

## **Fire Island Inlet to Moriches Inlet (FIMI) Stabilization Project**

### **Real Estate Fact Sheet - #2 – October 2, 2014**

NYS Department of Environmental Conservation (State) and Suffolk County (County)

**This provides answers to many of the questions we have received in the last two weeks and is posted on the FIMI website at: [www.suffolkcountyny.gov/fimi](http://www.suffolkcountyny.gov/fimi)**

#### **PLEASE NOTE:**

**The Easement documents cannot be finalized for execution until the County completes the surveys and attaches them to the Easement documents. The Easement documents are currently in DRAFT form only. Do not return them at this time.**

**Right of Entry forms must be signed for appraisals to be done.**

#### **QUESTIONS ABOUT THE FIMI PROJECT:**

- **What is the purpose of the FIMI Project?**
  - The FIMI Stabilization Project is designed to provide coastal storm risk reduction from coastal erosion and tidal inundation by reestablishing protective dunes and beach berms along the Atlantic Coast of Fire Island. Engineered beach and dune systems are designed to provide protection from flood and wave damage caused by storms.
- **What portion of the FIMI Project is currently funded? By whom? Is local government paying for FIMI?**
  - All of the FIMI Project is (from Robert Moses State Park to Smith Point County Park) 100% funded by the federal government at \$207,000,000. No local government is paying for any portion of FIMI. The State is providing \$68,000,000 to Suffolk County to obtain the real estate and the State will be reimbursed by the US Army Corps of Engineers (USACE).
- **How was the dune line determined? Why isn't straight? When was the dune alignment finally determined?**
  - An engineered beach and dune system provides coastal protection based on engineering calculations following extensive study by USACE. These calculations establish the appropriate width and slope of beaches and the size and location of dunes to protect the shoreline. USACE also weighed the costs and benefits of placing the dune line further south or north and determined the line that provided the best benefit for the cost. The alignment is not straight as it follows the natural contour of the land to match the existing topography. The final dune alignment was determined when the Final Report for the Project was approved by the Corps in July 2014.
- **Who was the voice of the homeowners when the dune line was set?**

- The Fire Island Association, the Towns and the County were all involved in dune alignment discussions for the past year.
- **Will the trap bags that were placed by the communities be removed by the Corps?**
  - It is the Corps' intention to incorporate the existing trap bags into the new dune structure. If any trap bags are seaward of the new dune alignment, they will be removed.
- **If sand has accreted above the dune design elevation due to the trap bags and sand fencing that exists now, will the Corps still add more sand on the dune?**
  - Sand will only be placed up to the design elevations. If the existing area has accreted above or to the design elevation at the time that the final design is completed, then no sand will be placed on that dune.
- **How was the budget for the FIMI real estate work developed?**
  - USACE appraisers estimated the value of real estate required by the Project. This figure is combined with an estimate for incidental acquisition expenses including surveys and appraisal. It does not include parcel specific information.

#### **QUESTIONS ABOUT THE RIGHT OF ENTRY FORM:**

##### **Right of Entry forms must be signed for appraisals to be done.**

- **Can it be negotiated?**
  - The duration of the ROE can be negotiated. Other terms cannot be altered.
- **Does every property owner need to sign this form? For surveying? For appraisal?**
  - Signed ROE forms are not required for surveys as NYS law (General Obligation Law NY CLS Gen Oblig § 9-103) permits entry for surveys. However, the ROE is necessary for appraisals and environmental investigations to be done. Therefore, the ROE should be signed and returned in a timely manner.
- **What if I don't want to sign the form?**
  - Surveys will be done whether the form is signed or not. If an appraisal is requested or required and the ROE is not signed, it will delay the Project.
- **Does it have to be for three (3) years?**
  - No. The duration can be negotiated.
- **Can there be a "hold harmless" indemnification clause in the ROE?**
  - Surveyors and appraisers will be required to possess liability insurance in addition to worker's compensation insurance. Questions regarding "hold harmless" indemnification clause(s) should be addressed with the property owner's attorney.

#### **QUESTIONS ABOUT THE WAIVER FORM:**

- **What is the waiver form for?**
  - Federal law provides that every property owner has the right to an appraisal for possible compensation in exchange for the granting of a Perpetual Beach Easement. The Waiver form offers the owner an opportunity to waive the right for an appraisal and to donate the Easement to the County.
- **Why would I sign the waiver form?**
  - To help more expeditiously achieve the benefits of the Project for the community by reducing the number of appraisals that need to be done. Signing the Waiver is entirely voluntary.
- **What happens if I don't sign the waiver form?**

- Suffolk County will appraise your property to determine the fair market value of the easement area. A signed ROE will be required to conduct the appraisals.
- **If I do sign the waiver, thereby donating my easement area to Suffolk County, do I still owe taxes on the easement area?**
  - Please consult your tax advisor and the Town tax assessor's office.

#### **QUESTIONS ABOUT THE SURVEYS:**

- **Will there be survey markers left on my property so I can "see" the easement area?**
  - Probably not. Modern survey methods do not use survey stakes or markers but rely on GPS coordinates. A copy of the survey will be attached to each individualized easement document identifying the easement area and structures in or near the easement area and will indicate the distances from property lines and structures to the easement area as appropriate.
- **Is there a large map available that shows the location of the dune line?**
  - There is no one map that shows the entire Project. The USACE website at <http://www.nan.usace.army.mil/Missions/CivilWorks/ProjectsInNewYork/FireIslandtoMontaukPointReformulationStudy.aspx> has the plans for the Project. The dune layout can be found in Appendix C of the Final Fire Island Inlet to Moriches Inlet Stabilization Project HSLRR Main Report.
- **Will any of the homes in the second row need to be surveyed?**
  - There may be some second row homes that will be within the dune alignment. This will be determined as the surveys are being done and the dune alignment is laid out.
- **How long after the surveys are done will we know whether we are slated for acquisition or whether we can be relocated?**
  - As surveys are completed, properties that need to be acquired or relocated will be determined. Those property owners will be contacted directly by the County to review the action needed. It is planned to have all surveys completed on or about December 31, 2014 and you will be notified very soon after that.

#### **QUESTIONS ABOUT THE APPRAISALS:**

##### **Right of Entry forms must be signed for appraisals to be done.**

- **How will the appraisals be done?**
  - The appraisal shall be prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and the 2014-2015 edition of the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP). The appraisals will be reviewed by USACE for compliance with the above standards. Properties will be appraised in their current condition. The above standards are available at: <http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf> and <http://www.uspap.org>, respectively.

#### **QUESTIONS ABOUT THE EASEMENTS:**

##### **The Easement documents cannot be finalized for execution until the County completes the surveys and attaches them to the Easement documents. The Easement documents are currently in DRAFT form only. Do not return them at this time.**

- **Why is the easement perpetual? If FIMI is de-authorized by Congress, can I be released from the easement?**

- The Easement is termed ‘perpetual’ because as long as the Project remains authorized by Congress, the Non-Federal Sponsors must maintain the ability to access the Project area to perform inspections and maintenance in order to ensure the continued benefit from the Project. The perpetual beach easement will also allow USACE to restore the dunes should another severe storm event occur. Since USACE projects are specifically authorized for construction by Congress, the Easement will remain in full force and effect while the Project remains authorized by Congress. Should Congress ever de-authorize the Project, landowners may request the release of the Perpetual Beach Easement on their property.
- **Who will own the easement area on my property?**
  - Title to the land will remain with the landowner. The easement will be held by Suffolk County.
- **How long after the surveys are done will we receive the easement document?**
  - As surveys are completed, they will be attached to individualized easement documents and sent to the property owners. It is planned to have all surveys completed by December 31, 2014 and all easement documents sent to property owners by February 28, 2015.
- **What work can I do on a pre-existing structure that is in the landward slope of the new dune and/or in the easement area? Will I need a DEC Coastal Erosion Management (CEM) Permit or other permits to do work in the easement area?**
  - Normal maintenance of an existing structure within the Coastal Erosion Hazard Area (CEHA) can be conducted without a CEM Permit. Any work beyond that will require a CEM Permit from DEC or your local CEHA administrator. Please contact the DEC Region 1 Permit Office before conducting **any** work within CEHA to determine if a permit is necessary. In addition, work may require additional Federal, State, or local permits.
- **Can I have construction equipment cross the easement area to do work on my property in the future? Will I need permits to cross the easement area?**
  - Regardless of the easement area, vehicular traffic is prohibited on dunes within the Coastal Erosion Hazard Area, except in those areas designated by DEC for dune crossing. Variances may be granted if a project is determined to meet the Coastal Erosion Management variance criteria, as set forth in 6 NYCRR Part 505.13 or your local CEHA ordinance.
- **If I need permits and it’s an emergency repair, how long will it take to get them?**
  - NYSDEC is required to respond to requests for emergency permits within 2 business days. Emergency permits only allow the minimum necessary to overcome the emergency and are good for 30 days.
- **Can I install sand fencing and plant the dune in the easement area on my property?**
  - Yes. These are encouraged when used for dune creation and stabilization. The draft Easement documents will be revised to reflect this.
- **Will any of the homes in the second row need to have easements on them?**
  - There may be some second row homes that will be within the dune alignment. This will be determined as the surveys are being done and the dune alignment is laid out.
- **How does the easement area work if my property extends to Mean High Water?**
  - The easement area will extend from the landward toe of the dune to the southern line of the property which in this case will be the Mean High Water line.
- **What areas does the public have access to on my property? The easement area itself? The land north of the easement area? The land south of the easement area?**

- The public will only have access to the easement area. They will not have access to any other portions of private property.

#### **QUESTIONS ABOUT THE ACQUISITION PROCESS:**

- **When will I know if my property is slated for acquisition or if it can be relocated?**
  - When the surveys are complete.
- **How will my property be valued?**
  - Your property will be valued by fair market value appraisal as described above. Properties will be appraised in their current condition at their current fair market value.
- **If I don't accept the offer made for acquisition, does the Project stop?**
  - The Project will not stop, but could be delayed. If a voluntary acquisition cannot be accomplished, the property will be taken by the County pursuant to federal and state laws concerning condemnation.
- **Are the settlement proceeds tax free?**
  - Please consult your tax advisor.
- **If a home is slated for acquisition and demolition, can I buy it and have the Corps move it to another lot I own and save the Corps the demolition cost?**
  - No. If, however, the home is purchased prior to the acquisition process, then the relocation process outlined in the Real Estate Fact Sheet can be followed.

#### **QUESTIONS ABOUT THE EMINENT DOMAIN PROCESS:**

- **Can you give more detail about the process?**
  - If no agreement is reached between the County and a property owner, the County is required to commence an eminent domain proceeding to take the property in question. The New York Eminent Domain Procedure Law sets forth the specific process that must be followed. Generally, the process begins with a resolution by the Suffolk County Legislature (Legislature) calling for a public hearing concerning the acquisition. Thereafter, the Legislature must approve a resolution adopting the findings and determinations and authorizing the acquisition by eminent domain. The legislative process usually takes one month between the time the resolution is introduced until the time it is approved depending upon the Legislative calendar.
  - The County will then ask the Supreme Court of the State of New York (Court) for a Vesting Order to obtain ownership of an easement or of the land itself, as appropriate. In the Vesting Order, the Court grants ownership of the land or easement to the County.
  - At this point, the former owner of the property who has rejected the prior offer of the County (based on the pre-vesting appraisal amount) may file a claim in the Court for a higher amount.
  - After the claim is filed, additional appraisals are done, by both the County and the former owner. Based upon those appraisals, it may be possible to reach a settlement. If not, the matter may proceed to trial.
  - It is not uncommon for two to three years to pass before conducting a trial before a Supreme Court Justice. After trial, the Judge will render a decision setting the "just and adequate compensation" to which the former owner is entitled. If the just compensation is substantially higher than the amount offered by the County, the Court may also award reimbursement of attorneys' and experts' fees to the former owner. If the Court's determination is not substantially higher, then the costs of attorneys, appraisers and engineers hired by the former owner will be borne by the former owner.

- This is intended for general information only and does not set forth the entire process in detail. Please consult your own attorney and/or advisor for further information.

**QUESTIONS ABOUT LIABILITY:**

- **What if my dune crossing stairs are damaged during construction?**
  - If the contractor damages your dune crossing stairs during the Project's construction, the stairs will be repaired.
- **What if my property is damaged during construction? Will I be compensated?**
  - If the contractor causes any damage to your property during the construction of the Project, it will be repaired.
- **What happens if a contractor is injured while working in the easement area on my property?**
  - The USACE and County contractors will have insurance to handle this situation.
- **What happens if a person is injured in the easement area on my property after the FIMI Project is finished?**
  - An owner of property does not assume additional liability by granting an easement to another person or entity. Please consult with your legal advisor and insurance company.
- **Can there be a "hold harmless" indemnification clause in the Easement document?**
  - Questions regarding "hold harmless" indemnification clause(s) should be addressed with the property owner's attorney.

**MISCELLANEOUS QUESTIONS:**

- **What will the revised Coastal Erosion Hazard Area (CEHA) area look like after the FIMI Project is finished?**
  - After the FIMI Project is completed, the NYSDEC will initiate the re-mapping of the Fire Island Coastal Erosion Hazard Areas. In areas where there are dunes, the landward limit of CEHA will be 25 feet north of the landward toe of the dune. In areas where there are only beaches, the landward limit of CEHA will be 100 feet north of the change in vegetation.