

September 25, 2009 (revised)

MEMORANDUM

Public Involvement in a Study for Cape Fear River Dredging

"A process that can't be seen can lead to suspicion."
-Corps of Engineers, Institute for
Water Resources, Planning Manual.

The Wilmington, North Carolina, District of the US Army Corps of Engineers has begun a reconnaissance study for a project to dredge a new channel in the Cape Fear River in southeastern North Carolina. This would be a very large project, approximately 22 miles of 52.5-foot-deep channel, much of which would be through undisturbed parts of the river. Approximately 68 million cubic yards of material would be removed. Based on the cost of a current dredging project in the river, the cost of this project would exceed 1.5 billion dollars. The project is very controversial.

The reconnaissance study is the first phase of a two-phase study of the feasibility of the project. The second phase would follow only if the Corps of Engineers District determined, in the reconnaissance phase, that there was a "Federal interest" in the project.

The Wilmington District has announced that there will be no public involvement in the reconnaissance study (see Exhibit A). The District has invited public comment, but advises in the announcement that such comments will not be addressed until after the reconnaissance study is complete, and the second phase, a full feasibility study, has begun. The District has confirmed this to the writer.

Such rejection of public participation is contrary to public policy, Corps of Engineers regulations, and sound planning principles.

The Project

The new channel would serve a proposed new marine container terminal on the Cape Fear River near Southport. The preliminary plans for this terminal show a capacity of 3,000,000 twenty-foot

NO PORT Southport NC, Inc.

Post Office Box 10062

Southport, NC 28461

www.noportsouthport.org

equivalent units (TEU) annually. This would be the largest such terminal in the United States after the terminals at Newark and Elizabeth, New Jersey, and Long Beach and Los Angeles, California.

There is a container terminal on the Cape Fear River, upriver at the Port of Wilmington, accessible by the largest vessels able to transit the Panama Canal. The capacity of that terminal is approximately 400,000 TEU annually, and projects are underway to increase that to 500,000 TEU. Current container movements through that terminal are slightly less than 200,000 TEU per year. The North Carolina State Ports Authority, the operator of the existing terminal and sponsor of the proposed terminal, perceives a need for the larger, 3,000,000 TEU terminal for future growth.

The existing marine terminal and other facilities at the Port of Wilmington are served by a 42-foot-deep channel in the Cape Fear River. From the Port of Wilmington to the mouth of the river is about 26 miles; the channel extends another seven miles out to sea to reach deep water. That channel has recently been dredged to the 42-foot depth from 38 feet, in a project costing, as of April 2009, \$533 million.

The existing channel can accommodate the largest vessels able to transit the Panama Canal, called "Panamax" vessels. The new marine container terminal, to be called the North Carolina International Terminal, and the new channel to serve it, would be designed to accommodate larger container ships, a new generation of vessels that are not able to transit the Panama Canal, now or after completion of larger locks in 2014. The new generation of vessels, called "post Panamax," would draw 50 feet, have a beam of 185 feet, and a length of over 1200 feet. They would be larger than any warship in the world's navies, including aircraft carriers.

CH2M Hill, Inc., consultants to the North Carolina State Ports Authority for the project, propose a new channel in the Cape Fear River from the terminal site to the mouth of the river, bypassing an "S" curve in the existing channel at Southport, and extending out to sea seventeen miles to reach deep water (CH2M Hill, Inc., Technical Memorandum, North Carolina International Terminal Conceptual Dredging Study (dated 2006, but believed to be 2008)). Inasmuch as the Cape Fear River is not a natural deep water harbor and the depth along the proposed new route is

NO PORT Southport NC, Inc.

Post Office Box 10062

Southport, NC 28461

www.noportssouthport.org.

measured in single digits, the consultants estimate that 68.3 million cubic yards of material would have to be removed, including 10 million cubic yards of rock. The recent channel dredging project in the river involved removal of 25 million cubic yards of material with 600,000 cubic yards of rock; the cost of that project has reached \$533 million, and the project is not complete.

Using the same unit costs as the recent project, without giving effect to cost escalation or the larger proportion of rock, the new channel would cost approximately \$1.5 billion.

Controversial Nature of the Project

The proposed terminal would be located in undeveloped woods, meadow and marshland immediately north of the City of Southport, a tranquil community of 2800. The terminal and the related channel would destroy over 100 acres of salt marsh and disrupt established wildlife habitat and recreational uses of the river. The terminal site is over the aquifer providing groundwater to much of eastern Brunswick County; the proposed channel would penetrate that aquifer to a depth of five to ten feet over a large area.

Southport is the nucleus of a larger area of eastern Brunswick County focused on the Cape Fear River and adjoining waterways for recreational, esthetic, and economic sustenance. A grass-roots organization, NoPort Southport NC, Inc., has been formed to oppose the project and has held public meetings attended by hundreds of people. The North Carolina Coastal Federation, an environmental advocacy organization committed to a sustainable coast, is concerned with the entire project's potential impacts and the lack of public involvement in the process so far. Other environmental and civic groups, also concerned, await emergence of specific information and the establishment of appropriate forums and procedures for comment.

Reconnaissance Studies

A reconnaissance study is the first phase of a two-phase study preceding a navigation or other water resource project conducted by the Corps of Engineers. Reconnaissance studies are mandated by section 905(b) of the Water Resources Act of 1986.

NO PORT Southport NC, Inc.

Post Office Box 10062
www.noportsouthport.org

Southport, NC 28461

Such a study "shall include a preliminary analysis of the Federal interest, costs, benefits, and environmental impacts of such project." The subject study has a budget of \$200,000 (of which \$96,000 has been appropriated), all Federal funds. Study duration is normally limited to 12 months, but can go to 18 months.

If the Corps of Engineers determines in the reconnaissance phase that there is a "Federal interest," that the benefits are likely to exceed costs, and that environmental impacts can be mitigated successfully, the study would proceed to the full "feasibility" phase. This involves more detailed economic analysis and a full environmental impact statement. This second phase would cost several million dollars, and take several years. For a project involving dredging to this depth, the Federal government would pay half the cost; the other half must be provided by non-Federal sources, that is, the State of North Carolina.

The two-step process depends entirely on the integrity of the first step, the study foundation. A recommendation by the Corps in the reconnaissance phase to proceed to the feasibility phase is a commitment by the Corps to the project, and this commitment would weigh heavily in the decision by Congress and the North Carolina Assembly to underwrite the cost of the feasibility study. That in itself is a commitment to the project. Thus the reconnaissance study, whatever its limitations, is crucial.

The Open Government Imperative

On the day after his inauguration, President Obama announced an Open Government Initiative. His Memorandum for the Heads of Executive Departments and Agencies (Exhibit B) begins with this paragraph:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

NO PORT Southport NC, Inc.

Post Office Box 10062
www.noportsouthport.org

Southport, NC 28461

This is not a new concept. The necessity for continuing public scrutiny of government operations and decisions in the United State of America goes back to the Declaration of Independence and underlies the guaranty of freedom of the press in the first amendment to the Constitution.

Louis Brandeis, later to be one of our most esteemed Justices of the Supreme Court, wrote this in 1914:

Sunlight is said to be the best of disinfectants,
electric light the most efficient policeman.

This is the source of the name "Sunshine laws" we use for the Freedom of Information Act and related statutes requiring transparency in government.

Corps of Engineers Practice

Planning studies, both the reconnaissance phase and the feasibility phase, are governed by the Corps of Engineers Economic and Environmental Principles and Guidelines for Water and Related Land Use Resource Implementation Studies (1983), and the Planning Guidance Notebook (Engineering Regulation 1105-2-100 (2000, as amended)).

Both documents recognize the open government imperative. The Principles and Guidelines addresses the matter only briefly, in section 1.4.3, but in unequivocal terms:

Interested and affected agencies, groups and individuals should be provided opportunities to participate throughout the planning process.

The Planning Guidance Notebook, in both the main text, section 2.5b, and a specific appendix, Appendix B, addresses the issue in more detail. Some excerpts:

All Corps planning studies are required to incorporate public involvement, collaboration and coordination with their Federal and non-Federal partners and the public (Planning Guidance Notebook, section 2.5b(2)).

Maximize Public Input. Each project should have a detailed public involvement strategy that is keyed to

NO PORT Southport NC, Inc.

Post Office Box 10062

Southport, NC 28461

www.noportsouthport.org.

maximize public input at each stage of the planning process (Planning Guidance Notebook, Appendix B, section B-5a).

Neither the Principles and Guidelines nor the Planning Guidance Notebook distinguish between the reconnaissance phase and the feasibility phase of a planning study for the public involvement aspects. The phrases "throughout the planning process," "All Corps planning studies," and "at each stage of the planning process" leave no doubt as to all-inclusive nature of the official position.

Other Corps of Engineers Districts include public involvement in reconnaissance studies, although the practice is not universal. It is generally left to the discretion of the individual district. Here are several examples of recent studies with significant public participation:

- Honolulu District, West Maui Watershed (currently being conducted)
- Los Angeles District, Long Beach Breakwater (July 2009, conducted by the City of Long Beach according to Corps of Engineers procedures)
- New York District, Westchester County Streams (July 2008)
- Huntington, West Virginia District, Ohio River Basin (currently being conducted). See Exhibit C.

The Wilmington District itself has engaged the public in prior reconnaissance studies. The three reconnaissance studies available on the Wilmington District Web site--projects for the Philpott Dam, John H. Kerr Dam, and Currituck Sound--all document public participation with meetings and other methods of public input.

Rejection of public participation in the largest and most controversial project the Wilmington District has faced in recent times is inexplicable.

Conclusions

There are two elements of the open government imperative at issue--public input and public scrutiny.

Public input involves testimony at public forums, whether formal hearings, public meetings in a "town hall" format, or simply meetings and workshops to which representatives of interested groups or interested individuals are invited to attend and participate. Public input also includes solicitation and consideration of written comments. Such input must be taken into account in the development of decisions. All of this is prescribed in Appendix B to the Planning Guidance Notebook.

The Wilmington District does not plan any public meetings for the subject reconnaissance study. The District has invited comment, but made clear in its announcement, and confirmed to the writer, that such comments would not be considered in the reconnaissance study. The comments would be put aside until the reconnaissance study is complete, the determination to proceed has been made, and the feasibility study authorized and funded.

The other, perhaps more important, aspect of the open government imperative is transparency, the ability of the public to observe the development of decisions and the provision of information for the public to make judgments on the wisdom of those decisions as they evolve. Only such transparency can assure accountability and give the public confidence in the decision. The Wilmington District has made clear that no such scrutiny will be tolerated. The study will be done behind closed doors. The writer suggests, without fear of contradiction, that those doors will, however, be open to the North Carolina State Ports Authority and its consultants.

As the President's statement points out, the most effective and efficient manner of decision development is involvement of interested parties at every step.

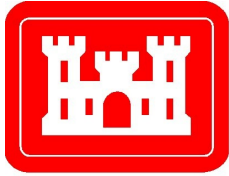
Proceedings held in secret will always be suspect, and indeed, such suspicions usually prove well-founded. Any confidence that the community may have had in the integrity of the Wilmington District's analytical process has been destroyed.

Michael Rice,
for the Steering Committee

NO PORT Southport NC, Inc.

Post Office Box 10062
www.noportssouthport.org

Southport, NC 28461



US Army Corps of Engineers®

Wilmington District

For Release: IMMEDIATELY
8 September 2009
POC: Penny Schmitt (910) 251-4626

Corps responds to questions about public involvement in NCIT project development process

Wilmington, N.C.—In Fiscal Year 2009 The Corps of Engineers received funding to determine whether there is a Federal interest in participating in a cost shared Feasibility Phase Study with a non-Federal sponsor to modify the existing Wilmington Harbor project, known as the North Carolina International Terminal. “This phase is known as a Reconnaissance Study,” said Project Manager Debbie Willis. “We understand the public will have many concerns, and these certainly will be addressed and discussed if the proposed project proceeds to the next, or Feasibility phase.”

The purpose of a Reconnaissance is to determine whether there is enough of a Federal interest to begin the next, more thorough Feasibility phase, during which extensive public input will be invited.

The Corps is currently conducting this Reconnaissance analysis, referred to as a 905(b) report, on the proposed NCIT project. As with all 905(b) reports, it will be based on existing information and will document assumptions to support the analysis. “It may certainly include known information about public concerns gathered from local governments or state and federal agencies,” Willis said. “We anticipate this analysis being complete by June 2010.”

Only after the Corps determines that a Recon analysis indicates a project is potentially in the Federal Interest can it move forward to the Feasibility Phase. At that time, a project management plan is developed. This lays out the scope of the feasibility study and includes development of public involvement strategies.

A feasibility study encompasses the full breadth of formal public involvement activities including public scoping meetings, public workshops and resource agency meetings to fully define the scope of issues to be investigated in detail. During the Feasibility phase, the Corps defines problems and opportunities, describes and fully evaluates the economic, technical and environmental feasibility of alternative plans. A wide range of alternatives are investigated in a feasibility study, including the no action alternative. In addition to public meetings held throughout the study process, draft and final reports are released for public comment.

While no formal public meetings are planned during the present Reconnaissance study, any comments received will be considered in order to more fully understand public concerns regarding the project. “When we begin to shape our public involvement process and strategies, the comments received will help us better gage the sensitivities of the public and the issues they desire to have addressed,” Willis said.

Those who wish may submit comments by email or by regular mail. “We hope that people will keep in mind that these comments will *not* be addressed or responded to individually at this time. We will be evaluating the comments and using them to help us as we begin to plan for public involvement during a potential Feasibility phase.” People who comment may also request to be placed on a mailing list and notified of any future public meetings.

To email comments, go to:

http://www.saw.usace.army.mil/Authorized_Projects/NCIT/main.htm

and click on the email link. Be sure to name the NCIT project in the subject line of your message.

To mail comments, go to:

USACE, Wilmington District
ATTN: NCIT Project Team
69 Darlington Avenue
Wilmington NC, 28403.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Transparency and Open Government

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

I direct the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development by appropriate executive departments and agencies, within 120 days, of recommendations for an Open Government Directive, to be issued by the Director of OMB, that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum. The independent agencies should comply with the Open Government Directive.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the Federal Register.

BARACK OBAMA



**US Army Corps
of Engineers**

News Release

Public Affairs Office

(Address, city, state)

FOR IMMEDIATE RELEASE
June 30, 2009

Contact: S Michael Worley

Army Corps of Engineers solicits input on new Ohio River Basin Comprehensive Study

Huntington, W. Va. — The U.S. Army Corps of Engineers is conducting a reconnaissance study of the Ohio River Basin, including the Cumberland and Tennessee River basins. Using a collaborative watershed approach, the study will identify current and future water resource issues within the basin.

“The study enables the Corps along with other organizations to collectively identify the most pressing problems and future water resource needs while collaborating,” said S. Michael Worley, project manager, Huntington District, W. Va.

The Corps is seeking input from local, state and federal agencies on their most pressing water resource priorities for the future. The Corps encourages input from environmental non-profit agencies and groups.

All water resources categories are being considered including:

- Flood Damage Reduction
- Environmental Degradation/Ecosystem Restoration/Fish and Wildlife Habitat
- Water Supply/Water Quality
- Hydropower
- Navigation

Water resources issues being considered include:

- Existing aging water resources infrastructure ranging from small flood reduction projects to large reservoirs

Products of the study include:

- GIS database of existing water resources projects in the study area
- Web site for information exchange and collaboration with stakeholders
- Report including identification of the greatest water resources problems, needs and opportunities
- Formulating a framework to establish a collaborative partnership to champion the water resource issues in the basin

Potential outcomes of the study are:

- Recommendations for planning to develop solutions to problems and needs
- Basin-wide water management plan and reinvestment strategy
- Formation of multi-state Ohio River Basin collaborative partnership

The study is expected to be completed in December 2009 with a draft report available through the website for public comment at the end of October 2009. The preliminary information gathering phase is underway. The Corps requests interested parties to provide input by September 30, 2009 through the study web site at: www.orboutreach.com.

For information contact project manager S Michael Worley 304-399-5802, Huntington, W.Va.

###