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CRC-17-11

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MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Amendments to 15A NCAC .2700 GP for the Construction of Marsh Sills

DCM has undertaken substantial efforts to advance marsh sills and other forms of living shorelines as alternatives to traditional bulkheads for estuarine shoreline stabilization in North Carolina. Living shorelines include a suite of options for shoreline erosion control that maintain existing connections between upland, intertidal, estuarine, and aquatic areas which are necessary for maintaining water quality, ecosystem services, and habitat values. Unlike vertical stabilization measures such as bulkheads, living shoreline techniques typically use native materials such as marsh plants, oyster shells, and occasionally minimal amounts of structural materials (e.g. stone) to stabilize estuarine shorelines, minimize erosion, and enhance habitats.

Over the past several years, DCM has developed a “Living Shorelines Strategy” to facilitate the use of living shorelines. The Strategy includes outreach, public awareness, financial incentives, monitoring and short and long-term implementation actions, which have included several training courses, a marsh sill evaluation effort, and development of an Estuarine Shoreline Stabilization Guide/Handbook for property owners. Additionally, the State and research community have collected significant data demonstrating that these small-scale marsh sills can be effective structures for erosion protection and habitat enhancement.

General Permit (15A NCAC 7H .2700)

During the 2003 legislative session, the North Carolina Legislature approved House Bill 1028, a bill which authorized the Coastal Resources Commission to adopt temporary and permanent rules to establish a general permit for the construction of “riprap sills.” This was implemented as a temporary rule in 2004, and became a permanent rule on April 1st, 2005. Significant discussions on the relative merits and use standards of this general permit took place during its development, including important issues such as the distance offshore that sill structures could be built, the consequences of trading one

type of habitat (shallow bottom) for another (marsh protected by riprap), navigational and public trust concerns, the suitability of such structures along different types of shorelines, and the permitting requirements of other agencies such as the U.S. Army Corps of Engineers (USACE), the Divisions of Marine Fisheries (DMF) and Water Resources (DWR). Due to these concerns, the current General Permit for the construction of marsh sills requires coordination with the DMF, DWR, and the USACE before issuance, and this process can take more time than is normally associated with other CAMA General Permits. Since its inception, there has been an ongoing effort to modify the marsh sill general permit to remove the more time-consuming conditions.

DCM has held numerous coordination meetings with other Department agencies to revise the General Permit 15A NCAC 7H .2700 for marsh sills in an effort to streamline the permitting of these structures. Since several marsh sill studies have been concluded and numerous sills have been constructed, DMF has agreed that there is no longer a need for DMF review of each marsh sill general permit application. In 2016, the U.S. Army Corps of Engineers (USACE) submitted a federal consistency determination to DCM on the reissuance of the USACE Nationwide Permits (NWP). NWPs are issued by the USACE on a national basis and are designed to streamline USACE authorization of projects that produce minimal impacts to the nation's aquatic environment. Included in this consistency determination was the new USACE NWP 54 for living shorelines.

NWP 54 requires a Pre-Construction Notification (PCN) even for the small-scale structures that can be permitted under the General Permit 15A NCAC 7H .2700. This PCN requirement will add additional processing time to the CAMA General Permit process, which is generally designed to take no more than a week. DCM has been working with a large stakeholder group that includes the USACE, marine science community, DWR, DMF, N.C. Coastal Federation, NC Sea Grant, and the National Oceanic and Atmospheric Administration (NOAA) to determine how best to move forward with creating a streamlined permitting process for marsh sills. These stakeholder's meetings are now complete. DCM is compiling all comments and recommendations and will draft an amended general permit 15A NCAC 7H .2700. For there to be an efficient streamlined general permit, all interested parties' concerns must be addressed within the permit conditions. The USACE has explained that they are willing to use this draft amended GP .2700 as a guidance document as they explore creating a Regional General Permit (RGP) for Marsh Sills. A RGP would have specific terms and conditions and would not require a PCN. If the USACE is able to create a RGP, it was agreed by all regulatory parties to begin the rule making process concurrently both at the State and Federal levels so as to streamline the permitting process for marsh sills.