

## SCOTUS Upholds Beach Preservation

On June 17<sup>th</sup>, in a much anticipated decision, the Supreme Court of the United States (SCOTUS) upheld a landmark Florida case regarding beach nourishment and restoration of Florida's critically eroded beaches. The outcome results in absolutely no change for



Captiva's beach nourishment projects, as the SCOTUS unanimously backed a lower

court's earlier decisions.

The Florida Beach Preservation Act was upheld and the constitutionality of beach nourishment validated. The issue was argued orally in December 2009 in the case of Stop the Beach Renourishment v. Florida (08-1151). The decision supports Captiva's rights to continue its beach nourishment practices. For detailed links to case articles, contact CEPD.

Florida's Beach and Shore Preservation Act (BSPA) [<http://tr.im/cepdbpa>] empowers the Department of Environmental Protection (DEP) to set seaward beachfront property lines, Erosion Control Lines (ECL), for nourishment projects. Our ECL was set on Captiva's beach at the old pre nourishment High Water Mark (HWM) in the late 1980's— where the mean high tide peaked landward prior to the first island-wide renourishment. Sand accreting on the beach extends the publicly owned beaches

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## Additional 1 Cent Bed Tax Requested

At the CEPD April 14, 2010 Board meeting, Chair Mike Mullins asked the board to consider a resolution to add a penny to transient bed taxes to help fund future beach nourishments. The driving force behind this action is the uncertainty of state and matching federal funds, Lee County funds going for other purposes, and the need for emergency funds should Captiva be impacted by the oil spill.

Mullins said, "Assuming that accommodation revenues are maintained at current levels, about \$3-4 million will be collected from just one penny of Captiva-specific rental taxes over the typically eight year period between nourishments. Yet this amount more than

**CEPD Proposes \$23.5 Million Project for 2013-14**

**Referendum to be on Ballot November 2, 2010**

**See the Special Insert Inside for Important Information**

doubles what Lee County contributed to Captiva's beaches in the last island-wide nourishment." The motion passed unanimously and authorized Chair Mullins to meet with the Lee County Board of Commissioners (BoCC) and bring back from that meeting the BoCC's decision for the CEPD Commissioners to act upon. The BoCC is required to pass an

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seaward but will continue to have no effect on private property access to the water. As nourishment projects restore eroding beaches, BSPA legislation reset property lines to fixed ECLs. Historically on Captiva, the public could legally walk only on the wet sand (seaward of HWM) until the 1980's, when the BSPA re-set the property lines of beachfront properties to the afore-mentioned ECL. The SCOTUS upholds the BSPA and continues to allow the public to walk on dry sand between the HWM and the fixed ECL or private property lines.

### Issues Still of Concern to Captiva

*Should the CEPD beach nourishments continue?*

*Will our beaches face an accelerated and critical state of erosion?*

*How much ancillary government funding for CEPD is achievable in the future?*

*What will be the effect of the BP oil spill?*

The reason we nourish with beach-compatible sand from offshore "borrow areas" is that beaches erode severely during storms, and routinely due to inlets' hydrology and other natural and man-made causes. Erosion has long threatened Captiva's beach and without our beaches and dunes, Captiva's survival is also threatened. Severe erosion confounded Captivans for years and the beach was officially designated as critically eroded. Also for years, Captivans were divided over which approaches to take. However, in the 1980's Captivans reached consensus and for over 25 years the CEPD has repeatedly demonstrated that beach nourishment prevails as the effective solution. Consequently, nourishment is critical to beach survival.

## Additional 1 Cent Bed Tax Requested

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ordinance or authorize the referendum.

The Lee County Attorney's office has advised the BoCC that because Captiva is not "a significant contiguous portion of the county," the BoCC cannot consider this matter. CEPD believes that it quite obviously constitutes a significant contiguous portion of the County. Moreover, CEPD does not believe it is appropriate for the County Attorney's Office to make this decision. CEPD contends that there is plenty of factual information that will allow the BoCC to make this determination independent of the County Attorney's opinion.

In a meeting with County Commissioner Ray Judah, Mr. Mullins and Mr. Judah agreed to submit the issue to the Florida State Attorney General's office. On May 12, the CEPD Board of Commissioners passed a motion to have CEPD's attorney prepare a brief on the legality of the tax to be presented to the Florida Attorney General. CEPD's request for the attorney general's opinion was sent on June 1 along with an accompanying memo of law and a comments letter and memo from the Lee County Attorney's Office. To date, CEPD has not received a response.



'Tween Waters Before Nourishment...  
and After...



## Oil Spill Volunteer Training Sells Out; Additional Ones to be Offered

CEPD has been proactive in its concern about the impact of the Deepwater Horizon oil spill by sponsoring and registering a large number of people for emergency beach oil spill cleanup training on June 14. Over 140 people were trained to perform basic beach cleanup; over 100 had to be wait-listed. Additional training sessions are scheduled for July for those shut out of the June sessions.



Conducted by the Ostego Bay Oil Spill Co-Op, the 4-hour sessions provided OSHA-certified training that will enable volunteers to perform basic beach cleanup. Because oil is a hazardous material, much of the OSHA-mandated training involved safety and first aid information. It also covered recognizing the different kinds of oil hazards (liquid versus tar

### CEPD Takes Action on the Oil Spill

- Drafts oil spill mitigation back-up plan
- Provides input to USCG and EOC plan
- Sponsors training for cleanup volunteers
- Provides spill updates in *Beach Briefs*
- Reviews cleanup technologies
- Communicates with Lee County BoCC

balls) and methods and equipment to contain and clean oil spills. Concerned organizations sent many of their staff: Casa Ybel Resort, the City of Cape Coral, Ding Darling Wildlife

Refuge, Jensen's Twin Palms Resort, Tween Waters Inn, Sanibel Captiva Conservation Foundation, Sanibel Sea School, Sanibel Police Department, and South Seas Resort.

CEPD thanks those who provided scholarships: Terry and Peter Gould, of Indiana Benefit, Inc., Jensen's Twin Palms Resort, Mike Mullins, Chair of CEPD.

## No Tar Balls on Captiva's Beach

Captiva's beaches remain untouched by the oil spill. If the oil does impact our area, experts currently predict that the impact will be in the form of tar balls and tar patties washing up. Tar balls are fragments of weathered oil formed through combining petroleum hydro-carbons with debris in the water after the lighter portions of oil evaporate. They range in size from a pinhead to huge globs.

Tar balls are a nuisance but they normally do "not pose a serious threat to public health and welfare," according to the EPA. Prolonged skin contact may cause an allergic reaction. Fumes are minimal but people with breathing issues should be wary.



Tar ball and residue can be removed by rinsing the affected areas with fresh water, scraping off the excess, and applying a grease-removing agent such as mineral oil. Rinse the

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## No Tar Balls on Captiva's Beach

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area with fresh water. If water or a removing agent is not available, rub the area with sand. Do not use gasoline or solvents that may be worse for the skin than the tar. Dispose of the sand properly.

Tar balls can be scooped up much like scooping waste from a kitty litter box. Disposal requires placement in containers able to withstand the dissolving nature of oil. Lee County has a facility approved for burning the product and additional permitting has been requested.

If tar ball removal is required, the Coast Guard will lead the effort using contract employees. Guard specialists oversee them to ensure they follow safety regulations. BP reimburses the cost of officially sanctioned work.

### Save the Date

8/11/10, General Meeting, noon  
9/7/10, Tentative Budget Hearing, 5:01 p.m.  
9/8/10, General Meeting, noon  
9/21/10, Final Budget Hearing, 5:01 p.m.  
10/4/10, Last day to register to vote  
10/19/10, General Meeting, noon  
10/20/10, Town Hall Meeting  
10/20/10, Apportionment Hearing  
11/2/10, Election and Referendum Day

The magnitude of the effort required if Captiva's beaches are impacted may be beyond the capacity of the federal agencies running the cleanup. CEPD has facilitated the training of beach cleanup volunteers (see Page 3) in case there is the need for additional **trained** personnel. Local governments may be called upon by the U.S.C.G. to assist. If so, CEPD will be able to furnish the names of OSHA-certified volunteers.

### TDC awards CEPD \$78,015 for Three Projects for 2010-2011

This is the first time in CEPD's history that Tourist Development Council funding was obtained for these uses.

- \$34,749 - to evaluate the performance of the Captiva and Sanibel Islands beach nourishment 5 years after construction.
- \$31,200 - to expand the sand borrow areas and modify the pipeline corridor in preparation for the next periodic beach nourishment project on Captiva.
- \$12,066 - to provide a report on the performance of the Blind Pass Inlet.

As funding priorities shrink, CEPD is seeking alternative and additional sources of funding. As importantly, the District is pursuing alternatives to minimize the impact on Captiva taxpayers.

Captiva Erosion Prevention District  
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A Special Insert in the CEPD Summer 2010 Newsletter

### **The Future of Our Beach: What's in Store? Beach Referendum - November 2, 2010**

Beaches are dynamic land forms subject to both storm damage and manmade erosion. The engineering solution to this problem is called restoration and renourishment. During a beach nourishment project large volumes of beach quality sand, called beach fill, are added from off shore sand sources to restore the eroding beach. Think of Captiva's beach like a road, requiring periodic resurfacing with sand.

While beach nourishment is not an exact science and variables and uncertainties exist, the periodic interval for beach nourishment on Captiva averages seven to eight years. Captiva's last nourishment was completed at the end of January, 2006. The planning process for the next nourishment project has begun. Because it's impossible to predict with certainty what wave or storm conditions will be in a given year, CEPD contracted with coastal engineers to use computer models to help design the next beach nourishment project based on a range of expected beach behavior and certain types of storms. The actual construction of the project is expected to begin in 2013.

The CEPD will approach federal, state, and county government with a request for funding assistance for the next project. Captiva has historically depended on federal, state and county funding. But no longer can we assume that all projects will get built with federal and state funds. Federal and state budgets for beach and shore projects have dwindled with the eroding economy. Since federal and state government has always required the community to share in the cost of the nourishment, the cost to the community may increase.

#### Voter Information

##### Key Dates

**Registration to Vote** – Closes 10/4/2010

**Early Voting** - October 18 – October 30, 2010

**General Election** - November 2, 2010

**Voter Registration Web Site** - [leeelections.com/voterreg.htm](http://leeelections.com/voterreg.htm)

**Request a Ballot by Mail** - call 239-533-6919; fax 239-533-6913

**Supervisor of Elections Phone Number** - 239 533-8683

The Captiva Erosion Prevention District is proposing a \$23.5 million project for 2013-2014. The CEPD will aggressively pursue funding from both local and state government estimated at \$8.5 million. Additionally, the District will seek federal reimbursement through Congressional appropriation. If and when federal dollars are received, the share of the cost of the project for Captivans will be reduced. In the absence of federal funding, the Captiva share of the project is estimated at \$15 million.

At their July 14, 2010 Regular Board Meeting, the Board of Commissioners of the CEPD passed a resolution to place a bond/loan referendum on the ballot for the November 2, 2010 general election. This early date was chosen to take advantage of existing interest rates that are at or near historical lows.

Only Captivans who are registered to vote on Captiva will be eligible to vote. Voter registration for the election closes on October 4. Should the referendum pass and the project move forward, residents and businesses will not pay on their renourishment assessment until the project is complete.

*"Think of Captiva's beach like a road, requiring periodic resurfacing with sand."*



## Captiva Island Beach Maintenance Renourishment Project FACT SHEET

### **PREVIOUS PROJECTS**

- 1989 All of Captiva
- 1996 All of Captiva and Northern Sanibel
- 2006 All of Captiva and Northern Sanibel

### **TIMETABLE**

- July 14, 2010 – CEPD Board to adopt Resolution calling for referendum question
- August 11, 2010 – CEPD Board adopts Resolution adopting engineering design
- September, 2010 – Letters of tentative assessment and Public Hearing mailed
- October 4, 2010 – Last day to register to vote in November 2 Election and Referendum
- October 20, 2010 - Public Hearing and Board Adoption of Resolution of Tentative Assessment
- November 2, 2010 – Election Day ( Vote on Referendum)
- 2011
  - Commence Bond/Loan negotiations/structuring
  - Establish competitive bidding processes
  - Finalize project design and management methodology
  - Finalize funding sources
- 2012
  - Finalize interlocal agreements
  - Execute competitive bidding process
  - Select contractor
- 2013 – Construction begins on project

### **PROJECT DESCRIPTION**

Cubic Yards	Approximately 1.2 million cubic yards
Length	6.4 miles
Width	30-145 feet
Borrow Site	Borrow Area III-B and VI are 8.3 to 8.7 miles off shore with medium to fine grained light gray to gray sand and shell
Dunes	Variety of dune vegetation and 15,000 C.Y. of sand for repair

### **PROJECT COSTS**

Total Cost Estimate	\$23.5 million
Other Governments Share	\$8.5 million
Captiva Share Estimate	\$15 million

### **SPECIAL ASSESSMENT**

Apportionment	Property Just Value X Assessment Millage Rate
Benefits:	
○ Gulf Front	Increased Recreation and Increased Storm Protection
○ Non-Gulf Front	Increased Recreation
Categories	Commercial, multi-family,