



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1.

3/21/2023

Subject:

Interlocal Agreement Between Sebastian Inlet District and the Brevard Mosquito Control District for Acquisition of Non-Beach Compatible Material

Fiscal Impact:

FY2022-2023 - estimated \$137,018 in savings for the repair of a hurricane-damaged mosquito impoundment.

Dept/Office:

Mosquito Control

Requested Action:

It is requested that the Brevard Mosquito Control District Board:

- 1) Authorize the Mosquito Control District to enter into an Interlocal Agreement for Acquisition of Non-Beach Compatible Material with Sebastian Inlet District; and
- 2) Authorize the Board Chair to sign on behalf of the Mosquito Control District.

Summary Explanation and Background:

Hurricanes Ian and Nicole caused significant erosion damage to the Crystal Lakes Mosquito Control Impoundment in the fall of 2022. An estimated 9,688 cubic yards of fill material is needed for the repair of a large section of the impoundment dike which was specifically damaged by Hurricane Ian.

The Sebastian Inlet District has approximately 9,000 cubic yards of non-beach compatible material available in their Dredged Material Management Area (DMMA). Mosquito Control has assessed the available material and determined it to be suitable to repair the impoundment dike. According to the conditions set forth in the Interlocal Agreement, the Inlet District would provide this material at no cost, and Mosquito Control would load and transport the material from the DMMA site to the impoundment for hurricane dike repairs. The net expenses include costs associated with rental equipment, labor and transport, while the costs associated with material placement on the impoundment are excluded as they would not be impacted by the mode of transport. The estimated 688 cubic yards of additional material required for the repair, beyond the 9,000 cubic yards available at the DMMA, will be provided by alternative means if necessary. A total project savings of \$137,018 is estimated, which reduces the cost of obtaining material for Hurricane Ian dike repair from \$231,059 to \$94,041.

Mosquito Control has been actively managing approximately 28,000 acres of mosquito impoundments within the Indian River Lagoon, including this Crystal Lakes impoundment, to effectively control the local salt marsh mosquito population for approximately 60 years. Once hurricane repairs are completed at the Crystal Lakes Impoundment, Mosquito Control will seek a Federal Emergency Management Agency (FEMA) reimbursement

for repairs and move forward with a shoreline resiliency project to protect the hurricane-impacted dike area, using grant funding that was recently awarded by the Florida Department of Environmental Protection (FDEP).

Clerk to the Board Instructions:

Please call Mosquito Control at 264-5032 when the fully executed Interlocal Agreement is ready for pick up.



March 22, 2023

MEMORANDUM

TO: Joseph Faella, Mosquito Control Director


RE: Item F.1., Interlocal Agreement Between Sebastian Inlet District and the Brevard Mosquito Control District for Acquisition of Non-Beach Compatible Material

The Board of County Commissioners, in regular session on March 21, 2023, authorized the Mosquito Control District to enter into an Interlocal Agreement for acquisition of non-beach compatible material with Sebastian Inlet District; and authorized the Chair to sign on behalf of the Mosquito Control District. Enclosed is the fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

Encl. (1)

cc: Contracts Administration
Finance
Budget

**INTERLOCAL AGREEMENT
BETWEEN SEBASTIAN INLET DISTRICT
AND THE BREVARD MOSQUITO CONTROL DISTRICT
FOR ACQUISITION OF NON-BEACH COMPATIBLE MATERIAL**

THIS INTERLOCAL AGREEMENT is entered into by and between the following Parties:
The Brevard Mosquito Control District, a special taxing district (hereinafter called the
"MOSQUITO DISTRICT"), residing at 800 Perimeter Road, Titusville, Florida 32780, and
Sebastian Inlet District, an independent special district of the State of Florida, residing
at 114 Sixth Avenue, Indialantic, Florida 32903 (hereinafter called the "INLET DISTRICT").

RECITALS

WHEREAS, the Brevard Mosquito Control District is a special taxing district in
Brevard County, Florida created by special act; and

WHEREAS, the Sebastian Inlet District is an independent special taxing district
consisting of a portion of Brevard County and Indian River County, Florida; and

WHEREAS, the Inlet District was created to maintain the navigational channel
connecting the Indian River Lagoon to the Atlantic Ocean; and

WHEREAS, in furtherance of its mission, the Inlet District maintains a sand trap in
the middle of the inlet that collects both beach compatible material and non-beach
compatible material; and

WHEREAS, the Inlet District removes the collected material periodically to its
dredged material management area (DMMA); and

WHEREAS, the Inlet District typically contracts to dispose of the non-beach
compatible material; and

WHEREAS, the Mosquito District would like to acquire the currently available non-
beach compatible material (approximately 9,000 cubic yards), which compacts well,
for use in making repairs to mosquito impoundments at no cost to the Mosquito
District; and

WHEREAS, the Parties have agreed to enter this interlocal agreement to detail the
necessary requirements for both Parties to proceed.

NOW, THEREFORE, in consideration of the mutual covenants herein, the

Parties hereby agree, as follows:

1. RECITALS. The recitals above are true and correct and incorporated by this reference.

2. AUTHORITY. This Agreement is being entered into under the authority vested in the Parties by section 163.01 Florida Statutes.

3. PUBLIC PURPOSE. The Mosquito District has a public purpose to maintain and preserve Brevard County's mosquito impoundments, and that maintenance requires repair of physical damage to the impoundment, including damage from the recent summer hurricane season. The Sebastian Inlet District has non-beach compatible fill dirt/material not needed for any other government purpose and is agreeable to providing said fill dirt/material at no cost to the Mosquito District, subject to the terms detailed herein.

4. SCOPE OF AGREEMENT. The following parameters will govern performance of the removal of non-beach compatible material by the Parties:

a. Upon coordination between the Parties, the Inlet District will make its DMMA accessible to the Mosquito District during its regular hours of operation, Monday through Friday. The Inlet District will provide personnel on-site while the Mosquito District personnel are present to assist in directing the Mosquito District personnel on where to remove the material.

b. The Inlet District and Mosquito District shall coordinate removal of all DMMA fill dirt/material with the manager of the Sebastian Inlet State Park ("Park Manager") or his/her designee prior to construction.

c. The Mosquito District will provide the transportation, the loading equipment, and personnel required to remove the non-beach compatible material. All removal operations are at the Mosquito District's own risk. The Inlet District understands the Mosquito District may contract to remove the material. All mobilization/demobilization of construction and hauling equipment will use the designated Sebastian Inlet State Park construction access as directed by Park Manager.

d. Repairs. In the event that the Mosquito District causes damage to any portions of the dredged material management area (DMMA), the Mosquito District shall coordinate with the Inlet District to repair, or

have repaired, the damage at the Mosquito District's cost. The DMMA shall be repaired to the condition the DMMA was in prior to the damage.

e. Term of Performance. The Mosquito District must remove the non-beach compatible material no later than 12 months after the last date this one-year agreement is signed. After 12 months, this agreement expires.

5. AUDITING, RECORDS, AND INSPECTION.

a. In the performance of this Agreement, the Parties shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures, as adopted by the Department of Financial Services, as set forth in Rule 69I-61.0012, Florida Administrative Code, as amended or superseded from time to time, or the Auditor General. Books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the office and shall be retained by each Party for a period of five (5) years after termination of this Agreement. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of Chapter 119, Florida Statutes.

b. The Parties agree to comply promptly with any request for public records or documents made in accordance with Section 119.07, Florida Statutes. If a request for public records is made by a third party, the Party receiving the request will inform the other of the request and upon request, provide a copy of the public records that were requested by the third party.

6. EFFECT OF AGREEMENT. This Agreement constitutes the entire agreement between the Parties. This Agreement may be amended only by written agreement approved and executed with the same formalities as this Agreement by all Parties. This Agreement supersedes all prior agreements to the extent that they are in conflict with this Agreement.

7. NOTICES. Notice under this Agreement shall be given to the Parties by mailing written notice, postage prepaid, and by email to:

Brevard Mosquito Control District
800 Perimeter Road
Titusville, Florida 32780
(321) 264-5032
Point of Contact: Joe Faella, Director
Joseph.faella@brevardfl.gov

Sebastian Inlet District
114 6th Avenue
Indialantic, Florida 32903
(321) 724-5175
Point of Contact: James D. Gray, Jr. Executive Director
jgray@sitd.us

8. **GOVERNING LAW/VENUE/ATTORNEY'S FEES.** The validity, construction and enforcement of and the remedies under this agreement shall be governed in accordance with the laws of the State of Florida, and venue of any proceeding shall be Brevard County, Florida. In the event any litigation arises out of this Agreement, each Party shall bear its own attorney's fees and costs. **BOTH PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL.**
9. **SAVINGS CLAUSE.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
10. **SEVERABILITY:** If any section, paragraph, sentence, clause, phrase, or word of this Agreement, is for any reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding will not affect the remainder of this Agreement. The remainder of this Agreement shall be effective and shall remain in full force and effect, unless amended or modified by mutual consent of the parties.
11. **LIABILITY.** Each Party agrees it shall bear responsibility for any injury or loss caused by its agents, representative, officials, employees or volunteers (hereinafter "agents") including when such agents are acting outside their jurisdiction. In agreeing to this provision, neither party intends to waive any defense or limit of sovereign immunity or limits to damages to which it may be entitled under section 768.28, Florida Statutes, as that section may be amended from time to time, or as otherwise provided by law. Nothing herein shall be construed as consent by either Party to be sued by third parties in any matter arising out of any contract. The Parties acknowledge that specific consideration has been exchanged for this provision.
12. **INDEPENDENT CONTRACTORS:** It is specifically understood and agreed to by and between the Parties that a material provision in this Agreement is that the relationship between the Mosquito District and the Inlet District is one in which each Party and its employees are independent contractors of the other Party, and not acting as agents, employees, joint venturers, or other partners and neither Party is entitled to any benefits of the other Party. Nothing contained herein shall be construed to be inconsistent with this relationship or status.
13. **NON-EXCLUSIVE CONTRACT.** The Parties acknowledge that this Agreement is not an

exclusive contract and both Parties may employ other professional or technical personnel to furnish services, as is their sole discretion, the Party finds is in the public interest.

14. INTERPRETATION: Both Parties have had the opportunity to consult with legal counsel and to participate in the drafting of this Agreement. Consequently, this Agreement shall not be more strictly or more harshly construed against either party as the drafter hereof.
15. COUNTERPARTS AND AUTHORITY. This Agreement may not be executed in counterparts. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that Party to the obligations stated herein.
16. EFFECTIVE DATE. This Agreement shall take effect on the date that it is executed by all Parties and recorded in the Official Records of Brevard County, Florida by the Brevard Mosquito Control District.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, fully authorized by all required action to sign on behalf of and to bind that Party to the obligations stated herein.

ATTEST:


Rachel Sadoff, Clerk


BREVARD MOSQUITO CONTROL DISTRICT

By: 

Rita Pritchett, Chair

(as approved by the District on 3/21/23)

ATTEST:


Dave Kershaw, Sr. Contracts/
Accounting Manager

SEBASTIAN INLET DISTRICT

By: 

Jenny Lawton Seal, Chair

(as approved by the District on 8 March 23)

APPROVED AS TO FORM:

By: 

Jack A. Kirschenbaum, Esq.



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The Sebastian Inlet District has approximately 9,000 cubic yards of non-beach compatible material available in their Dredged Material Management Area (DMMA). Mosquito Control has assessed the available material and determined it to be suitable to repair the impoundment dike. According to the conditions set forth in the Interlocal Agreement, the Inlet District would provide this material at no cost, and Mosquito Control would load and transport the material from the DMMA site to the impoundment for hurricane dike repairs. The net expenses include costs associated with rental equipment and labor for loading and transport, while the costs associated with material placement on the impoundment is excluded as they would not be impacted by the mode of transport. The estimated 688 cubic yards of additional material required for the repair, beyond the 9,000 cubic yards available at the DMMA, will be provided by alternative means if necessary. A total project savings of \$137,018 is estimated, which reduces the cost of Hurricane Ian dike repair from \$231,059 to \$94,041.

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WHEREAS, the Brevard Mosquito Control District is a special taxing district in Brevard County, Florida created by special act; and

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WHEREAS, the Inlet District was created to maintain the navigational channel connecting the Indian River Lagoon to the Atlantic Ocean; and

WHEREAS, in furtherance of its mission, the Inlet District maintains a sand trap in the middle of the inlet that collects both beach compatible material and non-beach compatible material; and

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13. **NON-EXCLUSIVE CONTRACT.** The Parties acknowledge that this Agreement is not an



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-51
Cancels: July 9, 2019
Approved: March 21, 2023
Originator: Planning &
Development/County
Attorney
Review: March 21, 2026

TITLE: Zoning Actions and Findings of Fact

I. Objective

To establish a standardized procedure for the development and approval of findings of fact after a zoning action by the Board of County Commissioners.

II. Definitions and References

Zoning Action – Any rezoning, conditional use permit, binding development plan, or other quasi-judicial action by the Board of County Commissioners in public hearing.

Findings of Fact – The factual conclusions reached by the Board of County Commissioners based upon substantial competent evidence contained in the record upon which the decision of the Board of County Commissioners is based.

Denial of Zoning Action – The denial of a zoning action occurs when a majority of the County Commission votes to deny a zoning application. A denial of a zoning application is presumed to have occurred when the County Commission, by a majority vote, approves a zoning classification other than the one requested by the applicant.

Public – Anyone with an interest in a rezoning request, including the property owner, applicant, representatives of the owner or applicant, neighbors, or business competitors of the owner or applicant, consultants for any such party, representatives of special interest groups, or any other person or group that expresses a projected positive or negative impact from the approval or denial of the requested zoning action. This does not include members of the Board of County Commissioners, its staff, or its advisors.

III. Directives

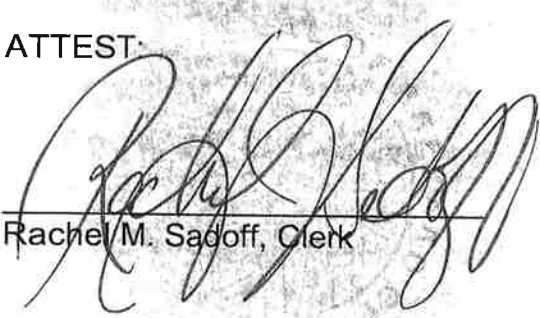
- A. Where the Board of County Commissioners has stated its intended zoning action, the public hearing shall be closed. As part of the intended zoning action, the Board may direct the County Attorney to develop a resolution setting forth proposed findings of fact, conclusions of law, and the action taken.
- B. The County Attorney shall schedule the proposed resolution and findings of fact for approval as a consent agenda item at a subsequent regular meeting of the Board of County Commissioners.

- C. If the Board of County Commissioners removes the resolution and findings of fact from the consent agenda for discussion at a regular meeting, the discussion shall not constitute a reopening of the public hearing, nor shall the Board hear any new evidence from the public. However, nothing in this section shall be construed to prevent the County Commission from continuing a public hearing to a time-certain and re-opening of the public hearing at that time.
- D. In the event the Board of County Commissioners wishes to re-open the public hearing portion of the hearing the item shall be re-advertised.

IV. Effective Date

This procedure shall take effect upon approval by the Board and may be updated by staff, as necessary.

ATTEST:



Rachel M. Sadoff, Clerk



Rita Pritchett, Chair
Board of County Commissioners
Brevard County, Florida
As approved by the Board on March 21, 2023

SUNSET REVIEW

POLICY/ADMINISTRATIVE ORDER NUMBER: BCC-51

POLICY/ADMINISTRATIVE ORDER NAME: Zoning Actions and Findings of Fact

Pursuant to Board Policy BCC-31, the review process for programs, services and existing ordinance shall be performed at four levels:

Department: Planning & Development; and County Attorney's Office

Please review with recommendations to the County Attorney, County Manager, and Advisory Board, if applicable.

Citizen Group: Recommendation to be submitted to the Board of County Commissioners

County Commission: To receive results of Department and Citizen Group reviews:

REVIEW TO INCLUDE (BUT NOT LIMITED TO):

1. What is the need being met and who benefits: (Quantify)
BCC-51 standardizes the procedure for the development and approval of findings of fact after a zoning action by the Board of County Commissioners. The Board and the applicants benefit based upon substantial competent evidence in the report upon which the decision of the Board is based.
2. Is this Policy/Administrative Order duplicative? ☐ Yes ☒ No
If yes, please explain.
3. Can another agency perform this function? ☐ Yes ☒ No
If yes, please explain.
4. County Funding ☐ Yes ☒ No
5. Should this Policy/Administrative Order be
☐ Eliminated
☐ Modified
☒ Continued
6. Is there an acceptable alternative? ☐ Yes ☒ No
If yes, please explain
7. Has this Policy/Administrative Order been reviewed by the County Attorney's Office? ☒ Yes ☐ No


Reviewed by

3/7/23
Date

The date(s) the Citizen Group/Advisory Board will review. N/A

The date the Board of County Commissioners will review results. 03/21/23