

United States Senate

WASHINGTON, DC 20510-0908

April 20, 2023

The Honorable Michael Connor
Assistant Secretary of the Army – Civil Works
U.S. Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

The Honorable LTG Scott Spellmon
Commanding General and Chief of Engineers
Headquarters
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314-1000

Dear Assistant Secretary Connor and Lieutenant General Spellmon:

Hurricane risk reduction and coastal storm risk management (CSRM) projects are crucial tools for mitigating the impacts of storm surge on coastal communities across the country. The projects, which frequently include sand nourishments, also have great economic benefits for water-based local economies like ours in Florida. Despite the obvious benefits of these projects, misguided policies are obstructing efforts to protect coastal communities.

It is our understanding that the U.S. Army Corps of Engineers (USACE) has interpreted Section 103 of the Water Resources Development Act (WRDA) 1986 (33 U.S.C. 2213) in a manner that requires a local project sponsor to secure perpetual easements from all upland private property owners within an authorized project's footprint before that project can commence, even in cases when access to a property is not necessary. Due to concerns of federal overreach, property owners are sometimes reluctant to agree to provide these perpetual easements. The apparent justification for this requirement is related to USACE policies to not conduct nourishments that are solely to the benefit of private property owners. This interpretation, which shouldn't be applicable to authorized projects, has obstructed desperately needed hurricane risk reduction and CSRM projects in Florida and across the country. In some cases, federally-authorized projects have become completely defunct due to this burdensome requirement.

The USACE's interpretation for shoreline easements is impacting projects on which work was being performed just a few years ago. It is unclear if the USACE simply failed to follow its own interpretation of the law or if the agency opted to reinterpret a nearly 40-year-old law without prompting or notice. What is clear, however, is the current interpretation is delaying projects and must be assessed within the scope of the review Congress has directed you to undertake.

As you know, when the USACE conducts a feasibility assessment of a potential hurricane risk reduction project, the Project Delivery Team will not recommend a tentatively selected plan unless a project fulfills public interest requirements. In order for a project to become authorized, the shoreline in the project footprint must be accessible to the public, and a cost-benefit analysis must demonstrate that a project would sufficiently be in the public interest. Because a project cannot become authorized without being sufficiently accessible to the public and receiving a positive cost-benefit analysis, there is no logical justification for imposing this burdensome easement policy on an authorized project.

We were saddened to learn that the scope of the federally-authorized hurricane risk reduction project for Fort Myers Beach, Florida, one of the communities most severely affected by Hurricane Ian, was severely reduced by the USACE due to the imposition of this burdensome easement

policy. Hurricane Ian's storm surge destroyed public and private properties and infrastructure along Fort Myers Beach, killing dozens and causing billions of dollars in damage. A properly-implemented hurricane risk reduction project could have helped to prevent loss of life and destruction.

The WRDA of 2022 directed you to complete a review of USACE easement policies for construction projects, including for hurricane and storm damage risk reduction and CSRMs projects. Given the obstructive nature of current easement policies, we hope that you will develop actionable recommendations to modify USACE easement policies and authorities in a manner that will allow these projects to commence, be completed, and maintained.

Thank you for your attention to this important matter.

Sincerely,



Marco Rubio
U.S. Senator



Rick Scott
U.S. Senator