



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

F.10.

File #: 5450, Version: 1

Subject:

Resolution of Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project, Resolution of Authority to Act, and Authorization for Related Required Actions

Fiscal Impact:

This agenda item will have no fiscal impact to the General Revenue Fund. Acquisition costs are the responsibility of the County but eligible for federal cost-credits and state cost-sharing, totaling 79% of total costs. Each easement has been appraised. The County will be responsible for the value of the easements, appraisal costs, 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.

Dept/Office:

County Attorney's Office and Natural Resources Management

Requested Action:

Request the Board of County Commissioners adopt the attached Resolution of Necessity and authorize the Chair to execute the resolution for the Mid-Reach Segment of the Brevard County Shore Protection Project. Request 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. Request that the Chair be authorized to make the required pre-suit offer to the landowners at the appraised value of each easement, and execute all documents in connection therewith, if accepted. Request 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. Request the Board authorize Mr. Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department, and the Project Engineer, Kevin R. Bodge PhD, PE of Olsen Associates, Inc. to make engineering and project management related commitments on the County's behalf in condemnation proceedings regarding the Brevard County Shore Protection Project - Mid-Reach Segment.

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 initial 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 seaward 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 in order to acquire the four remaining easements which are a pre-requisite to the first renourishment of the mid-reach segment. The Board adopted Resolution 22-139 on October 11, 2022. However, in January 2023, a survey error was discovered, which affects the legal descriptions in Resolution 22-139, as well as the appraisals. Pursuant to the rules, the case has been voluntarily dismissed and the County must restart the process. Resolution 2022-168 adopted on December 20, 2022 authorized Mr. Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department, and the Project Engineer, Kevin R. Bodge PhD, PE of Olsen Associates, Inc. to make engineering and project management related commitments on the County's behalf in the eminent domain case that was dismissed. Both will testify as expert witnesses. A new Resolution is required. Approval of the Resolution of Necessity, Resolution of Authority for Mr. McGarry and Dr. Bodge, and the related required actions will permit the County Attorney's Office to refile all the necessary actions.

Clerk to the Board Instructions:

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



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999
January 25, 2023

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

MEMORANDUM

TO: Morris Richardson, County Attorney

RE: Item F.10., Resolution of Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project, Resolution of Authority to Act, and Authorization for Related Required Actions

The Board of County Commissioners, in regular session on January 24, 2023, approved and adopted Resolution of Necessity No. 23-007, for Mid-Reach Segment of the Brevard County Shore Protection Project; approved 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, to "quick-take" proceedings; authorized the Chair to make the required pre-suit offer to the landowners at the appraised value of each easement, and execute all documents in connection therewith, if accepted; authorized the Chair to execute all Certifications of Lands for the Mid-Reach of Brevard County Shore Protection Project as prepared by the County Attorney's Office; and approved and adopted Resolution No. 23-008, authorizing Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department, and Dr. Kevin R. Bodge, PhD, PE of Olsen Associates, Inc. to make engineering and project management related commitments on the County's behalf in condemnation proceedings regarding Brevard County Shore Protection Project – Mid-Reach Segment. Enclosed are fully-executed copies of each Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/tr

Encls. (2)

cc: Natural Resources Management
Tourism Development
Finance
Budget

RESOLUTION NO: 2023 - 007

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, the Atlantic Coast of Brevard County, Florida has experienced erosion of the shoreline over the last several decades, and all federally authorized segments of Brevard County's Shore Protection Project, including the Mid-Reach Segment, are designated "critically-eroded shoreline" by the State of Florida; and

WHEREAS, the State of Florida in section 161.088, Florida Statutes has stated beach erosion is a serious menace to the economy and general welfare of the people of Florida and that erosion has advanced to emergency proportions, and has declared it to be a necessary governmental responsibility to properly manage and protect Florida beaches fronting on the Atlantic Ocean from erosion; and

WHEREAS, the State of Florida in section 161.088, Florida Statutes has declared that beach restoration and nourishment projects are in the public interest in areas designated as "critically eroded-shoreline;" and

WHEREAS, the Board of County Commissioners for Brevard County, Florida (hereinafter the "Board") finds that 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 including the Mid-Reach Segment of the Brevard County Shore Protection Project; and

WHEREAS, the United States 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, as a result of the Project Partnership Agreement, the Brevard County Shore Protection Project – Mid-Reach Segment (hereinafter the Mid-Reach Segment) is a federal project that must satisfy all the requirements of the U.S. Army Corps of Engineers; and

WHEREAS, the scope of the Mid-Reach Segment includes initial restoration of approximately 7.8 miles of beach area (from between Florida Department of Environmental Protection (FDEP) monument R-75.4 to R-118.3) with periodic nourishment of the same areas every three years, as needed, with a total project life of at least fifty (50) years; and

WHEREAS, pursuant to the Mid-Reach Segment plans, construction of the nearshore reefs for environmental mitigation was completed in June 2019; and

WHEREAS, the 18th Judicial Circuit granted an Order of Taking for easements on May 23, 2019, initial construction of the Mid-Reach Segment was completed in May 2020, and the 5th District Court of Appeals overturned the Order of Taking on July 10, 2020; and

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

WHEREAS, section 161.021, Florida Statutes, defines beach nourishment as the maintenance of a restored beach by the replacement of sand, and beach restoration as the placement of sand on an eroded beach for the purposes of restoring it as a recreational beach and providing storm protection for upland properties; and

WHEREAS, Brevard County, as the Local Sponsor of the Brevard County Shore Protection Project – Mid-Reach segment, has the responsibility to acquire easements satisfactory to the Army Corps of Engineers over properties where the sand will be placed; and

WHEREAS, the Army Corps of Engineers evaluated the proposed easement boundaries herein with respect to the authorized design, construction template, estimated erosion rates, and renourishment triggers laid out in the feasibility study that supports the authorization; and

WHEREAS, the Army Corps of Engineers determined said easement boundaries are

reasonable, sufficient, and necessary to fulfill the needs of the project authorization for the Mid Reach segment of the Brevard County Shore Protection Project; and

WHEREAS, as part of the Army Corps of Engineers evaluation, the landward limit of the easements is located at the seaward location of the 14-foot elevation contour, based on the National Geodetic Vertical Datum of 1929, as located in August 2018; and

WHEREAS, the Army Corps of Engineers requires the easements to include 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; and

WHEREAS, pursuant to Article 10, Section 6 of the Florida Constitution on eminent domain, no private property may be taken except for a public purpose; and Brevard County, Florida is authorized to exercise the power of eminent domain pursuant to section 127.01 Florida Statutes; and

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

WHEREAS, the Board finds that 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, the Board finds that 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. The Board adopts all the findings in the recitals above. Resolution 2022-139 is rescinded and replaced by this Resolution.
2. Necessity is hereby declared to exist for acquisition or condemnation of easements, as said easement is further described herein, on certain real property, as further described in Exhibits "A-1 through A-4," located in Brevard County, Florida for the placement of sand as part of the Brevard County Shore Protection Project – Mid-Reach Segment, in Brevard County, Florida for beach restoration, nourishment, and renourishment of the shores.
3. The Board acknowledges that to the extent permitted by law and the terms of the U.S. Army Corps' required easement herein, landowners may construct and maintain private dune overwalk structures within the easement area. The Board further finds that the easement's provision of "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," is applicable to the shores and not applicable to said private dune overwalk structures.

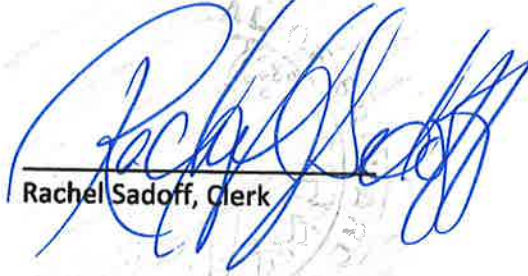
4. The interest to be acquired in the real property, described in Exhibits "A-1 through A-4," is a perpetual and assignable easement and right-of-way in, on, over and across the land described in Exhibits "A-1 through A-4" for use by the Board of County Commissioners of Brevard County, Florida (hereinafter 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.

5. The Office of the County Attorney is directed to acquire or condemn the interest described herein, in the real property described at Exhibits "A-1 through A-4." The office of the County Attorney is authorized to initiate and institute proceedings pursuant to section 127.01, Florida Statutes and Chapter 73 and 74 of the Florida Statutes for the exercise of the power of eminent domain by "quick take" 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.

6. This resolution shall be effective immediately upon adoption.

DONE, ORDERED and ADOPTED in Regular Session this 24 day of January, 2023.

ATTEST:



Rachel Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Rita Pritchett, Chair

(As approved by the Board on 1/24/23)

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 193.31 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 S16°37'13"E ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 100.00 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 186.72 FEET TO A POINT ON THE SAID 14.0 FOOT CONTOUR LINE; THENCE N17°31'03"W, ALONG THE SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 49.14 FEET; THENCE N19°11'11"W, CONTINUING ALONG SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 34.61 FEET; THENCE N31°17'15"W, CONTINUING ALONG SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 16.86 FEET TO THE POINT OF BEGINNING.

CONTAINING 18,816.527 SQUARE FEET, 0.43 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 183.29 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 S16°15'11"E ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 65.78 FEET; THENCE S15°54'59"E CONTINUING ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 134.23 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 186.84 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 36,947.773 SQUARE FEET, 0.85 ACRES MORE OR LESS.

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

Owners: Daniel Hasratian and Karine Melkounian

EXHIBIT "A-3"

LEGAL DESCRIPTION OF BEACH RESTORATION EASEMENT BRP-173: BY SURVEYOR

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 257.88 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 186.84 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°54'59"E ALONG THE SAID EROSION CONTROL LINE, A DISTANCE OF 65.80 FEET; THENCE S16°37'13"E CONTINUING ALONG SAID EROSION CONTROL LINE, A DISTANCE OF 34.20 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 195.61 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 LINE, A DISTANCE OF 37.62 FEET; THENCE N01°15'25"W, CONTINUING ALONG SAID 14 FOOT CONTOUR LINE, A DISTANCE OF 10.67 FEET TO THE POINT OF BEGINNING.

CONTAINING 19,060.374 SQUARE FEET, 0.44 ACRES MORE OR LESS.

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

Owners: Daniel Hasratian and Karine Melkounmian

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.

RESOLUTION 2023 – 008

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING MR. MIKE MCGARRY, PROGRAM MANAGER FOR BEACHES, BOATING AND WATERWAYS, NATURAL RESOURCES DEPARTMENT AND DR. KEVIN R. BODGE PhD, PE OF OLSEN ASSOCIATES, INC. TO ACT ON THE COUNTY'S BEHALF IN CONDEMNATION PROCEEDINGS REGARDING THE BREVARD COUNTY SHORE PROTECTION PROJECT – MID-REACH SEGMENT.

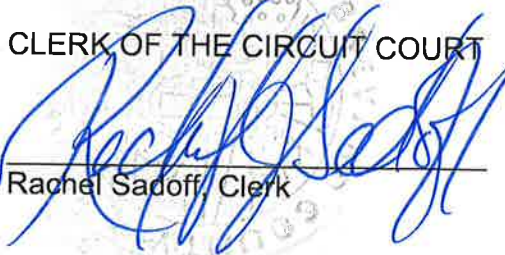
NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida:

1. The County is involved in an eminent domain action.
2. Mr. Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department and Dr. Kevin R. Bodge, PE of Olsen Associates, Inc. are hereby authorized to make engineering and project management commitments on behalf of the County involving the Brevard County Shore Protection Project – Mid-Reach Segment and upon such matters as may arise in court during the trial or any hearing relating to the eminent domain action to acquire easements for the Brevard County Shore Protection Project – Mid-Reach Segment.

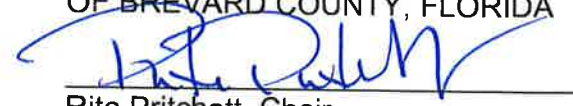
DONE, ORDERED AND ADOPTED in Regular Session, this 24 day of January, 2023.

ATTEST:

CLERK OF THE CIRCUIT COURT


Rachel Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair

(As approved by the Board on
January 24, 2023)



2725 Judge Fran Jamieson
Way
Viera, FL 32940



Agenda Report

Consent

F.10.

1/24/2023

Subject:

Resolution of Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project, Resolution of Authority to Act, and Authorization for Related Required Actions

Fiscal Impact:

This agenda item will have no fiscal impact to the General Revenue Fund. Acquisition costs are the responsibility of the County but eligible for federal cost-credits and state cost-sharing, totaling 79% of total costs. Each easement has been appraised. The County will be responsible for the value of the easements, appraisal costs, 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.

Dept/Office:

County Attorney's Office and Natural Resources Management

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Request the Board of County Commissioners adopt the attached Resolution of Necessity and authorize the Chair to execute the resolution for the Mid-Reach Segment of the Brevard County Shore Protection Project. Request 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. Request that the Chair be authorized to make the required pre-suit offer to the landowners at the appraised value of each easement, and execute all documents in connection therewith, if accepted. Request 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. Request the Board authorize Mr. Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department, and the Project Engineer, Kevin R. Bodge PhD, PE of Olsen Associates, Inc. to make engineering and project management related commitments on the County's behalf in condemnation proceedings regarding the Brevard County Shore Protection Project - Mid-Reach Segment.

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 initial 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 seaward 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 in order to acquire the four remaining easements which are a pre-requisite to the first renourishment of the mid-reach segment. The Board adopted Resolution 22-139 on October 11, 2022. However, in January 2023, a survey error was discovered, which affects the legal descriptions in Resolution 22-139, as well as the appraisals. Pursuant to the rules, the case has been voluntarily dismissed and the County must restart the process. Resolution 2022-168 adopted on December 20, 2022 authorized Mr. Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department, and the Project Engineer, Kevin R. Bodge PhD, PE of Olsen Associates, Inc. to make engineering and project management related commitments on the County's behalf in the eminent domain case that was dismissed. Both will testify as expert witnesses. A new Resolution is required. Approval of the Resolution of Necessity, Resolution of Authority for Mr. McGarry and Dr. Bodge, and the related required actions will permit the County Attorney's Office to refile all the necessary actions.

Clerk to the Board Instructions:

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

RESOLUTION 2023 – _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING MR. MIKE MCGARRY, PROGRAM MANAGER FOR BEACHES, BOATING AND WATERWAYS, NATURAL RESOURCES DEPARTMENT AND DR. KEVIN R. BODGE PhD, PE OF OLSEN ASSOCIATES, INC. TO ACT ON THE COUNTY'S BEHALF IN CONDEMNATION PROCEEDINGS REGARDING THE BREVARD COUNTY SHORE PROTECTION PROJECT – MID-REACH SEGMENT.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida:

1. The County is involved in an eminent domain action.
2. Mr. Mike McGarry, Program Manager for Beaches, Boating and Waterways, Natural Resources Department and Dr. Kevin R. Bodge, PE of Olsen Associates, Inc. are hereby authorized to make engineering and project management commitments on behalf of the County involving the Brevard County Shore Protection Project – Mid-Reach Segment and upon such matters as may arise in court during the trial or any hearing relating to the eminent domain action to acquire easements for the Brevard County Shore Protection Project – Mid-Reach Segment.

DONE, ORDERED AND ADOPTED in Regular Session, this ____ day of January, 2023.

ATTEST:

CLERK OF THE CIRCUIT COURT

Rachel Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rita Pritchett, Chair

(As approved by the Board on
January ____, 2023

Attachment to be added

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File #: 5450

Type: Consent Status: Agenda Ready

File created: 1/12/2023 In control: County Attorney

On agenda: 1/24/2023 Final action:

Title: Resolution of Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project, Resolution of Authority to Act, and Authorization for Related Required Actions

Attachments: 1. [Resolution Authorizing Authority to Act](#), 2. [2023 Resolution of Necessity - 3.pdf](#)

[History \(0\)](#) [Text](#)

Subject:

Resolution of Necessity for Acquisition of Easements for the Mid-Reach Segment of the Brevard County Shore Protection Project, Resolution of Authority to Act, and Authorization for Related Required Actions

Fiscal Impact:

This agenda item will have no fiscal impact to the General Revenue Fund. Acquisition costs are the responsibility of the County but eligible for federal cost-credits and state cost-sharing, totaling 79% of total costs. Each easement has been appraised. The County will be responsible for the value of the easements, appraisal costs, 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.

Dept/Office:

County Attorney's Office and Natural Resources Management

Requested Action:

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