



DEPARTMENT OF THE ARMY  
US ARMY CORPS OF ENGINEERS  
NEW ENGLAND DISTRICT  
696 VIRGINIA ROAD  
CONCORD MA 01742-2751

April 12, 2019

Kevin L. Sutherland  
City Administrator  
Saco City Hall  
300 Main Street  
Saco, ME 04072-1538

Dear Mr. Sutherland:

I am responding to your letter of April 2, 2019 concerning the Saco River and Camp Ellis Beach, Section 111 Shore Damage Mitigation project and the USACE longstanding request for the City of Saco (as the project's non-Federal sponsor) to provide a letter of support and commitment to fulfill the required non-Federal responsibilities for implementation of the project.

In your letter, you request that the requirement for the project's non-Federal sponsor to assume responsibility for future inspections, operation, maintenance, and repair of the stone spur jetty and its associated reinforcement of the adjacent seaward section of the main jetty (collectively the spur jetty) be made "permissive, rather than mandatory".

The USACE will prepare an Operations and Maintenance Manual after completion of initial construction of the project, which will provide a guide to the City on its future responsibilities for the spur jetty. At our last two meetings, the USACE also expressed a willingness to assist the City in scoping and evaluating its inspections, maintenance, and repairs to the spur jetty in the interest of the project's long-term success. However, we cannot agree to make the requirements for operation, maintenance, and repair discretionary (or permissive) on the Sponsor's part and not "required." That is not something that the District (or the Corps) can modify or waive as it is a matter of law.

The original Section 111 of the River and Harbor Act of 13 August 1968 did state that "the cost of installing, operating, and maintaining such projects shall be borne entirely by the United States." However this was changed in Section 940 of the Water Resources Development Act of 1986 which provided that "The Secretary of the Army is authorized to investigate, study, plan, and implement structural and nonstructural measures for the prevention or mitigation of shore damages attributable to Federal navigation works, if a non-Federal public body agrees to operate and maintain such measures ..." These non-Federal responsibilities must therefore remain requirements of the project.

The USACE also agreed to examine whether or not a project authorized and implemented under Section 111 authority would, if damaged by coastal storms that result in a disaster declaration, be eligible for restoration under the USACE Public Law 84-99 (Section 5 of the Flood Control Act of 1941) authority. PL84-99 allows for Federal funding of restoration of Federal Coastal Storm Damage Reduction projects damaged or destroyed by floods and coastal storms. However, as Section 111 projects are mitigation for damages attributable in part to the impacts of Federal Navigation Projects, they are not considered to be Storm Damage Reduction Projects, and are not eligible for PL84-99 assistance.

The Federally Implementable Plan recommended in the report was based on Plan 6, the least costly plan for mitigating further shore damages at Camp Ellis. Plan 6 consists of a stone spur jetty and beach fill on the 3,250 feet of beach north of the jetty. Plan 6 was reduced in scope to meet the \$26.9 million Federal funding limitation established by Congress in Section 3085 of the Water Resources Development Act of 2007 for this project. The initial cost of implementing Plan 6, as recently re-estimated using 2019 price levels escalated to 2021, is \$34.0 million, or about \$7.1 million more than the WRDA 2007 Federal funding limit. The beach fill component of Plan 6 was reduced in the most recent cost estimate to 168,000 cubic yards of sand to bring the total project cost down to the \$26.9 million Federal total project cost limit. **Requirements for the City to complete the remainder of the initial beach fill and perform future re-nourishment remain eliminated from the plan.**

The final report's recommendations outlined the principal responsibilities of the City as the project's non-Federal sponsor on pages 89 to 91 of the report, and include the following:

- (1) Assume responsibility for all project costs in excess of the \$26.9 million limit on Federal total project cost, which would be necessary if costs of such things as regulatory compliance, unfavorable bids, and or contract claims push initial construction costs higher;
- (2) Operate, maintain, repair, replace, and rehabilitate the spur jetty component of the project at no cost to the Federal government;
- (3) Agree, as required by the U.S. Fish and Wildlife Service, to monitor the beach fill area for the presence of shorebirds listed under the Endangered Species Act and to prescribe and enforce regulations to prevent adverse impact to those species;
- (4) Hold and save the United States free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the project, except for damages due to the fault or negligence of the United States or its contractors.

The USACE does not view your April 2, 2019 letter as supporting the recommendation of the report. In order for the project to proceed further, the City must agree to either proceed with the Federally Implementable Plan as described in the draft final report, or to fund any costs above \$26.9 million for an alternative plan. Until then the USACE must suspend further involvement in this project. If you have any questions, please contact me at (978) 318-8220, or Mr. John Kennelly, Chief of the Planning Division at (978) 318-8505.

Sincerely,



William M. Conde  
Colonel, Corps of Engineers  
District Engineer

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