

Frequently Asked Questions: Material Placement on Beaches

The U.S. Army Corps of Engineers (Corps) is the agency designated by Congress to protect the nation's shores from the chronic effects of erosion and coastal flooding. The Corps places sand on beaches via two distinctly different initiatives.

The first is site-specific beach nourishment projects that help reduce the threat of coastal storm damage and avoid the high costs of coastal storm damage. These projects are the product of Congressionally-authorized projects which involve a planning, design, and construction process throughout which there is coordination with local government organizations, such as counties or cities.

The other option is placement of beach-quality material from the construction or maintenance of navigation projects, such as dredging of inlets, channels, or harbors. Such placement is the addition of sand to the beach system and is not an element of an authorized beach nourishment project, although the placement location may be in the same footprint.

Pursuant to Florida Statute, Section 161.141, Property Rights of State and Private Upland Owners in Beach Restoration Project Areas, prior to construction of beach nourishment, beach restoration, and erosion control projects a mean high water boundary line is established to determine between state sovereign lands and the adjacent upland property. The line is referred to as an erosion control line (ECL). Florida Statute, Section 161.191, Vesting of Title to Lands, states that title to all lands seaward of the ECL shall be vested to the state by right of its sovereignty. The lands landward of the ECL remain vested to the upland owner.

Section 103(d) of the Water Resources Development Act (WRDA) of 1986 entitled Public Ownership and Use specifically prohibits Federal participation in costs assigned to benefits to privately-owned shores where the use of such shores is limited to private interests. Non-Federal interests must, therefore, assure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based during the economic life of the project. Non-Federal interests must also provide and maintain necessary access roads, parking areas and other public use facilities open and available to all on equal terms. Specific cases may also warrant assigning other additional local responsibilities, such as providing appurtenant facilities required for realization of recreational benefit

Who owns the new sand placed on the beach?

In the state of Florida, the public has access to the wet sandy beach per the state constitution's Public Trust Doctrine. People also have the right to access publicly owned beaches (Manasota Key and Blind Pass Park public beaches). In areas of beach nourishment before sand placement, the state establishes an erosion control line (ECL)

at the existing mean high water line. Once sand is placed seaward of the ECL, the public owns that sand. Consequently, the public has access rights to the new dry beach seaward of the ECL to the new location of the wet sandy beach.

Why are easements required for shore protection projects?

Temporary work area and/or access easements for equipment to stage and access the beach or perpetual storm damage reduction easement to place sand on private property may be required. Easements allow the temporary construction activities necessary to build the beach and will guarantee the public will be able to use the publicly-funded beach after construction. Public use is a provision necessary because the participating governments require that public funds only be spent on beaches that are usable by the public.

What portion of my property is subject to an easement?

The easement specifically describes the portion of the property where an engineered beach may be placed.

Can you put an expiration date on easements?

No. The easement is specifically for the authorized federal project until the project is deauthorized by Congress.

Why are easements perpetual?

The required easement is a perpetual storm damage reduction easement. It is perpetual because it guarantees that the public will have long-term use of the beach after public funds are spent restoring it. It also ensures that the engineered beach provided for the community at federal expense forever remains open to the public for use and enjoyment.

What happens if I don't approve an easement over my property?

Current Federal policy states that in the case of those properties for which an easement is not provided, the Federal government will not share in the cost of sand placed on the beach fronting that property. The local sponsor could choose to (1) ask the Federal government to skip, not fill, that section of the beach; (2) condemn by eminent domain.... (3) absorb the additional local costs or (4) assess the applicable property owner for the amount not funded by the Federal government.

How does the easement affect my property rights?

It does not affect property rights of the upland landowner. An easement is a right of use over limited and specific defined areas of a property. The right of use allows the engineered beach to be built on the property, maintenance of the beach, and public use of the beach in a reasonable and lawful manner.

Does the easement grant the state or US Army Corps of Engineers permission to build structures on my property?

No, the perpetual easement is specific to the federal project only, which is limited to beach restoration, beach nourishment and beach disposal of high quality sand from navigation projects or adjacent seabeds.

Will the public have the right to use the beach on my property?

Yes. The Corps requires that the beach remain open to the public for use. The public will be able use the beach on which the easement has been placed in a reasonable and lawful way. It does not, however, turn the beach into a municipal beach that is controlled by the government. It still remains private property. In addition, the public will not be permitted to use any portion of the property beyond restrictions set in the easement. For example, the public is not permitted to traverse the property in order to get to the beach.

Will I retain the right to enjoy my property?

Yes. The easement only authorizes the Corps to place sand on the property and allows the public to use the beach. It does not prevent you from using your property. It remains privately-owned property, but you cannot prevent the public from using the beach on your property, or tell them they need to move because it is private property.

Can we negotiate what is included in the easement?

Certain provisions can be made to accommodate property owners. However, there are certain easement requirements that cannot be modified, such as public access.

What rights do I maintain if I sign the easement?

The easement spells out property owner's rights, including the right to continued ownership of the property subject to the terms of the easement.

Am I liable if someone is injured on my property?

No. A property owner is not liable by granting an easement to another person or entity. The Landowners Liability Act provides additional immunity for injuries resulting from recreational activities on the property.