

The National Sea Grant Law Center is pleased to offer the January *Ocean and Coastal Case Alert*. The *Case Alert* is a monthly listserv highlighting recent court decisions impacting ocean and coastal resource management. Each Case Alert will briefly summarize the cases and provide a link to the opinion. Please feel free to pass it on to anyone who may be interested. If you are a first-time reader and would like to subscribe, just send an email to waurene@olemiss.edu with "Case Alert" on the subject line. MASGC 06-003-01

~ ~ **January 17, 2006** ~ ~

SECOND CIRCUIT

Connecticut

Duck Farm v. Fairfield Conservation Comm'n, 2005 Conn. Super. LEXIS 3484 (Conn. Super. Ct. Dec. 15, 2005). The Connecticut Superior Court ruled that the Fairfield Conservation Commission had the authority to attach a 100-foot buffer condition to permit approval. Duck Farm had appealed the Commission's imposition of a 100-foot buffer permit condition, claiming it was "equivalent to a taking." Duck Farm owned 15.4 acres containing 4.84 acres of wetlands which it proposed to subdivide into sixteen lots. Only four of the lots were affected by the buffer condition. The court held that the permit condition did not render the property worthless and that Duck Farm failed to demonstrate a taking.

THIRD CIRCUIT

Maryland

Montrose Parkway Alternatives Coalition v. U.S. Army Corps of Eng'rs., 2005 U.S. Dist. LEXIS 33446 (D. Md. Dec. 16, 2005). The U.S. District Court for the District of Maryland rejected Montrose Parkway Alternatives Coalition's request for a preliminary injunction suspending construction of a four-lane highway that will cross Montgomery County, Maryland and affect .94 acres of wetlands. The court found that the U.S. Army Corps of Engineers took the requisite "hard look" at the environmental impact before issuing a § 404 permit authorizing Montgomery County to discharge fill material into the wetlands. The court noted that the Corps' environmental assessment included an analysis of the project's impact on wildlife, wetlands, and streams and that its decision to examine only the two highway crossings over which it had jurisdiction was not arbitrary or capricious.

Stansbury v. MDR Dev., L.L.C., 2006 Md. LEXIS 4 (Md. Jan. 9, 2006).

MDR Development, L.L.C. ("MDR") sought to build a footbridge across a waterway and a submerged portion of the property of Nancy R. Stansbury. Ms. Stansbury objected to MDR's assertion that it had an easement by necessity across her property arguing that MDR could access the property via a navigable waterway. The Maryland Court of Appeals held that an easement by necessity may exist over the land of the grantor even though the grantee's land borders a navigable waterway, if the water route is not available or suitable to meet the requirements of the uses to which the property would reasonably be put.

FIFTH CIRCUIT

Louisiana

Schoeffler v. Drake Hunting Club, 2006 La. App. LEXIS 1 (La. App. Jan. 4, 2006).

Five individuals filed suit against a dozen private landowners and lessees who posted no trespassing signs along the waterways of the Atchafalaya Basin. Plaintiffs claimed the owners were impeding their access to waters and banks subject to public use and that the public has a right to fish, hunt, and navigate up to the high water mark along privately owned land. Plaintiffs sought a declaratory judgment to fix property boundaries. The court found that the plaintiffs did not have a right of action to fix such boundaries because they were not owners, lessors, or adverse possessors of the properties at issue. Nor did the plaintiffs have standing to compel the State to make broad declarations on their behalf.

--Opinion available at <http://www.la3circuit.org/opinions/2006/01/010406/05-0499opi.pdf>.

NINTH CIRCUIT

Alaska

State of Alaska v. Jack, No. S-11051 (Alaska Dec. 12, 2005).

The defendant was charged with committing sexual assault on board an Alaska state ferry, while the ferry was en route from Bellingham, Washington to Southeast Alaska. At the time of the assault the ferry was located in Canadian waters. The defendant argued that Alaska lacked jurisdiction because the crime occurred in another country. The Supreme Court of the State of Alaska ruled that the state has jurisdiction. The court held that the state could exercise jurisdiction over this crime because, even though it occurred in another country, the crime had a significant effect in the state due to the importance of the state ferry system.

--Opinion available at <http://www.state.ak.us/courts/ops/sp-5968.pdf>.

Washington

Siedler v. Hayes, 2006 Wash. App. LEXIS 28 (Wash. Ct. App. Jan. 10, 2006).

Landowners in Seabeck, Washington objected to the state's approval of two variances and a conditional use permit authorizing a neighboring oyster harvesting business to construct an oyster processing facility. The trial court found that the project satisfies the various permit requirements and the Court of Appeals affirmed. The record established that the processing facility will not be profitable or environmentally sound unless located next to the Hayes's existing oyster barge and the project meets the criteria to secure variances and permits as a water-dependent use.

--Opinion available at <http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=328798MAJ>.

D.C. CIRCUIT

District of Columbia

Wash. Canoe Club v. District of Columbia Zoning Comm'n, 2005 D.C. App. LEXIS 694 (D.C. Dec. 30, 2005).

The District of Columbia Zoning Commission granted Georgetown and the National Park Service a map amendment, special exceptions and variance relief to build a boathouse along the Potomac River shoreline for use by the University's crew team. The property is owned by the U.S. government. The petitioners contended that although the boathouse is a valid use, it would have an adverse impact on adjacent property because of its size and design. The D.C. Court of Appeals affirmed the findings of the Zoning Commission.

U.S. COURT OF FEDERAL CLAIMS

Banks v. United States, 2006 U.S. Claims LEXIS 3 (Fed. Cl. Jan. 9, 2006).

Plaintiffs own property along the eastern shoreline of Lake Michigan south of St. Joseph Harbor and allege that the United States Army Corps of Engineers (Corps), by its construction and maintenance of certain jetties in St. Joseph Harbor, has effected a physical taking of plaintiffs' shoreline property. In an opinion addressing only the Corps' potential liability, the Court of Federal Claims held that, to the extent that plaintiffs can establish at trial that the jetties in St. Joseph Harbor caused their erosion damage and that plaintiffs' revetments were constructed to address erosion damage so caused, the erosion damage caused by the revetments would not be merely consequential but rather a "direct, natural, or probable result" of the activities of the Corps compensable as part of plaintiffs' taking claim. Interestingly, the court refused to take judicial notice of the Michigan Supreme Court's decision in *Glass v. Goeckel*, because the Glass decision does not address the scope of the federal navigational servitude, which the Court of Federal Claims already determined "defines the boundaries within which the government may supersede private ownership interests to improve navigation."

COURT OF FEDERAL CLAIMS

Amber Resources Co. v. U.S., 2005 U.S. Claims LEXIS 347 (Fed. Cl. Nov. 15, 2005).

The court held that the 1990 amendments to the Coastal Zone Management Act breached 36 oil and gas leases off the California coast and the plaintiffs were therefore entitled to obtain restitution of \$1.2 billion in bonus payments.

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