

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
COUNTY ATTORNEY REPORT / AGENDA ITEM # 10b**

SUBJECT: Consider Hold Harmless Agreement for Dunes Restoration Project.

DATE OF MEETING: October 4, 2021

OVERVIEW/SUMMARY: In the pursuit of the Army Corps Project, property owners of the dune remnants within the Project area have expressed numerous questions which we have answered as completely as we could. To date we have secured the voluntary easements to 138 dune remnants covering 99.05% of Project's oceanfront length. There are two owners who have not signed easements, with one expressing reservations about the protections in the easement that also have been codified in our formal resolutions and ordinances. This owner's concern is that the promise of protections is made by current office holders and public officials, and they may be replaced. It is of course true that someday all the current commissioners and officials will be replaced by others that follow them. The successors may choose, he believes, not to honor the protections to the owner that are part of the easement document.

While explaining the permanence of the easement and its rights, and the reasons why the community will not allow anything less, he has witnessed local governments over his lifetime change the quiet beauty of the beach, overriding the interests of longtime residents. He has a healthy distrust of local governments.

For example, he asks, what assurance does the owner have that after the dune is restored, that the government will not then take the dune remnant property by eminent domain and sell it to private interests or use it as a parking lot or for new structures such as condominiums? What if the County assigns its easement (they are legally assignable) to a hostile power such as even Russia, or to a governmental entity that wants to plant sea grapes on the beach and obscure Flagler Beach's iconic view of the beach and ocean? He is rightly concerned about an uncertain future.

He bought his property for the view, owning the house across from the dune remnant. The property is within the South 2700 block of A1A. Despite pointing to the words of the legal documents and explaining the substantial investments made in the A1A National Scenic Byway in protecting the public's views, he is not convinced. He wants the assurance of the view for himself, his significant other, their children and grandchildren, to enjoy the beach. He has operated the house as a short-term vacation rental, residing permanently in Boca Raton. He enjoys his visits to the house in Flagler Beach as a getaway from the crowded areas of South Florida.

He said he was willing to sign a one-time permission to restore the dune remnant he owns but the Army Corps will not approve since there is a 50-year obligation to maintain and repair the beach.

While he has spoken to numerous officials, including the City Manager and Chair of Flagler Beach Commission, the Tax Collector, and the Property Appraiser, along with the County Attorney and County Engineer, he does not have the confidence to trust our representations for the long term. He wanted a hold harmless agreement that his ocean views would not be disrupted by the Project. To assure him the rights are permanent, we have taken our assurances related to these hypothetical scenarios and incorporated them into a hold harmless

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
COUNTY ATTORNEY REPORT / AGENDA ITEM # 10b**

agreement. The assurances are enforceable against the County, as always intended in any event.¹

To lend more credibility and permanence to the assurances, I suggested having each commissioner sign the agreement as representatives of the County government. Unanimous support and your signatures show backing for the principles of the Project.

FUNDING INFORMATION: Project fully funded by the US Army Corps of Engineers and the Florida Department of Transportation by grant agreements for 2.6 miles of dune restoration and by a permit from the US Department of the Interior allowing use of approximately 550,000 cubic yards of beach compatible sand from the offshore waters of the United States.

DEPARTMENT CONTACT: Al Hadeed, County Attorney

RECOMMENDATION: Approve Hold Harmless Agreement and as approved to form by the County Attorney and County Administrator with consent for minor revisions that do not change the intent of the assurances.

ATTACHMENTS:

1. Hold Harmless Agreement with Exhibits
2. Voluntary Easement for Property Owner

¹ These assurances are contained not only in the main easement, but its exhibits and in our educational materials on our web page for the public and in our mail outs to property owners.

HOLD HARMLESS AGREEMENT

Flagler County, a political subdivision of the State of Florida, with an address at 1769 E. Moody Boulevard, Building 2, Bunnell, Florida 32110 (the “County”), executes this Hold Harmless Agreement in favor of **Elke Vogel and Leonard Surles**, with an address at 2732 South Ocean Shore Boulevard, Flagler Beach, Florida 32136 (sometimes collectively referred to as “Owners”).

RECITALS

WHEREAS, Elke Vogel and Leonard Surles are the owners in fee simple as tenants in common of certain real property located in Flagler County, Florida, consisting of a beach dune, as more particularly described in Exhibit “A” (the “Dune Property”);

WHEREAS, the County has requested a Perpetual Beach Storm Damage Reduction Easement (“Easement”) over the Dune Property pursuant to the Flagler County, Florida Beach/Dune Restoration Project (“Project”);

WHEREAS, Ms. Vogel and Mr. Surles are concerned that their present view of the beach and ocean be preserved;

WHEREAS, Ms. Vogel’s and Mr. Surles’ ownership of the Dune Property includes a deed restriction at the time of their 2005 purchase that provides, “No building shall be erected East of Highway A1A that will mar the view of the ocean from said Highway property West thereof or from either direction on the beach;”

WHEREAS, the County shall honor the deed restriction in the Dune Easement, and it shall be incorporated into the Easement legal description;

WHEREAS, the County agrees to enter into this hold harmless agreement to be enforceable by the Owners that will protect their present view of the beach and ocean;

WHEREAS, the Owners are concerned that the Dune Property, across from their residential property which they own at 2732 South Ocean Shore Boulevard, not be used for any purpose under the Easement other than restoring, repairing, maintaining and renourishing the beach and their Dune Property over the life of the Easement;

WHEREAS, the County agrees that this enforceable hold harmless agreement will not allow any other use of the Dune Property other than as a beach dune as it is currently used by Ms. Vogel and Mr. Surles subject to the public’s limited right to make customary recreational use of the dry sand beach;

WHEREAS, the public’s limited right to customary recreational use of the beach is codified in the Flagler County Code and Flagler Beach City Code, and Ms. Vogel and Mr. Surles have had no objection to such limited public use of the dry sand beach and have no objection to such limited public use of the dry sand beach when the Dune Property and beach are restored and renourished;

WHEREAS, the public’s customary recreational use of the dry sand beach shall be as limited by Flagler County Code Section 7-1, attached and incorporated herein by reference;

WHEREAS, the County agrees to not allow the Easement to be used to permit any structures (other than a permitted dune walkover installed by the Owners) and not to allow any parking areas to be constructed on the Dune Property or take any action that would allow the conversion of the Dune Property to a private use other than its use by Ms. Vogel and Mr. Surles;

WHEREAS, the County agrees it will not allow or consent to any eminent domain of their Dune Property subsequent to its restoration under the Project;

WHEREAS, Ms. Vogel and Mr. Surles are uncertain that the County can or will abide by its promises in the Easement, including abiding by its Resolutions that are part of the Easement that formally confirm the County's assurances to all of the property owners in the Project;

WHEREAS, the Resolutions are attached hereto and incorporated herein by reference as Exhibit B and they shall be enforceable against the County as part of this hold harmless agreement;

WHEREAS, the County agrees to make the Resolutions part of the Easement for the Dune Property as it has for other property owners in the Project;

WHEREAS, Ms. Vogel and Mr. Surles also are in doubt about the effect of the Easement being assignable to another entity;

WHEREAS, the County agrees to make all of the above referenced rights and protections enforceable against any assignee of the County if any (the County is not contemplating an assignment); and

WHEREAS, regardless, the County obligates itself to make such rights and protections an express condition of any assignment if the County in fact makes any assignment of the Easement in the future.

NOW, THEREFORE, the County agrees as follows:

- I. The foregoing recitals are incorporated herein by this reference.
- II. Flagler County hereby makes the foregoing rights and protections binding obligations of the County, including those referenced in the exhibits hereto as if fully set forth herein. These rights and protections are enforceable against the County on a petition to the Flagler County Commission or in an action in the Circuit Court in and for Flagler County without the necessity of posting any bond for an injunction against the County.
- III. The foregoing rights and protections shall be enforceable by either Ms. Vogel or Mr. Surles or their families or heirs who become owners of the Dune Property.
- IV. The County's obligations hereunder are contingent upon the execution and delivery of the Easement and the associated federal waiver form by Ms. Vogel and Mr. Surles to the County.

IN WITNESS WHEREOF, the County has executed this Hold Harmless Agreement this ____ day of _____, 2021.

Flagler County
County Board of Commissioners
A Political Subdivision of the State of Florida

Donald T. O'Brien Jr., Chair
District 5

Joe Mullins
District 4

David Sullivan
District 3

Greg Hansen
District 2

Andy Dance
District 1

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, Ms. Elke Vogel and Mr. Leonard Surles agree to the terms hereof and have executed this Hold Harmless Agreement this ___ day of _____, 2021.

Elke Vogel

State of Florida, County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Elke Vogel who is personally known to me or produced identification _____ (type of identification).

Signature – Notary Public

(SEAL)

Leonard Surles

State of Florida, County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Leonard Surles who is personally known to me or produced identification _____ (type of identification).

Signature – Notary Public

(SEAL)

EXHIBIT A

That parcel of land 50 feet in width lying Easterly of the A1A Highway and extending Easterly from the prolonged Northerly line of Lot 9, Block 4, intersection of the Easterly right of way line of A1A Highway to the water's edge; thence Southerly along the meanderings of the mean tide line to the intersection with the Southerly line prolonged of Lot 9, Block 4; thence Westerly to the intersection of Easterly right of way line of A1A SRD; thence Northerly along said right of way line to the Point of Beginning. Also known as land opposite to Lot 9, Block 4, Atlanta Beach Subdivision of Flagler Beach of record in Flagler County in Map Book 3, Page 24 and 24A. This is in reference to governmental survey of record in the Government Land Office. This land is subject to restrictions of record, if any. No building shall be erected East of Highway A1A that will mar the view of the ocean from said Highway property West thereof or from either direction on the beach.

Property Appraiser's Parcel Identification Number: 19-12-32-0150-00150-0180

RESOLUTION NO. 2020 - 11

**RESOLUTION OF THE FLAGLER COUNTY
BOARD OF COUNTY COMMISSIONERS
REGARDING EASEMENTS FOR THE ARMY
CORPS DUNE RESTORATION PROJECT**

WHEREAS, Flagler County is in the process of restoring the dunes in the City of Flagler Beach under the auspices of the Army Corps; and

WHEREAS, the dune restoration project involves obtaining permission from property owners adjoining the beach in the project area, roughly from South 6th Street to South 28th Street; and

WHEREAS, Flagler County is securing easements from property owners to accomplish the project; and

WHEREAS, the Army Corps project includes a 50-year maintenance program; and

WHEREAS, Flagler County is seeking voluntary easements for the purpose of not only restoring the dunes but maintaining, repairing, and renourishing them in the future; and

WHEREAS, it is the intent of Flagler County in partnership with other agencies to continue a program or programs of maintaining, repairing and renourishing the dunes in the Army Corps Project and will do so with governmental partners as appropriate; and

WHEREAS, in the event there is a termination of such programs, it is the sense of the Board of County Commissioners that it will terminate the easements of private property owners that have been procured for the purpose of access to their dunes for maintenance, repair, and renourishment; and

WHEREAS, it is the further sense of Flagler County that before terminating any such programs, the Board of County Commissioners will seek to assign the easements to another governmental entity or entities capable of continuing the carrying out of the programs.

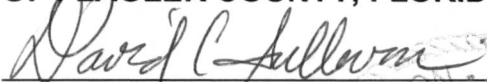
NOW THEREFORE, the Board of County Commissioners of Flagler County, Florida resolves as follows:

SECTION 1. Recitals and Findings. The Recitals set forth above are true and correct.

SECTION 2. Termination of Easements under Particular Circumstances. The Board of County Commissioners will terminate the easements obtained from private property owners for the Army Corps Dune Restoration Project should Flagler County terminate its programs for maintaining, repairing, or renourishing its beach dunes in the Army Corps Project or fails to find successor agencies that will continue to carry out such programs.

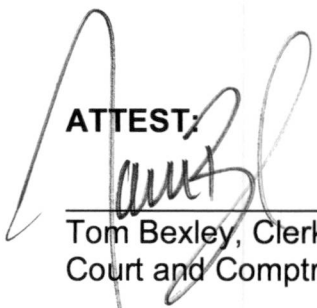
RESOLVED AND APPROVED THIS 16th day of March 2020.

**BOARD OF COUNTY
COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA**



David C. Sullivan, Chair

ATTEST:



Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:



Al Hadeed, County Attorney



RESOLUTION NO. 2020 - 71

RESOLUTION OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS REGARDING BEACH DUNE EASEMENTS, CODIFYING THE COUNTY'S ASSURANCES TO OWNERS OF BEACH DUNE REMNANTS IN THE JOINT PROJECT WITH UNITED STATES ARMY CORPS OF ENGINEERS AND THE FLORIDA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Flagler County Board of County Commissioners ("County Commission") is undertaking a significant dune restoration and repair program for the entire coastline of the County; and

WHEREAS, the County Commission is presently addressing a 2.6-mile length of the beach within the municipal limits of the City of Flagler Beach; and

WHEREAS, the County Commission has entered into a Project Partnership Agreement with the United States Department of the Army, its Army Corps of Engineers ("Army Corps") and also entered into other agreements concerning the dune restoration for the 2.6-mile length of the beach; and

WHEREAS, the County Commission has closely coordinated its work with the Army Corps, the Florida Department of Transportation ("FDOT"), the Florida Department of Environmental Protection ("FDEP"), the City of Flagler Beach, and numerous other groups and interested organizations to secure funding and proceed with project implementation; and

WHEREAS, the County sought and continues to seek voluntary easements from the property owners of dune remnants on which the project is to be constructed; and

WHEREAS, the County widely disseminated information concerning the project to the general public but specifically for the benefit of the property owners; and

WHEREAS, such efforts included public meetings, a dedicated web page, extensive written materials, on site visits by professional staff for the benefit of owners, responding to all questions posed by owners and the interested public and doing so in coordination with the stakeholder agencies; and

WHEREAS, the County Commission provided assurances to owners from whom voluntary easements were sought about the project's impact and design; and

WHEREAS, such assurances were consistent with the plans and specifications of the project and with the public agency presentations and written materials provided to owners explaining the project; and

WHEREAS, such assurances were consistent with Florida and federal law and also were consistent with the partnership and grant agreements secured by the County; and

WHEREAS, to assure that all owners are treated equally as a class and to memorialize the County's assurances that it has issued from time to time during the pendency of the project, the County Commission intends this Resolution to codify its assurances in order that all owners providing easements may rely upon them uniformly.

NOW THEREFORE, the County Commission enacts this Resolution to codify its assurances to the owners who have executed or will execute voluntary easements.

Section 1. Assurances.

- A. Public Beach – The easement to allow restoration of the dunes will not alter the owner's rights in its dune remnant except to allow the project to proceed and to allow future maintenance, repairs, and renourishment of the dune remnant. The easement does not allow members of the public to traverse across the owner's property to reach the ocean beach. The public may utilize the toe of the dune, commonly called the dry sand beach, for customary public uses engaged in from time immemorial by the public, such as sunbathing, picnicking, shell collecting, and other existing customary uses, all as subject to the customary use ordinances enacted by the Flagler County Board of County Commissioners and the City of Flagler Beach. The public may use the toe of the dune and seaward of the toe of the dune to move north and south along the beach. The easement does not permit the public to make use of the dune proper except as authorized by the customary use ordinances and the public trust doctrine of Florida as construed and applied by the courts of Florida.
- B. Open Views and Vegetation Planting – The project will not impair existing views of the ocean beach from the owner's property. The design of the project is specifically to preserve the roadside views. Plantings to stabilize the dunes do not include sea grape and include native plantings common to Flagler Beach in the approved landscape plans. The plantings will stabilize the dunes and allow for sand capture while the dunes are subject to naturally occurring erosion. The plantings will enhance the environmental habitat of the beach area, including making conditions more conducive for shore birds, nesting sea turtles, and other animals that utilize the beach.
- C. Dune Walkovers – Owners of dune remnants may obtain permits for dune walkovers subject to compliance with applicable permitting standards and rules of the FDOT, FDEP and the City of Flagler Beach. Subject to such agency permit compliance, the County in its legal status as Grantee (the recipient of the easement rights) will allow owners to construct walkovers. Owners are required to maintain their walkovers in compliance with permitting standards. No other structures will be allowed unless permitted.

Section 2. Application.

- A. The foregoing assurances shall apply to all easements secured for the project.
- B. The County shall notify its public agency partners of this Resolution and post the Resolution in all public communications used by the County to convey information to the owners who have executed easements.

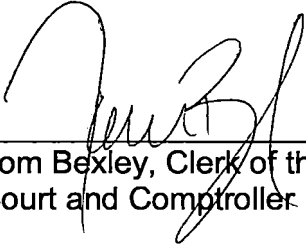
RESOLVED AND APPROVED THIS 5th day of October 2020.

**BOARD OF COUNTY
COMMISSIONERS OF FLAGLER
COUNTY, FLORIDA**



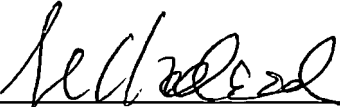
David C. Sullivan, Chair

ATTEST:



Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:



Al Hadeed, County Attorney

Sec. 7-1. - Customary use of the beach.

- (a) For purposes of this section, the term, "dry sand beach," shall mean the entirety of the dry sandy (in some cases rocky) areas of the Atlantic ocean beaches in Flagler County extending landward of the mean high water line to the easternmost seaward side of any sea wall, dune bluff, dune toe, rock revetment toe or any permanent dune vegetation.
- (b) Public access and use.
 - (1) The public's longstanding customary use of the Dry Sand Beach for recreational purposes is hereby recognized and protected. The public, individually and collectively, subject to the provisions herein, shall have the right of personal ingress and egress to, from and along the Dry Sand Beach from public approaches, public dune crossovers or from the wet sand beach, and the right to make customary recreational use of the Dry Sand Beach.
 - (2) It is prohibited for any person to obstruct or hinder the right of the public, individually and collectively, to enter or leave the Dry Sand Beach by way of any public approach, public dune crossover or from the wet sand beach to use lawfully any part of the Dry Sand Beach for customary recreational purposes. It is further prohibited for any person to display any non-governmentally authorized warning, in whatever form, in an attempt to prohibit or hinder public access to, or use of, the beach.
- (c) Limitations.
 - (1) This section does not authorize the access and use of privately owned areas of the dry sand beach after 10:00 p.m. and before sunrise, nor does it authorize any commercial use of the dry sand beach adjoining residential areas at any time. Any activities or uses prohibited in public beachfront parks are also prohibited in the dry sand beach.
 - (2) It shall be unlawful for any person to walk upon or otherwise traverse the dune areas of the dry sand beach except when utilizing designated crossovers.
 - (3) This section authorizes only the following activities by the public on the privately owned dry sand beach: swimming, fishing, hiking, jogging, bicycling, picnicking, shelling, surfing, sunbathing, kiting and building sand castles.
- (d) Exceptions.
 - (1) This section shall not apply to individuals authorized by federal, state, or local law to engage in activities otherwise prohibited herein, including, but not limited to, sea turtle patrol, other conservation entities when governmentally authorized, emergency responders, and those engaged in permitted dune restoration and flood control.
 - (2) Notwithstanding anything in this Section to the contrary, the county administrator, the emergency management chief, the sheriff, or their designees shall have the authority to temporarily close the entire beach or any portion thereof for use by the public during storms or other emergency situations.
- (e) Violations of the provisions herein shall be punishable as provided for in chapter 9 of this Code, provided however, that imposition of a penalty does not prevent the pursuit and issuance of injunctive relief.

This Instrument Prepared By:

Jay W. Livingston, Esq.
 Livingston & Sword, P.A.
 391 Palm Coast Parkway SW #1
 Palm Coast, Florida 32137

FILE NO. 19-1059

PERPETUAL BEACH STORM DAMAGE REDUCTION EASEMENT

GRANTOR: **Elke Vogel and Leonard Surles**
 2732 S. Oceanshore Blvd.
 Flagler Beach, Florida 32136

GRANTEE: **Flagler County, a political subdivision of the State of Florida**
 1769 E. Moody Boulevard, Building 2
 Bunnell, Florida 32110

DATE: _____, 2021

In consideration of the mutual benefits to be derived from the permitted uses described below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GRANTOR does hereby bargain, convey, and grant a perpetual and assignable easement and right-of-way in, on, over and across the land described in **EXHIBIT A**, attached hereto and made an part hereof (the "Easement Area"), for use by the GRANTEE, its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach, a dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic, renourishment and maintenance of the Flagler County, Florida, Beach/Dune Restoration Project (the "Project"), together with the right of public use and access; to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas; to trim, cut, fell and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the Easement Area.

Reserving, however to the GRANTOR, (his) (her) (its) (their) (heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the designated representatives of the GRANTEE and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the Project; and further reserving to the GRANTOR, and (his)

(her) (its) (their) heirs, successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, railroads and pipelines.

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed on the date first above written.

Signed, sealed and delivered in the presence of: GRANTOR

By: _____

Elke Vogel

PrintName: _____

By: _____

Leonard Surles

PrintName: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization this ___ day of _____, 2021, by Elke Vogel, who is personally known to me or has produced _____ as identification.

(SEAL)

Signature of Notary Public

(Typed or printed name)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization this ___ day of _____, 2021, by Leonard Surles, who is personally known to me or has produced _____ as identification.

(SEAL)

Signature of Notary Public

(Typed or printed name)

EXHIBIT A

That parcel of land 50 feet in width lying Easterly of the A1A Highway and extending Easterly from the prolonged Northerly line of Lot 9, Block 4, intersection of the Easterly right of way line of A1A Highway to the water's edge; thence Southerly along the meanderings of the mean tide line to the intersection with the Southerly line prolonged of Lot 9, Block 4; thence Westerly to the intersection of Easterly right of way line of A1A SRD; thence Northerly along said right of way line to the Point of Beginning. Also known as land opposite to Lot 9, Block 4, Atlanta Beach Subdivision of Flagler Beach of record in Flagler County in Map Book 3, Page 24 and 24A. This is in reference to governmental survey of record in the Government Land Office. This land is subject to restrictions of record, if any. No building shall be erected East of Highway A1A that will mar the view of the ocean from said Highway property West thereof or from either direction on the beach.

Property Appraiser's Parcel Identification Number: 19-12-32-0150-00150-0180

EXHIBIT B (Composite)

Grantee acknowledges that Grantors of Easements have relied on the assurances of Grantee as provided in the attached Resolution 2020-11 and Resolution 2020-71.

RESOLUTION NO. 2020 - 11

**RESOLUTION OF THE FLAGLER COUNTY
BOARD OF COUNTY COMMISSIONERS
REGARDING EASEMENTS FOR THE ARMY
CORPS DUNE RESTORATION PROJECT**

WHEREAS, Flagler County is in the process of restoring the dunes in the City of Flagler Beach under the auspices of the Army Corps; and

WHEREAS, the dune restoration project involves obtaining permission from property owners adjoining the beach in the project area, roughly from South 6th Street to South 28th Street; and

WHEREAS, Flagler County is securing easements from property owners to accomplish the project; and

WHEREAS, the Army Corps project includes a 50-year maintenance program; and

WHEREAS, Flagler County is seeking voluntary easements for the purpose of not only restoring the dunes but maintaining, repairing, and renourishing them in the future; and

WHEREAS, it is the intent of Flagler County in partnership with other agencies to continue a program or programs of maintaining, repairing and renourishing the dunes in the Army Corps Project and will do so with governmental partners as appropriate; and

WHEREAS, in the event there is a termination of such programs, it is the sense of the Board of County Commissioners that it will terminate the easements of private property owners that have been procured for the purpose of access to their dunes for maintenance, repair, and renourishment; and

WHEREAS, it is the further sense of Flagler County that before terminating any such programs, the Board of County Commissioners will seek to assign the easements to another governmental entity or entities capable of continuing the carrying out of the programs.

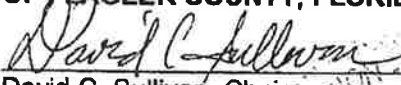
NOW THEREFORE, the Board of County Commissioners of Flagler County, Florida resolves as follows:

SECTION 1. Recitals and Findings. The Recitals set forth above are true and correct.

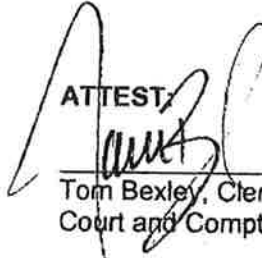
SECTION 2. Termination of Easements under Particular Circumstances. The Board of County Commissioners will terminate the easements obtained from private property owners for the Army Corps Dune Restoration Project should Flagler County terminate its programs for maintaining, repairing, or renourishing its beach dunes in the Army Corps Project or fails to find successor agencies that will continue to carry out such programs.

RESOLVED AND APPROVED THIS 16th day of March 2020.

**BOARD OF COUNTY
COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA**


David C. Sullivan, Chair

ATTEST:

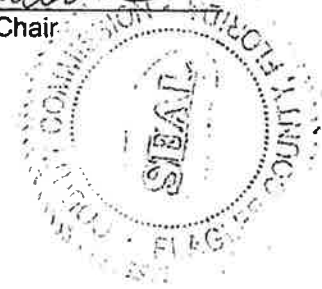


Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:



Al Hadeed, County Attorney



RESOLUTION NO. 2020 - 71

RESOLUTION OF THE FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS REGARDING BEACH DUNE EASEMENTS, CODIFYING THE COUNTY'S ASSURANCES TO OWNERS OF BEACH DUNE REMNANTS IN THE JOINT PROJECT WITH UNITED STATES ARMY CORPS OF ENGINEERS AND THE FLORIDA DEPARTMENT OF TRANSPORTATION.

WHEREAS, the Flagler County Board of County Commissioners ("County Commission") is undertaking a significant dune restoration and repair program for the entire coastline of the County; and

WHEREAS, the County Commission is presently addressing a 2.6-mile length of the beach within the municipal limits of the City of Flagler Beach; and

WHEREAS, the County Commission has entered into a Project Partnership Agreement with the United States Department of the Army, its Army Corps of Engineers ("Army Corps") and also entered into other agreements concerning the dune restoration for the 2.6-mile length of the beach; and

WHEREAS, the County Commission has closely coordinated its work with the Army Corps, the Florida Department of Transportation ("FDOT"), the Florida Department of Environmental Protection ("FDEP"), the City of Flagler Beach, and numerous other groups and interested organizations to secure funding and proceed with project implementation; and

WHEREAS, the County sought and continues to seek voluntary easements from the property owners of dune remnants on which the project is to be constructed; and

WHEREAS, the County widely disseminated information concerning the project to the general public but specifically for the benefit of the property owners; and

WHEREAS, such efforts included public meetings, a dedicated web page, extensive written materials, on site visits by professional staff for the benefit of owners, responding to all questions posed by owners and the interested public and doing so in coordination with the stakeholder agencies; and

WHEREAS, the County Commission provided assurances to owners from whom voluntary easements were sought about the project's impact and design; and

WHEREAS, such assurances were consistent with the plans and specifications of the project and with the public agency presentations and written materials provided to owners explaining the project; and

WHEREAS, such assurances were consistent with Florida and federal law and also were consistent with the partnership and grant agreements secured by the County; and

WHEREAS, to assure that all owners are treated equally as a class and to memorialize the County's assurances that it has issued from time to time during the pendency of the project, the County Commission intends this Resolution to codify its assurances in order that all owners providing easements may rely upon them uniformly.

NOW THEREFORE, the County Commission enacts this Resolution to codify its assurances to the owners who have executed or will execute voluntary easements.

Section 1. Assurances.

- A. Public Beach – The easement to allow restoration of the dunes will not alter the owner's rights in its dune remnant except to allow the project to proceed and to allow future maintenance, repairs, and renourishment of the dune remnant. The easement does not allow members of the public to traverse across the owner's property to reach the ocean beach. The public may utilize the toe of the dune, commonly called the dry sand beach, for customary public uses engaged in from time immemorial by the public, such as sunbathing, picnicking, shell collecting, and other existing customary uses, all as subject to the customary use ordinances enacted by the Flagler County Board of County Commissioners and the City of Flagler Beach. The public may use the toe of the dune and seaward of the toe of the dune to move north and south along the beach. The easement does not permit the public to make use of the dune proper except as authorized by the customary use ordinances and the public trust doctrine of Florida as construed and applied by the courts of Florida.
- B. Open Views and Vegetation Planting – The project will not impair existing views of the ocean beach from the owner's property. The design of the project is specifically to preserve the roadside views. Plantings to stabilize the dunes do not include sea grape and include native plantings common to Flagler Beach in the approved landscape plans. The plantings will stabilize the dunes and allow for sand capture while the dunes are subject to naturally occurring erosion. The plantings will enhance the environmental habitat of the beach area, including making conditions more conducive for shore birds, nesting sea turtles, and other animals that utilize the beach.
- C. Dune Walkovers – Owners of dune remnants may obtain permits for dune walkovers subject to compliance with applicable permitting standards and rules of the FDOT, FDEP and the City of Flagler Beach. Subject to such agency permit compliance, the County in its legal status as Grantee (the recipient of the easement rights) will allow owners to construct walkovers. Owners are required to maintain their walkovers in compliance with permitting standards. No other structures will be allowed unless permitted.

Section 2. Application.

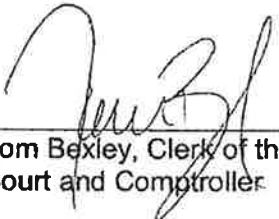
- A. The foregoing assurances shall apply to all easements secured for the project.
- B. The County shall notify its public agency partners of this Resolution and post the Resolution in all public communications used by the County to convey information to the owners who have executed easements.

RESOLVED AND APPROVED THIS 5th day of October 2020.

**BOARD OF COUNTY
COMMISSIONERS OF FLAGLER
COUNTY, FLORIDA**


David C. Sullivan, Chair

ATTEST:


Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:


Al Hadeed, County Attorney