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October 1, 2012

Ms. Emily Hughes
U.S. Army Corps of Engineers
Wilmington District Regulatory Division
69 Darlington Avenue
Wilmington, NC 28403

Re: Scope of EIS for the Town of Ocean Isle Beach's proposed East End Shoreline Protection Project (Terminal Groin)

Dear Ms. Hughes:

The Town of Sunset Beach respectfully submits the following comments concerning the scope of a Draft Environmental Impact Statement for the proposed terminal groin for the Town of Ocean Isle Beach.

In 2011, the Town of Sunset Beach opposed legislation allowing terminal groins. The Town's message to State Legislators stated that if the legislature approved terminal groins, eight recommendations from the North Carolina Coastal Resources Commission (CRC) about the permitting process should be included in the legislation.

Because terminal groins were approved by the legislature in Senate Bill 110 (SB110), which included the CRC recommendations, Sunset Beach has a stake in commenting on the scope of an Ocean Isle Beach Draft Environmental Impact Statement (DEIS).

- The DEIS must adequately address the down-drift ocean-side environmental impact well beyond the proposed groin. Coastal scientists have long warned about down-drift effects, including effects on adjacent islands. In an open letter signed by 43 of the country's top coastal scientists, the scientists state, "there is no debate: A structure placed at the terminus of a barrier island, near an inlet, will interrupt the natural sand bypass system, deprive the ebb and flood tide deltas of sand and cause negative impacts to adjacent islands."¹ And, "permitting the construction of terminal groins will harm the coast and place down-drift property at risk."²
- The DEIS must propose adequate funding for monitoring the environmental effects of the groin, as the law requires, along with monitoring or mitigation on adjacent islands and estuaries. We note that the Town of Sunset Beach agrees with the comments submitted by Todd Miller and Ana

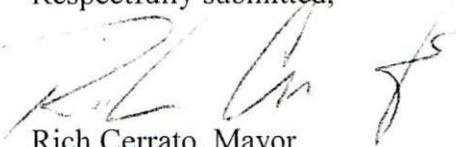
Zivanovic-Nenadovic to Bob Emory, Chair, Coastal Resources Commission, in the attached June 14, 2012 memorandum enumerating in part the shortcomings of a draft DEIS for Figure 8 Island, and discussing what should be in a proper DEIS, in our opinion, for any terminal groin project.

- If the groin causes damage to nearby islands or estuaries, the DEIS must propose appropriate funding for mitigation, as the law requires, as well as provisions for removal of the groin. All funding should be placed in escrow and monitored by the Corps of Engineers in accordance with its standard practices.

The DEIS in question is of vital concern to Sunset Beach, which is directly down-drift from Ocean Isle. As so eloquently stated by Dr. Len Pietrafesa, Professor Emeritus, North Carolina State University, and one of the premier coastal scientists in North Carolina, "A groin at the east end of Ocean Isle Beach will deprive sand from a half mile west of Shallotte Inlet, including the central and west end of Ocean Isle and all of Sunset Beach..." And, "If Ocean Isle Beach installs a groin, Sunset Beach will suffer." Finally, "Certainly the land downstream of the structures will be deprived of sediments, as shown over and over...Pity the homeowners at the central and west end of OIB, and pity the homeowners of Sunset Beach, an island only 3.5 mi long and in the lee of OIB."^{3,4,5} We ask that you ensure the protection of the properties down-drift of any terminal groin installed on Ocean Isle, and consider the impact on the Town of Sunset Beach before any terminal groin is approved.

For the sake of the entire coast of North Carolina, please ensure that any DEIS done for the Ocean Isle Beach project adequately addresses the concerns listed above.

Respectfully submitted,



Rich Cerrato, Mayor
Town of Sunset Beach

Attachment: Todd Miller, NC Coastal Federation Letter to Bob Emory, Coastal Resources Commission

¹ http://www.wcu.edu/WebFiles/PDFs/Coastal_Scientist_Groin_Statement.pdf

² <http://www.wcu.edu/4402.asp>

³ Dr. L. J. Pietrafesa. Letter to the *Brunswick Beacon*. 4-16-12

⁴ L. J. Pietrafesa. "On the Continued Cost of Upkeep Related to Groins and Jetties," published in the *Journal of Coastal Research*, September 2012.

⁵ Dr. L. J. Pietrafesa. Letter to the *Brunswick Beacon*. 3-1-11



North Carolina Coastal Federation

CITIZENS WORKING TOGETHER FOR A HEALTHY COAST

*Celebrating 30 Years of Coastal Conservation
1982-2012*

June 14, 2012

MEMORANDUM

TO: Bob Emory, Chair, Coastal Resources Commission
FROM: Todd Miller, Executive Director
Ana Zivanovic-Nenadovic, Program and Policy Analyst
RE: Need for Rules for S.B. 110

The draft EIS on the proposed terminal groin for Rich Inlet prompts me to follow-up on the email that I sent on October 10, 2011 encouraging the Coastal Resources Commission (CRC) to adopt rules to implement the terminal groin law (S.B. 110).

The N.C. Coastal Federation expressed concerns about how the N.C. Division of Coastal Management would consistently enforce broadly described requirements in S.B. 110. Many of those same issues were presented by the DCM staff last fall to the CRC's science panel for its help, but were never resolved.

Without formally adopted regulations that have been fully vetted through the public rule-making process, the applicants for terminal groins are left to interpret the stipulations of S.B. 110 at their own discretion. This is exactly what has now occurred in the draft Environmental Impact Statement (DEIS) recently submitted by the Figure Eight Homeowners Association (F8 HOA) to the U.S. Army Corps of Engineers.

Following is the list of some of the S.B. 110 requirements that are now being implemented without administrative rules:

- (1) § 113A-115.1(e)(6)(d) - *Restoration of public, private, or public trust property if the groin has an adverse impact on the environment or property;*
- (2) § 113A-115.1(e)(5)(b) - *Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impact must be mitigated;*
- (3) § 113A-115.1(e)(5)(c) - *Provide for mitigation measures to be implemented if the adverse impacts cannot be mitigated; and*



- (4) § 113A-115.1(e)(5)(b) *Proof of financial assurance in the form of a bond, insurance policy, escrow account, or other financial instrument that is adequate to cover the cost of mitigation.*

Left to its own discretion, F8 HOA has attempted to define **very limited** mitigation thresholds, mitigation triggers, and financial assurances. It has proposed to:

- (a) Allow a huge amount of beach erosion before the terminal groin is blamed: It is asking to use the lower 90-percent confidence level of shoreline position along the oceanfront based upon a linear regression estimate of where the beach would move under a complete retreat scenario for island residents. Within this project area, if this threshold is adopted as adequate, almost the entire island near Rich Inlet (in the area of the sand bags) can wash away (approximately 800 feet of erosion over 30 years) without triggering a need for mitigation. In addition, the DEIS states that this erosion must persist for two years before the groin will be blamed for the erosion, and mitigation is required. This huge amount of leeway to allow significant erosion is sought by the permit applicant even though in its own DEIS it claims that there will be ZERO loss of property along the beach over the next 30 years if the groin is constructed. This is a classic example of a snake oil salesman claiming amazing results when you buy his tonic, and then providing no guarantee that it will perform as advertised. All alternatives described in the DEIS can easily meet this proposed threshold, and will never trigger mitigation.
- (b) Exclude from consideration the potential for private property to be damaged along end and backside of the island: The DEIS does not address the potential for the groin to be flanked from the back side of the island during storm surges, and cause significant property damage to houses and lots on the end and backside of the island as flood waters are reflected and channeled along the south side of the structure. Triggers to mitigate such damage need to be established, and financial assurances to cover private property losses provided.
- (c) Ignore the cost and environmental effects of having to find additional sources of sand if increased beach nourishment is required: Additional sources of sand (in addition to Nixon Channel or the islands along the AICWW) could be necessary especially after storms or unexpected erosion events. The cost to obtain these additional sand supplies needs to be estimated, and included in the mitigation strategy. The terminal groin option does not include an inlet management plan as required by S.B.110.
- (d) Avoid any consideration of the need to mitigate the loss of public trust rights as well as increased dangers to public health and welfare: The DEIS does not address thresholds and triggers to protect public trust rights for access, swimming hazards that may be caused by the terminal groin, and navigational safety issues. These rocks next to water in a popular boating and swimming area are likely to become an attractive and dangerous nuisance, and costly lawsuits may result. Private property owners that must sign easements to allow the terminal groin on their land are likely to insist on "hold harmless" agreements, and that will obligate the F8 HOA to cover potential litigation costs.
- (e) Obtain a positive cost-benefit analysis by stating that the groin provides for complete protection of property for the next 30 years: While the terminal groin

will not be blamed if a huge amount of erosion occurs, at the same time the applicant is claiming that there will be zero property damage over the next 30 years if the groin is allowed. This financial result of the project is then used to give the terminal groin option a highly beneficial cost-benefit ratio. As long as ZERO future property damage is a benefit that is being claimed for the terminal groin alternative, then any property losses that occur in the next 30 years should be compensated by F8 HOA through its bonding requirement. Property losses should also trigger mitigation measures. (This in reality will occur since homeowners are going to insist on expanded beach nourishment if their properties become endangered. Nearly 350,000 cubic yards of sand were placed on the island's beaches after Hurricane Fran because so many houses were endangered by beach erosion related to the hurricane.)

- (f) Exclude the potential need for environmental mitigation from bonding requirements: The DEIS does not establish any thresholds or triggers for mitigation if critical fisheries or wildlife habitat in the inlet are lost as a result of the terminal groin. Baseline conditions for these habitats are need to be provided so that any losses to this public trust area can be mitigated, and financial assurances provided to make sure this mitigation takes place.

In calculating how much financial assurance it must provide, F8 HOA estimates that it will only need a little over \$3 million in financial assurances to cover all the potential future mitigation needs of the project over the next 30 years. This figure includes the cost of removing the terminal groin if necessary. This absurdly low estimate underscores why the mitigation measures that are proposed are simply unrealistic and silly, and why a thoughtful, open, and deliberative rule-making process to address these key legal mandates is urgently needed.

Lacking administrative rules, the permitting process will be chaotic at best, and subject all parties to needless delays and expenses associated with permit appeals and litigation that are likely given the lack of clear policy guidance on these statutory requirements. It is important that the CRC engage all parties in addressing this policy and regulatory vacuum.

Cc:

Joan Weld

Braxton Davis