



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940 5

Consent

F.31.

10/11/2022

Subject:

Resolution of Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project and Authority to Certify Lands

Fiscal Impact:

This agenda item will have no fiscal impact to the General Revenue Fund. Each easement has been appraised and acquisition costs are eligible for federal and state cost-sharing. The County will be responsible for the value of the easements, court costs and the property owners' reasonable attorney's fees and costs. The County's cost share (approximately 21%) will be funded by the Tourist Development Tax Beach Improvement Fund. The remaining 79% will be funded by state grants and federal cost credits.

Dept/Office:

County Attorney's Office and Natural Resources Management

Requested Action:

It is requested that the Board of County Commissioners adopt the attached Amended Resolution of Necessity and authorize the Chair to execute the resolution for the Mid-Reach Segment of the Brevard County Shore Protection Project. It is further requested that the County Attorney's Office and staff be directed to proceed with this action in accordance with the statutory requirements set forth in Chapters 73 and 74, Florida Statutes, applicable to "quick-take" proceedings. Finally, it is requested the Board authorize the Chair to execute all Certifications of Lands for the Mid Reach of the Brevard County Shore Protection Project as prepared by the County Attorney's Office.

Summary Explanation and Background:

The Brevard County Shore Protection Project is a federally authorized beach renourishment project constructed through the U.S. Army Corps of Engineers (USACOE). Brevard County, as the local sponsor, is contractually obligated to obtain easements required for the Project. The North and South Reaches were previously constructed in the early 2000's and are under periodic nourishment. The Mid-Reach Segment includes restoration of 7.8 miles of beach area, south of Pineda Causeway connecting to the South Reach, north of Indialantic. Periodic nourishment is anticipated to occur approximately every three years, over the next 50 years.

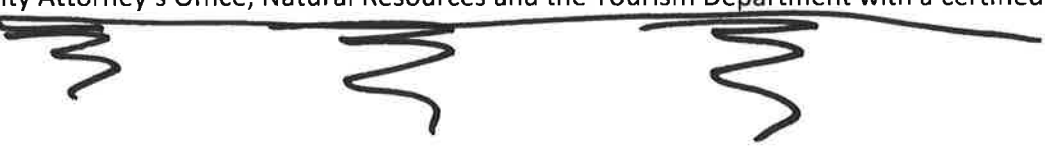
The Board previously adopted Resolution 2018-175 and 2019-046 authorizing the acquisition of easements across five properties for the placement of sand in the Brevard County Shore Protection Project Mid-Reach Segment. Eminent domain proceedings commenced and the 18th Judicial Circuit granted an Order of Taking on May 23, 2019. The initial construction of the Mid-Reach shore protection project was completed in May 2020. However, the Order of Taking was appealed by the five landowners and overturned by the 5th DCA on July 10, 2020. Since the taking was overturned, the U.S. Army Corps of Engineers amended the Project

Partnership Agreement and the required easement language to clarify that the Corps requires a "right of public use of, and access to, such shores by all on equal terms in a manner compatible with the authorized purpose of the project." The Corps has further specified that the easements be from the 14-foot elevation level surveyed in 2018. The Corps and Brevard County signed the amended Project Partnership Agreement on July 18, 2022. Additionally, one of the four landowners sold their property and the new landowner voluntarily signed the Corps beach protection easement. Four properties remain to be acquired. The first renourishment of the Mid-Reach segment is scheduled to begin in November 2023. A new resolution of necessity is required in order to institute the eminent domain process to acquire the four remaining easements which are a pre-requisite to all renourishment of the Mid-Reach segment.

The US Army Corps has requested that Brevard re-certify lands for the Mid Reach project prior to April 1, 2023. This timeline is to allow project construction to begin November 1, 2023 as planned. In order to meet this deadline, staff is requesting authority for the Chair and County Attorney's Office to proceed with certification of all lands with current easements or certificates of use (COUs) in place, and also with certification of the final four easements addressed by this resolution of necessity upon the successful acquisition of the easements by the Order of Taking Hearing or other mechanism.

Clerk to the Board Instructions:

Please provide the County Attorney's Office, Natural Resources and the Tourism Department with a certified copy of the Resolution.





October 12, 2022

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Director

RE: Item F.31., Resolution for Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project and Authority to Certify Lands

The Board of County Commissioners, in regular session on October 11, 2022, approved and adopted Resolution No. 22-139, for the Mid-Reach Segment of the Brevard County Shore Protection Project; directed the County Attorney's Office and staff to proceed with this action in accordance with the statutory requirements set forth in Chapters 73 and 74, Florida Statutes, applicable to "quick-take" proceedings; and authorized the Chair to execute all Certifications of Lands for the Mid Reach of the Brevard County Shore Protection Project as prepared by the County Attorney's Office. Enclosed is a fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

Encl. (1)

/tr

cc: County Attorney
Tourism Development
Finance
Budget

RESOLUTION NO: 2022 - 139

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, DECLARING THE NECESSITY TO ACQUIRE CERTAIN REAL PROPERTY EASEMENTS LOCATED IN BREVARD COUNTY FOR THE PLACEMENT OF SAND FOR THE MID-REACH SEGMENT OF THE BREVARD COUNTY SHORE PROTECTION PROJECT ALONG THE ATLANTIC OCEAN ON THE PROPERTY DESCRIBED HEREIN.

RECITALS

WHEREAS, to maintain safe and sufficient hurricane evacuation routes, protect upland structures and infrastructures, preserve nesting habitat for sea turtles and preserve areas for public recreation, it is necessary to elevate and widen certain areas of the shoreline along the Atlantic Ocean; and

WHEREAS, Congress authorized the construction of the North Reach Segment and South Reach Segment of the Brevard County, Florida, Shore Protection Project through the enactment of Section 101(b)(7) of the Water Resources Development Act of 1996, Public Law 104-303; and

WHEREAS, Section 3045(a) of the Water Resources Development Act of 2007, Public Law 110-114, authorized the Secretary to modify the original project to include the Mid-Reach Segment upon a determination by the Secretary, following completion of the general reevaluation report, that such shoreline protection is feasible; and

WHEREAS, the Assistant Secretary of the Army on September 8, 2014 approved the general reevaluation report and determined that the locally preferred plan for the Mid-Reach Segment is feasible, and

WHEREAS, the Department of the Army and Board of County Commissioners entered into a Project Partnership Agreement dated August 31, 2016, as amended July 18, 2022, setting forth the obligations of the parties for the construction of the Mid-Reach Segment of the Brevard County Shore Protection Project; and

WHEREAS, the scope of the Mid-Reach Segment includes initial restoration of approximately 7.8 miles of beach area with periodic renourishment of the same areas every three years, as needed, with a total project life of at least fifty (50) years; and

WHEREAS, construction of the nearshore reefs for environmental mitigation was completed in June 2019; and

WHEREAS, initial construction of the Mid-Reach Segment was completed in May 2020; and

WHEREAS, the first renourishment of the mid-reach segment is scheduled to begin in November 2023; and

WHEREAS, Brevard County, as the Local Sponsor of the Shore Protection Project, has the responsibility to acquire easements over properties where the sand will be placed; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, finds that the renourishment of oceanfront beaches is necessary and in the best interest of the public's health, safety and welfare; and

WHEREAS, easements over all the properties within the scope of the Mid-Reach Segment for the placement of sand is necessary to ensure the success of the overall project; and

WHEREAS, these easements have been shown to be fit for placement of sand in the Mid-Reach Segment.

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida as follows:

1. The recitals above are true and correct and incorporated herein by this reference.
2. Necessity is hereby declared to exist for acquisition and condemnation of easements on certain real property, as shown in Exhibits "A-1 through A-4" located in Brevard County, Florida for the placement of sand in the Mid-Reach Segment of the Brevard County, Florida, Shore Protection Project.
3. The interest to be acquired in the real property, described in Exhibits "A-1 through A-4" is a perpetual and assignable easement and right-of-way in, on, over and across the land described in Exhibits "A-1 through A-4" for use by the Board of County Commissioners of Brevard County, Florida (hereinafter referred to as "Board"), its representatives, agents, contractors and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach and other erosion control and storm damage reduction measures together with appurtenances thereto, including the right to deposit sand; to accomplish any alterations of contours on said land; to construct berms and dunes; to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; and to perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Mid-Reach Segment of the Brevard County, Florida, Shore Protection Project or beach renourishment project sponsored by the Board, together with the right of public use of, and access to, such shores by all on equal terms in a manner compatible with the authorized purpose of the project; to plant vegetation on said dunes and berms; to facilitate preservation of dunes and vegetation; to trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the limits of the easement, reserving, however, to the Defendant(s), (his) (her) (its) (their)

(heirs), successors and assigns, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from the Board and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the Defendant(s), (his) (her) (its) (their) (heirs), successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; subject however to existing easements for public roads and highways, public utilities, railroads and pipelines.

4. The Office of the County Attorney is directed to acquire or condemn the interest in real property described herein at Exhibits "A-1 through A-4." The office of the County Attorney is authorized to initiate and institute proceedings pursuant to Chapter 74 of the Florida Statutes for the exercise of the power of eminent domain to obtain the possession and title of the property in advance of the final judgment as provided by law and determined necessary by this Commission for the public purposes set forth herein.

5. This resolution shall be effective immediately upon adoption.

DONE, ORDERED and ADOPTED in Regular Session this 11 day of

OCTOBER, 2022.

ATTEST:


Rachel Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Kristine Zonka, Chair

(As approved by the Board on 10/11/22)

EXHIBIT "A-1"

A PORTION OF LOT 32, PLAT OF FIRST ADDITION TO OCEAN PARK AS RECORDED IN PLAT BOOK 9, PAGE 25 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING ALL THAT LAND WHICH LIES EAST OF THE SEAWARD LOCATION OF THE 14 FOOT ELEVATION CONTOUR, BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, AS LOCATED ON AUGUST 13, 2018, AS SHOWN ON MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 15, PAGES 93 THROUGH 98 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING THOSE LANDS LYING WITHIN THE FOLLOWING PARCEL OF REAL PROPERTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWESTERLY CORNER OF THE SAID LOT 32; THENCE N73°35'44"E ALONG THE NORTH LINE OF THE SAID LOT 32, A DISTANCE OF 251.01 FEET TO A POINT ON THE 14.0 FOOT CONTOUR LINE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, AS LOCATED ON AUGUST 13, 2018, AS SHOWN ON THE MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 15, PAGES 93 THROUGH 98 AND THE POINT OF BEGINNING; THENCE CONTINUE N73°35'44"E ALONG SAID NORTH LINE A DISTANCE OF 212.33 FEET TO THE EROSION CONTROL LINE AS DESCRIBED IN OFFICIAL RECORDS BOOK 8496, PAGES 718 THROUGH 725 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S19°02'22"E ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 100.11 FEET TO THE SOUTH LINE OF SAID LOT 32; THENCE S73°35'44"W ALONG THE SOUTH LINE OF SAID LOT 32, A DISTANCE OF 209.96 FEET TO A POINT ON THE SAID 14.0 FOOT CONTOUR LINE; THENCE N17°31'03"W, CONTINUING ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 49.14 FEET; THENCE N19°11'11"W, CONTINUING ALONG SAID 14 FOOT CONTOUR, A DISTANCE OF 34.61 FEET; THENCE N31°17'15"W, CONTINUING ALONG SAID 14 FOOT CONTOUR, A DISTANCE OF 16.86 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,930.038 SQUARE FEET, 0.48 ACRES MORE OR LESS.

Parcel ID Number:
27-38-30-50-*-32

Owners: Thirrel A. Altman, Jr., Trustee

EXHIBIT "A-2"

A PORTION OF LOTS 29 AND 30, PLAT OF FIRST ADDITION TO OCEAN PARK AS RECORDED IN PLAT BOOK 9, PAGE 25 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING ALL THAT LAND WHICH LIES EAST OF THE SEAWARD LOCATION OF THE 14 FOOT ELEVATION CONTOUR, BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AS LOCATED ON AUGUST 13, 2018 AS SHOWN ON MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 15, PAGES 87 THROUGH 92 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING THOSE LANDS LYING WITHIN THE FOLLOWING PARCEL OF REAL PROPERTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWESTERLY CORNER OF THE SAID LOT 29; THENCE N73°35'44"E ALONG THE NORTH LINE OF THE SAID LOT 29, A DISTANCE OF 262.75 FEET TO A POINT ON THE 14.0 FOOT CONTOUR LINE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, AS LOCATED ON AUGUST 13, 2018, AS SHOWN ON THE MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 15, PAGES 87 THROUGH 92 AND THE POINT OF BEGINNING; THENCE CONTINUE N73°35'44"E ALONG SAID NORTH LINE A DISTANCE OF 190.81 FEET TO THE EROSION CONTROL LINE AS DESCRIBED IN OFFICIAL RECORDS BOOK 8496, PAGES 718 THROUGH 725 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S18°23'21"E ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 200.12 FEET TO THE SOUTH LINE OF SAID LOT 30; THENCE S73°35'44"W ALONG THE SOUTH LINE OF SAID LOT 30, A DISTANCE OF 202.60 FEET TO A POINT ON THE SAID 14.0 FOOT CONTOUR LINE; THENCE N14°32'59"W ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 113.64 FEET; THENCE N15°37'02"W, CONTINUING ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 86.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 39,249.344 SQUARE FEET, 0.90 ACRES MORE OR LESS.

Parcel ID Number:
27-38-30-50-*-29

Owners: Daniel Hasratian and Karine Melkounmian

EXHIBIT "A-3"

A PORTION OF LOT 31, FIRST ADDITION TO OCEAN PARK, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 9, PAGE 25 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING ALL THAT LAND WHICH LIES EAST OF THE SEAWARD LOCATION OF THE 14 FOOT ELEVATION CONTOUR, BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AS LOCATED ON AUGUST 13, 2018, AS SHOWN ON MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 16, PAGES 6 THROUGH 11 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING THOSE LANDS LYING WITHIN THE FOLLOWING PARCEL OF REAL PROPERTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWESTERLY CORNER OF THE SAID LOT 31; THENCE N73°35'44"E ALONG THE NORTH LINE OF THE SAID LOT 31, A DISTANCE OF 256.21 FEET TO A POINT ON THE 14.0 FOOT CONTOUR LINE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, AS LOCATED ON AUGUST 13, 2018 AS SHOWN ON THE MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 16, PAGES 6 THROUGH 11 AND THE POINT OF BEGINNING; THENCE CONTINUE N73°35'44"E ALONG SAID NORTH LINE A DISTANCE OF 202.25 FEET TO THE EROSION CONTROL LINE AS DESCRIBED IN OFFICIAL RECORDS BOOK 8496, PAGES 718 THROUGH 725 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S19°02'22"E ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 100.11 FEET TO THE SOUTH LINE OF SAID LOT 31; THENCE S73°35'44"W ALONG THE SOUTH LINE OF SAID LOT 31, A DISTANCE OF 214.38 FEET TO A POINT ON THE SAID 14.0 FOOT CONTOUR LINE; THENCE N08°54'35"W ALONG SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 52.53 FEET; THENCE N17°04'27"W, CONTINUING ALONG SAID 14 FOOT CONTOUR, A DISTANCE OF 37.62 FEET; THENCE N10°13'00"W, CONTINUING ALONG SAID 14 FOOT CONTOUR, A DISTANCE OF 10.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,708.255 SQUARE FEET, 0.48 ACRES MORE OR LESS.

Parcel ID Number:
27-38-30-50-*-31

Owners: Daniel Hasratian and Karine Melkounian

EXHIBIT "A-4"

A PORTION OF LOT 9, BLOCK 1, PLAT NUMBER ONE, OCEAN SHORES SUBDIVISION-OF-GLEASON LAND CORPORATION EAU GALLIE, FLORIDA AS RECORDED IN PLAT BOOK 9, PAGE 6 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING ALL OF THAT LAND WHICH LIES EAST OF THE SEAWARD LOCATION OF THE 14-FOOT ELEVATION CONTOUR, BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929, AS LOCATED ON AUGUST 14, 2018, AS SHOWN ON MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 16, PAGES 1 THROUGH 5 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING THOSE LANDS LYING WITHIN THE FOLLOWING PARCEL OF REAL PROPERTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWESTERLY CORNER OF THE SAID LOT 9, BLOCK 1; THENCE N74°49'51"E ALONG THE NORTH LINE OF THE SAID LOT 9, BLOCK 1, A DISTANCE OF 312.37 FEET TO A POINT ON THE 14.0 FOOT CONTOUR LINE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 AS LOCATED ON AUGUST 14, 2018, AS SHOWN ON THE MAP OF BOUNDARY SURVEY AS RECORDED IN SURVEY BOOK 16, PAGE 1 THROUGH 5, AND THE POINT OF BEGINNING; THENCE CONTINUE N74°49'51"E ALONG SAID NORTH LINE, A DISTANCE OF 129.91 FEET, TO THE EROSION CONTROL LINE AS DESCRIBED IN OFFICIAL RECORDS BOOK 8496, PAGES 718 THROUGH 725 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S15°11'56"E ALONG SAID EROSION CONTROL LINE, A DISTANCE OF 41.47 FEET; THENCE S15°48'57"E ALONG SAID EROSION CONTROL LINE, A DISTANCE OF 33.53 FEET, TO THE SOUTH LINE OF SAID LOT 9, BLOCK 1; THENCE S74°49'51"W ALONG THE SAID SOUTH LINE, A DISTANCE OF 122.98 FEET TO A POINT ON SAID 14.0 FOOT CONTOUR LINE; THENCE N28°31'16"W ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 22.19 FEET; THENCE N17°09'43"W, CONTINUING ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 17.85 FEET; THENCE N20°49'54"W, CONTINUING ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 20.19 FEET; THENCE N13°39'49"W, CONTINUING ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 15.48 FEET TO THE POINT OF BEGINNING.

CONTAINING 9,605.009 SQUARE FEET, 0.22 ACRES MORE OR LESS.

Parcel ID Number:

27-37-24-75-1-9

Owner: Hubbard Investments, Inc.