

*“Information is power. And once you hold it,  
you get to decide what to do with it.”*

*Julie Clark*

**THINGS YOU  
SHOULD  
HAVE BEEN  
TOLD BEFORE YOU  
SIGNED THE  
COUNTY’S BEACH  
NOURISHMENT  
EASEMENT AND  
WHAT YOU CAN DO  
ABOUT IT NOW**

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## The Federal Sand Key Shore Protection Project

In anticipation of a possible beach nourishment project in 2023, all beachfront property owners - from Clearwater to Redington Shores - were asked by our municipal governments to sign perpetual "Storm Damage Reduction Easements" in favor of Pinellas County. The U.S. Army Corps of Engineers, Pinellas County representatives, our mayors, and our local "Beach Champions" have all told us that the federal government will not participate in the cost of this (or any future) renourishment project (usually a 60% share) unless all beachfront owners sign these easements.

The easements look innocuous enough on their face, as they purport to give the Corps of Engineers authorization to place sand on the beach in front of our homes and rental properties - but, if you look closely, you will find that these easements are seriously overbroad legal documents which affect your ownership interest in your real property. **You are receiving this booklet because you are on record as having signed and returned such an easement.**

To be clear, we support beach nourishment, and we also support federal participation in the funding for it - but not at the expense of forfeiting property rights and privacy. The reason we are writing to you is to explain the consequences of your having signed the easement and to ask whether you would do it again, if you knew what little you got for what you gave up. Here are some things you may not have known when you signed.

### Who Owns What: The Public Beach Versus the Private Beach

Under the Florida Constitution and the common law, the

whatever representations or promises you receive in writing. And remember, your easement gave the public the use of your property in perpetuity, so make sure that whatever assurances or remedies you get in return last at least that long.

If you think someone lied to you, misled you, tricked you, or coerced you into signing your easement, or, if someone failed to tell you something that would have been material to your decision of whether or not to sign, then you should most certainly act. You may want to write a letter or an email to the County and demand that your easement be rescinded (*i.e.*, demand that the County give it back to you). If the County doesn't comply, it's time for you to seek legal advice.

The Pinellas County "Sign for Sand" contacts are as follows:

John Bishop  
Pinellas County Coastal Management  
[jbishop@pinellascounty.org](mailto:jbishop@pinellascounty.org)  
(727) 464-8766

Commissioner Pat Gerard  
2020 Chair  
Pinellas County Board of County Commissioners  
315 Court Street  
Clearwater, FL 33756  
[pgerard@pinellascounty.org](mailto:pgerard@pinellascounty.org)  
(727) 464-3360

We hope this booklet has been helpful. Whether you agree or disagree with the positions stated here, our goal is to help you do so in an informed way.

public discourse.

The transfer of property rights is a serious matter, and both parties to the transaction should be well informed of all aspects of the transaction before signing legal documents. **When one party is the government, there is a heightened duty of full disclosure due to the disparity in bargaining power.**

If you have read anything in this booklet that you didn't know before, and you think that your Mayor, your Beach Champion, Pinellas County, or the U.S. Army Corps of Engineers should have told you before asking you to sign your easement, you have every right to be upset. You may want to call Pinellas County to discuss your particular situation, to seek clarification, or to ask why certain things were not more fully explained. For example, if you thought that the easement request was just a temporary thing - like an authorization to enter your property solely for the purpose of placing sand on the beach in back of your house, then maybe you should call your County representative and tell him or her that you were insufficiently attentive to the significance of the document you signed and ask for the courtesy of being able to make a different choice, now that you know more of the facts. Maybe you want to request a revised easement to protect your trees. Or, maybe you want written assurance that the County is going to pick up the trash left by the public in front of your house. Maybe you just want to know the truth about what is going to happen if your neighbors choose not to sign their easements.

By all means, you should feel free to ask questions and engage in a full discussion about anything contained in this booklet until all of your concerns are satisfactorily addressed. But, whatever you do, don't settle for idle, oral assurances. The County is fairly good at giving those, so we suggest that you get

State of Florida owns the land *seaward* of the mean high water line - what is often referred to as the "wet sand" between the mean high and mean low water lines. Because beaches are subject to ebbs and flows, erosion and accretion - and recently to beach nourishment projects, the location of the mean high water line constantly changes and has always been difficult to locate on the ground. Therefore, in 2005, the Florida Legislature authorized the establishment of a permanent Erosion Control Line to take the place of the mean high water line.

Because the permanent Erosion Control Line no longer fluctuates with the tides, it is not necessarily located between the wet and dry sand on the beach. Instead, its surveyed location was based on historical data accumulated over a 19-year period, which took into account both past erosion and the accretion of sand from prior nourishment programs. Therefore, its fixed and permanent location may be many feet landward or seaward of the water's edge. Its location relative to each beachfront property is shown on the survey-like sketch attached to each easement request sent out by the County. Generally speaking, on our beaches, the permanent Erosion Control Line runs through the sand of the currently-existing dune system, anywhere from 20 to 100 feet west (seaward) of existing seawalls. And, as explained below, it forms the western boundary of each beachfront owner's private property, irrespective of how your deed describes your western boundary. Let us explain.

**By state statute, FLA. STAT. § 161.191, all lands *seaward* of the Erosion Control Line are deemed vested in the State of Florida by right of sovereignty and are held in trust for the public** for purposes of bathing, fishing, and navigation, and the State has an obligation to conserve and protect these lands as important natural resources. This is the public beach **This same**



statute vests title to all lands landward of the Erosion Control Line in the riparian upland owners whose lands abut that line. (That's you, the beachfront property owners).

You may not know it, but, when you bought your beachfront home or rental property, part of the price you paid was for the "privacy buffer" afforded by the dunes and beach vegetation beyond your seawall to the Erosion Control Line where the public beach starts. It's yours, and it's private, even though it lies outside of your *platted* parcel as described in your deed. It's like your own little private beach on which the general public has no right to intrude. It's the area out in the sand where many condominiums set out beach chairs and umbrellas exclusively for the use of their residents. This "buffer zone" is your constitutionally and statutorily protected private property, and no interest in this property may be taken (in whole or in part) by any governmental entity without just compensation (*i.e.*, eminent domain). This private buffer zone (from your seawall, west to the Erosion Control Line) is the land which is the subject of the easement requests sent out by the County. The easement converts that portion of your land from private to public.

### **The Easement Language - Public Use in Perpetuity**

An easement is the right to use the property of another for a specified purpose. That purpose must be clearly and unambiguously stated in the easement, and the permitted use is limited to the precise language set forth in the easement. While the easements requested by Pinellas County state that they are requested in connection with the Federal Sand Key Shore Protection Project, *i.e.*, for beach nourishment, the operative language of the document itself actually conveys to the County an easement for "public use, in perpetuity." **There is no**

We don't know what's ultimately going to happen there, but the governmental action thus far seems a bit heavy handed.

All this is by way of describing what may eventually be coming our way. But, before our communities get all embroiled in "the next step," we hasten to point out that ALL of this, including the acquisition of easements, is unnecessary here in Pinellas County, because our beaches are already public. Nevertheless, if Pinellas County truly believes (and can prove) that the taking of the private property of the few is necessary to satisfy the needs of the many for more public beach, then the remedy is certainly eminent domain.

*Even the most ingenious constitutional safeguards  
will wither and die if the public no longer appreciates  
the importance of liberty and property  
and if they can be made to believe that the crises of the day  
invariably requires extra-constitutional remedies.*

Gary Pecquet

### **What Can You Do Now?**

As we said before, if you signed and submitted your easement, fully aware of its terms and the legal consequences of your actions, it is not our intent to criticize your choice. We respect your right to do with your property as you wish. We simply believe that choices should be informed ones, and we care enough about this issue to give our neighbors some things to consider which may have been, thus far, omitted from the

Take the New Jersey Shore, for instance. The Corps did the same thing there as it is doing here now (though the easements there were much more carefully drafted, and the public/private dichotomy was a bit more muddled). After a significant percentage of homeowners signed the easements - basically donating their private property to the public, **the State initiated eminent domain proceedings against the holdouts**. So, some beachfront owners got paid for the easements, while their neighbors did not. There's nothing to say that same strategy can't happen here, if a large enough percentage of our beachfront owners donate the easements, making it less expensive for the County to initiate eminent domain proceedings against the rest.

In Flagler County, Florida, after numerous residents signed easements for the building of a robust dune system along A1A, the County sent out a quartet of "walkabouts," consisting of the County Attorney, the Flagler Beach Police Chief, together with a notary and a witness, to individual properties to collect (or, according to the property owners' attorney, to intimidate and coerce) easements from the holdouts. When that didn't work, the County prominently listed the names and addresses of the holdouts "with spreadsheet-like detail" atop the County's web page as a form of public shaming - what their attorney called a Scarlet Letter-type tactic. As of July, 2020, the holdouts were still standing firm, the County refused to initiate eminent domain proceedings, presumably for lack of funds, and the Corps was threatening to abandon the project. In August, an enterprising resident of the area started a GoFundMe page, raising \$40,000 in an attempt to induce the holdouts to sign, and the Corps was contemplating eliminating a half-block section of the project. We recently heard, though it is unconfirmed, that there are only 2 remaining holdouts, and the County has initiated eminent domain proceedings against them.

**limitation in the easement language restricting its purpose to the placement of sand or other nourishment activities. Instead, it operates to give the public the right to use your formerly private beach as a public beach - forever.**

To be clear, no one would object to the temporary placement of machinery and equipment on their private property for the purpose of placing sand on the beach. In fact, that's the authorization many beachfront owners thought they were giving when they signed these easements. And, no one would object to other protective measures which prevent beach erosion or encourage habitat protection. But, most rational folks who have ever lived adjacent to any public space would seriously question whether it's a good idea to invite the general public nearer to their doorsteps - forever. That's the part that the County, the Corps, and the Beach Champions have downplayed in the process of soliciting these easements.

Some beachfront owners already experience periodic trespasses onto their private property, even the deeded property east of their seawalls. Others, especially condominium owners, have occasionally had to chase tourists out of their private pools! A few have had to retrieve their personal lawn chairs from beach-goers who dragged them down to the beach as if they were purchased for public use. Still others have had to discourage beach goers from utilizing their private water taps. These instances are infrequent, but they do happen - even though the Erosion Control Line (where the public beach starts) is generally 50 to 100 feet seaward of the seawall. Inviting the public 50 to 100 feet closer to your back doorstep is decidedly not in your best interest. But that's exactly what the subject easements do.

**Beachfront owners who have signed these perpetual**

easements have conveyed this right of public use until the end of time. Neither you, nor any subsequent owners, will ever be able to get your private property back! Perhaps you were aware of this consequence when you signed your easement, and, if so, that was certainly your choice. However, if you were not specifically made aware of the privacy right that you were giving up, we think the County's action in soliciting these easements without telling you so was totally wrong and unfair.

### Word Games?

We are keenly aware that some of the publicly disseminated information regarding these easements, including leaflets, news articles, and brochures, was not entirely accurate. In some cases, it was downright misleading. For example, in a handout at the Indian Shores town meeting entitled "Frequently Asked Questions: Material Placement on Beaches," one question asks: "How does the easement affect my property rights?" The answer: "It does not affect property rights of the upland landowner." That same handout confusingly states that, after you sign the easement, your property "still remains private property," but "you cannot prevent the public from using it or tell them they need to move because it is private property." So, does this mean that it's still private property, but you just can't tell anyone? As explained above, these statements are just blatantly false. This easement DOES affect your property rights. Indeed, it gives a very significant portion of those rights to the general public - so much so that there are very few, if any, private rights left to you. Ask any lawyer you know.

Local officials and the Army Corps of Engineers are fond of saying that the beachfront owners will still maintain "ownership" of the property subject to the easements. While that is technically true, you would be hard-pressed to articulate

County beach communities in response to the Corps' demand for easements is lazy, unfair, and unacceptable. These public officials need to stand up to the Corps (in litigation, if necessary) to fulfill their duty to nourish our beautiful public beaches. They must stop pitting neighbor against neighbor, suggesting that our beaches will never again be renourished if any owner fails to sign the easements. Many of these owners have serious and legitimate concerns, and all of them are being asked to part with valuable property rights. **Our officials must fight for a proper interpretation of the Water Resources Development Act of 1986, and fight for the federal funding to protect our public shoreline. Otherwise, we must elect new representatives who will.** After all, the first priority of government at any level is to protect the lives and property of its citizens.

*The moment the idea is admitted into society that  
property is not as sacred as the law of God,  
and that there is not a force of law and public justice  
to protect it, anarchy and tyranny commence.*

*John Adams*

### Preview of Coming Attractions

If you are still asking yourself why you should care about all this, let us share with you what has been happening in other jurisdictions. The acquisition of easements is just the first step in a well thought-out plan of action by the County and the Corps.



just that by calling the easement requirement a “policy realization.” Call it what you will, the fact remains that **the law hasn’t changed since it was enacted, and the federal funding restrictions in the law only apply to private beaches - which the Pinellas County beaches are not. Period. Full stop.** Simple logic dictates that a federal agency (the Army Corps of Engineers) cannot implement a policy change which is directly contrary to the clear language and intent of the federal WRDA enacted by Congress.

In addition, it is quite probable that the Corps’ new policy may be illegal. The Project Cooperation Agreement between the Army Corps of Engineers and Pinellas County states that both parties agree “to comply with all federal and state laws in the exercise of their respective rights and obligations under the Agreement.” See ARTICLE XI of the Agreement. In this regard, Florida statutory law clearly states that “there is no intention on the part of the state to expand its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his or her property [as a result of any beach restoration project].” FLA. STAT. § 161.141. Yet, these easement requests do just that. By their very essence, these easement requests do attempt to deprive abutting owners of the PRIVACY and enjoyment of their private lands. Therefore, both the County and the Corps are overstepping the bounds of Florida law in violation of their express contractual commitment to comply with it. Neither has shown any legal basis to intrude on private property rights, much less a justification for requiring all beachfront owners to gift to the public an easement over as much as 1/4 of their private property in exchange for “eligibility” to receive federal funding.

The approach taken by public officials in the Pinellas

what those remaining ownership rights are. You will have no say over what happens on that swath of ground. You won’t even be able to reserve your favorite sunbathing spot in front of your own house! Your “ownership,” with a public use easement over it, is worth nothing more to you than it is to the public at large. Lock down your beach chairs! And don’t forget to draw your drapes!

To illustrate the difference between the rights of a private property owner who *did not* sign the easement and the rights of an owner who *did* sign (thereby giving the County a public use easement), consider for a moment what might happen if a “peaceful protest” were staged on our beach some Saturday morning. . . . The owner who *did not* sign could call the police and have trespassers moved away from his seawall and down toward the water until they were off of his private property. The owner who *did* sign would just have to tolerate any disruption those protests might cause and hope that the protesters at least stayed on the beach side of his or her seawall. Privacy is no small thing. And public use can be noisy.

***“Relying on the government to protect your privacy  
is like asking a peeping tom to install your window blinds.”***

***John Perry Barlow***

### **Caution!**

We are warning those who have not yet signed these easements to be particularly careful to examine the “sketch” attached to the easement request because it too is a legal document which has legal consequences. Because it affects

property rights, it is recorded in the public records.

In three cases of which we are aware, the designated easement area infringes onto the owners' *platted* private property - east of their seawall. In connection with the extension of one owner's seawall a few years back, the town required them to recess the extension (*i.e.*, the new part) 5 feet landward of the existing seawall (*i.e.*, inside the western boundary line defined by their deed), as a condition of their construction permit. Through oversight, no doubt, the County included that 5 foot recessed area in the public use easement. Two neighbors to the south built a new seawall in back of their properties which tied into the first owner's seawall extension. The building department also required that their new seawall be set back 5 feet from their *platted* western property boundaries, as described in their deeds. The County's easement sketches sent to those property owners also show that the 5 foot recess, for the whole length of their beachfront, is being given over for public use. No fair!

It seems certain that, had these property owners not noticed this land grab, the County would not only have encumbered their *platted* property, but would also have continued to tax that 5 foot strip as though it were not so encumbered. More importantly, were any of these homeowners ever to sell their properties to a developer, the encumbrance of the easement mistakenly created on that 5 feet of beachfront would have significantly impacted the sales price. You may want to check your own sketch to make sure that the County and the Corps did not take advantage of you as well.

We repeat - these easements have perpetual legal consequences, many of which are not currently foreseeable, and they most certainly DO affect your property rights, both now

But, the most offensive part of the Corps' justification is the inherent assumption that beachfront owners should sacrifice their sacred private property rights for the common good, while no one else in our communities is being asked to sacrifice a thing. Everyone - from sunbathers to business owners - is going to benefit from this project, and, everyone, including the beachfront owners, paid the taxes to fund it. Yet, only the beachfront owners are being asked to give up property rights in exchange for the sand. That's an awful lot to ask.

Public funds are spent every single day of the world for projects that benefit private interests for the public good, without targeting only some members of the public to give up something extra - like, in this case, private property rights. Witness the General Motors bailout. The federal government gave public funds to GM, but members of the public can't demand a free car or even a tour of the plant their money "saved." Likewise, when the Gulf Boulevard Beautification Project came through our communities a few years ago, all of the property owners along the roadway got new trees or bushes planted on their private property at public expense. Yes, both the property owners and the general public got the benefit of the beauty, but it never occurred to anyone that the public should have the right to come onto that private property to sit under the trees or pick the flowers. The Corps' justification is just stupid and solidifies our resolve to contest the injustice. When the Florida Supreme Court held that "the costs of beach nourishment must be shared by the whole community" (*see* page 11, above), there was no mention of a little something extra being extorted from the beachfront owners.

Irrespective of its motives or after-the-fact justifications, the Corps can't rewrite the law. Nevertheless, it is trying to do



their jobs easier. In fact, in one publication, the Army Corps admitted that the current policy goal is to acquire easements to the most landward extent possible (*e.g.*, to the seawall), even though such easements are not required by law for placing sand on beaches that are already public. Holy cow!

It's understandable that most folks are having a hard time understanding why these easements over private property are even needed, given that the sand to be placed during the next renourishment will not be placed anywhere near private property. (With rare exception, all of the proposed project activity will occur, and all of the new sand will be placed, seaward of the Erosion Control Line). At several town informational meetings, the Corps has attempted to justify this land grab by suggesting that, during prior nourishment projects, *some* sand was placed on *some* private property, *in some cases* up to the seawall, and, since that previously-placed sand was paid for with public funds, "it's only fair" that all the beachfront owners should donate their private beach areas for public use as payback. This purported "justification" makes our blood boil. "The public" has never paid a dime for the real estate underlying any of this imported sand, and the vast majority of the beachfront owners have *never* received sand from prior projects up to their seawalls. Some didn't receive even a grain of sand *anywhere* from the renourishment in 2018. We beachfront owners are not all in the same situation, and none of us has ever had control over any part of this project - past or present - including when or where the Corps of Engineers chose to place sand. **Moreover, even if sand was, or will be, placed on private property, it certainly isn't going to remain where they put it in perpetuity!** So, why is the County asking for *perpetual* easements when the sand will be gone in 10 years and the Project is only authorized through 2043, with no guarantee of renewal?

and into the future.

## No Commitments to Provide Sand, Security or Cleanup

You may not have noticed this, but, in the easement you signed, there is no commitment by either the County or the Corps of Engineers to provide sand at any particular time or on any defined schedule in the future. Indeed, **the easement for public use which you gave is not conditioned upon the Corps ever placing the first grain of sand on your beach.** So, even if the federal government decides not to assist with the funding, and, even if no sand is ever placed in front of your property, the land outlined in your easement is still available for public use - forever. Bummer!

Even assuming that the Corps does place sand in back of your property, how long do you think that sand will remain there? The Corps estimates 8 to 10 years, maximum. So, you get sand for up to 10 years, and the public gets to use your property forever. Some deal!

What's more, if you look closely, you'll find that **neither Pinellas County, nor any of the towns, has undertaken ANY duties whatsoever in the easement document. Though they have clearly expressed their intent to invite the public to use your land, they have not assumed any duty to clean up after them.** You still get to pick up the Styrofoam cups and stray sandals because you still "own" the property. Any mess these new invitees leave behind is still yours to deal with. Double bummer!

And, what happens if a member of the public trips over a bucket and shovel left in the easement area by the child of

some other beach-goer and breaks his leg? Are you liable? Our County officials say not. But, if you're sued, will you have to hire a lawyer and go to court to explain? Maybe you should ask a few questions and **check your homeowner's liability insurance policy just in case**. The only thing certain is that neither Pinellas County, nor your town, is accepting responsibility for such an occurrence. Triple bummer!

### Chaos and Confusion

It's a pretty safe bet that not ALL beachfront owners are going to sign these gratuitous easements, yet we have not been able to get a straight answer out of anyone concerning what will happen when many of them don't. One mayor suggested that, unless all beachfront owners in designated grids (of perhaps 1,500 or 1,600 lineal feet each) sign the easements, no properties in that grid will receive sand. This would prevent any property owner who refuses to sign the easement from benefitting over time from blown or accreted sand which may be placed on the beach of his neighbor. If the grid approach is the chosen solution, you may find that you gave up your private property rights for nothing, as you won't get sand because some of your neighbors chose not to give up their rights. This is what apparently happened during the 2018 renourishment, even though some owners were not even *asked* for an easement at that time.

Alternatively, the Army Corps has suggested that individual properties could be bypassed, possibly leaving unsightly and dangerous berms in the back of some houses where the property owners did not sign an easement. This is not an optimal or responsible solution, but it's still on the table, and the Corps has done it in the past. We've seen pictures!

of this entire drama.

As proof, you will recall that, since the enactment of the WRDA in 1986, Pinellas County and the Corps have nourished the public beaches in 1988, 1999, 2006, and 2012 - all without easements. In 2017 and 2018, the County attempted to obtain easements from "some" residents, but many who did not sign received sand anyway. And, in case you're wondering, the relevant portion of **the WRDA has not changed in any way since its enactment in 1986**. The Corps has simply changed its "policy" administratively, and our mayors and town leaders have simply "given in," with no explanation or legal basis.

When asked at an "Easement Discussion Meeting" in December, 2015, (attended by a representative of the Army Corps, numerous County officials, and the mayors or city managers of Indian Rocks Beach, Indian Shores, Belleair Beach, Redington Shores, and Clearwater), why perpetual Storm Damage Reduction Easements were needed now and not for previous nourishment projects, the Corps representative responded:

During previous nourishment projects, the pertinent policy and laws were not realized, not thoroughly researched, or simply not enforced. The pertinent **policy** to require PSDREs [Perpetual Storm Damage Reduction Easements] was realized when beach repairs were made after the Florida storms in 2012 (Sandy and Debby).

What? Is there an answer in there somewhere? If you cut through the non-speak, what the representative actually said is that some group of bureaucrats in the Department of the Army thought it was a good idea to grab up more land to make

accompanied the easement requests, Pinellas County and the Mayor stated that the reason the Army Corps of Engineers is requiring these easements is because “the Water Resources Development Act of 1986 prohibits the use of federal dollars to nourish private beaches.” In other words, Pinellas County and the Corps of Engineers take the position that our beaches are private, and they need these public use easements to make them public, so that the federal government will participate in the cost of renourishing them.

The relevant funding provision of the Water Resources Development Act of 1986 (upon which the Corps relies to require the donation of these easements) provides as follows:

Costs of constructing projects or measures for beach erosion control . . . shall be assigned [as specified and in the percentages set forth in the statute] . . . except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-federal interests . . .

As previously explained, the Pinellas County beaches are not private. They are state owned and, by law, are fully open to the public seaward of the Erosion Control Line. Just look out your window. So long as you see tourists on the sand, you can be quite certain that our beaches are already open to the public. And, so long as they are, it cannot reasonably be argued that Pinellas County does not qualify for federal funding under the WRDA which only prohibits funding where use of the shores is limited to private interests. The County, the Corps, and, yes, our own local officials, have simply created this “private beach” red herring to justify a land grab. It is, nevertheless, this misinterpretation of the WRDA which seems to be the genesis

Others have suggested that the federal government’s share of the funding would be reduced (and the local government’s share increased) to take into account the areas where easements are not obtained.

A fourth option outlined in the County’s literature, though rarely discussed out loud (and for good reason), is to assess each non-signing beachfront owner his or her pro rata share of the amount not funded by the federal government - approximately \$900 to \$1,100 per lineal beachfront foot. This option appears to be merely a scare tactic, as the Supreme Court of Florida has expressly held that the benefit to the shore owners from a beach erosion project is merely “incidental” to the preservation of the shoreline for the entire town. Therefore, the costs of beach nourishment must be shared by the whole community. *Hillsboro Island House Condominium Apartments, Inc. v. Town of Hillsboro Beach*, 263 So. 2d 209 (Fla. 1972).

A fifth option, of course, is for the Army Corps of Engineers to refuse to go forward with the project. This is the threat that is being used to coerce us into signing. However, if this happens, the State will have to find an alternative source of funding, design a different method of erosion control, or both, because the State’s constitutional and statutory duty to preserve our shoreline doesn’t just go away.

The truth is, no one knows, or no one is saying, what will happen if not all beachfront owners respond positively to the County’s plea for easement donations, but most folks, including County and municipal officials, seem confident that there will not be 100% participation.

Irrespective of how “the governments” decide to deal with this issue, there can be little doubt that the general public



will not understand what is public beach and what remains private property as a result of individual decisions to sign the easements, or not. How will a tourist from Ontario know which property owners have given easements and which have not - or where he can legally prop his tent or plant his umbrella without trespassing? Clearly, these issues should have been addressed before the County asked us to transfer private property rights.

Oh, and by the way . . . some folks are also concerned that many of the easements already returned to the County by condominium associations are not valid. We have spoken with several unit owners who were not even aware that some representative of their associations had signed an easement on their behalf. While we do not purport to know all the ins and outs of the many variations of condominium documents in effect on our beaches, we do know that it would be highly unusual for any representative of an association to be authorized to transfer rights in real property (*i.e.*, land) without notice to, and some sort of official action (such as a vote) by, at least a majority of the unit owners. Again, we don't know whether proper procedures were followed in most cases, but we do know of at least a few cases where they were not. Just sayin'.

### **Promises Made - Promises Kept?**

Finally, questions have arisen, and will continue to arise, regarding the protection or replacement of trees and other vegetation in this buffer zone of "the beach." Unless you have engaged in private negotiations with your municipal government or the Corps, the version of the easement document which you signed states that the County or its representatives have the right to "trim, cut, fell, and remove all trees, underbrush, debris, obstructions, and any other vegetation, structures, and obstacles" . . . "solely for activities necessary

for construction and operation of beach nourishment." At one town meeting, some of the residents were skeptical and questioned the Corps representative about what that would actually mean with respect to the trees on their individual properties. The Corps representative "promised" to preserve the trees "to the extent possible" when drafting the specifications for the project, "as a matter of contract" between the federal government and the County.

Unless you truly believe the adage "we're from the Government, and we're here to help you," you should realize that you will not be a party to those construction specifications or contracts, and you will, therefore, have no opportunity or ability to insure that such a provision to protect your trees will be included in them. In fact, you should realize that you will not have the ability to enforce any oral promises made to you by anyone. **Verbal representations are not enforceable**, and you can't assume that, years into the future, or even next year, a governmental agency will act as you expect or even remember what the last guy promised. No disparagement intended, but the fact is that government agencies are not moral bastions, and their employees constantly change. So, if you signed the standard easement, and you didn't expressly reserve your right to preserve your trees or other beach vegetation, you left their fate in the hands of the next Army Corps of Engineers project manager - or the one after that.

### **Why Now?**

At the risk of sinking too deep into the weeds, we will attempt to explain why, after all these years, the County is requesting these easements now.

In the letters to property owners in Indian Shores which