

Congress of the United States
Washington, DC 20515

January 27, 2023

The Honorable Michael Connor
Assistant Secretary of the Army for Civil Works
U.S. Army
441 G Street, NW
Washington, DC 20314

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Assistant Secretary Connor and Director Young,

We write to request that the U.S. Army Corps of Engineers for Civil Works include funding to replace the Cape Cod Bridges (“Bridges”) in its fiscal 2023 and *Infrastructure Investment and Jobs Act (IIJA)* work plans and its fiscal 2024 and fiscal 2025 budgets. The Bourne and Sagamore bridges — which are nearly 90 years old and functionally obsolete — are owned by the Corps and are therefore a federal responsibility. The Corps rightfully concluded in 2020 that replacing the Bridges, rather than rehabilitating them, was the “most cost-effective means of providing safe and reliable crossings.”¹ Three years have now passed since that determination, and the Bridges have only grown older. Given the state of the Bridges, it is time for the Corps to provide significant funds for this project.

The Bridges are vital assets for the Cape Cod economy and surrounding communities, but they are in desperate need of replacement. Built in 1935, the Bridges “changed the relationship between the Cape and the rest of Massachusetts.”² Today, the Bridges serve as the gateway to Cape Cod for more than 260,000 Cape and Islands residents and more than five million annual visitors. With more than 35 million vehicles crossing the canal each year, the Bridges are also the sole access point for vehicular traffic to and from Cape Cod and serve as essential routes for general transportation, tourism, and evacuations in case of an emergency. However, the Bridges were built when Cape Cod’s population was 26,000 and are nearing 90 years old. As a result, the Bridges are functionally obsolete, require increasingly costly maintenance, and are unable to

¹ U.S. Army Corps of Engineers, *Major Rehabilitation Report and Environmental Assessment: Cape Cod Canal Highway Bridges Bourne*, Massachusetts ES-19 (Mar. 2020), <https://www.nae.usace.army.mil/Portals/74/docs/Topics/Cape%20Cod%20Canal%20Bridges/Reports/FinalMRERDdocument.pdf> [hereinafter 2020 MRER].

² Asad Jung, *Sagamore, Bourne bridges have brought prosperity, loyalty and now worries to Cape Cod*, Cape Cod Times (May 27, 2022), <https://www.capecodtimes.com/story/news/2022/05/27/cape-cod-canal-bridges-brought-prosperity-loyalty-worries/9688301002/>.

keep up with modern levels of traffic, resulting in “[l]egendary traffic jams that cost Cape businesses millions of dollars.”³ Today, the Bridges pose a significant risk to the accessibility, economy, and health of the Cape Cod region. In the case of a severe storm or other emergency situation, we are particularly concerned that the Bridges will become a deadly chokepoint both in the evacuation of residents and visitors and in the distribution of critical medical supplies and food.

In 2020, the Corps released a Major Rehabilitation Evaluation Report (MRER) that compared the costs of rehabilitating or replacing the Bridges. Based on that report, the rehabilitation would be expensive, lead to lengthy lane, canal, and bridge closures, burden the Corps with future maintenance and rehabilitation costs, and severely restrict access to and from Cape Cod.⁴ By contrast, the Corps found that new bridges would vastly improve travel conditions, meet modern safety standards for vehicle and pedestrian traffic, and significantly improve multimodal travel.⁵ In other words, new bridges are key to modernizing Massachusetts’ physical infrastructure to meet the economic, social, and environmental challenges of the twenty-first century. As it compared these options, the Corps rightfully concluded that replacing the Bridges was the most cost-effective solution.⁶

With this conclusion in mind, we worked hard to help pass the *Infrastructure Investment and Jobs Act*, which provided the Corps with \$17.1 billion in new funding — including \$11.6 billion for new construction — and more than \$9 billion in formula funds for Massachusetts.⁷ In January 2022, shortly after passage of the *IJA*, we convened a meeting with leaders from the Corps, the Massachusetts Department of Transportation (MassDOT), and the Federal Highway Administration (FHWA) to discuss the path forward for this project.⁸ As we explained at that meeting — and in dozens of public and private meetings since then — the Bridges replacement project is precisely the type of project that the *IJA* was designed to fund. Our work did not stop there: We convened a follow-up meeting with MassDOT and the Corps in April 2022 where both parties agreed to work closely to secure the necessary federal grants for this project.⁹ And we submitted multiple letters to the U.S. Department of Transportation strongly supporting the Corps and MassDOT’s applications for federal grants, including an August 2022 letter in support of the Corps’ Bridge Investment Program application signed by all members of the

³ See As Sagamore, *Bourne Bridges Age, Cape Looks For A Replacement Plan*, CBS Boston (May 22, 2019), <https://www.cbsnews.com/boston/news/sagamore-bourne-bridges-replacement-cape-cod-traffic/>.

⁴ See 2020 MRER, *supra* note 1, at 54-60 (explaining the impact of major rehabilitation of the Bridges).

⁵ See *id.* at 94 ((finding that the “advantages of the Bridge Replacements are minimal disturbances to traffic during construction and replacing the aging infrastructure with bridges that meet current engineering standards and regulations. The new bridges will also have far less future repair costs and traffic delays over the project life cycle.”)).

⁶ See *id.* at ES-21.

⁷ *Infrastructure Investment and Jobs Act*, Pub. L. No. 117-58, 135 Stat. 424 (2021).

⁸ Press Release, Massachusetts Lawmakers Host Meeting on Cape Cod Canal Bridges After Enactment of Bipartisan Infrastructure Law (Jan. 28, 2022), <https://www.markey.senate.gov/news/press-releases/massachusetts-lawmakers-host-meeting-on-cape-cod-canal-bridges-after-enactment-of-bipartisan-infrastructure-law>.

⁹ Press Release, Senator Markey, U.S. Army Corps, Baker Administration, Ma DOT and Local Officials Meet to Discuss Cape Cod Bridge Replacement (Apr. 16, 2022), <https://www.markey.senate.gov/news/press-releases/senator-markey-us-army-corps-baker-administration-ma-dot-and-local-officials-meet-to-discuss-cape-cod-bridge-replacement>.

Massachusetts congressional delegation.¹⁰ Through all these actions — fighting for the *IIJA*, repeatedly convening key stakeholders, and tirelessly advocating for the project with the Biden administration — we have done everything in our power and used every tool in our toolbox to make this project a reality.

Although the project did not receive a federal construction grant in fiscal 2022, we remain optimistic that with diligent planning, the project will be highly competitive in future grant rounds. In fact, the project has taken important steps forward over the past few months. In October, the Corps provided \$2 million from its *IIJA* investigations account to initiate and complete preconstruction and engineering and design work, an important signal about the Biden administration's commitment to replacing the Bridges.¹¹ And just a few weeks ago, FHWA provided the Corps with a \$1.6 million planning grant for the project.¹² In the meantime, MassDOT has invested millions of dollars to advance the planning and design of the project and continues to work on preliminary activities, including utility relocation and environmental reviews. In November, Massachusetts held two public meetings in which it unveiled proposed designs for the new bridges, and earlier this week, MassDOT held two more public meetings at which it announced the design chosen for the new Bridges.¹³

These actions make it all the more important that the Corps and MassDOT learn lessons from this year's grant application and submit an improved application in fiscal 2023. We are particularly concerned that the application did not identify all funding sources for the project. We strongly urge the Corps to address this shortcoming and identify all sources of funding for this project — including significant funds from the Corps — in fiscal 2023. We will continue to do our part in Washington on behalf of the Commonwealth, but the Corps — with MassDOT's assistance — is responsible for submitting more competitive grant applications in fiscal 2023.

We want to be clear: The Bridges are federal assets and therefore replacing them remains a federal responsibility. Although Massachusetts owns the highway approaches to the Bridges and also bears a significant responsibility for completing this project, the Corps cannot avoid its own financial responsibility. Even if the Bridges are not replaced — an outcome no one wants — the Corps will need to spend more than \$775 million to rehabilitate and maintain them over the next 50 years, according to the Corps' 2020 MRER.¹⁴ The figure is undoubtedly even higher

¹⁰ Letter from Sen. Edward Markey, Sen. Elizabeth Warren, Rep. William Keating et al. to Sec. Pete Buttigieg, U.S. Dep't of Transp. (August 5, 2022) (letter on file with author).

¹¹ U.S. Army Corps of Engineers, *Infrastructure Investment and Jobs Act Investigations FY22 Spend Plan - 03 October 2022 Addendum* (Oct. 3, 2022), <https://www.usace.army.mil/Portals/2/BID%20IIJA%20%20Investigations%20Addendum%20Final%20Cleared%2020221003.pdf>.

¹² Press Release, Biden-Harris Administration Announces \$2.1 Billion to Improve Four Nationally Significant Bridges Through the Bipartisan Infrastructure Law's First Large Bridge Grants (Jan. 4, 2023), <https://highways.dot.gov/newsroom/biden-harris-administration-announces-21-billion-improve-four-nationally-significant>.

¹³ See Irvin Rodriguez and Asher Klein, *Here's What Kind of Bridges Will Eventually Replace Cape Cod's Iconic Ones*, NBC Boston (Jan. 25, 2023), <https://www.nbcboston.com/news/local/heres-what-kind-of-bridges-will-eventually-replace-cape-cods-iconic-ones/2954477/>.

¹⁴ See 2020 MRER, *supra* note 1, at 57-58 (estimating total rehabilitation and future maintenance, repair, and rehabilitation costs for the Bourne and Sagamore bridges at \$407,223,000 and \$368,936,000 respectively).

today, given recent inflation. By providing funds for the project today, the Corps can help replace the aging Bourne and Sagamore bridges and finally divest the Bridges to Massachusetts.

The Corps has the funds to make this happen, and investment in the Bridges project is long overdue. Based on its public work plans, the Corps has already allocated nearly \$10 billion of its \$11.6 billion in *IJA* construction funds, with none for the Bridges.¹⁵ In fact, of those allocated funds, Massachusetts has received just \$1.7 million — less than 0.02%.¹⁶ Moreover, the Corps received another \$2.4 billion in construction funds in the fiscal 2023 omnibus.¹⁷ Although some fiscal 2023 funds are reserved for certain projects or purposes, the Corps retains discretion over some important pots of money. Finally, the Corps — with approval of OMB — can propose significant funding for the Bridges project in its fiscal 2024 and 2025 budgets. Although Congress still must appropriate funds for the Corps, we will fiercely fight for those funds as we did in the *IJA*. Given the urgency of replacing the Bridges and these different funding options, the Corps is due to make a significant down payment on this project.

The clock is ticking on this once-in-a-generation opportunity. The U.S. Department of Transportation will open its next grant round for important federal grants — including the \$12.5 billion Bridge Investment Program (BIP) — later this year. As a result, the next few months are critical. With its fiscal 2023 and *IJA* work plans and fiscal 2024 budget — and fiscal 2025 budget in the future — the Corps has the perfect opportunity to demonstrate to FHWA and to Massachusetts that the agency is committed to replacing the Bridges. Moreover, if the Corps and Massachusetts do not begin the project soon, the Corps will need to begin significant maintenance work on the Bridges, diverting to upkeep funds that should be used to replace the Bridges. We cannot emphasize enough: Time is of the essence. We urge you to devote all necessary resources to position this project to receive a federal grant in fiscal 2023.

Finally, we want to thank you and your staff for all your hard work on this project. Replacing the Bourne and Sagamore bridges is complex, involving an alphabet soup of federal agencies across federal, state, and local governments, and we stand ready to do everything in our power to make this project a reality. But ultimately, the federal government owns — and is responsible for — the Cape Cod Bridges. You have repeatedly committed to us — in public and private — that the Bridges project is a top priority. Now is the time to demonstrate that commitment by translating those words into numbers.

¹⁵ To see the projects funded by the Army Corps through its *IJA* construction funds, see U.S. Army Corps of Engineers, *Infrastructure Investment and Jobs Act Construction Spend Plan – Addendum* (Mar. 30, 2022), <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll6/id/2255> [hereinafter *Corps IJA Construction Work Plan*]; U.S. Army Corps of Engineers, *Construction Spend Plan – Addendum* (Mar. 30, 2022), *Infrastructure Investment and Jobs Act FY23 Construction Spend Plan* (Mar. 30, 2022), <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll6/id/2254>; U.S. Army Corps of Engineers, *Infrastructure Investment and Jobs Act Construction Spend Plan - 03 October 2022 Addendum* (Oct. 3, 2022), <https://www.usace.army.mil/Portals/2/BID%20IJA%2003%20OCT%2022%20Construction%20Addendum%20Final%20CLEARED%20w%20TC%20REV%2021.pdf> [hereinafter *Corps IJA Construction Work Plan Addendum*].

¹⁶ *Corps IJA Construction Work Plan*, *supra* note 15, at 7-9 (funding seven Massachusetts projects totaling \$1,295,000); *Corps IJA Construction Work Plan Addendum*, *supra* note 15, at 3 (funding one Massachusetts project for \$400,000).

¹⁷ *Consolidated Appropriations Act of 2023*, Pub. L. No. 117-328 (2022).

Assistant Secretary Connor and Director Young

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Thank you for your attention to this important matter.

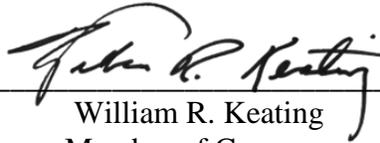
Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



William R. Keating
Member of Congress