

**F. Consent Agenda - Natural Resources Management  
ITEM 1.**



**AGENDA REPORT  
July 23, 2019**

**Land certification for the Mid Reach of the Brevard County Federal Shore  
Protection Project**

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**SUBJECT:**

Land certification for the Mid Reach of the Brevard County Federal Shore Protection Project

**FISCAL IMPACT:**

No direct fiscal impact by this land certification. The Tourism Development Office Beach Improvement Fund and matching state grants include funds for additional legal expenses, if any. No general funds will be used.

**DEPT/OFFICE:**

Natural Resources Management

**REQUESTED ACTION:**

It is requested that the Board: (1) Authorize the Chair to execute all Certifications of Lands, including the attached conditional certification for easements that are under appeal, for the Mid Reach of the Brevard County Shore Protection Project, as prepared by the County Attorney's Office.

**SUMMARY EXPLANATION and BACKGROUND:**

On August 31, 2016 the Board of County Commissioners entered into a Project Partnership Agreement with the US Army Corps of Engineers (USACE) to serve as the local sponsor for the Mid Reach Brevard County Shore Protection Project. This agreement requires that Brevard acquire the real estate interest ("lands") required for the project. On October 23, 2018 the Board approved a Resolution of Necessity and directed the County Attorney's Office to proceed with the "quick take" process to acquire the final five easements. On May 7, 2019 the BOCC authorized the Chair to execute all Certification of Lands for the project, subject to receipt of an Order of Taking. The County succeeded in this action and received an Order of Taking from the Court for these five easements on May 23, 2019.

The USACE must have land certification by the end of July, before they open bids for initial construction of the project. Brevard County currently holds all of the easements necessary for the project, but the Order of Taking for the final five easements has been appealed. The appeal will not be settled for months. Staff request authority for the County Attorney and the Chair to move forward by providing a conditional certification of

lands to the USACE, making it clear that we have the lands necessary for initial construction of the project unless the County's easement ownership is overturned on appeal. The Board took similar action in October/November 2000, when they approved a conditional land certification for the North Reach of the Federal Shore Protection Project while some easements were under appeal. In the North Reach, that appeal was denied.

Moving forward with certification of lands for the project while under appeal is essential to meet the project timeline. The Mid Reach project is planned to be constructed in combination with the South Reach project, between November 1, 2019 and April 30, 2020. Construction must begin on time in order to assure completion by the April 30 permit-imposed deadline. The USACE currently has the work out to bid. The bid opening and contracting process must move forward without delay to allow successful project completion. This requires the County to certify lands by the end of July.

Any delay in the certification of lands would result in delaying the project at least a year with very significant risk of losing the federal funding. The federal funds dedicated to the project have exceptionally tight expiration timelines. In total, there are approximately \$37 million federal dollars in hand for the project. This includes \$8.6 million of Federal Flood Control and Coastal Emergency funds for renourishing the South Reach, requiring no non-federal match. It also includes \$28.4 million of FY 2018-19 appropriations for the Mid Reach. This Mid Reach appropriation includes not just the standard federal share, but also a large portion of the \$8.6 million dollar credit toward the non-federal share, owed by the federal government and finally allocated in this fiscal year federal budget.

Failure to certify lands in July would not only delay the project a year or more and cause the county to lose some or all of the \$37M in federal funds, but it would also negatively influence our reputation with the Congressional Delegation and USACE leadership with whom we partnered to secure this unusually large amount of federal funding for a single construction season.

Legal expenses associated with easement acquisition were anticipated and included in the County's Beach Improvement Budget dedicated to the Mid Reach project. These expenses will be credited toward our non-federal match for the project, effectively resulting in the USACE paying approximately 50% of the legal expenses. In addition, the county has already secured a state grant containing dedicated state match for a nearly half of the non-federal share of easement acquisition costs. The net result is that Brevard's share of the total easement acquisition costs will be approximately 25%.

Brevard has been working on the Mid Reach for over 15 years. The County and State have spent over \$8 million on the project so far, which has been matched by a similar level of federal funds. This work includes permitting, design and construction of the \$11 million mitigation reef for the project, which was just completed in June 2019. A public notice for the Erosion Control Line (authorized by the Board on May 7, 2019) was just mailed to over 2,000 oceanfront residents announcing that the project would begin construction in 2019. With all this investment, additional funds at stake, and public anticipation, it seems to be in the County's best interest to proceed with conditional land certification rather than wait for a court decision on the appeal. Therefore, it is requested the County Commission authorize moving forward with conditional land certification, subject to eventual results of the appeal, as was done for the North Reach of the Shore Protection Project in 2000.

The County Attorney's Office has confirmed that the conditional certification is acceptable to the USACE. Should the County not prevail on the appeal, there could be additional costs for legal fees or damages. Funding for these expenses are available in the Tourism Development Office (TDO) Beach Improvement Fund with cost share available in state grants.

**ATTACHMENTS:**

**Description**

- **Title Certificate 2**
- **Certification2Final**
- **Mid Reach Cert Map 2019 Final**



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July 24, 2019

**MEMORANDUM**

**TO:** Virginia Barker, Natural Resources Management Director

**RE:** Item F.1., Land Certification for the Mid Reach of the Brevard County Federal Shore Protection Project

The Board of County Commissioners, in regular session on July 23, 2019, authorized the Chair to execute all Certifications of Lands; and accepted the County Attorney Office's conditional certification for easements that are under appeal for the Mid Reach of the Brevard County Shore Protection Project. Enclosed is a fully-executed Certification of Lands.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

## CERTIFICATION OF LANDS

**Certificate Number: 02**

**Project Name: Brevard County Shore Protection Project Segment:  
Mid Reach**

The Board of County Commissioners of Brevard County, Florida, (hereinafter referred to as "County") as Local Sponsor of the Brevard County Shore Protection Project authorized by Public Law Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303 and Section 3045(a) of the Water Resources Development Act of 2007, Public Law 110-114, under Project Partnership Agreement dated August 31, 2016, does hereby certify that the below described lands are approved for use in the Brevard County Shore Protection Project Mid-Reach Segment and shall not be conveyed, transferred, or otherwise altered or encumbered without express written consent of the Department of the Army acting by and through the Assistant Secretary of the Army for Civil Works or the designated representative, except in the event the County's easement ownership is overturned on appeal.

The County does certify that it owns the below described interests in the lands depicted on the attached Brevard County Shore Protection Project Easement Certification Map at the time of execution of this Certificate and that these recited interests will not be impaired during the life of the Project except as provided above. The County also certifies that all persons and business that have been displaced by acquisition of below lands have been relocated in full compliance with Public Law 91-646, as amended and that the other provisions of Public Law 91-646, as amended, have been complied with.

The County does hereby grant to the Department of the Army an irrevocable right to enter for purposes of construction, inspection and, if necessary, for the purpose of completing, operating, repairing, maintaining, replacing, or rehabilitating the Project upon lands which the County owns or controls for the Project.

The County hereby certifies that it has at least the following minimum interest in the lands depicted on the Brevard County Shore Protection Project Easement Certification Map and as identified thereon:

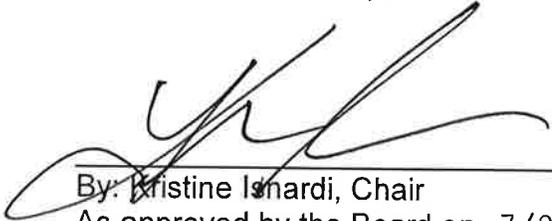
By virtue of the Order of Taking granted on May 23, 2019, in Brevard County v. Altman, et al, Case No. 05-2018-CA-055386, in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Temporary Beach Storm Damage Reduction Easements for the following properties:

- (1) John M. Pinter and Jane E. Pinter,  
as Trustees of the John M. Pinter  
and Jane M. Pinter Trust U/A/D 5/12/08  
Parcel ID#: 26-37-26-00-760  
BRP 29
- (2) Hubbard Investments, Inc.  
Parcel ID# 27-37-24-75-1-9  
BRP 133
- (3) Daniel Hasratian  
Karine Melkounian  
Parcel ID# 27-38-30-50-\*-29  
BRP 172
- (4) Daniel Hasratian  
Karine Melkounian  
Parcel ID# 27-38-30-50-\*-31  
BRP 173
- (5) Estate of Thirrel A. Altman Sr., Roberta M. Altman,  
Thad Altman, Alex B. Altman, Deborah A. Pooley  
Parcel ID# 27-38-30-50-\*-32  
BRP 174

In the event that the Order of Taking is overturned prior to construction of the Project on the five subject parcels, this Certification of Lands 2 automatically expires and construction cannot proceed on these parcels until a replacement certification of lands is provided.

BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA

Dated: July 23, 2019

  
By: Kristine Lenardi, Chair  
As approved by the Board on 7/23/19

ATTEST:

  
SCOTT ELLIS, CLERK

## ATTORNEY'S TITLE CERTIFICATE

### Title Certificate Number 2

I, Christine Valliere, Assistant County Attorney for the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida, with its principal office at 400 South Street, Titusville, Florida, do hereby certify that the County is vested with the recited estates, permits and authorizations in the lands shown on the Brevard County Shore Protection Project Mid-Reach Segment Easement Certification Map dated April 23, 2019 and as described in the attached Certificate.

There are no encumbrances that affect or limit the use of the agreement and permits for the performance of the Brevard County Shore Protection Project Mid-Reach Segment. All persons and business that have been displaced by acquisition of below lands have been relocated in full compliance with Public Law 91-646, as amended and that the other provisions of Public Law 91-646, as amended, have been complied with.

The person who executed Certification No.2 was empowered to execute same on behalf of Brevard County.

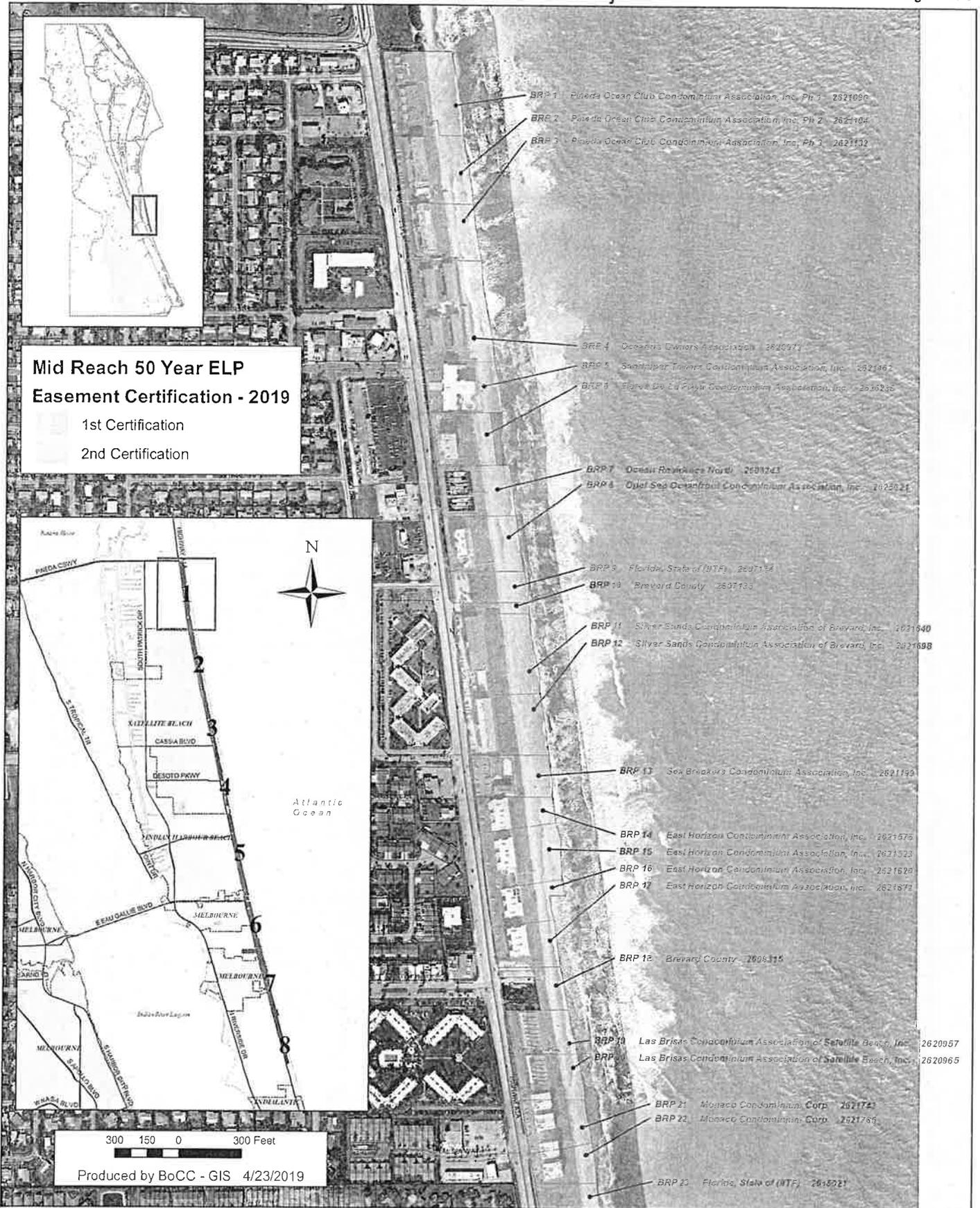
Dated and Signed this 23rd day of July, 2019.



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Christine Valliere  
Assistant County Attorney  
Board of County Commissioners of  
Brevard County, Florida

# Brevard County Shore Protection Project Easement Certification Map - 2019 50 Year Economic Life of Project



# Brevard County Shore Protection Project Easement Certification Map - 2019 50 Year Economic Life of Project







# Brevard County Shore Protection Project Easement Certification Map - 2019 50 Year Economic Life of Project



**Mid Reach 50 Year ELP  
Easement Certification - 2019**  
1st Certification  
2nd Certification



300 150 0 300 Feet  
Produced by BoCC - GIS 4/23/2019





