



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Raleigh Field Office

Post Office Box 33726

Raleigh, North Carolina 27636-3726

January 6, 2015

Mayor Ron Watts
PO Box 6627
Ocean Isle Beach, NC 28469

Dear Mayor Watts:

This letter is in response to a request for public comments regarding the proposed 21 platted lots within the Sunset Beach West development at the terminus of Main Street West located in the Town of Sunset Beach (Town), and adjacent to the natural area known as the Bird Island State Reserve. The U.S. Fish and Wildlife Service (Service) has been made aware of possible development that might be affected by the Coastal Barrier Resources Act (CBRA). Most new Federal expenditures and financial assistance are prohibited within the Coastal Barrier Resources System (CBRS), unless those activities qualify for an exception under Section 6 of the CBRA (16 U.S.C. § 3505). The Service, through the Secretary of Interior, is responsible for administering the CBRA which includes consulting with federal agencies that propose spending funds within the CBRS.

It is the responsibility of the federal funding agency to request from the Service a CBRA consistency consultation to determine whether the proposed project meets an exception under CBRA. The Service has not yet received such a request from the federal funding agency for the Sunset Beach West development. This letter is intended to be informational with the hopes of engaging the Town in further conversation about the proposed development and possible implications the CBRA might have on this proposed development. Possible development plans and utility connections have been brought to our attention, and we want to be transparent regarding the CBRA's restrictions on federal funding that may affect this proposed development. The Service will be glad to discuss the contents of this letter with the Town at any point in the future if it is requested.

Information in an email correspondence between Mrs. Ann Hardy (County Manager of Brunswick County) to a Sunset Beach citizen on June 3, 2014 provides initial information regarding federal funding assistance that has been provided to Brunswick County for various projects over the years. Based upon the information provided in the email it appears that Brunswick County has received federal assistance in the past through the North Carolina Department of Environment and Natural Resources (NC DENR) in the form of a construction grant and low interest loan for the construction of the mainland sewer system in Sunset Beach. Also, it appears that Brunswick County received federal assistance in the construction of the West Brunswick Water Reclamation facility and the Northeast Brunswick Regional Wastewater System through NC DENR in the form of low interest construction loans. Additionally, the

County has received at least one State and Tribal Assistance Grant (STAG) grant from the Environmental Protection Agency for water main construction over the past ten years. It is also our understanding that the County hopes to continue to receive federal funds from these same sources in the future. In order to properly understand the potential implications of the CBRA, it is important for the Service, Brunswick County, and the Town to communicate regarding when the federal funding assistance was received, and where the federal funding came from for each of these projects associated with Sunset Beach utilities.

Another item we would like to discuss with the Town and Brunswick County is the unanimously approved new policy found in Brunswick County Board of Commissioners September 15, 2014 Meeting Notes, page 16, item #7, which is quoted below:

“7. Utilities- Request for Approval of Utility Service Areas Regulated by Coastal Barrier Resources Act (COBRA) Policy – (Jerry Pierce, Director of Public Utilities) Request that the Board of commissioners approve a policy that establishes the terms and conditions that will apply to water and/or sewer service inside areas regulated by the Coastal Barrier Resources Act (COBRA).

Jerry Pierce, Public Utilities Director, explained that the U.S. Fish and Wildlife Service has designated one area at the end of the island in Sunset Beach as meeting the requirements for inclusion under the Coastal Barrier Resources Act. While the Coastal Barrier Resources Act does not preclude development of the property designated for inclusion, the Act prohibits the use of any federal funds in the development or restoration of any improvements within that area. This requirements means that the county would solely be responsible for any repair or replacement of the water and/or sewer mains within the area in the event of a major storm that damages the mains. Normally, the county would receive Federal Emergency Management Agency (FEMA) assistance to repair or replace the mains.

The proposed policy does not prohibit the development of the property designated by the Coastal Barrier Resources Act and allows the county to provide water and/or sewer service to the property if developed. The policy does require that the developer own and operate any water and/or sewer mains constructed within the COBRA designated area. The county would install taps and or meters outside of the COBRA designated area to serve the property.

Vice-Chairman Phillips moved to approve the Utility Service in Areas Regulated by the Coastal Barrier Resources Act (COBRA) Policy. The vote of approval was unanimous.”

Based upon the proposed plans and policy above, it is our understanding that the Town’s utilities will be connected to these new residential developments, but the connecting station will be located outside of the CBRS with the hope that this will circumvent CBRA’s restrictions on federal funding, as described in the County’s newly approved policy. As mentioned above, the Service would like to discuss this policy with the Town and Brunswick County regarding its potential implications with the CBRA.

We want to provide information on how this type of situation has been handled in the past, and have attached related cases and letters. If the facilities that are proposed to be connected to Sunset Beach West development within the CBRS were federally funded prior to the establishment of CBRS Unit M01, and have not received any federal funding after that date or

expect to in the future, then there is no federal nexus to the CBRA, and the proposed Sunset Beach West utility connection will not hinder future federal funding received by the Town. In order for the Service to make this determination as to whether the associated utilities received federal funds prior to October 1, 1983, the Town and Brunswick County must provide us with documentation showing when the federal funding assistance was received, and where the federal funding came from for each of these projects associated with Sunset Beach utilities.

Our response to this situation is based on a 1987 Department of Interior Solicitor's opinion with supporting rationale regarding the extension of the service area of an existing federally funded sewage treatment plant (copy of opinion enclosed).

Thank you for allowing us to comment on this project and we welcome an opportunity to discuss the details of this proposed project and its potential CBRA funding assistance implications with you in the near future. You can also visit the CBRA website for additional information here: <http://www.fws.gov/CBRA/index.html>. We are available if you need further clarification or information.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Benjamin". The signature is written in a cursive style with some overlapping loops.

Pete Benjamin
Field Supervisor