

# FREQUENTLY ASKED QUESTIONS

## DAUPHIN ISLAND WEST END NOURISHMENT PROJECT

The Town of Dauphin Island secured funding from the National Fish and Wildlife Foundation’s Gulf Environmental Benefit Fund (NFWF GEBF) and the Gulf of Mexico Energy Security Act (GOMESA) to conduct full engineering and design to nourish the beach and dunes along the West End of the island. This project was identified as a priority in the US Army Corps of Engineers (USACE) Final Alabama Barrier Island Restoration Assessment Report, 2020.

Without this project, erosion will continue. To create an engineered beach under the Alabama Beach Act, the project must establish a designated mean high tide line (MHTL). The designated MHTL establishes the separation between private and public property in perpetuity – even if more erosion occurs in the future. Without this project, Dauphin Island will continue to lose land to the Gulf of Mexico – and by law, submerged land is owned by the State of Alabama and held in trust for the benefit of the public.

An engineered beach constructed through the Beach Act will allow the Town of Dauphin Island to seek additional funding through FEMA. The Town will hold responsibility of maintaining the renourished beach. Engineered beaches in Alabama already exist in Gulf Shores and Orange Beach, as well as now along the East End of Dauphin Island.

## ALABAMA BEACH ACT

### **Q. What is the application process for nourishing beaches under the Alabama Beach Act?**

A. It is the responsibility under this Act for the Town of Dauphin Island to provide the following information to apply for the beach renourishment project:

1. A detailed description of the location, dimensions, and design features of the proposed beach project.
2. The location of the designated MHTL and project limits (landward and seaward extent of the proposed beach project) relative to the designated MHTL and the construction control line. This must be presented and adopted through a public hearing.
3. Adequate engineering, geological or other scientific data concerning shoreline topography, stability, and potential impacts.
4. A description of the quantities of sand needed from public water bottoms of the State of Alabama.
5. Any other supporting information reasonably required to evaluate the design.

Once the Alabama Department of Conservation and Natural Resources (ADCNR) has obtained a complete application and the Town has adopted the locations of the designated MHTL and project limits, the ADCNR Commissioner, in conjunction with the Alabama Department of Environmental Management (ADEM), will schedule and conduct a public hearing about the proposed beach project.

If all of these requirements are satisfied and all required permits are obtained (e.g., USACE Individual permit), the Commissioner may issue a permit for the proposed beach project which shall constitute a ratification and confirmation on behalf of the State regarding the location of the MHTL as identified in the application for the proposed beach project.

Upon issuance of the Alabama beach renourishment permit, the Town of Dauphin Island will record the designated MHTL with the office of probate in Mobile County. (*Act 2000-676, p. 1365, §1.*)

## ESTABLISHING A **DESIGNATED** MEAN HIGH TIDE LINE

### **Q. What is a mean high tide line?**

- A. The **natural mean high tide line** is the boundary between state owned submerged lands and upland property owners along tidal waters. Typically, this is the line that gets wet during the course of an average day. The **designated mean high tide line** is set by the Town prior to an engineered beach project as to the separation between private property (landward of the line) and state-owned property (seaward of the line), and then ratified by the State.

### **Q. How does a **DESIGNATED** mean high tide line get established?**

- A. As dictated by Alabama State law, the state can **DESIGNATE** a MHTL. The Town of Dauphin Island will recommend a designated MHTL based on science and engineering knowledge of the geomorphological processes of barrier islands, project sustainability, construction and maintenance costs, and more. The State law process for establishing the recommended designated MHTL requires the Town of Dauphin Island to hold a public hearing and then adopt the recommended designated MHTL. The State of Alabama will then hold a separate public hearing to discuss the proposed beach project. After all permits are obtained by the Town of Dauphin Island, the designated MHTL will then be recorded with the office of probate in Mobile County. By law, all land lying seaward of the designated MHTL will be owned by the State of Alabama and held in trust for the people of Alabama.

### **Q. Why is it important to set a designated mean high tide line?**

- A. Because State law requires the designation of a MHTL before a beach nourishment project can be constructed. This project simply could not move forward without a designated MHTL. Once completed, this project will create what FEMA considers to be an "engineered" beach, which is eligible for disaster assistance funding in the wake of major storms and other declared disasters. This means that the nourished, engineered, monitored beach will be eligible for funding for future renourishments, ensuring that the Town of Dauphin Island can maintain the wide sandy beach and prevent erosion from threatening private property and built infrastructure.

## PRIVATE PROPERTY AND SUBMERGED PROPERTIES

### **Q. Will I still be able to access the beach from my private property if the State owns the land seaward of the Designated Mean High Tide Line?**

- A. Yes, private landholders will still retain all riparian rights and privileges of access as prior to the project.

### **Q. Will the Town of Dauphin Island allow people to build back houses on renourished beaches landward of the designated mean high tide line?**

- A. Yes, as long as the structure does not unreasonably interfere with the use or purpose of any necessary and/or required easements, and the proposed construction is in compliance with applicable Town Ordinances.

### **Q. Who owns the land seaward of the mean high tide line? My property is underwater, do I still own it?**

- A. All submerged land seaward of the **NATURAL** mean high tide line, as it stands today, is owned by the State of Alabama by operation of State law. If sand accretes *naturally* onto submerged properties, those properties would be restored to private landowners. However, according to geomorphologic processes

understood by engineers, there is very little chance that sand will come back naturally to the west end of Dauphin Island. This project is a once-in-a-lifetime chance to restore sand to this part of the island.

**Q. Are the submerged properties being taken by eminent domain?**

- A. No. The establishment of the designated MHTL will only affirm the State’s ownership of submerged land seaward of the line that mother nature has already claimed. In other words, the State *already owns* all submerged land by operation of law – the establishment of the designated MHTL will only document an exact boundary of what the State does and does not own for purposes of having accurate land records.

**Q. If a homeowner has been paying taxes on submerged property, do I still own that property?**

- A. It has long been held by courts that the State of Alabama has title to submerged lands in navigable waters. This is even true for land that was once private upland property but became submerged due to natural avulsion, such as a hurricane. Following an avulsion event, the property owner has 5 years to apply to the State for permission to perform reclamation activities. Ala. Admin. Code r. 220-4-.09(4)(b)(5). If the land is not reclaimed through a State-approved reclamation project within 5 years of the avulsion event, title to the submerged lands becomes fully vested in the State. However, unless such natural transfer of land from private ownership to the State is documented in some manner (e.g., quiet title action by State, recording of State-confirmed mean high tide line), the County Revenue Commissioner has no way of knowing that ownership of the property (or a portion thereof) has changed. If the private property owner does not inform the Revenue Commissioner that the boundaries of its property have changed due to natural avulsion, the Revenue Commissioner will continue assessing the property against the owner “of record.” **Payment of taxes assessed against submerged property does not, however, give the taxpayer any rights or title to the submerged land.**

**CONSTRUCTION EASEMENT**

**Q. What is a Construction Easement and why do I need to sign it?**

- A. A construction easement allows the Town of Dauphin Island, through its contractor, to place and maintain sand on your property and monitor the area after major storm events. This area will be eligible for disaster assistance funding from FEMA in the wake of major storms.

**Q. What rights are conveyed to others via the Easement?**

- A. It conveys to the Town of Dauphin Island the right to access the Easement area to build, monitor, and maintain the project in perpetuity.

**Q. What is the Construction Control Line (CCL) and what affect does it have on land rights in the easement Area?**

- A. The Construction Control Line is a regulatory boundary independently established in the Alabama Code and administered by ADEM as part of the Alabama Coastal Area Management Program (ACAMP). Use of property in this area is already limited by ACAMP. All rights of access or riparian rights remain.

**Q. Who is responsible for the planned monitoring?**

- A. The Town of Dauphin Island will monitor the project and survey impacts as they occur.

**Q. Will landowners be advised of planned dates for monitoring?**

- A. Monitoring will be ongoing, and notice will not be provided. The majority of monitoring activities will take place seaward of the designated MHTL. No routine monitoring activities will take place landward of the project area.

**Q. In the event of loss of beach due to erosion or storm events, who is responsible to return the engineered beach to the original design?**

- A. After the project is completed, the Town of Dauphin Island will be responsible for future maintenance activities on the engineered beach. In the case of a FEMA-eligible event, any renourishment activities will be subject to review by FEMA.

**Q. How would planning for such re-nourishment activities commence? How would landowners be notified of such a process?**

- A. The normal permitting process for the US Army Corps of Engineers and public notice requirements would apply. Any project would be announced at Council meetings. Also, when a permit is required, the US Army Corps of Engineers will advertise a public notice in the local newspaper.

**Q. What limitations exist for the landowner in the Easement area?**

- A. Property owners have the right to use their private property in their easement area as long as the use does not unreasonably interfere with the purpose of the easement. The easement will allow for access for construction, monitoring, and maintenance activities.

**PUBLIC ACCESS**

**Q. Does the land seaward of the designated mean high tide constitute a public beach, and can people be on “my” beach?**

- A. People will be able to traverse on the State-owned land (i.e., seaward of the designated MHTL) and use that beach area.

**Q. How would the public gain access to the public beach?**

- A. The public can only access the State-owned beach through public access points, i.e, water or the west end beach, and Town road easements by foot or by permitted vehicle.

**Q. What are some examples of managed access actions that will be taken by the Town of Dauphin Island to ensure access?**

- A. Managed access can take many forms. Signage will be used to inform people to remain off of the dunes. Property owners will collectively be encouraged to build dune walkovers to access the beach from their private property. They will need to use plans for these walkovers approved by the Town’s planning commission. There will be sand fencing installed that also acts as a deterrent for access and to help form and maintain dunes.

## CONSTRUCTION FUNDING

### **Q. What are the constraints on federal funding opportunities?**

- A. Federal funding will not pay for the restoration of private properties.

### **Q. What other funding opportunities is the Town pursuing?**

- A. Other opportunities could include GOMESA grants, Congressional Appropriations, local funding, etc. The Town is actively pursuing all options to fund the entire designed project.

## CONSTRUCTION

### **Q. Will my property be disturbed during construction?**

- A. Disruption on any part of the beach will only be in small sections at a time. Pumping the sand should take less than two months, and heavy machinery will rework this sand for a few additional weeks in small sections at a time. Exact timing is difficult to pinpoint right now and will depend largely on the contractor, as well as timing for nesting wildlife species. Pre-construction activities will include discussions with the contractor to develop a construction process with a more precise timeline, which will then be provided to all adjacent landowners.

### **Q. How will bulldozers get to the beach, and will they be going through my property?**

- A. Heavy equipment will be transported to the island by truck or barge and stored in an approved staging area. Contractors will only need to access private property to mobilize equipment for construction activities within the agreed upon limits of the easements. The contractors will not need to move equipment through driveways or under houses.

### **Q. How will you avoid disturbance to the healthy vegetation on my property within the construction easement limits?**

- A. Final design and construction will be conducted in coordination with ecologists specializing in native beach vegetation. Contractors will mark healthy vegetation to be avoided by heavy equipment. Sand may be placed in the vicinity of healthy vegetation if ecology consultants verify that the plants can survive or be replaced. This project does include the planting of new, native beach vegetation.

### **Q. Where is the sand borrow area? Will they be digging deep holes beside the project?**

- A. The sand for this project will be dredged from a location about 4 miles offshore in State waters, in the Sand Island Beneficial Use Area. No pits will be dug on the island for this project. The sand in this borrow area closely matches the native beach sand in both color and grain size. In other words, it will look and feel just like the sand already existing on the West End.

### **Q. Based on where the project ends, will water come around the end and scour out adjacent properties to the west?**

- A. No, the beach nourishment project should not cause erosion.

**Q. How far out will the beach be?**

- A. The constructed beach width will vary along much of the project length but should widen the beach some 300+/- feet after construction. Note that this widened beach will quickly begin to erode. Some sand will move offshore (south), and some will move down the beach (to the west). This natural equilibrium process is expected, but difficult to quantify. The biggest changes will occur in the weeks and months immediately after construction.

**LONG-TERM SUSTAINABILITY**

**Q. How will the project be sustained into the future?**

- A. The Town of Dauphin Island has been working closely with the US Army Corp of Engineers (USACE) to enter into a Memorandum of Agreement (MOA). This MOA will include a mechanism in which Dauphin Island can receive sediments that are dredged by the USACE. The MOA is being pursued to address long-term sustainability of several project sites including, but not limited to, the West End, East End, Graveline Bay, Aloe Bay, and Little Dauphin Island. Once the Town secures a programmatic permit and funding is available, these USACE dredge events can be beneficially utilized to place sediments on appropriate project sites dependent on sediment types and volumes.

**Q. How do FEMA claims help the Town maintain projects?**

- A. This project will create what FEMA considers to be an "engineered" beach, which is eligible for disaster assistance funding in the wake of major storms. This means that the nourished, engineered, monitored beach will be eligible for funding (cost-share) for future renourishments, ensuring that the Town of Dauphin Island can maintain the wide sandy beach and prevent erosion from threatening private property and built infrastructure.