

## Minutes

**Briefing Meeting of the  
Captiva Erosion Prevention District**  
Tween Waters Inn, Wakefield Room,  
15951 Captiva Drive, Captiva, Florida 33924  
July 25, 2013 @ 1:00 P.M.

**Commissioners Present:** Jim Boyle (Chair); Dave Jensen (Treasurer); Harry Kaiser (Secretary); Mike Mullins (Commissioner); Doris Holzheimer (Vice Chair)-via telephone.

**Staff Present:** Kathleen Rooker, CEPD Administrator; John Bralove, CEPD Assistant to the Administrator; Hans Wilson, President, Hans Wilson and Associates; Robin Mixon, CFP, Hans Wilson and Associates.

**Guest Speakers:** Col. Alan Dodd, Commander, Commander Jacksonville District Army Corps of Engineers  
Jerry Scarborough, Water Resources Chief, Jacksonville District Army Corps of Engineers

### 1. Call to Order

Chairman Boyle called the meeting to order at 1:00 P.M.

### 2. Roll Call

The roll was called and the results are outlined above.

Chairman Boyle recognized the following people in the audience:

- Tammy Hall – Lee County Commissioner
- Joshua Jones – Congressman Radel's office
- Doug Congress – Vice Mayor, Sanibel
- James Evans – Director of Natural Resources, Sanibel
- Roland Ottolini – Director, Lee County Division of Natural Resources
- Justin McBride – Lee County Division of Natural Resources Project Manager
- Steve Keehn – Coastal Planning and Engineering
- Diane McGee – Senator Nelson's office

### 3. Guest Speakers

Chairman Boyle introduced Colonel Alan Dodd, Commander of the Jacksonville District of the U.S. Army Corps of Engineers, and Mr. Jerry Scarborough, Water Resources Chief of the Jacksonville District of the U.S. Army Corps of Engineers. Chairman Boyle reminded Commissioners that the letter rescinding CEPD's project eligibility from the Army Corps was signed by General Jackson of the South Atlantic Division and not by Col. Dodd. The Colonel had come to this meeting to explain the rationale the Corps had used to arrive at the decision to rescind the CEPD project funding

Col. Dodd provided Chairman Boyle a summary of the policies and regulations. In providing background, Col. Dodd said both he and General Jackson had signed off on the project and it had been approved on March 28 by Headquarters in Washington. As the process continued and there was further analysis, it was determined the Captiva project was found not to be in compliance with certain aspects of public parking and easement policies. He added these issues may have surfaced as early as

2005. Consequently, Col. Dodd said, the Corps was unable to proceed until the policy issues were resolved. He said he recognized the Corps had not given CEPD a lot of time. In an effort to move the project forward quickly, he explained, the Corps did not catch these policy issues.

Chairman Boyle said this was the first time the District had received anything specific on these issues from the Corps aside from General Jackson's letter. He said CEPD had heard about a memo allegedly signed by then Chairman Jensen in 2005, but when CEPD asked for a copy of this memo, it appeared that the memo was only from one division to another and was never sent to CEPD. The Chairman asked Col. Dodd whether this was his understanding of what had happened to the memo and Col. Dodd said yes. He said there had been no communication with CEPD. Mr. Scarborough said the Jacksonville District was unable to find the memo in their files.

Chairman Boyle said everything appeared to be in order as late as mid-May but had changed significantly since then. He asked Col. Dodd what had changed in this period between mid-May and June 28. Col. Dodd responded that Jacksonville had developed a better understanding of the policies and how CEPD's project applied to them. Jacksonville had not been applying them correctly. Mr. Scarborough said the Corps had sent a team to Captiva in May whose purpose was to determine compliance with the 2005 comments to which Chairman Boyle had previously referred. This visit had caused some minor tweaks that had reduced the cost share from 27 to 24 percent. At that time, the Jacksonville District felt like the project complied with the 2005 requirements. Chairman Boyle asked if the Jacksonville District's view had been overturned and Mr. Scarborough said there had been further analysis done at the division and headquarters level and the conclusion was that Jacksonville had not fully complied with Corps policies.

Chairman Boyle asked whether the situation in New Jersey, where there is no ECL, was driving this. What prompted the change between May 15 and June 28? Mr. Scarborough said his opinion was that the 2005 project had been given a waiver to go ahead but in the future, the project had to be in compliance. He said Jacksonville made an attempt to get the project approved anyway but the effort was not good enough. Ms. Rooker pointed out the Corps had come back in 2008 and there was no mention of this problem. Mr. Scarborough said this was correct and it was his opinion that since the work in 2008 involved FCCE funds that were 100% cost shared, the policies were not applied.

Commissioner Kaiser talked about how much of an advocate of the Army Corp he had been in the past and the economic impact on tourism that beaches had. Now he felt the people of Captiva were being kicked by their own government. Col. Dodd said he agreed with Mr. Kaiser about the economic concerns of this project and was even more concerned about the safety aspect – there was only one evacuation route off the island. He said protection is needed. If there were a way to overcome these issues, the Jacksonville District would have found it. Mr. Scarborough added that Captiva was not being singled out; the Jacksonville District was required to look at all their projects that are currently in line for the same kind of funding.

Chairman Boyle asked why Hagerup Beach Park was not qualified as public access and Mr. Scarborough replied that only 50 feet of it was in compliance. Mr. Boyle asked why the public needs an easement to access public land they own. Mr. Scarborough replied the easements were required landward of the ECL as well as seaward. Mr. Keehn commented that he had never seen the policy where landward and seaward easements were required and asked for a copy of it. He added that Florida's easements were superior to those of New Jersey. Mr. Scarborough said he agreed with Mr. Keehn and that is how Jacksonville had interpreted it until now. Mr. Keehn added that CEPD had

received no written instructions to the local sponsor as was required in Article III of the PCA, nothing had been done in a timely manner, and the memo about parking and easements was important enough so that it should have gone into the PCA but was not. Nobody ever took that last step to present physically what was needed. Mr. Keehn emphasized how important written instructions were in these kinds of situations. Mr. Scarborough said he agreed with what Mr. Keehn said and there was a lack of communication at the District level. Jacksonville never went out and said CEPD has to provide this. Col. Dodd said the Corps must help CEPD get into compliance with the policies so that CEPD can continue with the federal participation. But at this point, he said, he did not see any way the Corps could move forward with the project. Mr. Boyle suggested other ways this situation could have been handled. He added the Corps' withdrawal at the 12<sup>th</sup> hours was unbelievable.

Commissioner Mullins asked if the Corps was saying they did not want to move forward with the project. The response was that they could not move forward without CEPD being in compliance. Mr. Mullins asked whether the Corps could run the project even if CEPD paid for it. The answer was no. Mr. Mullins asked if the Corps could run the project with CEPD receiving reimbursement after it came into compliance with the policies. The response was that the Corps could not run the project. Mr. Mullins then suggested CEPD see how it could move forward without the Corps. Chairman Boyle said this was the purpose of the next agenda item and in anticipation of this, CEPD had asked CP&E for a design and to move forward as quickly as possible since the window with the dredgers was closing quickly.

Chairman Boyle outlined what had happened in the meetings last week in Washington with Deputy Chief Lee, Senator Nelson's staff, and Congressman Radel's staff. He said CEPD had asked for a waiver from Assistant Secretary of the Army Darcy and that decision was imminent. However he thought the chances of the waiver being granted were less than 1%. Mr. Mullins asked about CEPD's eligibility for state funding and Chairman Boyle replied that as long as the project was started before the end of the year, CEPD would not lose the state funding. Mr. Mullins commented CEPD should still address the parking and public access issues. Chairman Boyle agreed and said another issue that needs clarification is whether CEPD is eligible for FEMA funds now that it is not an Army Corps project. If the Army Corps is saying CEPD does not meet its eligibility standards, CEPD needs documentation from them. CEPD should approach FEMA to get funds for any storm damage that might occur in the future. Mr. Mullins asked whether there had been any progress on the FEMA emergency funding for which CEPD had applied. Mr. Boyle said it is still active. Ms. Rooker said CEPD's claim for Captiva had been rejected since the Corps was supposed to do the project. But the application for the Sanibel is still pending although it is a slow process. The amount involved is \$1.7 million. Chairman Boyle said CEPD would reapply for emergency funding for Captiva now that the Captiva project is not eligible for federal funds.

Mr. Jensen said the Jacksonville District appears to have admitted that mistakes had been made but was not willing to move forward although it was their fault. Col. Dodd repeated that the ACOE could not move forward with the project until CEPD was policy-compliant. Mr. Jensen argued that the new policy had never been communicated to CEPD. Mr. Scarborough said there had been an understanding in 2005 that there was an issue but it had not been properly communicated to CEPD by the Jacksonville District. It had been discussed verbally but never was put in writing. He said Jacksonville cannot find any written documentation where it was spelled out. Mr. Keehn said he remembered discussions about parking on Laika and Wightman Lanes but never anything to do with easements. It was always assumed that it was a grandfathered issue. None of this got into the PCA and there was no letter. Mr. Scarborough replied there was a letter that came to the Jacksonville District from a Donald

Basham that said there was basically a waiver to move forward with the 2005 project, but for future renourishment CEPD would have to get into compliance. However, it was not communicated properly to CEPD.

Chairman Boyle called for questions and comments from the audience. Paul McCarthy asked Col. Dodd if the Colonel had reviewed the 2005 policies, approved the project, and had sent the project on. Col. Dodd said this was correct. Mr. McCarthy then asked Col. Dodd that in his professional opinion had CEPD fulfilled these policies. Col. Dodd said yes. Mr. McCarthy then said about a week ago, someone, some place said CEPD had not complied with the policies. Col. Dodd confirmed this and Mr. McCarthy asked if the Colonel's interpretation of the policies was wrong. Col. Dodd said yes. Mr. McCarthy asked if there were a letter saying Col. Dodd was wrong and the Colonel said there was not. Col. Dodd explained he recommended the project, sent it on to his boss Gen. Jackson at the South Atlantic Division, who approved it, and then it was sent up to Corps headquarters. Mr. McCarthy asked whether 100% of the Colonel's staff had said CEPD had fulfilled these policies. Col. Dodd said yes. Mr. McCarthy asked if someone later said that the Colonel and his staff had made a mistake. Col. Dodd said yes.

Mr. Mullins suggested Mr. McCarthy was on the right track but CEPD needed to get on with the project while continuing to pursue on a separate track whether there is any way to address this problem. He said CEPD needed to get the project back on track so that the District would not lose the state funding. He added he thought CEPD should pursue additional funding from Lee County.

Mr. Kaiser asked whether the ACOE would throw up any roadblocks when CEPD goes on its own. Col. Dodd said CEPD's project was an important one and the Corps would support it whenever it could within its policies.

Chairman Boyle thanked Col. Dodd and Mr. Scarborough for coming to the meeting and called for a recess of 10 minutes at 1:51 P.M.

#### **4. Project Update**

Chairman Boyle reconvened the meeting at 2:02 P.M. He said he had spoken to Col. Dodd just before the Colonel left about getting a letter from the Army Corps that CEPD did not qualify for federal funding so that CEPD can reapply to FEMA for emergency funding for Captiva.

The Chairman called upon Mr. Keehn to discuss the redesign of the project. Mr. Keehn said new bids would go out as early as tomorrow (Friday) and bidders would have 2 weeks to respond. Bids could be opened 5-6 days before CEPD's Regular Board Meeting, the bids could be discussed at this meeting, and a contract could be awarded then. Mr. Mullins asked if CEPD would need to negotiate a new loan over and above the \$9.6 million it had just recently negotiated with Fifth Third. Chairman Boyle said he did not know.

Chairman Boyle then went over the other sources of funds and reminded Commissioners they were just estimates. As a consequence of the ACOE funds not being available, he estimated Captivans would end up paying about \$8.7 million, which is up from the estimated \$5.6 million if CEPD had been eligible for Corps funding. He said he was optimistic of getting competitive prices since 4 bids on the Sanibel project had been received. Chairman Boyle said the project could start late September.

Mr. Mullins asked whether CEPD should lobby the state to extend the funding CEPD had received. Chairman Boyle explained this would not be necessary as long as construction started before the end of the year. Mr. Jensen mentioned the Corp had done their own design and Mr. Keehn commented that they had and he did not agree with it. Chairman Boyle said one advantage of this situation was that CEPD was no longer constrained by ACOE considerations. CEPD now has more flexibility.

**Adjourn**

There being no further business, Chairman Boyle adjourned the meeting at 2:20 P.M.