

**General Meeting of the
Captiva Erosion Prevention District**

Celebration Center
11513 Andy Rosse Lane, Captiva, FL
33924

Wednesday, January 14, 2009

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**General Meeting of the
Captiva Erosion Prevention District**
Celebration Center
11513 Andy Rosse Lane, Captiva, FL 33924
Wednesday, January 14, 2009

- I. Call to Order
- II. Roll Call
- III. Approval of CEPD Meeting Minutes
 - a) December 10, 2008 General Meeting Minutes
 - b) January 5, 2009 Emergency Meeting Minutes
- IV. Public to Be Heard
- V. Financial Report
- VI. Report of the Administrator
 - a) Blind Pass Report
 - b) Parking Revenue Enhancements
 - c) 3 Year Beach Monitoring Survey and Report Scope of Professional Services
- VII. Old Business – Coastal Coalition
- VIII. New Business
 - a) Annual Organization of District Board-New Board Chairperson and Officers
 - b) Directors and Officers Insurance
 - c) Open House Date
 - d) Logo Change

Adjourn

Minutes of the General Meeting of the Captiva Erosion Prevention District

Captiva Community Complex
11550 Chapin Lane, Captiva, FL 33924
Wednesday, December 10, 2008 @ 12:00 P.M.

Commissioners Present: Rene Miville (Chairman), Mike Mullins (Commissioner), Doris Holzheimer (Secretary), Henry Kaiser (Commissioner)
Commissioners Absent: Dave Jensen (Treasurer)
Administration Present: Kathy Rooker, Michelle Wesley

I. Call to Order

Chairman Miville called the meeting to order.

II. Roll Call

Chairman Miville performed the roll call, the results of which are detailed above.

III. Welcome and Introduction of Commissioner Henry Kaiser

- Chairman Miville introduced Commissioner Kaiser
- Commissioner Kaiser spoke briefly and made the following points:
 - He has been a homeowner on Captiva since 1980
 - He remembers what the Captiva beach looked like before renourishment and thinks that CEPD has done a great job. He is looking forward to serving on the Board.

IV. Approval of CEPD Meeting Minutes

a) November 12, 2008 General Meeting Minutes

Commissioner Holzheimer made a motion that the November 12, 2008 General Meeting Minutes be approved, which was seconded by Commissioner Mullins and passed unanimously.

b) November 13, 2008 Emergency Meeting Minutes

Commissioner Holzheimer made a motion that the November 13, 2008 Emergency Meeting Minutes be approved, which was seconded by Commissioner Mullins and passed unanimously.

V. Public to be Heard

- Paul Garvey requested that he be provided with a recording of the meeting after the meeting adjourned. Mr. Garvey was informed that, per the CEPD Rules of Procedure, requests for recordings of CEPD General Board meetings must be made at least 2 days prior to the meeting date. Mr. Garvey was further informed that no recording was being made of the current meeting.
- Kelsey Angstadt asked why the decision was made not to record the current meeting. Ms. Angstadt was informed that, with the introduction of new Administration staff into the CEPD office, the CEPD was looking to improve the efficiency of the CEPD Administrative processes relative to how they had been performed in the past. One efficiency that the new Administration staff implemented was the discontinuation of the practice of having an Administrator attend the Board meeting, then listen to a recording of that Board meeting to produce minutes – instead, the new Administrative staff is expected to pay attention during the Board meeting itself and take effective

notes from which minutes can be produced, thereby significantly reducing the number of hours involved in producing minutes.

VI. Financial Report

- Rita Donaldson, the current accountant for the CEPD, presented a number of Summary and Detail reports (attached to these minutes) relative to the CEPD General and Capital Funds.
- Commissioner Mullins noted that this month's financial reports reflect a transfer of money between the Capital Fund and the General Fund that was made to correct a previous error, in which parking lot revenues for FY 2007-2008 were transferred from the General Fund to the Capital Fund.
- In response to an observation by Commissioner Mullins, Ms. Donaldson noted that she had complied with the Board's previous request to modify the "Budget vs. Actual" reports. In the new version of those reports, the budgeted amounts to which actuals are being compared have been pro-rated from the annual budgeted amounts to correspond to the time period being reported. For example, the budget amounts in the October Budget vs. Actual report, represent 1/12 of the annual budget amounts since the annual budget amounts were pro-rated to correspond to the time period (one month) of the report).

At the end of the discussion of the Financial Reports, Chairman Miville noted that if agenda item IX, "Old Business – Auditor Proposals" could be moved up as the next item to be discussed, then Ms. Donaldson could leave the meeting, as her attendance for discussion of other agenda items was not required. The rest of the Board agreed to the agenda change.

VII. Old Business – Auditor Proposals

- Kathy Rooker presented a comparison of the two proposals received to perform the third party audit for CEPD for FY 2007 – 2008 (a copy of which is attached to these minutes). The differences noted were:
 - Tuscan & Company performs audit work for other government agencies in the area
 - Tuscan & Company is located in Lee County and it is easier to physically coordinate with them since they are a local firm
- Commissioner Mullins noted that it was good governance practice to change audit firms every three or four years.
- Commissioner Mullins made a motion to negotiate a contract with Tuscan & Company per the proposal that they provided, the motion was seconded by Commissioner Holzheimer and passed unanimously.

VIII. Report of the Administrator

a) Relocation of the Office Report

Kathy Rooker made the following points on this topic:

- The move to the new offices will commence on Friday, December 12 and will continue throughout the weekend.
- There will be no change in telephone number
- She expects the office to be fully operational on Monday, December 15

b) Blind Pass

Kathy Rooker made the following points on this topic:

- She will be meeting with Robert O'Neal and Steve Butelle about Blind Pass on December 17 at 3pm
- No invoices have been received from the County since the last Board meeting – CEPD has paid every invoice submitted by the County to date

The Board had a discussion about Blind Pass during which the following points were raised:

- Even though CEPD, per the Interlocal Agreements executed for this project, is a funding partner and not the project manager, CEPD still has fiduciary responsibility to ensure that the project proceeds in the most efficient and effective manner. CEPD will exercise that fiduciary responsibility and not just write out checks.
- Clarification is required relative to the costs that should be included in the total Blind Pass shared project costs. The County is including their project management and administrative expenses in the shared project costs, however CEPD is incurring expenses associated with fiduciary oversight and quality assurance that are not currently being included in the total shared project costs.
- Although a formal communication of these concerns to Lee County was discussed, the Board decided to wait for a report on Kathy Rooker's December 17 meeting with the County to decide if that formal communication is the appropriate next step.

During the discussion of Blind Pass, Commissioner Mullins noted that it appeared that the meeting was being tape recorded without an announcement being made. Paul Garvey and Kelsey Angstadt admitted that they were each making separate tape recordings of the meeting even though neither of them had made an announcement that they were doing so. Several Commissioners made remarks to the effect that tape recording individuals without making an announcement prior to initiating the tape recording is generally considered rude, unethical and reprehensible behavior, if not actually an illegal act, and that they were personally and professionally offended by that behavior.

c) *Parking Lot Meter Report*

Kathy Rooker introduced John Lundine, who is currently engaged by CEPD to maintain the parking meter facility, collect parking meter revenue and deposit it into the bank, to give an update on the parking lot meters. Mr. Lundine made the following points in his update:

- The new parking meter is scheduled to be shipped to CEPD on December 12, 2008
- A new parking meter shelter must be constructed to cover both parking meters, once the new meter is received. John proposed that the new shelter be constructed of an aluminum frame with a washable canvas top that can be removed in the event of a hurricane.

Commissioner Mullins made a motion that the Board delegate authority to Kathy Rooker to decide, with input from the community, on the final design of the parking meter shelter and oversee its implementation.

IX. **Consultant's Report - Outsourcing**

Bob Gray, Sr. Management Consultant from Partners in Progress Inc., reviewed the highlights of the outsourcing proposal that Partners in Progress presented in detail to the Board at the previous Board meeting;

- **Scope of Services:**
 - The performance of all of the CEPD administrative processes defined in the Inventory of CEPD Administrative Processes presented at the last Board meeting.
 - Responsibility for paying all expenses budgeted for in the current CEPD General Budget
 - Mr. Gray stated that in subsequent discussions about the proposal with Chairman Miville, which took place per the instructions issued at the last Board meeting, it was noted that the originally proposed scope of services did not include the performance of any coastal management functions and that Chairman Miville asked for that to be included in the scope of services. Mr. Gray noted to the Board that the originally proposed scope of services had been enhanced to include the coordination of Coastal Management functions, with previously defined assistance and support from a Coastal Management Consultant and CEPD's Coastal Engineering firm.
- **Proposed Contract Term:** 5 years
- **Proposed Price:** \$1.3 million for the 5 years, plus \$50,000.00 for the development of the CEPD Administrative Standard Operating Procedures manual during the first year of the engagement.

A member of the public, Ms. Kristoff, asked whether the proposed contract was being competitively bid. Ms. Kristoff was informed that it was not for the following reasons:

- Per CEPD's attorney, the contract was not required to be competitively bid
- Partners in Progress, Inc. is uniquely qualified to assume the CEPD administration on an outsourced basis, given its involvement in the complexities of CEPD's administrative processes and its work with Alison Hagerup in defining and documenting the beach renourishment cycle processes
- The continuation of the current CEPD Administration scenario, where the voluntary Board is required to actively manage the day-to-day administrative aspects of the CEPD, is untenable for the time period required to competitively bid the contract.

Commissioner Mullins made a motion that the CEPD execute a contract with Partners in Progress, Inc. to commence on January 1, 2009, per the outsourcing proposal presented by Mr. Gray, Commissioner Holzheimer seconded the motion and the motion was passed unanimously.

X. **New Business**

a) **Selecting a New Board Chairperson**

Commissioner Mullins requested that Chairman Miville change the effective date of his resignation as Chairman such that he will remain Chairman through the January 2009 Board meeting. Chairman Miville agreed to do so.

At this point, the Board agreed to change the order of the remainder of the agenda items so as to move item X. b), Public Relations Plan, to be the last item on the agenda and to table item X. d), Directors and Officers Insurance, until the next Board meeting.

b) *Proposed Changes to the CEPD Rules of Procedure*

- Commissioner Mullins made a motion to change the regular meeting place from the Captiva Community Center Complex to 11513 Andy Rosse Lane, Unit 4, Captiva, FL 33924. Commissioner Holzheimer seconded the motion and it was passed unanimously.
- Commissioner Mullins made a motion to change the CEPD Rules of Procedure, Rule 1.03 (c), so as to replace the first sentence of that rule and section, which currently states, "All regular meetings shall be held at the Captiva Community Center Complex." with "For purposes of this Rules of Procedure document, the regular meeting place is defined as 11513 Andy Rosse Lane, Unit 4, Captiva, FL 33924. Regular, special and emergency meetings can be held in locations other than the regular meeting place, as long as the address of that other location is included in the public notice for the meeting in question. The Administrator may choose the locations for the regular meetings."
- Commissioner Mullins made a motion to change the CEPD Rules of Procedure, Rule 1.11 (b), so as to delete the first sentence of that rule and section, which currently states, "The Administrator shall be a salaried employee of the District Board."

c) *Meeting Calendar for 2009*

After discussing multiple aspects of scheduling meetings for 2009, Commissioner Mullins made a motion that the schedule for the General Meetings of the CEPD Board of Commissioners for 2009, and the Public Notice of same, stipulate that the meetings will be held on the second Wednesday of every month, with the exception of April 2009 during which the meeting will be held on the third Wednesday, at noon. Commissioner Holzheimer seconded the motion and it was passed unanimously.

d) *Public Relations Plan*

Commissioner Holzheimer presented a draft Public Relations Plan (a copy of which is attached to these minutes) and recommended that a subcommittee be formed to work on the plan. Commissioner Mullins made a motion that a subcommittee is formed to work on the CEPD Public Relations plan and that Commissioner Holzheimer be appointed chairperson of that committee. Commissioner Kaiser seconded the motion and it was passed unanimously. Commissioner Holzheimer stated that she was distressed about the uncoordinated work of organizations interested in the beaches and recommended that CEPD convene people with interest in the beaches to develop some common talking points. Commissioner Holzheimer offered to coordinate this.

e) *New Topic, not on agenda: Loss of Beach Funding from Bed Tax*

The Commissioners discussed the fact that many different organizations were concerned about the recent decisions by the Lee County Commissioners that affect beach funding provided by the bed tax and that

there was a need to form a coalition so that those organizations can speak with one voice and be heard. Commissioner Mullins noted that the idea of a coalition was already being raised by the Committee of the Islands, and suggested that the topic be included on the agenda for the January CEPD Board meeting when there may be more specific proposals to discuss. The Board agreed.

f) *New Topic, not on agenda: Chapel by the Sea request for exemption*

Commissioner Mullins stated that he thought that the Board should be aware that CEPD has received a letter from attorneys for Chapel by the Sea asking what form they have to fill out to receive the same exemption from the special assessment that the CCA currently receives. Commissioner Mullins is working with Nancy Stroud to address the issue.

The meeting adjourned at 3:20pm.

Minutes of the Emergency Meeting of the Captiva Erosion Prevention District
 The Celebration Center
 11513 Andy Rosse Lane, Unit 4, Captiva, Florida 33924
 Monday, January 5, 2009 @ 12:00 P.M.

Commissioners Present: Rene Miville (Chairman), Mike Mullins, Doris Holzheimer (Secretary), Henry Kaiser, Dave Jensen (Treasurer).
 Administration Present: Kathy Rooker (Administrator)

I. Call to Order

Chairman Miville called the meeting to order at 12:03 P.M.

II. Roll Call

Chairman Miville performed the roll call, the results which are detailed above.

III. Old Business

a) Public Relations Activities-key points

- The draft Public Relations Plan has not advanced. Feedback to the draft plan had not been returned to Doris.
- It is important to further plans to convene a group interested in beaches.
 - The Tourist Development Council has reallocated additional funds to the Visitors and Convention Bureau for marketing purposes.
 - Can we speak with one voice about our concerns in reference to the reallocation of funds?
 - Research of the TDC documents demonstrated there was to be a commitment to beaches. This priority has shifted and it is questionable how this commitment will be met.
 - The creation of a coastal coalition would provide one voice and a cover for various organizations to address beach concerns while retaining their objectives.
 - It is critically important to beach renourishment that we make sure the TDC is doing what it should do and that the right people are lobbied.
 - CEPD should do the research, send out invitations, and do power points to build support within a coalition.
- The draft PR plan that includes public outreach and newsletters is a good start and insufficient.
 - We must determine the content of our PR message and the audience. The audience would include project funders such as the county and the local property owners that pay for beach renourishment as well as all eligible referendum

voters. Regardless of whether we get additional monies; there is a need to move forward with renourishment.

- We need a plan to develop support on and off the island before the next vote for beach re-nourishment
- There has been a turnover of property owners who have not been involved in a previous renourishment.

The Commissioners discussed various aspects of developing a coastal coalition including setting a date for a meeting, the different organizations that may share a concern for Lee County beaches, the objectives of a meeting, and points of commonality among organizations.

b) Audit

A survey was taken to determine if all Commissioners that served during the last fiscal year completed and returned their questionnaire to Tuscan and Company. All Commissioners had returned the questionnaire with the exception of Harry Kaiser. Commissioner Kaiser did not take office until after the audit period.

c) Partners in Progress Contract- key discussion points

- The PIP contract should state exactly what PIP will do and what it won't do.
- The Administrative Processes are a part of the contract and state what PIP will do.

The Commissioners discussed the sharing of parking revenues with PIP and it was agreed between the Commissioners and PIP to reduce the contracted amount to begin sharing parking revenues from \$120,000 to \$110,000 and to include parking lot maintenance.

d) Meeting Dates, not on agenda

The Commissioners agreed to a Strategic Planning Workshop Meeting on January 15, 2009 at 10 A.M. at the CEPD office.

Proposed budget hearing dates will be September 9, 2009 and September 16, 2009.

The meeting adjourned at 2:20 P.M.

COASTAL PLANNING & ENGINEERING, INC.

2481 NW BOCA RATON BOULEVARD, BOCA RATON, FL 33431

(561) 391-8102 Telephone (561) 391-9116 Facsimile

Web Site:

E-mail:

January 8, 2009

Kathleen Rooker
Captiva Erosion Prevention District
11513 Andy Rosse Lane
P.O. Box 365
Captiva, FL 33924

**Subject: Captiva Island 3-Year Monitoring Survey and Report
Scope of Work**

Dear Kathy:

The scope of work (SOW) and fee proposal for the 3-Year monitoring survey and report of the 2006 nourishment project is enclosed for your review and approval. The SOW has been coordinate with Lee County and includes items required by FDEP permits for both the beach and Blind Pass, so that duplication of effort is avoided. The Blind Pass Restoration Project monitoring covers Gulf shoreline survey requirements similar to the beach project and additional aerial photographs for the Blind Pass. The timing of this survey will be one year after last year's monitoring survey (March), one year after last year's Corps emergency project (April) or at completion of Blind Pass dredging (April-May), whichever is latest.

The FDEP is planning to conduct their 4-year periodic survey of southwest Florida this year, but as of now, Captiva Island is not included in their plans and there should be no duplication of effort.

A copy of this Scope of Work and Fee Proposal will be provided to the FDEP for their review.

If you have any questions, please call me.

Sincerely,

COASTAL PLANNING & ENGINEERING, INC.

Stephen Keehn, P.E.
Senior Coastal Engineer

cc: Vincent George, FDEP
Jim Taylor, CPE
Jeffrey Andrews, PSM, CPE

**SCOPE OF ENGINEERING AND SURVEY SERVICES
3-YEAR BEACH MONITORING SURVEY AND REPORTS
CAPTIVA & SANIBEL ISLANDS 2005-6 RENOURISHMENT PROJECT
January 8, 2009**

Introduction:

This scope of work will provide the survey and engineering services required to conduct the 3-year monitoring survey and report required per the state permit (FDEP Permit No. 0200269-001-JC) and Physical Monitoring Plan of the Captiva Island and Sanibel Island Beach Renourishment Project; March 2005. All surveys and reports will be conducted in accordance with the March 2004 Bureau Monitoring Standards for Beach Erosion Control Projects. The monitoring tasks include a beach profile survey, aerial photographs, a survey report, and an engineering monitoring report. The services will include some of the monitoring requirements in support of the Blind Pass Restoration Project (FDEP Permit No. 02643-001-JC), so that the cost of any duplication is avoided. The lump sum fee for the task is \$89,215. The work will begin on completion of the Blind Pass dredging or April 2009, whichever is late.

I. Beach and Hydrographic Survey \$54,680

All work will be conducted under the direct supervision of a Florida Registered Professional Surveyor and Mapper and in accordance to Section 01000 (Beach Profile Topographic Surveying) and 01100 (Offshore Profile Surveying) of the March 2004 Bureau of Beaches and Coastal Systems Monitoring Standards for Beach Erosion Control Projects including field methodology and final deliverables.

Prior to the start of the survey a reconnaissance of FDEP 2nd order monuments will be conducted to confirm that survey control is in place and undisturbed using Real Time Kinematic Global Positioning System (RTK GPS). In order to achieve required accuracy, the survey will be controlled using FDEP 2nd order monuments. All assessable 2nd and 3rd order FDEP control monuments in the project area will be located using RTK GPS.

Topographic and Hydrographic profile surveys will be collected from R83 through R123 including intermediate monuments R83.5, R83.7, R84.6, R110.5, R111.5, and R112.5. Profile R84 will be run at two azimuths. Profile line R13.5 will be a new survey line in support of Blind Pass Restoration permit requirements. Profile lines R106-R118 are required by both the beach and inlet permits. All data seaward of the dune will be collected using RTK GPS technology. Upland areas inaccessible to RTK GPS will be collected using standard differential leveling techniques. Upland topography will extend approximately 150 feet landward of the vegetation line or until an obstacle is encountered.

Hydrographic portions of the profile line will be collected from CPE's 24-foot survey vessel equipped with RTK GPS technology and a dynamic motion sensor. Standard hydrographic procedures will be followed including all necessary quality control

checks. In order to maintain the vessel navigation along the profile lines HYPACK navigation software will be used. This software provides horizontal position to the sounding data allowing real-time review of the profile data in plan view or cross section format. HYPACK also provides navigation to the helm to control the deviation from the online azimuth. The landward limits of the hydrographic survey will be based on a minimum of 50 feet beyond the seaward extent of the beach profile. Profiles will extend seaward beyond the depth of closure, approximately 2,000 feet offshore. The survey results will be reduced and quality controlled in CPE office. The survey will be conducted using NAVD 88 and Florida State Plane Coordinate System NAD 83.

Upon completion of the survey and aerial photography, a certified survey report will be prepared that compares the two-year post construction conditions with surveyed beach conditions. The report will consist of the required FDEP Monitoring Standards, which include: Beach Profile Survey Report Notes and Certification/Charts, Monument Information Report, Federally Compliant Metadata, xyz data, DEP ASCII files, Profile Plots, Field Book Pages, and Ground Digital Photography.

II. Controlled Aerial Photography \$19,724

Color aerial photography will be obtained for the Captiva Island Project between Redfish Pass and Bowmans Beach (R83 through R123). The Blind Pass ebb shoal complex and the dredge area within the inlet will be photograph in a similar fashion in support of the Blind Pass Restoration Project. The aerial photographs between R106 and R118 are required by both permits. Surveyors from CPE will coordinate ground control and targeting with the designated sub-contractor, but the sub-contractor will provide RTK control. The sub-contractor will provide 9"x9" photographs and CD-ROM controlled raster imagery files. The photography will be collected following FDEP's standards for Aerial Photography Acquisition for Beach Erosion Control Projects (section 02000: March 2004). The aerials will be used in the survey report described in paragraph I above. Two oblique aerial photographs of Blind Pass will be taken from to duplicate historic photograph views of the region.

III. One-Year Engineering Monitoring Report: \$14,811

An engineering monitoring report will be prepared containing survey monitoring results compared to the pre- and post-construction conditions. The changes in shoreline width, beach sand volume placed and remaining and other pertinent beach characteristics will be described and illustrated in tables and figures. The report will summarize and discuss the data, the performance of the beach fill project, and identify erosion and accretion patterns within the monitored area. In addition, the report will include a comparative review of project performance to expectations and identification of impacts attributable to the project and recent storms. Appendices will include plots of survey profiles and graphical representations of volumetric and shoreline position changes for the monitoring area. Results will be analyzed for patterns, trends, or changes between annual surveys and cumulatively since project construction. Results of the survey and engineering report will be presented at a time

and place determined by CEPD. The report will not cover the post-construction requirements for the Blind Pass Restoration Project, although its benefit to the Captiva and Sanibel Island Renourishment Project will be described.

F:\Marketing_Proposals\Lee\Captiva\2009 survey\ 3-year Beach Monitoring Survey and Report Captiva & Sanibel 120808.doc

2009 CEPD 3-Year Beach Monitoring Survey and Engineering Report				
Activity Type/ Task	Type	Resource Hours/ Units	Billing Rate	Resource Contract
Captiva 2009 Annual Monitoring		662.0		89,215
Administration		36.0		3,884
Labor	Project Surveyor	8.0	100.00	800
Labor	Engineer	4.0	145.00	580
Labor	& Mapper	8.0	145.00	1,160
Labor	Surveyor	8.0	90.00	720
Labor	Survey Technician	8.0	78.00	624
Mobilization & Travel		84.0		9,204
Expense	Meals	16.0		576
Expense	Lodging	6.0		600
Expense	Tolls	1.0		24
Expense	Truck (2WD road use)	1,000.0	0.50	500
Labor	Survey Technician	28.0	78.00	2,184
Labor	Surveyor	28.0	90.00	2,520
Labor	Project Surveyor	28.0	100.00	2,800
Topo		192.0		19,652
Labor	Survey Technician	64.0	78.00	4,992
Labor	Surveyor	64.0	90.00	5,760
Labor	Project Surveyor	64.0	100.00	6,400
Expense	VEHICLE	3.0	105.00	315
Expense	TIME)	3.0	495.00	1,485
Expense	Level/Tripod/Rod/Tide	3.0	65.00	195
Expense	Digital Camera	3.0	10.00	30
Expense	Mileage	50.0	0.50	25
Expense	Insurance	6.0	75.00	450
Hydro		80.0		11,532
Labor	Survey Technician	36.0	78.00	2,808
Labor	Surveyor	36.0	90.00	3,240
Labor	Project Surveyor	4.0	100.00	400
Labor	& Mapper	4.0	145.00	580
Expense	Privateer)	3.0	790.00	2,370
Expense	Fathometer w/Digitizer	3.0	165.00	495
Expense	Compensator	3.0	215.00	645
Expense	Velocity Meter	3.0	63.00	189
Expense	System	3.0	260.00	780
Reduction & Reporting		106.0		10,408
Labor	& Mapper	16.0	145.00	2,320
Labor	Senior CAD Operator	10.0	100.00	1,000
Labor	Project Surveyor	24.0	100.00	2,400
Labor	Surveyor	24.0	90.00	2,160
Labor	Survey Technician	8.0	78.00	624
Labor	CADD Operator	16.0	85.00	1,360
Aerial Photography		16.0		19,724
Labor	Surveyor	8.0	90.00	720
Labor	Project Surveyor	8.0	100.00	800
Expense	Aerial Photographs	1.0		17,709

2009 CEPD 3-Year Beach Monitoring Survey and Engineering Report

Activity Type/ Task	Type	Resource Hours/ Units	Billing Rate	Resource Contract
Engineering Monitoring Report		148.0		14,811
Labor	Engineer	24.0	145.00	3,480
Labor	Principal Engineer	1.0	215.00	215
Labor	Engineer	74.0	95.00	7,030
Labor	& Mapper	2.0	145.00	290
Labor	Project Surveyor	6.0	100.00	600
Labor	CADD Operator	24.0	85.00	2,040
Labor	Clerical	17.0	68.00	1,156

Lewis Stroud & Deutsch, P.L.

MEMORANDUM

TO: Board of Commissioners
Captiva Erosion Prevention District

FROM: Nancy E. Stroud
Christine P. Tatum
Lewis, Stroud & Deutsch, P.L.

RE: Update on Liability Issues

DATE: December 22, 2008

You have asked us to provide the Board with an update on the potential liability of CEPD Commissioners and the desirability of obtaining additional insurance coverage. As public officials, the individual members of the Board have the potential for liability exposure for certain actions that they may take. The two most common areas of liability are tort (negligence) actions and Civil Right actions. Each has separate liability implications, and are addressed below.

1. **State Tort Liability Generally.**

It is our understanding that the District currently maintains general liability insurance which, in conjunction with the statutory safeguards enacted by Florida Legislature, provides a significant level of protection from claims against both the District and the individual Commissioners for claims based on negligence. It would be advisable to review the coverage provided by the current insurer, as there is insurance available particularly designed to provide coverage for government agencies.

*One Lincoln Place, 1900 Glades Road, Suite 251, Boca Raton, Florida 33431
Telephone — 561 826 2800 Facsimile — 561 826 2828*

The Captiva Erosion Prevention District Board is a public body which is subject to the protections of Section 768.28, Florida Statutes. In accordance with section 13, Article X of the Florida Constitution, Section 768.28, Florida Statutes waives sovereign immunity for the state and its agencies and subdivisions to the extent specified therein, meaning that those agencies can be subject to tort claims. However, monetary limitations on judgments against the state or its agencies and subdivisions are limited as prescribed in the statute. In addition to the monetary limits of \$100,000 per occurrence imposed on judgments against the Board, the statute also shields individual Commissioners and employees of the Board.

Section 768.28(9)(a), Florida Statutes, specifically provides:

“No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”

As a practical matter, if a Complaint is filed in Court naming both the CEPD and individual Commissioners, an attorney will most likely be appointed by the insurance company to represent the CEPD, and that attorney will have the opportunity at an early stage of the litigation to have the individuals dismissed based on their protections under Section 768.28(9)(a), Florida Statutes, set forth above.

Section 111.28(9)(a), Florida Statutes authorizes an agency to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or

Lewis Stroud & Deutsch, P.L.

function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety. Additionally, in certain circumstances when a public official is sued in an individual capacity, he or she may choose to obtain an attorney at their own expense to represent them in the matter. Florida law also provides protection for elected officials in such circumstances, as Florida courts have long recognized that public officials are entitled to reimbursement for legal representation at public expense to defend themselves against litigation arising from the performance of their official duties while serving a public purpose. For public officials to be entitled to representation at public expense, the litigation must (1) arise out of or in connection with the performance of their official duties and (2) serve a public purpose.

2. **Federal Civil Rights Claims**

Government employees and officers may be sued in their official and individual capacity for civil rights violations, but are protected to a great extent by the defense of qualified immunity. Under the doctrine of "qualified immunity," a government official performing a discretionary function is shielded from liability unless it can be proved that the official's conduct violated clearly established statutory or constitutional rights. The purpose of this immunity is to allow government officials to carry out their discretionary duties without the fear of personal liability or harassing litigation, "protecting from suit all but the plainly incompetent or one who is knowingly violating the Federal law." *Lee v. Ferraro*, 284 F. 3d 1188, 1194 (11th Cir. 2002). Pursuant to well-established case law in the federal courts in Florida, qualified immunity is the rule rather than the exception.

It would be unusual for a General Liability policy to provide coverage for Federal Civil Rights claims, although it is possible to obtain Public Officials Errors and Omissions coverage as a rider to certain General Liability policies. Public Officials Errors and Omissions insurance provides coverage for liability resulting from errors or omissions in the performance of professional duties, and will generally provide coverage against Civil Rights claims. This type of insurance may also be referred to as the government form of "directors and officers" liability insurance.

3. **Intentional Acts**

As discussed above, there are several safeguards providing protection for government officials in the State of Florida, including insurance and statutory limitations on liability. You will note that all of the protections are based upon acts performed by an official in the course of his duties. There is no coverage available which provides coverage for the intentional, willful or malicious acts of any government official. Please note that this would be an extremely unusual circumstance, as the vast majority of actions taken by public officials are clearly done "within the scope" of their office.

Conclusion: It would be advisable for the District to review the coverage provided by the current insurance provider and to consider acquiring Public Officials Errors and Omissions coverage, if none currently is provided. It would also be advisable for the CEPD to adopt a resolution or procedure which clarifies when the district will obtain counsel for individual commissioners, and the process for payment or reimbursement of

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any fees incurred. Attached are copies of such a policy and also a municipal ordinance to the same effect, which can serve as a reference for your consideration.

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EXECUTIVE LIABILITY

INSURANCE CARRIER:	Great American Insurance Company
CARRIER RATING:	A XIII (Source: <i>A.M. Best</i>)
POLICY TERM:	September 1, 2008 to September 1, 2009
DIRECTORS AND OFFICERS LIABILITY:	This coverage agreement provides protection for the directors and/or officers of the insured corporation against claims resulting from alleged breach of duty, negligence, error or omission while acting in their capacities as directors and/or officers.
CORPORATE INDEMNIFICATION:	This coverage agreement will reimburse the insured corporation after its indemnification of its directors and officers because of claims made against the directors and officers for alleged breach of duty, negligence, error or omission.
FIDUCIARY COVERAGE:	The Employee Retirement Income Security Act of 1974 imposes personal liability on Fiduciaries of employee welfare plans for acts of mismanagement or errors in judgment. This policy will pay on your behalf all sums you become legally obligated to pay as a result of any Wrongful Act . Wrongful Act means a breach of fiduciary duty, including negligence, by you in the discharge of duties as respects Trusts or Employee Benefit Plans.
EMPLOYMENT PRACTICES LIABILITY:	Employment Practices Liability covers "employment practices," generally defined to include sexual harassment, discrimination and wrongful termination. Coverage is usually extended to failure to promote, breach of contract, retaliation and deprivation of a career opportunity.
LIMIT OF COVERAGE:	<p>Shared Limits:</p> <p>Option 1: \$1,000,000 per Claim and in the aggregate for D&O/EPL Option 2: \$2,000,000 per Claim and in the aggregate for D&O/EPL Option 3: \$3,000,000 per Claim and in the aggregate for D&O/EPL</p> <p>Separate Limits:</p> <p>Option 4: \$1,000,000 per Claim and in the aggregate for D&O \$1,000,000 per Claim and in the aggregate for EPL Option 5: \$2,000,000 per Claim and in the aggregate for D&O \$2,000,000 per Claim and in the aggregate for EPL Option 6: \$3,000,000 per Claim and in the aggregate for D&O \$3,000,000 per Claim and in the aggregate for EPL</p>
DEDUCTIBLES:	\$10,000 Each Claim
IMPORTANT:	This is a "claims made" policy and covers only those claims occurring <u>and</u> reported during the current policy year. If the carrier terminates or nonrenews coverage, an extended claim reporting provision may be available. If you terminate coverage, steps must be taken to arrange coverage for claims reported after policy expiration.
DISCOVERY:	One year at 40% of the premium on a bilateral basis
RETRO DATE:	Date of Inception

Please refer to the policy contract for specific terms, conditions, limitations and exclusions.

PREMIUM OVERVIEW

Option 1: \$3,010.00 + applicable Florida Hurricane and FIGA surcharges

Option 2: \$4,515.00 + applicable Florida Hurricane and FIGA surcharges

Option 3: \$5,870.00 + applicable Florida Hurricane and FIGA surcharges

Option 4: \$3,465.00 + applicable Florida Hurricane and FIGA surcharges

Option 5: \$5,270.00 + applicable Florida Hurricane and FIGA surcharges

Option 6: \$6,565.00 + applicable Florida Hurricane and FIGA surcharges

Additional Coverage Option:

A shared Fiduciary limit is available for an additional premium of 20% of the premium selected

Please refer to the policy contract for specific terms, conditions, limitations and exclusions.

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More about...

Kathy-

Please see below for the revised premiums based on the higher retentions...

\$25,000 retention

\$1M - \$2,865
\$2M - \$4,295
\$3M - \$5,585
\$1M/\$1M - \$3,295
\$2M/\$2M - \$5,010
\$3M/\$3M - \$6,245

\$50,000 retention

\$1M - \$2,700
\$2M - \$4,045
\$3M - \$5,260
\$1M/\$1M - \$3,100
\$2M/\$2M - \$4,720
\$3M/\$3M - \$5,880

I look forward to talking to you later today.

Thanks,
Jason R. Fox, CIC
Assistant Vice President
Wachovia Insurance Services
Direct Dial: (813) 636 5366
Fax: (813) 282 1020
Email:

Chat Search, add, or invite

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- Rita Donaldson
- Robert Gray
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- Rene Miville

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