COASTAL SERVICES

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LINKING PEOPLE, INFORMATION, AND TECHNOLOGY

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Court Affirms Public's Right to Walk Michigan's Shoreline

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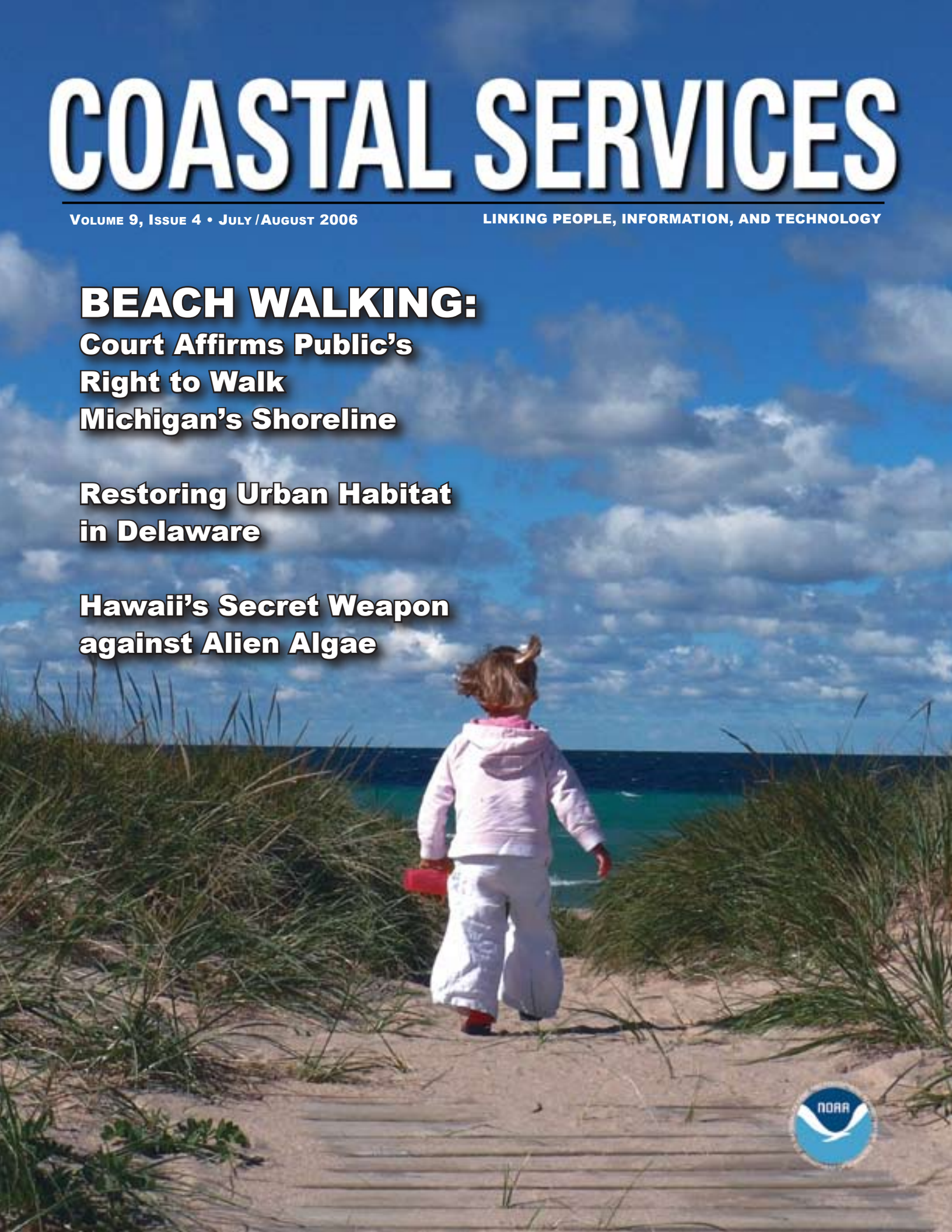

From the Director

When Hurricane Katrina struck the Gulf Coast last year, New Orleans' residents with the least resources were often the hardest hit. We all saw television images of the elderly and disabled on rooftops trying to escape the floodwaters, of women carrying children to emergency shelters through waist-deep water, and of families separated while trying to go for help.

Katrina shone a light on the need for public policies for our coastal zone that are related to social and environmental justice.

The Delaware Coastal Program is taking on many of these challenges in developing a groundbreaking Special Area Management Plan, or SAMP, to help redevelop the inner city of South Wilmington.

In this edition of *Coastal Services*, you can read about Delaware's inclusive efforts to help bring about physical, environmental, social, and economic revitalization to this underserved waterfront community.

Also in this edition, our writers explore a Michigan Supreme Court ruling that cited the Public Trust Doctrine as giving the public the right to walk along Michigan's 3,288 miles of shoreline.

This decision could influence legal decisions in other Great Lakes states that are struggling to judicially define public and private rights along our nation's inland seashores.

Other articles take a look at how the smart growth groundwork laid by coastal resource managers in Mississippi paid off as the state began its recovery from last year's devastating hurricane season, and how researchers in Hawaii are using a new weapon in their battle to protect coral reefs against invasive algae.

We hope that you find these articles interesting and useful. We believe that *Coastal Services* is an excellent tool for coastal managers interested in information about coastal resource management issues and successful management programs.

Now is your chance to tell us if we are right. If you have received a survey for either *Coastal Services* or its sister publication, *Coastal Connections*, please fill it out and tell us how our publications can better meet your needs.

Margaret A. Davidson

The mission of the NOAA Coastal Services Center is to support the environmental, social, and economic well being of the coast by linking people, information, and technology.

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News and Notes

Products and Services to Help You Tap Into the Human Side of Coastal Resource Management

Coastal communities depend on natural resources for their livelihoods, recreational opportunities, and sense of identity. Public perceptions often influence how decision makers protect and manage these resources. Social science tools and information can help officials understand and consider the relationships that exist between people, their communities, and coastal resources.

A new effort within the National Oceanic and Atmospheric Administration's (NOAA) Coastal Services Center focuses on social science products and services. The Human Dimensions program specializes in applying social science tools such as needs assessments, surveys, and content analysis.

The following represent some of the current social science services offered by the NOAA Coastal Services Center.

Technical Assistance

Surveys, interviews, focus groups, content analysis, stakeholder analysis – Many tools are available to help managers better understand the behaviors, values, and opinions of their audience. The Center assists coastal managers in selecting tools that best meet their needs, and works with clients to help implement the appropriate social science tools.

Two of the most frequently requested tools are needs assessments and social assessments.

A *needs assessment* is a systematic approach that gets to the heart of an issue by identifying the information gaps and barriers to understanding that surround a particular issue. The Center provides an on-line training course that explains the basic principles of needs assessments and assists managers who need to conduct an assessment.

A *social assessment* is a process that employs a variety of social science methods to characterize the social environment (social processes, social changes, and population demographics) in which coastal managers are working. This type of information helps managers develop policies and programs that are tailored to their audience, socially feasible, and acceptable to community members.

Training

Coastal community planning and development training and assistance – There is more than one way for a community to grow, and the Center can help state and local decision makers understand the economic, environmental, and social impacts of various approaches to development. A Web site also illustrates these concepts and impacts by comparing development strategies at a real site in coastal Georgia.

Visitor use management training – A need exists for common and consistent management approaches to balance the protection of natural resources with opportunities for multiple uses by the public. This training helps managers develop a systematic process for planning, monitoring, and managing visitor use. ❖

To access these services and learn more, visit www.csc.noaa.gov/socialscience/. Contact the NOAA Coastal Services Center's Human Dimensions program at nos.csc.human.dimensions@noaa.gov to discover how social science and the Center might assist your organization.

Restoring Urban Habitat in Delaware

Coastal resource managers have developed Special Area Management Plans, or SAMPs, for a wide variety of issues, such as watershed and resource management, water quality, coastal habitats, endangered species, economic development, hazards, and preserving cultural resources.

Delaware may be the first coastal state creating a SAMP to help redevelop an inner-city neighborhood.

"We have a responsibility to these communities that we should have been serving better."

David Carter, Delaware Coastal Programs

"What we are trying to do for this waterfront community is help bring about physical, environmental, social, and economic revitalization," says David Carter, environmental program manager for the Delaware Coastal Programs, part of the Delaware Department of Natural Resources and Environmental Control.

"We got a wake-up call from Hurricane Katrina," Carter says. "Katrina clearly blew back the curtain for some concerning public policies in our coastal zone related to social and environmental justice. We have a responsibility to these communities that we should have been serving better."

The South Wilmington Special Area Management Plan is a cooperative effort to create a master plan for the region that coordinates the efforts of all government entities, residents, and other stakeholders.

The first piece of the SAMP—a comprehensive plan for the Southbridge neighborhood—was recently completed. The other five pieces of the SAMP are expected to be completed by 2007.

Special Area

The 1.6-square-mile SAMP area is within the City of Wilmington, Delaware. The Christina River wraps around South Wilmington on three sides, separating the mostly industrial area from the rest of the city. The fourth boundary is Interstate 495.

At the center of South Wilmington is the historic neighborhood of Southbridge, an underserved community of just under 1,900 residents.

Arthur Boswell, executive director of the Neighborhood House, a Southbridge nonprofit community center, says the neighborhood suffers from "classic inner-city woes," such as a disproportionate number of residents who are "income challenged," a high percentage of single parent families, a 45 percent rental rate, and a deteriorating housing stock.

The mostly minority community is surrounded by numerous areas with suspected or known soil contamination, and is afflicted with poor drainage and chronic flooding. In fact, most of the SAMP area is within a 100-year floodplain.

Residents lack access to retail businesses, have limited safe pedestrian access to the other side of the river, and have no access to the waterfront.

What Southbridge does have, Boswell says, is a "particularly strong sense of community and tradition." He notes that many of the residents have lived in the area for three and four generations.

Development Pressures

Another thing the community has is a "huge opportunity for economic development," Carter says.

Just a mile from Southbridge is the new, upscale Christina Landing development with homes in the $400,000s. The path of development is clearly headed for the small Southbridge neighborhood.

While Southbridge residents welcome the growth, many are worried the neighborhood will be overwhelmed by new development, changing the community's character and displacing its residents, particularly senior citizens on a fixed income who could be forced to move because of higher property taxes.

"It's an exciting kind of time," Boswell says, "but the dangers of gentrification hover in a situation like this."

Beginning with Brownfields

In 2003, the Delaware Coastal Programs received a fellow from the National Oceanic and Atmospheric Administration's (NOAA) Coastal Services Center to complete a brownfield inventory.

Listening to stakeholders providing input into the inventory "led us to the realization that we needed some very focused and comprehensive planning that considered the full realm of social, economic, and environmental considerations of South Wilmington," Carter recalls.

He says when you consider "the full scope of the congressional declaration of policy for the CZMA [Coastal Zone Management Act], the project makes sense. It's a balanced approach that includes many of the CZMA goals rather than the typical strong bias towards coastal conservation."

Coming Together

The coastal program received a three-year NOAA grant to complete the SAMP and pulled together residents and community groups, county and city service agencies, relevant state agencies, and other stakeholders to serve on a core management team.

"All the right parties are at the table," notes Hanifa Shabazz, a Wilmington City Council member representing Southbridge.

The team oversees the efforts of several work groups that focus on six different SAMP components. These components are the now-completed Southbridge neighborhood plan, a review of legal authorities, an environmental and ecological characterization and enhancement plan, an economic development plan, a stormwater and flood relief plan, and a public outreach and engagement plan. The final master plan will be a combination of these six components.

In addition to being on tap to address many of the drainage and environmental issues, the coastal program's biggest roles in the SAMP process, says Carter, "are to serve as a catalyst, to facilitate, and make sure we're all hearing each other."

Wilmington Mayor James M. Baker praises the coastal program's approach.

"Here you have an environmental agency of the state coming in and working with the city and neighborhood, looking at potential problems, and going beyond just their issues," Baker says. "They are recognizing that housing and open space come into play."

He adds, "Everybody has gotten out of the role you traditionally see and is working as true partners for the betterment of the common good."

Urban blight in the Southbridge neighborhood (left) and new, upscale development just a mile from the community (above) are both addressed in the South Wilmington Special Area Management Plan.

The Neighborhood Plan

The first piece of the SAMP—the recently completed neighborhood plan—provides a series of recommendations and strategies addressing the area's economic development, land use, housing, education, community facilities, streets, traffic, public safety, environment, open space, and recreation.

"The neighborhood plan is the first part, but it actually is the overarching piece that is really helping set a larger vision for the area," Carter says. "It's capturing the direction and hope and aspirations of the community."

One of the aspirations of the community is to ensure the plan comes to fruition.

"We've already begun to see some things," says Marvin Thomas, president of the Southbridge Civic Association. Officials have cleared blocked drainage systems, trees have been trimmed and planted, and developers are negotiating with the community to get zoning variances.

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Photos courtesy of Delaware Coastal Programs

Beach Walking: Court Affirms Public's Right to Walk Michigan's Shoreline

What began as a dispute between neighbors ended up with Michigan's Supreme Court ruling that the public has the right to walk Michigan's 3,288 miles of shoreline. In February, the U.S. Supreme Court denied the defendants' request to review that decision.

In its *Glass vs. Goeckel* opinion, the Michigan Supreme Court unanimously ruled that the Public Trust Doctrine applies to the shores of the Great Lakes, just as it governs the nation's ocean coastal waters and shores. This includes the right to walk the lakes' shorelines as part of the public's rights of fishing, hunting, and navigation. Five of the seven justices held that the right extends up to the ordinary high water mark.

"The Public Trust Doctrine underlies all our environmental regulations," says Catherine Ballard, chief of the Michigan Coastal Management Program, which is part of the Environmental Science and Services Division of the state's Department of Environmental Quality. "Not only are we acting as a trustee to protect our environment's natural functions for the public now, but we're also protecting the public's future long-term interests."

The state court's decision "took people's rights away," argues David Powers, the defendants' attorney and vice president of Save Our Shoreline (SOS), a group of lakeside property owners that supported the defendants' appeals. "The position of SOS, and the reason we got involved, is that we did not want the public trust to be established to the high water mark."

The ruling in the case could influence legal decisions in other Great Lakes states that are struggling to judicially define public and private rights along the nation's inland seashores.

"On my watch, millions of people were denied the right to walk the beaches."

Pam Burt, Plaintiff's Attorney

Neighbor vs. Neighbor

The *Glass vs. Goeckel* case began as a clash between across-the-street neighbors, Joan Glass and Richard and Kathleen Goeckel.

Since 1967, Glass has used a 15-foot deeded easement across the highway from her home to reach Lake Huron. When Richard and Kathleen Goeckel purchased the property with the easement in 1998, they objected to Glass's use of the trail.

"Things started to go downhill fairly soon" between the neighbors, notes Pam Burt, Glass's attorney.

Glass filed suit in 2001 in Alcona Circuit Court, asserting that the easement established her legal right to walk to the beach and that well-established public trust and common law allowed her to walk along the water's edge.

In 2002, the neighbors reached a settlement that allowed Glass to use the trail. The circuit court judge also issued a separate ruling that said Glass had the right to walk on the beach as long as she stayed below the high water mark.

The Goeckels appealed the second half of the judge's ruling to the Michigan Court of Appeals, arguing that they owned the land all the way to the water's edge and the public could not walk there.

On Appeal

SOS filed a late amicus brief supporting the Goeckels in the appeal, citing *Hilt vs. Weber*, a 1930 Michigan Supreme Court ruling that said "shore land down to the water's edge was private land," Powers says.

The Michigan Court of Appeals ruled that citizens have the right to walk along the beach as long as they remain in the water. Property owners, the court said, have exclusive rights down to where dry land begins and may bar access to the beach.

"I felt pretty responsible," recalls Burt. "On my watch, millions of people were denied the right to walk the beaches."

While it appears that the decision of the court of appeals relied heavily on SOS's amicus brief, Powers says the group wasn't happy. "The ruling said the state owned the property but the owner had exclusive use. We didn't agree that the state owned the property."

While SOS was debating appealing the case to the Michigan Supreme Court, Burt appealed on behalf of Glass.

Getting Attention

It wasn't until the appeals court ruling that state coastal managers keyed in on the case.

"There has always been some confusion on the part of the public on the interpretation of our regulations as they relate to beach walking, because Great Lakes water levels fluctuate year to year," says Ballard.

The issue of property owner vs. public rights was ripe for questioning because record low Great Lakes water levels have produced wider beaches that some shoreline property owners claim as their own.

Not Just Walking

The right to manage the beaches is another issue behind SOS's fight to limit state ownership to the water's edge. The problem is that with dropping lake levels, vegetation is growing on the newly exposed beaches.

"Basically there has been regulatory conflict for the past four years" about managing this vegetation, Ballard says.

Powers claims the plants are non-native invasive Phragmites. "These plants are not helpful for fish or wildlife, and grow 10 to 15 feet tall. It crowds out native vegetation and is just nasty." He says the state is not addressing the Phragmites issue, and property owners should be allowed to manage it themselves.

"That's the problem," Powers says. "Phragmites is growing on beaches; we go talk to DEQ [Department of Environmental Quality] about it, and it's going to take years for something to get done. Government departments are just not nimble. Shoreline owners could take care of it in a week or a day."

Phragmites are a problem, Ballard agrees, but "removing native vegetation from the beach just creates more opportunities for Phragmites to establish itself." Phragmites infestation, she explains, is more prolific in areas that have been disturbed, such as when the natural vegetation is removed.

"Our concern is that when you chop up Phragmites, everywhere a little piece lands, you have a new infestation," Ballard says. Many property owners are "not always familiar with the fluctuations in lake levels and the resulting natural process of the lakes," and as a result have mowed, plowed, and bulldozed native vegetation.

She adds, "I believe people who live on the Great Lakes should serve as stewards for the long term and try to understand the resource. You have an obligation to understand the natural processes of the lakes and how individual actions can affect those processes. We've actually done a lot of research that shows the vegetation's critical impact to fish and biodiversity, and the plant's ability to keep property from eroding."

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Overturned

While SOS's position is that owners of property abutting the Great Lakes own to the water's edge at whatever stage, free of the public trust, the question before the Michigan Supreme Court was the public's right to walk along the shore.

In its July 29, 2005, ruling, the state supreme court found that although Great Lakes property owners retain their full rights of ownership, they hold these rights subject to the public trust.

"Our court unanimously agrees that plaintiff does not interfere with defendants' property rights when she walks within the area of the public trust," the justices wrote in their opinion. "We conclude that the public trust doctrine does protect her right to walk along the shores of the Great Lakes. American law has long recognized that large bodies of navigable water, such as the oceans, are natural resources and thoroughfares that belong to the public."

The opinion also held that because the Public Trust Doctrine preserves public rights separate from a landowner's property title, the boundary of the public trust does not equate with the boundary of a landowner's littoral title.

"So, even if a given lakefront owner has his boundary right at the edge of the water, the trust lands still extend up to the ordinary high water mark, and the public gets to use the entire area for walking and navigation-related activities," Burt explains.

By Definition

Because the Great Lakes, unlike the nation's oceans, are not tidally influenced and their water levels do not vary much from day to day, the Michigan Supreme Court defined "high water mark" using a Wisconsin definition.

The ruling stated that the high water mark is "where the presence and action of the water is so continuous as to leave a distinct mark, either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic."

This definition may still be a little vague in some instances, says Ballard, because some of the state's shoreline is hard substrate or is rocky.

Land Grab?

SOS and the Goeckels filed a petition for writ of certiorari with the U.S. Supreme Court citing the Fifth Amendment, which states there cannot be a taking of private property for public use without just compensation, and the Fourteenth Amendment, which applies the U.S. Constitution to the states, so a state cannot take private property without compensation.

"What's really happening" with the Michigan Supreme Court's decision, Powers says, "is the transfer of control of that property. We're concerned about the imposition of the Public Trust Doctrine on property rights."

He adds, "This was a taking under the federal Constitution—a judicial taking of private property rights without compensation."

Five judges on the U.S. Supreme Court would have needed to agree to review the case. In February, the Court denied certiorari.

Burt responds, "The U. S. Supreme Court has already rejected SOS's arguments, inherently. . . SOS is flatly wrong as to any taking, and not a single federal takings case has ever, to my knowledge, held that a private property owner has any rights below ordinary high water mark which trump the public trust."

Business as Usual

While emotions on both sides of the case ran high, Ballard says she doesn't think it's "changed how people use the beach." She also notes that it isn't changing how her agency does business, because the ruling "upheld our interpretation of our regulations."

As far as Glass is concerned, says Burt, "She's one happy lady."

Burt adds, "She's in her mid 70s, is arthritic, and her only use of the lakeshore is to walk the beach. This case preserved that right for her." ❖

To review the Michigan Supreme Court ruling, point your browser to www.courts.michigan.gov/supremecourt/clerk/Opinions-04-05-Term/126409.pdf. For more information on the case, you may contact Pam Burt at (989) 724-7400, or pb@wabpc.com, or David Powers at (989) 892-3924, or dpowers@smpklaw.com. You may also contact Catherine Ballard at (517) 335-3456, or cunningc@michigan.gov.

Coastal Managers Lay Foundation for Rebuilding Mississippi's Coast

Over the past seven years, coastal resource managers in Mississippi have introduced local communities to smart growth concepts, developed geographic information system (GIS) capabilities in small municipalities, and provided tools for local managers to use to address storm water and other issues.

These efforts paid off for the state after Hurricane Katrina devastated its coastline.

"Long before Katrina, our six coastal counties were embracing smart growth."

Tina Shumate, Mississippi Comprehensive Resource Management Bureau

Shortly after the storm, Mississippi's governor established a Commission for Recovery, Rebuilding, and Renewal to develop a comprehensive storm recovery plan for the state. More than 500 volunteers—including coastal resource managers from the Mississippi Department of Marine Resources—contributed 50,000 hours to complete the commission's 190-page final report in only four months.

"It was easy to jump on board" with the governor's commission, says Tina Shumate, director of the Department of Marine Resources' Comprehensive Resource Management Bureau, because many of the tools the bureau had provided to local communities in the past were directly applicable to the post-storm redevelopment process.

Existing bureau tools, such as the Storm Water Management Toolbox and the GIS Land Suitability Model, were used by many of the 14 committees established by the governor's commission that were tasked with addressing specific areas of concern ranging from agriculture to land use to the future of tourism.

"All the GIS stuff that NOAA [National Oceanic and Atmospheric Administration] and EPA [U.S. Environmental Protection Agency] have been paying for all these years—the committees needed it," Shumate says.

Other bureau information was equally valuable. A Mississippi Gulf Coast National Heritage Area Management Plan completed August 20—just nine days before the storm—provided the only comprehensive source of information after the storm on Mississippi's heritage sites, attractions, and structures. The report enabled the governor's commission to quickly determine the amount of damage to state historic structures and the number that were lost.

The bureau's work also helped speed the progress of dozens of town hall meetings held by the governor's commission that included discussions about smart growth principles.

Shumate notes that because of groundwork laid by the bureau before the storm—such as hosting annual smart growth conferences—the town hall meetings were able to accomplish more than many people anticipated in a short period of time.

Moving casinos from barges on the water to shore is part of Mississippi's plan for rebuilding after Hurricane Katrina.

"Long before Katrina, our six coastal counties were embracing smart growth," Shumate says. "It wasn't a word they hadn't heard before."

The final report of the governor's commission included strong arguments for smart growth concepts, such as encouraging more pedestrian-friendly streets and a better mix of commercial, office, and residential uses in rebuilt neighborhoods.

"You always wonder if the work you are doing is really making a difference," notes Shumate. Because of the support the bureau was able to provide to the governor's commission, "we know we have been making a difference." ❖

For more information on the Governor's Commission for Recovery, Rebuilding, and Renewal, point your browser to www.governorscommission.com. You also may contact Tina Shumate at (228) 216-4201.

Photo courtesy of Mississippi Department of Marine Resources

Hawaii's Secret Weapon against Alien Algae

The Super Sucker is helping marine researchers clean up 3,000 pounds of algae a day.

In the battle against invasive algae taking over coral reefs, marine researchers in Hawaii have a new weapon—a vacuum cleaner.

Called the "Super Sucker," this giant underwater vacuum cleaner is deployed from a 13-by-25-foot specially built barge and requires a five-person crew to operate. It can remove up to 800 pounds of alien algae in an hour.

The idea for the Super Sucker came out of a partnership between the University of Hawaii, The Nature Conservancy, and the state Department of Land and Natural Resources' Division of Aquatic Resources.

The problem researchers were facing, says Eric Co, marine program coordinator for The Nature Conservancy of Hawaii, is that alien algae overgrow coral reefs at "very high rates," resulting in corals being smothered in "a sprawling blanket of marine algae." One of the areas hardest hit by the algae overgrowth is Kaneohe Bay on the island of Oahu.

The partners first began tackling the algae problem through a community outreach effort that uses volunteers to clean the algae off reefs.

While the initiative helps educate the community and volunteers successfully remove tons of algae, the process is limited and labor intensive.

Then they had the idea of vacuuming the algae off the reef.

Built and piloted in Kaneohe Bay, the Super Sucker is essentially a modified gold dredger that has been outfitted with a 40-horsepower diesel engine that runs on biodiesel fuel.

The pumping mechanism has no "grinding blades of death"—to ensure the algae stay intact and that no other species are harmed, says Brian Parscal, operations supervisor for the Super Sucker at the University of Hawaii.

Two divers, equipped with a 4-inch-round, 100-foot flexible hose, work in the water directing the suction hose. Aboard the barge, about 300 gallons of seawater a minute is dumped onto a mesh-screen-topped sorting table. Sorters look for native algae and other marine life inadvertently picked up by the vacuum.

Once cleaned, reefs will be seeded with native sea urchins to help control the alien algae's reinvasion.

The Super Sucker is helping marine researchers clean up 3,000 pounds of algae a day. Once collected, the algae are provided to local farmers to use as fertilizer. The group also is monitoring the reef for algae regrowth and reef health.

Divers direct the Super Sucker's vacuum hose to remove alien algae from a coral reef.

The partners are currently working on a Super Sucker Jr., which can be deployed in shallower waters outside Kaneohe Bay.

Tony Montgomery, aquatic biologist with the state's Division of Aquatic Resources, sees the potential for the Super Sucker to have broader applications.

"The technology could easily be tweaked or maybe even directly transferred over to address other coastal management issues," he says.

"Plenty of people were skeptical when we started this," adds Eric Conklin, a graduate student in the University of Hawaii Department of Biology. "When they see what we've accomplished, they've become a lot less skeptical." ❖

For more information, contact Eric Co at (808) 587-6270, or eco@tnc.org; Brian Parscal at (808) 271-1266, or parscal@hawaii.rr.com; Tony Montgomery at (808) 587-0365, or Tony.Montgomery@hawaii.gov; or Eric Conklin at (808) 218-4366, or econklin@hawaii.edu.

Photo courtesy of The Nature Conservancy

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But Thomas also recognizes that implementing the far-ranging plan will take time. "We've emphasized throughout this process that this is a 20- to 26-year plan," he says. "This is not something that we're going to see completed within the next two to three, or even five, years."

Councilwoman Shabazz believes the redevelopment of Southbridge is "so vital for the continued development of the entire city that there will be continuous momentum for this to happen."

She notes that the community plans to be persistent with government officials, if necessary, when the SAMP process ends. "When everybody else goes home, we still need housing stock, a grocery store, library, and recreational outlets for our children."

Spreading the Plan

"If carried through," says Carter, "this planning effort can serve as a case study of local, state, and federal support for neighborhood empowerment. It can also demonstrate how it is possible for a community to lead the way in ensuring that the environmental mistakes of the past are not repeated, and instead pursue a positive, healthy, and safe development path for the future."

He adds, "We need a few hundred projects like the South Wilmington SAMP across all our coasts. These are projects rooted in making a difference in the everyday lives of people at the local level, with much larger regional and national implications. I think that is what the CZMA intended to do. . . This is making a huge difference in a lot of people's lives, and that's exciting." ❖

For more information on the South Wilmington Special Area Management Plan, go to www.dnrec.state.de.us/dnrec2000/Divisions/Soil/dcmp/WilmSAMP/SAMP.htm. For more information, contact David Carter at (302) 739-9283, or David.Carter@state.de.us.

Deadline for Submitting Abstracts
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