



TOWN OF EAST HAMPTON

159 Pantigo Road
East Hampton, New York 11937

The Downtown Montauk Stabilization Project Frequently Asked Questions As of November 18, 2015

1.) What is FIMP?

FIMP stands for the Fire Island to Montauk Point Reformulation Study (FIMP).

The purpose of FIMP is to identify, evaluate and recommend long-term solutions for hurricane and storm damage reduction for homes and businesses within the floodplain extending along 83-miles of ocean and bay shorelines from Fire Island Inlet to Montauk Point. This area extends as far landward in some locations as Sunrise Highway and Montauk Highway. The study considers all areas within the maximum estimated limit of flooding, and is located entirely within Suffolk County. This encompasses the Atlantic and bay shores of the Towns of Babylon, Islip, Brookhaven, Southampton, and East Hampton and incorporated Villages. The study area also includes 26 miles of the Fire Island National Seashore, which is under the jurisdiction of the National Park Service.

Congress and New York State have asked the United States Army Corps of Engineers (ACOE) to develop a comprehensive long-term plan of protection for areas that are prone to flooding, erosion and other storm damage. This plan would replace the numerous uncoordinated measures that have been used to protect individual properties with a comprehensive management approach that considers the entire coastal system. The objective of the study, therefore, is to evaluate and recommend a long-term, comprehensive plan for storm damage reduction, which maintains, preserves or enhances the natural resources. The New York State Department of Environmental Conservation (NYSDEC) is the Corps' non-Federal partner.

2.) What is the Town's understanding of the ACOE's plan for Montauk under FIMP?

It is the Town's understanding that a major beach replenishment project estimated at \$20 million will be proposed for Montauk under FIMP. The actual proposal has not been revealed yet and is projected to be announced sometime in 2016.

3.) How does the current Downtown Montauk Stabilization Project (Montauk Project) fit into FIMP?

On October 29, 2012, Hurricane Sandy hit New York, devastating and causing severe beach erosion to the shoreline and other areas of Montauk. In particular, Sandy resulted in erosion of the beach that provides protection to Downtown Montauk. Sandy's storm surge thus resulted in damage to Downtown Montauk's commercial buildings.

In response to Sandy's devastating impact, Congress passed the Disaster Relief Appropriations Act, Public Law 113-2, providing full Federal funding of the FIMP Reformulation Project. Once funding became available, the ACOE decided to go forward with a smaller, emergency project in Downtown Montauk. The Project does not constitute the Corps' full efforts to undertake and implement the ongoing FIMP Reformulation Project. Rather, it is a one-time, stand-alone storm protection measure aimed at addressing an area stated to be especially, and immediately, vulnerable to storm damage. The area of the Project construction is the Downtown Montauk beach area from South Emery Street to the Atlantic Terrace Motel. The stated purpose of the Montauk Project is to provide protection to Downtown Montauk – protection that the Sandy-eroded beach can no longer provide.

4.) Who are the parties involved in the Montauk Project?

The U. S. Army Corps of Engineers (ACOE), New York State Department of Environmental Conservation (NYSDEC), and Suffolk County are all working with the Town of East Hampton to promote erosion control and storm damage reduction measures on Town-owned properties located within the Downtown Montauk Stabilization Project area.

5.) Who is the lead agency on the Montauk Project?

This is a federal project and the ACOE conducted the federal environmental review pursuant to National Environmental Policy Act (NEPA) while the NYSDEC is the lead agency that conducted the environmental review for the state under the New York State Environmental Quality Review Act (SEQRA).

6.) What role does the Town of East Hampton play?

In order for the Downtown Montauk Stabilization Project to proceed, the ACOE and NYSDEC required that a local municipality agree to be the Local Sponsor of the Project. The Town of East Hampton by resolution, adopted on November 20, 2014, agreed to be the Local Sponsor.

7.) What is the responsibility of the Local Sponsor?

The Local Sponsor is responsible for the cost and performance of operation, maintenance, repair, and rehabilitation of the Project. By Resolution No. 765-2014, adopted on October 7, 2014, the County of Suffolk agreed to share equally in the operation and maintenance costs for the Project and has entered into an Inter-municipal Agreement with the Town of East Hampton.

Therefore the Town and County are responsible for the maintenance of the bags, sand cover, snow fencing, and walkways upon completion of the project. There is an executed agreement for the County and Town to share this cost on a 50/50 basis. The Army Corps has estimated the average annual maintenance cost at \$150,000 per year. Of course in any given year this cost could be higher or lower. In the event of a federally declared disaster the ACOE would be responsible for the repair of the project under federal law.

8.) When did discussions first begin regarding a project with the ACOE?

Discussions first began just after Sandy. The first Town Board resolution on a project in the Downtown area was introduced and unanimously adopted on April 18, 2013.

Resolution 2013-373 stated:

WHEREAS, the Montauk Business District has suffered severe erosion due to Super Storm Sandy and remains at risk; and

WHEREAS, preventing the loss of businesses, tourism, recreational and natural resources is paramount to the economic survival of Montauk; and

WHEREAS, there is a broad support in the local community to restore the wide sand beach and protective dunes along approximately 2.5 miles of shoreline; and

WHEREAS, the Town of East Hampton desires to entertain options for an engineered beach, now, therefore be it

RESOLVED, that the Town of East Hampton respectfully supports Federal funding and attendant coastal engineering resources from the Army Corps of engineers for an engineered beach.

9.) Did the Town Board hold public discussions about a federally funded project in Downtown Montauk?

The Town Board spent close to three years reviewing this project. The Town Board typically holds close to sixty open meetings per year and allows public comment at each meeting. There were approximately ten public meetings over the past three years held by the Town Board during which this project was discussed with specificity. Two of those meetings were special meetings held, in addition to the Town Board's normal meetings, where the Army Corps of Engineers appeared to describe the Project and answer questions, one of which was held in Montauk. The Town Board passed numerous resolutions in furtherance of this project, all of which are available as part of the public record. Moreover, the Project has been widely publicized in the local newspapers throughout the Board's review.

10.) What were the original alternatives presented by the ACOE?

The ACOE presented five alternatives at the meeting held in East Hampton Town Hall on September 26, 2013:

- 1.) Sand only
- 2.) Relocation of hotels
- 3.) Feeder beach
- 4.) Sand and buried rock
- 5.) Groins

11.) When did the geotextile technology option get added to the list of alternatives?

On October 5, 2013, the Concerned Citizens of Montauk (CCOM), invited Dr. Orrin H. Pilky, a professor emeritus of earth and ocean sciences at Duke University and a marine and coastal geologist specializing in the study of ocean beaches and coastal policy, and Dr. Stephen P. Leatherman, a professor and director of the laboratory for coastal research at Florida International University, to offer their insight at the meeting, named, "Beaches or Boulders: Montauk's Future Shoreline."

At the meeting the East Hampton Press published an article on October 8, 2013 entitled: *Coastal Experts Offer Input on Protecting Montauk's Beaches, Downtown*. The article stated: "Dr. Leatherman said he supports maximizing the amount of sand placed on the beaches to make them as wide as possible, but advised against hard structures. When the beaches erode, a buried seawall will become exposed, and such structures will be stuck there, he said. They never get removed. By that point, he said, the Army Corps will have moved on and Montauk will no longer be a priority, as it is now, because of the

destruction from Superstorm Sandy. To protect businesses, however, he suggested placing geotubes, or large bags pumped full of sand, under the beach. They can build up sand like a seawall, but have the advantages of not being a hard structure and have the possibility of taken out easily down the road.”

Following the CCOM meeting, the Town Board adopted Resolution 2013-1139 requesting that the ACOE consider an option that called for geotextiles. The resolution read as follows:

WHEREAS, the Montauk Business District suffered severe erosion due to Super Storm Sandy and remains vulnerable and at risk, both physically and financially; and

WHEREAS, preventing the loss of businesses, tourism, recreational and natural resources is paramount to the economic survival of downtown Montauk and the Town of East Hampton; and

WHEREAS, the U.S. Army Corps of Engineers has previously presented the Town of East Hampton with potential options for rebuilding and protecting the ocean beaches of Montauk; and

WHEREAS, the Town of East Hampton has narrowed the presented options of feeder beach; groins; relocation; sand; and sand and buried rock to two preferred options, specifically the sand only option and the rock and sand option, and is awaiting financial impact recommendations from the Army Corps of Engineers, now, therefore be it

RESOLVED, that in anticipation of the final recommendations of the U.S. Army Corps of Engineers, the Town of East Hampton respectfully approves and submits to the Corp the additional option of inclusion of geotextile tube technology and soft structure shoreline protection systems as a third preferred option.

12.) How did the ACOE ultimately decide which alternative to pursue?

The ACOE considered each option and, after conducting three years of review, authorized the current project. Further information on the ACOE review is available at:

<http://www.nan.usace.army.mil/Missions/CivilWorks/ProjectsInNewYork/FireIslandtoMontaukPointRef ormulationStudy.aspx>

13.) What are the specifics of the Montauk Project?

The Project consists of stabilizing and reinforcing the existing dune along 3,100 ft. of the shoreline in downtown Montauk. The approximate \$8.4 million project calls for the installation of 14,000 sand filled geotextile bags weighing 1.7 tons each. The bags will be covered with 3 feet of sand.

The construction cost is 100% federally funded. The dune height is approximately at elevation 15 feet above the water line and will slope towards the water for a distance of about 50 feet. At certain times of high tides in the area where the beach is narrowest there will be very little flat beach. In addition the dune will be planted with beach grass and snow fenced on all four sides. Private property owners will be limited to one 4 foot path. The NYSDEC has required three public walkovers constructed of wood. These are perpendicular to the beach in existing public access points. There is no boardwalk running parallel to the beach.

There will be approximately 50,000 cubic yards of sand used in the project. Approximately 14,000 cubic yards will be required for the 3 feet of cover sand and the source of this sand is excavated sand on site. The balance or 36,000 cubic yards used to fill the bags and some fill will be trucked from a sand quarry approved by the ACOE.

14.) Opponents to the Project have stated that geotextile bags violate the Town's LWRP which states that "only non-structural measures are permitted to minimize flooding and erosion". Are geotextile bags structural or non-structural? In other words, are they a hard or soft solution?

According to the ACOE the Project does not run afoul of those restrictions because dune reinforcement via the use of geotextile bags is "non-structural". The ACOE asserts that the use of geotextile bags are consistent with the "nourishment of beaches and dunes with appropriate material" as allowed pursuant to New York State's coastal erosion hazard area regulations. Moreover, the federal court's report and recommendation upheld the ACOE's position with regard to the non-structural status of the geotextile bags and the requisite consistency determinations made by the ACOE.

15.) Who is the contractor for the Project?

The Project has been awarded by the ACOE to a company known as H&L Contracting, LLC at a cost of \$8.4 million.

16.) What is the timetable for the Project?

To avoid interference with beach season, the ACOE agreed to start the Project beginning in October 2015. H&L began mobilization efforts – setting up equipment, machinery and office trailers – on or about October 1, 2015. The construction phase was set to begin on or about October 15, 2015 but was delayed due to a nor'easter and an action brought by Defend H2O seeking a temporary restraining order (TRO). The TRO was then denied. Construction began the first week of November and is expected to be complete by January 31, 2016.

17.) Will the beach be closed during the construction?

Parts of the beach will be closed until the completion of the Project, which is scheduled for February 2016. Upon completion of the Project, the full beach will re-open and the community will have full access to the beach.

18.) What was the outcome of Defend H2O's motion to obtain a temporary restraining order to halt the Project?

On October 1, 2015, Defend H2O and other parties brought a motion seeking a temporary restraining order and preliminary injunctive relief to federal court in an effort to stop this project. The Honorable Arthur D. Spatt, the United States District Court Judge to whom this matter is assigned held a hearing, denied the TRO on October 2, 2015 and referred the matter to the Honorable Magistrate Anne Shields to make a recommendation with regard to the requested preliminary injunction. Magistrate Shields made her recommendation and the parties must wait for Judge Spatt to render a final determination.

In an extremely well reasoned, 35 page decision, the Honorable Magistrate Anne Shields recommended denying the request for the preliminary injunction. The Magistrate offered, in part, the following rationale:

1. Consistency Review

The Court recommends upholding the Army Corps August 11, 2014, determination that the project is consistent with the State's Coastal Management Program (CMP) and the Town's Local Waterfront Revitalization Program (LWRP). The consistency determination is comprised of a cover letter and

two reports; one specifically addressing twenty-one potentially impacted LWRP policies and the other specifically addressing twenty-four potentially impacted CMP policies. The Court set forth the standard of review as requiring the proposed project be “carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of the approved CMP.” On October 24, 2014, the State issued a concurrence with consistency determination and agreed with the Corps that the project was consistent with the State CMP and LWRP. Pursuant to federal case law, the court found that where the state agrees with the federal consistency determination, federal Coastal Zone Management Act compliance is complete and the project may proceed.

2. NEPA Environmental Review

Likewise the Court recommends upholding the Corps environmental assessment of this project stating that “it is clear that, as a matter of substance, the Environmental Assessment and Finding of No Significant Impact (FONSI) are well supported documents. Indeed the Court specifically reviewed the “no action” alternative considered by the Corps, citing the Corps conclusion that taking no action would “likely result in major damage to structures and possibly human safety, since the majority of the Downtown Montauk project area lies within the 100 year floodplain. Therefore even no action has negative environmental consequences, since during catastrophic storm events, no action will probably mean a loss of property and potentially even human life.”

3. Balance of Equities and Public Interest

The Court stated:

Although financial issues are significant, this courts recommendation as to the balance of equities question is not based solely upon the cost of delay and the loss of funding. Instead, the Court relies additionally on the clear public interest that will be hindered by a grant of the preliminary relief sought by Plaintiffs. There can be no question but that Long Islanders, including all those who live, work or visit the area sought to be protected by the project, have suffered catastrophic property and personal loss as a result of past hurricanes and other storms. New York’s latest tragic flooding took place almost three years to the date of this opinion in the form of Hurricane Sandy. It was that event that finally led the Federal government to fully fund disaster relief aimed at protecting coastal communities and citizens from future storms....It is clear that any order delaying the project , for even a short period of time, will put the shoreline in danger, and expose Montauk’s population to unnecessary risk. It is thus clear that the balance of equities and public interest weigh overwhelmingly against the injunctive relief sought.

19.) What is the Town Board’s responsibility to the community?

The Town Board is charged with the responsibility of protecting the health, safety and welfare of the people of the Town of East Hampton, and in this case Montauk. Municipalities enjoy the power to regulate persons and property for the purpose of securing the public health, safety, welfare, comfort, peace and prosperity of the municipality and its inhabitants. The Town Board cannot ignore the specific findings made in the Corps’ environmental review nor can it ignore the Court’s rationale in protecting the public’s interest. While this may anger and disappoint those citizens protesting against the Project, the Town Board’s charge under the law to protect its citizenry is paramount to any arguments that have presented to the Town Board. Indeed the Town Board has made every effort to listen to and consider the constituents that are protesting the Project. While community members are demanding that the Town Board share the costs of cancelling this project with the public, the potential monetary costs and damages are not the sole focus of the Corps, the Court or the Town Board. The potential risk to

property and human life that the next storm could bring, as articulated by the Corps and the Court, supersedes the costs and is not a risk that the Town Board is willing to take.

20.) Why can't the Town Board temporarily "pause" the Montauk Project so that the plans can be modified?

Any reformulation of this project would take at least another three years of review, leaving the shoreline unprotected and vulnerable to another storm. Those opposing the Project have requested a "pause" of the Project, in order to reconsider and perhaps modify the approved plan. Without any real, expert input setting forth a viable alternative, the Town is left with the "no action" plan which the Court specifically addressed, and found likely to result in major damage to property and potentially human life by leaving the shoreline and downtown Montauk unnecessarily vulnerable to the ravages of the next storm. Moreover, any considerable delay incurs extra costs to the contractor and necessarily the Corps and could take away from the potential benefits of the greater FIMP project.

21.) Why can't the Town purchase and operate its own dredge?

Ocean dredges are different from other dredges in that they are substantially more expensive and require specifically qualified persons to operate it. There are only five ocean certified contractors in the United States. Pursuant to prior reports from the ACOE an ocean dredge can cost approximately 5-7 million dollars to mobilize.

22.) There has been some talk about creating an Erosion Control District. What specifically is an Erosion Control District?

A beach erosion control district is a special improvement district, or a means by which the Town may furnish special district services or functions to taxpayers in specific areas of the Town. New York State statute, known as Town Law Article 12 and 12-A, allows a town to establish special improvement districts.

The Town has the authority create beach erosion control districts to stop erosion within each district and to prevent or alleviate further damage from such erosion. The districts may contract for or construct improvements as may be necessary to carry out their purposes.

Those properties located within the district pay the cost of supplying the services and special improvements the district furnishes. The cost is paid by taxes assessed, levied, and collected from real property located within the boundaries of the district according to the assessed value of said property. The Town Board would act as the Commission for the Erosion Control District.