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October 1, 2024

The Honorable Michael Connor
Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, D.C. 20310-0108

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The Honorable Rachel Jacobson
Assistant Secretary of the United States Army
Installations, Energy, and Environment
110 Army Pentagon
Washington, D.C. 20310-0110

Dear Assistant Secretary Connor and Assistant Secretary Jacobson:

Perkins Coie LLP represents the Buxton Civic Association (Association) in their effort to ensure that the formerly used defense site (FUDS) at Cape Hatteras, North Carolina, is fully remediated and restored, including demolition and removal of all former Navy and Coast Guard infrastructure.

The Association appreciates the recent decision by the Army Corps of Engineers (Corps) to remove petroleum and other contaminants from the FUDS area. It is unfortunate that the work was not completed long ago given the significant adverse impacts to Cape Hatteras National Seashore (Seashore), the visitors thereto, and the local economy dependent on that visitation. Nevertheless, the Association considers the Corps' recent actions and commitments to be a good step in the right direction. The Association is grateful to Colonel Sturgeon for his leadership.

The Association is concerned, however, that the Corps appears to have limited the scope of its planned work to no more than removal of contaminated sand and any materials impeding access to contaminated sand. This means that the Corps does not intend to address the myriad pipes, building foundations, septic systems, and other infrastructure that was abandoned by the Navy and Coast Guard when they ended their use of Cape Hatteras, one of the most popular and treasured sites in North Carolina.

The permit issued by the National Park Service under which the Navy and Coast Guard were authorized to use the Seashore's land is not ambiguous on the question whether the site was to be cleaned up or whose job it would be (with apologies for the poor copy quality):

11. The permittee shall remove all structures, foundations and pavements, and clean up and restore the site prior to or immediately following termination of use

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We have attached photos taken recently that show some of the materials left behind by the federal government. The abandoned infrastructure is unsafe, unsightly, and does not belong on a national seashore. They are the reason why one of the most popular beaches in North Carolina has been closed to public use since September 2023. The infrastructure formerly used for defense purposes will continue to damage the visitor experience, environment, and local economy until it is removed.

We ask that you use your authority to ensure that the remediation and restoration work at Cape Hatteras extends beyond removal of contaminated sand to include removal of all infrastructure left behind by the Navy and Coast Guard. The rebar, concrete, pipes, and other materials jutting onto the beach (and still buried nearby) were placed there by the Navy and Coast Guard. It is a federal mess. A formerly used defense site. No private or non-federal government parties are responsible. There can be no question that it is a federal responsibility to “clean up and restore the site.” And there is no question that the Navy and Coast Guard committed, on behalf of the federal government, to get the clean-up and restoration done.

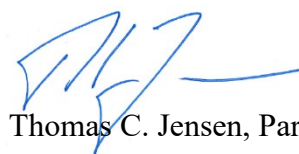
The Association members have paid attention as local Corps officials used public meeting time to lay out all the technical reasons why the agency’s hands are tied and can do only the minimum needed to get oil-soaked sand out of the Seashore. Making this inadequate response even worse, the Corps apparently does not intend to replace the sand it removes—compounding the negative impacts of sea level rise and storms on the site.

Cape Hatteras is one of North Carolina’s most important and prominent environmental treasures and economic engines. Millions of Americans, many from North Carolina itself, visit Cape Hatteras. Cape Hatteras matters to North Carolina and North Carolinians. Hotels near the contaminated beach have recently experienced cancellations, with visitors citing the contaminated beach as the reason. We submit that none of the visitors to Cape Hatteras or its residents expect the federal government or this Administration to resort to technical excuses to escape responsibility for removing this federal mess from the best-known and most iconic beach in North Carolina.

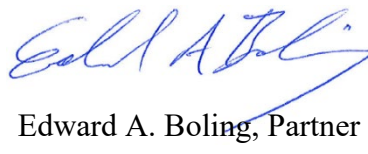
On behalf of the Buxton Civic Association, we urge your immediate attention to this issue. Your leadership now could bring considerable favorable reaction from community and government leaders in North Carolina and elsewhere and would set the Corps on a path to make a major contribution to the environmental and economic well-being of the state. Simply, it is the right thing for this Administration to do now.

We will follow up with your offices to request time to meet on this topic. Thank you for your consideration of our request. Please do not hesitate to contact us.

Respectfully,



Thomas C. Jensen, Partner



Edward A. Boling, Partner

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Cc: Brenda Mallory, Chair
Council on Environmental Quality
Executive Office of the President

Shannon Estenoz
Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior

Jaime A. Pinkham
Principal Deputy Assistant Secretary
of the Army for Civil Works

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Deputy General Counsel
for Installations, Environment and Civil Works





