



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

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**File #:** 5450, **Version:** 1

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### **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.