Legal Reporter for the National Sea Grant College Program

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Our coastal resources face a variety of competing uses, including fisheries and aquaculture, seafood processing, trade, energy production, tourism, and recreation. Development pressures and shifting coastlines threaten water-dependent industries and water and beach access for coastal residents. Additionally, our coasts face immense population pressures. In fact, more than fifty percent of our nation's residents live in coastal counties. In this edition of *The SandBar*, we have focused on various issues surrounding coastal development.

One of the most critical challenges to coastal development is public access to the coasts. While the public has the right of access to the shore through common law, landowners along the coast enjoy private property rights. In this issue, a federal district court case highlights the problem. In that instance, the court struck down the New Jersey's public access requirements for municipalities.

The cases also highlight challenges of local zoning boards struggling to balance the rights of coastal landowners to develop their property and the need to preserve the coast from undue development. For instance, a Connecticut court affirmed a local board's variance allowing construction within a setback, while a Massachusetts court overturned a board's decision allowing a septic system in a coastal dune.

Please enjoy the issue, and, as always, feel free to contact us with any thoughts and comments that you might have. We are here to serve you, so please let us know how we are doing.

Beach scene courtesy of ©Nova Development Corp.

Coastal Development Issue

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Court Invalidates New Jersey Public Access Rules

Borough of Avalon v. New Jersey Dep't of Envtl. Prot., 403 N.J. Super. 590 (2008).

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In 2007, the New Jersey Department of Environmental Protection (DEP) adopted a comprehensive set of rules expanding public access to beaches and other tidal waterways. When the Borough of Avalon (Avalon) challenged the rules as they applied to municipalities, the Superior Court of New Jersey held that the regulations were invalid. The court based its decision on the fact that the DEP did not have legislative authority to regulate municipally owned beaches.

Background

New Jersey's Public Access Rules significantly expanded DEP authority over public access to municipal beaches and tidal waterways. One of the new rules required municipalities located on tidal waterways to allow public access to those waterways "at all times," unless the municipality obtained DEP permission to close those areas during late night hours based on threats to public safety or for "exigent circumstances."[1] Two other new rules required municipalities seeking appropriations from the state's Shore Protection Fund to enter into a State Aid Agreement, which functionally obligated the borough to provide enough parking spaces to accommodate public demand and install public restrooms every one-half mile parallel to the beach.[2]

Avalon, a borough situated on Seven Mile Beach, a barrier island off the coast of New Jersey, filed suit challenging the rules. The borough argued that the rules were not statutorily authorized and constituted an infringement on the statutory powers of municipal government. Furthermore, the town already provided significant public access to its beaches.

Photograph of Avalon beach courtesy of Scott Wahl, Public Information Officer, Borough of Avalon.

Avalon's entire four miles of beaches are open to the public without any restrictions except for the payment of a reasonable beach fee. In addition, the borough has sixty-two public streets that front the beach, the majority of which are open to the public. These streets combine to provide 5,700 on-street public parking spaces, in addition to 550 off-street parking spaces, 370 of which are within one-quarter mile of the beach.[3] Avalon also maintains fifteen different public restrooms; however, the restrooms are not located every half-mile along the beachfront as required by the challenged regulation.[4] Avalon claimed that it would have to install portable restrooms at certain locations to comply with the requirement.[5]

24-Hour Access

The New Jersey Superior Court first addressed the validity of the Public Access Rule that required all municipalities to allow public access to tidal waterways at all times, unless the municipality obtains the DEP's permission to close the area. The application of this rule was not contingent upon the municipality applying for appropriations from the Shore Protection Fund; therefore, it applied to every municipality located on a tidal waterway. The court noted that the legislature had delegated broad and general police powers to municipalities for the protection of its residents and property owners. These general police powers not only extended to municipally-owned beaches, but municpalities also have the statutory authority to "close beaches and preclude the use of property," even those falling under the umbrella of the public trust doctrine, "when the public safety and welfare is threatened."[6]

In contrast, the court found no legislative authority for the DEP to supervise a municipality's operation of its beaches. Moreover, there was no basis to imply such authority since "[i]t is the municipalities, not the DEP, that owns and operates and therefore bears responsibility for the management of its beaches."[7] The court acknowledged that while it may be possible for some municipalities to keep their beaches open at all times, others may need to close areas as a matter of public safety. Either way, the court

explained that a municipality is in a better position than the DEP to determine whether the beach poses a public safety risk warranting closure. Despite the DEP's authority over land uses in coastal zones, the court determined that the legislature did not authorize the DEP to usurp municipal authority to manage and operate beaches, "including deciding when those areas should be open to the public."[8]

Restrooms and Parking

The court turned next to assessing the validity of the Public Access Rule that required municipalities seeking an appropriation from the Shore Protection Funds to enter into a State Aid Agreement with the DEP. According to the regulations, any municipality wishing to participate in the Shore Protection Program may be required to provide additional public parking spaces and restrooms in proximity to the beachfront based upon DEP directives. The DEP claimed that the legislature had implicitly approved such requirements through the Shoreland Protection Program. The court found that the DEP's authority under the Shore Protection Program was limited to "develop[ing] a priority system for ranking shore protection projects and establish[ing] appropriate criteria therefore."[9] The priority list compiled by the DEP, however, was simply a recommendation to the legislature, which retained the authority to determine which projects should be funded.

The DEP also argued that the public trust doctrine provided a required authorization for the adoption of these regulations. While the public trust doctrine precludes municipalities from limiting public access, the doctrine does not require that a municipality provide a specific number of parking spaces or restrooms within a certain proximity of the beachfront. The court stated that the imposition of such obligations are under the exclusive jurisdiction of the legislature and the DEP cannot create, without express authority, regulations which require municipalities to provide public parking and restrooms near tidal waterways. In addition, the court noted that while its decision relied upon the DEP's lack of statutory authorization, the parking rule was so vague that it would be subject to invalidation on the grounds that it failed to provide "regulatory standards that would inform the public and guide the agency in discharging its authorized function."[10]

Conclusion

The court held that the DEP lacked the requisite legislative and statutory authority necessary to create the challenged regulations. Therefore, the Public Access Rules requiring a municipality to grant public access to tidal waterways at all times unless it obtains DEP permission and requiring any municipality that seeks appropriation from the Shore Protection Fund to enter into State Agreements that obligates the municipality to provide additional parking spaces and restrooms were invalid. The court's invalidation of the rules for lack of statutory support opens the door for future challenges to all of the Public Access Rules. In the meantime, the DEP has filed a petition for certiorari with the New Jersey Supreme Court.

Endnotes

1. *Borough of Avalon v. New Jersey Dep't of Envtl. Prot.*, 403 N.J. Super. 590, 595 (2008); *see also* N.J.A.C. 7:7E-8.11(f).
2. *Borough of Avalon*, 403 N.J. Super. at 602; *see also* N.J.A.C. 7:7E-8A.2(c)(2)(i).
3. *Borough of Avalon*, 403 N.J. Super. at 596.
4. *Id*.; *see also* N.J.A.C. 7:7E-8.11(p)(7)(iii).
5. *Borough of Avalon*, 403 N.J. Super. at 596.
6. *Id*. at 599.
7. *Id*.
8. *Id*. at 601.
9. *Id*. at 604; *see also* N.J.S.A. 13:19-16.2(a).
10. *Borough of Avalon*, 403 N.J. Super. at 608 (*citing N.J. Soc. For Prevention of Cruelty to Animals v. N.J. Dep't of Agric*., 196 N.J. 366 (2008)).

California Court Defers to State Agencies on Public Trust Question

Center for Biological Diversity, Inc. v. FPL Group, Inc., 166 Cal App. 4th 1349 (2008).

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A California appellate court rejected a suit brought by an environmental group alleging that wind turbines were killing thousands of birds of prey in violation of the public trust doctrine. Although the court agreed that the birds were within the scope of the public trust doctrine, it ruled that the group improperly challenged the violation of the doctrine and dismissed the action.

Background

According to the Center for Biological Diversity (CBD), since the installation of wind-powered turbines in Alameda County, California in 1981, tens of thousands of raptors, including eagles, hawks, falcons, and owls, have been killed by these generators.[1] The group claimed that the more than five thousand turbines in question were inefficient and obsolete; newer models would not only produce more energy, but would inflict significantly less damage on the bird population.

CBD sought an injunction to stop the wind farm operators, FPL Group, from using its current turbines. The group claimed that by using the turbines, FPL was in violation of state and federal law, including the public trust doctrine. CBD argued that the destruction of wildlife falls under the public trust doctrine based on the general public's loss of a protected resource: the raptors. The Superior Court of Alameda County dismissed the claim, holding that private parties were not permitted to bring an action for the violation of the public trust doctrine arising from the destruction of wildlife.

Expansion of the PTD

On appeal, the wind farm operators first argued that the public trust doctrine only applies to tidelands and navigable waters, excluding wildlife.[2] Historically, FPL's assertion is correct. Fundamentally, the public trust doctrine is a principle of common law declaring that the state holds title to submerged land under navigable waters in trust for the benefit of the public. However, public trust law has evolved. Recognizing that the public has an interest not only in coastal lands, but also in the wildlife contained therein, courts have expanded the public trust doctrine to include natural resources for various public purposes.

Accordingly, the appellate court disagreed with the lower court's conclusion that wildlife is not protected under the public trust doctrine. The court noted that it is well-settled in California that wildlife is within the scope of the public trust doctrine. California courts have held that the transient nature of wildlife dictates that they may not be "owned" in the

Photograph of wind turbines courtesy of the US EPA.

traditional sense of property; logically, if wildlife belongs to no one, then it belongs to the public and the state has a duty to protect the public's interest.[3] California law explicitly states that "fish and wildlife resources are held in trust for the people of the state."[4]

. . . the transient nature of wildlife dictates that they may not be "owned" in the traditional sense of property . . .

Standing

Although wildlife is protected by the public trust, the court questioned whether members of the public had standing to sue to protect wildlife under the public trust doctrine. Until this case, only actions brought by public entities have attempted to regulate governments' actions regarding wildlife.[5] However, the court stated that individual members of the public are entitled to bring such suits. "Wildlife, including birds, is considered to be a public trust resource of all the people of the state, and private parties have the right to bring an action to enforce the public trust."[6] Furthermore, the very nature of the public trust creates a burden upon the state to protect such resources, and the state cannot be solely responsible for overseeing its own actions. The general public must be free to file suit when the state has neglected its duties. The court noted that protection is meaningless without the opportunity for enforcement.[7]

Though CBD had standing to bring this action, the court found that the group incorrectly sought relief from the wind farm operators, not against Alameda County. The government, in this case Alameda County, bears the responsibility of protecting the public trust. While FPL may be directly responsible for the turbines which continue to harm the raptor population, the county allows those turbines to operate via the issuance of permits. Even if some public trust action by CBD existed against FPL, the court stated that it would abstain from judgment in "deference to the regulatory oversight being provided by public alternatives."[8] The court also noted that once the trial court ruled in FPL's favor, CBD could have requested that Alameda County be joined in the suit but did not.

Conclusion

The responsibility to enforce resources protected by the public trust resides solely with the government. Should the government fail, the beneficiaries of the trust may seek judicial intervention. However, such proceedings must include the government. By only seeking relief from the wind farm operators, CBD did not properly address their grievances. Had CBD first pursued relief from the appropriate regulatory body of Alameda County and then, assuming that action failed, filed suit against the county, the case would have been allowed to proceed. Most importantly, though the court affirmed the trial court's ultimate decision, it did emphasize that private entities may file suit for such claims. In doing so, it strengthened the general public's ability to enforce the government's duty to protect resources in the public trust.

Endnotes

1. *Center for Biological Diversity, Inc. v. FPL Group, Inc.*, 166 Cal. App. 4th 1349, 1355 (Cal. Ct. App. 2008).
2. *Id.* at 1350.
3. *Golden Feather Community Assn. v. Thermalito Irrigation Dist.*, 257 Cal. Rptr. 836 (Cal. Ct. App. 1989).
4. CAL. FISH & GAME CODE § 711.7 (2009).
5. *Center for Biological Diversity*, 166 Cal. App. 4th at 1365.
6. *Id*. at 1354.
7. *See Illinois Cent. R. Co. v. Illinois*, 146 U.S. 387 (1982).
8. *Center for Biological Diversity*, 166 Cal. App. 4th at 1371.

Georgia Supreme Court Rules Act Does Not Apply to Upland Development

Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736 (2008).

Terra Bowling, J.D.

The Georgia Supreme Court has ruled that the state's Coastal Marshlands Protection Act does not extend to residential structures built upland from coastal marshes. The ruling will allow development to continue on one of the state's largest private marina projects.

Background

The Coastal Marshlands Protection Act (CMPA) regulates activities in Georgia's coastal marshlands. The Act charges the Coastal Marshlands Protection Committee with granting permits for projects in the marshlands. The CMPA specifies, "[n]o person shall remove, fill, dredge, drain, or otherwise alter any marshlands or construct or locate any structure on or over marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee…"[1]

In 2005, Point Peter LLC, a residential developer, sought a permit under the CMPA for the construction of three community day docks and two full-service marinas, as part of a residential development spanning over 1,000 acres. After stipulating certain conditions to reduce adverse impacts to the marshlands, the Committee approved the permit.

The Center for a Sustainable Coast and other environmental organizations (CSC) challenged the permit. CSC argued that stormwater runoff from the residential development would "otherwise alter" the marshlands, and, therefore, the Committee should have considered the potential harm to the coastal marshlands caused by the upland portion of the development rather than looking solely at the development in the marsh. An administrative law judge agreed and remanded the permit to the Committee. The Committee and the developer challenged the remand.

The Georgia Court of Appeals found that the permitting power of the Committee did not extend to regulating the residential upland portions of the development. The appellate court found that the term "'otherwise alter' . . . refers to activities of the same kind or class as 'remove, fill, dredge, [or] drain'" and only activities within that class required a CMPA permit. The court concluded that stormwater runoff from upland development did not require a permit. "'[O]therwise alter' applies 'only to the extent that the runoff alters the marshlands in a direct physical manner akin to removing, refilling, dredging, or draining the marshlands."[2] CSC appealed.

Photograph of Georgia marshland courtesy of the U.S. Department of Agriculture's NRCS.

The Georgia Supreme Court granted certiorari. The court considered "whether the CMPA authorizes the Coastal Marshlands Protection Committee to regulate activities in upland areas that adversely impact marshlands in connection with its consideration of applications for permits to build on the marshlands."[3]

Otherwise Alter

The court first looked at the ALJ and the appellate court's interpretation of the term "otherwise alter" in the CMPA. The court agreed with the appellate court's interpretation of the term.

To interpret the term, the court of appeals used the statutory canon of construction "*ejusdem generic*." Under the canon, "when a statute or document enumerates by name several particular things, and concludes with a general term of enlargement, this latter term is to be construed as being [of the same kind or class] with the things specifically named, unless, of course, that a wider sense was intended."[4] In this instance, the supreme court agreed that "'otherwise alter' applies only to the extent that the runoff alters the marshlands in a direct physical manner akin to removing, refilling, dredging, or draining the marshlands."[5]

CSC argued that the canon should only be applied when a statute is ambiguous, and, in this instance, the statute was unambiguous. The supreme court agreed that the statute was unambiguous, but noted that ambiguity would arise if "otherwise alter" applied to stormwater runoff from upland development.

If the term applied to stormwater runoff "it would require that any project, even an upland project located miles from the marshlands, would have to undergo the permitting process if it could be shown that storm water runoff from the project would affect the marshlands."[6] The court reasoned that this would create ambiguity when read with the CMPA's directive stating that "if the project is not water related or dependent on waterfront access or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities, a permit usually should not be granted…"[7] Essentially, the CSC's interpretation of the term would require the Committee to regulate activities from upland activity, while the CMPA prohibited the Committee from granting permits for non-water related activities. The court reasoned that this "ambiguity" justified the use of the *ejusdem generic* canon.

The court further reasoned that the appellate court's interpretation of "otherwise alter" comported with the reading of the CMPA as a whole. "Requiring that all potential actors secure a permit from the Committee before engaging in such activities is a grant of authority and responsibility to the Committee so immense that it simply cannot be squared with the General Assembly's intent."[8]

CSC also argued that if a development requires a permit, the scope of the Committee's review extends to all facets of that development. The court found that the Committee's responsibilities were clearly limited to considering activities involving piers, docks, and other marine developments, but not upland residential developments. The court concluded that the role of the Committee's regulation power "is intended to be limited to the CMPA's stated scope, the marshlands themselves."[9]

Conclusion

In a 5-2 decision, the Georgia Supreme Court affirmed the appellate court's decision. The dissent argued that the trial court prematurely intervened in the ongoing administrative process.

Endnotes

1. GA. CODE ANN. § 12-5-286(a) (2008).
2. *Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm.*, 284 Ga. 736, 739 (2008).
3. *Id*. at 736.
4. *Id* at 737-738.
5. *Id* at 739.
6. *Id*. at 738.
7. *Id*. at 738-739.
8. *Id*. at 739.
9. *Id*. at 743.

Town Board Grants Variance for Construction within Set Back

Hescock v. Zoning Bd. of Appeals, 962 A.2d 177 (Conn. App. Ct. 2009).

Terra Bowling, J.D.

A Connecticut court upheld the Stonington Zoning Board of Appeal's approval of a coastal site plan review application and its grant of a variance allowing construction within a regulatory set back of 100 feet from the reach of mean high tide. Despite opposition from adjacent landowners, the court found that the Board's decision was supported by evidence in the record, that the Board complied with local flood zone regulations in making its decision, and that although an unusual hardship was not established, the reduction of the existing house's nonconformances was an independent basis on which the Board could grant the variance.

Background

Coastal landowners, Carol Holt and Thompson Wyper, filed a variance application and a coastal site plan review with the Board that would allow them to construct within a regulatory set back of 100 feet from the reach of mean high tide. The landowners planned to raze their house, which was forty-four feet from the mean high tide, and construct a new house forty-seven feet from the mean high tide. The Board approved both the variance and the site plan review. Adjacent landowners, William and Regina Hescock, brought suit against the Board challenging the approvals. A lower court dismissed the Hescocks' challenge.

Coastal Site Plan Review

On appeal, the Hescocks first claimed that approval of the coastal site plan was not supported by substantial evidence. The court noted that its review of the Board's approval was limited to whether there was substantial evidence in the record to support the Board's decision, and it would not consider whether it would have reached the same conclusion.

The court found substantial support for the approval of the coastal site plan review application. For instance, the application "evaluated land and water resources, stated that there were

Historic photograph of Hurricane Carol flooding the Connecticut coast courtesy of NOAA's National Weather Service.

no adverse impacts on those resources and even proposed mitigating measures, such as the decreased coverage of impervious surfaces and best storm water management practices."[1]

At the hearing, an employee of the Department of Environmental Protection had submitted a letter concluding that the application was incomplete for the purposes of determining whether the grant of the variance would be consistent with the Act. Despite this, the court found that other testimony supplied the missing information on the day of the hearing. Furthermore, in the hearings, no one offered evidence of potential adverse impacts from the construction. The court concluded that the Board's decision was supported by substantial evidence.

Zoning Requirements

The court next addressed the Hescocks' contention that the Board did not comply with zoning regulations, which required the Board to consider the effects of the construction in the flood plains, in making its decision. The Board had concluded that the new construction would actually address and improve flood zone issues. In the hearings, the Board acknowledged that "the new construction would be the only house standing when the next hurricane hits the area."[2] The court found that by finding that flood zone issues would be improved by the new construction, the Board had considered the standards set forth in the zoning regulations.

. . . the Board acknowledged that "the new construction would be the only house standing when the next hurricane hits the area."

The court noted that its role is "to determine whether the board acted arbitrarily, illegally, or in abuse of its discretion and not to indulge in a hypertechnical examination of whether the board complied with all the minute requirements of its regulations."[3] In this instance, the court concluded that the record indicated that the board carefully considered the zoning requirements in making its decision.

Interestingly, with regard to the Board's consideration of one of the zoning requirements, the court noted that "[t]he board's failure to specifically state, orally or in writing, that it had made these findings does not amount to an exercise of discretion that is arbitrary, illegal, or an abuse of discretion." The court cited testimony heard by the board as evidence that the board evaluated the zoning requirements under the flood zone regulations.

Legal Hardship

The Hescocks' final claim was that the Board upheld the variance without substantial evidence of legal hardship. The existing house had been damaged by a hurricane and was uninhabitable. The new construction would eliminate existing nonconformities and would be farther away from the water than any other house on the street. One of the Board members commented that the development would be on the "cutting edge" of development in the years to come. Although there was no evidence of unusual hardship, the court found that the Board could grant a variance based on the reduction of nonconformance by the replacement of the existing house with new construction.

Conclusion

The appellate court affirmed the trial court's judgment. Barring a successful appeal by the Hescocks, the landowners may proceed with their new construction.

Endnotes

1. *Hescock v. Zoning Bd. of Appeals*, 962 A.2d 177, 185 (Conn. App. Ct. 2009).
2. *Id*. at 186.
3. *Id*. at 187.

Court Upholds City's Amendment Limiting Harbor Development

Samson v. City of Bainbridge Island, 2009 Wash. App. LEXIS 454 (Wash. Ct. App. Feb. 24, 2009).

Terra Bowling, J.D.

A Washington appellate court upheld a city's amendment of its Shoreline Master Program (SMP) that allowed the city to limit dock and pier development in a harbor that is less developed than other shorelines of the city.

Background

Blakely Harbor is one of Bainbridge Island's four harbors. Land surrounding the harbor was owned by a timber company for over 100 years. Because of this, the harbor remains largely undeveloped, with only six existing docks or piers. Its scenic beauty and intact natural resources make it a favorite of area residents for kayaking, scuba diving, swimming, and fishing.

In 2003, the city passed an amendment to its SMP to protect the navigability, scenic visibility, and natural resources of the harbor. The amendment allows the city to prohibit the construction of new single-use private docks in the harbor and to limit dock construction in the harbor to two joint-use docks, one community dock, floats, and buoys. The Department of Ecology reviewed the amendment under its existing guidelines and approved it.

Several residents, Kelly and Sally Samson and Robert and Joanne Hacker (Samson), appealed the amendment to the Puget Sound Growth Management Hearings Board (Board). The residents claimed that the amendment was inconsistent with the city's SMP, Comprehensive Plan Policies, and the Department of Ecology's new guidelines. The Board upheld the amendment. A superior court upheld the Board's ruling and Samson appealed.

Department Guidelines

In considering SMPs, the Shoreline Management Act (SMA) requires the Department to make written findings regarding the consistency of the amendment with the Department's guidelines and the SMA.[1] The Department developed new guidelines regarding SMPs in 2004. When the Department approved the amendment in 2003, it found that the amendment was in compliance with the SMA but did

Photograph of Puget Sound courtesy of NOAA's America's Coastlines Collection.

not make findings regarding its draft guidelines. Samson argued that although the new guidelines were not in effect, the Department should have considered its draft guidelines.

The court found this argument illogical, given the fact that "there would be no guarantee that the adopted guidelines would contain the same language and requirements."[2] The court dismissed this argument and held that the Department's guidelines were not applicable to the amendment, because they were not in effect when the amendment was reviewed.

The court disagreed, finding "Samsons' position would turn the jus publicum doctrine on its head."

Consistency

The SMA requires the city to "plan for and foster all reasonable and appropriate uses."[3] Samson argued that by limiting development, the amendment does not "embody a legislatively-determined and voter-approved balance between protection of state shorelines and development."[4] Conversely, the city argued that its amendment promoted the public's opportunity to enjoy the harbor and protected the public's interest in navigation while allowing some development in the harbor. The court found that the Board did not erroneously interpret or apply the law in finding that the amendment was consistent with the requirements of the SMA.

Samson also argued that the amendment was not consistent with the city's SMP and Comprehensive Plan, as required by the state's Growth Management Act.[5] Samson cited the fact that prior to the amendment the SMP had allowed dock construction in the harbor. And, furthermore, that the SMP goals and policies give preference to water-dependent and water-related uses. The court disagreed, finding "[t]he amendment protects against interference with navigable waters, protects the public's use of the shoreline, protects views from adjoining property, and minimizes adverse environmental impacts. Further, the amendment does not prevent all or even most uses of the private properties; it simply limits one type of structure in Blakely Harbor."[6] The court held that Samson failed to establish the amendment as inconsistent with the SMP or Comprehensive Plan.

Public Trust Doctrine

Samson also contended that the amendment violated the public trust doctrine by prohibiting public access to the waters through the prohibition on private docks. The court disagreed, finding "Samsons' position would turn the jus publicum doctrine on its head. There is no doubt that the amendment protects the public interest in this navigable waterway more so than allowing the construction of multiple docks and piers would."[7]

Conclusion

The court summarily rejected Samson's remaining arguments and affirmed the lower court's decision.

Endnotes

1. WASH. REV. CODE § 90.58.090(2)(d) (2009).
2. *Samson v. City of Bainbridge Island*, 2009 Wash. App. LEXIS 454, *12 (Wash. Ct. App. Feb. 24, 2009).
3. WASH. REV. CODE § 90.58.020 (2009).
4. *Samson*, 2009 Wash. App. LEXIS 454 at *14, *quoting Biggers v. City of Bainbridge Island*, 162 Wn.2d 683 (2007).
5. WASH. REV. CODE §§ 36.70A.040(4), 36.70A.070 (2009).
6. *Samson*, 2009 Wash. App. LEXIS 454 at *26-27.
7. *Id*. at *34-35.

Florida Court Eases Standing Requirements for Development Challenges

Save the Homosassa River Alliance, Inc. v. Citrus County, 2008 Fla. App. LEXIS 16449 (Fla. Dist. Ct. App. 5th Dist. Oct. 24, 2008).

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This article originally appeared in 28:4 of Water Log, the legal reporter for the Mississippi-Alabama Sea Grant Legal Program.

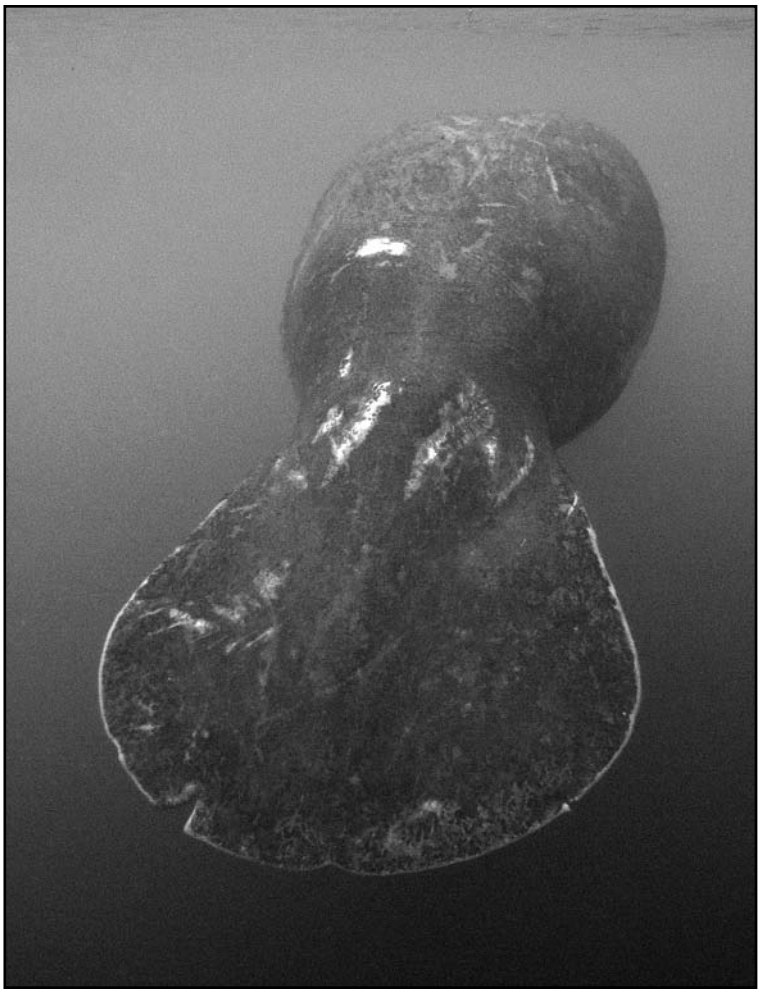
Florida's Fifth District Court of Appeals held that plaintiffs who have particularized and legitimate interest in the use and preservation of a specific property have standing to challenge development projects on that property, even when their interest does not differ from that of the community as a whole.

Background

The Homosassa River is a pristine waterway and unique habitat to both fresh and saltwater marine life. It also serves as a rehabilitation center and refuge for endangered manatees.[1] The Citrus County's Board of County commissioners (Citrus County) granted permission to a Florida resort (Resort) along the Homosassa River to redevelop and significantly expand its facilities. Currently, the resort consists of two buildings containing fifteen residential condominium units. The proposed expansion approved by Citrus County includes the development of four new four-story buildings containing 87 condominium dwelling units, retail space, amenities, and parking.

The Save the Homosassa River Alliance, Inc., a non-profit organization "committed to the preservation and conservation of environmentally sensitive lands and the wildlife in and around the Homosassa River and in Old Homosassa, Florida," and three local property owners (collectively, Plaintiffs) filed suit against Citrus County.[2] They alleged that approval of the proposed expansion is inconsistent with the county's comprehensive land use plan, a statutorily mandated guide prepared by the local planning commission to control and direct the use and development of property. The Plaintiffs allege that the redevelopment plan exceeds the maximum density per twenty acres established by Citrus County's adopted plan.

Photograph of manatee in the Homosassa River courtesy of Jeff Haines/Marine Photobank.



Trial Court Interprets Standing Requirements Narrowly

Prior to the enactment of Florida Section 163.3215 in 1985, "[A] party had to possess a legally recognized right that would be adversely affected by the decision or suffer special damages different in kind from that suffered by the community as a whole" to have standing to challenge development inconsistent with comprehensive plans.[3]

The Florida Legislature enacted Section 163.3215 to ensure standing for any person "that will suffer an adverse effect to an interest [that is] protected or furthered by the local government comprehensive plan.[4] Citrus County interpreted this statute to mean that the Plaintiffs directly must suffer an adverse effect from the redevelopment, or must demonstrate that the redevelopment will impact their interests to a greater degree than the community as a whole. Plaintiffs contended that Citrus County's narrow interpretation was outside the express meaning of the statute.

The trial court sided with Citrus County in holding that the Plaintiffs failed to establish standing under Florida Statute Section 163.3215. The court interpreted the statute to mean that the Plaintiffs must sufficiently allege that their interests are adversely affected by the project in a way not experienced by the general population of the community.

The Appellate Court's Reversal

Florida's Fifth District Court of Appeal reversed the trial court decision by finding that Florida Statute Section 163.3215 speaks to "the quality of the interest of the person seeking standing" and does not require a unique harm not experienced by the general population.[5] The court asserted that the statute is designed to expand the class of individuals who can achieve standing, and interpreting the statute in a manner that requires a plaintiff to show harm different from that of the general population is inconsistent with the statute's purpose.[6]

The court stated that a "unique harm" limitation "would make it impossible in most cases to establish standing and would leave counties free to ignore the [comprehensive] plan because each violation of the plan in isolation usually does not uniquely harm the individual plaintiff."[7]

In a 2-1 decision surely welcomed by a wide variety of environmental organizations, the majority concluded that Plaintiffs established a particularized and legitimate interest in the use and preservation of the Homosassa River, which is of the kind contemplated by the statute.[8] The dissenting jurist suggested that such a broad view of the standing doctrine will allow citizen organizations to "vindicate their own value preferences through the judicial process," instead of through the legislative process.[9]

While the court held that these litigants have standing to pursue their lawsuit, Plaintiffs still face significant challenges on the merits, as regulatory decisions by elected county boards often need not be strictly consistent with plans recommended by planning commissions.

Endnotes

1. Southwest Florida Water Management District, Watershed Excursion of the Spring Coast, Homosassa River, http://www.swfwmd.state.fl.us/education/interactive/springscoast/2.shtml (last visited Dec. 22, 2008).
2. Save the Homosassa River Alliance, Inc. v. Citrus County, 2008 Fla. App. LEXIS 16449 (Fla. Dist. Ct. App. 5th Dist. Oct. 24, 2008).
3. *Id.* at *15 (citing Citizens Growth Mgmt. Coal., Inc. v. City of W. Palm Beach, 450 So. 2d 204, 206-08 (Fla. 1984); Putnam County Envtl. Council, Inc. v. Bd. of County Comm'rs, 757 So. 2d 590, 592-93 (Fla. Dist. Ct. App. 5th Dist. 2000)).
4. FLA. STAT. §163.3215 (2008).
5. *Save the Homosassa River Alliance, Inc.,* 2008 Fla. App. LEXIS 16449, at *18.
6. *See id.* at*16 (internal citations omitted).
7. *Id.* at *28.
8. *Id.*
9. *Id.* at *35-36 (Pleus, J., dissenting) (citing Sierra Club v. Morton, 405 U.S. 727 (1972)).

Court Overturns Board's Decision Allowing Septic System in Coastal Dune

Macero v. Macdonald, 73 N.E.2d 1256 (Mass. App. Ct. 2008).

Terra Bowling, J.D.

The Board of Health in Falmouth, Massachusetts granted variances from the state environmental code and the town's health regulation to allow the construction of a septic system in a coastal dune. Recently, the Appeals Court of Massachusetts vacated the lower court's decision affirming the variances. The appellate court found that the Board did not address siting criteria of the state code, the town's regulation, or the variance test in state law when making its decision.

Background

The oceanfront lot at issue, which is in an environmentally sensitive area adjacent to Buzzard's Bay, contained an existing four-bedroom home that included a septic system. Planning to reconstruct the home, the landowner applied to the Board to permit a new, enlarged septic system located in a coastal dune.

The town's health code specifically prohibits septic systems from being located in a coastal dune. However, the code allows the board to grant variances to this and other provisions of the code when "(1) the enforcement thereof would do manifest injustice; and (2) the applicant has proved that the same degree of health and environmental protection required under this title can be achieved without strict application of the particular provision."[1]

The state environmental code also prohibits septic systems in coastal dunes, unless an applicant meets seven specific siting criteria.[2] In addition to the siting criteria, an applicant must meet a two–part variance test. The test requires the applicant to show that enforcement of the provision "…would be manifestly unjust, considering all the relevant facts and circumstances of the individual case; and [t]he person requesting a variance has established that a level of environmental protection that is at least equivalent . . . can be achieved without strict application of the provisions . . ." and, "with regard to variances for new construction, enforcement of the provision . . . must be shown to deprive the applicant of substantially all beneficial use of the subject property."[3]

Photograph of Buzzard's Bay courtesy of NOAA, photographer Edgar Kleindinst, NMFS Woods Hole Laboratory.

Adjacent landowners, SPD Investment Trust (SPD), appeared at the Board's administrative hearings to contest the variances, citing concern that a septic system

located in the dune would reduce the ability of the dune to buffer flood waters and increase the potential for storm damage to its property. Despite this, the Board approved the variances without addressing the siting criteria, the variance test, or the town's health code. SPD filed suit in superior court, which upheld the Board's decision. SPD appealed.

Inadequate Decision

On appeal, SPD argued that the judge erred in finding that the Board was not required to make additional findings or explain its reasons for granting the variances. The appellate court agreed.

First, the Board failed to find whether the reconstruction was merely a remodeling of the existing home or a demolition and new construction. The court noted that this distinction was important because for new construction, the two-part variance test requires the board to determine whether the enforcement of the provision will "deprive the applicant of substantially all beneficial use of the subject property."[4]

Second, the Board failed to consider the siting considerations as required by the state environmental code. For instance, the Board did not investigate whether the new septic system could be located in an area other than the coastal dune.

Ultimately, the court found the Board's findings to be inadequate. "The authority of the [B]oard is broad. However, competent judicial review of such decisions is often, as here, rendered difficult if not impossible by the lack of specific findings and rationale for the agency decision."[5]

Conclusion

The appellate court vacated the trial court's judgment. The case was remanded to the Board, with instructions to make specific findings and reasons for granting the variances.

Endnotes

1. FALMOUTH HEALTH REG. 15.1(3).
2. 310 MASS. CODE REGS. § 15.213(2) (1995).
3. *Id.* § 15.410.
4. *Id.* § 15.410.
5. *Macero v. Macdonald*, 73 N.E.2d 1256, 1261 (Mass. App. Ct. 2008).

Photograph of Buzzards Bay courtesy of NOAA, photographer Edgar Kleindinst, NMFS Woods Hole Laboratory.

Appellate Court Imposes Strict Requirements on Citizen Suits

Ctr. for Biological Diversity v. Marina Point Development Co., 535 F.3d 1026 (9th Cir. 2008).

Moses R. DeWitt, 2L, Florida State College of Law

In a case regarding alleged Clean Water Act (CWA) and Endangered Species Act (ESA) violations at a lakeside development, the United States Court of Appeals for the Ninth Circuit ruled in favor of the developer. The court held that the notice given to the developer was inadequate according to the CWA and that the violation of the ESA was moot because the bald eagle was no longer a listed species.

Background

Marina Point Development Company (Marina Point) purchased a 12.51 acre parcel of land on the north shore of Big Bear Lake and the east shore of Grout Bay in the San Bernardino Mountains of California. Marina Point planned to build a residential condominium project on the property that was previously used as a tavern, recreational vehicle park, campground, and commercial marina. However, some concern arose that this development would harm the bald eagle and its habitat.

In response to that concern, Marina Point secured permits from the United States Army Corps of Engineers (Corps) and the United States Fish and Wildlife Service (FWS). Both agencies approved the planned development after determining that the upland portion of the site was not a suitable bald eagle habitat. However, to ensure the continued protection of the bald eagle's habitat, the agency sought to protect the water quality of the lake and bay by forbidding Marina Point from placing rock at elevations below lake bottom contours, from depositing sand below the ordinary high water mark, and from transferring fill or structures to neighboring wetlands.[1] Marina Point was also barred from working during winter months in order to protect bald eagles' seasonal behaviors.[2]

Marina Point began development in May 2002. Shortly thereafter, the Center for Biological Diversity (Center) sent four separate notices of intent to commence a citizen suit and filed an action on April 7, 2004 to enjoin Marina Point from any further development, alleging violations of the CWA and the ESA. Specifically, Marina Point had stockpiled material below the ordinary high water mark and caused incidental fallback of soil into the lake, which could potentially damage the lake and the bald eagle's habitat. The district court denied Marina Point's motion to dismiss for lack of subject matter jurisdiction and "permanently enjoined Marina Point from any development on the site without the court's prior authorization."[3] Marina Point appealed.

Citizen Suit and the Clean Water Act

A citizen suit allows a citizen or entity to bring an action for the purpose of enforcing a provision of an environmental regulation. Both the CWA and the ESA allow these types of lawsuits. However, the CWA has a strict notice requirement that must be complied with.[4] The CWA requires a sixty-day notice of the intent to sue before a citizen action may be commenced. The notice must include "sufficient information to permit the recipient to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the location of the alleged violation, and the full name, address, and telephone number of the person giving notice."[5]

Requiring notice allows the governmental agencies to take responsibility for the enforcement of the regulation and allows the alleged violator to bring itself into compliance. This requirement is "intend[ed] to strike a balance between encouraging citizen enforcement of

environmental regulations and avoiding burdening the federal courts with excessive numbers of citizen suits."[6]

The Court of Appeals for the Ninth Circuit held, in part, that the Center for Biological Diversity's notice was insufficient because the notice refers to the violation in general terms and does not give specific details. The notice's lack of details did not give governmental agencies or the alleged violator the opportunity to cure the problem and was not in compliance with the intent of the CWA. The Court of Appeals held that the district court did not have subject matter jurisdiction because a citizen's action suit cannot be brought under the CWA when insufficient notice has been issued.

Photograph of bald eagle courtesy of NPS, Canaveral National Seashore.

This extensive specificity requirement is another hurdle citizens must overcome to enforce the regulations of the CWA. Acquiring such detailed information is an expensive and burdensome task that may deter many citizens and organizations from bringing suits against alleged violators.

Bald Eagle and the Endangered Species Act

The Center for Biological Diversity also brought a claim against Marina Point under the ESA for the destruction of the bald eagle's habitat. However, after the district court's ruling and during the appeal, the FWS delisted the bald eagle from the Endangered Species List. The Court of Appeals for the Ninth Circuit held that "to qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed."[7] The action filed was to protect the bald eagle in accordance with the ESA and, because the bald eagle is no longer listed as an endangered species, no present controversy remains.

The Ninth Circuit did not address whether the controversy would re-arise if the bald eagle were to again be placed on the Endangered Species List. However, the ESA only allows for injunctive relief and the damage from Marine Point's development would most likely already be completed. Therefore, no remedy would be available under the ESA.

Conclusion

The United States Court of Appeals for the Ninth Circuit held that a citizen suit must give the alleged violator of the CWA detailed notice of the specific violations. The court also held that the removal of a species from the Endangered Species List moots any claim or controversy of an ongoing appeal.

Endnotes

1. *Ctr. for Biological Diversity v. Marina Point Development Co.*, 2008 U.S. App. LEXIS 16599 (9th Cir. July 14, 2008).
2. *Id.* at *3.
3. *Id.* at *5.
4. *Id*. at *7.
5. *Id.* at *10-11.
6. *Id*. at *7.
7. *Id*. at *19.

Organization's Objection to Marine Terminal Is Untimely

S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 2008 S.C. App. LEXIS 174 (S.C. Ct. App. Oct. 23, 2008).

Terra Bowling, J.D.

A South Carolina appellate court ruled that a conservation organization's request for a final review of permit applications for the construction of a 300-acre marine container terminal was untimely, because the organization did not conform to mandatory filing requirements.

Background

The South Carolina State Ports Authority (SPA) and the South Carolina Department of Transportation (DOT) filed permit applications for the construction of a 300-acre marine container terminal with the South Carolina Department of Health and Environmental Control (DHEC). The terminal would be in an area around the former Charleston Naval Base and the project would include an access road.

During hearings regarding the permits, the South Carolina Coastal Conservation League (CCL), a conservation organization, provided comments expressing concern over the negative effects of the construction. The DHEC granted the necessary permits for the project. The SPA and CCL filed a request with the South Carolina Board of Health and Environmental Control (Board) for a final review of the permits. Prior to the final review the SPA resolved its issues regarding its permit; however, the Board continued the hearing to hear CCL's concerns regarding the project. The SPA and DOT objected to the review as untimely, because South Carolina law requires requests for final review to be filed within fifteen days from the date the notice was mailed to permit applicants.[1] After the hearing, the Board issued a final agency decision granting the permits with only minor revisions.

CCL requested a hearing with an Administrative Law Court (ALC) regarding the permits. SPA argued that court lacked jurisdiction to hear the case, because CCL's review before the Board was untimely. The court agreed and dismissed the case.

Untimely Review

On appeal, the court considered whether the ALC was prevented from hearing the case due to the untimely filing of the motion. The CCL filed its request for final review more than fifteen days from the date the notice was mailed to the SPA and DOT. South Carolina law states that the decision becomes final "fifteen

Photograph of container ship at Charleston Port courtesy of Rich Bourgerie, Oceanographer, CO-OPS, NOS, NOAA.

days after notice of the department decision has been mailed to the applicant."[2] CCL argued that the fifteen-day limit should run from the time that the notice was actually received. Because the statute was clear and unambiguous in stating that the time ran from when the notice was sent, the court reasoned that it must abide by the "plain meaning rule," which means that the court must construe the statute in accordance with its usual and customary meaning. The court found that because CCL did not comply with the filing deadlines, the Board did not have jurisdiction to hear the case.

The CCL also argued that the time limit was affected by waiver, estoppel, and equitable tolling. These three doctrines would have the effect of allowing CCL more time to file its petition with the Board. The appellate court held that because these issues were not initially raised before the ALC, the issues were not preserved and could not be addressed by the court.

Finally, CCL argued that its constitutional due process rights were violated by the ALC's application of the fifteen-day limit. Under the U.S. Constitution, procedural due process essentially requires a party whose property or liberty interests are affected the right to notice and a meaningful opportunity to be heard. In this case, CCL claimed that it would be denied due process if the ALC did not hear its case. The court rejected this argument, since CCL had notice and the opportunity to be heard, but merely failed to follow the proper administrative procedures that would have allowed them be heard.

. . . the statute was clear and unambiguous in stating that the time ran from when the notice was sent . . .

Conclusion

The court affirmed the ALC's decision. The permits issued by the DHEC will stand as final agency decisions.

Endnotes

1. S.C. CODE ANN. § 44-1-60(E) (2007).
2. *Id*.

Photograph of container terminal courtesy of NOAA.

Report Examines Impact of Sea Level Rise on Mid-Atlantic Region

A recently released report, *Coastal Sensitivity to Sea-level Rise: A Focus on the Mid-Atlantic Region*, explores the impacts of sea-level rise on the coastal landscape, communities, and habitats of the mid-Atlantic region. The report, issued by the U.S. Environmental Protection Agency, the U.S. Geological Survey, and the National Oceanic and Atmospheric Administration, examines various ways governments and coastal communities may plan for and adapt to rising sea levels. The report was commissioned by the U.S. Climate Change Science Program.

Through scientific literature and policy documents, *Coastal Sensitivity to Sea Level Rise* examines not only the effects of sea level rise, but also the impacts on society and opportunities to prepare for those consequences. The report finds that the effects of sea level rise, including erosion, wetland conversion, and increased flooding, will be increased if the rate of sea-level rise accelerates. *Coastal Sensitivity to Sea Level Rise* examines prospective ways natural and social science research may improve comprehension of potential impacts of sea-level rise and society's ability to respond. The report looks at opportunities for adaptation, as well as institutional barriers to adaptation. Coastal Sensitivity to Sea Level Rise outlines the current coastal policy context in the mid-Atlantic region and describes the implications for the other regions of the U.S. The report concludes that preparing for sea-level rise now can reduce future environmental and economic impacts of sea level rise.

The report is available at http://www.epa. -gov/climatechange/effects/coastal/sap4-1.html .

Study Estimates Commercial Ship Emissions

A new study provides a comprehensive estimate of maritime shipping's contribution to air particle pollution based on direct measurements of emissions. The study found that world-wide, commercial ships emit almost half as much particulate matter pollutants into the air as the total amount released by the world's cars. Researchers conducting the study noted that ship pollutants have an immense impact on coastal air quality and the health of people living along coastlines, given that 70% of shipping traffic takes place within 250 miles of the coastline.

Researchers from NOAA and the University of Colorado at Boulder conducted the study aboard the NOAA ship Ronald H. Brown, analyzing the exhaust from more than 200 commercial vessels, including cargo ships, tankers and cruise ships, in the Gulf of Mexico, Galveston Bay, and the Houston Ship

Photograph of tanker courtesy of NOAA.

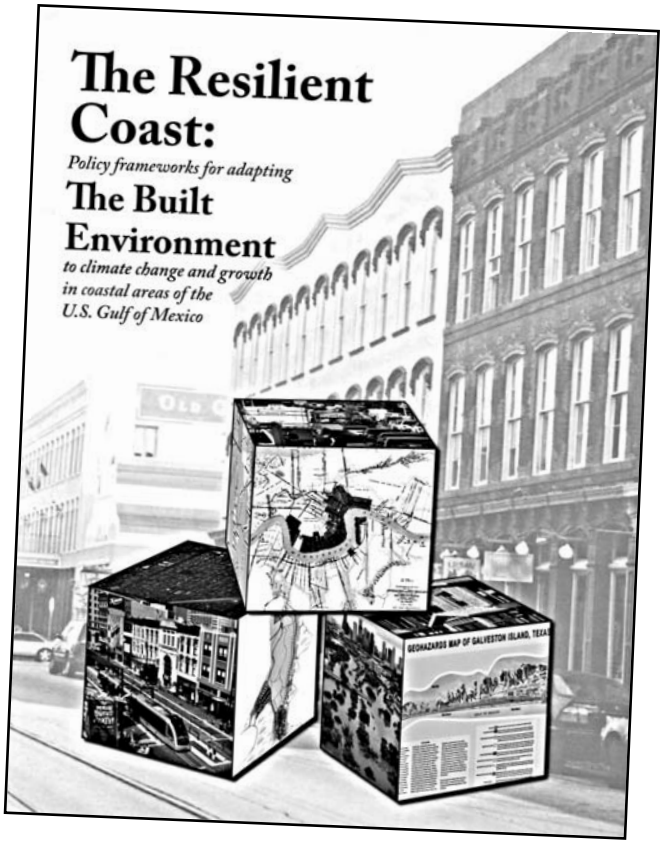
Channel. The authors concluded that ships emit about 2.2 million pounds of particle pollution each year.

The researchers also examined the chemistry of particles in ship. The authors found that sulfate emissions from ships, which make up just under half of shipping's total particle emissions, vary with the concentration of sulfur in ship fuel. Organic pollutants and sooty, black carbon make up the other half of emissions.

The study appears in the *Journal of Geophysical Research*. More information is available at http://www.noaanews.noaa.gov/stories2009/20090226_shipping.html .

Sea Grant Publication Addresses Development Practices Along Gulf Coast

Coastal cities face multiple challenges, including violent storms, flooding, and erosion. In addition to these challenges, coastal cities are densely populated, as they play vital parts in trade, fishing, and tourism industries. The challenges facing the coast are magnified by the implications of climate change, such as the possibility for more frequent and more intense storms, higher sea levels, and more coastal erosion.



To examine legal and policy issues that might come into play as a result of climate change, Texas Sea Grant and the National Sea Grant Law Center have collaborated to publish "The Resilient Coast: Policy Frameworks for Adapting the Built Environment to Climate Change and Growth in Coastal Areas of the U.S. Gulf of Mexico."

The publication examines legal and policy frameworks that could affect adaptation to global climate change and population growth along the Gulf Coast. The publication also offers recommendations for improved planning and mitigation practices.

The Resilient Coast outlines existing federal, state, and local frameworks in place to manage development on the coast. Next, it examines adaptation to climate change and population growth, including mitigation and response practices that may be used by coastal communities to handle both current hazards and those that may occur as a result of climate change. The authors note that Hurricane Katrina provided valuable lessons for disaster response, including the need to encourage more intergovernmental cooperation. *The Resilient Coast* also addresses the role of integrated coastal zone management in adaptation to climate change and growth, the question of urban resiliency, and the question of who should bear the burden of risk for development in these areas.

The publication is available online at http://www.urban-nature.org/publications/publications.htm .

Coast to Coast
And Everything In-Between

Offices at the Santa Monica Pier Aquarium were flooded thanks to a tiny octopus that tugged on a valve releasing hundreds of gallons of water from its tank. Staff report that the octopus is known for its curious nature. Although no sea life was harmed in the flood, the aquarium reported damage to its new ecologically designed floors. (*Associated Press*, Feb. 26, 2009)

British scientists plan to release robotic fish designed to detect pollution off the coast of Spain. The fish are fitted with detectors that can identify the source of pollution, such as fuel or chemicals. The fish cost about $29,000 each and run on an eight-hour battery-no remote control required. The researchers hope the fish will one day be used to detect hazardous discharges at sea. (*Agence France Presse*, Mar. 19, 2009)

Photograph of octopus courtesy of NOAA's Ocean Explorer.

Before cooking a pot of fresh crabs, note that researchers have found that crabs not only suffer pain, but retain a memory of it (arguably, not for long.) The researchers conducted an experiment to test pain using wires to deliver mild shocks to hermit crabs. The crabs vacated their shells-indicating an unpleasant experience. The scientists next offered the shocked crabs a new mollusk shell "home" to determine if the memory of the shock would cause the crabs to switch to a new shell. The shocked hermit crabs overwhelmingly chose the new home. (*LiveScience.com*, Mar. 27, 2009).

Photograph of hermit crab courtesy of NOAA.

In a new study, the U.S. Environmental Protection Agency reports that fish from five U.S. rivers contained residue from medications and common chemicals. The tested fish were from waterways in or near Chicago, Dallas, Philadelphia, Phoenix, and Orlando. The pharmaceuticals found include a common antihistamine, an anticonvulsant, and two types of antidepressants. Prior research has shown that antidepressant medications negatively affect mating and fighting behavior of fish. (*HealthDay News*, Mar. 27, 2009).

The captain of a 2007 oil spill in the San Francisco Bay has pleaded guilty to two misdemeanor environmental crimes. In exchange, the prosecutors will drop felony counts against the captain. The oil spill occurred when the ship crashed into the San Francisco-Oakland Bay Bridge. The ship spilled more than 50,000 gallons of oil, killing and injuring thousands of birds. Several lawsuits have been filed by federal, state, and local governments to recoup the cost of the clean up. (*Associated Press*, Mar. 6, 2009).

THE SANDBAR is a quarterly publication reporting on legal issues affecting the U.S. oceans and coasts. Its goal is to increase awareness and understanding of coastal problems and issues. To subscribe to *THE SANDBAR*, contact: the Sea Grant Law Center, Kinard Hall, Wing E, Room 262, P.O. Box 1848, University, MS, 38677-1848, phone: (662) 915-7775, or contact us via e-mail at: sealaw@olemiss.edu . We welcome suggestions for topics you would like to see covered in *THE SANDBAR*.

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