities were to be conducted on the property south of Highway 90.

In May 2011, the City of Long Beach Port Commission entered into a Boundary Agreement with the state, through the Secretary of State, to delineate the Public Trust Tidelands within the Long Beach harbor – a small portion of which included Parcel B of the resort lease. On the same day, the city entered into a Public Trust Tidelands Lease with the Secretary of State which authorized the city to use the tidelands defined by the Boundary Agreement within the harbor for harbor and development uses only.

In December 2017, Long Beach Harbor Resort entered into an Option Agreement with the Secretary of State for a Public Trust Tidelands Lease. The purpose of the Option Agreement was to allow the resort and the Secretary of State to come to an agreement on the terms of a lease for



Credit: City of Long Beach

Parcel B, the parcel of land the resort was leasing from the city that was located within the tidelands. The Option Agreement expired approximately six months later in April 2018, but the Secretary of State and the resort never entered into a tidelands lease.

Litigation Unfolds

Following the expiration of the Option Agreement, the resort continued development of the leased premises and obtained site approval from the Mississippi Gaming Commission in early 2019. Pursuant to state statute and Mississippi Gaming Commission regulations, the gaming site was to be constructed with the entire proposed gaming area located onshore within eight hundred feet of the mean high water line of the Mississippi Sound. Parcel B, which contained the leased parking lot on the tidelands, was used to satisfy these requirements.

In September 2019, the Secretary of State sent a proposed tidelands lease to the resort. In the proposed lease, the Secretary of State required the tidelands property at issue to be removed from any prior leases, including the resort lease between the city and the resort. The resort filed a declaratory judgment action against the state, urging the chancery court to declare that the resort did not need a tidelands lease because the real property on which Parcel B is located is not part of the Mississippi Public Trust Tidelands, and that the Mississippi Gaming Commission's approval of the site negated the need for approval from the Secretary of State pursuant to Mississippi law.

The Secretary of State responded, arguing that the Boundary Agreement was binding and required that the resort have a lease for the tidelands property. Additionally, the state argued that the tidelands property is held in trust by the state, with the Secretary of State as the trustee,

so any acquisition of tidelands property by the resort was therefore void under the Public Trust Tidelands Act.

The trial court found that the resort has a valid and enforceable property right, albeit a leasehold interest, in the leased premises by virtue of its lease with the Port Commission and the City of Long Beach. Further, the court found that the Port Commission had full jurisdiction, control, and management of the leased premises as of the date of the resort lease, which was more than a year prior to the Boundary Agreement and the Public Trust Tidelands Lease the city and the Secretary of State entered into in May 2011. The state appealed the chancery court's final judgment granting the resort's motion for summary judgment, arguing that neither the city nor the Port Commission had the authority to lease the tidelands property, and therefore, the resort should be required to obtain a tidelands lease.¹¹

Did the City Have the Authority to Lease the Tidelands Property?

Although both the Secretary of State and the resort set forth numerous arguments regarding the city's authority to enter into a lease for the tidelands property before the trial court and on appeal, the court determined that an analysis of such arguments was unnecessary. Instead, the court firmly stated that the case turns on one simple principle: the Boundary Agreement and Tidelands Lease between the Secretary of State and the City of Long Beach ratified the 2010 resort lease.

Simply put, the city entered into a lease with the resort. The Secretary of State subsequently entered into a Boundary Agreement and Public Trust Tidelands Lease with the city regarding the tidelands which, in part, allowed the city to use and lease the tidelands property for development uses identical to those set forth in the resort lease with prior approval of the Secretary of State. The Public Trust Tidelands Lease then specifically recognized the resort lease and the right of the city to partially assign the lease to the resort for the purpose of assuring good leasehold title, so long as the rights conveyed were in conformity with the lease between the Secretary of State and the city. In doing so, the Secretary of State ratified the prior lease between the city and the resort.

The court went on to further note that had the state not leased the right to partially assign the lease away to the city

– and to the resort by ratification – through the Public Trust Tidelands Lease, the state would be well within its rights as Trustee of the Tidelands to require the resort to enter into a separate tidelands lease. However, the State did in fact lease this right away to the city, and the city exercised its leased right by continuing its lease with the resort.¹²

What's Next for Long Beach Harbor Resort?

The developer of the resort property, Jim Parrish, plans to construct the \$180 million casino, featuring a 300-room hotel, three restaurants, and 40,000 feet of gaming space. Although the resort obtained a favorable ruling, the resort still faces a few developmental obstacles. The Mississippi Gaming Commission must approve the financial plans of the development and the proposed plan must meet the gaming standards before any groundwork begins. Overall, both the resort developers and City of Long Beach officials seem to appreciate the court's ruling, as this decision means the resort is one step closer to construction and may further negotiations for other developments within the city.¹² 🦋

Endnotes

1. NSGLC Research Associate; 2023 J.D. Candidate, University of Mississippi School of Law.
2. *State by and Through Watson v. Long Beach Harbor Resort*, 346 So.3d 406 (2022).
3. Miss. Code Ann. § 97-33-1.
4. Devin O'Connor, *Mississippi Casino Resort Long Delayed in Legal Battle Cleared by State Supreme Court*, CASINO.ORG (Aug. 26, 2022).
5. *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 476 (1988).
6. *RW Dev, LLC v. Miss. Gaming Comm'n*, 307 So. 3d 404, 410-11 (Miss. 2020).
7. Miss. Code Ann. § 29-15-3(1), (2).
8. Miss. Code Ann. § 29-1-107(2)(a).
9. *Columbia Land Dev., LLC v. Sec'y of State*, 868 So. 2d 1006, 1011 (Miss. 2004).
10. *Long Beach Harbor Resort*, 346 So.3d at 410.
11. *Id.* at 409.
12. *Id.* at 412.
13. Hunter Dawkins, *Mississippi Supreme Court Allows Long Beach Harbor Resorts Lease for Gaming*, GAZEBO GAZETTE (Aug. 26, 2022).