

US High Court to Hear Beach Re-nourishment Case

This winter the future of coastal communities such as Captiva's is in the hands of the U.S. Supreme Court. On June 15th, the High Court agreed to hear a case examining property rights versus the State's right to re-nourish beaches, viz. *Stop the Beach Re-nourishment v. Florida Department of Environmental Protection (FDEP)*. At stake is nothing less than Florida's nationally recognized Beach and Shore Preservation Act. A ruling against the FDEP could gut Florida's beach program, putting at risk the wide sandy beaches of Captiva and Florida.

To restore some 387 miles of shoreline deemed critically eroded from repeated damage of tropical storms, hurricanes and the littoral drift of the Gulf, the Florida Beach and Shore Preservation Act was enacted four decades ago. The Act established procedures to restore critically eroded beaches.

The procedures in the Act involve:

- 1) Mean High Water (MHW), an established elevation based upon the mean height of the high tides over a 19-year period;
- 2) Mean High Water Line (MHWL), a survey of the MHW elevation across a property at a given date when the survey is conducted and
- 3) Erosion Control Line (ECL), which is derived from the MHWL at the time of a proposed re-nourishment. Using accepted surveying practices and principles, the FDEP can establish the MHWL.

The DEP requires establishing the ECL prior to the construction of a beach restoration project and is recognized in Florida as the boundary between private upland property and submerged state owned lands. Any sand accretive to the property landward of the ECL remains the property of the uplands property owner. The sand accreting seaward of the ECL (where state owned submerged land existed before the project) is considered state owned land. The cost of the project to add sand to the eroded beach is usually funded with at least some public funds (local, state, and federal).

Since the establishment of the first ECL in Dade County in 1973, there have been no serious challenges to the Act until the recent Walton County lawsuit. Upland property owners and businesses have been thankful for the storm protection and economic benefits associated with a wide sandy beach. Coastal communities such as Captiva have appreciated the protection the beach provides to the community infrastructure and the increasing property values. Florida coastal communities have enjoyed the benefits of fifty re-nourishment projects.

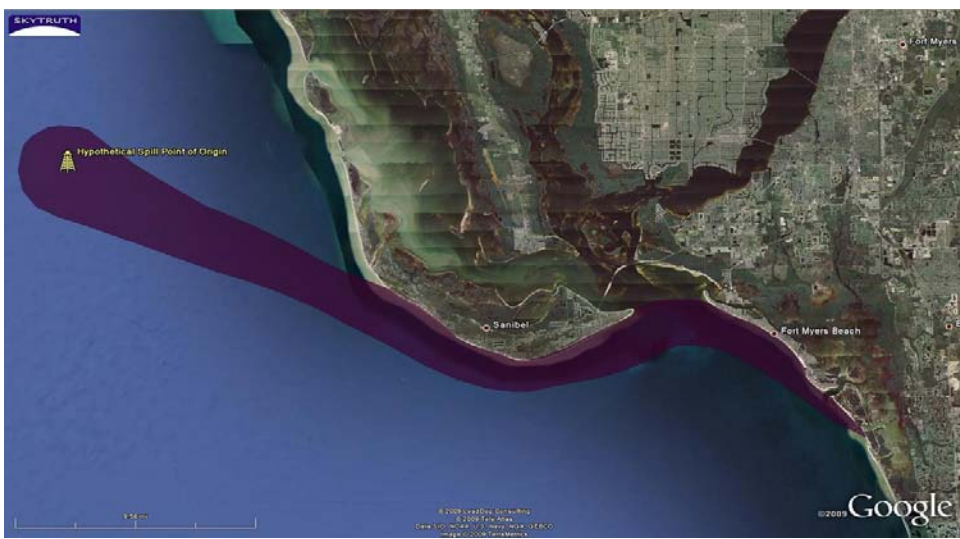
Life on the beach has been good, that is until now.



Between 1995 and 2004, seven miles of beach in Destin, Florida were repeatedly damaged by storms and hurricanes. Destin beach was designated as critically eroded, enabling the City of Destin and Walton County to begin the re-nourishment process. To the dismay of many, a few Destin condo owners formed an organization called "Stop the Beach Re-nourishment" and filed suit to contest the establishment of the ECL. The owners did not wish to see non-owners walking along the newly re-nourished beach in front of their condo seaward of the ECL. After a series of hearings and appeals, in the winter of 2008 the Florida Supreme Court upheld the ECL provision of the Beach and Shoreline Act. In the ruling, the State Supreme Court wrote, "Without beach re-nourishment under the Act, the public would lose vital economic and natural resources. As for the upland owners, the beach re-nourishment protects their property from further storm damage and erosion."

To the surprise of many, the issue was not put to rest following the Florida Supreme Court ruling in favor of the FDEP. Stop the Beach Re nourishment petitioned the U.S. Supreme Court. The Court granted cert and has since agreed to hear oral arguments beginning December 2nd, 2009. Former Walton County attorney, David Hallman, expressing his concern said, "I think this may well be one of the biggest cases for local governments that have a waterfront tourism industry. Every local government, Florida or otherwise should be very concerned about the potential for an adverse outcome here."

Debbie Flack, Director of Government Affairs for Florida Shore and Beach Association (FSBPA), shares Hallman's anxiety. According to Flack, "Neither Congress nor the Florida Legislature is likely to appropriate funds for beach nourishment knowing that projects will likely engender litigation, especially when the value of the upland properties is enhanced as a result of beach nourishment." (Continued on page 2)



Hypothetical overlay simulates the path of an earlier oil spill assuming such was off Captiva. Given Gulf currents, purple indicates projected areas of oil contamination - including the shores of Captiva, Sanibel and Fort Myers Beach.

Oil lobbyists promote Fl. Offshore drilling

Lobbyists waging a campaign in Tallahassee to lift the state's ban on offshore oil drilling may not want Florida Legislators and citizens looking at some recent events. On August 5th, the U.S. Coast Guard reported that a crack in the Eugene Island pipeline off the shore of Louisiana spilled 63,000 gallons of crude oil into the Gulf of Mexico before it was skimmed up or dispersed. The graphic you see is a scenario based on the Eugene Island pipeline leak, which ultimately created an 80 square mile oil slick. The map overlay illustrates a hypothetical 80 square mile oil slick impacting Sanibel Island and Fort Myers Beach, assuming an oil spill source 10 miles offshore, a southeast current and wind blowing from the west.

Down under, the West Atlas blow out and oil spill off Western Australia began spilling millions of liters of oil on August 21, covering 5,800 square miles of the Timor Sea. During the fourth attempt to plug the leak on November 1st, the modern state of the art rig burst into flames.

The U.S. Department of the Interior Minerals Management Service (MMS) oversees the oil and gas industry. According to the MMS, there were five spills of over 50 barrels of oil in the Gulf last year. There were four in 2007 and 14 in 2006. Hurricane Katrina destroyed over 100 platforms, creating the largest oil spill in the U.S. since the Exxon Valdez. Hurricane Rita destroyed 11 platforms for a combined total (Katrina and Rita) of 124 destroyed platforms and 741,000 gallons of oil spilled into the Gulf of Mexico. The National Oceanic and Atmospheric Administration spills database indicates that the Gulf of Mexico tops the list of regions in the world with the most oil pollution.

Florida legislators will deliberate on a fast track measure to allow oil drilling off the coast of Florida during the upcoming legislative session. Is this what you want?



West Atlas Oil Spill in Australia

(Supreme Court Continued)

An adverse ruling by the U.S. Supreme Court is likely to affect many coastal states. Federal and state funding for re-nourishment projects would likely come to a halt. Coastal states are following the case closely. Recently the San Francisco Bay Conservation and Development Commission recommended that the Commission support the State of Florida and sign on to the Coastal States Organization amicus brief before the U.S. Supreme Court. The Commission stated, "A Supreme Court ruling reversing the Florida Supreme Court could undermine the ability of state courts and legislatures to make decisions that affect shoreline property rights. It could also hinder the efforts of state coastal management programs to maintain and preserve public trust beaches and protect state lands and waters from the impacts of climate change-associated sea level rise and intensified storm activity."

The Captiva Erosion Prevention District (CEPD) recognizes the importance of this case. The CEPD Board of Commissioners moved quickly to support the filing of a joint amicus brief with the Florida League of Cities, Florida Association of Counties, and the FSBPA. Florida's 40-year-old Beach and Shore Preservation Act requires our full support. Captiva's beaches depend on the outcome of the High Court's decision. And so much depends on our beaches.



This "state of the art" facility, constructed off the western coast of Australia in 2007, has been leaking out of control and in flames since August of 2009.

Want to make your voice heard? Here is a list of senators who are willing to listen:

- | | |
|------------------|--|
| Charlie Crist | Charlie.crist@myflorida.com |
| Anthony Hill | hill.tony.web@flsenate.gov |
| Evelyn Lynn | lynn.evelyn.web@flsenate.gov |
| Victor Crist | crist.victor.web@flsenate.gov |
| Mike Bennett | Bennett.mike.web@flsenate.gov |
| Nancy Detert | detert.nancy@flsenate.gov |
| Thad Altman | altman.thad.web@flsenate.gov |
| Jeff Atwater | atwater.jeff.web@flsenate.gov |
| Joe Negron | Negron.joe.web@flsenate.gov |
| Chris Smith | smith.chris.web@flsenate.gov |
| Jeremy Ring | ring.jeremy.web@flsenate.gov |
| Frederica Wilson | Wilson.frederica.web@flsenate.gov |
| Garrett Richter | richter.garrett.web@flsenate.gov |
| Alex Villalobos | villalobos.alex.web@flsenate.gov |

Blind Pass

A Celebration of Life

In the event you haven't heard all the whooping and shouting; you may well have missed the fact that Blind Pass opened with a big splash in August. Once again we are two separate islands of Sanibel and Captiva. Though the islands are now physically separated by the Pass, the islands philosophies and mutual efforts of environmental cooperation are more together than ever.

This environmental restoration of the Blind Pass habitat is an achievement that could not have happened without the commitment and resources of the Captiva Erosion Prevention District (CEPD), the City of Sanibel, Lee County's Natural Resources Marine Division, the Lee County Visitor and Convention Bureau and the State's DEP. The project's cost of approx 3-3.5MM is funded 35% by CEPD, 35% Lee County VCB and 30% FLDEP. In addition, Sanibel contributed in several important ways, including the installation of the culvert under Sanibel Captiva Road and the great support for the project by the City of Sanibel.

For those of us who worked closely with the late CEPD administrator Alison Hagerup, this accomplishment is a victory in many ways, but a bitter sweet victory. Blind Pass reopened short of a year after we celebrated Alison's life at the Captiva north Beach Park named in her honor just prior to her death. Now we are again celebrating her life as well as the vibrant life of our Blind Pass. The opening is one Alison would have cherished. Certainly, this restoration is an event celebrated daily as a great amenity to Captiva, Sanibel and all of Lee County

Blind Pass has again become a daily magnet attracting thousands. Eagerly flocking to this teaming life source are thousands of marine and avian creatures, as well as hundreds of delighted human visitors arriving daily by boat, foot, car and air to enjoy the beauty and vibrancy of this environmentally restored habitat. Do you know the extensive effort that went into this project? The project took almost a decade with the efforts of Sanibel, Lee County, CEPD, FL DEP with community support from Bayous Preservation Association and Ding Darling NWR.

A celebration program is scheduled January 15, 2010, 11:00am at Blind Pass. P.S. Let's keep fingers crossed that it stays open.



Blind Pass image, compliments of Rusty Farst.

Beach Etiquette

by Commissioner Harry Kaiser

Captiva is a very special place. As you drive across the causeway from Fort Myers, you get a sense that the islands are somehow different and how wonderful nature is. As you enter Captiva over the newly opened Blind Pass you know you've left the hustle and bustle behind.

The Gulf of Mexico greets you with its azure waters, white sandy beaches and seashells not found anywhere else in the world. The lush, tropical foliage and many species of birds set the picture. This is what drew my family to Captiva in the late 70's. We purchased our home in 1980. The sunsets, remoteness and tranquility made us stay.

During the early years on Captiva we were besieged by storms and depletion of beaches to the point where there was no beach, only purchased rocks to prevent further erosion. On high tide you could not walk on the beach for there was no beach. On low tide you had to go around the Australian pine trees that had fallen into the water. Thanks to the efforts of many, the first beach re-nourishment was completed in 1988 and the success is clearly visible now. The beaches have returned and our beach grass is plentiful, signifying a healthy beach.

For some, it may be difficult to realize just how fragile our beach environment is. This means we must follow rules and regulations that have been put into place to keep Captiva the pristine place that we all love.

- Golf carts are not permitted on the beaches at any time.
- Please remove all beach furniture from the beach daily.
- Remove garbage, plastic, & fishing lines to preserve our wild life.
- Dogs are not permitted on our public beaches and we do have a leash law in effect for all other areas on Captiva.

These regulations are in effect to preserve our beaches and eliminate any damage to the beach grasses and wildlife. We ask that you tread lightly and respect our natural resources.



VS.



Important Dates:

December 9 – Regular Board Meeting

January 13 – Regular Board Meeting

December 15 – Lee Legislative Delegation@10AM

January 15 – Blind Pass Celebration @ 11AM

Captiva Erosion Prevention District
P.O. Box 365
11513 Andy Rosse Lane, Unit 4
Captiva, FL 33924

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Beach Clips

- ✓ While U.S. Beaches contributed \$322 billion annually to the economy in 2007, the federal investment in beach maintenance is only \$100 million per year. This investment is less than 4% of the \$2.6 billion federal contribution to the National Park Service that returns only \$12 billion to the economy.
- ✓ For every \$1 the federal government spends annually on beach nourishment, it collects about \$320 in tax revenue from beach tourists.
- ✓ From 2002-2006, the number of Florida coastal parcels grew by about 10%, but the **value of coastal parcels more than doubled** reflecting the strong demand for coastal real estate.
- ✓ Florida's Coastal Economy generated almost \$562 billion in 2006.
- ✓ Florida's Beach Tourism added \$52 billion to the economy in 2007.
- ✓ Travel and tourism is America's leading industry, employer, and earner of foreign exchange; and beaches are America's leading tourist destination.

(National Ocean Economics Program, 2008 and James R. Houston, ASBPA Shore and Beach, Summer, 2008.

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