

**City of Deerfield Beach adv.
Town of Hillsboro Beach**

**Joint Commission Meeting
March 1, 2016**

HILLSBORO ADV. DEERFIELD - NATURE OF DISPUTE

This dispute focuses around allegations that the groins on Deerfield Beach are causing erosion to the “Hot Spot” Area that is on Hillsboro’s and Deerfield’s Beach.

- Beach erosion is a grave concern for both the Town and City. It is a state wide problem which communities should work together in managing.
- Hillsboro and Deerfield have worked together over the past years to manage this issue.

THE TOWN OF HILLSBORO HAS A MUCH LARGER BEACH

- The Town of Hillsboro Beach has *over 3X* the amount of beach of that of the City of Deerfield Beach has:
- Town of Hillsboro Beach: 3.27 miles of beach or 5700 yards
- City of Deerfield Beach: just over 1 mile of beach or 1911 yards.
- The Town has considerably more beach to protect and preserve, yet does not want to pay for it.

CHRONOLOGY OF MAJOR EVENTS BEFORE TODAY



**Hillsboro/Deerfield
Interlocal Agreements:
Regional Approaches to the
Problem**

THE 1997 INTERLOCAL AGREEMENT

The Town and City have entered into several agreements over the years to manage beach erosion.

- In December 1997, the City entered into an Interlocal Agreement, proposed by the Town, for purposes of beach re-nourishment. The majority of the sand was placed on Hillsboro's beach.
- The Agreement provided that the 3 southernmost groins in Deerfield would be modified *not* removed under Hillsboro's project design plan.
- Also provided for 5 groins on Hillsboro beach to be removed. *Why significant now?* Hillsboro was permittee (*and initiated the project*) under the 1997 agreement and Hillsboro's plans did not include removal of the groins on Deerfield Beach as it did in Hillsboro – How can Hillsboro now assert the groins are causing erosion?
- 1997 agreement also provided for 550,000 cubic yards of sand to be placed on Hillsboro Beach from Borrow Area 1 located off shore of Deerfield Beach.

HILLSBORO COULD NOT BE REIMBURSED BY THE STATE UNDER THE 1997 INTERLOCAL AGREEMENT WITHOUT DEERFIELD'S COOPERATION AND PUBLIC ACCESS TO BEACH



The Town relies on the Agreement with City for State reimbursement:

6. State Funding Reimbursement Agreement: A request will be submitted to the Florida Department of Environmental Protection by the Town of Hillsboro Beach and the City of Deerfield Beach requesting their consideration of a State funding reimbursement agreement. The State's acceptance of this reimbursement agreement request would enable the Town to be reimbursed for their qualifying share at such time as monies are appropriated from the Legislature. The State requires that this joint project be considered as one project and has determined that the project as a whole would qualify for between 18% and 25% State funding. This State funding recognizes a 50% cost share for the portion of the project within Deerfield Beach plus some additional percentages for parking and public beach access at the northern end of Hillsboro Beach. It is agreed that any monies reimbursed from the State will be issued to the Town of Hillsboro Beach for reimbursement of the costs that they advanced for the 50% share of both the City's and the Town's portion of the project.

THE 2010 INTERLOCAL AGREEMENT

- In November 2010 the City entered into a second Interlocal Agreement with the Town again for purposes of beach re-nourishment.
- 340,000 cubic yards of sand taken from Borrow Area 1 located offshore of Deerfield Beach. Most sand placed on Hillsboro Beach.

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, Town and City agree as follows:

1. **Project Description:** The proposed Hillsboro/Deerfield Beach - Beach Renourishment Project (Project) involves placing beach compatible sand from Broward County Borrow Area 1 (BA-1) onto the southern 1,400 linear feet of beach in Deerfield Beach and the northern 5,775 linear feet of the Town of Hillsboro Beach. The Project footprint commences approximately 300 feet south of DEP Monument R-5 and terminates approximately 450 feet south of DEP Monument R-12. The Project involves placing approximately 375,000 cubic yards of fill material over approximately 7,175 linear feet of beach. The northern 1,075 linear feet of the Project consists of dune/dry beach rehabilitation only with no fill material placed below the MHWL. The northern 1,075 linear feet of the Project will involve the placement of approximately 5,000 cubic yards of fill material, while the southern 6,100 linear feet of the Project will involve the placement of approximately 370,000 cubic yards of fill material. The average placement of fill in the southern 6,100 linear feet of the Project will involve the placement of approximately 60.7 cubic yards per linear foot. Approximately 25,000 cubic yards of material will be placed in the City and 350,000 cubic yards will be placed in the Town. Project construction is expected to take approximately 2 to 4 weeks, with round the clock operation of the dredge, weather permitting.



THE 2014 INTERLOCAL AGREEMENT

- In April 2014 the City entered into a third Interlocal Agreement with the Town yet again for purposes of beach re-nourishment. This agreement involved a smaller area of beach but the Town worked with the City as recently as 2014.

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, Town and City agree as follows:

1. Project Description: The proposed project includes the placement of beach compatible sand from approximately SE 7th Street in Deerfield Beach to the Ocean Vista Condominium in Hillsboro Beach (Figure 1). The total project length is approximately 1940 feet.

The beach nourishment will require approximately 36,000 cubic yards of sand which will be placed in a non-uniform method between SE 7th Street in the City and Ocean Vista Condominium in the Town. Currently there is no Erosion Control Line established pursuant to Chapter 161, F.S. between SE 7th street and the Ocean Harbor condominium; therefore, the nourishment in this area will be limited to dry beach placement only.

From Ocean Harbor Condominium to the south Deerfield Beach limit, the project will extend the mean high water shoreline seaward to the seaward end of the groins (Figure 1). Relative to Hillsboro Beach, the beach will be extended to allow a continuous beach across the municipal boundary, and then taper to the existing beach at the Ocean Vista Condominium.

ALL THREE PREVIOUS INTERLOCAL AGREEMENTS REQUIRED DEERFIELD'S PARTICIPATION FOR HILLSBORO TO GET STATE REIMBURSEMENT

- Hillsboro cannot get State funding for beach re-nourishment on its own because it has no public beach access and any state funding must include “adequate public access.”

See Fla. Stat. 161.101(12)

- Hillsboro will not be reimbursed unless it works with Deerfield because it has no public beach access.
- Why has Hillsboro opted not to continue its cooperation with Deerfield?

Example of reimbursement language from 2010 agreement:

6. **State and Local Funding Reimbursement:** The Town and City participated in a joint beach nourishment in 2011. Due to the impacts of hurricane Sandy in 2012, the State of Florida Legislature appropriated \$700,000 to be used for beach re-nourishment in the Town and City. The \$700,000 will be applied to the total cost of the project.



PAST INTERLOCAL AGREEMENTS ARE TANTAMOUNT TO WAIVER AS WAS HILLSBORO'S PERMIT IN 1997

In 1997 the Interlocal agreement provided for:

- Deerfield Groins to be *modified* under Hillsboro's design plan.
- This made the Groins more permeable.
- Under the previous Interlocal Agreements, Hillsboro received close to 900,000 cubic yards of sand from Borrow Area 1 offshore of Deerfield Beach – now depleted.
- All Interlocal Agreement provided for Hillsboro to receive state reimbursement.

Original 1997 Permit Materials

IN 1997 TOWN WANTED TO "REHABILITATE" DEERFIELD'S GROINS



Florida Department of Environmental Protection

NOTICE TO PROCEED

Permittee:

Town of Hillsboro Beach
c/o Harvey Sasso
1210 Hillsboro Mile
Hillsboro Beach, Florida 33062

Permit Number: 0128853-001-JC

You are hereby granted final authorization to proceed with the construction or activities authorized by the permit number referenced above. Authorized work must conform with the detailed project description, approved plans, and all conditions including preconstruction requirements included in the final order. A brief description of the authorized work follows.

Project Description: The project involves the restoration of 6,120 feet of eroding shoreline along Hillsboro and Deerfield Beach. Approximately 500,000 cubic yards is to be placed along the northern 5,430 feet of Hillsboro Beach and 50,000 cubic yards is proposed to be placed along the southern 690 feet of Deerfield Beach. The beach restoration site is located between the Department of Environmental Protection's DNR reference monuments R-6 and R-12. A typical beach profile of elevation +9 feet NGVD, construction berm width of 100 feet, and construction slope of 1 vertical to 10 horizontal will be constructed. The borrow site is located northeast of the fill site approximately 1000 feet offshore. The project will also involve the rehabilitation of the three southernmost rock groins at the Deerfield Beach Municipal Park.

Project Location: The activity is located in Sections 5, 8 and 17, Township 48 South, Range 43 East; in Broward County, within the Atlantic Ocean, Class III waters of the State of Florida.

Questions regarding the permit or this notice should be directed to the undersigned at:

Bureau of Beaches and Coastal Systems
3900 Commonwealth Blvd. M.S. 300
Tallahassee, Florida 32399-3000
Telephone (850) 487-1262

1/7/98, Robert V. Lutz
Date of Notice Robert V. Lutz

ORIGINAL PERMIT MATERIALS FOR 1997 PERMIT PROVIDE FOR GROIN MODIFICATION

PROJECT DESCRIPTION

The proposed project involves the restoration/stabilization of approximately 6,120 feet of chronically eroding shoreline along Hillsboro and Deerfield Beaches located in north Broward County, Florida.

A total construction volume of 550,000 cubic yards of sand fill is proposed to be placed from approximately 50 feet south of DNR reference monument R-6 in Deerfield Beach to 175 feet south of DNR reference monument R-12 in Hillsboro Beach. Approximately 500,000 cubic yards is proposed to be placed along the northern 5,430 feet of Hillsboro Beach and approximately 50,000 cubic yards is proposed to be placed along the southern 690 feet of Deerfield Beach. The proposed berm height is +9.0 feet NGVD with a design profile consisting of a 1:10 foreshore slope transitioning to a 1:30 nearshore slope consistent with the US Army Corps of Engineers' design.

In combination with the beach nourishment, a rehabilitation of three (3) T-head groins along the southernmost 690 feet of shoreline in Deerfield Beach is proposed. The proposed rehabilitation is consistent with the design of the existing groins located immediately north of this area that were constructed in 1958. These groins are low-profile with a crest height of approximately +4.0 feet NGVD, a length of 100 feet, and a T-head width of 50 feet. Large 4 foot diameter rocks (3 tons) are proposed for the seaward T-head structure while 2 to 3 foot diameter rocks (0.5 to 1.5 tons) are proposed for the trunk structure. Rock quantity for the groin rehabilitation is estimated at 1,085 tons each for a total quantity of approximately 3,255 tons.

ORIGINAL 1997 HILLSBORO PERMIT – HILLSBORO ADMITS THAT GROINS “POSITIVELY EFFECT” THE RENOURISHMENT PROJECT

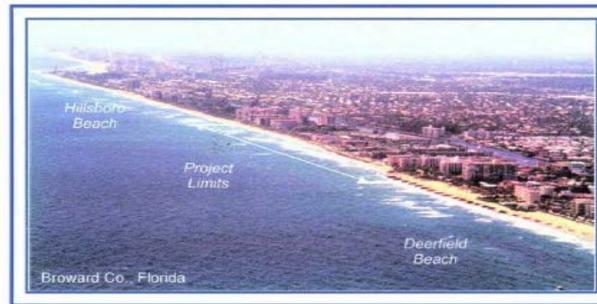
RESPONSE TO ITEM 23.

Engineering Description

The existing Deerfield Beach groin field is expected to positively effect the proposed Hillsboro/Deerfield Beach nourishment project. An engineering description of these structures and their anticipated effect upon this project are discussed in Section 2.1 of the “Long Range Beach Renourishment Plan for Hillsboro Beach” (Appendix B).

IN 1997, HILLSBORO'S CONSULTANTS MAKE SEVERAL "ADMISSIONS" AND BINDING FINDINGS TO THE U.S. ARMY CORPS OF ENGINEERS

Responses to Requests for Information
from
U.S. Army Corps of Engineers
Broward County Dept. of Natural Resources Protection
Florida Department of Environmental Protection
for
Hillsboro/Deerfield Beach Nourishment



by



Coastal Systems International, Inc.
464 South Dixie Highway, Coral Gables, Florida 33146

RECEIVED

JUL 25 1997

DEPT. OF BEACHES
& COASTAL SYSTEMS

July 21, 1997

IN 1997, HILLSBORO'S CONSULTANTS MAKE SEVERAL "ADMISSIONS" AND BINDING FINDINGS TO THE U.S. ARMY CORPS OF ENGINEERS

c. Any details of the groin rehabilitation which differ from the original proposal.

The three southernmost emerged groins north of DNR monument R-7 will be rehabilitated. As agreed with DEP staff, the existing exposed concrete piles will be removed (Engineering Permit Sketch 22). In addition, a new layer of armor rock will be added to each groin within the existing footprint in order to structurally and aesthetically improve their condition.

As noted by DEP staff, the five (5) southernmost submerged groin remnants are considered to be a potential safety hazard to the public and therefore, Coastal Systems agreed that instead of rehabilitating these groin remnants, they will be completely removed before commencement of construction.

IN 1997, HILLSBORO'S CONSULTANTS MAKE SEVERAL "ADMISSIONS" AND BINDING FINDINGS TO THE U.S. ARMY CORPS OF ENGINEERS

3.0 - DESIGN OF COASTAL IMPROVEMENTS

3.1 General

This chapter presents the proposed beach restoration design for the north Hillsboro Beach/south Deerfield Beach segment. The design calls for a total of approximately 550,000 cubic yards of fill including the initial design volume, advance renourishment volume, and the quantity of fill placed landward of the Erosion Control Line (ECL).

The U.S. Army Corps of Engineers had previously delineated Hillsboro/Deerfield Beach as a new project area with the proposed placement of 1,055,000 cubic yards from R-1 to R-24 (USACE, 1995). The proposed design template presented herein is similar to the USACE (1995) design but with more fill volume (per foot of shoreline). With this increased fill volume, the proposed beach design will serve, in part, as a "feeder" beach providing sediment for the downdrift region of south Hillsboro Beach.

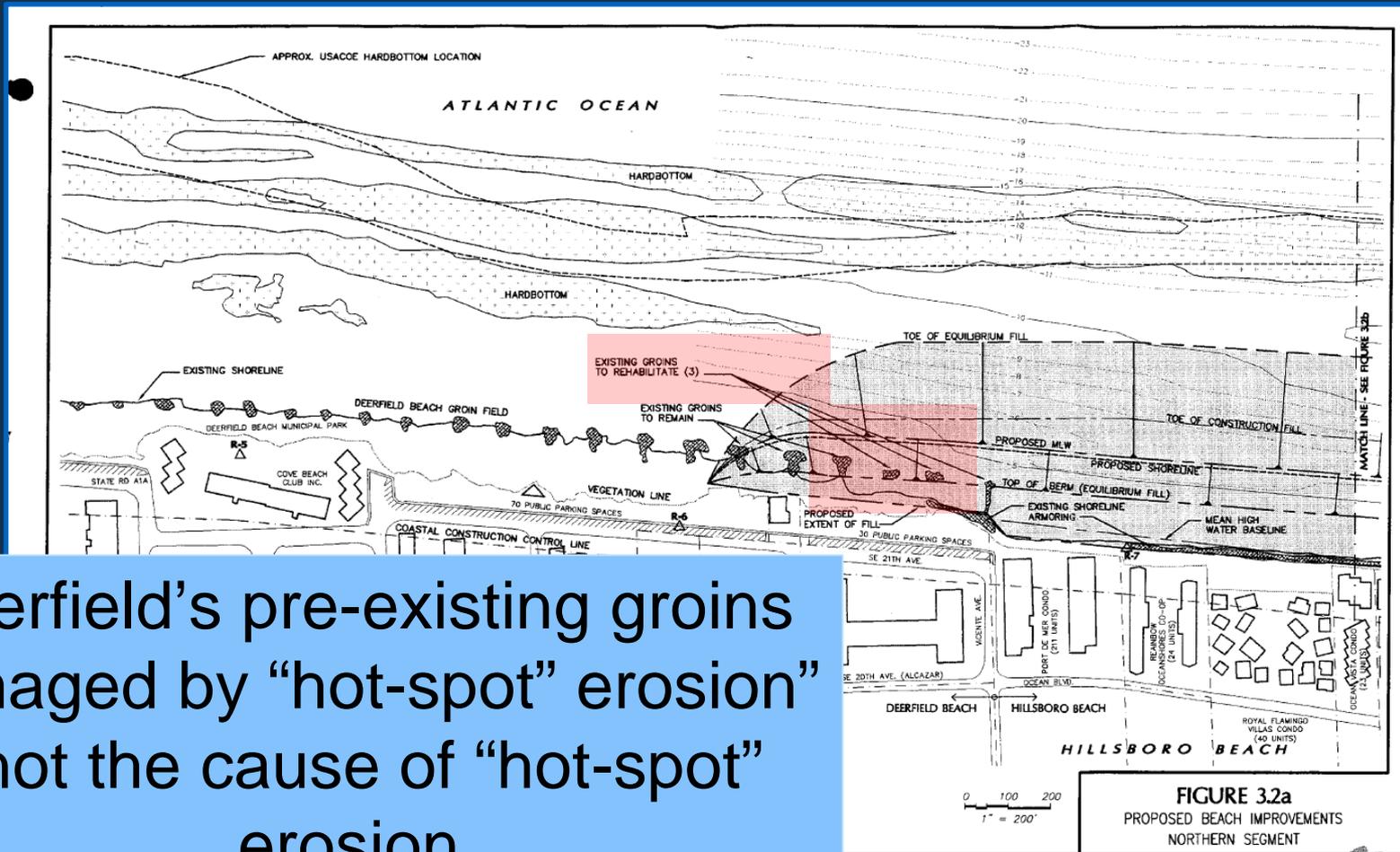
The proposed beach design template is developed based on the existing site characteristics, including the location of nearshore hardbottom, rock groins, and other shoreline stabilization structures established from aerial photographs. Beach performance is evaluated using an analytical approach for the prediction of the beach fill evolution based on diffusion.

IN 1997, HILLSBORO'S CONSULTANTS MAKE SEVERAL "ADMISSIONS" AND BINDING FINDINGS TO THE U.S. ARMY CORPS OF ENGINEERS

Deerfield Beach Groin Rehabilitation: Included in this proposed beach renourishment project is the rehabilitation of the southernmost three groins in Deerfield Beach. Due to the severe erosion along this southern stretch of Deerfield Beach, this area has been subject to higher wave impacts causing significant damage to these structures. The proposed rehabilitation includes the placement of additional rock armor to rebuild the structures to the design sections as shown in Figure 3.6. The rehabilitation is based on the existing design of the intact groins located to the north.

The groins are of a low profile design with a crest height of approximately +4 feet NGVD, length of approximately 100 feet, and a T-head width of approximately 50 feet. Due to the potential for increased wave attack for this southern portion of the groin field, a rock diameter of 4 feet (3 tons) is proposed for the seaward T-head structure and 2 to 3 feet (0.5 to 1.5 tons) for the groin trunk structure. Estimated rock quantities for the T-head and trunk structures of each groin are 435 and 650 tons, respectively for a total of 1,085 tons per groin. After construction, these groins will initially be covered by the beach fill. After some time, the groins will eventually re-emerge as the fill shoreline recedes due to diffusion and erosion.

IN 1997, HILLSBORO'S CONSULTANTS MAKE SEVERAL "ADMISSIONS" AND BINDING FINDINGS TO THE U.S. ARMY CORPS OF ENGINEERS



Deerfield's pre-existing groins damaged by "hot-spot" erosion" - not the cause of "hot-spot" erosion

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PUBLIC TAXPAYERS SHOULD PAY FOR THE PRIVILEGE TO BE ARRESTED ON HILLSBORO'S BEACH



HILLSBORO WANTS TO KEEPS ITS BEACH PRIVATE

Despite saying that it does not have public beach access because of Deerfield, Hillsboro wants its beach completely private:

Hillsboro asks public to fix 'private' beach

By LAINE KELLEY
Staff Writer

HILLSBORO BEACH — This town's residents live on one of the most exclusive beaches in Florida — and they have gone to great lengths over the years to keep the public out.

You can't legally park your car and go to the beach here. When the county tried to buy land in 1989 for a public park, some of Hillsboro Beach's most influential residents — who live on a street sometimes called "Millionaire's Row" — pressured commissioners to ditch the idea.

Now the people on Millionaire's Row want public money to improve the beach, though they still plan to keep it as private as they can.

A grant that could amount to \$500,000 to help pay for widening the beach.

The state won't decide on the request until next July. But whether Hillsboro Beach gets the money or not, the project, set to begin in December, will create more public beach that is essentially private property.

Florida law is clear: No one owns the beach east of the high-water mark. So technically it is perfectly legal to walk along Hillsboro Beach — if you can get there.

"As far as the white sandy beaches are concerned, the courts have said that the public has a right to walk along the beach," says Robert Brantley, an engineer with the Florida Department of Environmental Protection. "When you leave it and walk across someone's property is when you get into trouble."

But the public doesn't have access to the ocean in Hillsboro

Beach.

"And if people can't get there, it's as good as being not public," says Nikki Grossman, who as county commissioner in 1989 bought residents — and lost — trying to provide public access to the ocean in Hillsboro Beach.

The only public access to the Hillsboro Beach waterfront by land is at a park behind the Embassy Suites Hotel in Deerfield Beach. Getting to the beach from a public road in town requires trespassing on private property, "or by invitation of individual homeowners," Mayor Larry Fink said.

What has made Hillsboro Beach such a plush little burg over the years is what it doesn't have: no schools, no shops, no movie theaters, no bars or convenience stores or gas stations, not even a stoplight. And no public access to the ocean.

People move here to get away from the public, and they pay dearly for it. The most expensive homes in Broward County are in Hillsboro Beach.

Harold Kets, owner of the Philadelphia 76ers basketball team, spent \$10 million in 1992 building the main house of his estate. Other residents include billionaire Toyota distributor Jim Moran and near-billionaire John Hugh Macmillan III, both listed on the latest Forbes list of the 400 richest Americans.

With millions in their homes, few if any residents want to sell their land to build a park, even if they could sell it for big bucks.

"Because then you'd have to put in parking," says Commissioner Chuck Sussman, who lives in a house on the ocean, "and who's going to give up their private property to provide parking?"

The lack of public parking here

has long been an obstacle to Hillsboro Beach getting public money for beach projects. The state's position is no access, no money. But Hillsboro Beach has found a loophole by linking up with Deerfield Beach for what is now expected to be a \$2.7 million renourishment project.

The project will pump 550,000 cubic yards of sand from the ocean floor to restore 12 miles of shoreline extending from the south end of Deerfield Beach into Hillsboro Beach, where condominiums are threatened by the erosion.

Since most of the sand will be added below the high-water mark, it will technically be public property.

Hillsboro Beach can use a loophole to get some public funding — Deerfield Beach's public parking lot at the Embassy Suites. That counts as public access, and Hillsboro Beach qualifies for renourishment funds within a quarter-mile of the parking lot.

The town and its residents are paying for the rest of the beach — about three-quarters of a mile. That works out to more than 80 percent of the project's total cost. They could end up paying for all of it.

Phil Flood, project manager at the State Bureau of Beaches and Coastal Systems, says the Hillsboro-Deerfield project is more than halfway down the list of his agency's funding requests for renourishment projects.

"It's not the highest priority," Flood said.

Shap Shop king Preston Henn, who lives in Hillsboro Beach, says he's not worried about crowds of beachgoers turning up on July Fourth in front of his home. "They've got to walk a long way," Henn said.

HILLSBORO BEACH — This town's residents live on one of the most exclusive beaches in Florida — and they have gone to great lengths over the years to keep the public out.

You can't legally park your car and go to the beach here. When the county tried to buy land in 1989 for a public park, some of Hillsboro Beach's most influential residents — who live on a street sometimes called "Millionaire's Row" — pressured commissioners to ditch the idea.

Now the people on Millionaire's Row want public money to improve the beach, though they still plan to keep it as private as they can.

HILLSBORO WANTS TO KEEPS ITS BEACH PRIVATE

Despite claiming it wants public beach access through Deerfield's beach, Hillsboro is prepared to keep its beach completely private:

SunSentinel

Drawing Lines In Their Sand

September 25, 2000 | By LISA J. HURIASH Staff Writer

HILLSBORO BEACH — "Trespass Beach" is the nickname given by locals to a tiny sliver of sand that borders this town with Deerfield Beach. It's also the spot of a growing dispute pitting the rights of property owners against the public's right to enjoy the ocean.

But the commission is expected to approve an annual budget this week that would include an all-terrain vehicle for the police department to monitor the beach in hopes of snagging some trespassers. Ten of the town's 13 sworn officers will learn how to patrol on the buggy.

patrol on the buggy.

"We don't [yet] have the enforcement that Deerfield does," said Vice Mayor Rick McCarty. "It's kind of hard to call the police every time some lady walks by with her poodle."

People are allowed free access because the beach up to the average highest spot where the water meets the sand -- which is generally where the seaweed lies -- is public.

"It belongs to the state of Florida and God," explains Police Chief Ralph Dunn.

Landward of the seaweed line is private.

FIU COMMUNITY BACKGROUND REPORT ON HILLSBORO DATED DECEMBER 1, 2011

Community Dynamics

The Town of Hillsboro Beach is a wealthy enclave, home to residents that have been included in Forbes magazine's list of 400 richest Americans.² The sole street that runs through the town, A1A, is often referred to as "Millionaire's Row."³ The small town is entirely residential –there are no businesses, no schools, and no street lights.⁴ Hillsboro Beach is the only municipality in Broward County that does not have public access to the beach.⁵

Although Florida state law recognizes the high-water line as the boundary between public and private property,⁶ the town is able to keep its beach exclusive by limiting public access to the ocean by land.⁷ Getting to the beach from a public road requires trespassing on private property. Thus, the shore is accessible only by the invitation of a homeowner or from the water, by boat.⁸

Hillsboro Beach has gone to great lengths to limit public access to its beach. In 1989 the town's residents were able to derail a county plan to purchase land for a public park with a public beach.⁹ County commissioners passed a \$75 million bond issue to buy land for preservation, including a 10-acre parcel in Hillsboro Beach.¹⁰ Despite passage of the bond issue, the land was dropped from the list after the vote, and in 1992 the commission allowed a dozen homes to be built on the land.¹¹ According to the Sun Sentinel, "then-Commissioner Nicki Grossman, who voted against dropping the land from the list, charged at the time that subtle racism and political pull had kept Broward residents from getting a park."¹²

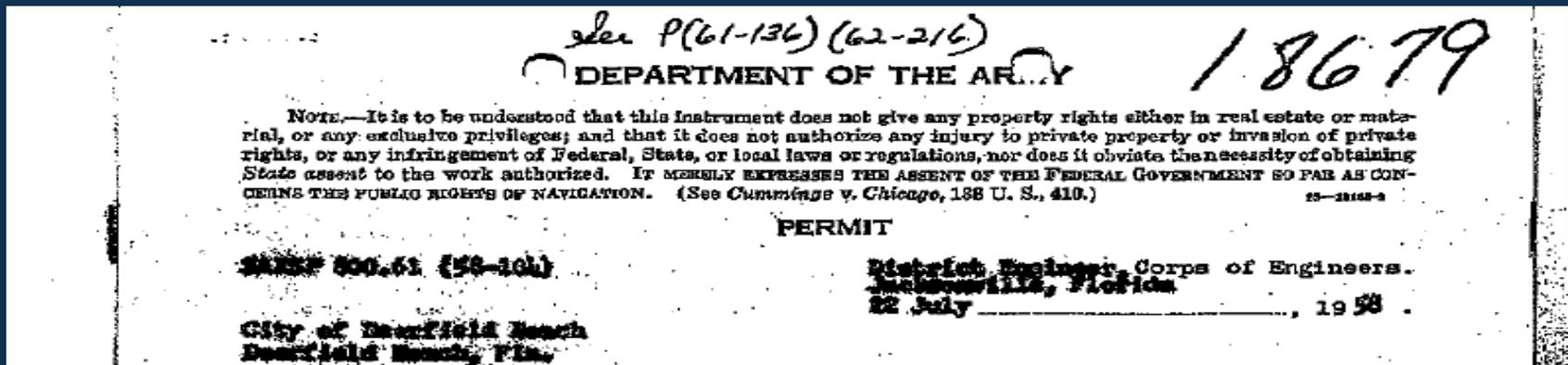
Since the lack of public access to the beach has long been an obstacle to Hillsboro Beach's ability to obtain public money for beach nourishment projects, the commissioners considered opening the town's beach in 2008.¹³ The town's residents made sure that the status quo prevailed, with an outpouring of opposition to public

“Hillsboro Beach has gone to great lengths to limit public access to its beach”

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HILLSBORO HAS NEVER RAISED THIS ISSUE BEFORE

- First permit allowing for construction of groins in Deerfield was in 1958.
- Hillsboro has not raised this issue over the past 57 years.
- 3 Interlocal agreements waive Hillsboro's rights to argue differently
- Hillsboro is be equitably estopped from asserting this claim.
- Hillsboro also faces statute of limitations issues should it file a lawsuit.
- Any litigation will cause delay and worsen erosion.



Hillsboro's Demand for Removal of the Groins

Hillsboro’s admissions and other evidence will show:

- Groins are in an area of preexisting “hot spot” beach erosion.
- “Hot spot”/erosional signature starts in Deerfield Beach into Hillsboro Beach.
- Coverage of Groins does not extend over entire “hot spot.”
- Groins are in the area erosion but are not the cause of the erosion.
- **Association not causation.**
- Removal of the Groins **will not** resolve Hot Spot beach erosion and **is not** the answer:
- Removal of the Groins may impact Deerfield as a feeder beach for Hillsboro(if Groins removed region will suffer additional erosion and will not be able to “feed” Hillsboro beach).
 - As such, additional complications could arise.
 - Hillsboro’s beach is too thin to anchor the beach in the “hot spot” area and Groin removal will not repair this issue.

NO EVIDENCE THAT GROIN REMOVAL WILL FIX HILLSBORO'S "HOT SPOT"

The Town's own study does not support what it is asking of Deerfield

Hot-Spot Management Study Town of Hillsboro Beach



Town of Hillsboro Beach
1210 Hillside
Hillsboro Beach, FL 33426



Coastal Systems, Inc.
464 South
Coastal Highway
Palm Beach, FL 33480

Alternative 3 - Existing Deerfield Groin Modification:

Alternative 3 is to modify the existing five southernmost Deerfield beach groins. The modified five groins were tapered from the fifth groin north of the southernmost groin to the southernmost groin. The tip of the southernmost groin was proposed to retreat landward approximately 49 feet. Figure 4.7 illustrates the 10-year period predicted shoreline response to the groin modification Alternative. The model results suggest that the project life for the groin modification project is limited to between 4 and 6 years. The modeling results for this alternative did not meet the Town's objective for a long term structural solution. The 5 modified (tapered) groins evaluated for this study represent approximately 25% of the existing groin field. Further groin modification and/or removal of the entire groin field may improve the beach shoreline performance, but was not considered practical for evaluation in this study.

ADDITIONAL FACTORS CAUSING EROSION

Through its experts Deerfield can show that the following additional factors are causing the “Hot Spot”:

- Early development and encroachment
- Shoreline hardening
- No adequate beach and dune formation anymore to provide for natural shore protection
- Offshore Hardbottom
- Borrow Area 1 – not within depth of closure and depleted. Causes waves to bend and causes erosion at the “hot spot” area
- Inlet Management

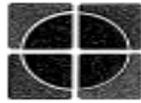
HILLSBORO MISQUOTES ITS OWN DEMAND AT FEB 3RD MEETING

During the Conflict Assessment Meeting, Hillsboro says it is not looking to have groins removed:

“So, the permit doesn’t require you to remove the groins. We’re only trying to enforce the permit condition. What you can do is mitigate for the loss by depositing sand on the beach that would normally flow to Hillsboro’s beaches. ***And so, nowhere have we written that we expect you or require you to remove the groins.*** You’d have to mitigate for the damage they’re causing to Hillsboro...”

Hillsboro’s attorney Ken Oretel from transcript of conflict assessment meeting, February 3, 2016, pg. 35.

HILLSBORO MISQUOTES ITS OWN DEMAND AT FEB 3RD MEETING



OERTEL,
FERNANDEZ,
BRYANT &
ATKINSON, P.A.

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ATTORNEYS
TIMOTHY P. ATKINSON
M. CHRISTOPHER BRIDANT
C. ANTHONY CLEVELAND
ANGELA FARFORD
SEGUNDO J. FERNANDEZ
KENNETH G. OBITE
TIMOTHY J. PERRY

July 8, 2015

VIA OVERNIGHT DELIVERY

Jonathan P. Steverson, Secretary
Florida Department of Environmental

Jean M. Robb, Mayor
City of Deerfield Beach

Hillsboro's letter of July 8, 2015 says it wants to have groins removed

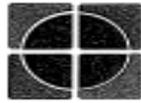
Re: Statutory Notice of Intent to File Petition for Enforcement Pursuant to Section 120.69, Fla. Stat.

Dear Mr. Steverson, Attorney General Bondi and Mayor Robb:

This letter is to inform you of the Town of Hillsboro Beach's intent to file a Petition for Enforcement pursuant to Section 120.69, Florida Statutes, to seek enforcement of permit conditions issued by the State of Florida, Board of Trustees of the Internal Improvement Trust Fund.

As a result of this, the Town of Hillsboro Beach, pursuant to Section 120.69, Florida Statutes, requests that the Board of Trustees of the Internal Improvement Trust Fund immediately take action to enforce the permit conditions contained in the above permits and to require the City of Deerfield Beach to alter, remove, modify, adjust the groins in question so as to eliminate the destruction these structures continue to cause to the beaches of the Town of Hillsboro Beach.

HILLSBORO MISQUOTES ITS OWN DEMAND AT FEB 3RD MEETING



OERTEL,
FERNANDEZ,
BRYANT &
ATKINSON, P.A.

MAILING ADDRESS POST OFFICE BOX 1110 | TALLAHASSEE, FLORIDA 32302-1110

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PHONE: 850-521-0700 | FAX: 850-521-0720 | WWW.OHFC.COM

ATTORNEYS
TIMOTHY P. ATKINSON
M. CHRISTOPHER BRIDANT
C. ANTHONY CLEVELAND
ANGELA FARFORD
SEGUNDO J. FERNANDEZ
KENNETH G. OBITE
TIMOTHY J. PERRY

July 8, 2015

Hillsboro's letter of July 8, 2015 misstates permit conditions – there was no finding made by the State that groins are the cause of “hot spot” erosion

This letter is to inform you of the Town of Hillsboro Beach's intent to file a Petition for Enforcement pursuant to Section 120.69, Florida Statutes, to seek enforcement of permit conditions issued by the State of Florida, Board of Trustees of the Internal Improvement Trust Fund.

5. Structure or structures authorized herein shall be adjusted at the request of the owner(s) of adjacent property in the event leeside erosion should appear, and the engineering representative of the Trustees finds the groins are responsible for such erosion. Permittee may as an alternative solution request permission from the Trustees to place artificial fill on the area which is subject to the leeside erosion. Any changes the Trustees determine to be necessary under the terms of this paragraph shall be taken at the expense of the Permittee.

- AS PART OF 1997 PERMIT, HILLSBORO PROVIDES LIST OF ADJACENT UPLAND PROPERTY OWNERS
- THE LIST PROVES THE TOWN IS NOT AN ADJACENT PROPERTY OWNER WITH STANDING TO BRING CLAIMS RELATED TO PERMIT CONDITIONS

**Hillsboro Beach Restoration Project
Adjacent Upland Properties**

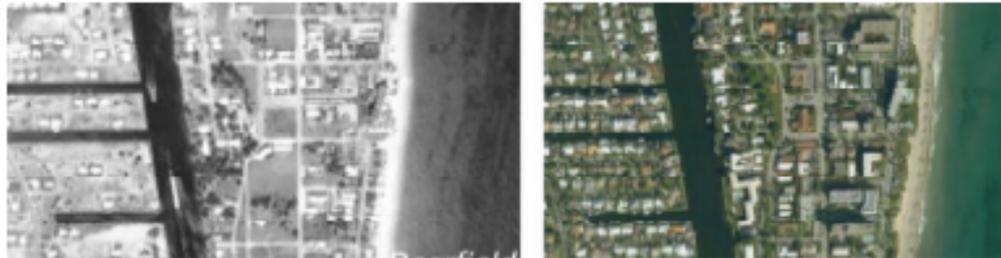
Name	Address	No. of Units	Folio No.
Ocean Crest Apts Condo	Association President 1189 A1A Hwy Hillsboro Beach, Florida 33062	16	8308 AA [001-016] 1311 04
Hillsboro Island House Condo	1160 A1A Hwy Hillsboro Beach, Florida 33062	64	8308 AB [001-064] 1311 04
Royal Flamingo Villas	1225 Hillsboro Mile A1A Hwy Hillsboro Beach, Florida 33062	40	8308 AD [001-040] 1311 04
Opal Towers Condo North	1147 Hillsboro Mile Hillsboro Beach, Florida 33062-1703	111	8308 AH [001-111] 1311 04
Opal Towers Condo South	1147 Hillsboro Mile Hillsboro Beach, Florida 33062-1703	130	8308 AH [112-242] 1311 04
Pieces O Eight Condo	Association President 1166 A1A Hwy Hillsboro Beach, Florida 33062	15	8308 AK [001-015] 1311 04
Port De Mer Condo	Association President 1238 Hillsboro Mile Hillsboro Beach, Florida 33062	211	8308 BC [001-206] 1311 04
Opal Towers West Condo	1150 Hillsboro Mile Hillsboro Beach, Florida 33062-1708	135	8308 BD [001-135] 1311 04
Hillsboro Square Condo	Association President 1172 Hillsboro Mile Hillsboro beach, Florida 33062	12	8308 B] [001-012] 1311 04
Ocean Vista Condo	Association President 1223 Hillsboro Mile Hillsboro Beach, Florida 33062	23	8308 BK [001-023] 1311 04
Harborside at Hillsboro Beach	Association President 1170 Hillsboro Mile Hillsboro Beach, Florida 33062	18	8308 BM [001-018] 1311 04
Hillsboro Ocean Club Condo	Association President 1155 Hillsboro Mile Hillsboro Beach, Florida 33062	65	8308 CA [001-065] 1311 04

THE FLIP-FLOP CONTINUES

SUN SENTINEL ARTICLE OF FEBRUARY 3, 2016-POST MEETING

Local News / Broward News / Deerfield Beach News

Hillsboro, Deerfield again fail to resolve sand fight



Hillsboro Manager Robert Kellogg said his town, which is lined with private beaches except one spot that sometimes erodes, would not insist on removing the groins. It just wants some way to recoup the sand losses.

"The engineers will talk, the attorneys will talk, and Burgess and I will talk to avoid this potentially protracted litigation," he said.

A contentious meeting between officials from Hillsboro Beach and Deerfield Beach about beach sand ended without a resolution Wednesday.

Hillsboro says Deerfield's so-called "sand groins" — man-made sand catchers that jut into ocean — are starving its beaches of sand. Wednesday's meeting was a required step before the issue goes to litigation.

HILLSBORO'S OWN PRODUCTION DOES NOT SHOW THAT IT WANTS TO AVOID "PROTRACTED LITIGATION" - IN FACT, IT SHOWS JUST THE OPPOSITE

From: Ken Oertel
Sent: Wednesday, December 09, 2015 10:34 AM
To: 'William Dally'
Subject: RE: Invoice# 2015-3 payment

I was told the Town approved the invoice also. The hiring of other consultants is something I have to be briefed on. Don't know how long it takes for them to pay but I assume it should be soon.

REDACTED PURSUANT TO SECTION 119.071(1)(D)1, FLORIDA STATUTES

Ken

Hillsboro's production contains numerous redactions done in anticipation of litigation.

West's F.S.A. § 119.071

119.071. General exemptions from inspection or copying of public records

Effective: October 1, 2015

(d) 1. A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

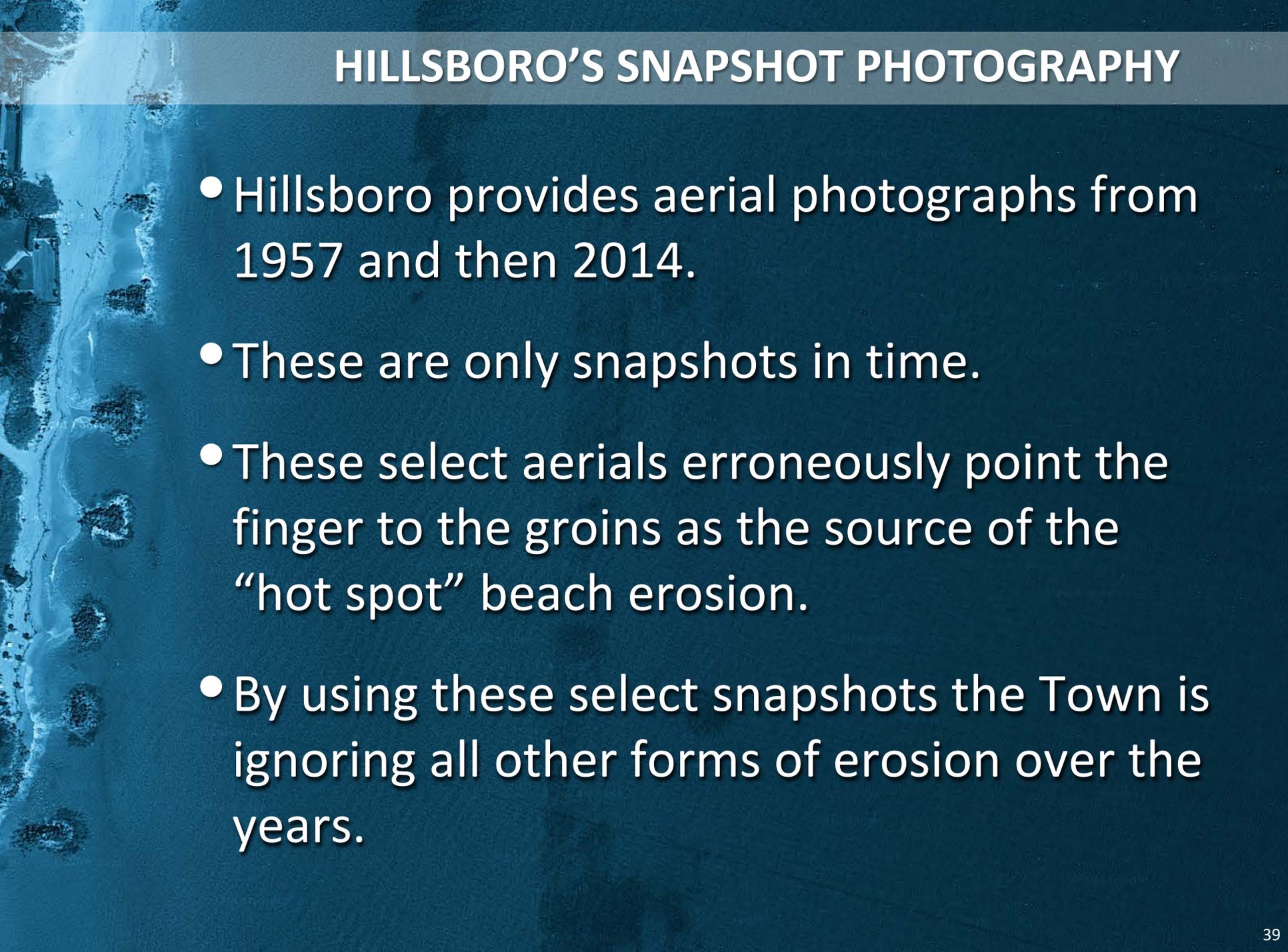
CONCLUSION

NO EVIDENCE

that the Groins are the cause
of “Hot Spot” Erosion.

In fact, removal of Groins
will only make matters worse.

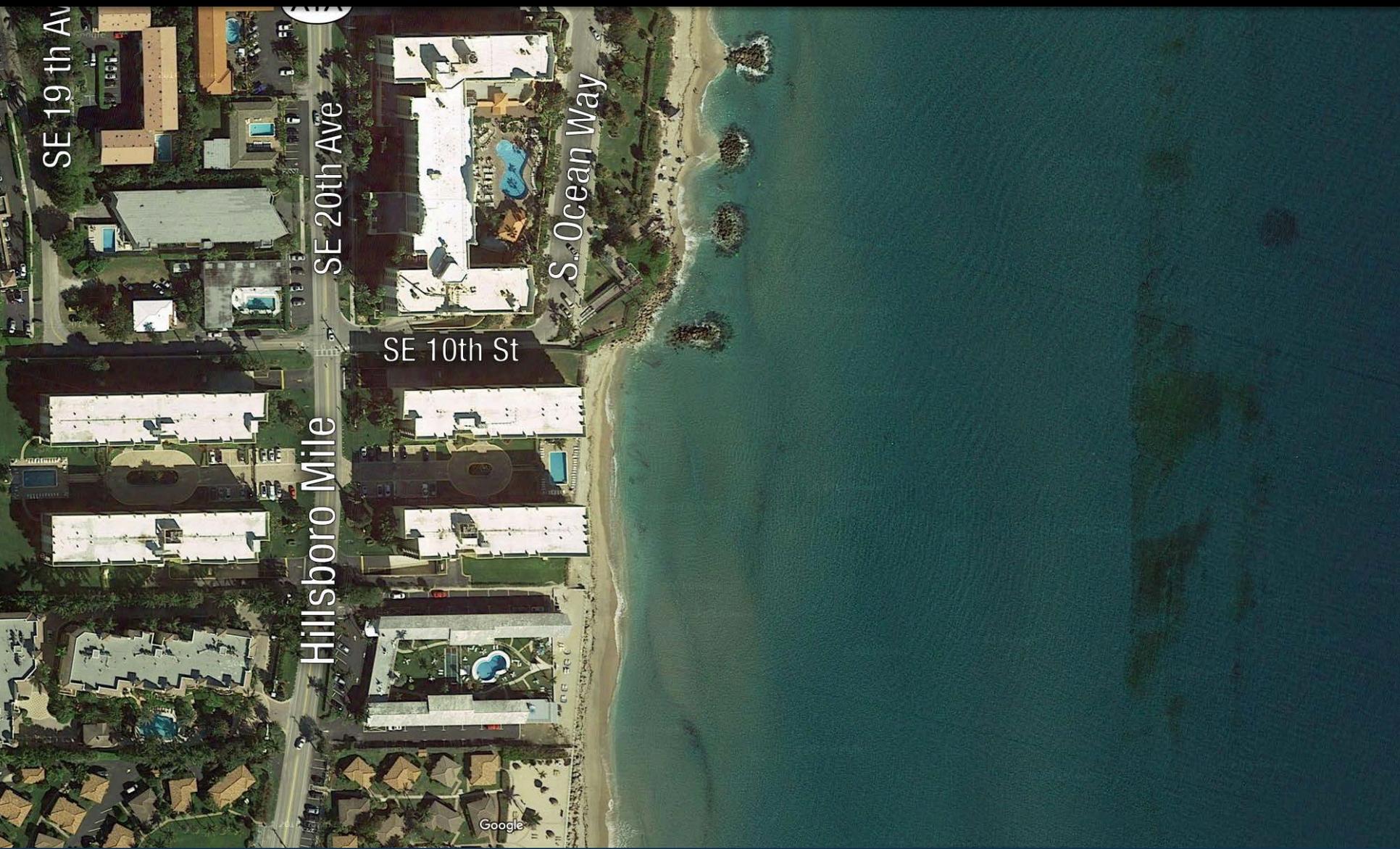
Addressing points raised by Hillsboro

An aerial photograph of a coastline, showing a prominent area of beach erosion. The image is oriented vertically, with the coastline running from top to bottom. The beach is a light-colored strip along the water's edge, and there are several dark, irregular shapes that appear to be groins or structures extending into the water. The water is a deep blue color. The background is a dark blue gradient.

HILLSBORO'S SNAPSHOT PHOTOGRAPHY

- Hillsboro provides aerial photographs from 1957 and then 2014.
- These are only snapshots in time.
- These select aerials erroneously point the finger to the groins as the source of the “hot spot” beach erosion.
- By using these select snapshots the Town is ignoring all other forms of erosion over the years.

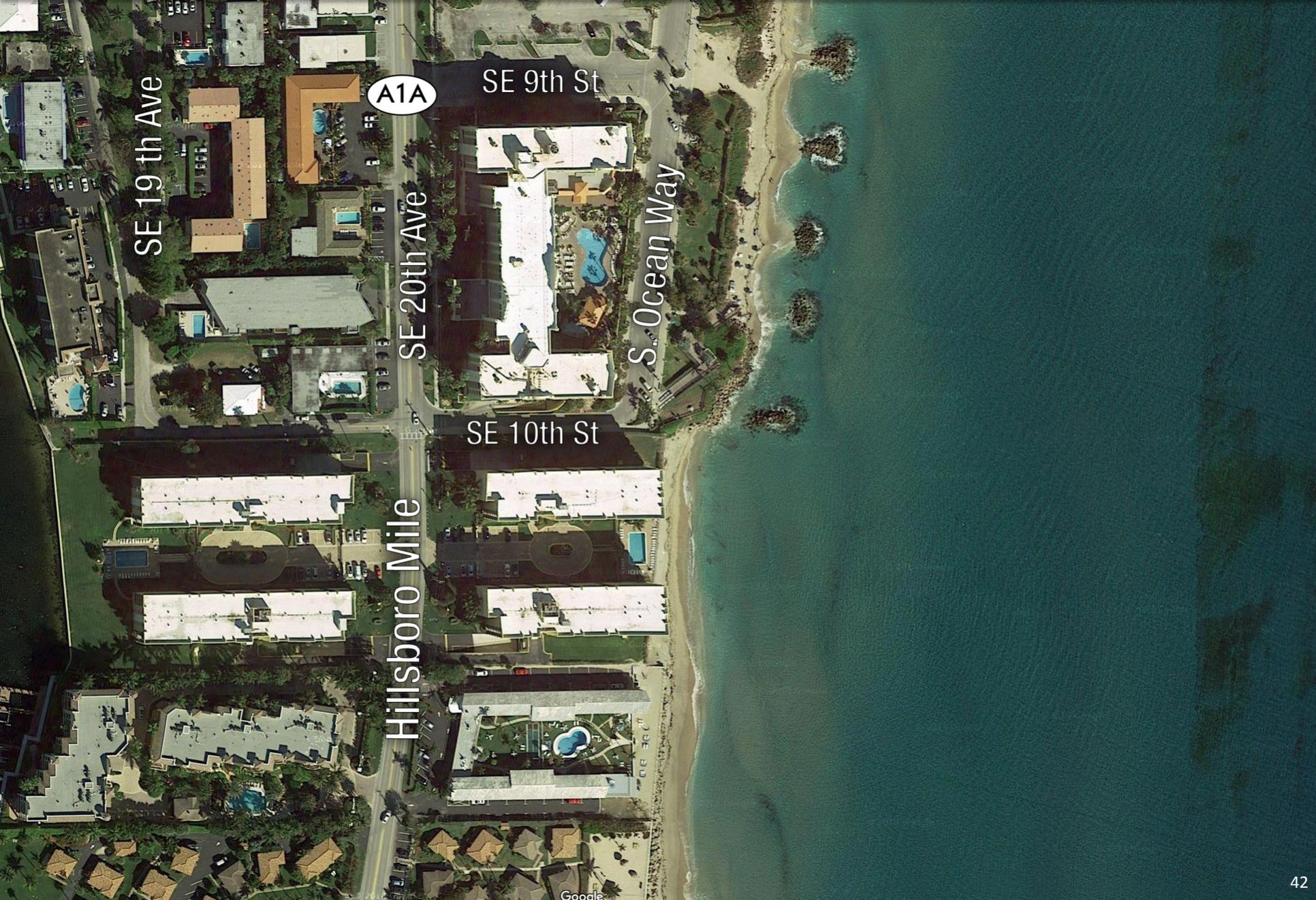
Removal of the pilings and Rehabilitation of the Rocks at the 3 Southernmost Groins did not resolve the "hot spot" beach erosion as proposed in the 1997 permit



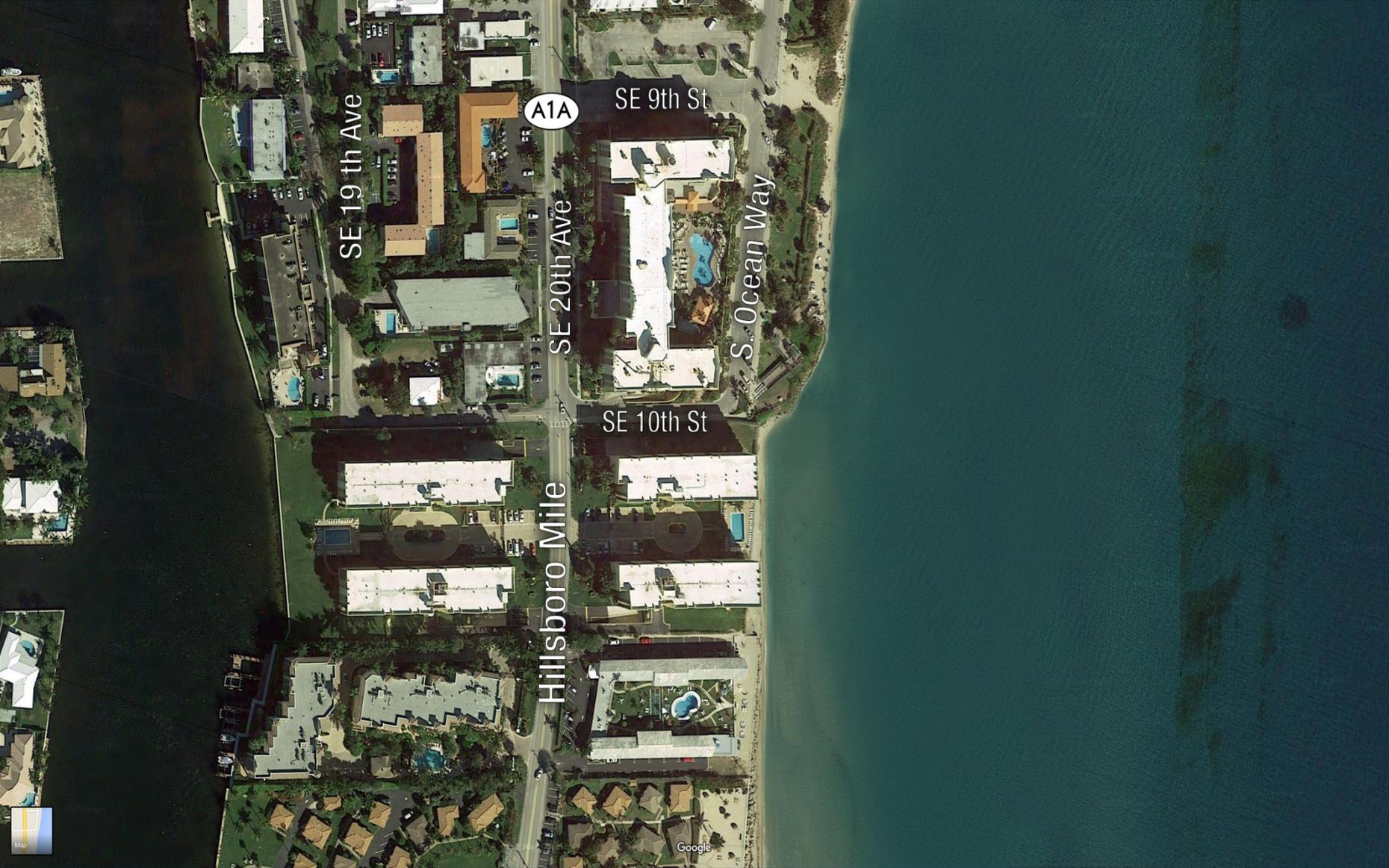
WHAT HILLSBORO THOUGHT WOULD HAPPEN



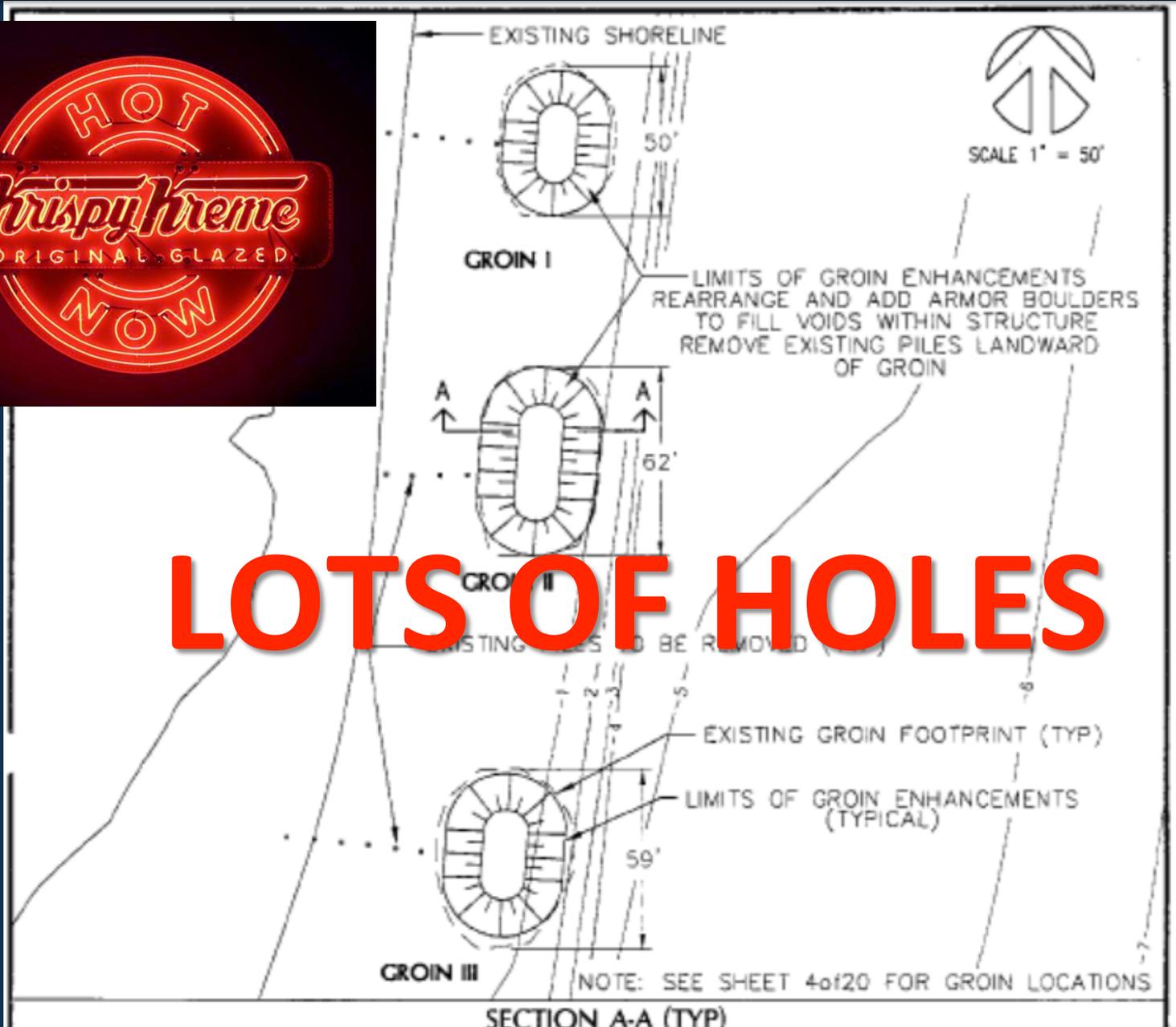
WHAT ACTUALLY HAPPENED MADE IT WORSE



HILLSBORO'S SOLUTION **WILL MAKE IT EVEN WORSE**

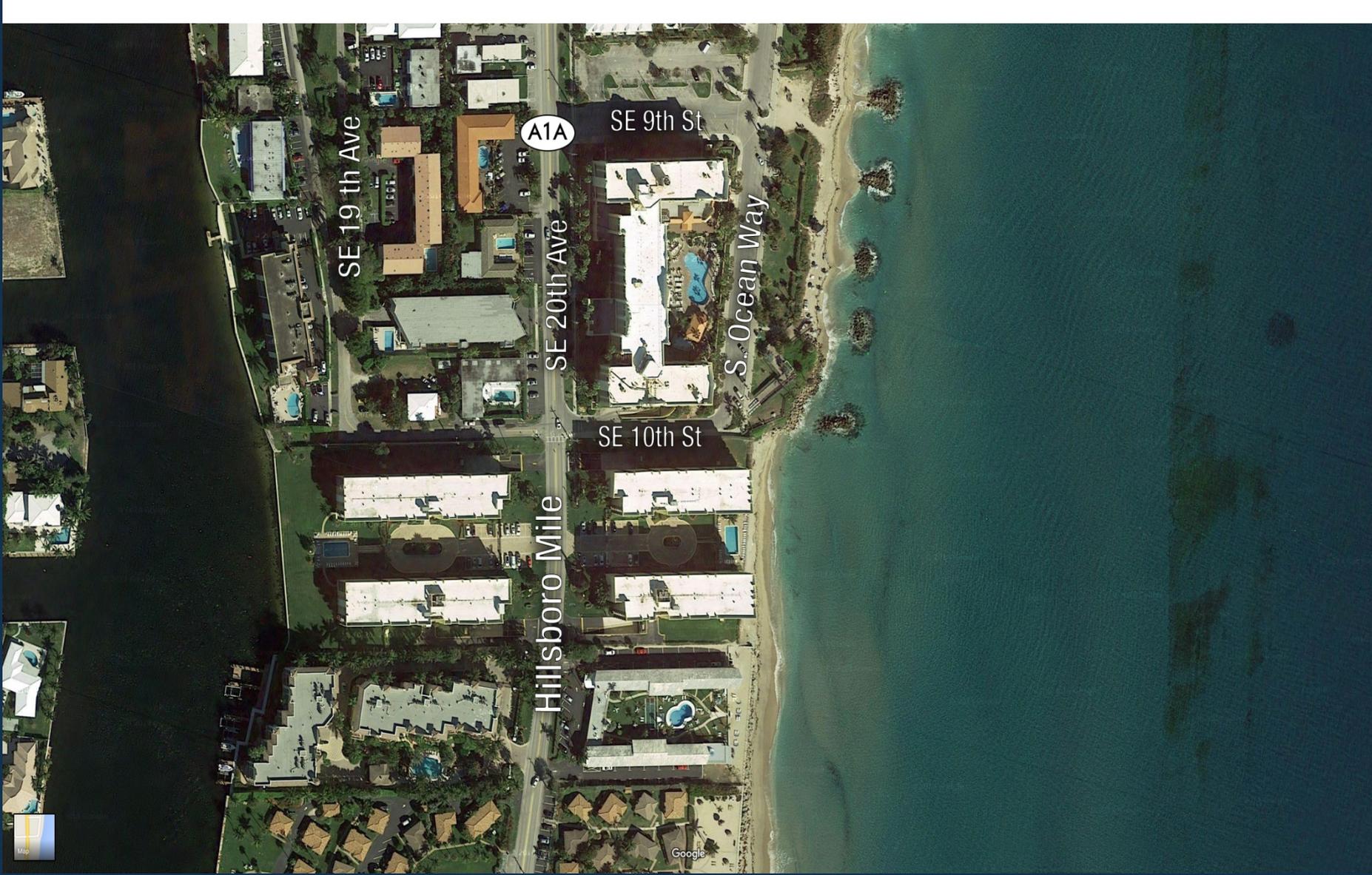


THE KRISPY KREME SOLUTION



LOTS OF HOLES

WHAT ACTUALLY HAPPENED MADE IT WORSE



A lot has changed in 20 years to explain why the Groins are NOT the Problem

- There is no scientific or engineering evidence to support the Town's opinions that the Groins are the cause of the problem
- Town's "opinions" and "beliefs" are unsupported speculation unsupported by scientific standards and cannot be admitted into evidence to prove their case here
- Town's claims should have been brought decades ago – by 1997 at the latest
- Scientific developments and evidence now confirm the Groins have actually prevented even further erosion in the Town
- Removing the Groins will erode Deerfield's Beaches and cause *even worse erosion* to the Town's Beaches

Hillsboro's response to DEP concerns (as provided in April 28, 1997 letter)

ADMITS Groins not the problem

After further engineering studies, review of available information and the consideration of concerns expressed by the Department of Environmental Protection (DEP) environmental permitting staff, a less obstructive design was developed for the transition between the groin field and the open southern shoreline along Hillsboro Beach. The revised design calls for the removal of

The proposed design changes will guarantee a smooth transition between the existing Deerfield Beach groin field and the proposed project fill.

Hillsboro's Public Records show Hillsboro's own experts cannot confirm groins as cause of "hot spot" erosion

No evidence that groins are the problem

Brenda Petty

From: Ken Oertel
Sent: Tuesday, September 15, 2015 9:16 AM
To: w.dally@surbreakengineering.com
Subject: FW: Telling Tales
Attachments: 090415 CB&I Responses to Questionnaire.docx

Bill for your info

From: John [mailto:SeaFront@Comcast.net]
Sent: Saturday, September 12, 2015 4:48 PM
To: Ken Oertel <koertel@ohfc.com>
Subject: Telling Tales



*975 Hillsboro Mile
Hillsboro Beach, Florida 33062
Phone-fax (954) 781-7356
SeaFront@Comcast.net*

Hello Ken:

Several of us attended a meeting with three CB&I chief engineers who worked for Boca Raton Inlet for decades. One engineer was the original architect of the current inlet dilemma.

I have highlighted sections of their responses to our questions which may have legal implications. They are emailed to avoid making this public.

You may wish to share with Bill Dally whom we will meet in Duck Key.

The Best,

John Carlson

Hillsboro's Public Records show Hillsboro's own experts cannot confirm groins as cause of "hot spot" erosion

No evidence that groins are the problem

9/4/2015 CB&I Responses to Questionnaire

12. How would you allocate the amount of HB erosion cause by the groins vs Boca Inlet bypass or lack thereof?

The methodology is to perform an "even-odd" analysis on either a set of shoreline changes or volumetric changes. This separates background erosion (even effect) from a structure/inlet (odd) effect. This is complicated further by having essentially two "odd" effects. (In this case "odd" does not mean strange or abnormal, it refers to the symmetry (even) or asymmetry (odd) of the effect being analyzed.) As the City of Boca Raton bypasses sand on a regular basis, the "odd effects of the inlet" may be difficult to show cause and effect.

27. Other than a new study, how would you mitigate the southern Deerfield Beach groin syndrome and scour.

The simplest solution is to truck haul sand in on an as needed basis. A permit could be obtained from the FDEP that would allow multiple nourishments.

It may be possible to obtain a permit to pump sand directly from the Boca Inlet ebb shoal the next time the ebb shoal is dredged. This would require a permit application, which while not technically a study would incur a cost.

Additional studies would be required to put in a structural solution such as a groin.

Studies show inlets are significant cause of beach erosion

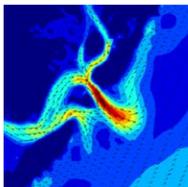
A Renewed Focus on Inlet Management: Committing to the Contributions of Dr. Dean and Senator Jones

Thomas P. Pierro, P.E., D.CE
Director, Coastal Restoration, CB&I



Studies show inlets are significant cause of beach erosion

- Inlets are a major contributor to beach erosion
- Inlets are holders of large quantities of high quality sand
- Long term impacts are significant
- Beach nourishment is helping to catch up, but economical sand resources are getting harder to find
- Proper sediment management practices can offset the need for offshore/upland sand and reduce costs

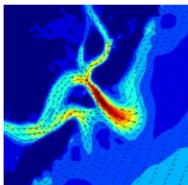


Studies show inlets are significant cause of beach erosion

In 1986, the Florida Legislature recognized that while Florida's improved inlets must be maintained for commercial and recreational navigation, these inlets interrupt the natural flow of sand and have significantly contributed to beach erosion.

- Section 161.142:
 - Declaration of public policy relating to improved navigation inlets
 - Beach-quality sand from inlets should be placed on the beaches
 - Restore the net annual transport on an average annual basis

- Section 161.161:
 - Procedure for approval of projects
 - Evaluate inlets to determine cause of erosion
 - Develop mitigation strategies, cost estimates and cost sharing



Florida Standard Jury Instructions in Civil Cases: Legal Cause

Hillsboro cannot prove that, but for the Deerfield Beach groins, it would not have suffered downdrift “hot spot” erosion and its case will not reach a jury

Legal cause generally: negligence is a legal cause of loss or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss or damage, so that it can reasonably be said that, but for the negligence, the loss or damage would not have occurred. *Fla. Std. Jury Instr. (Civ.) 401.12(a)*

Florida Law on Legal Cause

Speculation or Conjecture; Choice of Probabilities or Theories

In reviewing sufficiency of evidence, it must be remembered that a mere possibility of causation is not enough, and when matter remains one of pure speculation or conjecture, or probabilities are at best evenly balanced, it becomes duty of court to rule for defendant.

Gant v. Lucy Ho's Bamboo Garden, Inc., 460 So.2d 499 (Florida Supreme Court 1984)

As there is no causation, Hillsboro Taxpayers will Pay Deerfield's Attorney's Fees, Expert Witness Fees and Costs

Florida Statute

120.69 Enforcement of agency action.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

**What Hillsboro/Deerfield Beach
looks like as of yesterday**

**HILLSBORO/DEERFIELD BEACH AS OF FEBRUARY 29, 2016
MILD WAVE CONDITIONS HAVE CAUSED MORE SAND TO PUSH UP
ON THE BEACH – EVIDENCE THAT GROINS NOT THE CAUSE OF
“HOT SPOT” EROSION**



Feb 29, 2016

This presentation can be found at the following websites:

www.ConradScherer.com/deerfield-sand

and

www.deerfield-beach.com/Protectourbeach