



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

November 10, 2009

Office of Counsel

Mr. George W. House
Brooks, Pierce, McLendon,
Humphrey & Leonard
P.O. Box 26000
Greensboro, North Carolina 27420

Subject: Village of Bald Head Island Notice of Intent to File Suit

Thank you for your letter of October 7, 2009 on behalf of your client, the Village of Bald Head Island. This letter is to confirm some of the discussion we had regarding your client's demands during our meeting of October 27, 2009. Although we discussed each of your client's demands during our meeting, I do not address all of them here.

One of your client's concerns is the proposed date for issuance of the final report on the Wilmington Harbor Sand Management Plan (SMP). We currently propose to complete our analysis and make recommendations concerning the SMP by April 2011. As you know, the SMP describes a six year cycle, with maintenance dredging occurring every two years. Material from the first two events of the six year cycle is placed on Bald Head Island, and material from the third and last event of the cycle is placed on Caswell Beach/Oak Island. We completed the third dredging event in the cycle with placement on Caswell Beach/Oak Island in April 2009.

It is important to obtain a full set of data from this last dredging event prior to making any recommendation on potential changes to the SMP, including the beach surveys at Bald Head Island and Caswell Beach/Oak Island in January and July 2010. The report will deal not only with the beach at Bald Head Island; it will also address the beach at Caswell Beach/Oak Island. To the extent we can shorten the time required to analyze the data and make recommendations after the data is collected, we will do so. Keep in mind that if the SMP is not revised prior to the next dredging event, all beach suitable material will be placed on Bald Head Island.

Your client has also demanded that we not dredge within 500 feet of the Mean High Water Line in existence at the Point. We explained that we cannot make any agreement that would undermine our ability to keep the channel open for safe navigation. The Point is in an Inlet Hazard area, and has for decades been subject to fluctuations in its location relative to our fixed channel. We have in the past modified our dredging prism and practices at the request of your client, and will continue to do so to the extent the request is practicable and will allow us to maintain safe navigation. We are willing to consider any suggestions your client or its consultants may have in this regard.

My client will do an initial appraisal of the channel under Section 216 of River and Harbor and Flood Control Act of 1970, and plans to complete it within the next 6 months. Section 216 authorizes the Corps to review existing projects and make reports to Congress when found advisable due to significantly changed physical or economic conditions, or for improving the quality of the environment in the overall public interest. An Initial Appraisal is the first step in pursuing initiation of studies under the Section 216 authority. As we discussed, the initial appraisal is a very limited investigation, generally only \$20,000 in cost, and designed to determine whether there is a Federal interest in pursuing further planning studies that could result in an alteration of the project or its operation.

The initial appraisal will determine whether there is value in further investigation in two areas: (1) whether there is more shoaling in the channel than was anticipated during the initial planning of the project, causing our maintenance costs to be higher; and (2) whether the channel should be optimized for navigation. We obviously cannot make any commitment at this time that further study will be justified. We also cannot make any commitment about what alternatives may be considered in the event further study is warranted; some may be acceptable to your client, while others may not be.

With regard to your client's demands that we complete reconnaissance, feasibility and other studies on a terminal structure at the Point and on relocating the channel to the west, no funds have been appropriated to do that work, and we cannot legally agree to these demands. We discussed the Corps budget process in some detail at our meeting; we would be happy to meet with your client to explain this further.

We did not discuss two authorities your client may be interested in considering. Section 206 of the Water Resources Development Act (WRDA) of 1992 (33 U.S.C.A. § 426i-1) provides a mechanism to allow non-Federal interests to prepare the necessary studies for shoreline protection projects, and provided certain conditions are met, construct the project with the potential for reimbursement of what would normally be the Federal cost for the project. Section 203 of WRDA 1986 (33 U.S.C.A. § 2231) contains a provision with regard to non-Federal interests conducting feasibility studies for navigation projects to submit to the Secretary of the Army. The Wilmington District has not participated in a project like this, and we would have to review these authorities in more detail to determine whether they would apply here. If your client is interested in exploring either of these possibilities, please let me know and we'll be glad to research this further.

I am available to discuss these matters with you further, at your convenience.

Sincerely,



M. Brooke Lamson
District Counsel

Copies Furnished:

CESAW-PM-C/Keistler

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