

MEMORANDUM OF UNDERSTANDING
for
Coordination of Supplemental Beach Nourishment and Related Coastal Activities

THIS MEMORANDUM OF UNDERSTANDING for COORDINATION OF SUPPLEMENTAL DOWNDRIFT NOURISHMENT AND RELATED COASTAL ACTIVITIES (“Agreement”) entered into effective this 2nd day of April 2013 (“Effective Date”) by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida (“County”); and Sebastian Inlet District (“District”) an independent special taxing district established by a Special Act of the Florida Legislature in 1919, to maintain the navigability of the Sebastian Inlet.

BACKGROUND RECITALS

A. The County maintains beach and dune systems along the 22 miles of Indian River County Atlantic Ocean shoreline. The mission of the Indian River County Coastal Engineering Division is to identify areas of chronic beach erosion and areas of high potential storm damage and to propose appropriate projects to mitigate the threats. Coastal activities are guided by the County’s Beach Preservation Plan and the County’s Habitat Conservation Plan. Both plans are referenced in Chapter 9, Coastal Management Element of the 2030 County Comprehensive Plan adopted on October 12, 2010.

B. The District is authorized by, a Special Act of the Florida Legislature (Chapter 2003-373, Laws of Florida) to construct, improve, widen or deepen, and maintain the Sebastian Inlet. Pursuant to F.S, 161.042 the District is directed to place all beach compatible materials derived from dredging the Sebastian Inlet on the downdrift beaches of Indian River County.

C. The District’s activities are guided by an Inlet Management Plan certified in March 2000 and recommendations by a Technical Advisory Committee accepted August 2005. The District strives to transfer an average annual volume of sand to the downdrift beaches in the range of 70,000 to 90,000 cubic yards. A sand bypass budget is maintained by comparing annual survey profiles of the beach and dune system and performing other coastal measurements.

D. The County and the District desire to cooperate in connection with obtaining beach compatible materials from the dredging of the Sebastian Inlet sand trap and channel, using such beach compatible materials to partially construct or repair dune projects, previous beach renourishment projects or erosional hot spots along the County’s beaches north of DNR monument R-40, all on the terms and conditions set forth herein.

E. The District has constructed a Dredged Material Management Area (DMMA) for stockpiling both beach compatible sand and non-beach compatible sand material. The District and County desire to coordinate on the appropriate use of DMMA material in public works type projects with a corresponding public benefit.

F. The County and the District regularly collect data on the coastal system such as: hydrographic survey, geotechnical survey, biological monitoring, aerial photography, etc. The County and the District desire to share data when necessary for permitting purposes, management plan modification and analysis and understanding of the coastal system. Coordination between coastal engineering consultants will benefit both the County and the District.

G. The District has entered into an agreement with a private consulting firm for evaluating the economic benefits of maintaining the Sebastian Inlet. Surveys of waterfront businesses, boat owners and marine related entities will provide information related to uses of the inlet. The County may benefit from economic data generated by the survey related to property values near the inlet and public interest in establishing artificial reefs offshore of Sebastian Inlet.

H. Florida Statutes Chapter 163 known as the Florida Interlocal Cooperation Act of 1969, provides a method for governmental entities such as the County and the District to cooperate with each other on a basis of mutual advantage to provide services and facilities in a manner that will accord best with the factors influencing the needs and development of local communities. Also, Florida Statute 189.4221 allows the District to purchase commodities and certain contractual services from purchasing agreements of the County which have been procured by a process that would have met the procurement requirements of the District. This arrangement also known as piggy-backing.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, and intending to be legally bound, the County and District agree as follows:

1. Background Recitals. The background recitals are true and correct and form a material part of this Agreement.

2. Coordination. Inlet sediment bypassing, supplemental downdrift nourishment and related activities of the District should be carried out in close cooperation with Indian River County and the Florida Department of Environmental Protection, and the Division of Recreation and Parks. All parties desire to mitigate downdrift erosion, promote public use and protect natural resources through their respective management plans.

3. Sand Bypassing. The District desires to transfer sand to the downdrift beaches. The primary placement location for material from the sand trap and alternate sources should be on the downdrift beach, north of R-17 and within the approved construction fill template of the County designated Sectors 1 and 2 Project area. The timing and placement of supplemental material and inlet sand bypassing should be coordinated with Indian River County to reduce the frequency of County beach nourishment placement in that region. A figure identifying the location of the sediment bypassing template (Sectors 1 & 2) is attached as Exhibit 1 and incorporated by reference herein.

4. Supplemental Nourishment. If there is not adequate volumetric capacity within the Sectors 1 and 2 construction fill template, supplemental material should be placed by the District on the downdrift beach in areas of greatest need (as

determined by Indian River County) north of R-40. Supplemental volumes will be determined through agreement between the County and the District (target volumes are anticipated to be in the range of 15,000 cubic yards). A figure identifying the location of the Supplemental Fill template (R-17 – R-40) is attached as Exhibit 2 and incorporated by reference herein. *District and Indian River County Responsibilities:* In order to maximize success of the Supplemental Nourishment and Sand Bypassing Plans, the District and Indian River County must cooperate closely, and any such placement should be guided by the Sebastian Inlet Management Plan, and Indian River County's Beach Preservation Plan and Dune Maintenance Program.

- The District will be responsible for fill excavation, transportation and placement of beach compatible sand on downdrift beaches to meet its bypassing objective.
- Indian River County should be responsible for: 1) identifying, designing, permitting, and constructing supplemental fill access locations south of R-17; and 2) identifying, designing and permitting supplemental fill placement locations south of R-17; and 3) securing necessary releases and approvals from upland property owners.
- The District should be responsible for coordinating (with the Department and Indian River County) use of supplemental fill access and placement locations north of R-17.
- The District should be responsible for maintaining (during construction) and restoring any fill access locations (to their immediate pre-use condition) it uses to place supplemental sand.
- Indian River County should reimburse the District for any incremental increase in transportation costs for sand placement south of R-17. The County and the District should coordinate monitoring to maximize efficiency and minimize overall cost.

5. Monitoring. The District agrees to assume all physical and biological monitoring associated with the approved Sectors 1 and 2 fill template as required by permit for purposes of measuring the potential impacts to nearshore hard bottom. The County agrees to share all historical monitoring data collected by the County for purposes of establishing baselines. In the event of a County sponsored beach renourishment project north of R-17, then the County, District and agencies will renegotiate the responsibilities of permit required monitoring.

6. Storm Loss Mitigation. The County will undertake applications for storm loss mitigation for Sectors 1 and 2 required by state or federal agencies for impacts resulting from named storms and identified by disaster declarations. The County's "engineered beach" template qualifies the project for such reimbursement programs. For renourishment events to offset storm loss, the County and District will coordinate and give priority to any sand available in the District's sand trap and/or DMMA for potential beach or dune placement. If the County and its coastal engineer select an offshore or upland sand source

for restoring the beach, the District has the option to fund a portion of the restoration as the local cost-share. Quantities of sand taken from the inlet system or funded by the District will be calculated as a sand bypass volume credit. The County and the District will coordinate closely following emergency events to determine the most efficient and expeditious manner of beach protection.

7. Notices. Any notice, request, demand, consent, approval or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (1) Hand delivery to the other party; or (2) Delivery by commercial overnight courier service; or (3) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

Indian River County:
Indian River County Public Works Department
Attn: Public Works Director
1801 27th Street
Vero Beach, Florida 32960
Fax: (772) 778-9391

Sebastian Inlet District.
Attn: Martin Smithson, Administrator
114 Sixth Avenue
Indialantic, Florida 32903
Fax: (321) 951-8182

Notices shall be effective when received at the address as specified above. Either party may change its address, for the purposes of this section, by written notice to the other party given in accordance with the provisions of this section.

8. Governing Law; Venue. The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, as well as any litigation between the parties, shall be Indian River County, Florida for claims brought in state court, and the Southern District of Florida for those claims justifiable in federal court. Because it is impossible to ascertain damages if either party should breach this agreement, the parties hereto are limited to bringing an action in the event of breach for specific performance

9. Merger; modification. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration

in the terms and conditions contained herein shall be effective unless contained in a written document signed by all parties. A party requesting an amendment to this Agreement must propose such amendment in writing to the other party at least ninety (90) days prior to the proposed effective date of the amendment.

10. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

11. Captions; Construction. Captions in this Agreement are included for convenience only and are not to be considered in any construction or interpretation of this Agreement or any of its provisions. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

13. Sovereign Immunity. Each party to this Agreement is responsible for all injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. In addition, each party is subject to the provisions of Florida Statutes section 768.28 (2005).

14. No Waiver. The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the right of either party thereafter to enforce the same. No waiver by either party of any breach of any provision hereof shall be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

16. Term. Subject to early termination as set forth in this Agreement, this Agreement shall commence on the Effective Date and shall remain in effect for a period of five (5) years from the Effective Date of the Agreement, with one renewal option of five (5) years, for a potential total of ten (10) years.


17. Recordation. This Agreement shall become effective upon execution by both parties and filing with the Clerk of the Circuit Court for Indian River County and the Clerk of the Circuit Court for Brevard County.

REST OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the District has approved this Agreement at a duly noticed meeting held on March 13, 2013 and the County has approved this Agreement at a duly noticed meeting held on April 2nd, 2013.

Attest:

By


M. K. Eschenbach

SEBASTIAN INLET DISTRICT
BOARD OF COMMISSIONERS

By:


Beth L. Mitchell, Chairman

Attest: Jeffrey R. Smith, Clerk of
the Court and Comptroller

By


(Seal) Deputy Clerk

INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

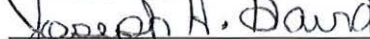
By:


Joseph E. Flescher, Chairman


Date BCC approved: 04-02-13

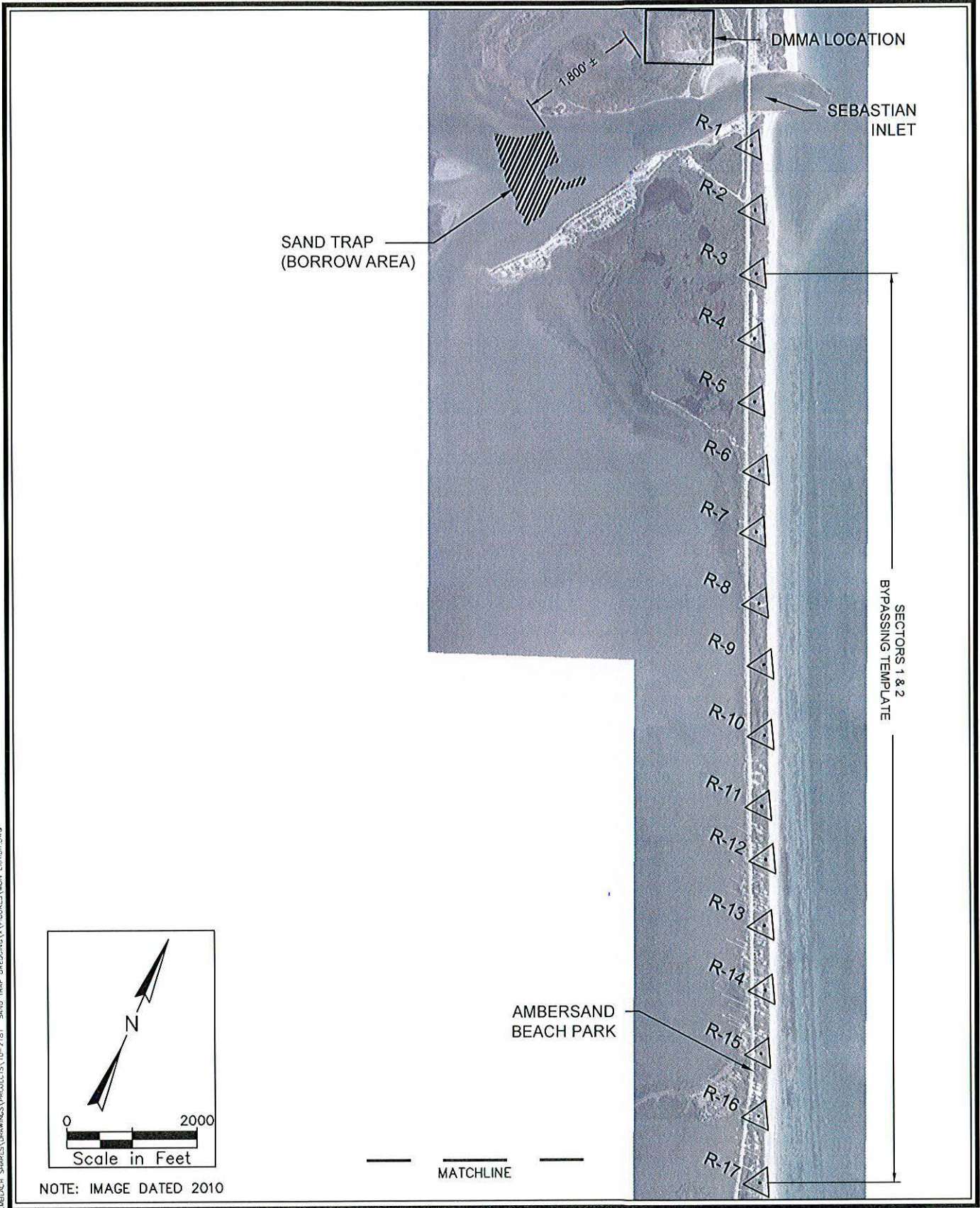


APPROVED


Joseph A. Baird,
County Administrator

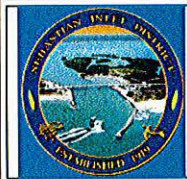
APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


for: Alan S. Polackwich, Sr.
County Attorney



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Exhibit 1
 Primary Placement Locations
 Sectors 1 & 2 Bypassing Template



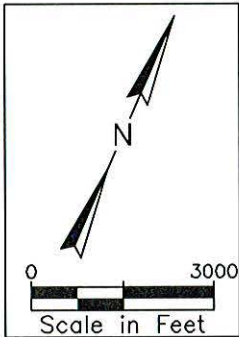
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TREASURE SHORE
BEACH PARK

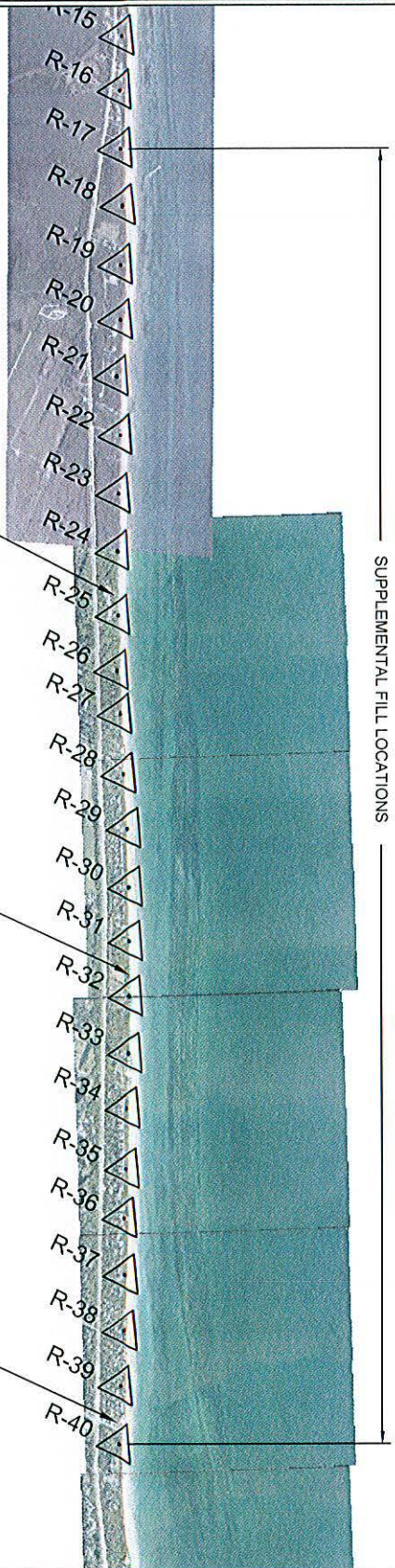
GOLDEN SANDS
BEACH PARK

WABASSO
BEACH PARK

SUPPLEMENTAL FILL LOCATIONS



NOTE: IMAGE DATED 2010



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LEWIN

Exhibit 2
Supplemental Fill Locations (R-17 to R-40)

