

WATER LOG

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Also,

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*Cover photograph of an oil-covered pelican;
courtesy of Globovisión.*

*Contents photograph of seagulls;
courtesy of Ed Schipul.*

• UPCOMING EVENTS •

21st Annual Summit on Environmental Law & Policy

February 19-20, 2016
New Orleans, LA

<http://bit.ly/tulane21st>

ABA SEER Spring Conference

March 30 - April 1, 2016
Austin, TX

<http://bit.ly/abaspring2016>

3rd Annual Mid-South Agricultural and Environmental Law Conference

April 21-22, 2016
Memphis, TN

<http://nationalaglawcenter.org/midsouthcle2016>

BP Consent Decree and the Gulf States

John Juricich

Oil washing ashore the Louisiana coast; courtesy of the Louisiana GOHSEP.

In 2010, less than 50 miles off the coast of Louisiana, the Macondo well suffered a disastrous blowout. The resulting explosion and fire destroyed the Deepwater Horizon drilling rig, killing eleven men aboard and sending more than three million barrels of oil into the Gulf of Mexico over a period of nearly three months. Oil flowed within deep ocean currents, hundreds of miles away from the blown-out well, resulting in oil slicks that extended across more than 43,000 square miles, affecting water quality and exposing aquatic plants and wildlife to harmful chemicals. Oil was deposited onto at least 400 square miles of the sea floor and washed up along more than 1,300 miles of shoreline of the Gulf. The spill wrecked the Gulf economy and waterfront, damaged and temporarily closed fisheries vital to the Gulf economy, oiled hundreds of miles of beaches, coastal wetlands, and marshes, and killed thousands of birds and other marine wildlife. The London oil giant, British Petroleum, was responsible, and the Gulf wanted—indeed, needed—restitution.

Litigation and the Consent Decree

Eight months later, on December 15, 2010, Attorney General Eric Holder announced a civil lawsuit against BP and several co-defendants, seeking to hold them accountable for the Deepwater Horizon disaster.¹ The federal lawsuit ended in a three-phase civil trial in which the court found that the spill was caused by BP's gross negligence.² Each of the Gulf states—Alabama, Florida, Louisiana, Mississippi and Texas—also filed civil claims against BP relating to the spill, including claims for economic losses and natural resource damages.

As a result of the litigation, on October 5, 2015, the United States and the five Gulf states announced a settlement resolving civil claims against BP arising from the April 2010 oil spill.³ This settlement resolves the governments' civil claims under the Clean Water Act and natural resources damage claims under the Oil Pollution Act, as well as economic damage claims of the five Gulf states and local governments. In all, this



settlement agreement of civil claims is worth \$20.8 billion and is the largest settlement with a single entity in the department's history. Also, consistent with the settlement, the Deepwater Horizon Trustees Council, made up of representatives of the five Gulf States and four federal agencies, has published a draft damage assessment and restoration plan and a draft environmental impact statement. The plan includes a

comprehensive assessment of natural resource injuries resulting from the oil spill and provides a detailed framework for how the trustees will use the natural resource damage recoveries from BP to restore the Gulf environment.

Under the terms of a consent decree evidencing the settlement, BP must pay a: \$5.5 billion federal Clean Water Act penalty, plus interest, 80% of which will go to



Controlled burn of the Deepwater Horizon BP oil spill; courtesy of Deepwater Horizon Response.

restoration efforts in the Gulf region pursuant to the RESTORE Act. This is the largest civil penalty in the history of environmental law. BP will also pay \$8.1 billion in natural resource damages (including \$1 billion BP already committed to pay for early restoration) for joint use by the federal and state trustees in restoring injured resources. In addition, BP will pay up to an additional \$700 million, some of which is in the form

of accrued interest, specifically to address any later-discovered natural resource conditions that were unknown at the time of the agreement and to assist in adaptive management needs.

The money allocated for natural resource damages will fund Gulf restoration projects that will be selected by the federal and state trustees to meet five different restoration goals and thirteen restoration project categories, including restoration focusing on supporting habitats such as coastal wetlands, but also providing for specific resource types, such as marine mammals, fish and water column invertebrates, sturgeon, submerged aquatic vegetation, oysters, sea turtles, birds, and lost recreational use, among others.

Another \$600 million will go to other claims, including claims for reimbursement of federal and state natural resource damage assessment costs and other unreimbursed federal expenses and to resolve a False Claims Act investigation due to this incident. The payments will be made over time and are backed by parent company guarantees from BP Corporation North America Inc. and BP P.L.C. Additionally, BP has entered into separate agreements to pay \$4.9 billion to the five Gulf states and up to a total of \$1 billion to several hundred local governmental bodies to settle claims for economic damages they have suffered as a result of the spill.⁴

Notice of both the consent decree and the draft damage assessment and restoration plan were published in the federal register. Both were available for public comment for 60 days. A series of public meetings were held in the Gulf region and Washington, D.C. to solicit comments on the proposed consent decree and the draft restoration plan. The comment period has now ended. The Gulf States are now waiting for the consent decree to become final, which will likely be later this year.

Tax Write Offs?

As an interesting side note, the consent decree allows BP to write off \$15.3 billion of the total payment as an “ordinary cost of doing business” tax deduction. The majority of the settlement is comprised of tax-deductible natural resource damage payments, restoration, and reimbursement to government, with just \$5.5 billion explicitly labeled a non-tax-deductible



Contractor cleaning up oily waste; courtesy of DVIDS Media.

Clean Water Act penalty. Under the U.S. tax code, restitution, reimbursement, and compensatory payments made to injured parties in a settlement can be claimed as “ordinary cost of doing business” tax deductions unless expressly stated to the contrary in the agreement.⁵ In fact, BP has already written off the cost of its \$32 billion cleanup effort after the spill, earning a tax windfall of \$10 billion.⁶ By contrast, when the U.S. Department of Justice reached a criminal settlement with BP over its role in the deaths of 11 workers who were aboard the oil-rig when it exploded, that \$4 billion criminal settlement specified that it was not tax-deductible. The key takeaway for the public: This proposed settlement would allow BP to claim \$5.35 billion as a tax windfall, significantly decreasing the public value of the agreement.

Conclusion

As current Attorney General Loretta Lynch put it, “[t]aken as a whole [the consent decree] is both strong and fitting. BP is receiving the punishment it deserves.”⁷ A tragic event that will live in infamy, the BP oil spill is literally a stain on the Gulf Coast. As this consent decree becomes final, and the settlement is paid out, the Gulf will be able to continue to restore its coast and finally close the book on this disaster. 🐼

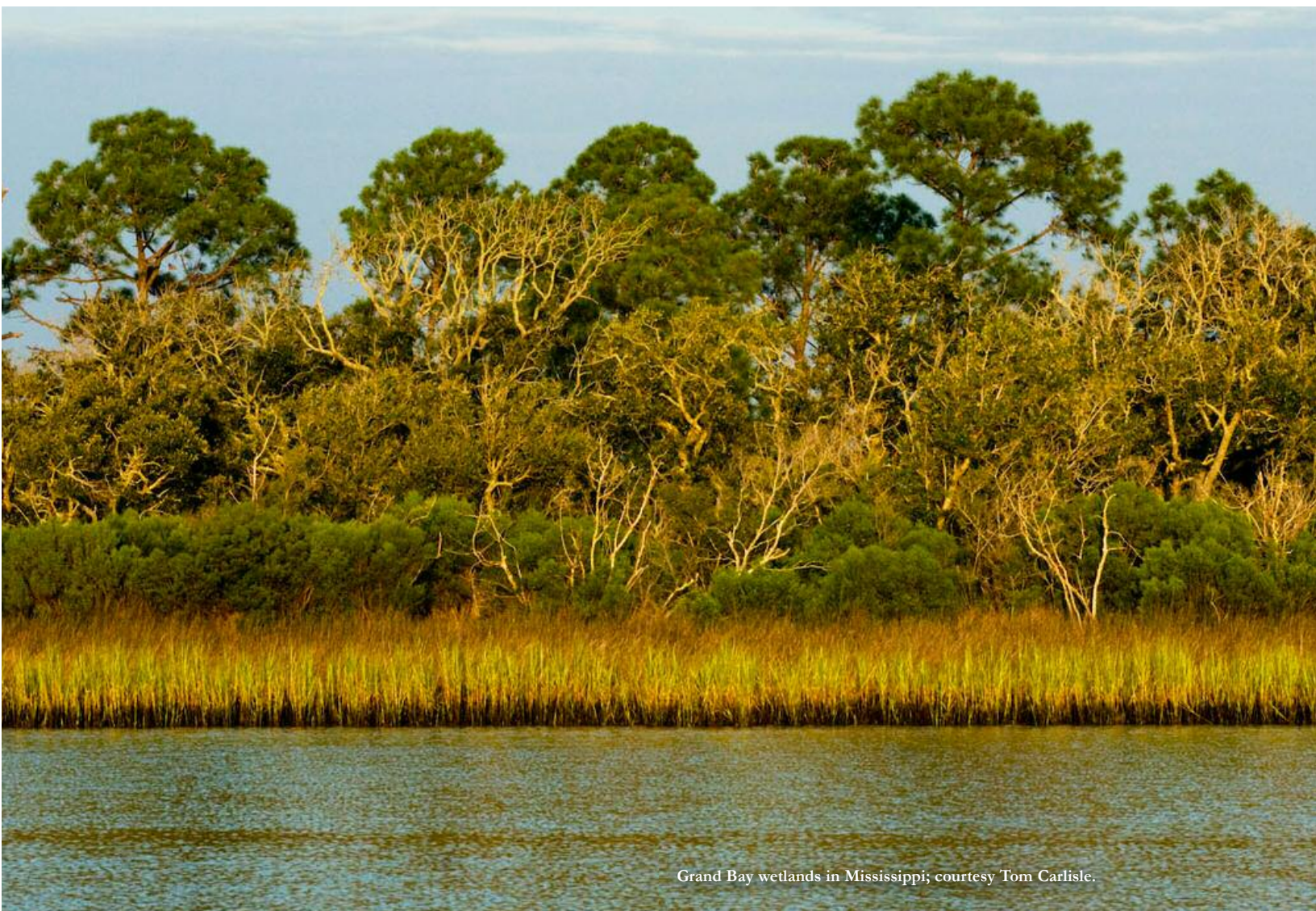
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Endnotes

1. *See, eg.,* In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on April 20, 2010, 21 F. Supp. 3d 657 (E.D. La. 2014).
2. *Id.*
3. *See Id.; see also* CONSENT DECREE AMONG DEFENDANT BP EXPLORATION & PRODUCTION INC. (“BPXP”), THE UNITED STATES OF AMERICA, AND THE STATES OF ALABAMA, FLORIDA, LOUISIANA, MISSISSIPPI, AND TEXAS.
4. *See* CONSENT DECREE, *supra* note 3.
5. *See* INTERNAL REVENUE CODE § 162(a).
6. *See* Jesse Reiblich, *BP Agrees to Settlement with the Federal and State Governments*, 47 NO. 2 ABA TRENDS 9 (2015).
7. Speech by Attorney General Loretta Lynch at the Department of Justice on October 5, 2015.

Wetlands Takings Claim Appealed to Mississippi Supreme Court

Amanda Nichols



Grand Bay wetlands in Mississippi; courtesy Tom Carlisle.

The Mississippi Supreme Court recently ruled in favor of a property owner who brought an action against the Mississippi State Highway Commission for its permitted, but uncompensated, taking of 1,300 acres of property for use in state wetlands mitigation. The Supreme Court found that the trial court erred by

granting summary judgment in favor of the Commission and dismissing the case.¹ As the case presented factual issues disputed by the parties that could affect the outcome of the case, the Supreme Court ruled that the case should have proceeded to a trial to investigate these matters rather than being dismissed.

Background

In 2007, the Mississippi Highway Commission (Commission) applied for a Clean Water Act wetlands permit from the U.S. Army Corps of Engineers (Corps) to fill wetlands as part of a construction project within the Turkey Creek watershed. As part of the project, the Commission requested to fill in the roadbed of a proposed connector road near Gulfport, Mississippi. In exchange, the Commission offered to purchase wetland mitigation bank “credits” to remediate the loss of the filled wetlands. However, the Corps, the Mississippi Department of Environmental Quality, and the EPA took issue with this proposal and refused to approve the permit on those conditions.

During a 2009 site visit, the Commission suggested that it could use adjacent properties to mitigate the wetland loss, including approximately 1,300 acres owned by Ward Gulfport Properties (Ward). The Corps accepted this proposal and issued the permit to the Commission on the condition that the Commission acquire Ward’s property prior to opening the new road to traffic.

Around the same time, Ward also had a wetland permit request pending before the Corps related to potential development on the same property and was in discussions with various buyers regarding the parcel. After issuance of the permit to the Commission, the Corps denied Ward’s request and negotiations to sell the property ceased with all parties except the Commission. In response, Ward filed suit against the Commission in state court claiming a taking of his property. He also filed suit against the Corps in federal court, challenging the validity of the permit to the Commission.

In state court, Ward argued that the Commission’s permit constituted a full categorical taking, or, alternatively, a partial regulatory taking. Ward further alleged that the Commission had initially requested the permit and suggested using Ward’s property, thereby first initiating the taking. In 2012, the federal court sided with Ward and vacated the permit from the Corps to the Commission.²

Consequently, Ward amended its complaint in state court to seek damages from the date the permit was issued (August 28, 2009) to the date it was vacated

(November 21, 2012). In response, the Commission filed a motion for summary judgment alleging that: (1) the Corps caused Ward’s damages, not the Commission, and (2) the temporary halt of development on Ward’s property was not a sufficient basis for claiming damages.³ The trial court sided with the Commission on both counts and dismissed the case. According to the trial court, Ward failed to demonstrate a regulatory taking had occurred. The trial court also found that the federal court decision determined that the Commission did not cause the damages to Ward.

Ward appealed the matter to the Mississippi Supreme Court. On appeal, the Supreme Court considered whether the trial court properly dismissed the case, determining that the Commission did not take Ward’s property. In doing so, the court analyzed two types of takings claims: (1) categorical taking, and (2) partial regulatory taking.

Categorical Taking

The court first addressed whether the Commission’s permit constituted a categorical taking. A categorical taking occurs when a person’s property is permanently taken by the government’s actions. The trial court failed to analyze this possibility, instead concluding that the impact to Ward’s property was only temporary because Ward’s property was never “used or occupied” by the Commission.⁴ However, Ward maintained that the impact to his property was permanent, though ultimately cut short by the repeal of the permit. According to Ward, a categorical taking occurred.

On appeal, the Supreme Court noted that the test for categorical takings depends on whether the permit “left plaintiffs without any present or future interest in economically viable use in their parcel as a whole or only diminished the value of their interests.”⁵ A categorical taking will occur only when all economically viable use in the land has been destroyed. The court also noted that subsequent events that cut short the taking (like the repeal of the permit in this case) might reduce the impact of the taking, but those later events do not change whether a



The Biloxi River in Gulfport, MS; courtesy of Charles Ali.

taking occurred. The court reasoned that the permit, here, was intended to be permanent. Because of this, Ward was rendered wholly unable to develop the property, obtain permits for development, or sell it. The property's only remaining use that existed was use as the Commission's wetlands mitigation.

Assuming that the Commission's permit constituted a taking, Ward would be entitled to just compensation for his loss. The compensation would be based on the time that "a regulation unconstitutionally takes the property interest in question until it is rescinded or repealed."⁶ Further, if the government's actions have already constituted a taking, repeal of the permit does not relieve the government of the duty to provide this just compensation for the permit from the date the taking was effectuated.

Without deciding whether or not a categorical taking had occurred in this case, the Supreme Court determined that the lower court should have further investigated the matter. If the trial court determines that a categorical taking has occurred in this case, Ward will be entitled to just compensation from the date the permit was first issued to the date it was repealed.

Partial Regulatory Taking

The Supreme Court next turned to the partial regulatory taking claim. Even if a categorical taking did not occur (all economic use of land destroyed), Ward may have suffered a partial regulatory taking. The Supreme Court utilized the three-prong balancing test set forth in *Penn Central Transportation Co. v. City of New*

York to determine the likelihood of this claim.⁷ This balancing test weighs (1) the economic impact of the action, (2) its interference with distinct investment-backed expectations, and (3) the character of the governmental action.

Based on the limited evidence in the record, the court examined each of the three factors. As to the first prong, the court held that the available evidence indicated that the negative economic impact on Ward's property was significant. According to Ward, the permit's existence deprived him of all economically viable use of the property during the time it was in effect.

In regards to the second prong, the court noted that this analysis requires "an objective, but fact-specific inquiry into what, under all the circumstances, the [landowner] should have anticipated."⁸ In other words, the inquiry must analyze whether the owner was able to use the property as he or she reasonably believed that he or she would be able to at the time it was purchased. The Commission argued that Ward was unable to succeed on this prong because he failed to "produce numerous potential buyers or development plans" evidencing such interference.⁹ The court, however, rejected this argument because Ward provided affidavit evidence that he had negotiations with potential buyers for the property as well as a pending permit with the Corps before the permit to the Commission was granted. After the issuance of the Commission's permit, these negotiations were destroyed and Ward's permit was denied, thus creating the requisite interference under this second prong.

The final prong—looking at the character of the governmental action—fell clearly in Ward's favor based on the evidence presented. While the Commission conceded this point, it alleged that the Corps' actions caused a "disproportionate burden" of the wetlands mitigation efforts to fall on Ward in comparison to others in the community.¹⁰ The Commission claimed that it was merely an "innocent pawn" that was forced to pledge Ward's property for wetlands mitigation.¹¹ However, Ward introduced deposition evidence indicating that the Commission actually suggested Ward's land for use in its mitigation efforts, not the Corps.

Because Ward had the distinct possibility of succeeding in all three prongs of the *Penn Central* test, the Supreme Court found that there was sufficient evidence to defeat summary judgment on the issue of whether there was a partial regulatory taking. In other words, the trial court improperly dismissed Ward's case.

The Commission claimed that it was merely an "innocent pawn" that was forced to pledge Ward's property for wetlands mitigation.

Conclusion

The case will return to the trial court for further proceedings in line with the Supreme Court's ruling. During this process, both Ward and the Commission will have the opportunity to introduce additional evidence as the court further investigates the merits of the case. Should the trial court conclude that Ward suffered a taking, the Commission may be required to pay damages to Ward for this loss. 🐼

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Endnotes

1. *Ward Gulfport Properties, L.P. v. Mississippi State Highway Comm'n*, 176 So. 3d 789, 798 (Miss. 2015).
2. *Id.* at 792.
3. *Id.* at 793.
4. *Id.*
5. *Id.* at 797.
6. *Id.*
7. *See generally*, *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).
8. *Ward Gulfport Properties*, 176 So. 3d at 798.
9. *Id.*
10. *Id.*
11. *Id.* at 799.

Illegal Red Snapper Catch May Lead to Jail Time

Katie Muldoon

Photo of red snappers; courtesy of Steve Harwood.

A collaborative investigation involving the U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, U.S. Coast Guard Investigative Service, and the National Marine Fisheries Service uncovered the violation of federal and state laws by a 30-year-old Texas man after he failed to report more than 1,000 lbs of red snapper he caught in the Gulf of Mexico and transported for sale.¹

Red snapper fishing is regulated by both federal and state law in order to reduce chronic overfishing in the commercial fishing industry. In 2013, a cooperative undercover investigation called “Operation in the Red” was organized in order to “identify, apprehend and prosecute individuals and businesses involved in the unlawful catch, possession, sale and purchase of red snapper along the Texas gulf coast.”² In August and October of 2013, Christopher James Garcia sold over 1,000 lbs of red snapper to undercover agents for more than \$6,000.³

Garcia is a co-owner and operator of Exclusive Fishing Texas. In addition to violating federal law by failing to claim the fish against his catch quota, he violated Texas state law in failing to obtain a wholesale truck dealer’s fish license that would have allowed him to lawfully sell legal fish from a truck.⁴

Garcia pled guilty to violating the Lacey Act, a federal conservation law enacted in 1900 to help states protect their wildlife. The Act prohibits people from importing, exporting, transporting, selling, receiving, acquiring, or purchasing any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any tribal law.⁵

In this instance, Garcia’s failure to report the catch violated the Magnuson-Stevens Fishery Conservation and Management Act, which sets a total allowable catch of a managed species (like the red snapper) for each fishing season in federal waters. That catch total is then allocated among the various fishing sectors by percentages. The objective of catch limits is to rebuild overfished stocks and to ensure a safe and sustainable supply of seafood.

Garcia faces a federal prison sentence of up to 5 years imprisonment, a \$20,000 maximum fine, as well as up to 3 years of supervised release. Currently, he is released on bond. A sentencing hearing was scheduled for December 11, 2015.⁶

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Endnotes

1. USAO News Release: Corpus Christi Man Convicted for Illegally Selling Red Snapper (Aug. 27, 2015) (on file with author).
2. *Id.*
3. *Id.*
4. Ben Lloyd, *Illegal red snapper catches has Corpus Christi man facing 5 years in prison* (Aug 27, 2015 3:04 PM CDT).
5. Lacey Act, 16 U.S.C. §§ 3371–3378.
6. USAO News Release, *Supra* note 1.

Mass Transit in a Seasonal Context: How Coastal Cities can Ease Demands on Beach Access

Stephen Deal

One of the major policy dilemmas in coastal communities is efficiently managing beach access. The quirks of seaside geography often mean that many of the nation's most popular shoreline communities are located on isolated and narrow barrier island chains. Deep bays and estuaries can also serve as major barriers between coastal resorts and nearby urban areas, as is the case with Mobile and the beach towns of Gulf Shores and Orange Beach. During peak tourist season, this often results in clogged entry points and lengthy waits for coveted beachfront parking spaces. This traffic drops off sharply out of season though, and coastal communities that lack proximity to a large metropolitan area may not have the critical mass necessary to sustain a public transit service year round. There are, however, a number of emerging technological innovations and policy solutions coastal communities may employ to provide timely transit service and deal with the sudden seasonal surge in popularity.

The Power of Microtransit

When people think mass transit, they typically think of bus service, or in the case of large cities, subways and rail lines. But another transit service has emerged that fills the gap between cars and traditional transit: Microtransit. Microtransit is a private van or bus service that offers fixed or flexible routes for prices cheaper than private car services like Uber or Lyft, but slightly more pricey than a comparable public transit provider.¹

The chief appeal of Microtransit is that it represents a kind of emergent transit network, one that can complement existing fixed-route service or can function

as a kind of specialized transit system for a private company or for a particular subset of the population. One internet start-up platform indicates that there are more than 1,000 ventures of such nature, which suggests that this idea could go a long way in changing the conceptions we have of the link between cities and mass transit.² Some of these ventures are the product of Uber and Lyft, such as Lyftline, but several of these services are standalone companies, each one offering its own unique take on the mass transit experience. Two recent startup examples are Chariot in San Francisco and Bridj in Boston, which essentially function as private commuter buses.

While these private services have been a source of debate, the Microtransit movement is not something effectively isolated to the private market. Many local governments and non-profits have embraced Microtransit for their own immediate urban needs. One city in Florida provides an interesting case study in how coastal communities can employ a system like this.

Small-Scale Transit in the Coastal Context

Traditionally such services in coastal cities have either been grandfathered in from an earlier era or are something of a tourist novelty. For example, the Jersey Shore city of Wildwood has a tram service, which offers rides along the entire length of the city's boardwalk and has been in operation on the beach since 1949.³ It has only been recently, though, that this type of transit has come under reassessment as a viable policy option that cities can pursue. One example of a coastal community who has applied Microtransit principles to their situation is Stuart, Florida.



Photo of a tram in St. Augustine, FL; courtesy of Flickr user bob194156.

Stuart uses a customized golf cart shuttle to transport people from nearby parking areas into downtown Stuart. First conceived of in 2006, the custom-built golf cart can accommodate between 20 and 22 people and the shuttles are also on-call for users in the event the drivers are in the middle of a route.⁴ The shuttle service is a popular option with downtown visitors, with more than 41,000 riders

in one year. This low-tech transit solution is comparatively cheap as well. In June 2015, the city was able to purchase two additional trams for the price of \$67,000.⁵ By comparison, a new 40-foot diesel bus can cost a city upward of \$400,000.⁶ Though Microtransit is not a panacea for all transit problems, it offers flexibility and a simple foundation for cities to build on.

The Dollar Van Dilemma

Like its more taxi-inspired predecessors, Uber and Lyft, the movement towards Microtransit has not been devoid of controversy, as the case of New York City's Dollar Vans demonstrates. Dollar Vans predate the whole Microtransit movement by several decades, but they fit the definition of a transit service somewhere between taxi companies and fixed-route transit. First conceived of as a response to the 1980 transit strike, the Dollar Van service has gone through several trials and tribulations, which may be instructive in how smaller cities and towns respond to emerging Microtransit options.⁷

Although the city started issuing van licenses in 1994, the Dollar Vans continue operating within a cloud of regulatory uncertainty. Between 400 and 500 licensed vehicles operate across the entirety of New York City, but that service is far outstripped by illegal vans. This problem is compounded by the lack of clear oversight on where Dollar Vans can operate curbside pickup. Many of the Dollar Vans are not authorized to pick up on city bus routes, which is problematic since the bus routes cover significant portions of the city's road system. There is also concern from public officials about the safety of the vehicles since operators drive aggressively to get quickly to the next paying customer.

Although the city started issuing van licenses in 1994, the Dollar Vans continue operating within a cloud of regulatory uncertainty.

The Dollar Van service also appears to be in constant state of flux, something that may be a pro or con depending on how you look at it. For example, in many of the city's large immigrant neighborhoods, the Dollar Vans function more like a community social service. Quite often the drivers in immigrant neighborhoods like Chinatown will be well versed in the language of the neighborhood or be residents themselves. Drivers in these neighborhoods have also been known to go the extra mile for their users by offering doorstep drop-off and helping unload groceries.

In the borough of Brooklyn, though, the Taxi and Limousine Commission has impounded more than 600 illegal vehicles and the system's general operation here tends to be viewed as more of a hassle. Though cities can stem off some of these concerns by running their own small systems on high-volume traffic corridors, or by working with local business associations to establish a small service, there are still important questions which cities must consider when incorporating Microtransit into the city's transit fabric.

The Smart Parking Spot

Another solution coastal communities can employ to manage traffic is through smart parking meters and dynamic pricing. The success of these two concepts is illustrated well in the ExpressPark program, which was set up by the city of Los Angeles. The program is also unique due to its adoption of dynamic pricing. As the term implies, the price one pays for parking is dynamic or fluid and it changes in order to reflect the demand for parking that day. So, if parking demand is up for the day, the prices increase and if the demand drops, then the prices drop as well.⁸ This feat is accomplished by wireless pavement sensors, which keep track of parked vehicles in real time.

This technology also allows the city to track the availability of individual spots. Essentially, users can go to the ExpressPark website or use two app services, Parker and ParkMe, to track and find available parking.⁹ In downtown Los Angeles, the system is further augmented by 27 digital signs that inform drivers of available spots in public parking locations. The results of all this new smart technology have been significant. Revenue through the program has risen by 2.5% and there has been a marked reduction in traffic congestion caused by motorists cruising around for an available spot. Because of this success, the city plans to introduce the service into other Los Angeles neighborhoods, such as Hollywood and Venice, in the near future. Also, while the rollout of the ExpressPark program has been gradual, the smartphone apps have been able to expand aggressively beyond ExpressPark's current range and provide important parking information throughout the city's major neighborhoods.



The Wildwood tram has been helping visitors navigate New Jersey's boardwalk for more than 60 years.

One consequence of urban sprawl has been the tendency to view parking as a public good, something to be provided at little to no cost to the user.¹⁰ Naturally this viewpoint has profound negative implications for urban resiliency since this arrangement elevates sprawling subdivisions over great urban places. However, by introducing the variable of price back into the equation, cities are not only able to generate more revenue, but they also pave the way towards a more nuanced and strategic approach to providing parking.

Conclusion

In short, good mass transit is a lot like a good city in the sense that it is geared towards context-sensitive solutions and can easily adapt to sudden fluctuations within the system. Unfortunately our current mass transit approach tends to lock cities into a “one size fits all” scenario, with the perception that a large, public bus network is the baseline, rather than one option between a plethora of unique modes and methods of conveyance.

Recent trends and innovations like Microtransit and smart parking point towards a more emergent type of transit network, one that holds particular value for seasonal resort towns. Microtransit services could be deployed on a selective basis around public beach spots and a small van or golf cart shuttle could easily navigate individual parking areas to provide curbside pickup. Smart parking technology can also provide real-time data on parking availability and will help people better plan their trip accordingly. The mark of a

resilient community is one that can respond to sudden change quickly and nimbly. Coastal communities don't really have the option of creating several miles of new beach to ease concerns related to access, but they can employ policies that lessen the adverse effects of traffic and congestion through a flexible approach to transportation management. 🦋

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Endnotes

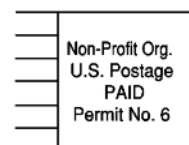
1. Jim Benning, *Microtransit aims to civilise the worst part of your workday*, BBC, September 3, 2015.
2. Eric Jaffe, *How the Microtransit Movement is Changing Urban Mobility*, Atlantic CityLab, April 27, 2015.
3. Jason Nark, *Wildwood's Boardwalk Trams a Perennial Attraction*, The Philadelphia Inquirer, May 19, 2011.
4. Gaylon Parker, *Cart System Provides Several Benefits*, Martin County Hometown News, March 20, 2015.
5. City of Stuart Florida, *Resolution Number 61-2015*, City of Stuart, June 22, 2015.
6. Joanne Shriner, *Ocean City Seeking Five New Buses for Next Summer*, Maryland Coast Dispatch, September 3, 2015.
7. Aaron Reiss, *Interactive: New York's Shadow Transit System*, The New Yorker, June 27, 2014.
8. Martha Groves, *L.A. Program Aims to Make Parking Easier*, Los Angeles Times, August 22, 2010.
9. Dan Weikel, *L.A.'s ExpressPark Connects Motorists to Downtown Parking Spots*, Los Angeles Times, December 15, 2015.
10. Matthew Yglesias, *Out, Damned Spot*, Slate, September 18, 2015.



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