

Sebastian Inlet District
Regular Commission Meeting
Wednesday, 4 PM, April 12, 2023
Sebastian Inlet District Office
114 Sixth Avenue, Indialantic, FL 32903

Minutes

Present at the meeting were: Chairman Jenny Lawton Seal, Commissioner Beth Mitchell (Vice Chair), Commissioner Michael Rowland (Secretary/Treasurer), Commissioner David Barney and Commissioner Lisa Frazier. Also, in attendance were: Executive Director James Gray, Contracts & Accounting Manager Dave Kershaw, SID Public Outreach Associate Ed Garland, SID Legal Counsel Jack Kirschenbaum, Kenneth Torres (SISP), Sam Cox (SISP), Christine Noll-Rhan (Carr, Riggs & Ingram, LLC), Steven Jachec (ATM), Bryan Flynn (ESA), Marie Yarbrough (Atkins) and Tom Pierro (remotely for Agenda Item 4B1) (Coastal Protection Engineering).

Under Agenda Item I

Call to Order –Chairman Lawton Seal called the meeting to order at 4 p.m.

Under Agenda Item II

Approval of the Minutes of the regular Commission meeting of March 8, 2023. Commissioner Mitchell made a motion to approve the minutes. Commissioner Barney seconded the motion. **The motion carried 5-0.**

Under Agenda Item III

Presentations

- A. Presentation of Independent Auditor’s Report for Sebastian Inlet District FY 2022 Financial Statements — Christine Noll-Rhan (Carr, Riggs & Ingram, LLC)

Ms. Noll-Rhan gave an Auditor’s Report of the District’s Financial Statements for FY 2022, calling the District’s audit a “clean audit.” She noted that the District’s fund balanced dropped by approximately \$200,000 but that the net decrease was due to the number of projects started during the year. The entire FY 2022 report is available on the District’s website. Following the presentation, Mr. Gray noted that he and Mr. Kershaw are developing policies to ensure vendors submit invoices on time. He also recognized Mr. Kershaw on another clean audit.

Vice Chairman Mitchell made a motion to accept the Auditor’s Report. Commissioner Rowland seconded the motion. **The motion carried 5-0.**

Under Agenda Item IV

Information and Discussion Agenda

- A. Media and Information

No discussion.

- B. Executive Director’s Reports

1. Update on the Sebastian Inlet Management Plan Technical Advisory Committee Meeting on April 5, 2023

Mr. Gray updated the Commission on the results of the fourth and final Sebastian Inlet Management Plan (IMP) Technical Advisory Committee (TAC) meeting that occurred on April 5, 2023. He prefaced his update by summarizing the statutory requirements for periodic

management plan updates and noted that TACs occurred in 2000 and 2004. The most recent round of meetings began in January 2022. During the first three meetings, members reviewed and discussed the District's survey data and monitoring information with a goal of looking at a 10-year sediment budget. Following lengthy discussion, the TAC came to a consensus of a bypassing objective of 75,000 cy/yr, a seven percent increase over the original adopted IMP, but a 20 percent reduction from the 2004 TAC committee findings of 90,000 cy/yr. In the next three months, FDEP will draft an updated management plan identifying a target bypassing objective of 75,000 cy/yr and additional strategies as recommended by the TAC. Once the TAC reviews the draft plan, FDEP will notice the document for 21 days and will adopt it if it is unchallenged. Over the next few weeks, the District will work with Indian River County to revise its memorandum of understanding regarding placement of sand.

TAC member Tom Pierro, linked into the meeting remotely, said the TAC meetings were challenging and commended District staff on their work. Mr. Pierro noted that there is no evidence that the 90,000 cy/yr number cited in 2004 was the approved number, but instead was the result of negotiations based on a wide range of numbers the previous TAC used. Mr. Pierro said that during the final TAC meeting, the range of numbers based on the data he used was between 68,000 cy/yr and 90,000 cy/yr. The average of those numbers is 74,000 cy/yr which is very close to the number 75,000 cy/yr that the TAC agreed to by consensus.

Commissioner Rowland asked whether the proposed target bypass number would satisfy downdrift property owners. Mr. Gray said the downdrift property owners were represented at the TAC but that once the report is finalized and publicly distributed anyone can challenge it.

Commissioner Mitchell said she was concerned about other items that could be inserted into the updated management plan. She asked whether the District could refuse to adopt the plan if there are changes to which the District does not agree. Mr. Gray responded that TAC conclusions are recommended strategies to implement inlet management plans. He said the District will meet with Indian River County in advance of the final report to discuss the MOU strategies relative to monitoring, such as extending placement areas south so that the District could meet its objective. Setting strategies also provides greater opportunities for the District to take advantage of FDEP cost-share funding. He was unable to discuss strategies in more detail because FDEP's is still drafting the update to the Sebastian Inlet Management Plan.

Commissioner Mitchell said she would like as many definitive edicts in the IMP as possible to avoid issues in the future. Mr. Gray agreed, saying the District is playing close attention to the conclusions that have been made or expressed.

Commissioner Mitchell asked Mr. Gray to expound on the concept of a deficit and whether there is a new opportunity for the threat of a lawsuit. Mr. Gray said FDEP annually produces an inlet report that identifies each managed inlet's target bypass responsibility and whether it is meeting its goals and objectives. It also identifies surpluses and deficits. Mr. Gray said due to the 2004 TAC findings never being formally adopted the District disagrees with 90,000 cy/yr. However, the 2022 annual inlet report produced by FDEP shows a total deficit of approximately 700,000 cy. Mr. Gray discussed Florida Statutes referring to "each level of government to undertake all reasonable efforts to maximize inlet sand bypassing to ensure that beach-quality sand is placed on adjacent eroding beaches." Mr. Gray stated the District, FDEP and Indian River County had been placing sand on Indian River County beaches. Mr. Gray said he believes that the District is meeting the bypassing objective by working in concert with other government agencies.

Mr. Barney questioned who has the right to challenge the IMP and whether the 700,000 cy deficit is common knowledge. Mr. Gray said the IMP is a public document. Statute 161.142 prescribes a methodology for discussing the target bypassing objective and sediment budget, but not how to respond to a sediment surplus or deficit.

Commissioner Mitchell said the District never accepted or agreed with FDEP's 90,000 cy/yr target bypass interpretation in 2008. She said she believes the threat of a lawsuit is on the way. Mr. Kirschenbaum advised Commissioner Mitchell not to use the word, "lawsuit." The TAC is an advisory committee and advises FDEP, which can take or reject advice and adopt a report. If there is opposition, the procedure for challenging the report is called an Administrative Procedure Act lawsuit. This process allows the challenger to seek changes to the report. The deficit that FDEP is discussing is based on faulty data that was never accepted by the District. It is a calculation with no legal significance. The second kind of lawsuit of concern is the downdrift property owners suing for inverse condemnation for the taking of their land because the District didn't make up for the sand interrupted by the inlet. This type of lawsuit occurred about 30 years ago, he said. The current data has little to do with that lawsuit. They are two different types of lawsuits with different objectives. There is almost nothing the District can do about either type of lawsuit.

Commissioner Mitchell asked whether downdrift homeowners could repeatedly sue the District for downdrift impacts. Mr. Kirschenbaum said lawsuits based on condemnation are temporal. One cannot go back in time to sue for a date to which they had already were paid.

Commissioner Mitchell asked for the duration of the IMP. Mr. Gray said FDEP reviews are generally every five years and that they can be done by a study. He noted that the District conducts annual updates via the Sebastian Inlet State of the Inlet Report, which are sent to FDEP for review.

Mr. Gray said the District has demonstrated over the last decade that it has exceeded the TAC recommendation by placing approximately 83,000 cy of sand annually.

Mr. Kirschenbaum said the takeaway is that the District has been conscious of its obligations and diligent in putting sand on the beaches.

2. Update on the DMMA project with Brevard Mosquito Control District

Mr. Gray updated the Commission on its agreement with Brevard County that will allow Brevard County Mosquito Control District to remove material from the District's Dredged Material Management Area (DMMA) to use for stabilizing mosquito impoundments within District boundaries. The material is not suitable for beach bypassing placement. Removal of approximately 9,000 cubic yards may begin as soon as April 17, 2023. Work should take about two months to complete. The project has the potential to save taxpayers hundreds of thousands of dollars.

3. Recent impacts to north jetty due to recent inclement weather

Mr. Gray added an impromptu item to his report to the commission about recent impacts at the north jetty due to high surf and 30 mph gale force winds. Mr. Gray reminded the commission about a large washout that had occurred in the wake of Hurricane Nicole last winter. Mr. Gray presented a series of PowerPoint slides showing a new potential washout, although much smaller, where the last large washout occurred. He described the materials used to repair the washout last time. He said he didn't see a breach on the inlet side of where the washout occurred. Mr. Gray said he will be meeting with Mr. Flynn to examine the

impacted areas and that surveys along the north jetty are contracted this month to determine the extent of missing armor stone needed for future repairs.

Mr. Gray also shared PowerPoint images of Ambersand Beach where the District recently completed a 30,000 cy bypassing project. The PowerPoint images showed escarpments where some sand has washed away. Mr. Gray said there is no need to be alarmed and that natural recovery is expected.

4. Discussion of Consent Agenda

Under Agenda Item V

Public Outreach Activities

Mr. Garland provided an update on recent outreach activities, including promotion of an upcoming clean-up event at SISP later this month, website updates, his participation in an upcoming Earth Day event at Blue Origin and the second consecutive monthly spike in the number of people visiting the District's website. In February, the site received more than 45,000 visits.

Under Agenda Item VI

Park Matters – Mr. Torres shared information about an upcoming law enforcement-sponsored cleanup event that will take place on April 26 and 27, 2023, at the north jetty. He said Florida Fish and Wild Conservation Commission officers and partners from around the state, including the District will participate. The north jetty will be closed while the cleanup takes place, he said. Mr. Garland added that he is working with Mr. Torres to solicit media coverage for the event.

Under Agenda Item VII Legal Counsel Update — Jack Kirschenbaum (Gray Robinson)

Nothing to report.

Under Agenda Item VIII

Public Comment Period

There was no public comment.

Under Agenda Item IX

Consent Agenda

A. Authorized Work For Commission Review

1. No items.

B. Recommended for Approval

1. Data Sharing Agreement Between Florida Department of Economic Opportunity and Sebastian Inlet District and the Balmoral Group

Mr. Gray said that District approved a contract with The Balmoral Group, LLC, to develop a 2023 update to the District's Regional Economic Benefits of Sebastian Inlet study. As part of the study, the District requested the Data Sharing Agreement (DSA) that will allow the District and Balmoral to review quarterly census data to assess employment characteristics of businesses within the District's boundaries.

2. Work Order No. 2223-015 - GPI, GPI Geospatial, Inc. 2023 Shoreline Aerial Monitoring

Mr. Gray said the proposed work order allows GPI to continue to provide aerial photography services necessary for the District to analyze the inlet sediment budget, permit-required monitoring of the beaches north and south of the inlet and the District's sand bypass project areas. The total amount of the work order is \$18,000.

3. Work Order No. 2223-016 - GPI, GPI Geospatial, Inc. 2023 Inlet Shoal Aerial Monitoring
Mr. Gray said the proposed work order allows GPI to continue to provide aerial photography services that support the District's permit-required monitoring of the beaches north and south of the inlet and seagrass along the inlet shoals. The total amount of the work order is \$11,000.
4. Work Order No. 2223-017 – ATM, Applied Technology and Management, Inc. – 2023 Post Construction Biological Monitoring
Mr. Gray said the proposed work order is for ATM to provide the third year of post-construction hardbottom monitoring for the 2019 Sand Trap Dredging and Beach Placement Project, which is a requirement of the Florida Department of Environmental Protection (FDEP). The total amount of the work order is \$145,129.
5. 2022/23 Upland Sand Truck Haul and Beach Placement Project Final Payment and Full Release of Retainage – Rio-Bak Corporation
Mr. Gray said the agenda item is a recommendation for the Board to approve the final release of withheld retainage and final payment in the amount of \$69,849.76 to Rio-Bak for construction services in connection with the District's 2022/23 Upland Sand Truck Haul and Beach Placement Project. All work is now 100% complete and the total final contract amount was \$1,374,750.
6. Work Order No. 2223-018 – ATK, Atkins North America, Inc. 2023 Flood Tidal Shoal Seagrass Monitoring
Mr. Gray said the agenda item is for the ATK to continue its annual surveys and monitoring of seagrasses within the inlet's flood shoal. Monitoring provides an indicator of lagoon health in the inlet and the District shares the data with other agencies. The total amount for the work order is \$30,170.

Vice Chairman Mitchell voted to approve the consent agenda. Commissioner Rowland seconded the motion.
The motion carried 5-0.

Under Item X

Commissioner Items

Vice Chairman Mitchell – Congratulated the District staff for its work on the TAC meetings.
Commissioner Frazier – Congratulated the District staff for their work on the TAC meetings.
Chairman Lawton Seal – Nothing to share.
Commissioner Barney – Will not be attending June 7 Commission meeting.
Secretary/Treasurer Rowland – Praised Mr. Gray for his good work.

Under Item XI

Unfinished Business

No Unfinished business

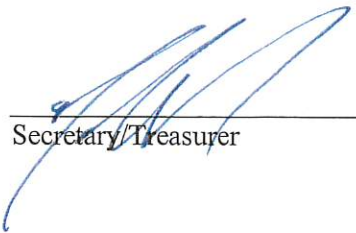
Under Item XII

New Business

Mr. Gray asked Mr. Kershaw to provide a brief quarterly update of the District's finances. Mr. Kershaw provided the report, a copy of which is included in the recorded minutes.

Under Item XIII

Adjournment — Chairman Lawton Seal adjourned the meeting at 5:37 p.m.



Secretary/Treasurer

5/10/23

Date