



## Uninterrupted Beach Access, Beach Renourishment and Public Beach Access around 6633 Gulf of Mexico Drive

### Beach Access and the Erosion Control Line:

In 1977 the State of Florida delineated an Erosion Control Line (ECL) along the northern segment of Longboat Key at 6633 Gulf of Mexico Drive and recognized the existing seawall and the property eastward as private property. The ECL south of 6633 Gulf of Mexico Drive was established in 1993.

The Erosion Control Line is a line established by the State of Florida. Under Florida law, the ECL is the boundary line that indicates what lands are public versus private property. Pursuant to Florida Statutes 161.191, once an ECL is established by the State of Florida, it replaces the mean high-water line (MHWL) when determining the extent of public and private property rights.

The Town recognizes the private property rights of the owners and has asked the Town's residents to respect the property owners' request to not trespass or traverse across their property.

The Town has re-nourished the Town's beaches seaward of the ECL on Longboat Key on multiple occasions since 1993 pursuant to an adopted beach restoration plan.

### The Town's Beach Management Plan

The Town's renourishment priorities are determined pursuant to the Town's Beach Management Plan. The Beach Management Plan provides for the design, permitting, engineering, construction, maintenance and monitoring of the coastal infrastructure in order to maintain a healthy beach profile. This infrastructure includes the beach, stabilization structures, and beach accesses.

Periodic beach nourishment projects are scheduled in order to replenish sand along Longboat Key's coastline in conjunction with the State of Florida Department of Environmental Protection and other Federal, State, County and local agencies. The Town's Beach Management Plan is updated in advance of each nourishment cycle. The Town's Beach Management Plan is presented at public workshops and meetings of the Town Commission. Ultimately, the plan is approved by the Town Commission.

Primary funding for the Beach Management Plan is based on millage rates that appear on property owners tax bills associated with the Town's two beach districts. The Town's Gulfside and Bayside beach districts are financing tools to assist in the overall funding of the Beach Management Plan. Historically, the Gulfside District has contributed 80% of the cost for beach maintenance and renourishment activities, and the Bayside District has contributed 20% of the costs. In addition, funding for beach maintenance and renourishment activities is also received from the State of Florida through their beaches grant program as well as through Tourism Development Tax (TDT) dollars, and any Federal Emergency Management Agency storm impacts funding.

The scope and extent of the Beach Management Plan and the amount of millage (tax) levied support the funding of the Beach Management Plan is a policy decision determined by the Town Commission.

### Beach Renourishment Requirements and Private Property

There is no legal requirement on the State of Florida or on local governments (including the Town) to perform re-nourishment activities for the maintenance of a walkable beach along the entire

beachfront. The Town is also not legally required to re-nourish or maintain sand along the entire beachfront of the island, including in front of private properties. Private property owners along the beachfront have always been and remain responsible for maintaining and protecting their private properties (lands located landward of the ECL). The construction that beachfront property owners perform (including construction activities to protect their private property) remain subject to federal, state and local laws regulating such activities.

## **Beachfront Armoring Structures and the Ohana and Half Moon Seawalls**

Prior to the 1990's the island had a series of private groins and seawalls along the Town's coast. The majority of those coastal armoring structures have been removed over the years.

Currently, there are several seawalls that extended farther into the Gulf waters, including the properties at 6633 Gulf of Mexico Drive (a/k/a the "Ohana Property"), 6541 Gulfside Rd. (a/k/a the "Halfmoon Property"), and the Longbeach Condominiums on the north end of the island.

During re-nourishment cycles, sand has been placed in front (west) of these existing seawalls but was quickly displaced by normal beach tidal and wave action or storm events.

Historical aerials and photographs indicate that there has been a seawall in existence at 6633 Gulf of Mexico Drive since the 1950s. Since that time, the seawall has been repaired and replaced, and the replacement structures have been rebuilt landward of the initial seawall.

The segment of the beach in the area of 6633 Gulf of Mexico Drive and 6541 Gulfside Road are some of the most erosional areas of the island, due in part to the westward extension of the island and the scouring presence of the seawall itself.

In 2014, the Town Commission considered purchasing the property at 6541 Gulfside Rd. (a/k/a the "Half Moon Property"), and decided not to pursue the purchase.

On June 22, 1999, the Town Commission considered the recommendations of the Beach Advisory Committee and discussed purchasing the property at 6633 Gulf of Mexico Drive (a/k/a the "Ohana Property"). Numerous discussions have been held since that time, with the Commission ultimately deciding after each discussion, not to pursue that purchase.

The current owners purchased the Ohana Property in 2019. They are full time residents with children residing within the residence.

In 2020 the existing seawall at 6633 Gulf of Mexico Drive was damaged by a tropical storm. The owners permitted the repair of the existing wall through the Florida Department of Environmental Protection ("FDEP") and the Town of Longboat Key. The State permit required that they build the wall within the existing ECL and it was constructed approximately 5' landward of the previously damaged wall.

The Ohana Property owners have expressed concerns about trespassing onto their property by the Town's residents and visitors and the related potential liability. They have documented instances of trespass onto their property.

In 2021 they increased their efforts to keep trespassers off of their property including the addition on warning signs about their security dog on the premise

Members of the public expressed concern that they have been traversing that property for many years without restriction.

## **Negotiations Between the Town and the Ohana Property Owners**

The Town initiated a discussion with the property owners to see if there was a way to reach an agreement on a public easement across the property.

The Town Commission also requested information regarding legal options to address public concerns relating to the public's inability to have an uninterrupted beach walk past the Ohana Property and possible engineering solutions.

Outside Counsel was retained and the Commissioners were briefed on various legal options and the staff and the Town's Coastal Engineer reviewed engineering options associated with that particular segment of beach.

The legal review confirmed that the property landward of the ECL is private property and legal action(s) to create dedicated public access would not be advisable.

The Town Commission also considered potential engineering options relating to the Ohana Property, including the feasibility of a waterside walk around, maintaining sand in front of the wall, and installing multiple structures (groins) in the area to hold the sand in place. The two sand placement options (with and without structures) were estimated to cost between \$1M and \$3M a year. The Town staff also identified a potential option of additional beach access points in the area to facilitate a walkable detour walking around the Ohana Property.

The Owner proposed a temporary annual lease arrangement with the Town leasing a portion of the Ohana Property (estimated at approximately 1/3 of the total Ohana Property area) for public access to transverse north and south across their property for uninterrupted beach access. The Ohana Property owners proposed lease terms that included:

- the Town assuming liability for the pedestrian access,
- the lease being temporary and renewable annually,
- the lease being terminable on the Owner's sale of the property,
- a requirement that the that the Town assume liability and acquire insurance to cover such liability,
- the Town assume the costs for maintaining sand on the portion of the owner's property landward of the ECL, and
- the Town would permit a type of landscaping (ie, rock) barrier to be installed separating the sandy portion of the property from the property's main and accessory structures, and
- The Town pay an annual fee to the Owners estimated to be between \$800,000 and \$1.3M.

The Town Commission countered indicating they wanted to limit the ingress/egress area to an approximately 10' pedestrian path, would consider covering liability, and would be willing to pay the Ohana Property owners \$10K a year for an easement.

The Ohana Property owners responded that the Town's offer was not acceptable, the 10' foot pedestrian path was not practical, and that their proposed lease amount was supported by a professional appraiser's review.

At the January 24, 2022, Town Commission meeting, the Commission directed that the Town cease negotiations for an easement/lease of the Ohana Property, to continue to pursue potential nearby property owner interest for additional public beach access points, and to continue to explore beach renourishment options as part of the Town's Beach Management Plan updates.