

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

SUBJECT: Resolution for Dune Easements that Codify the County's Assurances to Dune Remnant Owners

DATE OF MEETING: October 5, 2020

OVERVIEW/SUMMARY: As mentioned at the last BCC meeting, a resolution is being prepared that will codify the assurances made to beach dune remnant owners. For example, the reference in the Army Corps' easement template to a "public beach" does not mean that the owner's property is available for public use outside of the customary use declarations of the County and City of Flagler Beach. Members of the public will not be allowed to cross the property of the dune remnant owner to access the beach. Beachgoers may only move along the beach as they customarily have done since time immemorial. They may put towels down on the dry sand and picnic and engage in customary activities as specified in the ordinances of Flagler County and the City of Flagler Beach. But the public may not make use of the sloping dune designed to protect the property of the owner and of others who own property along the beachside.

Another assurance is that the project will be conducted in a way that the views of the beach and ocean are not impacted. All vegetation is low growing, and sea grapes are excluded. The new dunes will not block the views which are iconic for Flagler Beach.

The resolution will summarize the other assurances that have been provided from time to time to owners and make them applicable to all owners who have executed easements. This assures not only a clearer understanding of the project but also assures all owners are treated equally.

When the proposed resolution is finalized, a copy will be furnished to the Board and posted to the agenda.

FUNDING INFORMATION: N/A

DEPARTMENT CONTACT: Al Hadeed, County Attorney (386) 313-4005

RECOMMENDATION: Request the Board approve a Resolution for Dune Easements that Codify the County's Assurances to Dune Remnant Owners.

ATTACHMENTS:

1. Resolution (to be provided)

RESOLUTION NO. 2020 - ____

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 _____ 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