Item No. 16d

AGENDA ITEM MEMORADUM

Public Information Office
Department

Steve d'Oliveira
Department Director

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
☐ Feb 28, 2012	Feb 17
☐ Mar 13, 2012	Mar 2
☐ Mar 27, 2012	Mar 16
☐ April 10, 2012 *	Mar 30
☒ April 24, 2012	Apr 13

*Subject to Change

☐ Presentation ☐ Reports ☐ Consent ☐ Ordinance
☐ Resolution ☐ Quasi-Judicial ☒ Old Business ☐ New Business

☐ **FY2012 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC**

SUBJECT TITLE: Broward County Beach Renourishment Project Segment II

EXPLANATION: Eric Myers of Broward County's Environmental Protection and Growth Management Department sent a letter dated April 16 to the Town responding to our questions about the upcoming beach renourishment project that were raised at the special Town Commission meeting on March 5th.

This project, which involves three cities, is divided into two segments: from Anglin's Pier south to Sunrise Boulevard, and from the Pompano Fishing Pier south to the Ocean Colony Condo in Town.

The summary below includes the key points in the County's response.

-Our shoreline would only be used for the project's beach tapers, which the County states are essential to all beach renourishment projects. The County said the elimination of the beach tapers in Town would "significantly diminish" the performance of the project in Fort Lauderdale and Pompano Beach.

-In terms of the noise and disruption during construction, the County estimates that up to 150 trucks per day could be traveling on our roads when work crews were depositing sand on the beach.

-With regard to environmental concerns raised by Lauderdale-By-The-Sea residents about how beach scarping would impact nesting sea turtles, the County says that permit regulations will require the contractor to grade any significant scarping.

-The potential damage to the Town's near-shore coral reefs from turbidity and sedimentation was also addressed. The County has pledged to "minimize" any negative impacts to our marine resources.

-The County estimated the Town's share for the cost of this project at $442,000.

The summary below are staff's comments on this project.

While this project is critical to Pompano Beach and Fort Lauderdale, it is not critical to the Town. The County has acknowledged that the Town's beaches are in overall good condition. Because of improved sand bypassing at the Hillsboro Inlet, the central portion of the Town's beach has recently gained sand.

I recently surveyed the entire length of our beach with the VFD Beach Patrol. Our central beach area (north of Pine) is fairly wide, but it narrows significantly starting at Cristelle Cay, 1430 N. Ocean Blvd. The beach south of the pier is not as wide as in our central area, but is wider than at our northern end.

If the project were to proceed as proposed, staff expects the County to ask us to use the Palm Avenue portal as a key access point for crews to place sand south of the pier and along the Galt Ocean Mile.

While the County has said it will minimize damage to our reefs from turbidity and sedimentation, there is no guarantee our reefs would not be negatively impacted. One reason the Segment II project was delayed until now was because this area was deemed more environmentally sensitive than the reefs south of Port Everglades. It should be noted that the potential damage to our reefs would come when the Town will be marketing itself to scuba divers statewide as the *Shore Dive Capital of South Florida.*

The Town Attorney has stated the Town has the legal right not to participate in the project.

The $442,000 cost to the Town is not included in our 5-year Capital Improvement Plan. Based on the project's high cost, the fact that our beaches are in good shape overall and that the beach tapers would primarily benefit Fort Lauderdale and Pompano Beach, it is staff's recommendation that, if the Town allows the County to proceed, that it be done on the condition that the Town has no financial obligation.

EXHIBITS: Town Attorney memo, Broward County letter to Mayor Minnet dated April 16, 2012.

Reviewed by Town Attorney
☐ Yes ☒ No

Town Manager Initials CH

BROWARD COUNTY
FLORIDA

ENVIRONMENTAL PROTECTION and GROWTH MANAGEMENT DEPARTMENT
Natural Resources Planning & Management Division
Mailing Address: 115 South Andrews Avenue, Room 329H, Ft. Lauderdale, FL 33301
954-519-1270 • FAX 954-519-1496

April 16, 2012

Roseann Minnet, Mayor
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

Re: Response to Questions Regarding Broward County Segment II Beach Nourishment Project

Dear Mayor Minnet:

We appreciated the opportunity to appear before the Town's Commission at the specially scheduled meeting on March 5, 2012 to discuss the County's proposed beach nourishment project for portions of Segment II (Hillsboro Inlet to Port Everglades Inlet). As presented, two fill areas are proposed for nourishment including 1) portions of Pompano Beach and northern Lauderdale-By-The-Sea and 2) southern Lauderdale-By-The-Sea and Ft. Lauderdale. At the end of the meeting we asked for the opportunity to respond in writing to questions raised by Commissioners and residents who attended the meeting. We have reviewed our notes, the Town's minutes (draft), and the meeting video in preparing our response (attached).

We understand that the discussion and development of the Town's position regarding support for the proposed beach nourishment project is scheduled for the Commission meeting of April 24, 2012. We hope that the information provided earlier in writing and at the presentations as well as the attached material is helpful in supporting a decision to allow the construction of "tapers" transitioning from larger fill sections to the north and south of the Town, as well as access for construction purposes. We will attend this meeting to respond to any additional questions the Commission may have.

Pending receipt of comments from each of the partner municipalities we will prepare a Segment II project recommendation to advance to our County Commissioners for final direction. If you have any questions or concerns regarding our response document or other issues I can be reached at (954) 519-1231 or emyers@broward.org

Sincerely,

Eric Myers

Eric Myers
Natural Resources Administrator

Broward County Board of County Commissioners
Sue Gunzburger • Dale V.C. Holness • Kristin Jacobs • Chip LaMarca • Ilene Lieberman • Stacy Ritter • John E. Rodstrom, Jr. • Barbara Sharief • Lois Wexler
www.broward.org

Attachment 1

Issues Raised at Lauderdale-By-The-Sea special Commission Meeting (March 5, 2012) to Discuss Upcoming Segment II Project

Broward County staff made a presentation to the LBTS Commission about the proposed Segment II beach nourishment project. This project will include two fill sections, one in Pompano Beach and northern Lauderdale-By-The-Sea (LTBS) and the other in southern LBTS and Ft. Lauderdale. Sand to be placed along the LBTS shoreline is associated with only the beach fill tapers for the northern and southern fill areas.

Broward County is seeking support from Lauderdale-By-The-Sea for the proposed Segment II project because we believe that to provide the most effective plan for areas needing significant restoration that tapers north and south into LBTS are very important to the design. The reduced amounts of fill in these tapers will significantly lessen nearshore hardbottom impacts.

Following the presentation, Broward County staff took questions from Commissioners and residents regarding particular details of the project. Some of the questions were answered during the meeting and others were provided to Broward County staff for a follow-up written response. We have reviewed meeting notes and minutes to ensure all questions are addressed and have organized the questions into several broad categories which include:

- Project Need
- Project costs
- Environmental concerns
- Traffic and construction concerns

Following are detailed responses to the questions within the above identified categories of concern.

Project Need: The overall Segment II nourishment project is intended to restore and protect eroded areas of beach along the Segment II shoreline. The areas in most need of restoration along the Segment II shoreline include the southern area of Pompano Beach, Galt Ocean Mile in Fort Lauderdale, and central Fort Lauderdale. Given that the Pompano Beach and Galt Ocean Mile project areas are located immediately adjacent to LBTS it is necessary to include beach fill tapers along portions of the LBTS

shoreline to ensure success of the overall Segment II project. The location, extent and configuration of these tapers are depicted in attached Figure 1.

Beach fill tapers are essential elements of all beach nourishment projects. Tapers provide a gradual transition between the fill area and the adjacent areas where fill may not be required, minimize fill losses from the end of nourishment projects, and improve overall project performance. Elimination of the beach fill tapers proposed for the LBTS shoreline would significantly diminish the performance of beach fill along the adjacent shorelines.

Although the LBTS shoreline may not require sand to the degree as the noted adjacent areas, the added sand associated with the beach fill tapers in LBTS will improve the shore protection benefits of the beach system and enhance recreational space. Since the fill volume placed in the tapers will be much less than that need along other areas of the project, the potential for adverse environmental impacts especially to nearshore hardbottom areas will be limited.

Project costs: Historically the cost share formula for County beach nourishment projects was approximately 50% Federal and 25% State, with the County and Cities splitting the remaining 25% 75:25 based on length of project. The County:City split was misstated as 50:50 during the question and answer session. This may be subject to change based on Federal and State participation. Table 1 shows what the anticipated city participation would be based on current project design and a $45.6 million project cost estimate.

Table 1 Estimated cost share for the Segment II Shore Protection Project. The estimate is based on the proportion of the project length along each city's beachfront.

City	[illegible]	[illegible]	[illegible]	[illegible]
Project Length	4,357'	4,316'	19,082'	27,755'
Percent Of Project	15.7%	15.5%	68.8%	100%
Estimated City Cost Share	$447,450	$441,750	$1,960,800	$2,850,000

Regarding the possibility of others paying for the work in in LBTS we do not have an answer to that question at this time, but will raise it to our Board when we bring the issue to them for project direction.

Environmental concerns:

Escarpment Formation. Several commenters expressed concerns regarding the potential for scarping following the project which could lead to problems for adult sea turtles to access nesting areas and

hatchlings returning to the sea. Permit conditions and good post-nourishment practices will require that scarps be graded in the project area if they exceed 18 inches in height and 100 feet in length. Daily sea turtle monitoring during nesting season provides additional observations of scarp formation. Additionally, compaction monitoring will determine if tilling is necessary to loosen up the fill in order to facilitate successful nesting.

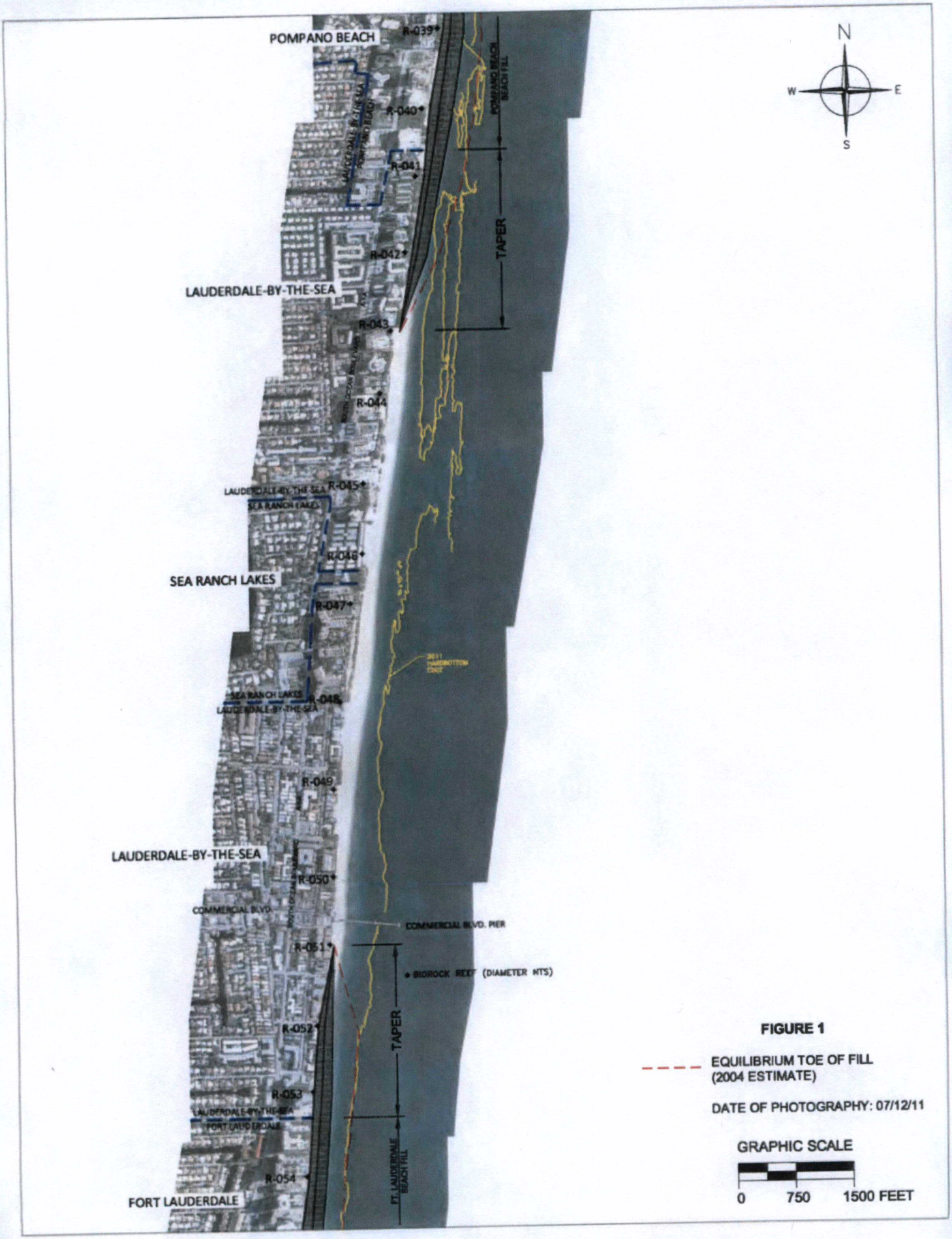
Hardbottom Resources. As described in the presentation, material placed on the dry beach and the nearshore face does have the potential to migrate offshore potentially impacting the nearshore hardbottom communities; however, our goal is to avoid or minimize impacts to these high value resources by placing the minimal amount of material to meet the project goals for the entire project. The tapers will have significantly less fill and will have commensurately reduced risk of impact.

Turbidity and Sedimentation. Prior to placement, the fill material will be analyzed through a sediment QA/QC process which carefully examines the sand source and identifies material which meets the project specifications while rejecting material which does not meet specifications. Because of this QA/QC process, we strongly believe that use of an upland source will provide slightly coarser sand with fewer fines, which is intended to reduce both turbidity and sedimentation impacts. This process will occur before and during construction to ensure quality is met throughout placement activities. Upland sand fill is placed at a slower rate than from offshore sources and this slower rate is what makes it much more feasible to detect and avoid placement of any unacceptable material. Additionally, permit-required turbidity monitoring will be conducted during placement to ensure that conditions remain with compliance levels.

Traffic and construction concerns: Commissioners and residents expressed concerns over the effects of a truck haul project on bridges, roads, access points and the beach and that LBTS may be disproportionately impacted because of the availability of desirable staging/stockpiling areas. Although LBTs represents only about 15.5 % of the project length it does have attractive access points. We have not done the detailed design of access points yet, however, our goal would be to balance the burden as proportionately to the municipality as possible. Although this process will create a traffic impact to the community as it proceeds along the project segments, we will draw on the experiences of other truck haul projects in dense urban areas to mitigate the impacts to the degree possible. It is anticipated that up to 150 trucks per day could access the staging/stockpile areas along the project reach.

Attachment 1

Cc: Ms. Connie Hoffman, Town Manager (with enclosure)
Mr. Ralph (Bud) Bently, Assistant Town Manager (with enclosure)
Dr. Jennifer Jurado, Director, NRPMD
Mr. Norm Beumel, Coastal Planning and Engineering, Inc.
Mr. Chris Creed, Olsen Associates, Inc


POMPANO BEACH
R-039
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R-042
LAUDERDALE-BY-THE-SEA
R-043
R-044
R-045
SEA RANCH LAKES
R-046
R-047
R-048
R-049
LAUDERDALE-BY-THE-SEA
R-050
COMMERCIAL BLVD.
COMMERCIAL BLVD. PIER
R-051
BIOROCK REEF (DIAMETER NTS)
R-052
R-053
FORT LAUDERDALE
R-054
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DATE OF PHOTOGRAPHY: 07/12/11
GRAPHIC SCALE
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1500 FEET

FIGURE 1

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

Memo

To: Connie Hoffman
Town Manager

From: Susan L. Trevarthen, Town Attorney
Harlene S. Kennedy, Assistant Town Attorney

Date: March 27, 2012

Subject: Refusal of Beach Restoration Services

You have asked us whether the Town may be forced to receive beach restoration services. We believe it may not be forced to receive these services, though we have not located any definitive authority on this subject.

Discussion

The general rule of law is that a municipality may exercise any governmental power regarding any subject matter, except when expressly prohibited by law.[1] Accordingly, it is not the Town's burden to demonstrate its' specific authority to refuse these services or to exert control over the lands within its jurisdiction, but rather to show there is no express prohibition of the Town to do so, if its authority is questioned.[2] We have not located any authority for the proposition that a municipality's authority has been pre-empted in the area of control over the beaches within its municipal boundaries.

It is noted that if the Town were to accept money relating to these beach restoration services, the circumstances would entirely change and the Town may be bound to accept the services. Additionally, if it becomes the Town's firm intention to refuse the beach restoration services, it would be beneficial to all parties involved for the Town to make that known at the earliest possible time so that no parties would be relying on the Town's participation.

As a related side matter, there is a line of cases that relate to the rights of individual property owners wherein it was determined that individual property owners' rights do not necessarily

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[1] City of Boca Raton v. State, 595 So. 2d 25, 28 (Fla. 1992)

[2] It is noted that while the beach is owned by the State and not the Town, the beach is subject to control by the Town pursuant to a Management Agreement between the Town and the Board if Trustees of the Internal Improvement Trust Fund dated August 8, 2003

trump the state's rights regarding permitting for beach restoration, but this does not necessarily relate to a municipality's standing to stop a state or county government from these activities with the municipal boundaries.[3]

Conclusion

Therefore, the Town has standing to refuse the beach restoration services.

[3]Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, 130 S.Ct. 2592, 177 L.Ed.2d 184, 78 BNA USLW 4578, 70 ERC 1505, 10 Cal. Daily Op.Serv. 7553, 2010 Daily Journal D.A.R. 9081, 22 Fla. L. Weekly Fed. S 484 (U.S.Fla.Jun 17, 2010) (NO.08-1151)