

JEFFREY K. BARTON
Clerk to the Board



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OF BOARD OF COUNTY COMMISSIONERS
OF NOVEMBER 3, 2009

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JEFFREY K. BARTON

Clerk to the Board



November 3, 2009

**REGULAR MEETING OF THE BOARD OF COUNTY
COMMISSIONERS**

The Board of County Commissioners of Indian River County, Florida, met in Regular Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Tuesday, November 3, 2009. Present were Chairman Wesley S. Davis, Vice Chairman Joseph E. Flescher, Commissioners Peter D. O'Bryan, Bob Solari, and Gary C. Wheeler. Also present were County Administrator Joseph A. Baird, County Attorney William G. Collins II, and Deputy Clerk Maureen Gelfo.

1. CALL TO ORDER

Chairman Davis called the meeting to order at 9:00 a.m.

2. INVOCATION

Reverend Tom Harris, First Presbyterian Church, delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

County Attorney Collins led the Pledge of Allegiance to the Flag.

4. ADDITIONS/DELETIONS TO THE AGENDA/EMERGENCY ITEMS

Chairman Davis requested the following changes to today's Agenda:

ADDITION: ITEM 5.D PRESENTATION BY CHAIRMAN DAVIS REGARDING THE 17TH ANNUAL SOUP BOWL TO BENEFIT THE SAMARITAN CENTER FOR HOMELESS FAMILIES

DELETION: ITEM 14.D.1. FLORIDA ASSOCIATION OF COUNTIES (FAC) LEGISLATIVE CONFERENCE

ON MOTION by Commissioner Wheeler, SECONDED
by Chairman Davis, the Board unanimously approved the
Agenda as amended.

5. PROCLAMATIONS AND PRESENTATIONS

5.A. RECOGNITION OF JULIANNE R. PRICE AS RECIPIENT OF GOVERNOR'S POINT OF LIGHT AWARD

Commissioner Wheeler read a press release from Tallahassee and the congratulatory letter from Governor Charlie Crist recognizing Julianne R. Price for her accomplishments, and presented to her the Governor's Points of Light Award.

Ms. Price announced that on November 14, 2009 at 5:00 p.m., a Celebrity vs. Government softball game would be held at 5:00 p.m. at Holman Stadium as a fundraiser for the nonprofit organization, Every Dream Has A Price, Inc.

5.B. PRESENTATION OF PROCLAMATION IN SUPPORT OF THE EFFORTS OF INDIAN RIVER IMPACT 100

Chairman Davis read and presented the Proclamation to President Sherry Brown and two other members of Indian River Impact 100.

Ms. Brown advised that information was available on the organization, and on the kick-off breakfast to be held on November 16, 2009, at www.impact100ir.com. She also reported that Indian River Impact 100's first two grant recipients are Castle and the Treasure Coast Food Bank.

5.C. PRESENTATION BY KRISTY STURDIVANT, KEEP INDIAN RIVER BEAUTIFUL, REGARDING DONATIONS OF CAMPAIGN SIGNS TO REUSE EXCHANGE CENTER

Kristy Sturdivant, Keep Indian River Beautiful (KIRB), reported that valuable landfill space can be saved by donating used campaign signs to the KIRB Reuse Exchange Centers located at Habitat for Humanity, at US 1; the Senior Resource Association on 6th Avenue and 14th Street; or the KIRB office at 1255 Main Street in Sebastian. Further information is available at www.kirb.org.

5.D. PRESENTATION BY CHAIRMAN DAVIS, REGARDING THE 17TH ANNUAL SOUP BOWL TO BE HELD BY THE SAMARITAN CENTER

Chairman Davis announced that the 17th Annual Soup Bowl would be held on Thursday, November 5, 2009, from 11:30 – 12:30 in various locations throughout the County, including Rosemary’s Café. For a \$5.00 donation, participants may purchase soup, and for an additional donation, handmade ceramic bowls can also be purchased. There will be an additional fund raiser at Holy Cross Catholic Church on Friday, November 6, 2009. All proceeds for both events will go to the Samaritan Center for Homeless Families.

6. APPROVAL OF MINUTES

6.A. REGULAR MEETING OF SEPTEMBER 15, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Regular Meeting of September 15, 2009. There were none.

ON MOTION by Commissioner Solari, SECONDED by Vice Chairman Flescher, the Board unanimously approved the Minutes of the Regular Meeting of September 15, 2009, as written.

6.B. FINAL BUDGET HEARING OF SEPTEMBER 16, 2009

The Chairman asked if there were any corrections or additions to the Minutes of the Final Budget Hearing of September 16, 2009. There were none.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved the Minutes of the Final Budget Hearing of September 16, 2009, as written.

**7. INFORMATIONAL ITEMS FROM STAFF OR COMMISSIONERS
NOT REQUIRING BOARD ACTION**

7.A. CITY OF FELLSMERE – NOTICE OF FIRST READING ON ORDINANCE 09-22, PROPOSING TO ANNEX .58 ACRES, MORE OR LESS INTO THE CITY, NOVEMBER 5, 2009, AND A PUBLIC HEARING TO ADOPT ORDINANCE 09-22 WILL BE HELD ON NOVEMBER 19, 2009, 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

7.B. RESIGNATIONS OF IRRIGATION AND VEGETABLE REPRESENTATIVES TO THE AGRICULTURE ADVISORY COMMITTEE

Noted for the record was the resignation of Dan Chellemi, Irrigation Representative; and Kevin O'Dare, Vegetables Representative, from the Agriculture Advisory Committee. Their terms would have expired in 2010.

7.C. APPOINTMENT OF DISTRICT 4 APPOINTEE TO THE CHILDREN'S SERVICES ADVISORY COMMITTEE

Noted for the record was the appointment of Michele Falls as the District 4 Appointee to the Children's Services Advisory Committee. Her term will expire on January 2011.

**7.D. WORK ORDER #7, COASTAL TECHNOLOGY CORPORATION, INC., REVISED
UPLAND SAND SOURCE DESIGN SERVICES**

Noted for the record was Work Order No. 7 with Coastal Technology Corporation, Inc. for Sector 3 Revised Upland Sand Source Design Services (approved by the County Administrator under Section 105.01 of County Code).

8. CONSENT AGENDA

Commissioner Solari pulled for discussion Items 8.G., 8.P., and 8.Q.
Commissioner O'Bryan pulled for discussion Item 8.M.

ON MOTION by Vice Chairman Flescher, SECONDED
by Commissioner O'Bryan, the Board unanimously
approved the Consent Agenda, as amended.

**8.A. APPROVAL OF WARRANTS AND WIRES OCTOBER 8, 2009 TO OCTOBER 15,
2009**

ON MOTION by Vice Chairman Flescher, SECONDED
by Commissioner O'Bryan, the Board unanimously
approved the list of Warrants and Wires as issued by the
Clerk to the Board for the time period of October 8, 2009
to October 15, 2009 as recommended in the memorandum
of October 15, 2009.

8.B. APPROVAL OF WARRANTS AND WIRES OCTOBER 16, 2009 TO OCTOBER 22, 2009

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the list of Warrants and Wires as issued by the Clerk to the Board for the time period of October 16, 2009 to October 22, 2009, as requested in the memorandum of October 22, 2009.

8.C. OPEB TRUST REPORT FOR THE PERIOD 10/1/08 THROUGH 9/30/09

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the quarterly *Other Post Employment Benefits (OPEB) Trust Report* for the year ended September 30, 2009, as recommended in the memorandum of October 28, 2009.

8.D. INDIAN RIVER COUNTY INVESTMENT ADVISORY COMMITTEE QUARTERLY INVESTMENT REPORT FOR THE QUARTER ENDING 09/30/09

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the *Investment Advisory Committee Quarterly Report* for July 1, 2009 through September 30, 2009, as recommended in the memorandum of October 28, 2009.

8.E. WACHOVIA BANKING SERVICES AGREEMENT

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Chairman to execute the Banking Services Agreement with Wachovia Bank, N.A., as recommended in the memorandum of October 22, 2009.

AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.F. OUT OF COUNTY TRAVEL TO ATTEND FAC LEGISLATIVE CONFERENCE

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved out of County travel for Commissioners and staff to attend the Florida Association of Counties (FAC) *County Structure & Authority Workshop* during the Florida Legislative Conference in Saint Petersburg, Florida, December 2 – 4, 2009. Commissioner Wheeler has been asked to be a participant on a panel at this workshop, as stated and as requested in the memorandum of October 27, 2009.

**8.G. REQUEST TO ADVERTISE FOR PUBLIC HEARING ON THE ORDINANCE TO
CREATE A NEW "GIFFORD COMMUNITY CENTER MSTU"**

Commissioner Solari pulled this item so residents would be aware of this proposal to create a new Gifford Community Center Municipal Service Taxing Unit (MSTU), which would

subject them to this tax. He did not think anyone should be surprised by this, and asked Commissioners and Citizens to advise others of this matter, before the matter comes before the Commission for a vote.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to authorize the County Attorney to advertise for a public hearing to be held December 1, 2009 to consider adoption of an Ordinance creating a “Gifford Community Center MSTU,” as recommended in the memorandum of October 27, 2009.

Since this matter had not been advertised under Item 10. A. Public Hearings, Chairman Davis read into the record staff’s recommendation to “authorize the County Attorney to advertise for a public hearing to be held December 1, 2009 to consider adoption of an ordinance creating a “Gifford Community Center MSTU”.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board authorized the County Attorney to advertise for a public hearing to be held December 1, 2009 to consider adoption of an Ordinance creating a “Gifford Community Center MSTU,” as recommended in the memorandum of October 27, 2009.”

8.H. PROCLAMATION HONORING PHILLIP HARTSFIELD ON HIS RETIREMENT
FROM INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS
DEPARTMENT OF PUBLIC WORKS

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Proclamation honoring Phillip Hartsfield on his retirement from the Public Works Department.

8.I. CONSIDERATION OF A REVISED MANAGEMENT PLAN FOR THE OSLO RIVERFRONT CONSERVATION AREA (ORCA), AMENDED TO INCLUDE THE FLINN TRACT LAAC SITE

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Revised Management Plan (amended to include the Flinn Tract LAAC Site), for the Oslo Riverfront Conservation Area (ORCA), as recommended in the memorandum of October 23, 2009.

8.J. FINAL PAYMENT, MASTELLER & MOLER, INC. – SPOONBILL MARSH WETLAND R/O CONCENTRATE/REUSE MAIN PIPELINE PROJECT

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved and authorized the Chairman to execute the Final Payment with Masteller & Moler, Inc. (M&M) in the amount of \$1,315.00 for the Spoonbill Marsh

Brine/Reuse Pipeline Project, as recommended in the memorandum of October 22, 2009.

**8.K. NORTH COUNTY REVERSE OSMOSIS PLANT – CAMP DRESSER MCKEE
(CDM) FINAL PAYMENT FOR PROFESSIONAL SERVICES IN DESIGN,
PERMITTING & GENERAL SERVICES DURING CONSTRUCTION**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O’Bryan, the Board unanimously approved final payment in the amount of \$2,512.47 to Camp Dresser McKee (CDM) for North County Reverse Osmosis Water Treatment Plant Expansion Project, as recommended in the memorandum of October 16, 2009.

**8.L. APPROVAL OF BID AWARD FOR IRC BID NO. 2009064 BRINE LINE
CONVERSION**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O’Bryan, the Board unanimously: (1) approved the Bid Award to Masci Corporation as the lowest most responsive and responsible bidder, meeting the specifications as set forth in the Invitation to Bid; and (2) approved the Sample Agreement and authorized the Chairman to execute said Agreement after the required performance and payment bonds, along with the appropriate Certificate of Insurance, have been received and once the County Attorney has approved the

Agreement as to form and legal sufficiency, as recommended in the memorandum of October 27, 2009.

8.M. AMENDMENT NO. 2 TO THE CONTINUING CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES WITH G. K. ENVIRONMENTAL, INC.

Commissioner O'Bryan explained that this item would allow for Purchase Orders with G.K. Environmental, Inc. to be authorized by Division and Department Heads for projects costing less than \$15,000. Commissioner O'Bryan would like notifications of same to be placed under Item 7. Informational Items from Staff or Commissioners Not Requiring Board Action.

Director Mora conveyed staff's willingness to comply with Commissioner O'Bryan's request.

ON MOTION by Commissioner O'Bryan, SECONDED by Commissioner Solari, the Board unanimously approved Amendment No. 2 to the Continuing Contract Agreement for Professional Services with G.K. Environmental, Inc. modifying the Agreement to allow for Purchase Orders to be issued by Division and Department heads for projects with proposals less than \$15,000.00, as recommended in the memorandum of October 16, 2009.

AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

**8.N. FINAL PAYMENT AND RELEASE OF RETAINAGE WORK ORDER #3,
COASTAL TECHNOLOGY CORPORATION INC., SECTOR 3 BEACH
RESTORATION**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved the final invoice and retainage release request with Coastal Technology Corporation, Inc. (Sector 3 Beach Restoration). The work contained in the Work Order is subject to 50% cost sharing with the Florida Department of Environmental Protection under Grant Agreement 03IR1. Local funding of Beach Restoration includes a portion of Local Option Tourist Tax revenue as well as allocations of the One-Cent Sales Tax, all as stated and recommended in the memorandum of October 16, 2009.

**8.O. WORK ORDER No. 6, CONTINUING PROFESSIONAL SURVEYING &
MAPPING/GIS SERVICES CONTRACT 0725 MORGAN AND EKLUND, INC.,
SECTOR 3 BEACH RESTORATION – LEGAL DESCRIPTIONS AND SKETCHES
FOR TEMPORARY CONSTRUCTION EASEMENTS**

ON MOTION by Vice Chairman Flescher, SECONDED by Commissioner O'Bryan, the Board unanimously approved Work Order No. 6 to Contract No. 0725 with Morgan and Eklund, Inc. (for Sector 3 Beach Restoration). Local funding of Beach Restoration includes a portion of Local Option Tourist Tax Revenue as well as allocation of

the One-Cent Sales Tax, as stated and recommended in the memorandum of October 22, 2009.

WORK ORDER IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

8.P. OUTSIDE AGENCY FUNDING POLICY REVISION

Commissioner Solari explained that up until now, nonprofits and other organizations receiving \$25,000 or more from the County have been required to obtain an audit, which can cost up to \$10,000. This item would increase the threshold for an audit from \$25,000 to \$100,000.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to approve Alternative 1, to increase the funding threshold requiring Outside Agencies to submit audited financial statements from the current level of \$25,000 to \$100,000.

Commissioner Solari observed that this does not mean the agencies' finances are not reviewed - it would just ensure that they do not have to expend funds which could be better used elsewhere for an audit. He stressed that the \$100,000 limit would apply only to the actual dollars expended by the agency.

Chairman Davis remarked that the County has a fiduciary responsibility to make sure the taxpayer's money is spent wisely, and the current Outside Agency Funding policy accomplishes this because all grant requests are submitted for County approval before payment is disbursed.

Budget and Management Director Jason Brown elaborated on staff's Alternatives, as outlined on page 184 of the backup. He also noted that the \$100,000 threshold has a precedent, as it is used by United Way when requiring their agencies to obtain an audit.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved Alternative 1, to increase the funding threshold requiring Outside Agencies to submit audited financial statements from the current level of \$25,000 to \$100,000 of actual expenses.

**8.O. CONSIDERATION OF AN MOA WITH INDIAN RIVER COUNTY LAND TRUST
AND A LEASE AGREEMENT WITH THE FLORIDA INLAND NAVIGATION
DISTRICT**

Commissioner Solari stated that most of the funding for the Lagoon Greenway Project will come from the private sector. He announced that the Indian River County Land Trust (IRCLT) would hold a fund raiser on November 12, 2009 at Rock City Nursery, from 6:00 p.m. to 10:00 p.m. He relayed that Ken Grudens, Executive Director of the IRCLT, wanted to thank both the County Commission and the County staff who have worked with them on the Memorandum of Understanding. Commissioner Solari thereafter thanked Mr. Grudens and the IRCLT for great work on this project, noting that it would provide a template for public/private partnerships, which he believes will be very important for the future of the County.

ON MOTION by Commissioner Solari, SECONDED by Commissioner O'Bryan, the Board unanimously approved the Memorandum of Agreement (MOA) with the Indian River County Land Trust and the Lease Agreement with the Florida Inland Navigation District, and authorized the Chairman to execute the Agreements, as recommended in the memorandum of October 28, 2009.

AGREEMENTS ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

9. CONSTITUTIONAL OFFICERS AND GOVERNMENTAL AGENCIES-NONE

10. PUBLIC ITEMS

10.A. PUBLIC HEARINGS

10.A.1. 510, LLC'S REQUEST TO ABANDON A SEGMENT OF 86TH STREET BETWEEN CR510 AND 47TH AVENUE IN WABASSO (LEGISLATIVE)

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

Planning Director Stan Boling announced that he would be addressing the first of two inter-related matters, a request from 510, LLC, for the County to abandon a segment of 86th Street between CR510 and 47th Avenue in Wabasso, and that Community Development Director Robert Keating would be addressing 510, LLC's second request, to amend the Comprehensive Plan (see Item 10.A.2.). He provided detailed description and conditions of the proposed 86th Street abandonment, noting that Public Works is currently at 60% design for improvements of the CR510-US 1 intersection. Director Boling reported that Bruce Barkett, the applicant's attorney, had submitted an Escrow Agreement whereby the applicant agrees to dedicate the right-of-way, the temporary construction easement, and the drainage easement needed for the CR510 improvement project, subject to approval of both requests. He thereafter conveyed staff's recommendation for Board approval of the 86th Street right-of-way abandonment, with Conditions 1 and 2 as outlined on page 229 of the backup information.

Commissioner O'Bryan wanted to know, if the County approves the subject abandonment, if 510, LLC would grant an easement to keep 86th Street open as a functioning road until development is begun at the site.

Bruce Barkett, Attorney for 510, LLC, affirmed that an executed copy of a Temporary Right-of-Way Easement (copy on file) has been provided to the Deputy County Attorney.

A lengthy discussion followed as Commissioners and staff discussed traffic patterns and whether the abandonment would negatively impact the neighboring residents. Various configurations were suggested for maintaining connectivity between CR510 and US1 should 86th Street be closed. The Board also questioned staff on the cost of purchasing the right-of-way after up-zoning, if 510, LLC 's request is not approved, and was informed that the right-of-way would cost an additional \$500,000.

Commissioner Wheeler presented arguments supporting the County's retention of the 86th Street right-of-way, believing that closing that street would cause inconvenience to the residents of an old established Florida neighborhood, as well as the businesses on US 1.

Bruce Barkett, Esquire, representing 510, LLC, displayed slides outlining the proposed areas of abandonment and rezoning. Recalling that the Board had formerly expressed concerns about the impacts of the roadway abandonment on traffic, he reported that Kimley-Horn and Associates, Inc. had completed a traffic study, showing that the use of 86th Street is basically inconsequential. Attorney Barkett thereafter provided his views on how the subject abandonment would benefit the County.

The Chairman opened the Public Hearing.

The following residents spoke in opposition to the 86th Street Abandonment:

Allen Yarbrough, Pastor of First Baptist Church, Wabasso, and resident of 4720 86th Place

William Wells, 8800 44th Avenue

Pat Mills, 4655 87th Street

Rye Griffin (no address provided)

Robin Davis, 8580 48th Avenue, and owner of properties at 4785 86th Street and 4755 86th Street. (Mr. Davis relayed that a resident of 4785 86th Place had to leave, but also shared his sentiments).

There being no further speakers, the Chairman closed the Public Hearing.

Staff continued to address the Board's concerns about providing some connectivity for the residents living near 86th Street; further information was also provided on traffic circulation patterns and future development plans related to the CR510 roadway project.

Commissioner Solari opined that the abandonment would not have a negative impact on the neighborhood, and that it would ultimately increase road safety.

Responding to Vice Chairman Flescher's question regarding whether 510, LLC would be providing a secondary access from the neighborhood to CR510, Attorney Barkett affirmed that he would make that commitment on behalf of 510, LLC, but he did not think it could be written into the abandonment.

Director Boling explained that the LDR's would dictate traffic circulation improvements, including connections, which would be dependent upon the characteristics of the site plan and what uses are going to be there.

The Chairman re-opened the Public Hearing.

Pastor Yarbrough asked the Board to leave 86th Street open until the site plan and the location of the secondary access is concretized.

Ms. Mills, referring to the possibility of using 87th Street for the secondary connection (presented earlier by staff), presented arguments for not doing so.

Kevin (inaudible surname) felt that the County should retain 86th Street as an evacuation route for residents heading north.

Jens Tripson, 2525 14th Street, believed that the abandonment of 86th Street would have negative impacts on the traffic, and felt that the site plan should be complete before 86th Street is closed.

There being no further speakers, the Chairman re-closed the Public Hearing.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner O'Bryan, to DENY 510,
LLC's request to abandon a segment of 86th Street
between CR510 and 47th Avenue in Wabasso.

Commissioner O'Bryan outlined his reasons for supporting Commissioner Wheeler in his opposition to the abandonment, which included safety concerns regarding left-hand turns.

Chairman Davis presented his arguments for supporting the proposal, including the future need to provide for the residents some type of interconnectivity for going to a signalized intersection.

The Chairman CALLED THE QUESTION, and by a 2-3
vote (Commissioners Davis, O'Bryan and Solari
opposed), the Motion DIED.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Davis, to approve staff's recommendation for the County to abandon its rights to a segment of 86th Street between CR510 and 47th Avenue in Wabasso, including Conditions 1 and 2, and with the caveat to keep 86th Street open until such time that development occurs.

A question was raised as to the terms of the Temporary Right-of-Way Easement for 86th Street from 510, LLC to the County. Attorney Barkett explained that the Easement would be in place for 10 years, OR until 510, LLC recorded a Notice of Termination of Easement, accompanied by a land development permit or equivalent, indicating that development of the Easement or the platted lots adjacent to same has commenced.

Commissioner O'Bryan said that he still had misgivings, but in light of the aforementioned Temporary Right-of-Way Easement until the time of development, he would support Commissioner Solari's Motion.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner Wheeler opposed), the Motion carried. The Board approved and authorized the Chairman to execute **Resolution 2009-163**, *with the following conditions: (1) that a 25' wide utility easement for the existing water line be reserved over the northern 25' of the 86th Street (Palm Blvd.) right-of-way segment and that a 10' wide utility easement for the existing power and communication lines be reserved over the southern 10' of the 86th Street (Palm Blvd) right-of-way segment; (2) that prior to physically closing 86th Street to vehicular traffic,*

the property owner shall obtain approval from Traffic Engineering for the method of closure; and (3) with the caveat to keep 86th Street open until such time that development occurs; Providing for the closing, abandonment, vacation and discontinuance of a segment of 86th Street (Palm Blvd) lying between CR510 and 47th Avenue (Tropical Avenue) adjacent to Blocks 8 and 9 of Weona Park, as shown in Plat Book 2, page 17 of the public records of Indian River County, Florida, as described herein, said land lying in Indian River County, Florida.

The Chairman called a recess at 11:17 a.m. and reconvened the meeting at 11:27 a.m., with all members present.

10.A.2. 510, LLC'S REQUEST TO AMEND THE COMPREHENSIVE PLAN TO REDESIGNATE ± 6.4 ACRES FROM L-2, LOW-DENSITY RESIDENTIAL-2 (UP TO 6 UNITS/ACRE), TO C/I, COMMERCIAL/ INDUSTRIAL, AND TO REZONE THOSE ± 6.4 ACRES FROM RM-6, MULTI FAMILY RESIDENTIAL DISTRICT (UP TO 6 UNITS / 1 ACRE), TO CG, COMMERCIAL GENERAL; AND UNITED INDIAN RIVER PACKERS, LLC'S REQUEST TO AMEND THE COMPREHENSIVE PLAN TO REDESIGNATE ± 6.4 ACRES FROM C/I, COMMERCIAL/ INDUSTRIAL, TO L-2, RESIDENTIAL-2 DISTRICT (UP TO 6 UNITS / 1 ACRE), AND TO REZONE THOSE ± 6.4 ACRES FROM IL TO RM-6, MULTI FAMILY RESIDENTIAL DISTRICT (UP TO 6 UNITS / 1 ACRE)(LEGISLATIVE)

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

Community Development Director Bob Keating, through a PowerPoint Presentation (copy on file), provided background conditions of the requests of 510, LLC and United Indian River Packers, LLC to swap the land use and zoning designations for Subject Property 1 (owned by 510, LLC and located north of CR510, south of 87th Street and east of 47th Avenue) and Subject Property 2 (owned by United Indian River Packers, LLC, and located north of 77th Street and west of the Florida East Coast Railroad), by amending the Comprehensive Plan. The swap would involve redesignating and rezoning Subject Property 1 from L-2 (Low-Density Residential-2) to C/I (Commercial/Industrial) and from RM-6, (Multi-Family Residential) to CG (Commercial General); and redesignating Subject Property 2, from C/I (Commercial Industrial), to L-2 (Residential-2) and rezoning the subject property from IL to RM-6, Multi Family Residential District. Director Keating explained that today the Board will decide whether to transmit the amendments to the State Department of Community Affairs (DCA) for review, after which there would be a final adoption hearing this spring. He thereafter presented staff's recommendation, based on staff's analysis on pages 267-274, for the Board to approve the transmittal of the Comprehensive Plan Amendment to DCA, by approving the Resolution.

Director Keating informed the public that the Department of Community Affairs has an allowance providing for citizens to receive information regarding this Comprehensive Plan Amendment throughout the review process, and asked those individuals to give their contact information to Sasan Rohani, Chief of Long Range Planning.

Commissioner Wheeler questioned whether the proposed land use designation amendment was consistent with the fourth criterion of *Future Land Use Element Policy 14.3* (presented on page 272 of the backup), which states that...“The proposed amendment involves a swap or reconfiguration of land use designations at separate sites and, that swap or reconfiguration will not increase the overall land use density or intensity depicted on the Future

Land use Map.” He believed that the proposed land use designation amendment would increase the intensity and density of Subject Property 1. Additionally, he provided his reasons for believing that Subject Property 2 would not be desirable for residential development.

The Chairman opened the Public Hearing.

Attorney Barkett, representing 510, LLC, and United Indian River Packers, LLC, invited questions from the Board. Receiving none, he resumed his chair.

William Wells, 8800 44th Avenue, opposed the land swap and requested the notification from DCA.

The following speakers expressed their opposition to the land swap:

Jens Tripson, 2525 14th Street

Pastor Yarbrough, 4720 86th Place, Sebastian

Pat Mills, 4655 87th Street

Staff addressed **Bob Johnson**'s question on whether the C/I land use designation would be compatible with one of the existing land uses, which allows for a church on Subject Property 1.

There being no further speakers, the Chairman closed the Public Hearing.

MOTION WAS MADE by Commissioner Wheeler,
SECONDED by Commissioner O'Bryan, to DENY
approval of the Resolution to transmit the proposed future
land use map amendment to the Department of
Community Affairs (DCA).

Commissioner Wheeler set forth that the proposed land swap would be wrong; that it would be development of the landowner's property at the expense of the neighborhood.

Commissioner O'Bryan was concerned about approving the land swap without knowing how the property would be developed or what changes might occur to the neighborhood. He felt that the Board would have more input if the subject land was developed through a Commercial Planned Development (PD) process, and inquired whether it was possible to get this commitment from the Kennedys (the landowners).

Staff reminded Commissioners that the matter before the Board at today's hearing was whether or not to transmit the Comprehensive Plan Amendment to DCA, and that it was not possible to mandate a Planned Development at this point.

Director Mora addressed **Ms. Mills'** questions regarding traffic signals on 87th Street, CR510, and at the entrance to Bristol Bay.

Further discussion ensued regarding the PD process, after which, **Thomas Kennedy**, the applicant, advised the Board that he would be amenable to going through a PD process for Commercial Development at the subject site (Property 1).

Based on Mr. Kennedy's assurance that he was willing to go through the PD process, Commissioner O'Bryan WITHDREW his SECOND to Commissioner Wheeler's Motion to deny the land swap.

Commissioner Wheeler's MOTION FAILED for lack of a
SECOND.

There being no further speakers, the Chairman closed the Public Hearing.

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher to approve staff's recommendation for transmittal of the proposed future Land Use Amendment to the Department of Community Affairs (DCA) by approving the proposed Resolution, with the caveat for staff to review the fourth criterion of *Future Land Use Element Policy 14.3*

Commissioner Wheeler suggested tabling this matter until the fourth point under the *Future Land Use Element Policy 14.3* can be reviewed, as specified in the above Motion; however, there was no CONSENSUS to do so.

The Chairman CALLED THE QUESTION, and by a 4-1 vote (Commissioner Wheeler opposed), the Motion carried. The Board: (1) directed staff to review the fourth criterion of *Future Land Use Element Policy 14.3* (page 272 of the backup), pertaining to a swap or reconfiguration of land use designations at separate sites; and
(2) Approved **Resolution 2009-164**, approving the transmittal of a proposed Indian River County Comprehensive Plan Future Land Use Map Amendment to the State of Florida Department of Community Affairs.

The Chairman called a break at 12:14 p.m. and reconvened the meeting at 1:31 p.m., with Vice Chairman Flescher rejoining the meeting at 1:33 p.m.

10.A.3. COUNTY INITIATED REQUEST TO REDESIGNATE ±27.97 ACRES FROM L-1, LOW-DENSITY RESIDENTIAL-1 (UP TO 3 UNITS/ACRE), AND C/I, COMMERCIAL / INDUSTRIAL, TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±27.97 ACRES FROM A-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT /5 ACRES), AND CL, LIMITED COMMERCIAL DISTRICT, TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); REDESIGNATE ± 37.48 ACRES FROM AG-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT/5 ACRES), AND R, RURAL RESIDENTIAL DISTRICT (UP TO 1 UNIT / 1 ACRE), TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±37.48 ACRES FROM A-1, AGRICULTURAL-1 DISTRICT (UP TO 1 UNIT / 5 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); REDESIGNATE ±70 ACRES FROM C-2, CONSERVATION-2 DISTRICT (UP TO 1UNIT/40 ACRES), AND L-2, LOW-DENSITY RESIDENTIAL-2 (UP TO 6 UNITS/ACRE), TO C-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±70 ACRES FROM RS-6 SINGLE-FAMILY RESIDENTIAL DISTRICT (UP TO 6 UNIT / 1 ACRE), AND RS-1, SINGLE-FAMILY RESIDENTIAL DISTRICT (UP TO 1 UNIT/1 ACRE), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY); REDESIGNATE ±457.86 ACRES FROM AG-2, AGRICULTURAL-2 DISTRICT (UP TO 1 UNIT /10 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY), AND REZONE THOSE ±457.86 ACRES FROM A-2, AGRICULTURAL-2 DISTRICT (UP TO 1 UNIT /10 ACRES), TO CON-1, CONSERVATION-1 DISTRICT (ZERO DENSITY) (LEGISLATIVE)

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

Community Development Director Robert Keating recapped his memorandum of October 19, 2009, to present the County-initiated request to redesignate a total of ± 593 acres acquired under the County's Environmental Lands Program to the C-1, Conservation-1 Land Use Category. He used a PowerPoint (copy on file) to provide descriptions of the properties, known as Subject Property 1, Canoe Launch Park/Ansin Tract; Subject Property 2, South Prong Preserve/Shadowbrook Estates Parcel and South Prong Preserve/Ryall Parcel; Subject Property 3, Oslo Riverfront Conservation Area (ORCA) Diamond Tract; and Subject Property 4, Corrigan 460 Tract/Berry Groves Exchange. He thereafter presented the recommendations of the Planning & Zoning Commission (PZC) and staff for the Board to approve transmittal of the proposed future land use amendment to the Department of Community Affairs (DCA) by approving the Resolution attached to staff's report.

Commissioner O'Bryan was informed by staff that the proposed amendment to the Comprehensive Plan would not interfere with the permit application for boat ramp improvements and parking at Subject Property 3, Oslo Riverfront Conservation Area (ORCA) Diamond Tract.

Discussion ensued among Commissioners and staff on whether the pending improvements to Subject Property 3 should be made prior to re-designation of the land use designation and zoning. The Board agreed that it would be prudent to first make the improvements, and it was noted that the County's willingness to commit the land to a conservation land use plan might provide future leverage for any required mitigations.

The Chairman opened the Public Hearing. There being no speakers, the Chairman closed the Public Hearing.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-165**, as amended to remove Subject Property 3, the Oslo Riverfront Conservation Area

(ORCA) Diamond Tract, approving the transmittal of a proposed Indian River County Comprehensive Plan Future Land Use Amendment to the State of Florida Department of Community Affairs.

**10.A.4. PROPERTY EXCHANGE WITH THE ESTATE OF ELVESTER B. MOWATT FOR
RIGHT-OF-WAY ALONG CR 510 (ADMINISTRATIVE)**

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

Deputy County Attorney William DeBraul recalled that on Sept 8, 2009, the Board had approved a property exchange and purchase agreement with the Estate of Elvester Mowatt for right-of-way along CR510 in Wabasso. He reported that since the agreement involved an exchange of County-owned land, the terms of the agreement had to be advertised, which process was now completed. He thereafter presented staff's recommendation for the Chairman to execute the Resolution approving the Exchange Agreement with the Estate of Elvester B. Mowatt, and any additional deeds necessary to effectuate the exchange.

The Chairman opened the Public Hearing. There being no speakers, the Chairman closed the Public Hearing.

ON MOTION by Commissioner Wheeler SECONDED by Chairman Davis, the Board unanimously approved **Resolution 2009-166**, approving an exchange of land with the Estate of Elvester Mowatt.

AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

10.B. PUBLIC DISCUSSION ITEMS

10.B.1. REQUEST TO SPEAK FROM WILLIAM M. WELLS REGARDING 8810 44TH AVENUE AFTER THE FACT PERMITS

William Wells, 8800 44th Avenue, provided handouts to the Chairman and the Clerk (copy on file), regarding a neighboring property owned by Kenneth C. Chestnut, and located at 8810 44th Avenue. He outlined what he believed were permitting violations involving a dock extension, fence, seawall, generator, pool house steps, and a garage, all occurring on the subject property.

No Board action required or taken.

10.B.2. REQUEST TO SPEAK FROM JOE T. WIGGINS REGARDING RECREATION

Joe T. Wiggins, 895 11th Street SW, addressed the Board regarding the need to construct at South County Park a Youth Center which could be used for multiple purposes, such as giving the children a place to gather in inclement weather, and providing them with activities and educational opportunities. He stressed the need to encourage our children by providing them with a safe place to congregate. Mr. Wiggins told Commissioners there were plenty of community groups and citizens who would volunteer, but the County would need to construct the building.

No Board action required or taken.

10.C. PUBLIC NOTICE ITEMS

**10.C.1.A. NOTICE OF SCHEDULED PUBLIC HEARINGS NOVEMBER 10, 2009:
AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF
INDIAN RIVER COUNTY, FLORIDA EXTENDING THE DEADLINE BY**

THREE YEARS FOR THE LIBERTY PARK, MANDALA CLUB, TURTLE CREEK PRESERVE, AND SUNNYSIDE UP PLANNED DEVELOPMENTS TO COMMENCE CONSTRUCTION OR HAVE THEIR ZONING REVERT TO THE SITE'S ORIGINAL (PRE-PLANNED DEVELOPMENT APPROVAL) ZONING (LEGISLATIVE)

10.C.1.B. VICTOR MUNOZ REQUEST FOR ABANDONMENT OF A PORTION OF 59TH AVENUE LYING NORTH OF 24TH STREET (LEGISLATIVE)

10.C.2. NOTICE OF SCHEDULED PUBLIC HEARINGS NOVEMBER 17, 2009: SR 60 VERO, LLC: REQUEST TO REZONE 19.98 ACRES LOCATED SOUTH OF S.R. 60 AND APPROXIMATELY 1,350 FEET WEST OF 58TH AVENUE, FROM RM-6 TO RM-8 (QUASI-JUDICIAL)

County Attorney William Collins read the notices into the record.

11. COUNTY ADMINISTRATOR MATTERS-NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. REQUEST TO APPROVE THE HURRICANE WILMA COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY INITIATIVE FOURTH APPLICANT LIST AND TO AUTHORIZE STAFF TO SOLICIT BIDS FOR HURRICANE WILMA HARDENING WORK ACTIVITIES

MOTION WAS MADE by Commissioner Solari, SECONDED by Vice Chairman Flescher, to approve the Hurricane Wilma Community Development Block Grant Disaster Recovery Initiative (CDBG-DRI) Group Four (4) applicants list and authorized staff to begin the bid process to secure services from licensed contractors for needed rehabilitation work.

Responding to Commissioner Solari's inquiry, Chief of Long Range Planning Sasan Rohani confirmed that each Commissioner must declare any conflict of interest regarding the list of applicants provided with staff's report.

Commissioner Solari, Commissioner O'Bryan, Vice Chairman Flescher, Commissioner Wheeler, and Chairman Davis each declared there was no conflict of interest, respectively.

The Chairman CALLED THE QUESTION, and the Motion carried. The Board unanimously approved the Hurricane Wilma Community Development Block Grant Disaster Recovery Initiative (CDBG-DRI) Group Four (4) applicants list and authorized staff to begin the bid process to secure services from licensed contractors for needed rehabilitation work, as recommended in the memorandum of October 21, 2009.

12.B. EMERGENCY SERVICES-NONE

12.C. GENERAL SERVICES-NONE

12.D. HUMAN RESOURCES-NONE

12.E. HUMAN SERVICES-NONE

12.F. LEISURE SERVICES-NONE

12.G. OFFICE OF MANAGEMENT AND BUDGET

12.G.1. INDIAN RIVER COUNTY CENSUS 2010 MISCELLANEOUS BUDGET

AMENDMENT 001

Management and Budget Director Jason Brown recalled that on October 13, 2009, the Board directed staff to bring back information on funding for promotional items for the Census 2010 Complete Count Committee. He presented for Board consideration a Budget Amendment for \$3,000, funded by General Fund Contingencies, which could be used for the aforementioned purpose.

MOTION WAS MADE BY Commissioner Wheeler,
SECONDED by Commissioner Solari, to DENY funding
for the promotional items for the Census 2010 Complete
County Committee.

Commissioners Wheeler and Solari voiced their opposition to the proposed Budget Amendment. Both felt that in light of the trillions of dollars of stimulus monies being dispensed, the Federal Government should have \$3,000 to allocate for the census, and Commissioner Solari pointed out that the census was a mandate of the United States Constitution.

Vice Chairman Flescher upheld the Budget Amendment, as he spoke to the importance of increasing awareness about the census. He also believed that to decline the proposed funding would curtail any future positive support for the County. Vice Chairman Flescher informed

Commissioners that there was a United States Census Bureau program whereby program participants can receive up to \$2,999 of product support.

Commissioners debated whether the proposed Budget Amendment of \$3,000 would noticeably increase citizen participation in the Census.

Commissioner O'Bryan agreed with Vice Chairman Flescher that the budget allocation was necessary, but felt that the funds should be allocated to maximum effect, and not for such promotional items as pens and bumper stickers.

Discussion continued as Board members and staff considered the most effective ways to utilize the funds, if appropriated.

After learning from Director Brown that the County had spent over \$3,000 for Census activities in 2000, Vice Chairman Flescher noted that the proposed allocation was less than the amount spent ten years ago.

Director Brown provided a brief explanation of the U.S. Census Bureau's 2010 Partner Support Program, which disburses funds to the vendors providing products and services to its partner organizations.

The Chairman CALLED THE QUESTION, and by a 3-2 vote (Commissioners Flescher and O'Bryan opposed), the Motion carried. The Board DENIED funding for the promotional items for the Census 2010 Complete Count Committee.

12.H. RECREATION-NONE

12.I. PUBLIC WORKS

**12.I.1. APPROVAL OF BID AWARD FOR IRC BID NO. 2010005 ANNUAL BID FOR
MAIN RELIEF CANAL POLLUTION CONTROL FACILITY SEDIMENTATION
SYSTEM DREDGING**

MOTION WAS MADE by Commissioner Solari, SECONDED by Commissioner O'Bryan, to approve the Bid Award to **EMC, Inc.** as the lowest and most responsive bidder meeting the specifications as set forth in the Invitation to Bid; to authorize the Public Works Department to enter into a master agreement with an option for two (2) additional one (1) year extensions subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual bid is in the best interest of Indian River County; and to approve the Sample Agreement and authorize the Chairman to execute said agreement after receipt and approval of the required Certificate of Insurance, and after the County Attorney has approved the agreement as to form and legal sufficiency.

Commissioner O'Bryan asked whether the dredged material (sediment) that had already piled up at the site was going to be hauled off, and Director Mora said it would be deposited at the landfill.

Chairman Davis wondered whether an alternate use could be found for the sediment, and Director Mora indicated that staff was open to suggestions.

Commissioner Solari noted that the project is keeping tons of phosphorous and nitrogen out of the Indian River Lagoon, and requested that staff return with a brief presentation whereby the public can be informed of this project, which is a real positive for the County.

The Chairman CALLED THE QUESTION and the Motion carried. The Board unanimously: (1) approved the Bid Award to **EMC, Inc.** as the lowest and most responsive bidder meeting the specifications as set forth in the Invitation to Bid; (2) authorized the Public Works Department to enter into a master agreement with an option for two (2) additional one (1) year extensions subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual bid is in the best interest of Indian River County; and (3) approved the Sample Agreement, and authorized the Chairman to execute said agreement after receipt and approval of the required Certificate of Insurance, and after the County Attorney has approved the agreement as to form and legal sufficiency, as recommended in the memorandum of October 26, 2009.

12.I.2. FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) MAINTENANCE
MEMORANDUM OF AGREEMENT (MOA) AND AUTHORIZING RESOLUTION
FOR LANDSCAPE MAINTENANCE ALONG SR60 FROM JUST WEST OF I-95
INTERCHANGE (M.P. 22.389) TO JUST WEST OF 82ND AVENUE
(M.P.23.923) FM # 228628-1-52-01

Public Works Director Christopher Mora provided description and conditions on the Florida Department of Transportation's (FDOT's) request for the County to maintain the landscaping along SR60 west of the I-95 Interchange and west of 82nd Avenue. He revealed that in response to the County's request, the FDOT has redesigned the area to include low maintenance trees and turf, with generous areas of stamped concrete.

Chairman Davis expressed his preference to have the landscaping include more live oaks than sable palms. He also wanted Director Mora to check the requirements of the Corridor Plan and to explore with the FDOT, the possibility of using Bahia grass, which does well in dry conditions.

Vice Chairman Flescher and Director Mora briefly discussed the irrigation system.

Commissioner O'Bryan pointed out that there is some attractive turf by Ace Hardware on Oslo Road which might provide a good landscaping option.

Director Mora assured Commissioners that there was time to discuss these matters with the FDOT.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Davis, the Board unanimously approved **Resolution 2009-167**, authorizing the execution of District Four Landscape Maintenance Memorandum of Agreement for SR60 from just west of I-95 Interchange to just west of 82nd Avenue (MP 22.389 to MP 23.923), FM # 228628-1-52-01.

AGREEMENT IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

12.I. PUBLIC WORKS

12.I.3. STAFF UPDATE – SECTOR 3 BEACH RENOURISHMENT PROJECT

Coastal Resource Manager Jonathan Gorham recalled that due to reports that the use of upland sand would eventually cover an offshore reef, the volume of sand to be placed on certain beach property (in the Towns of Indian River Shores and Orchid) was going to be substantially reduced. He reported that upland sand suppliers have worked to process the sand equivalent to the median grain size of the offshore material, and the design will proceed with the original 471,858 cubic yard volume of sand. Dr. Gorham reported that Coastal Technology, Inc. has submitted a permit modification request to the Florida Department of Environmental Protection (FDEP) and the U.S. Army Corps of Engineers on October 30, 2009, with a courtesy copy to the local U.S. Fish and Wildlife Service. He presented a timetable of upcoming meetings with the FDEP, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service, and credited the State Legislative Delegation for helping to expedite the permitting process, noting that he has never seen the State and Federal Agencies so responsive.

Dr. Gorham disclosed that the Bureau of State Lands has accepted the County's Mean High Water Line Survey and the FDEP would be holding a public hearing on the establishment of the Erosion Control Line, on December 14, 2009, several weeks sooner than staff had anticipated. Concluding, Dr. Gorham conveyed that thus far, staff was moving forward on its ambitious schedule for permit issuance in time to construct the beach renourishment project this year.

Commissioner O'Bryan wanted to make sure that Indian River Shores was informed that the full volume of sand would now be placed on their beaches, as its Council Members had sent to the permitting agencies a letter of protest regarding the reduced volumes of sand that they were going to get (because of the upland sand).

Responding to Vice Chairman Flescher's query, Director Gorham elaborated on how the upland sand material was brought up to the proper standards for the Beach Renourishment Project.

No Board action taken or required.

12.J. UTILITIES SERVICES

**12.J.1. WORK ORDER NO. 2, ECO TECH, INC. – SPOONBILL MARSH SITE
MONITORING**

Capital Projects Manager Michael Hotchkiss reviewed his memorandum of October 21, 2009 to provide background and analysis on staff's request to obtain monitoring services from Ecotech Consultants, Inc., in accordance with the Industrial Waste Facility Permit issued for the Spoonbill Marsh Wetland. He outlined the proposed duties and responsibilities of Ecotech, which would include their submission of a report to the Florida Department of Environmental Protection (FDEP) showing that County actions at the site have had a net positive environmental benefit for all the water that is treated.

MOTION WAS MADE by Commissioner O'Bryan,
SECONDED by Commissioner Solari, to approve Work
Order No. 2 with EcoTech Consultants, Inc. in the amount
of \$97,880.00.

Commissioner Solari remarked that the Spoonbill Marsh Project, as opposed to a deep well injection process, was much better for the environment, and thanked Mr. Hotchkiss and the Utilities staff for their work.

The Chairman CALLED THE QUESTION, and the
Motion carried unanimously. The Board approved Work

Order No. 2 with EcoTech Consultants, Inc. in the amount of \$97,880.00 (Spoonbill Marsh Site Monitoring), and authorized the Chairman to execute the same, as recommended in the memorandum of October 21, 2009.

WORK ORDER IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD

12.J.2. SHELL LANE EAST A PORTION OF SUMMERPLACE PETITION SEWER SERVICE, INDIAN RIVER COUNTY PROJECT NO. UCP 4039, PRELIMINARY ASSESSMENT RESOLUTIONS I AND II

James D. Chastain, Manager of Assessment Projects, briefed the Board on staff's request to begin the assessment process associated with the Shell Lane East Gravity Sewer Project, wherein the County will provide petition sewer service to ten (10) properties on Shell Lane East, at a total estimated cost of \$84,973.30. He thereafter presented staff's recommendation for the Board to approve Preliminary Assessment Resolutions I and II, approving the preliminary assessment roll and establishing the public hearing date.

Chairman Davis asked whether the project had come in over or under the anticipated cost, and Director Chastain advised that the final cost would be bid out after the public hearing on December 1, 2009.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-168**, providing for sewer main expansion to Shell Lane East (a portion of Summerplace) in Indian River County, Florida; providing the total estimated cost, method of payment of assessments,

number of annual installments, and description of the area to be served.

ON MOTION by Commissioner Wheeler, SECONDED by Vice Chairman Flescher, the Board unanimously approved **Resolution 2009-169**, setting a time and place at which the owners of properties located along Shell Lane East (a portion of Summerplace) in Indian River County, Florida, and other interested persons, may appear before the Board of County Commissioners of Indian River County and be heard as to the propriety and advisability of constructing the sewer main extension, as to the cost thereof, as to the manner of payment therefor, and as to the amount thereof to be specially assessed against each property benefited thereby.

12.J.3. APPROVAL OF BID AWARD FOR IRC BID NO. 2010011 ANNUAL BID FOR UTILITY OPERATIONS WAREHOUSE STOCK

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, to approve the Bid Award to HD Waterworks and Ferguson Waterworks as the two lowest and most responsive bidders meeting the specifications as set forth in the Invitation to Bid.

Assistant Director of Utility Services Cindy Corrente addressed Commissioner O'Bryan's question about North-South Supply, the Vero Beach bidder.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board approved: (1) the Bid Award to HD Waterworks and Ferguson Waterworks as the two lowest and most responsive bidders meeting the specifications as set forth in the Invitation to Bid. The dual award gives the Utilities Department the ability to take advantage of the best prices for each item specified. At the time of order, when exact items and quantity are known, the lowest cost and availability will be used to determine vendor; (2) authorized the Purchasing Division to issue blanket purchase orders for the period of October 1, 2009 through September 30, 2010 with the recommended bidders; and (3) authorized the Purchasing Manager to renew this bid for three (3) additional one (1) year periods subject to satisfactory performance, vendor acceptance, and the determination that renewal of this annual bid is in the best interest of Indian River County, all as stated and recommended in the memorandum of October 16, 2009.

13. COUNTY ATTORNEY MATTERS

13.A. PURCHASE OF CUMBERLAND FARMS SITE FOR THE OSLO ROAD IMPROVEMENT PROJECT AND THE 27TH AVENUE IMPROVEMENT PROJECT

Deputy County Attorney Bill DeBraal provided background information on this request for acquisition of two parcels required for right-of-way and a stormwater retention pond for the Oslo Road and the 27th Avenue Improvement Projects, respectively. He provided details on the Final Judgment and Stipulated Order of Taking with Cumberland Farms, for the 1.06 acre

property located at the corner of Oslo Road and 27th Avenue, which the County would purchase for \$2,750,000 inclusive of all costs and fees. Attorney DeBraal noted that two conditions of the Final Judgment included granting Cumberland Farms extended possession until at least July 1, 2010, and the requirement to continue negotiations with the Mary Rutz Trust (formerly the Carden Estate) for the 1.4 acres of property required for the retention pond for the 27th Avenue Project.

Attorney DeBraal addressed Chairman Davis's questions on whether the fuel tanks were double walled and whether the road improvement projects would necessitate their removal.

ON MOTION by Commissioner O'Bryan, SECONDED by Chairman Davis, the Board unanimously accepted and approved the Stipulated Order of Taking and Final Judgment as to Cumberland Farms, as recommended in the memorandum of October 28, 2009.

13.B. CONSIDERATION OF MEDIATED SETTLEMENT AGREEMENT FOR PURCHASE OF PROPERTY LOCATED AT THE NORTHWEST CORNER OF 66TH AVENUE AND 57TH STREET

Attorney DeBraal provided an in-depth description and brought forward for Board consideration, the Mediated Settlement Agreement reached between County staff and Steven, Evan, and William Abazis, for the County's purchase of 9.803 acres located at the corner of 66th Avenue and 57th Avenue for \$805,000, plus \$100,000 in appraisal, engineering, construction contractor, and attorney's fees. He reported that the County requires Parcels 102 and 401, which together comprise 6.210 acres or 63%; however, since over half of the parent parcel was being acquired, the Abazis requested a taking of their entire 9.803 acre property. Attorney DeBraal stated that the land acquisition would provide right-of-way on 66th Avenue, a stormwater retention pond site, and allow the County to fulfill its obligation to the School Board (via an

Interlocal Agreement) to construct a temporary turn lane onto 57th Street to service Storm Grove Middle School. Attorney DeBraal noted that if the Mediated Settlement Agreement is not approved, the turn lane project would be delayed until an Order of Take hearing can be brought before the Court.

After questioning Attorney DeBraal, Commissioner Solari learned that the appraisal provided by the Abazis and their attorneys, referenced on page 471 of staff's report, which values the Abazi property at \$95,000 per acre, was not derived from a complete appraisal, but from the "For Mediation Only" packet (copy on file), supplied by Brent Simon, Esquire; and David Holloway, Esquire, the Abazis' attorneys. Commissioner Solari objected to the land values set forth in the Mediation documents, which place the subject property at \$95,000 per acre, the same price paid by the School Board in 2005 at the height of the market, for the property across 66th Avenue. Alluding to the current 25%-75% decline in property values, he also opposed the additional \$25,000 per acre cost desired by the Abazis because of the smaller size of their parcel.

MOTION WAS MADE by Commissioner Solari,
SECONDED by Commissioner O'Bryan, to DENY
approval of the Mediated Settlement Agreement with
Steven Abazis, William Abazis, and Evan Abazis.

Vice Chairman Flescher agreed with Commissioner Solari that the values provided for the property purchased by the School Board did not reflect current market values. Additionally, the values were not derived from a true appraisal, and the trees inventoried in the packet are very costly.

Attorney DeBraal explained that normally when going to mediation, staff and the opposing party exchange appraisals ahead of time. In this case, however, although he knew the opposing side did not have a complete appraisal report, Attorney DeBraal chose to go ahead with

the mediation, instead of delaying it for another thirty or sixty days, because of the Interlocal Agreement with the School District.

Chairman Davis felt that Attorney DeBaal had gone through the correct process by undergoing the mediation process and bringing the Mediated Settlement Agreement back to the Board for consideration. The mediations are now concluded, and the matter can proceed to Court.

Assistant County Administrator Michael Zito provided a brief explanation of the mediation process.

The Chairman CALLED THE QUESTION, and the Motion carried unanimously. The Board unanimously DENIED approval of the Mediated Settlement Agreement with Steven Abazis, William Abazis, and Evan Abazis.

14. COMMISSIONER ITEMS

14.A. COMMISSIONER WESLEY S. DAVIS, CHAIRMAN

14.A.1. ANNUAL APPOINTMENT OF COUNCIL MEMBERS TO TREASURE COAST REGIONAL PLANNING COUNCIL (TCRPC)

Chairman Davis conveyed the request of the Treasure Coast Regional Planning Council (TCRPC), for the County to submit its appointees, consisting of four members and four alternates (two County, two Municipal) for next year, prior to its December 11, 2009 Organizational Meeting. He said the current policy is to rotate representation between a small city and a large city. Chairman Davis asked Commissioners if they wanted to leave the process in place, or craft another type of policy.

Commissioner Wheeler, sitting Chairman of the TCRPC, wanted to see on the TCRPC those individuals who were interested in the Council.

Chairman Davis clarified that he was not talking about individuals, but rather the two municipalities who would be chosen to serve as representatives of the County, along with the two County Commissioner and two alternate Commissioner members.

Commissioner O'Bryan believed that when Mayor Sabin Abell, City of Vero Beach, put this together, his intention was to have on the Council a large city with a small city. He believed that in the upcoming year it would be the City of Vero Beach's turn as the large city, and either Fellsmere or the Town of Orchid as the small city, as the Town of Indian River Shores was currently on the Council.

There were no objections from the Commissioners, and Chairman Davis remarked that no formal action would be taken at this time, but it was good to know in advance who would be serving this year on the TCRPC. He noted that the actual individuals could be chosen at a later time.

14.B. COMMISSIONER JOSEPH E. FLESCHER-NONE

14.C. COMMISSIONER GARY C. WHEELER-NONE

14.D. COMMISSIONER PETER D. O'BRYAN

**14.D.1. FLORIDA ASSOCIATION OF COUNTIES (FAC) LEGISLATIVE
CONFERENCE**

Deleted.

14.D.2. LETTER OF INTENT

Commissioner O'Bryan expressed confidence that the Sector 3 Beach Renourishment Project would be constructed this year, and felt that the upland sand suppliers would now have to spend significant amounts of money to begin processing and stockpiling the required sand, so the project can commence right after the County receives its permit from the Florida Department of Environmental Protection (FDEP). Since Ranger Construction Industries, Inc. (the contractor approved by the Board for the project), has no formal written commitment from the Commission, he wondered if the Board could issue some type of Letter of Intent to Ranger that codifies the Contract Award in writing, contingent upon approval of the permit modification to use the upland sand source. Commissioner O'Bryan noted that Ranger Construction could take the proposed Letter of Intent to their bank or lender.

Attorney Collins saw no problem with issuing a Letter of Intent, provided the language parallels that already in the bid documents, that the County would enter into a contract within five (5) days after the FDEP issues the permit.

Bob Schafer, Vice President of Ranger Construction, affirmed that the bid documents were written such that had the offshore contractor been chosen, the County would have already had to write them a contract, even though the permit was not yet in hand. He asked Attorney Collins to review the language in the bid documents to see if a contract, pending permit approval, could be written to Ranger at this point.

Administrator Baird suggested that Attorney Collins research this matter, and bring it back before the Board at the November 10, 2009 County Commission meeting.

A brief discussion ensued during which staff and Commissioners considered whether to have Attorney Collins draft the Letter of Intent now, or to bring it back for Board approval next week.

Mr. Schafer agreed to wait another week for the letter.

Since his brother owns a sand mine, Chairman Davis announced he would abstain from voting and requested that Vice Chairman Flescher execute the subject document after its approval.

MOTION WAS MADE by Commissioner O'Bryan, SECONDED by Vice Chairman Flescher, for the County Attorney to bring to the November 10, 2009 Board of County Commission meeting for Board approval, a "Letter of Intent" to enter into a contract with Ranger Construction Industries, Inc., *to be executed by the Vice Chairman*, for the Sector 3 Beach Renourishment Project, within five (5) days after final permit issuance by the Florida Department of Environmental Protection (FDEP).

Commissioner Solari was concerned that the FDEP might issue the permit with less quantities of sand than was specified in the County's application. This sparked further discussion on whether the Letter of Intent should include permit approval authorizing a specific amount of sand.

Dr. Gorham advised that the FDEP would either approve or deny the permit as per the modified application which was submitted, but they could not issue the permit for less sand; if they stipulated less sand, it would have to be with the consent of the applicant.

The Chairman CALLED THE QUESTION, and by a 4-0 vote (Chairman Davis recused himself), the Motion carried. The Board directed the County Attorney to bring

to the November 10, 2009 Board of County Commission meeting for Board approval, a “Letter of Intent” to enter into a contract with Ranger Construction Industries, Inc., *to be executed by the Vice Chairman*, for the Sector 3 Beach Renourishment Project, within five (5) days after final permit issuance by the Florida Department of Environmental Protection (FDEP).

(Clerk’s Note: Form 8B, Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers, is on file in the office of the Clerk to the Board.)

14.E. COMMISSIONER BOB SOLARI-NONE

15. SPECIAL DISTRICTS AND BOARDS

15.A. EMERGENCY SERVICES DISTRICT-NONE

15.B. SOLID WASTE DISPOSAL DISTRICT

The Chairman announced that immediately upon adjournment of the Regular Board of County Commission Meeting, the Board would reconvene as the Board of Commissioners of the Solid Waste Disposal District. Those Minutes are being prepared separately.

15.B.1. APPROVAL OF MINUTES OF REGULAR MEETING OF SEPTEMBER 15, 2009

**15.B.2. INDIAN RIVER CORRECTIONAL INSTITUTION’S REQUEST FOR SOLID
WASTE ASSESSMENT ADJUSTMENT**

15.C. ENVIRONMENTAL CONTROL BOARD

The Chairman announced that immediately upon adjournment of the Solid Waste Disposal District Meeting, the Board would reconvene as the Board of Commissioners of the Environmental Control Board. Those Minutes are being prepared separately.

15.C.1. APPROVAL OF MINUTES OF REGULAR MEETING OF AUGUST 18, 2009

15.C.2. QUARTERLY REPORT FOR THE 4TH QUARTER – FISCAL YEAR 2008-2009 FOR SUBMISSION TO THE BOARD OF COUNTY COMMISSIONERS

15.C.3. RELEASE OF LIEN – SHELBY HOMES AT OSLO, INC., ENVIRONMENTAL CONTROL HEARING BOARD CASE 434-08

ALL BACKUP DOCUMENTATION, RESOLUTIONS, AND ORDINANCES ARE ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND ARE HEREBY MADE A PART OF THESE MINUTES

16. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at 3:31 p.m.

ATTEST:

Jeffrey K. Barton, Clerk

Wesley S. Davis, Chairman

Minutes Approved: _____

BCC/MG/2009Minutes