

Ruling dooms dune

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Condo gets OK to level sand that obstructs ocean view

A sand dune on Fort Lauderdale's beach that attracts trash and obstructs the ocean view of a condominium community can be destroyed, a state judge ruled this week.

The Mayan Beach Club, a low-rise complex at the southern end of the beach, will be allowed to level the 176-foot-long dune on its property, despite objections of environmentalists and county officials who say the dune is important for maintaining the beach and providing nesting habitat for sea turtles.

Florida Administrative Law Judge David Maloney said the dune played no role in preventing coastal erosion and provided no better habitat for nesting sea turtles than adjacent sections of beach. He said there was no evidence endangered green turtles preferred nesting on the dune over other habitat and none that it prevented emerging hatchlings from being disoriented by lights from shore.

The case arose when Broward County and Sea Turtle Oversight Protection went to court against the condo and the Florida Department of Environmental Protection, which had issued a permit for the dune's destruction. They argued the dune provided important turtle nesting habitat, helped anchor the shoreline, harbored an endangered plant called the beach star and should not be destroyed simply for blocking an ocean view. Richard WhiteCloud, head of Sea Turtle Oversight Protection, said the dune currently contained two sea turtle nests, one established by a threatened loggerhead turtle, the other by an endangered green turtle.

"It is sea turtle nesting habitat, and this would result in a modification of that habitat," he said. "They'll lose nesting habitat, and the green turtles will have to search long and far for other places. They're attracted by its elevation and its sheltering capability. A case in point: We could be having a hurricane, and we'll see how high and dry these nests stay compared to the others."

He said the judge was wrong to dismiss the testimony of his side's experts, which included Kirt Rusenko, a sea turtle expert at the Gumbo Limbo Nature Center, and Blair Witherington, a marine biologist with the Florida Fish and Wildlife Conservation Commission, who both testified the dune's destruction would harm sea turtles.

He said his organization has not yet decided what to do in response to the ruling.

The condo, which was joined in the suit by the adjacent Ocean Lane Villas, said the dune may have been built up after tractor tires washed onto the beach, having been



Residents of the Mayan Beach Club condominium says this sand dune blocks their ocean view. (Amy Beth Bennett, Sun Sentinel / November 21, 2011)

dumped offshore in a failed attempt to create an artificial reef.

The judge found that the dune – which he called a mound – lacked the height or continuity along shore to meet the legal definition of a "significant dune" and would not provide any defense against storms.

Mitchell Burnstein, attorney for the Mayan Beach Club, said in an email, "Obviously, my client is quite pleased with yesterday's ruling. Throughout this long process, the Association always has cooperated with DEP for permission to lawfully remove the sand mound."

"The Association is also pleased by the judge's recognition of its empirical evidence proving that no nesting marine turtles, or their hatchlings, will be harmed by removal of the sand mound," he said.

Although the condo had no legal obligation to do so, he said it voluntarily spent thousands of dollars planting salt-tolerant vegetation to compensate for the loss of the dune. And he said the association would "under no circumstances" destroy the dune before the end of sea turtle nesting season.

Eric Myers, beach erosion administrator for Broward County, called the decision "disappointing."

"The standard [the judge] held the state to was pretty low," he said. "He didn't accept much in terms of what we offered. Obviously he gave great deference to the state agency."

The case may not be over. The judge's ruling came in the form of a recommended order to the Department of Environmental Protection to issue the permit for the dune

destruction. All parties may now file exceptions, in which they contest elements of the order and file responses to the other side's exceptions. Finally each side can appeal the ruling.