



Office of *Attorney's Matters 11/20/2018*  
**INDIAN RIVER COUNTY  
ATTORNEY**

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Dylan Reingold, County Attorney  
William K. DeBraul, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: William K. DeBraul, Deputy County Attorney *WKB*

DATE: November 13, 2018

SUBJECT: Approval of License Agreement between Lutgert Vero, LLC and Indian River County for construction of a dune crossover at Tracking Station Park

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In June 2017, Lutgert Vero LLC purchased two parcels of property located within the Town of Indian River Shores. The parcels are depicted on the attached aerial photo. The eastern most parcel is 2.53 acres in size with the western parcel 2.87 acres for a total of 5.40 acres. The two parcels do not have direct access to the beach but are adjacent to the north section of the County owned Tracking Station Park (aerial photo attached). While the property is now unimproved, Lutgert has submitted plans to Indian River Shores to construct condominiums on the parcels.

On April 4, 2017, the Board of County Commissioners considered a request from Indian River Shores to allow the purchaser of the property to have non-exclusive access to the beach through Tracking Station Park, including authorization to construct a dune crossover. At that time, the Board voted to allow construction of one dune crossover, subject to the purchaser (Lutgert) entering into a non-exclusive license agreement with the County. As a part of the Board's approval, the Board specified that no sea grape trimming is to occur, except as necessary to maintain and protect the paths associated with the crossover. The minutes from the April 4, 2017 Board meeting are attached to this memorandum.

After purchasing the parcels, Lutgert approached the County about obtaining access to the beach via Tracking Station Park. The developer has offered to design, permit, construct and maintain a path and dune crossover in the northern most section of the park (see the attachments to the License Agreement). The crossover and path would be open to the public up to the point the path meets with the Lutgert property line. The important aspects of the License Agreement include:

- ❖ Lutgert will design, engineer, permit, construct and maintain the dune-crossover at a location to be approved by the County
- ❖ the dune-crossover will be open to the public for use during daylight hours
- ❖ Lutgert will perform limited, periodic maintenance on the County parcel to preserve the natural character of the area around the crossover
- ❖ Lutgert will remove selected exotic plant species to the limited extent needed for path and crossover construction and replace with native species under supervision of a County environmental manager
- ❖ plans and specifications for a dune-crossover and public access path are subject to prior County approval

- ❖ the path and crossover are created for the benefit and use of the public and no signage discouraging their use shall be posted
- ❖ residents or guests of the Lutgert Property cannot store anything on the County's property, such as beach chairs, fishing equipment or watercraft

At this time it is difficult to depict the exact location of the crossover, due to tree preservation and other site plan requirements. Once the location is determined and approved by the County, a location sketch of the crossover will be included with the "as-builts" drawings submitted to the County by Lutgert.

**FUNDING.** There is no impact to County funding with this License Agreement. Any recording fees will be paid by Lutgert.

**RECOMMENDATION.** Staff recommends the Board of County Commissioners approve the License Agreement between Lutgert Vero LLC and Indian River County and authorize the Chairman to execute the Agreement on behalf of the Board.

Attachments: Aerial photo of properties  
Minutes from April 4, 2017 BCC meeting  
License Agreement with attachments

Copy to: Roland DeBlois, Chief, Environmental Planning  
Bruce Barkett, Attorney for Lutgert  
[Bbarkett@verolaw.com](mailto:Bbarkett@verolaw.com)