

**1. Requested Motion:**

**Meeting Date: June 20, 2011**

This item is for Town Council information as a follow up to the discussion  
 On June 6, 2011 regarding the Beach Vegetation Management Plan.

**Why the action is necessary:**

**What the action accomplishes:**

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

**5. Background:**

At the June 6, 2011 Regular Town Council Meeting, the Town Attorney was asked to review the Interlocal Agreement for Estero Island Beach Restoration and render an opinion as to whether the cost of development of a Beach Vegetation Management Plan would be considered part of "total project costs" and therefore subject to reimbursement by Lee County.

**6. Alternative Action:**

Take no action.

**7. Management Recommendations:**

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

TO: Mayor and Town Council

FROM: Marilyn W. Miller

DATE: June 10, 2011

RE: Interlocal Agreement For Estero Island Beach Restoration

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At this past Monday's Town Council meeting, I was asked to review the above-referenced interlocal agreement and render an opinion as to whether costs incurred by the Town in connection with the Beach Vegetation Management Plan are the type of costs that are subject to reimbursement by Lee County as part of the "*total Project costs*" referenced in the Agreement. If such costs are part of the "total Project costs" then such costs should be included for purposes of the Town's not to exceed share of the Project costs (\$110,224).

Section Four A of the Interlocal Agreement states that the cost allocation between the Town and County will be based on *total Project costs*. Section One B of the Agreement defines the "Project" as "...includ(ing) permitting, easement transactions, design, engineering and construction activities." Section Two G of the Agreement obligates the Town, as part of the project, to "define a planting plan that meets the intent of the comprehensive plans of the COUNTY and TOWN, has due regard for the Town of Fort Myers Beach Nourishment Vegetation Management Plan and protects the rights of the property owners." The only limiting language in the Agreement related to vegetation management activities states that the County will have no responsibility for post-construction maintenance of beach vegetation on private property. It would, therefore, appear that development of the vegetation management plan is part of the Project.

Based on the foregoing, it is my opinion that costs associated with the Town's obligation under the Agreement to develop a vegetation management plan are Project costs that should be included when determining the Town's not to exceed share of such costs.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

cc: Terry Stewart, Town Manager  
Michelle Mayher, Town Clerk