

[DJC INFO](#)   [SUBSCRIBE](#)   [LOG IN](#)



MEET YOUR PERFECT GROUP PLAN AT  
BENEFITMATCHMAKER.COM

share  
the well

 Regence

Regence BlueCross BlueShield of Oregon is an independent licensee of the Blue Cross and Blue Shield Association.

- [HOME](#)
- [NEWS](#)
- [FEATURES](#)
- [COMMENTARY](#)
- [CALL FOR BIDS](#)
- [PUBLIC NOTICES](#)
- [BIDDING DETAILS](#)
- [BIZ LEADS](#)
- [EVENTS](#)

Thursday September 10, 2009

• [Advertise](#) • [Classified](#) • [Subbids](#)

## Beach dispute heads for highest court

POSTED: Wednesday, September 9, 2009 at 01:57 PM PT  
 BY: Edward Sullivan and Carrie Richter



May a court effect a “taking” of private property without just compensation? The United States Supreme Court will consider this question in its next term, beginning in October.

The case arose under the Florida Beach and Shore Preservation Act, which dealt with the erosion of beaches along the coast and provided for the establishment of a line along the existing division between state-owned and privately-owned properties. Once that line is established, the state may then provide for re-nourishment or restoration of the beach; however, any land seaward of that line becomes state property.

In this case, the line was drawn and a re-nourishment plan was approved that would have provided for a state-owned beach between 60 and 120 feet wide between private beachfront properties and the Gulf of Mexico.



In *Stop the Beach Renourishment Inc. v. Florida Department of Environmental Protection*, the Florida Supreme Court reversed a trial court determination that a taking had occurred under the act. Plaintiffs claimed that the statute allowing the boundary-setting process was unconstitutional because it deprived coastal landowners of contact with the coastal waters as well as subjected them to future potential additions to their property through re-nourishment of the coastal shoreline. Under the act any lands that were added to the coastline following the drawing of the boundary became state lands. Under common law, the change of coastal property lines through natural action

automatically adjusted the property interests according to whether the property were located on the seaward or landward side of the mean high-tide line. The statute thus changed the common law, and plaintiffs claimed that this recalculation of property rights was unconstitutional.

The Florida Supreme Court found that under the state’s constitution, the state holds title to lands between the mean high-tide line and the ocean in trust for the use of the people of the state. The coastal boundary was necessarily dynamic, changing as the shoreline changed through erosion, accretion or other natural forces. The court found that the statute struck the same basic balance between public trust and private rights as provided by the common law, although doing so in a different way.

The United States Supreme Court granted review of the case on June 15, and at least 12 amicus briefs have been filed on behalf of the landowners. The same number of briefs should be expected on behalf of the public agencies. Thus far, those siding with the landowner before the court include the Cato Institute, Oregonians in Action, and the Eagle Forum Education and Legal Defense Fund. The public agencies are likely to be supported by the National Association of Attorneys General, the National League of Cities, and the American Planning Association. With all this legal firepower, one can expect an exciting oral argument and potentially a new direction in property rights law.

Streams, rivers and shorelines change constantly. The genius of the common law is in finding a means to adjust property interests without the need of individual lawsuits when a beach erodes or a river changes its course. In the Florida case, the Legislature made a determination to alter a line so that public investment may be made to stabilize a shoreline. The interesting question before the court is whether the Legislature can “freeze” property rights at one point in time so as to justify the investment, but also to reap the gain of additional shorelands seaward of the line without including the interests of an adjacent landowner. The case should be interesting and may have a ripple effect in other jurisdictions.

**Editor’s note: Both of the authors of this column are members of the APA Amicus Curiae Committee, which has authorized the filing of a brief of APA on the side of the state in this case.**

Edward J. Sullivan has specialized in land use law for nearly 40 years and is an owner in the Portland office of Garvey Schubert Barer. Contact him at 503-228-3939 or at [esullivan@gsblaw.com](mailto:esullivan@gsblaw.com).

Carrie A. Richter specializes in land use and municipal law in the Portland office of Garvey Schubert Barer. Contact her at 503-228-3939 or at [crichter@gsblaw.com](mailto:crichter@gsblaw.com).



< [Increasing deficit will have dramatic impact](#) [Friends of Urban Renewal ends its fight](#) >

### POST A COMMENT

Your name \*

### MOST READ

- Uwajimaya waits on money
- Debate over Oregon wind credits heats up
- Pitching a hit in Beaverton
- One Main Place tower is for sale
- Timing is everything for Wal-Mart project

### POPULAR TAGS

- ABC ACE Academy AGC Ankrum Moisan Associated
- Architects Army Corps of Engineers **bid**
- results** Cardno WRG **construction**
- bidding** DEQ Energy Star EPA federal
- stimulus** gas tax general contractors Gerding Edlen Hoffman Construction Interface Engineering
- John Killin Ken Simonson layoffs **LEED** Lents Living
- Building Challenge LRS Architects **ODOT** Old Town
- Oregon Legislature Oregon OSHA Park Avenue West
- PDC pge park Portland Climate Change Project of the Day
- projects recession stimulus projects THA Architects
- Transportation TriMet Turner Construction
- unemployment Walsh Construction Washington County
- WES workforce development

DAILY JOURNAL OF COMMERCE 921 S.W. Washington St. Suite 210 Portland, Oregon 97205 503-226-1311