

SUBJECT: Beach Renourishment/Easement Issues

There appears to be a great deal of confusion and many questions regarding a variety of issues as to the beach renourishment project, as well as easements needed for that work to take place. The following are answers to some frequently asked questions.

- I. Issue** – Does the placement of publicly funded sand on private property give the public the right to use or access private beachfront property?

Answer – No. The placement of publicly funded sand does not make the privately owned portion of the beach a public beach. In addition, the public does not have the right to traverse private property to reach the public beach seaward of the ECL/MHWL.

However, the public already has access to, and can reasonably use for customary beach uses, the beach seaward of the erosion control line (ECL), or if there is no ECL in a location, seaward of the mean high water line (MHWL). However, the public does not have the right to traverse private property to reach the public beach seaward of the ECL/MHWL. Access to the public beach must be obtained through a publicly accessible access point.

This situation is not changed merely due to the placement of publicly funded sand on private property, or the signing of an easement for the placement/maintenance of such sand. The standard form easement that is being requested to be signed by the Town will not change any of these issues.

In particular, the easement does not create a dedication, gift, or right to use the private property by the public. Use given by the easement is limited to purposes of sand placement and maintenance and vegetation planting (and related work) on the beach area by authorized governmental representatives.

- II. Issue** – Why is public money being spent to place sand on properties that are owned by beachfront property owners who might be perceived by many as wealthy?

Answer – Public money is being spent on beach renourishment to protect the entire island. If the beach goes away (as sadly some of it has due to Hurricane Ian), public infrastructure and private property on the island that is not beachfront will likely suffer damages in future weather events.

The first defense against coastal flooding is maintaining a healthy beach, which is the object and purpose of beach renourishment. Merely placing sand seaward of the ECL/MHWL (on public property) would not be effective to protect the island as a whole and would likely be quickly washed away by storms.

Placing sand merely seaward of the ECL/MHWL would also create a trough of water between the newly placed sand and the upland private property, which would impede turtles in their important reproductive journey, and would not appropriately or effectively prevent future storm damages.

The FDEP staff has experts trained in the appropriate measures to protect the island going forward in storm recovery and preventing more damage due to future storms and normal wave action.

The Town of Fort Myers Beach is working hand in hand with FEMA, FDEP, and Lee County in taking the proper and scientifically appropriate steps to assist the Town, its residents, property owners and business owners in hurricane recovery and preparation for future storm events.

III. Issue – Are beachfront property owners required to sign an easement and agree to beach renourishment?

Answer – No. A beachfront property is not required to sign an easement, but without an easement, the Town will not place sand and take appropriate actions to maintain the beach in front of properties when the owners of the properties decline to sign an easement.

Declining to sign an easement does not mean that a property owner cannot purchase and install sand on its own property and pay for the maintenance of that sand at the expense of the property owner.

In instances in which a property owner declines to sign an easement but wishes to purchase and install their own sand, appropriate state and local permits would need to be acquired and if such permits are granted, beach grade sand could be purchased and installed on private property at the cost of the individual property owner(s). More information regarding purchasing sand can be found at www.fmbgov.com/beach and at www.floridadep.gov/hurricane.

IV. Issue – Is there a form easement agreement that must be signed to get publicly funded beach renourishment, and can each property owner make changes to the form easement agreement?

Answer – There is a form easement agreement that can be viewed and downloaded on the Town's website at www.fmbgov.com/beach.

There have been numerous requests by individual property owners to tailor a particular easement agreement with individual terms only applicable to that particular property.

Having numerous forms of agreements is problematic since it would be difficult, if not impossible, to keep track of what can be done (allowed under the individually tailored easement) on a particular parcel of property when the massive public works project of beach renourishment is taking place.

Merely deleting certain properties from the project (those properties for which an easement has not been executed) will be difficult enough, but applying different standards to different participating property owners would necessarily result in a more expensive project and would open up an administrative nightmare for the supervision of this important project.

One issue that has been raised, which *can* be accommodated, is that if there is a concern that some of the property for which an easement is requested (typically related to riparian rights property not specifically owned by the upland owner), a revision can be added (although frankly not needed)

that states that the easement is granted only as to any rights the owner may have as to the property outside the regular legal description of the property. Again, this last issue does not have to be addressed in an easement, but if any property owner is hesitant to sign the easement as drafted due to this issue, the Town can address that issue for you.

V. Issue – When must signed easements be delivered to the Town to participate in the beach renourishment program?

Answer – There is a deadline of **Friday, August 18, 2023 at 4:00 p.m.** The deadline has been extended into August as the Town waits on the US Army Corps (USACE) to issue the permit. But once the USACE permit is issued, Staff will move quickly to issue the invitation to bid. Staff will make every effort to include late easements into the project, but waiting to sign may jeopardize the properties inclusion into the project.

The deadline is needed for the Town to get the information as to participating properties to the engineer so that appropriate plans for the project can be drawn and the project can be bid. The Town's coastal engineer must begin design plans for the contractor to construct the beach. The invitation to contactors to bid on the project must go out soon for the project to stay on schedule. Changes after the design process begins, or after a contract is issued, would increase the costs involved in the project and possibly delay the completion of the overall project. Updates to the deadline will be noticed on the Town's website www.fmbgov.com/beach.

Personal delivery, fax or emailed delivery of the executed easement by that date (with original hard copy immediately sent by U.S. Mail, Fed Ex. or UPS) is acceptable.