

COASTAL SERVICES

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LINKING PEOPLE, INFORMATION, AND TECHNOLOGY



JUDICIAL TAKINGS:

**A U.S. Supreme Court Ruling for Florida
May Open the Door for Other Cases**

Test-Driving StormSmart Coasts in Massachusetts

Putting Marine Debris in Its Place in CNMI



From the Director

Property rights advocates are taking note of a recent minority opinion of the U.S. Supreme Court on judicial takings. The cover story of this edition of *Coastal Services* takes a look at the case and explores the potential implications for coastal resource managers.

Also in this edition, we look at a two-year effort to “test-drive” Massachusetts’ StormSmart Coasts website, which is a toolkit that communities can use to prepare for and bounce back from more intense hurricanes, flooding, sea level rise, and other impacts of climate change. The state now has seven real-life models that can be used by other coastal communities.

The NOAA Coastal Services Center provided two coastal management fellows to Massachusetts who helped create and test-drive the state’s StormSmart Coasts website. Wes Shaw was the phase one project manager, and Daniella Hirschfeld helped lead the test-drive phase.

The Coastal Services Center also provided seed funding for the expansion of StormSmart Coasts to states in the Gulf of Mexico.

Since then, a partnership of the NOAA Coastal Storms Program, the Gulf of Mexico Alliance, and the Environmental Protection

Agency has worked to establish the StormSmart Coasts Network, which gives coastal decision makers a definitive place to find and share the best resilience-related resources and tools available.

All five Gulf states now have sites within the StormSmart Coasts Network, which can be viewed at www.stormsmartcoasts.org. Other New England states are working to develop sites for the network.

A sister Web resource is StormSmart Connect—www.stormsmartconnect.org—which provides a venue for real-time collaboration, allowing users to share documents and expertise.

Also in this edition of *Coastal Services*, we look at efforts in the Commonwealth of the Northern Mariana Islands (CNMI) to clean up marine debris by addressing on-land trash and recycling, and a county communications effort in Minnesota that merges print publications with the Internet and YouTube videos.

As always, we hope you find these articles interesting and informative. I am always open to hearing your thoughts and feedback. ❖



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

Now May Be the Right Time to Pitch the Smart Growth Concept to Local Officials

Smart growth is economically sound, is environmentally friendly, and generally makes communities better places to live. It is a great concept that many local governments have expressed interest in but may not have fully implemented for a variety of reasons.

The less-than-perfect economy, however, is slowing the pace of development and giving many local governments an opportunity to rethink their development policies and strategies. For many communities, this downturn is turning out to be the right time to push for incorporating smart growth approaches.

The following suggestions are for those looking to start or restart a smart growth conversation with local officials.

Keep it simple. Local officials are called on to be well versed in many areas. Even if they are very interested in smart growth, complex concepts are not the way to go. Be inspirational in your approach, and boil the message down to the basics.

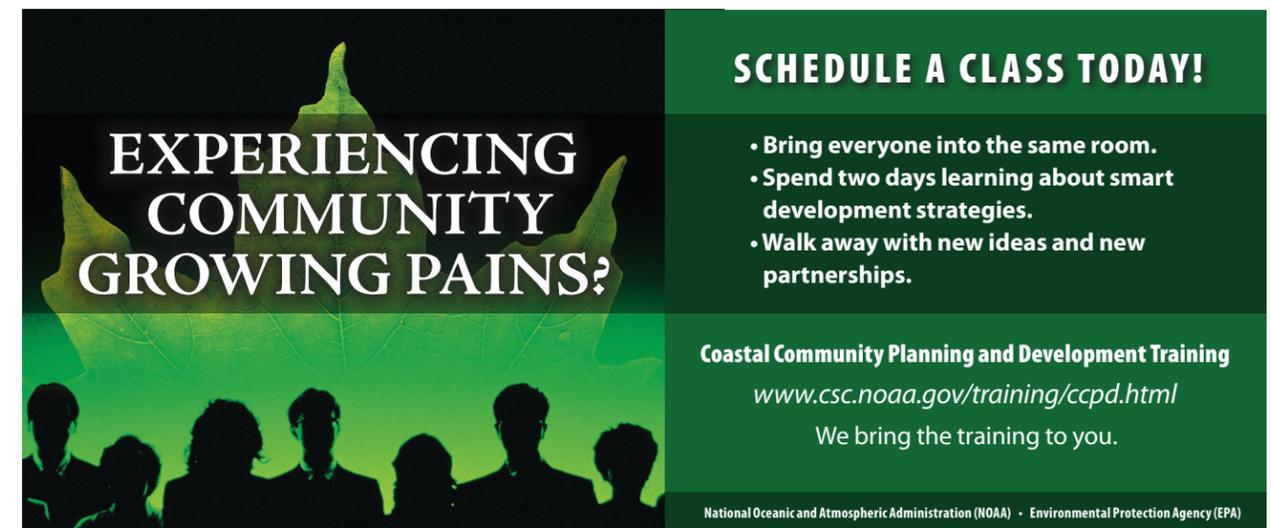
Align the vision with local priorities. It is important to work with community members to determine their hot button issues and how they can be addressed using smart growth approaches. If traffic congestion

is a concern, then include traffic considerations in the strategy. If the community values recreation, highlight the planned parks.

Emphasize economic benefits. Many local governments have found that smart growth initiatives are often an economic draw for industry and residents, providing long-term benefits that help shape a lasting, improved future for the community.

Be patient. Most change happens slowly. Smart growth advocates in the community should have a multifaceted, multiyear approach, meet community officials halfway, and be willing to change as circumstances change. ❖

Start the smart growth discussion in your community with the NOAA Coastal Services Center’s Coastal Community Planning and Development course. Participants will discuss the drivers behind conventional development, understand development alternatives, discuss the importance of natural hazard resilience, network with members of the community, and move toward a shared vision of the future. To bring this training to your location, visit www.csc.noaa.gov/training/ccpd.html.



Test-Driving StormSmart Coasts in Massachusetts

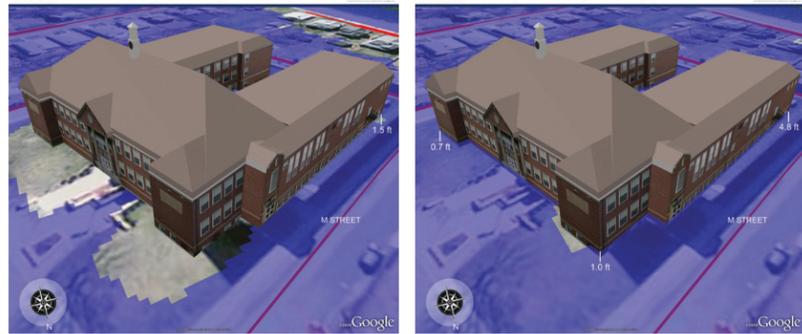
To help communities prepare for and bounce back from more intense hurricanes, flooding, sea level rise, and other impacts of climate change, coastal resource managers in Massachusetts created a StormSmart Coasts website that consolidated and simplified information from around the U.S. After working with seven municipalities to “test-drive” the toolkit, the state now has models that can be used by other coastal communities.

“When we started StormSmart Coasts, we packaged the tools we thought local officials needed,” says Andrea Cooper, who retired in October as the shoreline and floodplain management coordinator for the Massachusetts Office of Coastal Zone Management. “We took those strategies we had presented and worked with communities to really test-drive them in a real-world setting.”

She adds, “What we found was that communities are more than ready to deal with climate change adaptation, and in fact were opting for more protective measures than we expected.”

While the models are specific to Massachusetts, Cooper believes they would be useful to other coastal communities around the country.

“There are some Massachusetts nuances, but I think basically every product is transferable.” Cooper says. “There are always going to be different local political, social, and



The first graphic (left) shows base flooding in Hull, Massachusetts, and the second shows base flooding with an additional 3.3 feet of sea level rise.

financial constraints that require these models to be tweaked from town to town, but the issues of climate change that we are all facing are basically the same.”

The Toolkit

Launched as a website in May 2008, Massachusetts’ StormSmart Coasts provides information on everything from hazard identification and mapping to planning and funding. The website provides a menu of regulatory tools, case studies, outreach strategies, and other technical assistance materials for successful coastal floodplain management.

“We provided one-stop shopping for local authorities by translating highly technical information into tools or strategies they can use,” says Cooper.

The state’s efforts were so good that NOAA and other partners are pursuing StormSmart Coasts as a national concept, with a website that gives coastal decision makers

a definitive place to find and share the best resilience-related resources available nationwide, and that provides tools for collaboration.

To view the StormSmart Coasts National Network, go to <http://stormsmartcoasts.org>.

Ground Truthing

When Massachusetts’ StormSmart Coasts website was launched, “it felt like we’d birthed a baby,” Cooper says. “But there was still the question, ‘Could the toolkit result in real-world change?’”

Seven cities and towns were selected to “ground truth” the toolkit, Cooper says.

Working with Massachusetts coastal program staff members, as well as partner organizations and agencies, local officials from each community chose StormSmart Coasts tools to meet their municipal floodplain management challenges, and considered local goals and capacity in applying the tools.

“We took those strategies we had presented and worked with communities to really test-drive them in a real-world setting.”

Andrea Cooper,
Massachusetts Office of
Coastal Zone Management

While each of the towns produced “inventive models,” Cooper says the efforts of two communities stand out.

Going 3-D

One of the standout communities was Hull, where photo-realistic 3-D models helped community officials and residents visualize different scenarios of sea level rise for seven facilities that are critical to the community’s public safety, health, and welfare, such as a wastewater plant, electric plant, and emergency shelter.

“They felt that sea level rise just wasn’t on people’s radar screens,” Cooper says. “They wanted a visualization tool to help residents understand the impacts of four possible sea level rise scenarios.”

Developed using Google Earth, the 3-D models “really provide a template for other communities to add their data and produce their own local 3-D models,” Cooper says.

Providing Incentives

As a result of the 3-D models, Hull officials were better able to plan for adaptation, relocation, or other measures to protect residents and services in the future.

For instance, the community created an incentive program that encourages builders and homeowners through reduced fees to elevate new and renovated structures above predicted floodwaters.

“You can’t require builders to go above two feet elevation according to the state building code, but a town can offer incentives,” Cooper explains. “A builder or homeowner can choose to build at a higher elevation.”

Amending Bylaws

Another pilot community, Oak Bluffs, adopted several new amendments to strengthen the town’s floodplain overlay district bylaw.

The amendments prohibit new residential development and expansion of existing development in coastal high-hazard flood zones designated on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps. The revisions to the bylaw will also require that all new development in less hazardous areas meet design criteria and performance standards through a special permit process.

Nearly unanimously adopted by residents at the 2010 annual town meeting, the amendments will minimize threats to public health and safety and increase the town’s capacity to recover after a storm by reducing damage to personal and public property.

“The design criteria are based on not just the current flood-base elevations, but they also are looking at anticipated impacts for the future,” Cooper says. “They are preparing to address development in areas that

may be more in harm’s way many years from now.”

The coastal program will provide technical training to town officials as they work to incorporate the new regulations into the decision-making process.

Local Decisions

Because Massachusetts is a home rule state that does not have county governments, coastal managers have had to work at the local level. But Cooper believes this is where most of the decisions about climate adaptation will take place throughout the country.

“I firmly believe,” Cooper says, “that what all the coastal programs share in common is that sooner or later what progress we make in terms of environmental protection and climate change adaptation really comes down to the local level and how local officials are adapting to or mitigating climate change.”

She adds, “Locals are the ones who permit development, or create hazard mitigation plans, or have emergency response plans. Those steps that are taken at the local level are really on the front line for resiliency. Coastal managers are the ones who are able to provide the help they need.” ❖

To view Massachusetts’ StormSmart Coasts website, go to www.mass.gov/czm/stormsmart/. To read more about how the state created StormSmart Coasts, go to www.csc.noaa.gov/magazine/2008/05/article1.html. You may also contact Massachusetts Office of Coastal Zone Management staff members Julia Knisel at Julia.Knisel@state.ma.us, and Rebecca Haney at Rebecca.Haney@state.us.ma.

Judicial Takings:

A U.S. Supreme Court Ruling for Florida May Open the Door for Other Cases

The U.S. Supreme Court recently ruled in favor of the State of Florida in a case that challenged the state law establishing nourished beaches as public property, but it declined to decide the issue pushed by property rights advocates of whether a state judicial decision can ever amount to a government taking of private property without just compensation.

The court's decision on the state law will likely have little impact outside Florida, but a minority opinion concluding that in some circumstances a judicial decision could amount to a taking may encourage property rights advocates to pursue lawsuits to clarify the issue.

"For the State of Florida, this case was a win," says Kristen Fletcher, an attorney who is executive director of the Coastal States Organization. "I think on the issue of judicial takings, the court left it gray. I don't know that it gave a win to either side, but it left the door open for future cases that potentially answer the question or not."

Kent Safriet, attorney for the property owners in the case,

Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection et al., called the minority opinion a "major victory for property rights advocates," but admits that many questions were left unanswered.

"It opens the door that had heretofore not existed," Safriet says. "It's a shot across the bow to the state courts, warning 'don't be too aggressive' and 'don't get too far outside of the mainstream.' If that doesn't squelch court activism, I see the U.S. Supreme Court taking up a case to address it more specifically."

Defining Takings

While the legal issues around takings are complex, there are three potential scenarios where landowners could lose most or all economic uses of their property due to government interference, explains Fletcher.

The most common form of a taking is eminent domain, where private property is taken for public use, for which the owner is fairly compensated.

A regulatory taking occurs when a government regulation effectively takes enough value away that a person loses all viable economic uses without losing the title to the property, which is a violation of the U.S. Constitution.

A judicial taking—which has never legally occurred—would be if a state court made a decision that effectively changes state or local property law so that property loses its economic viability without just compensation to the owner.

"It's something debated and discussed in academic circles, but there's never been a case of a judicial taking," notes Niki Pace, research counsel for the Mississippi-Alabama Sea Grant Legal Program.

Adding Sand

In the *Stop the Beach Renourishment, Inc.* case, homeowners in Walton County near Destin filed suit in 2004 to stop a state-planned seven-mile beach renourishment project that included placing sand in front of their homes.



"The real fear is that the threat of legal action alone will make municipalities or states back down and adopt less effective ordinances, laws, or regulations."

Kristen Fletcher, Coastal States Organization

Under the state's Beach and Shore Preservation Act, counties and cities can use public moneys to restore beaches eroded by hurricanes and storms by adding sand beyond a state-designated erosion control line—this sets the private property beachfront line where it is when a restoration project begins.

If the addition of new sand at water's edge extends the dry beach farther out toward the water, that new additional dry strip is considered public property.

Land Grab

While Florida's renourishment program has generally been popular with homeowners, Safriet's clients felt it was "a land grab."

"It created public beach in front of their private beach," Safriet says. "It was a backdoor way to take away private beachfront property."

State and local governments see the renourishment program as essential to preserving private property, coastal roads, utilities, infrastructure, and tourism.

Decisions

A Florida district court ruled in 2006 that the state's restoration effort constituted an uncompensated taking, depriving property owners of their right to maintain contact with the water and their "right to accretion," which is the gradual accumulation of land by natural forces.

The Florida Supreme Court reversed the lower court order.

Without beach renourishment, "the public would lose vital economic and natural resources," the state Supreme Court held. "As for the upland owners, the beach renourishment protects their property from future storm damage and erosion while preserving their littoral rights to access, use, and view. . . The act facially achieves a reasonable balance of interests and rights to uniquely valuable and volatile property interests."

Safriet's clients appealed to the U.S. Supreme Court, seeking a determination that the state court's decision amounted to an unlawful judicial taking by depriving them of property.

Balancing Interests

On June 17, 2010, the U.S. Supreme Court unanimously agreed that under Florida law and judicial precedents, the state owns the land under the water at the shoreline, and the state continues to own that land even if it adds new sand that interrupts the private property contact with the water.

The court acknowledged that such restoration programs may deprive the homeowners' waterfront

property of some of its value, but the justices noted that long-standing Florida court precedent balanced the public-private interest and therefore there was no taking of private property that would have required compensation from the state.

The Coastal States Organization filed an amicus brief in the case on behalf of the state. "Our basic argument," Fletcher says, "was that as sovereign entities and landowners, states need to have the flexibility to decide which tools are best for their issues. Some states see beach renourishment as an effective tool to deal with beach erosion, sea level rise, and other issues of climate change."

Very Specific

The high court's ruling was "a win for the state and what they're trying to do to manage coastlines," Fletcher says. "Florida is in a slightly safer position than it was before. At the same time, there are some creative legal arguments out there, and there's the possibility of another legal challenge."

Pace says, "I think it's an important decision because it held that there was no taking, but it was very specific to Florida and dealt with specific Florida property law. This was a narrow decision that doesn't have broad application to other states."

"This case is not the approval of the U.S. Supreme Court of beach restoration, or beach restoration in Florida," Safriet says. "This case turned on very specific provisions of Florida common law that date back hundreds of years."

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Putting Marine Debris in Its Place in CNMI

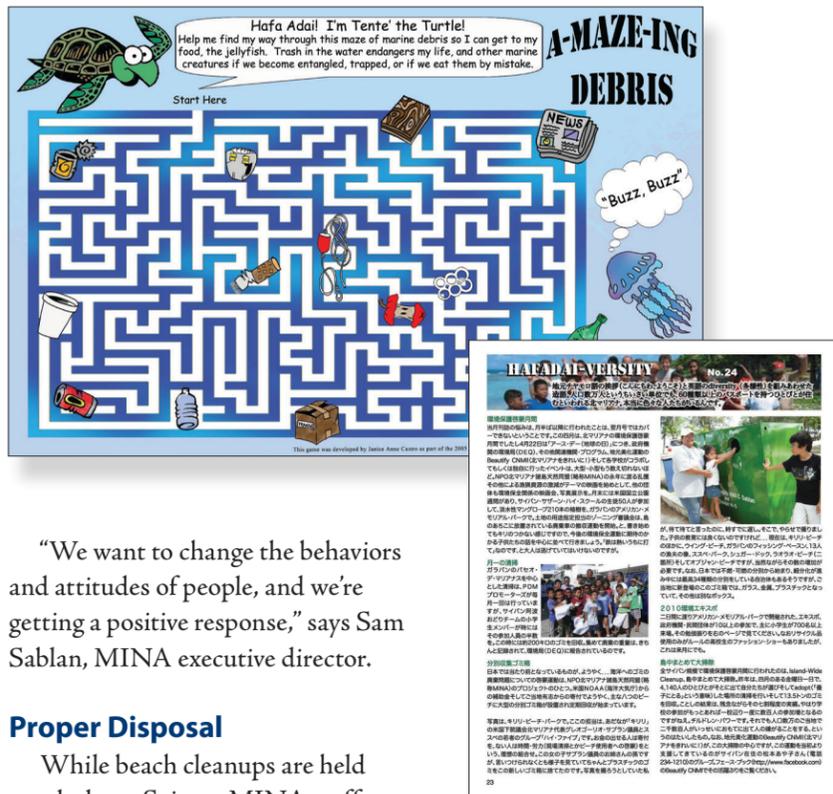
Mention marine debris and many people think of thousand-pound fishing nets and other derelict fishing gear. For Saipan, the largest island in the Commonwealth of the Northern Mariana Islands (CNMI), marine debris also results from island residents and visitors who drop cigarette butts, pull tabs, plastic bottle caps, and juice boxes on the ground.

“We want to change the behaviors and attitudes of people, and we’re getting a positive response.”

Sam Sablan, Mariana Islands Nature Alliance (MINA)

“This type of debris is not only unsightly, it poses a risk to marine life from toxicity, entanglement, and smothering from its ingestion,” says Kathy Yuknavage, marine debris project manager for the Mariana Islands Nature Alliance (MINA). “Saipan’s rich reefs and habitats are at risk from land-based sources of marine debris polluting the surrounding waters.”

To prevent land-based trash from becoming marine debris, MINA has installed mixed waste and recycling bins at public beaches, began the island’s first recycling program, and is conducting an outreach program based on social marketing concepts.



“We want to change the behaviors and attitudes of people, and we’re getting a positive response,” says Sam Sablan, MINA executive director.

Proper Disposal

While beach cleanups are held regularly on Saipan, MINA staff members realized that more needed to be done.

“There’s not a lot of money for curbside trash pickup,” Yuknavage explains. “It’s hard to raise taxes in order to add this element. There were also no trash cans at beaches, or if there were, they weren’t emptied regularly, so trash would spill out and blow into the water.”

She adds, “The reason there is so much litter on the ground is that people didn’t have convenient receptacles. We realized that proper waste disposal needed to be addressed.”

MINA received a grant from the NOAA Marine Debris Program to begin its marine debris initiative.

Exceeding Goals

At the beginning of April, MINA met its initial goal to have local sponsors “adopt” bins at seven popular beaches. The bins allow beachgoers to separate their trash from recyclable material. Trash is collected once a week, and recyclable materials are shipped off-island.

“The program has been a wild success,” says Yuknavage. By the end of August, a total of 17 bins had been adopted.

“We had to stop at 17,” she says. “We want to continue this program for years, and we didn’t want to bite off more than we could chew.”

Since the bins have been in place, 7.9 metric tons of potential marine debris has been collected, and 42 percent of the waste has been recycled, says Yuknavage.

Adoption Process

Businesses and organizations that adopt a bin pay a \$1,000 annual adoption fee, which pays for trash-hauling services, and they pledge to conduct at least two beach cleanups at the site.

In return, the adopters’ logos are displayed on their bins. “We don’t have billboards on the islands, and these are big recycling bins that they get to put their logos on,” Yuknavage says.

Adopters will also be recognized in a documentary that MINA is filming about the program, which they hope to show at the upcoming 25th U.S. Coral Reef Task Force meeting.

Measuring Awareness

With the waste and recycling bins in place, MINA staff members worked to create a social marketing campaign that encourages people to put litter in its new place.

Pre-campaign surveys were conducted to determine how much people knew about the island’s marine debris problem—its causes, impacts, and solutions. Post-campaign surveys will be conducted in December.

“We found that people were already knowledgeable about the problem, so we weren’t going to change their awareness,” Yuknavage says. Instead, all of MINA’s outreach efforts focus on changing people’s behavior.

Getting People to Act

To promote the use of the bins and proper waste disposal, MINA volunteers are giving presentations at schools and are manning booths at island markets. Public service announcements are running at the airport, movie theatre, television station, and a local radio station.

Next year, MINA is hoping to be able to provide a stipend for volunteers “who actually go to beaches, pass out garbage bags, and point out where the bins are, as well as take visual observational data to see how many people are using the bins,” Yuknavage says.

Litter Patrol

The most successful element of the outreach effort has been “deputizing” students to be part of the Litter Patrol.

Elementary students attending classroom presentations on marine debris prevention are asked to recite a pledge, commit to showing family, friends, and neighbors how to recycle, and wear a badge while performing their pledged duties.

Litter Patrol duties include setting up recycling stations at home and during family picnics and other social gatherings.

So far, 311 elementary children have been deputized as Litter Patrol

officers. “The badges do work,” Yuknavage says. “It’s hard to ignore when your child is setting up places for recycling and is telling you what should go where.”

Expanding Program

An unexpected benefit of the program, Sablan says, is that a village public works department is considering a mobile transfer station to expand recycling efforts to other areas of the island.

Other islands in the CNMI chain are also expressing interest in creating recycling programs, and MINA is working with the island legislature to establish necessary infrastructure.

“People generally want to do the right thing, and people are getting used to the idea of recycling,” Yuknavage says.

She adds, “This project has been a good start, and we feel good about the possibility of it expanding.” ❖

For more information on MINA’s Adopt-a-Bin program, go to www.minapacific.org and view the *Goals and Projects* page. You may also contact Kathy Yuknavage at kathyjuk@gmail.com, or Sam Sablan at sablansam@gmail.com. For more information on marine debris, go to <http://marinedebris.noaa.gov>.

THE LITTER PATROL PLEDGE

I promise to throw litter away, and show others how to recycle the right way, I will respect my ocean and the land, by protecting it with my own two hands, I need to care, because our island is our home to share.

Merging Media for Sharing Shoreland Information in Minnesota

The intricate rules, regulations, and requirements for owning or developing shoreland property got easier to navigate this summer in St. Louis County, Minnesota. Not only was a new 28-page comprehensive guide published and made available on the Internet, but a series of complementary short videos were posted on YouTube.

“This is a combination of bringing us up to the digital age and getting information out to a new generation of users.”

Darren Jablonsky, St. Louis County, Minnesota

“We’re excited to take a new and varied approach to getting complex regulatory information out to the public and seeing it so well received,” says Darren Jablonsky, planning, research, and GIS manager for the St. Louis County Planning and Community Development Department.

The “Shoreland Guide for St. Louis County, Minnesota: A Comprehensive Property Owner’s Guide” provides easy-to-understand information about sustainable shoreland practices. “We wanted to highlight best practices and encourage residents, contractors, and developers to institute these best practices in their projects as they

go through the land use permitting process,” Jablonsky says.

The guide includes information on zoning, land use standards and terms, stormwater management, and structural standards, as well as wetland sequencing, classification, and identification.

At various points throughout the manual are icons indicating a supporting video on YouTube. In total, 13 short educational videos are available on topics such as how to calculate slope, how to prepare a site plan, and how to preserve and establish shoreline vegetation.

“We’ve received positive feedback that validates that this multimedia venue is where people are going, and where the industry is going, in terms getting information out quickly,” Jablonsky says. “This is a combination of bringing us up to the digital age and getting information out to a new generation of users.”

The county received grants from Minnesota’s Lake Superior Coastal Program to create both the shoreland guide and the YouTube videos, which were launched simultaneously in June.

“Lots of planning went in up front,” Jablonsky says, to define the target audience and tailor the publication to them.

Most of the text was written by county staff members, but a graphic artist was contracted to design the manual. A 15-year-old VHS video was mined for the 2- to 7-minute digital YouTube segments.



While still too early to measure the effort’s success, Jablonsky says, the videos have had hundreds of downloads in just a few months.

“We’re confident our communication efforts will help protect the shoreland, the 1,000 lakes we have in this area, and our other key natural and riparian resources,” he says.

“Anybody who is looking to package their statewide rules related to shoreline development and local ordinances could use this as a model and just modify it to make it work for their community,” says Amber Westerbur, coastal program specialist with Minnesota’s coastal program.

She adds, “We’re really excited to have been able to help St. Louis County with their efforts.” ❖

To view the shoreland guide and watch the YouTube clips, go to www.co.st-louis.mn.us/slcportal/SiteMap/HomePage/Departments/Planning/tabid/79/Default.aspx. For more information, contact Darren Jablonsky at (218) 725-5011, or jablonskyd@co.st-louis.mn.us. You may also contact Amber Westerbur at (218) 834-1445, or amber.westerbur@state.mn.us.

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Minority Opinion

What has attracted the attention of property rights advocates, however, is that four of the justices noted in the decision that while this case was not a taking, if a court declares that what was once an established right of private property no longer exists, it has taken the property in violation of the U.S. Constitution.

The remaining four justices held that it was unnecessary to decide such a theoretical question. Justice John Paul Stevens, who owns a Florida beachfront residence, did not take part in the ruling.

Safriet says that as a result of the opinion, he expects to see litigation to clarify judicial takings in the future.

“It’s important to keep in mind,” Pace says, “that all the justices agreed that there was no taking in this case and there was no majority opinion on judicial takings. Right now, we still don’t have a case that has found a judicial taking, so we don’t know what is going to happen.”

Fletcher says, “States and municipalities have more strength against takings claims than they realize. The real fear is that the threat of legal action alone will make municipalities or states back down and adopt less effective ordinances, laws, or regulations.”

She adds, “In my opinion, they can see this case as one more in a series of cases that shows the roles and responsibilities of government is taken seriously, and they can withstand a takings claim.” ❖

For the U.S. Supreme Court’s decision, go to www.supremecourt.gov/opinions/09pdf/08-1151.pdf. For more information on the case, you may contact Kristen Fletcher at (202) 508-3861, or kfletcher@coastalstates.org, or Kent Safriet at (850) 222-7500, or KentS@hgslaw.com. For more information on takings, contact Niki Pace at (662) 915-7775, or nikilpace@gmail.com.

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