

**INDIAN RIVER COUNTY, FLORIDA
MEMORANDUM**

TO: John Titkanich, Jr. County Administrator

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

FROM: Eric Charest, Natural Resources Manager

SUBJECT: Sector 7 Beach and Dune Restoration Project Easement Status
and Project Options

DATE: April 24, 2023

DESCRIPTION AND CONDITIONS

The Indian River County Sector 7 Beach and Dune Restoration Project (Project), initially scheduled to be completed during the November 2020 through April 2021 beach construction time period has been postponed at the direction of the Board of County Commissioners (BCC) three (3) times over the past three (3) consecutive beach construction seasons (November 1 to March 31). These postponements have been discussed in public forums and agreed to based on a lack of sufficient easements having been obtained to make the Project viable and constructible (July 14, 2020 BCC meeting in which a 90% easement acceptance target was set to provide for a successful project). Each postponement of the Project had run the risk of available funding not being extended into the next construction season, but Staff was able to obtain approval from both FEMA and the FDEP to extend the funding, with the current approval allowing for construction to take place this season (November 2023 through April 2024).

Staff has brought forward to the BCC, Departmental Agenda Items on multiple occasions related to the status of the easements for the Sector 7 Project, with the most recent County item brought forth under a Commissioner Item at the January 31, 2023 BCC meeting. At that meeting, the BCC passed unanimously a motion to circulate a revised easement request to the property owners within Sector 7 who had either denied or deferred previous attempts by Staff to obtain an executed easement agreement. The easements circulated after that January 31, 2023 BCC meeting contained revised language created by Commissioner Earman and the County Attorney mirrored language from utility and construction easements that the County routinely engages in. The intent of the revised language was to overcome some of the reluctance from property owners at signing the easements used for the completed Sector 3 and Sector 5 projects. At that meeting, a deadline of March 17, 2023 was set for the revised easements to be returned to the County.

On February 21, 2023, under a Public Discussion Item, options were reviewed with regards to shifting the starting point of the Sector 7 permitted Beach and Dune Restoration Project in order to exclude portions of the Project area in which large percentages of the property owners had denied or deferred the original easement. At that meeting, the BCC did not support the request of the speaker to adjust the project limits in order to seek a higher percentage of easement agreements at the expense of significantly reducing the amount of sand. In addition, at that meeting, Staff indicated that an extension to the return of signed easements could be made through April 1, 2023 at which time a decision would need to be made as to whether to move forward with required pre-construction monitoring activities in order to go to construction in November 2023.

Of the 27 revised easement agreement packages that were mailed out during February, one (1) signed easement has been returned and is currently under review for recording, with one (1) additional response being received in which the property owner's legal counsel recommended against providing the County with a permanent easement. For the remaining 25 easements, the County did not receive any written correspondences regarding acceptance or denial of the revised easement.

As of April 4, 2023, the Sector 7 Beach and Dune Restoration Project has been unable to garnish the targeted 90% acceptable easements, with 67% of the properties having an easement in place, 1% of the properties currently in review, and 32% of the properties either denying or not providing a response on multiple County attempts to obtain an easement.

Month/ Year	Jan 2018 (Project Start)	July 2020 BCC Meeting (Establish Target)	Sep 2020 BCC Meeting (1 st Postponement)	Jul 2021 BCC Meeting (2 nd Postponement)	Mar 2022 BCC Meeting (3 rd Postponement)	April 2023
Granted	0	90% set as the Goal	41 (50%)	51 (62%)	54 (66%)	55 (67%)
In Process	0		10 (12%)	8 (10%)	1 (1%)	1 (1%)
Pending	0		26 (32%)	9 (11%)	12 (15%)	11 (14%)
Denied	0		5 (6%)	14 (17%)	15 (18%)	15 (18%)

To date, the County has spent approximately \$700,000 on permitting, monitoring and design work associated with the Sector 7 Beach and Dune Restoration Project, in addition to countless Staff hours attempting to obtain the required easements. It is estimated that the construction of the Sector 7 Beach and Dune Restoration Project could cost approximately \$12,000,000 to \$14,000,000 (based on estimated costs at the time of construction), with FEMA funding in the amount of \$4,325,015 (after a reduction of \$1,372,844 for insurance proceeds received) and FDEP funding in the amount of \$307,583 currently available for the Project.

The purpose of this current Sector 7 Beach and Dune Restoration Project update is to provide the BCC with the current status of the easements within Sector 7 and to request guidance on the project. In order for on-beach construction to start this upcoming season (November 2023 through April 2024), pre-construction monitoring must commence in the upcoming spring/summer timeframe. This pre-construction monitoring is estimated to cost approximately \$250,000. In addition to pre-construction monitoring, modifications to the permitted fill templates will be required in advance of any beach nourishment activities, along with bidding and award consultant services. Many of these monitoring and design/permitting/bidding efforts are a duplication of tasks completed three years ago in advance of the expected 2020/2021 construction season which was put on hold due to the lack of easements obtained.

At the April 17, 2023 publicly noticed Beach and Shore Preservation Advisory Committee (BSPAC) meeting, County staff presented the Committee with an update on the Sector 7 Beach and Dune Restoration Project. As this project had been discussed many times over the years with this group, Committee members recommended the County modify Option #3 being presented to the BCC to include

amended language such that the BSPAC members supported the determination that the current Sector 7 Beach and Dune Restoration Project was not constructible based on lack of sufficient stakeholder support, but that County staff should be directed to pursue, study, examine what an alternative project could be that could be designed and built that was feasible. This recommendation has been incorporated into Amended Option #3 presented below.

As the current number of recorded easements falls short of the Board directed 90% value, Staff is seeking direction from the BCC on next steps.

FUNDING

Funding for the Sector 7 Beach and Dune Restoration Project was included in the FY 20/21 budget in the amount of \$9,900,000.00. An increase to this amount up to \$11,000,000 was requested in the FY 21/22 budget year reflecting projected market adjustments. As the project was postponed in 22/23 prior to budgeting, the cost of the Sector 7 Beach and Dune Restoration Project is expected to increase to \$12,000,000-\$14,000,000 based on market conditions for the upcoming FY 23/24 construction year.

Should Staff be directed to request another extension to available funding, and should the agencies grant the extension, partial funding for the Sector 7 Beach and Dune Restoration Project may be made available through FEMA funding as shown in the amount of \$4,325,015, with \$307,538 being made available from the FDEP through their Cost Share Local Governmental Funding Request award. Additionally, insurance proceeds in the amount of \$1,372,844 were also received for this project.

If an extension is sought and granted, yet a sufficient number of easements are still not obtained, constructability of the project may still not be viable and the construction commencement date of November 1, 2024 may not be possible.

AVAILABLE OPTIONS

As the current percentage of executed easements for the Sector 7 Beach and Dune Restoration Project is below the targeted amount of 90%, with the current executed easements representing 67% of the necessary project easements, Staff is seeking guidance from the BCC as to how to proceed with the Sector 7 Beach and Dune Restoration Project knowing that required pre-construction monitoring related expenses in the amount of \$250,000 would be incurred over the spring/summer, well in advance of any on-beach related construction activity beginning on or after November 1, 2023.

The following options are available:

Option 1: While seeking the remaining easements necessary for a viable project, perform pre-construction monitoring in accordance with permit conditions and adjust permit templates accordingly. Prepare bid documents and advertise in July, with a bid opening in September. Prior to award of bid, come back to the BCC to reassess the number of easements obtained in order to determine constructability of the project. It is estimated that this approach could cost in excess of \$250,000 and still may not yield a constructible project based on lack of easements. However, at this time the County has no viable access to the Sector 7 beach which will make the project expensive.

Option 2: Determine the project to not be constructible in the FY 2023/2024 construction window and do not pursue pre-construction monitoring at this time. As the permits for the Sector 7 Beach and Dune Restoration Project are valid for 15 years, staff can once again seek extensions on the funding currently available (FDEP LGFR Grant and FEMA funds) and potentially pursue construction in the 2024/2025 construction window. However, as the project seems to be at an impasse based on lack of sufficient stakeholder support, the funding agencies may claim that no additional extensions are warranted. Staff has been notified by FEMA that Indian River County has currently been granted the longest time extension for any Hurricane Matthew project. Additionally, staff will continue to try and solve the beach access issue as the County has no viable access to the Sector 7 beach.

Original Option 3: Determine the project to not be constructible at all based on lack of sufficient stakeholder support in signing the original or revised easements and beach access not being available. This approach would require that both FEMA funding and the FDEP Grant funds be surrendered by the County, and any future projects that may be sought would be subject to being funded solely by the County should no additional funding sources be found. In addition, Insurance funds received for Sector 7 losses incurred under Hurricanes Matthew and Irma may need to be reallocated to the Sector 3 and 5 projects, with potential refunds to FEMA on insurance receivables should they not be allowed to be used to off-set Sector 7 costs incurred to date.

BSPAC Amended Option 3: Determine the current project to not be constructible at all based on lack of sufficient stakeholder support in signing the original or revised easements and beach access not being available. Per BSPAC recommendation, the BCC should direct Staff to pursue, study, examine what an alternative project could be that could be designed and built that was feasible. This approach may require that both FEMA funding and the FDEP Grant funds be surrendered by the County, and any future projects that may be sought would be subject to being funded solely by the County should no additional funding sources be found. In addition, that may impact Insurance funds already received for Sector 7 losses incurred under Hurricanes Matthew and Irma which may need to be reallocated to the Sector 3 and 5 projects, with potential refunds to FEMA on insurance receivables should they not be allowed to be used to off-set Sector 7 costs incurred to date or future costs from a redesigned project.

RECOMMENDATION

Staff is seeking BCC direction on the how to proceed with the Sector 7 Beach and Dune Restoration project. The easement issue appears to be at an impasse and while the County continues to reach out to property owners to obtain easements, there is little chance that the County will obtain enough easements to make the project viable.

APPROVED AGENDA ITEM FOR MAY 2, 2023