



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SACW

MAR 06 2026

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF
ENGINEERS

SUBJECT: Revised Direction for Pinellas County, Florida

1. References:

a. Section 1145 of the Water Resources Development Act of 2024, Public Law 118-272 (33 U.S.C. 598c).

b. Section 103(d) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(d)).

c. An Act to amend the act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property" approved August 13, 1946" Public Law 79-727), Public Law 84-826 (33 U.S.C. 426e).

d. Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n) (commonly referred to as "Public Law 84-99").

e. Assistant Secretary of the Army, Memorandum, Subject: Execution of Section 1145(d) of the Water Resources Development Act of 2024 for Pinellas County, Florida Projects (June 18, 2025).

f. Real Estate Handbook, Engineer Regulation (ER) 405-1-12.

g. Federal Participation in Shore Protection, ER 1165-2-130.

h. Real Estate Policy Guidance Letter No. 35, Approved List of Standard Estates (2023).

2. Background. Recent storms have degraded hurricane and storm damage risk reduction projects in Florida, and there is an immediate need to address vulnerabilities from coastal storms that may put people and critical infrastructure at risk. In response, the Acting Assistant Secretary of the Army for Civil Works previously directed the U.S. Army Corps of Engineers (Corps) to carry out beach nourishment for the Pinellas County projects in accordance with Section 1145. There are still lingering issues related to real estate interests and cost share that could cause delays in future renourishment cycles of these vital projects.

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a. General Requirements. Federal water resources development projects are cost shared with a non-federal sponsor. As part of shared project responsibilities, a non-federal sponsor must acquire interests in the lands needed for the project, such as easements and rights-of-way. Congress has directed the Army consider and only require the minimum real estate interest necessary for water resource projects and to consider real estate interests that "minimize conflict with property owners related to such project." 33 U.S.C. 598a(a) & (b); see also 33 U.S.C. 598c(c)(requiring the Army to "identify and accept the minimum real estate interests necessary to carry out the project"). In no event will a federal employee or contractor enter private property to carry out these projects without a real estate instrument allowing access.

b. Cost Share Considerations. Congress only authorizes federal participation in hurricane and storm damage reduction on private shores "if there is benefit such as that arising from public use or from the protection of nearby public property or if the benefits to those shores are incidental to the project." 33 U.S.C. 426e(d); see also 33 U.S.C. 2213(d)(1) and (2)(B) (stating that federal funds are not available for work on privately owned lands). Under longstanding Corps policy "public use means use by all on equal terms" and project beaches "will not be limited to a segment of the public" for beaches used for recreation. ER 1165-2-130 at p. 12. Corps policy also specifies that unless the protection of privately-owned beaches is incidental to protection of public beaches, "they must be open to all visitors regardless of origin or home area, or provide protection to nearby public property to be eligible for Federal assistance". ER 1165-2-130 at p. 12. Non-federal sponsors may cover the full project costs for portions without public use and access as required by 33 U.S.C. 2213(d)(1) and (2)(B) provided the "benefits to . . . [those properties] are incidental to the project." 33 U.S.C. 426e(d).

c. Non-Federal Sponsor's Request. My staff has had several meetings with the non-federal sponsor to discuss real estate and cost share issues on these projects. I consider those meetings as a request for the Army to "identify and accept the minimum real estate interests necessary to carry out the project" as contemplated in 33 U.S.C. 598c(c). I am providing direction to the Corps for these projects consistent with that request.

3. Project Direction.

a. Easement Terms on Duration. Previous Corps policy requiring perpetual easements over private property has caused conflicts with property owners impacted by the project. Notwithstanding any Army Civil Works or Corps policy to the contrary, the Corps will not require the non-federal sponsor to obtain perpetual easements for any outstanding easements related to this project. For remaining easements, the Corps will only require the non-federal sponsor to obtain easements covering the projects' remaining 50-year periods of Federal participation. The Federal period of participation for the purposes of this memorandum is from the initiation of construction plus fifty years for the current authorization. See 33 U.S.C. 426e-1(a)(specifying 50-year period for periodic beach renourishment projects); 33 U.S.C.

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598c(d)(3)(providing “the sense of Congress that, for the purpose of constructing and maintaining a project for hurricane and storm damage risk reduction, the minimum estate necessary for easements may not exceed the life of the project nor be less than 50 years”). In carrying out this direction, the Corps must ensure that it follows the requirements in 33 U.S.C. 598c(a) & (b), as applicable.

b. Easement Terms on Public Use and Access Requirements. The approved standard estate for these projects in Real Estate Policy Guidance Letter 35 simply states that the property owner is granting “the right of public use and access” across the area covered by the easement. This imprecise language has caused “conflict with property owners related to this project.” 33 U.S.C. 598a(b). Longstanding Corps policy implementing the statutory direction on public use requires public use along the beach and defines beach as “the zone of unconsolidated material that extends landward from the low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.” ER 1165-2-130, App. A.1. Consistent with that policy, I am directing the Corps to revise the easement required for these projects to more precisely reflect what we require by policy. The Corps will remove “the right of public use and access” and replace that provision with “along with the right of use and access by the general public on equal terms, without restrictions or limitations to specific groups, communities, or private interests, to the beach—defined as any zone of sand extending landward from the erosion control line to the base of any dune, line of permanent vegetation or seawall.” A revised easement is attached to this memorandum. Additionally, I am confirming the ability of the Corps to make discrete modifications of the terms of the standard Beach Storm Reduction Easement to help non-federal sponsors reach agreement with property owners. I will want my staff to review and approve changes.

c. Alternatives to Easements for Providing Public Use and Access. Easements over private lands providing for public use and access is not the only way for a non-federal sponsor to meet the requirement. Specifically applicable to the Pinellas County projects, a non-federal sponsor can meet the public use and access requirement through a municipality’s city ordinance. The Indian Rocks Beach Code of Ordinances specifically “recognize[s] and protect[s] . . . [t]he public’s long-standing customary use of the dry sand areas of all of the beaches in the city for recreational purposes.” Sec. 74-66(a) (Jan 29, 2025). That ordinance defines the protected area as the “dry sand area of the beach is defined as the zone of unconsolidated material that extends landward from the mean high-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.” Sec. 74-66(b). That definition is consistent with the Corps policy definition of beach ER 1165-2-130, App. A.1. The ordinance does provide for a 15-foot buffer seaward of the toe of the dune or any habitable structure that the public is not allowed to use with only narrow exceptions. Sec. 74-66(c). I have determined as a matter of policy that the Indian Rocks Beach Code of Ordinance, Sec. 74-66, satisfies the public use and access requirements. The Corps will determine the cost shares for private beach areas covered by the 15-foot buffer in Sec. 74-66(c) in accordance with paragraph 3.d. of this memorandum.

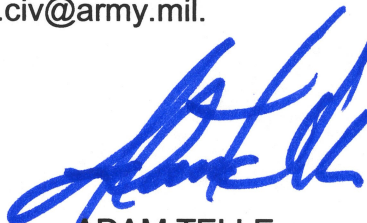
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d. Cost Share for Project Areas Covering Private Beaches Without Public Use Easement Provision. Previous guidance on these projects stated that the non-federal sponsor "must pay 100 percent of the costs for sand placement seaward of the erosion control line, even though on public lands, if this placement is benefitting private landward beach." See Ref. 1.e. at para 6.b. I am revising that previous policy direction on this project because there is public use and access on the public lands seaward of the erosion control line, and in the areas subject to the Indian Rocks Beach ordinance, and therefore public benefits. See 33 U.S.C. 2213(d)(1); 33 U.S.C. 426e(d) ("Shores other than public will be eligible for Federal assistance if there is benefit such as that arising from public use or . . . if the benefits to those shores are incidental to the project, and the Federal contribution to the project shall be adjusted in accordance with the degree of such benefits"). The non-federal sponsor, here, will pay 100% of the costs for the portion of private beaches without public use landward of the Erosion Control Line and to the toe of the dune, sea wall, or permanent vegetation and for the buffer areas identified in Sec. 74-66(c) – the private parts of the beach.

4. I am further directing that the project partnership agreement be amended to be consistent with this direction and a copy of this memorandum be included in the agreement as an attachment.

5. The point-of-contact for this memorandum is Mr. Milton Boyd, Acting Deputy Assistant Secretary of the Army (Policy and Legislation). Mr. Boyd may be contacted at (703) 693-3655 or milton.w.boyd.civ@army.mil.



ADAM TELLE

BEACH STORM DAMAGE REDUCTION EASEMENT

A easement [effective from the start of project construction] valid until [a period not to exceed the life of the project or 50 years] and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tract No. ____) for use by the (Project Sponsor), its representatives, agents, contractors, and assigns, to construct; preserve; patrol; operate; maintain; repair; rehabilitate; and replace; a public beach [a dune system] 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 (Project Name), along with the right of use and access by the general public on equal terms, without restrictions or limitations to specific groups, communities, or private interests, to the beach—defined as any zone of sand extending landward from the erosion control line to the base of any dune, line of permanent vegetation or seawall; [to plant vegetation on said dunes and berms; to erect, maintain and remove silt screens and sand fences; to facilitate preservation of dunes and vegetation through the limitation of access to dune areas;] 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 (except ____); [reserving, however, to the grantor(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 (designated representative of the Project Sponsor) 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 grantor(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.

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