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February 11, 2022

James L. Booth
Colonel, U.S. Army District Commander
Department of the Army
Corps of Engineers, Jacksonville District
701 San Marco Boulevard
Jacksonville, FL 32207-8175

Re: Flagler County, Florida Coastal Storm Risk Management Project

Dear Colonel Booth:

On behalf of Flagler County, the following is our update that you requested in your letter emailed to the County on January 6, 2022. First, it goes without saying that we agree this is an essential and critical project for our community. To that end we have devoted considerable resources in advancing the project in all of its aspects, but particularly so with securing voluntary easements along the project boundary.

Below we will summarize our efforts to date in securing easements and our work on pursuing eminent domain for any remaining properties not under voluntary easements. We also provide a timeline below that will allow us to submit for lands certification no later than December 30, 2022, given existing circumstances including court schedules.

Update on Status of Completed Work

There are a total of 141 easement parcels along the 2.6-mile length of the project. These are so called "dune remnants" east of the FDOT Right of Way for Oceanshore Boulevard (State Road A-1-A). As such they have minimal to no dune crest and are subject to erosion. (The dune crest is overwhelmingly located in the Right of Way with little to no dune crest on the dune remnants.) Further, the dune remnants in the project area are not buildable except to install a dune walkover as permitted by the State and City of Flagler Beach. Their vulnerability is emphasized by the Florida Department of Environmental Protection's formal designation of this particular length of shoreline as a critically eroding beach.

Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien, Jr.
District 5

The short-term and long-term advantages of the project are both obvious and vital. Despite the project's critical nature and benefit and the fact that it is supported by all of the involved state and local agencies, many property owners were unwilling to sign the standard easement form provided by the Corps of Engineers.

As likely reported by your staff, the lengthy and relatively intricate form language is beyond the ability of most people to understand its impact on their rights of ownership. This was especially true in Flagler County where owners were unsure of their "remaining" rights and how the project would affect their enjoyment of the beach, in particular their views of the beach and ocean.

To underscore the importance of this issue to the owners, as well as the community at large, Oceanshore Boulevard is a designated National Scenic Byway and has been designated an "All American Road" principally for its ocean front views and highly publicly accessible character. Preserving views is codified official policy of the County and City of Flagler Beach governments, and their work in that regard is consistent and ongoing. Their work is strongly supported by its citizens, as well as the owners within the project area.

To overcome this hesitancy and uncertainty with the form language, we launched a robust public engagement program that included town hall style meetings, detailed mailings explaining the project, distribution of comprehensive FAQs, and creation of a dedicated website with an ability for anyone to make an inquiry concerning the project directly from the website. Our public outreach included regular updates at the County and City meetings and standing at these meetings for questions or comments from the public and any owners.

Our efforts became more pronounced in type and frequency as we surprisingly experienced low return rates for signed easements. Large blocks of owners would not sign despite our vigorous public education campaign. Petitioning the courts for eminent domain was not an option during the time of the COVID pandemic when court schedules were substantially stalled and the volume of cases we would have needed to initiate were substantial. As if to add to our burdens, the same pandemic complicated our efforts to have easements signed and for in-person meetings to further educate owners.

We also understood that the easement form could not be altered, and this had to be explained to anxious owners. This posed a problem because of the case in our appellate district that invalidated a taking in Brevard County because of the public beach language of the easement. Many of our owners (independently of the case)

worried that signing the easement would mean that their dune remnant would become a public beach allowing individuals to traverse up and down and across their properties, far beyond the customary recreational use of the beach enjoyed by our citizens and fully accepted by our owners.

Brevard County had not enacted a customary recreational use ordinance that defined the public's right of access, and this left Brevard in a difficult situation, especially due to the fixed nature of the easement language. Fortunately, Flagler County has enacted customary use and so has the City of Flagler Beach. The County promulgated a formal resolution clarifying that its customary recreational use code would continue to apply but would not be enlarged in scope because of the storm reduction easement. That clarification, as it was explained over time to individuals, was instrumental in procuring additional voluntary easements. Our customary recreational use codification will inform our future maintenance responsibility under the project.

The County cannot overlook the grassroots efforts of interested citizens who established a GoFundMe account to provide reluctant owners with a donated amount to facilitate their signing of easements. That helped procure over a dozen owners to sign easements.

Voluntary easements are obviously preferable, not just because Florida law expressly favors such whenever governments seek to condemn land. Voluntary easements provide certainty to the project schedule that a court case cannot promise. (The Brevard County case remains pending after its appellate ruling in July 2020.)

To date, we have secured 138 voluntary easements, inclusive of the 2.6 miles of shoreline length. The 3 outstanding easements total 150 linear feet or approximately 1% of the total shoreline length. We had hoped to identify another voluntary easement with this update, but it has not been received by this submittal time. Obviously, if received, we will inform you by separate communication.

Please note that regardless of the process, including advancing the lawsuits, the County will remain open to resolving the outstanding matters by voluntary agreement. Moreover, please note that the pendency of legal action will not be abated while such discussions may be ongoing. Our interest is in achieving the lands certification as expeditiously as we are able.

Update on Tasks and Timeline for Lands Certification

The County will pursue the following tasks with the below identified timelines for the three remnants such that the lands certification will be submitted to the Corps at the earliest practical time but not later than year end, as follows:

Surveys completed and appraisals to be certified March 1, 2022 – The surveys already have been completed and certified and include the Erosion Control Line and other data required for eminent domain litigation. They comply with the recent decision in the Brevard County case in specifying clearly the work area of the project. Copies of the surveys have been furnished to the Corps.

Appraisals are now moving forward in light of the definitive clarification recently received from the Corps' engineering design team on the project impacts to the dune crest and on privately owned remnants. The County's independent appraiser who was approved by the Corps is in consultation with the Corps' appraisal reviewer and he expects the appraisals to be approved and available March 1, 2022.

Resolution of taking and fund authorizations to be completed March 7, 2022 – The County Commission will be presented for adoption an authorizing resolution required by the case law to authorize eminent domain under Florida Chapter 74, including approving funding to be disbursed to the Court based on the appraisals. The resolution must describe the public necessity of the proposed taking. This is part of what is commonly referred to as the "quick take" proceeding (taking title in advance of final judgment on compensation). This also confirms that the County only intends to "take" the right to repair and renourish the beaches and is not seeking ownership of the dune remnant.

Pre-suit requirements fulfilled by March 14, 2022 – Florida requires the County to provide certain notices to the owners and a written offer on the amount of compensation. This proposal will be based on the resolution adopted by the County Commission. The appraisal reports will already have been provided to the owners for their consideration, along with the surveys, project construction plans as then existing and other materials relevant to the project. The parties are to negotiate in good faith. The owners have 30 days from the date of the notice in which to address the compensation issues pre-suit.

In this regard, it is important to note that the County has been engaged in extensive communications with the owners as to the County's intent and plan details, including monetary issues. The communications have been written and telephonic and have included the County Engineer's office as well as the County Attorney's office, among other offices in the government. The County has been quite transparent and clear about what it is able to do and not do for the owners. Finally, there has been a healthy

volume of pre-suit negotiations and discussions that would satisfy any standard requiring reasonable attempts to come to an amicable resolution prior to filing suit. This included good faith estimates of value based on sales data that the County had assembled. (This work does not substitute whatsoever for the formal appraisal but was provided to the owners to share the data we had assembled to move the process along. The independent appraiser utilizes the data he finds through his own professional efforts.)

Declaration of Taking and other pleadings and notices to be filed by May 2, 2022 – After the conclusion of the notice period if the full time is used by the owners, then a formal declaration is prepared and filed with the Court. This initiates the quick take action. The declaration also will be accompanied by a show cause order setting the date of the quick take hearing. Based on the course of the post-notice activity, the County will have to assemble the paperwork to perfect a declaration of taking. The proposed declaration will include all outstanding properties simultaneously.

Show Cause Hearing to be initiated on or before September 12, 2022 – The owners are allowed adequate time if they avail themselves of it in order to prepare their case after the declaration of taking is filed. There may be discovery they desire if it already has not been provided. Pre-hearing motions and defenses may be filed that need adjudication. We believe this is an adequate amount of time for such activities given the Court's current docket load.

Obtain Final Taking Order on or before November 21, 2022 – This time frame takes into account any continuation of the hearing or post-hearing motions or actions. This also is predicated on the state of the Court's current calendar and the time needed by the Court to author an order based on the evidence and law. The full amount of this time may or may not be needed, but this stage should be in the timeline for such an adjudicatory hearing.

Disbursement to the Court's Registry of the Amount Tendered by the County on or before December 9, 2022 – Upon issuance of an order of taking, the County must remit the funds within 20 days of the order of taking to preserve the taking. Obviously, the County would be prepared to make an immediate payment due to its earlier action in the resolution of taking authorizing the amount and source of the funding.

Submit Lands Certification on or before December 30, 2022 – This will allow us the time to organize the submittal that is required of the County in order to obtain the Lands Certification.

Ancillary Matters – To continue advancement of the project, the County acknowledges it may need to engage in other legal and engineering work to allow the project to commence with adequate resources and planning. It is understood, for example, that

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based on the current surveys of the beach profile, that substantial sand has eroded due to recent storm activity. We are aware that we must pursue an amendment to the U.S. Department of Interior's BOEM lease for outer continental shelf sand to address the extra volumes of sand needed due to erosion. In this regard and for any other such implementing action, we pledge our prompt attention to address any issue for the benefit of the project.

Thank you for this opportunity to update you on what we have accomplished and how we intend to proceed. We pledge our full efforts in bringing this to a prompt conclusion. Accordingly, we will apprise you of reaching each of the milestones as and when we complete them. Thank you again for all that Corps has done for Flagler County and Flagler Beach.

Sincerely,

A handwritten signature in blue ink, appearing to read "Al Hadeed", with a long, sweeping underline.

Albert J. Hadeed

AJH/jm