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May 11, 2007, 9:36AM

Judge allows building permits on Galveston wetlands

Ruling lets developers resume projects on island

By HARVEY RICE
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GALVESTON — A federal judge dealt a setback to environmentalists Thursday in a ruling that allows the U.S. Army Corps of Engineers to continue issuing building permits on Galveston Island without considering the cumulative effect on the environment.

The ruling was the second blow for environmentalists, following a decision by the city of Galveston to shelve a geological hazard map intended to guide the regulation of construction in areas subject to erosion, storm damage and sea-level rise.

U.S. District Judge Samuel Kent lifted a 2004 injunction on a wetlands permit that had caused the corps to withhold all permits for construction in wetlands on the island until the case was resolved.

The corps and developer Blackard Pirates Galveston Development LP had asked Kent to lift the injunction, but environmentalists had hoped he would order the corps to assess total damage to the environment by development on the island.

Kent's decision was welcomed by developers whose permits have been delayed.

Bruce Reinhart, owner of the Kahala development, said his project could have been delayed another 18 months if the judge had ruled for the plaintiffs.

Monitoring permits

The lifting of the injunction means that the corps can continue to issue permits for development in environmentally sensitive wetlands without taking into consideration the total effect of all development on the environment.

The issue is key for environmentalists, who fear that the limited amount of land on the Island is being overdeveloped without concern for fragile wetlands and habitat for wildlife.

The decision "underscores that we as environmentalists can't simply rely on the corps permitting process," said Bob Stokes, president of the Galveston Bay Foundation.

The foundation was not a party to the lawsuit but closely monitors the corps permits process and backed the plaintiffs.

Stokes called the decision a setback but said, "I don't see it as a long-term loss."

Kent surprised attorneys for both sides by cutting short arguments that had been scheduled to take more than a day and issuing a decision after about an hour.

The judge said streets already had been paved and a channel dug for a marina on the property in

dispute. He said he had no authority to order the developer to rip out the improvements.

Surprise outcome

Kent did not address the disputed issue of whether he has the authority to force the corps to conduct an environmental impact statement.

"We are all sort of a little stunned at the moment," said Jim Blackburn, attorney for Lafitte's Cove at Pirates' Beach Nature Society, which sought the injunction.

Anthony Buzbee, attorney for Blackard, said, "I was pleasantly surprised."

The controversy centers on the corps jurisdiction over wetlands and canals dug into the island.

Critics say the corps has handed out permits to build in the wetlands with inadequate consideration for the environment.

"The corps seems to want to rubber-stamp every development that comes through," said Scott Weaver, board member of the Nature Society.

"There is also the fact that the Corps of Engineers is ignoring the cumulative impact of all this development on the island," Weaver said.

The Nature Society sued in 2004 because the Corps issued a permit enabling Blackard to build 29 homes and a marina on a lot that was being used to deposit material dredged from existing canals.

The disappointment for environmentalists follows a decision by the city to decline to use a \$50,000 geological hazard map as a basis for regulations.

The decision was made in a report to the City Council by City Manager Steve LeBlanc.

Mayor Lyda Ann Thomas, however, said discussion on the geohazard map would be reopened at the next council meeting in two weeks.

"The recommendation of the city staff is to utilize the information from the geohazard study as an informal tool and guide rather than formal adoption of the geohazard study by the city council," LeBlanc's report said.

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