

# FREQUENTLY ASKED QUESTIONS

## DAUPHIN ISLAND WEST END NOURISHMENT PROJECT

### ALABAMA BEACH ACT PROCESS

#### **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 mean high tide line and project limits (landward and seaward extent of the proposed beach project) relative to the designated mean high tide line 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 mean high tide line 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 mean high tide line 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 mean high tide line 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 state prior to an engineered beach project to as the separation between private property (landward of the line) and state-owned property (seaward of the line).

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

- A. All property lying seaward (south) of the **NATURAL** mean high tide line, as it stands today, is owned by the State of Alabama.

### **Q. How does a **DESIGNATED** Mean High Tide Line get established?**

- A. As dictated by Alabama State law, the state can **DESIGNATE** a mean high tide line. The State will recommend a Designated Mean High Tide Line based on science and engineering knowledge of the geomorphological processes of barrier islands. The State Law process for establishing the recommended Designated Mean High Tide Line requires the Town of Dauphin Island to hold a public hearing and then adopt the resulting Designated Mean High Tide Line. The State of Alabama will then also hold a public hearing. After these public hearings, the Designated Mean High Tide Line will be recorded with the Mobile County Probate Office and Secretary of State. All property lying seaward (south) of the Designated Mean High Tide Line is owned by the State of Alabama.

### **Q. Why is it important to set a Designated Mean High Tide Line?**

- A. Having a Designated Mean High Tide Line establishes an ‘engineered’ beach which would then become FEMA-claim eligible after major storms. This would mean that the nourished engineered beach can receive funding for future renourishment events.

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

- A. Yes, private landholders will still have their riparian rights to access the beach and water.

**Q. Will the Town of Dauphin Island / State of Alabama allow people to build back houses on renourished beaches north of the Designated Mean High Tide Line?**

- A. This will depend on the resulting size of your parcel and the location of any permanent maintenance easement. In order for any parcel to be buildable, it must meet certain minimum lot size and front, rear, and side setback requirements, and only certain types of structures (i.e., dune crossover, pier, etc.) may be built within the permanent easement area.

**Q. What criteria were used to set the location for the Designated Mean High Tide Line?**

- A. There are several factors that were considered in setting the proposed designated mean high tide line.

**1. Coastal Processes** - the input of the engineering team, in their 30+ years of understanding of the coastal processes of our barrier island, was critical for setting this line. From an engineering perspective, the designated mean high tide line should be similar to the natural mean high tide line. The location of the natural mean high tide line and the major northerly barrier island rollover migration we have experienced due to decades of major hurricanes (e.g. the 1915-1930s and 1995-2005) all indicate that sand will not come back naturally without intervention. The proposed designated mean high tide line being place farther south than the natural mean high tide line is already a compromise due to stipulations from the State (see number 3). The engineers are working with the proposed designated mean high tide line to ensure a resilient design based on coastal processes into the future.

**2. Costs** - the establishment of the designated mean high tide line and an engineered beach comes with maintenance responsibilities for the Town of Dauphin Island. This must be considered, as maintenance of the project comes with high costs.

**3. State of Alabama input** - The Town has been working collaboratively with ADCNR to ensure we meet all of their stipulations per the Alabama Beach Act. For example, guidance from the State indicated that the proposed designated mean high tide line should not run under existing houses.

The proposed designated mean high tide line is drawn in a location that is seaward of the location of the current natural Mean High Tide Line. In every case, the proposed designated mean high tide line is located seaward of the historical shoreline in the past five years. The proposed designated mean high tide line is also seaward of any currently emergent sand or residential structures. The distance at which the proposed designated mean high tide line is moved south from the current natural shoreline is limited by several factors: project budget limitations; funding source requirements; 'Estimated Useful Life' of the project.

## **Eastern Section**

East- West: The proposed designated mean high tide line begins at the eastern limits of the project boundary, near Ryan Ct, at the existing shoreline. From this point the proposed designated mean high tide line runs west to the western boundary of 2625 Bienville Blvd.

North- South: The proposed designated mean high tide line is positioned no less than 10' seaward of the north boundary of the POA West Surf Beach, or at least 10' seaward of the natural mean high tide line, whichever is further seaward. In every case, this positioning adds property back where it is currently under water.

Eastern Section Discussion: The north- south proposed designated mean high tide line placement preserves the POA's exclusive North- South right of access through the existing platted easements. This includes the current Town/ POA permit-only parking areas. The parking areas are at Raphael Semmes, Saint Stephens, Sam Houston, and Sehoy. These four streets represent are where most full-time residents, property owners & their guests can go to the beach and enjoy "permit only" parking privileges. No aspect of this project changes any existing north-south rights of access. No new public access points are created by the project. The general public will still have the rights of access they currently have to the WSB, by walking east or west along the shoreline.

## **Middle Section**

East- West: From the west property line of 2625 Bienville Blvd, the proposed designated mean high tide line runs west to the eastern boundary of the Town's West End Beach Property.

North- South: The proposed designated mean high tide line is positioned 10' seaward of all residential structures. The line connecting the structure follows the approximate current shoreline.

Guidance from the State indicated that the proposed designated mean high tide line should not run under existing houses. Instead of drawing the lines around the residential structures, the line is drawn in a straight line connecting the existing homes that are furthest seaward.

## **West Section**

East-West: The proposed designated mean high tide line connects to the line at the western extent of section two and runs west to the end of the project footprint

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

- A. State law requires the designation of a mean high tide line before a beach nourishment project can be constructed. This project simply could not move forward without a designated mean high tide line. 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.

**Q. Can we move the proposed designated mean high tide line south?**

A. One of the project's primary goals is to reduce overwashing of the West End, which is both a constant economic burden for the Town and a driver of beach erosion in decades past. To accomplish this goal, the project includes a large sand dune with a wide, sandy beach in front of it. This is the fundamental design concept of the project; it's success is directly associated with the resilience of the sand dune and the width of the beach south of the dune.

Moving the proposed designated mean high tide line (and thus the buildable areas) southward necessitates also moving the dune southward. For the dune to be resilient, the constructed beach must also widen to the south into deeper and deeper water, requiring more sand and significantly increasing the overall cost by 20%.

Furthermore, once this is an engineered beach, maintenance of the beach will be the Town of Dauphin Island’s cost responsibility. There are huge trade offs for every request that every landholder makes associated with their personal property. The Town is striving to make Dauphin Island resilient as a barrier island system that both protects our MS Sound resources (oysters beds) and our neighbors on the mainland.

**Q. In *United States v. Louisiana, et al.*, (the “Alabama and Mississippi Boundary Case”), the U.S. Supreme Court established a permanent 3-mile seaward boundary for the State of Alabama in the Gulf of Mexico.**

- a. **Does that case have any impact on the Town’s establishment of a designated mean high tide line for this project?**
- b. **Does the federal preemption doctrine prevent the Town from designating a mean high tide line?**

**Answer:**

- a. No. In 1992, the U.S. Supreme Court authorized an agreement between the United States and the State of Alabama that established a permanent (i.e., non-ambulatory) line identifying where Alabama’s territory ends and the U.S.’s territory begins. That line was established with precise coordinates, and bears no relationship to the location of the mean high tide line on the Island.
- b. No. The federal preemption doctrine does not apply when a state law and a federal law can coexist without conflict. If the state law does not impede, contradict, or undermine the objectives of the federal law, and both laws can operate independently, preemption is unnecessary. This principle allows states to legislate in areas traditionally under their authority unless Congress explicitly or implicitly intends federal law to fully occupy the field or there is a direct conflict between the two. The 3-mile boundary is a function of federal law that identifies what portion of submerged lands, waters, and natural resources belong to the State, with everything *beyond* that 3-mile boundary belonging to the federal government. The mean high tide line is a function of State law that has no impact on the location of the federal 3-mile boundary. Moreover, the permanent location of the 3-mile boundary is not a “law” passed by Congress, but is instead a Court-authorized agreement between Alabama and the U.S., and there is no provision in that agreement that would be breached by the Town’s establishment of a designated mean high tide line for this project.

#### 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 no chance that even a fraction of this project’s sand delivery will occur naturally to the west

end of Dauphin Island, particularly in a way that uniformly benefits the structure and property owners of the 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 mean high tide line 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 mean high tide line 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 the POA vote for construction easement.**

A: The first and most important step for addressing funding opportunities is that we must have a willing participant. An affirmative yes vote will only AUTHORIZE the POA leadership to sign the construction easement and will help the TOWN secure funding opportunities that have specific stipulations. When the time comes, and funding is secured, the easement will be recorded. POA easement does not change ownership. You will continue to enjoy the POA as you always have. Once a designated mean high

tide line is established, you will also continue to be able to access and enjoy the beach as you always have.

**Q. What is a Construction Easement and why do I need to sign it? Am I signing away my property rights?**

- A. A construction easement may be required for certain parcels to allow the placement of sand and/or dune structures on private property. Typically, the easement area does not cover the entire lot. Property owners who grant a construction easement will continue to own the property, but the Town would have certain rights to construct and maintain the project in the easement area.

**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. Does everyone have to sign the easement for the project to move forward?**

- A. Construction easements will only be for private properties landward of the designated mean high tide line affected by the project. We hope that the private landholders will understand the importance of a whole and resilient project and that they are receiving sand with this easement. Within the footprint of the designed project, we would like 100% participation or the project will be compromised. If an individual easement is not signed, no sand will be put on your property which will leave a deficit of sand on your property.

For the POA West Surf Beach properties, the POA membership has to vote yes to sign the easement because of the position of that property. Without this yes-vote the project will not move forward and we will very likely never get this opportunity again.

**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 mean high tide line. 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 mean high tide line) 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.

## BEACH NOURISHMENT ENGINEERING AND DESIGN

### **Q. What are the goals of the Project?**

A: The primary goals are to restore beach and dune habitat along the Gulf of Mexico beaches and protect West End infrastructure with beach nourishment, sand dunes, and vegetation. Secondary goals include: introducing beach sands back into the littoral drift of the northern Gulf of Mexico barrier islands to restore the mainland protective functionality of our barrier island system; and improve West End beach and dune habitat including Gulf-front foraging and nesting habitats for seabirds, shorebirds, neotropical migratory birds, and sea turtles.

### **Q: How is the beach renourishment project designed?**

A. It is designed to restore a healthy, functioning sand dune and beach south of the houses. Historically, there was such a beach and dune system just south of the houses (in the 1950s through the 1990s). The dune is designed to reduce island overwash and property damage in major hurricanes. The beach south of the dune is designed to protect the dune until the major hurricanes.

### **Q. Will landholders be updated with conceptual design and design milestones?**

A. Yes. The design team will provide regular updates with the conceptual design and major design milestones at 30% and 90% design. These will be provided through the Town website and at individual requests.

### **Q. How wide will the new beach be?**

A. The current design has varying widths of beach from 170' to 590' (this wider value is in the Town's West Beach Park). Generally, south of the houses, the new beach will be about 200' to 300' wider than today's beach. The new project will restore 40 acres of dune habitat and about 200 acres of beach habitat over a 3.5 mile stretch of the west end.

### **Q. Will the continuous dune be on private property?**

A. The final position of the sand dune has not been determined and is under discussion with the design team considering the funding available. These discussions can and will continue during the design process and in discussion with landholders. Historically, the natural sand

dunes along the West End were just south of the houses on private property. The resilience and longevity of the project will be improved the farther north the dune is constructed.

**Q. Will I have to build a dune walkover?**

A. Per the dune overlay district of the Town of Dauphin Island and associated ADEM regulations, dune walkovers will be required for access to the beach. This is much like most American beachfront communities. The purpose of any dune walkover is to protect the sand dune, including its vegetation, from the degrading effects of foot traffic.

**Q. Will the sand ever come back naturally?**

A. No (with one exception discussed at the end of this paragraph). The sandy beach and dune system which existed south of the houses in the 1990's is permanently gone along most of the West End. Our detailed understanding of the West End beaches extends back to the 1850s. The West End historically has experienced major northerly barrier island rollover migration due to decades of major hurricanes (e.g. the 1915-1930s and 1995-2005). Shoreline recession rates were likely 200-300 feet in the 1915-1930's time frame due to a series of major hurricanes. The shoreline recession from 1957 to 2022 averaged 260 feet along the West End beaches due to the major hurricanes between 1995 and 2005. There has been no significant natural shoreline accretion along the West End beaches in the past century. The exception are the beaches east of Quebec Ct. They are accreting now due to the collapse of Pelican Island onto Dauphin Island that began in 2008. This project has been designed to take advantage of that ongoing geological phenomenon. So, there is no scenario where sand will return at even a tiny fraction of what this directed project will do.

**Q: Can the dune be moved south, as currently designed?**

A: We are happy to discuss this with the engineering team. The dune is strategically placed for the resilience of the project based on coastal engineering. We can move the dune south of the proposed designated mean high tide line but will have to then also extend the beach template south to ensure project sustainability which increases cost of the project.

**CONSTRUCTION FUNDING**

**Q. What funding is currently pending?**

A. This project is being considered for funding under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) Council-Selected Restoration Component (commonly referred to as "RESTORE Bucket 2). These funds are administered by the Federal RESTORE Council which is made up of representatives from the 5 Gulf States and 6 Federal agencies.

When undertaking the planning process that designate projects for funding, the RESTORE Council works collaboratively with input from stakeholders across the Gulf to develop Funded Priorities Lists (FPLs). FPL funding decisions are guided by criteria set forth in the RESTORE Act, the Council's 2016 Comprehensive Plan Update: Restoring the Gulf Coast's Ecosystem and Economy, the Council's 2019 Planning Framework and other policies. We anticipate this proposed project will be considered in the next FPL and that plan will be available for public comment Fall 2025. Approval of that FPL is tentatively anticipated Spring/Summer 2026. We anticipate the funding amount could cover phases of construction.

**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.

**Q. Will the project be phased or segmented?**

A. While it is the intention of the Town to construct the entire project, there are constraints with funding opportunities and with the amount of funding required. The Town will make every effort to fund the entire 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 200+/- 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 Corps 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.