



## Fact Sheet

### Beach Nourishment & Perpetual Construction Easements

In 2013, St. Lucie County partially restored South County beaches while a federal shore protection project was under development by the U.S. Army Corps of Engineers (USACE). About 3.3 miles of beach from Normandy Beach Park to the Martin County line were nourished via placement of about (a) 635,000 cubic yards of sand on the beach, and (b) 280,000 plants on the restored dune crest. As part of preparations for the 2013 project, in 2012, the County obtained temporary easements from each property owner in the project area. These temporary easements authorized limited use of the seaward portion of each property by the County “to construct, repair, nourish, rehabilitate and replace a beach and dune system” over the “limits of construction ...from the landward toe of the dune to the mean high water line”; these temporary easements expired on March 1, 2016.

The USACE is the agency designated by Congress to protect the nation’s shores from the chronic effects of erosion and coastal flooding. After completion of studies by the USACE- Jacksonville District, the U.S. Congress authorized a federal cost-shared project through *America’s Water Infrastructure Act of 2018*. The USACE is expected to place sand on the project beaches to help reduce the threat of coastal storm damage and avoid the high costs of coastal storm damage as part the Congressionally-authorized project in coordination with St. Lucie County. To effectuate the federal project, the County must obtain easements for construction and maintenance of the federal project – comparable to the easements obtained for the 2013 project, but with a longer duration to cover all future USACE and County efforts to construct and maintain the federal project. USACE regulations relative to Real Estate Acquisition (ER 405-1-11) include provisions for perpetual construction easements so as to avoid property rights interference with operation of the project by the USACE and County.

As required by Florida Statutes (161.191), an Erosion Control Line (ECL) was establish by the County prior to construction of the 2013 project; the ECL effectively corresponded to the mean high water boundary between state sovereign lands and the adjacent upland property. All lands seaward of the ECL remain vested to the state by right of its sovereignty; the lands landward of the ECL remain vested to the upland owner. Perpetual construction easements are required for sand placement for areas landward of the ECL.

Attached are:

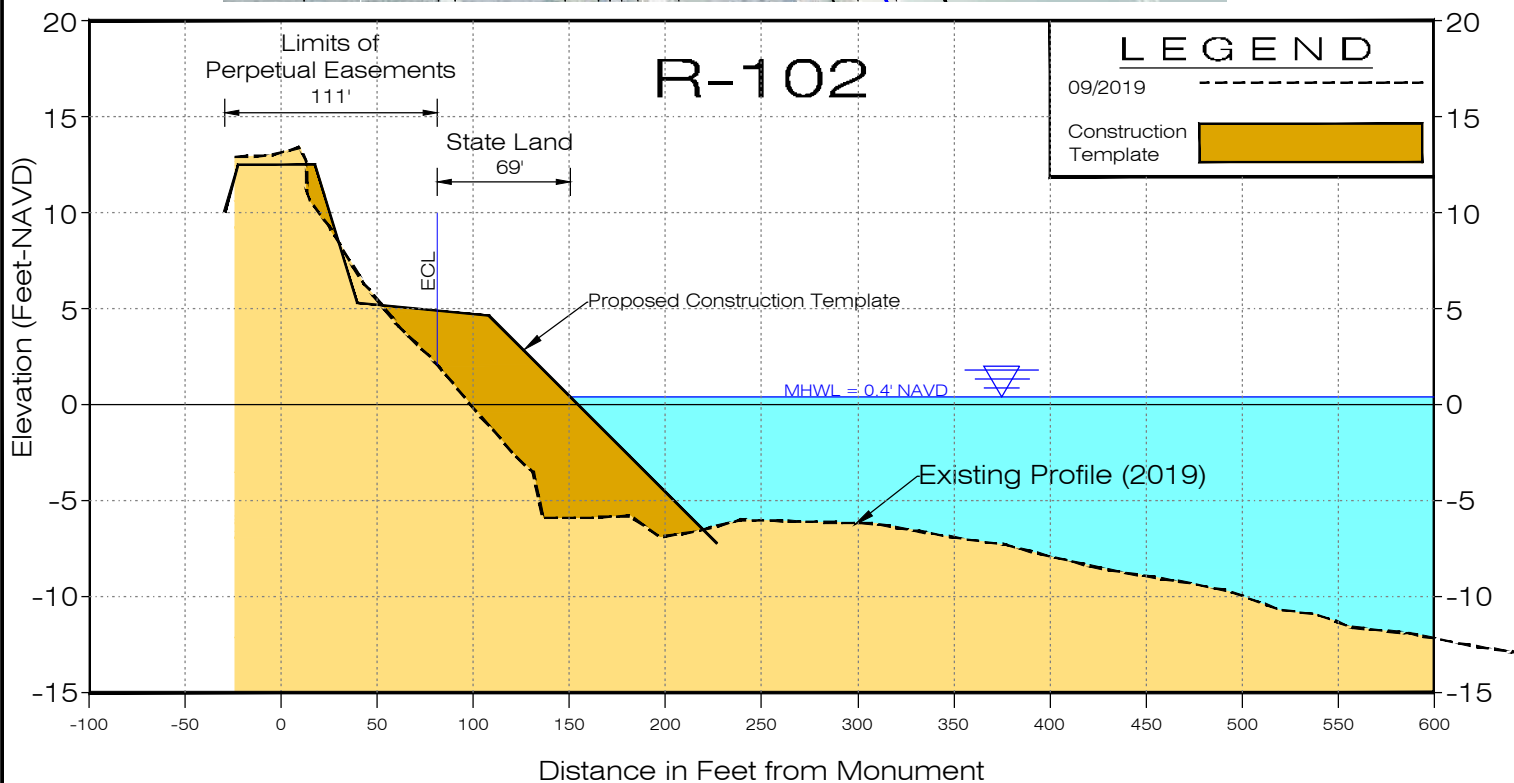
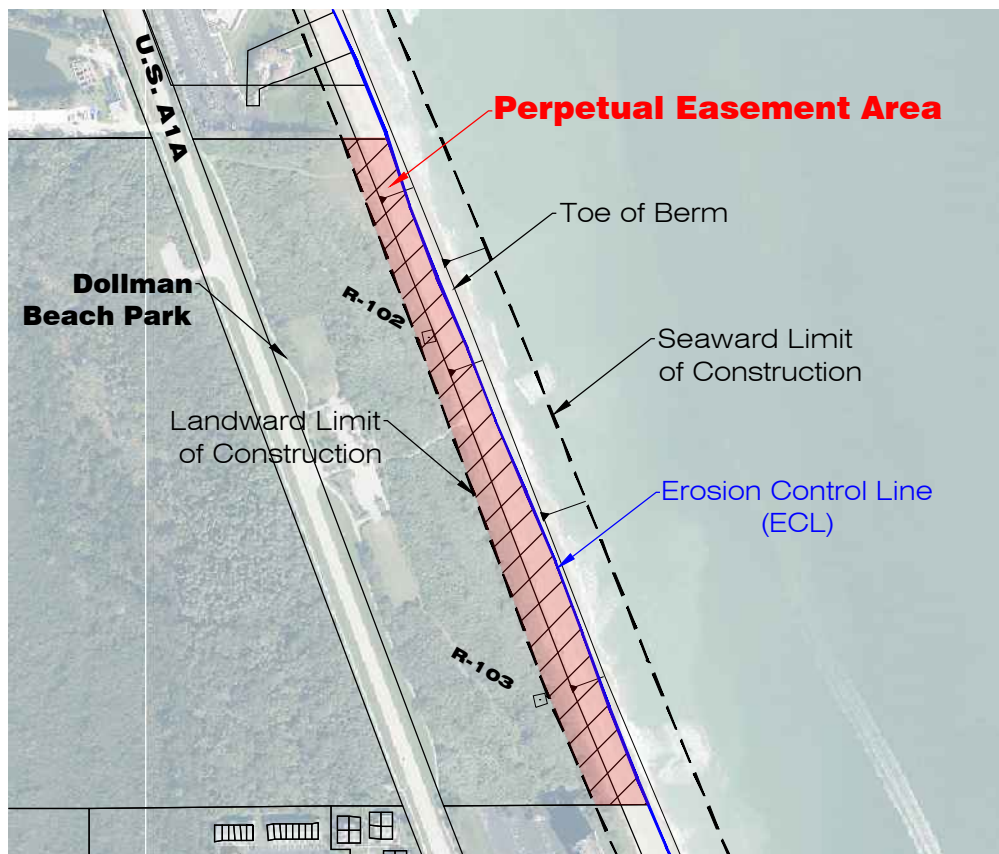
1. a graphic illustrating the location of a typical proposed easement – including the location for future placement of sand and dune plants;
2. a Fact Sheet with Frequently Asked Questions about Beach Nourishment & Easements; &
3. an example Easement Agreement.

Note the following schedule of events pertaining to the proposed construction easements:

- Initial public outreach meeting to present and discuss the perpetual construction easement – TBD,
- Second public outreach meeting to present and discuss the perpetual construction easement – TBD,
- prepared and send perpetual construction easement package to individual property owners for execution – Summer 2020, and
- executed by property owners and returned to the County to be recorded into public record - by May 1, 2021.

# ATTACHMENT 1

Parcel ID: 3534-411-0001-000-8 Sample Perpetual Easement Exhibit



St. Lucie County, Florida  
Coastal Storm Risk Management Project

Parcel ID: 3534-411-0001-000-8



## ATTACHMENT 2

### Frequently Asked Questions: Beach Nourishment & Construction Easements

Following are Frequently Asked Questions relative to beach nourishment and perpetual construction easements.

#### **Who owns the new land created from sand placed on the beach?**

The state of Florida owns the land seaward of the ECL where the public has access to the beach per the Florida constitution’s Public Trust Doctrine. The upland property owner owns the land landward of the ECL.

#### **Why are easements required for shore protection projects?**

Authorization from upland property owners is required for work areas and access areas on the upland property for equipment to stage and place sand on the portion of the beach on private property. Easements provide this authorization and will guarantee the public will be able to use the publicly-funded beach after construction. Public use is a provision necessary because the participating federal, state and local governments require that public funds only be spent on beaches that are usable by the public.

#### **What portion of my property is subject to an easement?**

The easement specifically describes the seaward portion of the property where an engineered beach may be placed – typically seaward of the dune crest or vegetation line.

#### **Is there an expiration date on easements?**

No. The easement is specifically for the authorized federal project until the project is de-authorized by Congress.

#### **Why are construction easements perpetual?**

The required construction easement is perpetual because it guarantees that (a) the USACE and County can maintain the project; (b) the public will have long-term use of the beach after public funds are spent restoring it. It also ensures that the engineered beach provided for the community at government expense forever remains open to the public for use and enjoyment.

#### **What happens if I don’t approve an easement over my property?**

Current Federal policy states that in the case of those properties for which an easement is not provided, the Federal government will not share in the cost of sand placed on the beach fronting that property. The County, as the local non-federal sponsor, could choose to:

1. ask the Federal government to skip, not fill, that section of the beach;
2. condemn the easement property by eminent domain;
3. absorb the additional local costs, or
4. assess the applicable property owner for the amount not funded by the Federal government.

#### **How does the easement affect my property rights?**

It does not affect property rights of the upland landowner. An easement is a right of use over limited and specific defined areas of a property. The right of use allows the engineered beach to be built on the property, maintenance of the beach, and public use of the beach in a reasonable and lawful manner.



**Does the construction easement grant the state or US Army Corps of Engineers permission to build structures on my property?**

No, the perpetual construction easement is specific to the federal project only, which is limited to beach restoration, beach nourishment and beach disposal of high quality sand from navigation projects or adjacent seabeds.

**Will the public have the right to use the beach on my property?**

Yes. The USACE requires that the beach remain open to the public for use. The public will be able use the beach on which the easement has been placed in a reasonable and lawful way. It does not, however, turn the beach into a municipal beach that is controlled by the government. It still remains private property. In addition, the public will not be permitted to use any portion of the property beyond the restrictions set in the easement. For example, the public is not permitted to traverse the upland property in order to get access to the beach, sell food/other vending services or engage in any other activity prohibited by the County’s code of ordinances.

**Will I retain the right to enjoy my property?**

Yes. The easement only authorizes the USACE and County to place sand on the property and allows the public to use the beach. It does not prevent you from using your property. It remains privately-owned property, but you cannot prevent the public from using the beach on your property, or tell them they need to move because it is private property.

**Can we negotiate what is included in the easement?**

Certain provisions can be made to accommodate property owners. However, there are certain easement requirements that cannot be modified, such as public access.

**What rights do I maintain if I sign the easement?**

The easement spells out property owner’s rights, including the right to continued ownership of the property subject to the terms of the easement.

**Am I liable if someone is injured on my property?**

No. A property owner is not liable by granting an easement to another person or entity. The Landowners Liability Act provides additional immunity for injuries resulting from recreational activities on the property.

**If this easement is granted, is federal funding of future beach projects guaranteed?**

No. Granting of the perpetual construction easement will not guarantee federal funding for future beach projects, which is dependent upon future Congressional appropriations. Refusing to grant the perpetual construction easements could jeopardize (a) construction on individual properties with no easement, and/or (b) federal funding for future beach projects.

For additional questions, please contact:

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Email: RevordJ@stlucieco.org

Prepared by:

## ATTACHMENT 3

### PERPETUAL BEACH STORM DAMAGE REDUCTION EASEMENT

**THIS INSTRUMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2020, between \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter referred to as the “Grantor”, and St. Lucie County Erosion District, whose address is 3150 Will Fee Road, Fort Pierce, FL 34982, hereinafter referred to as the “Grantee”.

(Wherever used herein the terms “Grantor” and “Grantee” shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

#### WITNESSETH:

WHEREAS, GRANTOR owns beachfront property described in Exhibit “A”, incorporated by reference and made a part hereof; and

WHEREAS, GRANTEE and the Department of the Army have entered into a Project Partnership Agreement for the St. Lucie County, Florida Coastal Storm Risk Management Project (the “Project”) whereby GRANTEE has agreed to be the Local Sponsor for the Project, which provides for beach and dune nourishment within the South Ponte Vedra Beach and Vilano Beach reaches; and

WHEREAS, as Local Sponsor for the Project, GRANTEE is seeking to obtain “perpetual beach storm damage reduction” easements from owners of property in the Project reaches, such as GRANTOR; and

WHEREAS, it is in the interest of the GRANTOR to grant this Easement to prevent storm damage and restore adjacent beach and dune.

**NOW THEREFORE**, 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, the Parties to this easement agree to the following.

GRANTOR does hereby bargain, convey, and grant a perpetual and assignable easement in, on, over, and across the land described in Exhibit “A”, which is attached hereto and incorporated herein, for use by 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 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.

GRANTOR their successors and assigns reserve 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. Prior approval of the plans and specifications for such structures is obtained from the designated representative of the Project Sponsor and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project which may require removal of such structures at Grantors’ expense.

GRANTOR their successors and assigns further reserve all such rights and privileges as may be used and enjoyed by a fee owner without interfering with or abridging any right or privilege acquired by GRANTEE in this Easement, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

GRANTOR and GRANTEE shall be responsible for their own acts of negligence when acting within the scope of this Easement and shall be liable for any damages resulting from said negligence. Nothing herein is intended to be a waiver of sovereign immunity or of any applicable statutory limitations of liability, including, but not limited to, Section 768.28, Florida Statutes, by GRANTEE (or GRANTOR if applicable). Nothing herein shall be construed as consent by GRANTOR or GRANTEE to be sued by third parties in any manner arising out of this Easement.

This Easement shall become effective upon proper execution by GRANTOR.

The covenants, rights, privileges, restrictions, and reservations set forth herein shall run with the land.

The terms and conditions of this Easement shall be deemed severable. Consequently, if any term or condition in this Easement shall be held illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Easement shall continue in full force and effect unless the particular term or condition held illegal or void renders the balance of the Easement impossible to perform.

IN WITNESS WHEREOF, GRANTOR has set hereto its hand and seal on the day and year above written.

Signed, sealed and delivered  
in the presence of :

Witness Signature \_\_\_\_\_

Grantor Signature \_\_\_\_\_

Print Witness Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Grantor Signature \_\_\_\_\_

Print Witness Name \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ who are personally known to me or have produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

EXHIBIT "A"

THAT PART OF THE FOLLOWING DESCRIBED PARCEL LYING BETWEEN THE EROSION CONTROL LINE AND THE "LANDWARD LIMIT OF EASEMENT LINE" AS DESCRIBED IN AFFIDAVIT RECORDED IN OFFICIAL RECORDS XXXX, PAGE YYYY OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA:

LEGAL DESCRIPTION