

Midnight Pass Reopening Project Update October 2005

This update on the Midnight Pass Reopening Project provides a summary of ongoing activities and activities completed since the last project update and a discussion of the role of the Erosion Control Line in the permitting and development of the project. The project background and a project description are included at the end of the update.

Summary Update of Work-to-Date: What kinds of activities have taken place since the last update and are taking place right now?

1. A second Request for Additional Information (RAI) was received from the State DEP, and the ECE Project Team prepared and transmitted the RAI #2 response to the State DEP October 10, 2005. This response is one of a series of official requests for supplemental information and data pertaining to the engineering and environmental aspects of the Project. The RAI is essentially a “checklist” that the State uses to ensure that the proposed project complies with Florida Statutes and Administrative Rules. The receipt of multiple RAIs is an expected part of the permitting process (see December 2004 Update). It is not possible to address all questions regarding the project design with the initial permit submittal because work on specific tasks is ongoing or because the work cannot be completed until closer to the time of construction. In addition, RAIs often include requests for clarification and/or expanded responses to items already addressed in the permit submittal. This is particularly true for a project of this nature and scope.
2. ECE developed the Project Public Notice with the U.S. Army Corps of Engineers (USACE). The USACE published the Public Notice on August

- 8, 2005 and will receive comments from state and federal agencies and the general public until October 8, 2005.
3. Official coordination and consultation with the National Marine Fisheries is in progress through the federal permit review process in order to determine how the Project will affect essential fish habitat in Little Sarasota Bay.
 4. The draft Inlet Management Plan for the Pass was completed and submitted to the DEP also on October 10, 2005.

What is an Erosion Control Line, and why do we need one?

The Erosion Control Line (ECL) is quite simply defined as the property boundary between the submerged lands of the state and the riparian upland property. The location of the ECL is determined by the location of the mean high water line at a fixed point in time. Florida Statute 161.151(3) specifically defines the ECL as the line "...which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey as authorized in [Florida Statute] 161.181."

Without an ECL, the property line between state-owned riparian lands and privately or locally owned riparian lands is the fluctuating mean high water line. Thus, in an area of erosion, there is a net loss of land to the upland property owner as the mean high water line recedes, while an accreting shoreline results in a net gain to the upland property owner. Once a community undertakes a shoreline restoration project, however, upland property owners are required by Florida Statute to determine a fixed property line through the establishment of an ECL. Thus, "...the common-law no longer serves to increase or decrease the proportions of upland property lying landward of [the ECL]." Florida Statute

161.191(2). In short, without the ECL, a beach restoration project would essentially result in a taking of state land for private use. The trade-off for private land owners is that their property boundary will not continue to move landward.

After the establishment of the ECL, upland property owners maintain their riparian rights (e.g. ingress and egress, view, boating, bathing, and fishing). In addition, the state may not permit construction seaward of the ECL, except for structures necessary for erosion control, nor may the state permit use of the property that would result in injury to person, business, or property of the upland owner.

Background: Over the past 20 years, there has been considerable debate whether to reopen Midnight Pass or leave it closed. In January 2004, the Sarasota County Board of County Commissioners (the Board) agreed it was time to accumulate necessary scientific data to determine whether the project should go forward and whether permits could be obtained. To provide appropriate information to make this determination, the Board retained Erickson Consulting Engineers, Inc., whose principal engineer is Karyn Erickson, P.E. Ms. Erickson's most recent experience with inlets was in relocating an unstable coastal inlet in New Hanover County, NC.

While the research and design for both the Midnight Pass and the South Siesta Key Beach Restoration Project will occur at the same time, the Midnight Pass permitting process is expected to be more time-consuming. As a result, the two projects are not being paired.

Project Description: Although project specifications will evolve as more data becomes available and as the state and federal permitting agencies examine the project, the conceptual plans consist of removing 135,000 cubic yards of sand from the pass channel, removing 130,000 cubic yards to create a sand trap, and

removing another 125,000 from the tidal channel that will connect the Gulf to the Intracoastal Waterway. The restored Midnight Pass channel through the barrier island would be 500 feet wide, 400 feet long, and 12 feet deep with a 200-foot channel extending 2,400 feet from the inlet into the Intracoastal Waterway. It would be maintained on a three- to five-year interval, and the sand would be placed on adjacent beaches.