

OPEN-OR-SHUT CASE

Sarasota County makes its final push to dredge Midnight Pass

By DOUG SWORD
doug.sword@heraldtribune.com

Along the spit of sand once known as Midnight Pass, time stopped when the channel was bulldozed closed 25 years ago. All efforts to reopen the channel have failed, while time has created a new ecosystem in Little Sarasota Bay that environmentalists say should be left alone.

But, for good or ill, the Midnight Pass clock is about to start ticking again.

This week, Sarasota County will begin sending a final package of scientific data, arguments and commitments to the Florida Department of Environmental Protection.

The last of the materials should be in July 16, starting a five-month countdown to a decision on the county's \$15 million proposal to reopen the long-closed pass.

The reopen-the-pass crowd, known for their passion about this unique local issue, sees this as the best and possibly last chance to reverse what they still describe as the 1983 atrocity when artist Syd Solomon and a neighbor bulldozed the pass closed to save their homes.

If Midnight Pass were just another Florida inlet closed by a storm, it would likely have been accepted by residents. But it was not. The ongoing passion, and anger, has persisted for 25 years, largely because the closing was man-made.

A lot has changed since 1983, when homeowners could quickly get county and state permission to close a pass. State law now throws regulatory hurdles in front of any proposal to tinker with



Sarasota County estimates clearer water will encourage growth of 86 acres of sea grass.

This 6- to 7-foot deep channel would be partially filled in and its 3,000 feet would be turned into sea grass beds. Infill would come from the dredging of Midnight Pass

Sea grass sites

Sea grass beds from the new channel would be transplanted in

- Tidal lagoon
- Old Gulf Intracoastal Waterway channel

Mangrove restoration sites

- Tidal flat
- Old Mote Marine site

Channel

60-foot wide, 6-foot deep channel would connect the reopened pass to the Turtle Beach access channel and the county's boat ramp at Turtle Beach Park.

Midnight Pass channel

Channel would displace 3.3 acres of mangroves and 12.5 acres of sea grass

260,000-square-foot sand trap would capture sand in a storm, keeping the pass from silting over.

Sand from trap and other sources would restore beaches to the north and south of the new pass.

SOURCE: Sarasota County
STAFF GRAPHIC / JENNIFER F. A. BORRESEN



COURTESY PHOTO / SARASOTA COUNTY

In 1983, Sarasota County and the state allowed two Siesta Key homeowners to relocate Midnight Pass, which threatened to undermine their beachfront homes. The new pass closed almost immediately. Several groups have been fighting to reopen the pass for years.

MORE ON MIDNIGHT PASS

The plan: The restoration is either beautiful in its array of interlocking pieces or doomed to failure by its complexity. **Page 7A**

Time line: A hurricane opened Musketee Pass in 1921, but in the 1980s, residents who were worried about their homes sought the shrinking pass's closure. **Page 7A**

Read the county's Midnight Pass application, state responses and other information at tinyurl.com/512hon.

See a gallery of Midnight Pass photographs at heraldtribune.com.



HERALD-TRIBUNE ARCHIVE / 1983

On Dec. 5, 1983, the first attempt to open a new channel for Midnight Pass failed. Three more attempts over the next month would also fail.

Pass is an open-or-shut case

TIME LINE

- 1921:** A hurricane opens Musketeer Pass.
- 1924:** Musketeer Pass is renamed Midnight Pass.
- 1924:** Blind Pass Inlet at Point of Rocks closes, creating a long lagoon system between Point of Rocks and Midnight Pass.
- 1942-48:** Midnight Pass migrates north about 1,200 feet.
- 1945:** Congress funds the 100-foot-wide, 9-foot-deep Gulf Intracoastal Waterway.
- 1955:** Midnight Pass is more than 500 feet wide with a maximum depth of 13 feet.
- 1960:** Hurricane Donna causes shallowing of Midnight Pass' north channel.

PASS FROM 1A

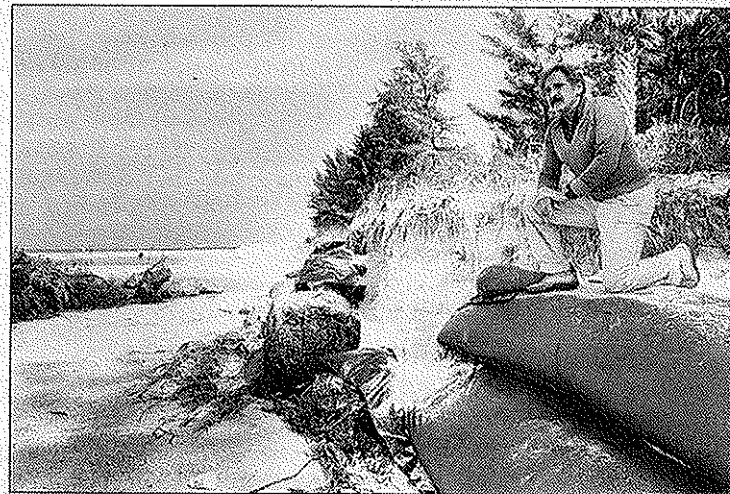
the waterfront environment. Dredging a new Midnight Pass, says county-hired coastal engineer Karyn Erickson, would require an unprecedented permit from the state, which has never approved the reopening of a closed pass under these laws.

One look at the DEP's bulging public file shows where the weight of public opinion lies on the issue. It contains letters from 227 people or groups urging that the pass be reopened and 12 from dissenters.

"Public opinion favors it, there's no question," said Bob Waechter, president of the Midnight Pass Society, a group of fishermen and boaters.

"I think we're finally honing in on this thing to get a resolution," Waechter said.

Boaters are among the



COURTESY PHOTO

Syd Solomon kneels on large sandbags placed to save his beachfront home on Midnight Pass in August 1983. The sandbagging attempt failed by September and Solomon received permission to close the pass.

the new channel is dredged. Erickson's plan includes moving sand from the new Mid-Scuppernon Andromeda, the

about the reopening to withdraw their objections, said

Waterway changes on Caladesa bay.

1972: Hurricane Agnes deposits more sand in northern channel.

1983: Midnight Pass has shrunk to 50 feet in width with a maximum depth of 4 feet. Erosion causes homeowners to use sandbags to protect their homes.

Dec. 2: After sandbags fail, homeowners get permission to close pass in exchange for an agreement to open a new pass to the south and maintain it.

Dec. 4: Midnight Pass closed, new pass opened.

Dec. 5: New pass closes.

Dec. 8 to Jan. 6, 1984: New pass dredged three times, closes within days each time.

1985: County pays for study to reopen pass.

1986: County turns down dredging project, fearing the pass would close again by 2000.

1990: State denies application to reopen pass after county reversed position and filed an application.

1991: County pledges to reopen and maintain pass; state turns down plan. Midnight Pass Society sues state over ruling.

1998: County funds feasibility study to reopen pass.

2000: Feasibility study recommends four options, the least objectionable requiring ongoing dredging.

2004: County applies to Department of Environmental Protection to reopen pass.

July 2008: The DEP will be asked to rule that the county application is complete. If it is deemed complete, the DEP has 90 days to issue a notice on whether it will permit or deny the county's application.

SOURCE: Sarasota County



Over the past several years, more than 30,000 "Let It Flow" and "Open Midnight Pass" bumper stickers have been distributed.

recreation is downplayed as a reason to reopen the pass, since it is unlikely to sway regulators. Instead, the county's permit emphasizes the improvements to water quality in Little Sarasota Bay that reopening the pass is supposed to bring.

But environmental groups are among the main opponents to reopening the pass, including local chapters of the Sierra Club and the Audubon Society, along with ManaSota-88.

The county's claims that a reopened pass would bring better and healthier water flow to the bay have merit, said Audubon's Wade Mathews. But the issue seems driven more by popular support than science, and the county has not proven that the project would not cause more environmental harm than good, he said.

Ominously, for supporters, two of the letters supporting the "as is" option — that the pass remain closed — are from lawyers.

Which brings us to North Casey Key, where waterfront homeowners have seen their beaches grow and grow ever since the pass closed.

In 1976, when John MacFarlane bought his house about a half-mile south of where Midnight Pass used to be, he had about 25 feet of beach. But MacFarlane, president of the North Casey Key Association, says because of the migration of sand from north to south, his beach is now 300 feet wide.

MacFarlane understands why Siesta Key residents hope to alter the status quo, considering the county and residents just paid \$12 million to rebuild South Siesta beaches last year. But the migration of sand favors North Casey Key and residents are not going to just surrender that advantage over a project that might not work.

"Money is money, and as I say it works both ways," MacFarlane said. "Obviously we want to protect our beach and obviously the people from South Siesta want to open the pass and enhance the value of their property."

If Casey Key homeowners lose beachfront, they would consider that an unconstitutional taking of their property and go to court, he said.

But Erickson says nearby beaches will actually grow if

north and south of the reopened pass.

Over time the new pass will attract sand to both beaches, while, at the same time, the county will annually monitor those beaches to determine where sand trapped by the new channel system should be moved, she said.

So far, Erickson's study of the pass has cost the county \$771,000, including all the paperwork filed in the 2004 application and the responses to three years of requests for more information from the state. Erickson's contract tops out at \$910,000.

But the county is not the only one who has hired a coastal engineer, said Ken Oertel, a Tallahassee attorney who represents some of the Casey Key landowners.

Oertel says his coastal engineer claims that if the pass is opened, "there is no question in the world" that Casey Key beaches will erode.

Calling the county's plan a "boondoggle," Oertel sees the same future for the pass that a county-hired engineer foresaw in the 1980s: each flood tide will bring in sand and the pass will eventually close.

With two passionate sides weighing in on the issue and no room for compromise, the immediate future is easy to predict, he says.

"Sooner or later, DEP is going to have to give a thumbs-up or thumbs-down, and that's when it goes to litigation."

The permit

But first, the county is asking that all its documentation for the project be declared complete by the DEP. The state agency then has 30 days to either agree with the county that the application is complete or to ask for more time.

After that, the DEP has 90 days to file a notice that it will either approve the project or deny it. But the approval, or denial, does not go into effect for 30 days, giving environmental groups, individuals, or perhaps societies, a chance to appeal or even to bring suit.

Absent appeals, or lawsuits, the county could have a permit in hand by mid-December. At that point, the next step is to get several federal agencies which have voiced concerns

night Pass.

The Environmental Protection Agency has complained that the county has not shown the need for the project or how the pass would be kept open. The National Marine Fisheries Service says Little Sarasota Bay, which has become a nursery for fish, is a "nationally important aquatic resource."

Another big if is whether the county, which will run a deficit next year, can come up with \$15 million if it gets the permit.

At a recent budget hearing, Commissioner Paul Mercier suggested talking about where the Midnight Pass money would come from, but the other four commissioners appeared happy to put off that contentious discussion.

Pros and cons

"It always amazes me how easily people closed the Pass, but how it seems impossible to reopen it."

That lament over 1983's man-made closing of the pass was penned by Wanda Kerr of Siesta Key in a letter to the DEP.

E-mail after e-mail touts the county's project as turning back the clock 30 years to a time when the bay was supposedly pristine.

While restoring the pass to a marine lagoon with clear flowing water reflecting a pretty blue is the Midnight Pass Society's dream, opponents say murky, brown Little Sarasota Bay has developed a beauty of its own as it turned into a back bay estuary and a nursery for a wide variety of fish species.

Opponents also point out that the pass had become nearly impassable by the time of the 1983 bulldozing, and that every attempt to reopen the pass has failed.

County Commissioner Jon Thaxton, who reluctantly predicts he will be the only commissioner to vote against the reopened pass, is not buying the \$15 million cost estimate. It will be more, said Thaxton, noting that the county's permit application includes a commitment to keep the pass open for 20 years.

"The only way a pass is going to stay open is with consistent maintenance dredging, nobody disputes that," he said.

"It's an incredible investment."