

# TOWN OF PALM BEACH

Information for Town Council Meeting on: January 9, 2024

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TO: Mayor and Town Council

VIA: Kirk W. Blouin, Town Manager

FROM: H. Paul Brazil, P.E., Director of Public Works

RE: Mid-Town Beach Renourishment Project Update

DATE: December 21, 2023

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## **STAFF RECOMMENDATION**

Town staff is providing a project update for the Federally authorized Mid-Town Beach Renourishment Project.

## **GENERAL INFORMATION**

The United States Corps of Engineers (“USACE”) approved and received funding for a Flood Control and Coastal Emergencies Act (“FCCE”) project for the Mid-Town Beach Federal Nourishment Project in the Town of Palm Beach to replace sand lost from Hurricane Nicole. USACE Headquarters has determined that the project cannot be designed or constructed due to the Town of Palm Beach’s inability to acquire 100% of the required perpetual easements. Staff have been working with the Jacksonville District office of USACE in an effort to find a way for a one-time waiver to construct the project within the limits of the area that the Town does have the necessary easements. This area is essentially from Root Trail south to Hammond Road. After review by the real estate and engineering staff, the Jacksonville District determined that a project review and new cost benefit analysis would be required. This can be done, but not in time to implement the FCCE project in November of 2024. Due to the existing condition of the Mid-Town seawall and the plan to begin construction of the Mid-Town seawall in November 2026, staff is continuing to work with USACE to find another alternative to ensure the FCCE project can be constructed in November of 2024.

While USACE is enforcing the requirement for 100% executed perpetual easements for all Coastal Storm Risk Management (CSRM) projects nationally, the state of Florida is unique among other states in the fact that CSRM projects, such as the Mid-Town Beach Nourishment, require an established Erosion Control Line (“ECL”), which is supported by state law. All lands waterward of the ECL are sovereign lands of the state. Therefore, the state can provide the required perpetual easements for any lands waterward of the ECL and by definition these areas remain publicly accessible in perpetuity. This boundary is clearly established and defined in the Mid-Town Beach Renourishment project in the Town of Palm Beach, Florida and provides a continuous project area for USACE to construct the project.

Due to property owners that are unwilling to provide a perpetual public access easement, the Town could seek a perpetual construction easement. Section 103(d) of the 1986 Water Resources Development Act, allows local sponsors of a federal beach erosion project to pay for that portion of the cost of the federal project that benefits the private upland property owners. If USACE agrees the Town could acquire perpetual construction easements from the properties that are refusing to provide the perpetual easements that include

public use language. This would allow USACE to pay for the portion of the project waterward of the ECL and the Town would pay for the portion of the project landward of the ECL. Staff is working to schedule a meeting with USACE Headquarters to specifically request utilizing this existing law to allow the USACE to construct the federally approved FCCE without using federal dollars on those portions of private properties that have not executed the required easement for reasons of perpetual public access (portions of the project landward of the ECL).

#### **FUNDING/FISCAL IMPACT**

Staff has not determined what the additional cost to the Town would be for the areas with only perpetual construction easements or how this would be funded.

cc: Jason Debrincat, P.E., Assistant Director  
Patricia Strayer, P.E., Town Engineer  
Joanne O'Connor, Town Attorney, Jones Foster