



PAT MCCRORY

Governor

DONALD R. VAN DER VAART

Secretary

BRAXTON DAVIS

Director

November 30, 2015

Ms. Erica Seiden
Program Manager
Ecosystems and NERRS Program
NOAA Office for Coastal Management
1305 East-West Highway, Silver Spring, M.D. 20910

Dear Ms. Seiden,

The purpose of this letter is to inform you that the North Carolina Department of Environmental Quality intends to study the removal of the southern component of the "New Inlet Dam" along the western boundary of the Zeke's Island component of the N.C. National Estuarine Research Reserve in accordance with Section 14.6.(h) of the 2015 Appropriations Act (NC Session Law 2015-241), entitled "Cape Fear Estuarine Resource Restoration" (for full text of the Act, please see <http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H97v9.pdf>).

In summary, Section 14.6.(h) instructs the Department of Environmental Quality to conduct the following (paraphrased):

- (1) Notify the U.S. Army Corps of Engineers of the State's intent to study the removal of the Southern Component of the New Inlet Dam;
- (2) Issue a Request for Information for a firm capable of conducting an analysis of the costs and benefits of removing the Southern Component of the Dam, including necessary permits and approvals;
- (3) Request approval from the National Oceanic and Atmospheric Administration (NOAA) to adjust the boundary for the Zeke's Island component of the N.C. National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary from the Reserve, and adding equivalent acreage to the northern boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreation Area; and
- (4) If NOAA approves the boundary adjustment described above, the NC Coastal Resources Commission is then required to amend the Reserve Components Rule (15A NCAC 070 .0105) as further described in the Act.



The Division of Coastal Management is responsible for carrying out the steps outlined above. As such, I request specifics on the process and information that NOAA requires to consider a boundary change to a Reserve within the National Estuarine Research Reserve System. A report on the implementation of this Section is due to the General Assembly by April 1, 2016 and therefore, I would appreciate a response by January 15, 2016.

Please contact me at 252.808.2808 or Braxton.Davis@ncdenr.gov with any questions or comments that you may have on this study.

Sincerely,



Braxton Davis

Attachment

cc: Tom Reeder, Assistant Secretary, Department of Environmental Quality
Rebecca Ellin, Coastal Reserve Program Manager, Division of Coastal Management
Stephanie Robinson, Coastal Management Specialist, The Baldwin Group at NOAA
Office for Coastal Management



(22) The Secretary of Environment and Natural Resources for the waiver or modification of non-State cost-share requirements under G.S. 143-215.73G."

CAPE FEAR ESTUARINE RESOURCE RESTORATION

SECTION 14.6.(h) The General Assembly finds that the New Inlet Dam or "The Rocks" was constructed by the United States Army Corps of Engineers in the late 19th century. The New Inlet Dam is composed of two components, a Northern Component that extends from Federal Point to Zeke's Island and a Southern Component that extends southwestward from Zeke's Island and separates the New Inlet from the main channel of the Cape Fear River. The General Assembly further finds that the Southern Component of the New Inlet Dam impedes the natural flow of water between the Cape Fear River and the Atlantic Ocean that occurred prior to emplacement of the dam. The General Assembly further finds that it is necessary to consider removal of the Southern Component of the New Inlet Dam in order to reestablish the natural hydrodynamic flow between the Cape Fear River and the Atlantic Ocean. To this end, the Department of Environment and Natural Resources shall do all of the following:

- (1) Notify the United States Army Corps of Engineers of the State's intent to study the removal of the Southern Component of the New Inlet Dam.
- (2) Issue a Request for Information for a firm capable of conducting an analysis of the costs and benefits of removal of the Southern Component of the New Inlet Dam, including an inventory of all necessary State and federal permits and approvals needed to develop and implement a removal plan. Identification of a capable firm pursuant to this section shall be done in accordance with Article 8 of Chapter 143 of the General Statutes.
- (3) Request approval from the National Oceanic and Atmospheric Administration to adjust the boundary established for Zeke's Island for both of the following changes:
 - a. Moving the current western boundary 200 feet seaward and removing the area that lies between the current boundary and the new boundary from the North Carolina National Estuarine Research Reserve.
 - b. Compensating for any loss of acreage pursuant to sub-subdivision a. of this subdivision by adding a corresponding amount of acreage to the northern boundary of Zeke's Island from adjacent acreage at Fort Fisher State Recreation Area.
- (4) If the Department obtains approval from the National Oceanic and Atmospheric Administration to adjust the boundary established for Zeke's Island as described in subdivision (3) of this subsection, the Coastal Resources Commission shall amend 15A NCAC 070 .0105 (North Carolina Coastal Reserve: Reserve Components) as follows:
 - a. Definitions. – "Reserve Components Rule" means 15A NCAC 070 .0105 (North Carolina Coastal Reserve: Reserve Components) for purposes of this section and its implementation.
 - b. Reserve Components Rule. – Until the effective date of the revised permanent rule that the Coastal Resources Commission is required to adopt pursuant to sub-subdivision d. of this subdivision, the Commission and the Department of Environment and Natural Resources shall implement the Reserve Components Rule, as provided in sub-subdivision c. of this subdivision.
 - c. Implementation. – Notwithstanding the Reserve Components Rule, the Commission shall adjust the boundary established for Zeke's Island in conformance with any boundary change that is approved by the National Oceanic and Atmospheric Administration pursuant to subdivision (3) of this subsection.
 - d. Additional rule-making authority. – The Commission shall adopt a rule to replace the Reserve Components Rule. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this subdivision shall be substantively identical to the provisions of sub-subdivision c. of this subdivision. Rules adopted pursuant to this subdivision are not subject to Part 3 of Article 2A of Chapter 150B

of the General Statutes. Rules adopted pursuant to this subdivision shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

- e. Effective date. – Sub-subdivision c. of this subdivision expires when permanent rules to replace sub-subdivision c. of this subdivision have become effective, as provided by sub-subdivision d. of this subdivision.

Notwithstanding any other provision of law, the Department of Environment and Natural Resources may use funds from the Deep Draft Navigation Channel Dredging and Maintenance Fund, established pursuant to G.S. 143-215.73G, as enacted by subsection (c) of this section, to implement this subsection. No later than April 1, 2016, the Department shall report to the Environmental Review Commission, the chairs of the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division regarding its implementation of this subsection, including a copy of the Request for Information required by subdivision (2) of this subsection and any responses received to the Request. Neither the Department nor any State agency may proceed with the removal of the New Inlet Dam until (i) the Environmental Review Commission has reviewed the report required by this section and (ii) a bill expressly providing authorization for the removal becomes law.

CLARIFY COASTAL COUNTY AUTHORITY OVER ABANDONED VESSELS

SECTION 14.6.(n) Section 1 of S.L. 2013-182 is repealed.

SECTION 14.6.(o) G.S. 153A-132(i), as rewritten by S.L. 2013-182, reads as rewritten:

"(i) A county may by ordinance prohibit the abandonment of vessels in navigable waters within the county's ordinance-making jurisdiction, subject to the provisions of this subsection. The provisions of this section shall apply to abandoned vessels in the same manner that they apply to abandoned or junked motor vehicles to the extent that the provisions may apply to abandoned vessels. For purposes of this subsection, an "abandoned vessel" is one that meets any of the following:

- (1) A vessel that is moored, anchored, or otherwise located for more than 30 consecutive days in any 180 consecutive-day period without permission of the dock owner.
- (2) A vessel that is in danger of sinking, has sunk, is resting on the bottom, or is located such that it is a hazard to navigation or is an immediate danger to other vessels.

Shipwrecks, vessels, cargoes, tackle, and other underwater archeological remains that have been in place for more than 10 years shall not be considered abandoned vessels and shall not be removed under the provisions of this section without the approval of the Department of Cultural Resources, which is the legal custodian of these properties pursuant to G.S. 121-22 and G.S. 121-23. This subsection applies only to the counties set out in G.S. 113A-103(2)."

EROSION CONTROL STRUCTURES

SECTION 14.6.(p) The Coastal Resources Commission shall amend its rules for the use of temporary erosion control structures to provide for all of the following:

- (1) Allow the placement of temporary erosion control structures on a property that is experiencing coastal erosion even if there are no imminently threatened structures on the property if the property is adjacent to a property where temporary erosion control structures have been placed.
- (2) Allow the placement of contiguous temporary erosion control structures from one shoreline boundary of a property to the other shoreline boundary, regardless of proximity to an imminently threatened structure.
- (3) ~~The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date for any of the permits.~~
- (4) The replacement, repair, or modification of damaged temporary erosion control structures that are either legally placed with a current permit or