

SHORELINES – December 2003
As presented to the Island Review Magazine.

“On Hold”

For those of us not familiar with the Brandt Island Pump-Out/Section 933 Project, this two-year effort is scheduled to utilize up to 4.5 million cubic yards of sand from the Morehead City Harbor over a 11.9-mile stretch of Bogue Banks including the beaches of Ft. Macon, Atlantic Beach, Pine Knoll Shores, and Indian Beach. The “Base Disposal Plan” will nourish the shorelines of Ft. Macon and Atlantic Beach by utilizing dredged sand stored in the upland disposal site called Brandt Island. This portion of the overall effort is funded 100% by the Federal Government and has been included in this year’s Federal budget. The Section 933 Project on the other hand has an element of Federal/non-Federal cost sharing that was dependent upon Congress providing additional funding to the Corps this year to complete Phase I of the Section 933 Project that will encompass the shorelines of Pine Knoll Shores and also utilize the sand stored in Brandt Island. The second Phase of the Section 933 Project will be constructed next year and will nourish the shorelines of Indian Beach utilizing sand from the Morehead City Harbor ocean entrance channel.

But wait -- November 1st has come and gone and the Holidays are rapidly approaching complete with turkey, ham, dressing, matzo ball soup, and a multitude of desserts. So where is the cutterhead dredge?, the bulldozers?, the stacks of dredge pipe?, the teams of surveyors?, and what seems like scores of men and women traversing the beach with hard hats? As Beach Commission chairman William “Buck” Fugate mentioned at our last Commission meeting; “The Section 933 Project has had more ups and downs than a yo-yo this year.” The latest twist comes as a compliment from the U.S. Court of Federal Claims located in Washington, DC and involves a dispute between two dredging companies – Bean Stuyvesant and Norfolk Dredging.

The Wilmington District of the Corps structured the Base Disposal Plan/Section 933 dredging bid by requesting a price for the Base Disposal Plan (Ft. Macon and Atlantic Beach) and a 933 option (Phase I - Pine Knoll Shores). The winning bid would be based on the Base Disposal Plan price only. Bean Stuyvesant was the lowest bid for the Base Disposal plan at \$9,570,800; the second lowest bid was Norfolk Dredging that was only \$6,760 higher (\$9,577,560). "Bean" was also the low bid for the Section 933 option at \$4.667 million; Norfolk's cost was significantly higher at \$7.785 million. Actually Norfolk's bid is so high that a Section 933 Project would not occur even if Norfolk did win the contract based on the Base Disposal Bid.

The Corps awarded the Base Bid to Bean in early October and was planning to exercise the Section 933 option later in the month. In the interim, Norfolk Dredging decided to file a lawsuit against Bean. The premise of the lawsuit was not the \$6,760 discrepancy in the Base Bid but the notion that Bean's parent company Boskalis, the largest dredging company in the world, is owned by the Dutch, and the Federal Government may only contract with American dredging companies (75% U.S. citizen owned). Bean won a similar lawsuit a couple of years ago and the U.S. Customs Service provided opinion that Bean was a legitimate, American Company. Bean is a well-respected dredging company, is a member of the Dredging Contractors America, and has completed many Corps projects including portions of the Wilmington Harbor Clean Sweep and the Oak Island Section 933 Project. Part of Norfolk's legal argument was that the U.S. Customs Service's opinion in the previous case against Bean was incorrect.

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Unfortunately, the judge in this new case ruled in Norfolk's favor. The U.S. Court of Federal Claims decision by virtue of essentially awarding the Morehead City Harbor contract to Norfolk Dredging precludes the construction of the Section 933 because Norfolk's Section 933 option price is excessive, therefore the Corps cannot exercise the option. However, the U.S. Justice Service has now filed motion to reconsider and this places the Base Disposal Plan and the Section 933 Project (Phase I) on hold until the courts rectify the situation.

The “take home message” in all of these legal proceedings is that the entire beach nourishment/sand management effort is at the mercy of the court system for now. If worst comes to worst, the entire effort could be delayed a year because there simply would not be enough time in the environmental window to complete the project this year. Maybe this latest twist will reach some resolution by the time the next edition of *Shorelines* goes to print.And then again, maybe not.