

## INDIAN RIVER COUNTY, FLORIDA MEMORANDUM

**TO:** Jason E. Brown, County Administrator

**THROUGH:** Richard B. Szpyrka, P.E., Public Works Director

**FROM:** Eric Charest, Natural Resources Manager

**SUBJECT:** July 14, 2020 Update regarding the Sector 3 (IRC-1925) and Sector 7 (IRC-1926) Beach and Dune Restoration Project easement status

**DATE:** July 6, 2020

### DESCRIPTION AND CONDITIONS

On June 23, 2020, the Indian River County Public Works Department's Coastal Engineering Division brought before the Board of County Commissioners (BCC) an agenda item to update the BCC on the status of easement agreements with respect to the planned Sector 3 and Sector 7 Beach and Dune Restoration Projects. As a result of public comment received during that June 23<sup>rd</sup>, 2020 meeting, the BCC directed staff to meet with the Beach and Shores Preservation Advisory Committee and present them with the status of the easement agreements, and report back to the BCC on July 14, 2020 with regards the outcome from that meeting.

Public comments received during the June 23, 2020 BCC meeting included evaluating the possibility of using the linear feet of the granted easements as a possible metric for determining viability of the project(s). In response, staff prepared a comparison table using the linear footage of each property and agreement status of properties within each planned Sector project area to present to the Beach and Shores Preservation Advisory Committee (BSPAC) meeting. Staff also included metrics from the recently completed Sector 5 Beach and Dune Restoration Project for informational and comparison purposes.

	Sector 3		Sector 5*		Sector 7	
	Linear Feet	Percent of Project Area	Linear Feet	Percent of Project Area	Linear Feet	Percent of Project Area
Easement Pending or Granted	25,603	71%	14,596	89%	4,190	39%
Easement Pending Owner Action	9,427	27%	0	0%	6,693	61%
Declined Easements	633	1.8%	1,727	11%	0	0%

Estimates as of July 6, 2020

\* Sector 5 project reflects easement data from completed project

Staff met with the BSPAC during a special call meeting held on Tuesday, June 30, 2020. During this meeting, Coastal Division staff presented the BSPAC with an update on the existing percentage of easement agreements received, the linear feet of the project area represented by the easement agreements that have been received and recorded as of June 30, 2020, and outreach methods utilized by staff and consultants to obtain easement agreements. The presentation also included information on the need to obtain a high percentage of easement agreements in order to ensure cost effective constructability, as well as provide the most effective storm protection from a contiguous beach and dune system restoration project.

Comments from Committee members and the public comment supported the need for a high percentage of easement agreements in order for the projects to be deemed viable. Stakeholders offered input and assistance on ways to reach out to those property owners that have not yet responded to the County's easement agreement requests. Staff has since been utilizing the additional resources offered by the BSPAC and other members of the public, such as local outreach groups to have the easement agreements reach the intended recipients for consideration.

#### JUNE 23, 2020 AGENDA AS PRESENTED TO BCC MODIFIED TO REFLECT CURRENT EASEMENT STATUS

On January 9, 2018, the Indian River County Board of County Commissioners (BCC) approved contracts with APTIM Environmental & Infrastructure, Inc. (APTIM) and Coastal Technology Corporation (Coastal Tech) for professional coastal engineering and biological support services related to the management and nourishment of the Sector 3 (Wabasso Beach) and Sector 7 (Porpoise Point) beach project areas (RFQ#2018006 and RFQ#2018007) respectively. Since that date, both organizations have been working on the design and permitting aspects on their respective projects.

The Sector 3 and Sector 7 Beach and Dune Restoration projects will add beach compatible sand along the dune and berm, resulting in a wider beach. Most sand will be placed seaward of the Mean High Water Line (MHWL), but a portion of the sand may be placed on the beach landward of the MHWL and seaward of the dune line, which is private property. In order to proceed with the sand fill project on these sections of private property, the County requires a beach management and assessment easement from property owners of beachfront parcels in the project areas. The easement is a standard requirement whenever a public agency places sand on a private beach as part of a beach restoration project. Without the signed easement, some sand will still be deposited seaward of the MHWL, but will not be placed on the private section of beach and will be sloped downward to the edge of the property at the MHWL resulting in less viable nesting habitat for sea turtles and a hole within the project. Granting of the easement allows the County to match the property's topography with the rest of the beach fill design as envisioned in the engineering plans and allow the integrity of the project to persist throughout the project area. Granting of the easement also provides the maximum storm protection benefits to each of these properties. It is important to collect each of the necessary easements to ensure the integrity of the project and maximum storm protection along our beaches and to also ensure federal cost share funds for each of these projects.

Concurrent with the design and permitting work being done by APTIM and Coastal Tech for

their respective beach projects, the BCC approved Work Order No. 9 with Morgan and Eklund, Inc. (M&E) on January 22, 2019 for professional Land Surveying services to prepare and/or update legal descriptions and sketches for the approximate 270 parcels adjoining the Sectors 3 and 7 Erosion Control Line/Mean High Water line. These description and sketches are required in order for the County to seek the easements that will allow nourishment projects to place sand fill on private property.

- SECTOR 3 BEACH AND DUNE RESTORATION PROJECT AREA

On March 5, 2019, the County entered into Work Order No. 2018006-5 with APTIM for that firm to coordinate obtaining construction easements for the affected property owners within the Sector 3 Beach and Dune Restoration project area using the documents supplied by the County through the M & E Work Order No. 9. The APTIM Work Order anticipated a second mailing and follow-up on the construction easements requests would be required due to an anticipated 50% unresponsive rate on the initial mailing.

APTIM coordinated with County staff and reviewed easement descriptions supplied by M&E from March until June 2019. The initial mailing of the Sector 3 construction easement requests performed by APTIM occurred between July 2019 and December 2019.

Responses were received by the County and verified for proper execution and recorded where possible. In instances of improper execution, County staff attempted to reach out to the property owner and explain the issue and seek re-execution. As of June 11, 2020, County staff had received and recorded 39 properly executed easement agreements for the Sector 3 project area, with an additional 28 easements that were in the process of recording/review. Updated numbers as of July 6, 2020 reflect County staff as having received and recorded 58 properly executed easement agreements for the Sector 3 project area, with an additional 24 easements that are in the process of recording/review. An additional 24 parcels are made up of County, State or Federal owned Public Lands in which a letter of authorization for sand placement is anticipated. The properties allowing sand placement represent as of June 11, 2020 reflected 48.4% of the targeted responses, that number has increased to 56.4% as of July 6, 2020. Three (3) properties within the Sector 3 project area have denied the easement request, and will therefore not be receiving sand.

SECTOR 3		
	As of June 11, 2020	As of July 6, 2020
Properties	188	188
Granted Easements	39	58
Indian River County Properties	10	10
Federal or State owned Public Lands	14	14
Intent to Grant Easement (in process)	28	24
Easements pending or Acquired (%)	48.4%	56.4%
Denied Easement - No Sand	3	3
Pending Responses	94	79

For those remaining 79 parcels in which easement agreements have not been received as of July 6, 2020, staff continue to send out mailings for those Sector 3 parcels and continue to follow up with any additional forms of communication available in order to reach out to the parcel owners regarding the easement agreements.

- SECTOR 7 BEACH AND DUNE RESTORATION PROJECT AREA

Work Order 2018007-2 was entered into with Coastal Tech on January 22, 2019 in order for Coastal Tech to acquire executed construction easements within the Sector 7 Beach and Dune Restoration project area that will allow the placement of sand fill on private property. Coastal Tech was furnished legal descriptions and sketches for the required easements by the County through work performed by Morgan and Eklund, Inc. The Coastal Tech Work Order anticipated a second mailing and follow-up would be required to obtain the required easements due to an estimated 70% unresponsive rate anticipated from the initial mailing.

Coastal Tech coordinated with County staff and reviewed 82 easement descriptions supplied by M&E, with the initial mailing by Coastal Tech of the 82 Sector 7 construction easement requests taking place in May of 2019. Return addresses for the easement requests were directed to the County offices where each received easement was validated and recorded, or further processed for additional information/correction. Twenty-seven (27) properties received a second mailing performed by Coastal Tech in late July/early August 2019.

Responses were received by the County and verified for proper execution and recorded where possible. In instances of improper execution, County staff attempted to reach out to the property owner and explain the issue and seek re-execution. As of June 11, 2020, County staff had received and recorded 23 properly executed easement agreements for the Sector 7 project area, with 10 parcels being in the review/recording stage, reflecting a response rate as of June 11, 2020 of 40.2% of the parcels. Updated numbers as of July 6, 2020 show County staff as having received and recorded 28 properly executed easement agreements for the Sector 7 project area with 8 easements that are in various stages of recording/review. As of July 6, 2020, staff have received responses from 43.9% of the parcels within the Sector 7 project area.

SECTOR 7

	As of June 11, 2020	As of July 6, 2020
Properties	82	82
Granted Easements	23	28
Intent to Grant Easement (in process)	10	8
Easements pending or Acquired (%)	40.2%	43.9%
Denied Easement - No Sand	0	0
Pending Responses	49	46

For those remaining 46 parcels in which easement agreements have not yet been received as of

July 6, 2020, County staff continue to utilize mailings and additional forms of communication available in order to reach out to the parcel owners regarding the easement agreements.

- **OBTAINING EASEMENTS TO SECURE FUNDING**

Partial funding for the Sectors 3 and 7 Beach and Dune Restoration Projects is made available through FEMA funding as shown in the table below. FEMA funding requires that projects be completed within 18 months of Project Worksheet issuance. As the Sector 3 and Sector 7 Beach and Dune Restoration Projects are very large and complex, extensions to FEMA funding has been requested previously in order to retain funding availability. The granting of extensions typically requires demonstration of project constructability by the County to FEMA, however the constructability of the project(s) is contingent upon the County obtaining enough easements from the property owners within the limits of the project(s) to justify the protection benefit to the shoreline of such a project. Requesting extensions does run the risk of FEMA not granting the extension, and thus the County losing potential funding sources. Additionally, FDEP Local Governmental Funding Requests (LGFR) grants are also made available for these projects, and these Grants also come with deadlines for project completion, or risk the loss of funds if an extension is not granted. FDEP LGFR 17IR2 requires project completion by 4/30/2021, and grant 19IR2 expires on 11/30/2021.

	SECTOR 3	SECTOR 7
Hurricane Matthew	\$5,320,233.45	\$2,725,070.46
Hurricane Irma	\$2,904,746.00	\$1,022,367.00
Hurricane Dorian	\$2,669,027.00	\$2,451,767.00
FDEP Grants	17IR2 \$446,551.30	19IR2 \$307,538.00

### **FUNDING**

The estimated cost for the Sector 3 Beach and Dune Restoration Project is anticipated to be \$14,800,000 while Sector 7 is estimated at \$9,900,000. Funding for these projects will be programmed into the upcoming FY 20/21 budget request. However, if sufficient easements are not obtained, construction will not commence and budgeted funding will be revised.

### **RECOMMENDATION**

Staff is requesting direction from the BCC on establishing a percentage of easements necessary to move forward with the Sector 3 and/or Sector 7 Beach and Dune Restoration project(s). Staff is recommending an easement agreement percentage of 90% or greater in each respective sector in order to proceed with the Beach and Dune Restoration Project(s).

### **ATTACHMENTS**

**APPROVED AGENDA ITEM FOR JULY 14, 2020**