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CRC-20-14

May 26, 2020

MEMORANDUM

TO: Coastal Resources Commission

FROM: Ken Richardson

SUBJECT: Development Line Implementation Subcommittee Update

At the February 13, 2020 Coastal Resources Commission (CRC) meeting, NC Division of Coastal Management (DCM) Staff presented a detailed review of the CRC's Static Vegetation Line (SVL), Static Line Exception (SLE), and Development Line (DL) rules, followed by continued discussion with the CRC that began in September 2019 on matters of rule implementation. DCM Staff requested clarification on the siting of exceptions listed in in 07H.0309, such as decks, dune walkovers, gazebos, and parking areas, in communities with approved DLs. Staff also asked the CRC whether communities are able to have both a DL and a SLE, and if so, how the rules should be applied to development applications. Although each management alternative allows oceanfront development setbacks to be measured from the actual vegetation line, rather than the SVL, there are significant differences between these two rules. Most notably, and perhaps challenging to resolve, are that the DL rules: 1) do not require a demonstrated commitment to maintaining projects; 2) have no State oversight in mapping DLs or managing them once approved by the CRC; and 3) can allow seaward encroachment of new development, including the expansion of existing structures. Recognizing the time needed to examine solutions and the complexities associated with amending DL rules, the CRC Chair appointed a subcommittee of CRC members (Commissioners Neal Andrew, Phil Norris, and Robin Smith), who were tasked to assist with identifying potential strategies and alternatives for consideration.

On March 3, 2020, the subcommittee had a conference call with DCM Staff to further discuss rule implementation issues, and how they could be resolved. Details of this discussion centered around three options: 1) Amend the SLE, add incentives for a "beach plan," and eliminate DL rules; 2) map a more precise DL, allow existing SLEs to expire, and eliminate the long-term commitment to beach nourishment rules; or 3) map a more precise DL, eliminate SLEs and long-term commitment to beach nourishment requirement, and offer incentives for voluntary long-term nourishment plans. The subcommittee did not reach a conclusion on how to retain both the SLE and DL rules, while also eliminating rule implementation issues; however, they did favor an approach that would simplify SLE and DL rules. DCM Staff was asked by the subcommittee to

summarize provisions that could be considered, and to prepare the different options and recommendations for presentation to the full Commission.

On April 15, 2020, the subcommittee and DCM Staff held a follow up conference call/WebEx to discuss the details of what combining the two rules might look like, along with Staff recommendations (see attachment A). Given that these options are complex and are significant relative to application of current rules, the subcommittee felt that the alternatives in Attachment (A) should be discussed in-person by the full Commission before any decisions are made on moving forward, and before DCM Staff begins drafting concept rule language for the Commission to consider.

ATTACHMENT A: April 15, 2020 Static Vegetation Line Exception & Development Line Alternatives
ATTACHMENT B: Original CRC Concerns with Static Vegetation Line (in 2015)

ATTACHMENT A:

April 15, 2020: Static Vegetation Line Exception & Development Line Alternatives

Option 1: Consolidate Static Line and Development Line Rules; Incentives for Beach Plans:

DCM Recommendation 1: Change "Static Line" to "Pre-Project Vegetation Line," Change "FLSNV" to "Vegetation Line," and define both terms in Rule. The terms "Static Line" and Static Line Exception" are complex and result in unclear regulatory meanings and intent for the public and property owners. (Reconsider threshold for Pre-Project Vegetation Line in Rule).

DCM Recommendation 2: Provide regulatory and other incentives for local and/or regional beach plans; encourage local development lines.

- Plans demonstrate long-term local commitment to beach maintenance, and CRC oversees implementation through 5-year re-authorizations. Communities continue to demonstrate intent to maintain beaches and/or inlets areas by providing a review of project design and performance, identifying potential sand sources and funding mechanism(s), and highlighting local ordinances that limit development expansion in vulnerable areas, including local development lines.
- In communities with CRC-approved beach plan:
    - Measure construction setbacks from the Vegetation Line.
    - Limit new or expanded construction to the landward-most adjacent structures on adjacent lots.
    - Streamline permitting for beach maintenance projects – see "Bogue Banks model" where a CAMA Major permit was issued for Master Plan and each project that corresponds with approved plan and standards only requires agency notification process rather than new Major Permit. Formalize this process in 15A NCAC 07J Rules.
    - Retain large-structure relief from graduated setback; minimum setback 120 feet, or 60 x SBF for structures >5,000 sf
- In communities with approved Inlet Management Plans, (see for example Terminal Groin provisions in CAMA or inlet relocation plans (e.g. Bogue Inlet & Mason Inlet), remove density and 5000sf size limit restrictions.
- Consider additional benefits of plan approval:
    - Higher state match on projects
    - Potential to leverage state/federal financial support for geological / sand resource studies to assist in plan development
    - Promotes resolution of regional conflicts involving overlapping sand resources
- If a community does not have an approved plan, measure setbacks from Pre-Project Vegetation Line.

DCM Recommendation 3: Enhance grandfathering rules to include structures built after August 11, 2009 and eliminate size restriction for grandfathering commercial and multi-family structures. Also assess costs/benefits of other grandfathering provisions in 15A NCAC 07H rules.

Option 2: Measure all oceanfront construction setbacks from Vegetation Line:

- Eliminate Static Line, Static Line Exception, and Development Line rules
- Limit new or expanded oceanfront construction to the landward-most adjacent structures on adjacent lots.
- Add large-structure relief from graduated setback (minimum setback 120 feet, or 60 x SBF for structures >5,000 sf)
- No justification for measuring setbacks from the artificially forced (post-project) vegetation line, rather than from a Pre-Project Vegetation Line.
- Where no development on adjacent lots, use "sight-line" approach or simply do not restrict more than graduated setback

Other incentives for voluntary long-term planning could still be enacted through future rule changes, including streamlined permitting for beach plans.

Attachment B:

Original CRC Concerns with Static Vegetation Line (in 2015):

The following is a list of primary concerns expressed by the Coastal Resources Commission (CRC) in 2015. DCM Staff have provided updated responses to those same questions using up-to-date information.

1. **Communities discouraged from constructing large-scale projects in order to avoid getting a static vegetation line.**

    a. **Staff update (2020):** The reality is that 80% of the oceanfront communities (incorporated and unincorporated) have installed large-scale projects on some portion (26% to 100%) of their oceanfront jurisdiction. These communities are seeing the benefits that can come with larger projects: 1) reduced storm damage; 2) recreational and ecological quality of the beaches are maintained, and; 3) projects can potentially last longer than smaller projects. The graphs below show that over time, NC beach communities are spending more on projects that are increasing larger in terms of length and volume (Figures 1-6):

Figure 1. *This graph illustrates the total cost per year spent on beach nourishment projects from 1939 to 2019.*

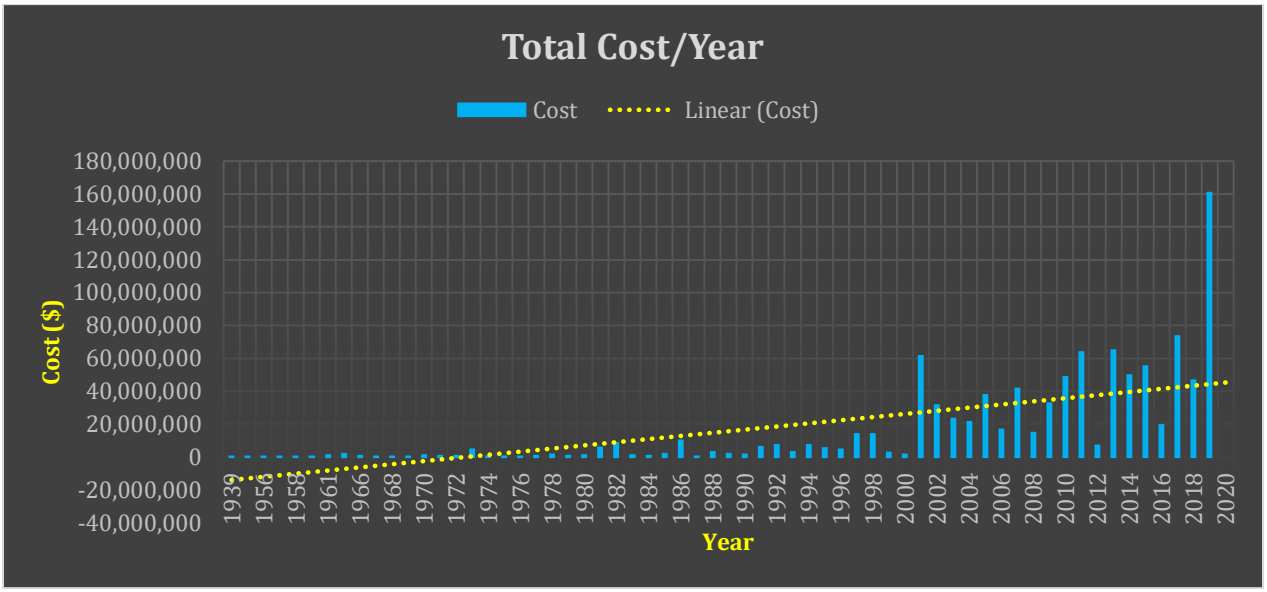


Figure 2. *This graph illustrates the total length of beach nourishment projects per year from 1939 to 2019.*

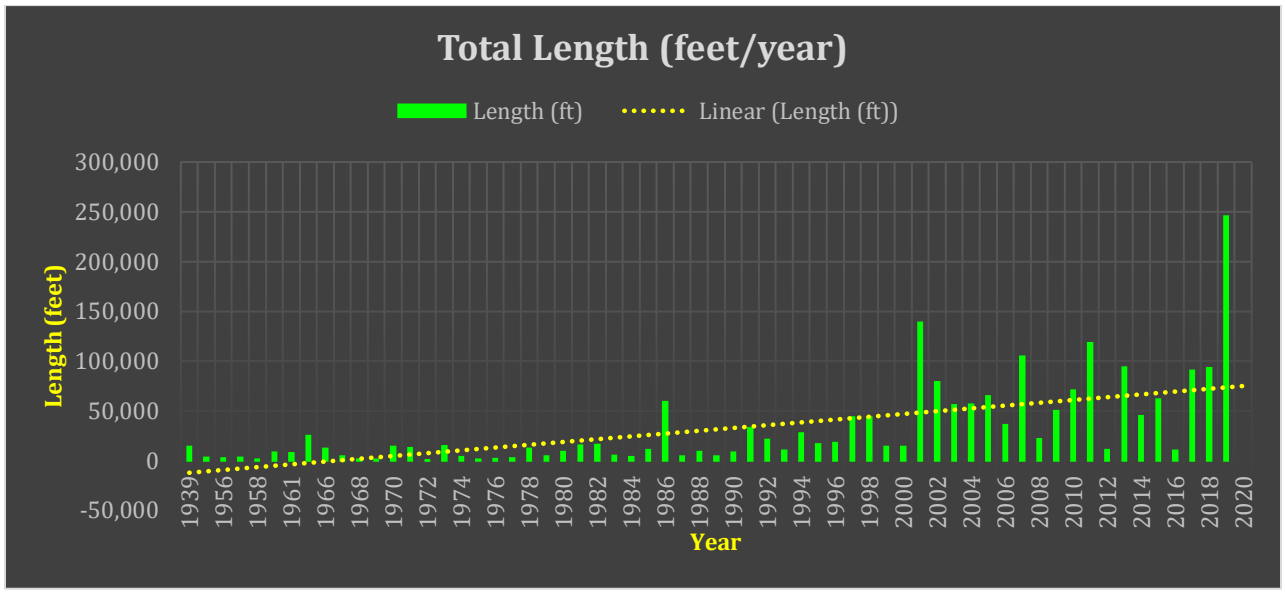


Figure 3. *This graph illustrates the total volume (cubic yards) of sediment placed on NC's beaches from 1939 to 2019.*

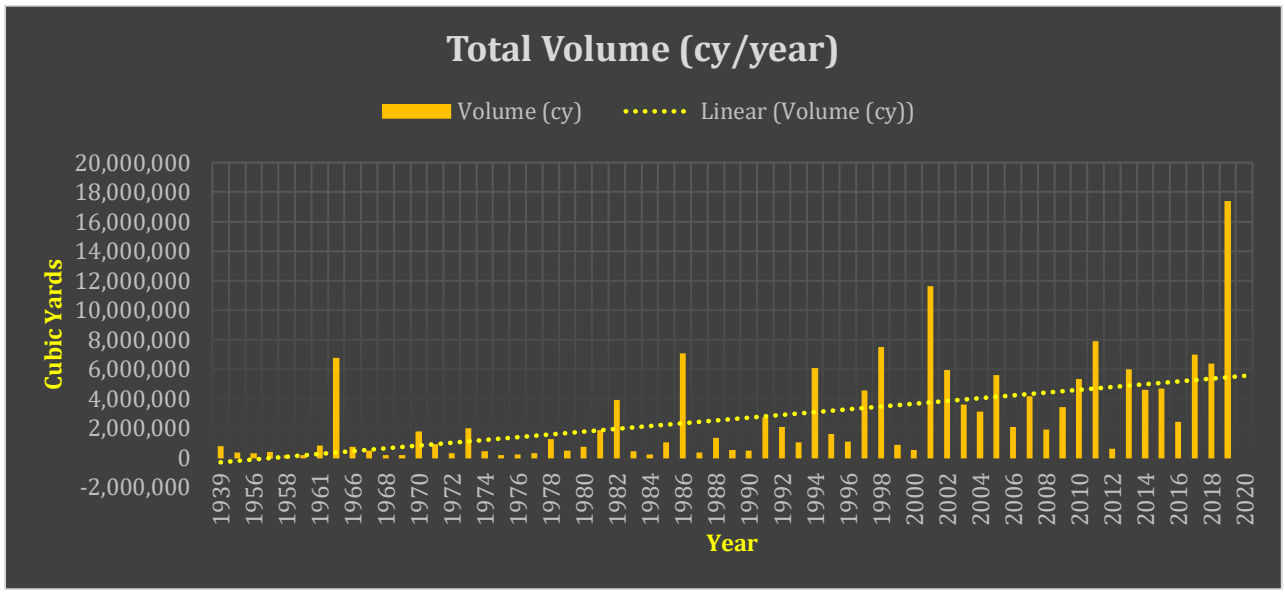


Figure 4. *This graph illustrates the average cost per decade spent on beach nourishment projects from 1939 to 2019.*

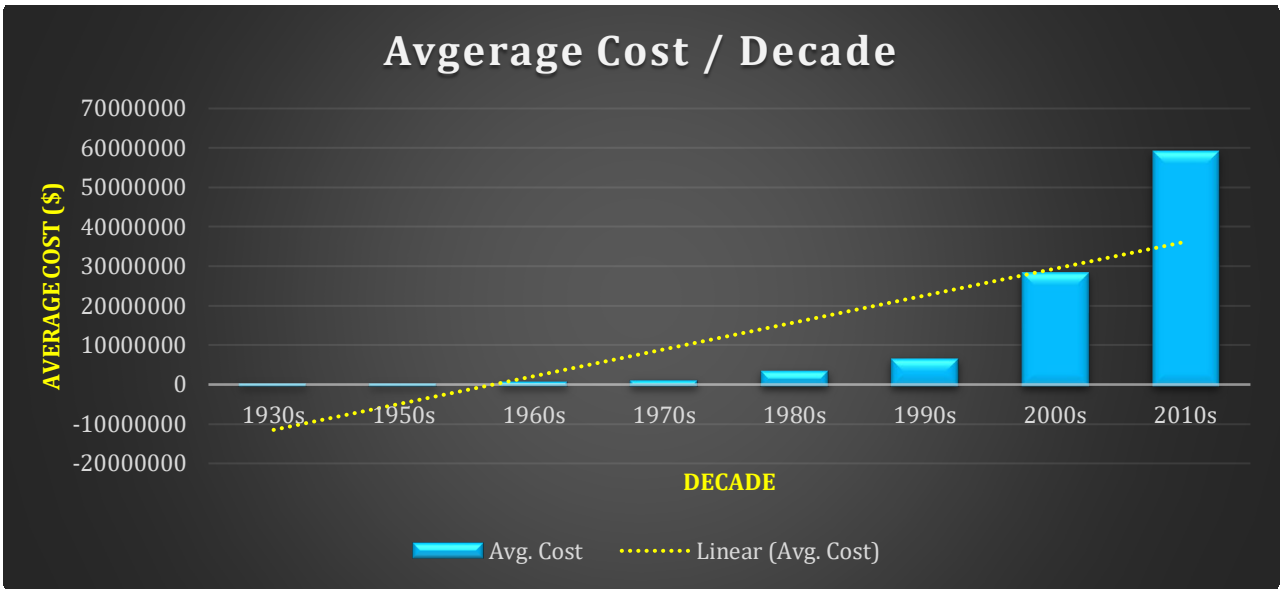


Figure 5. *This graph illustrates the average length of beach nourishment projects per decade from 1939 to 2019.*

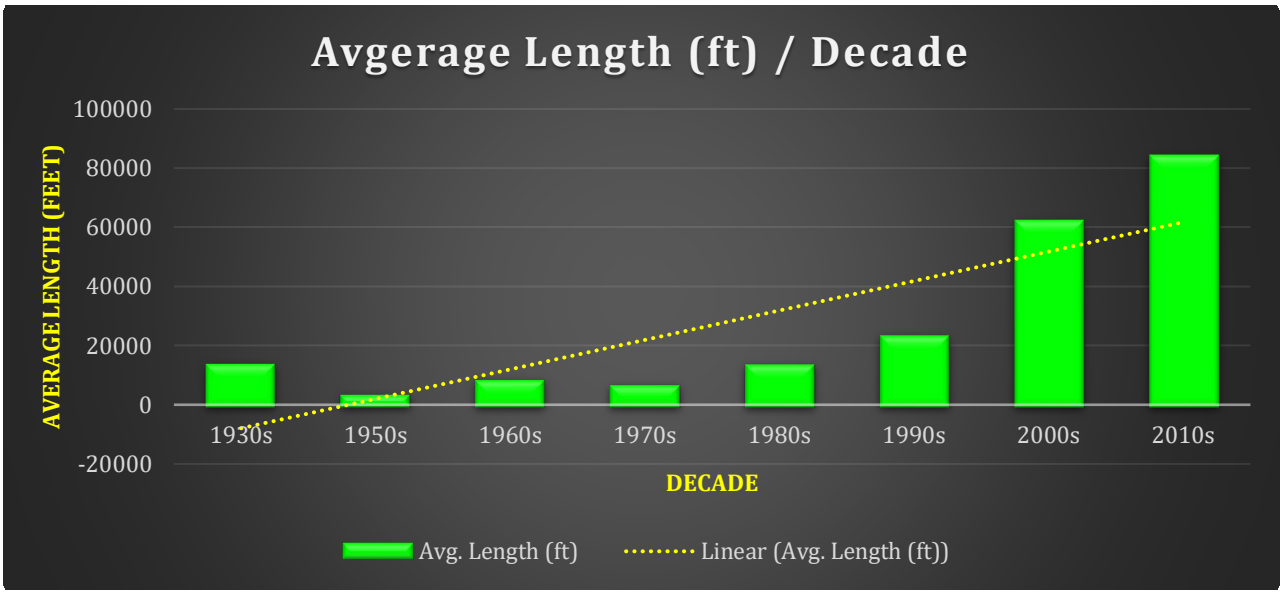
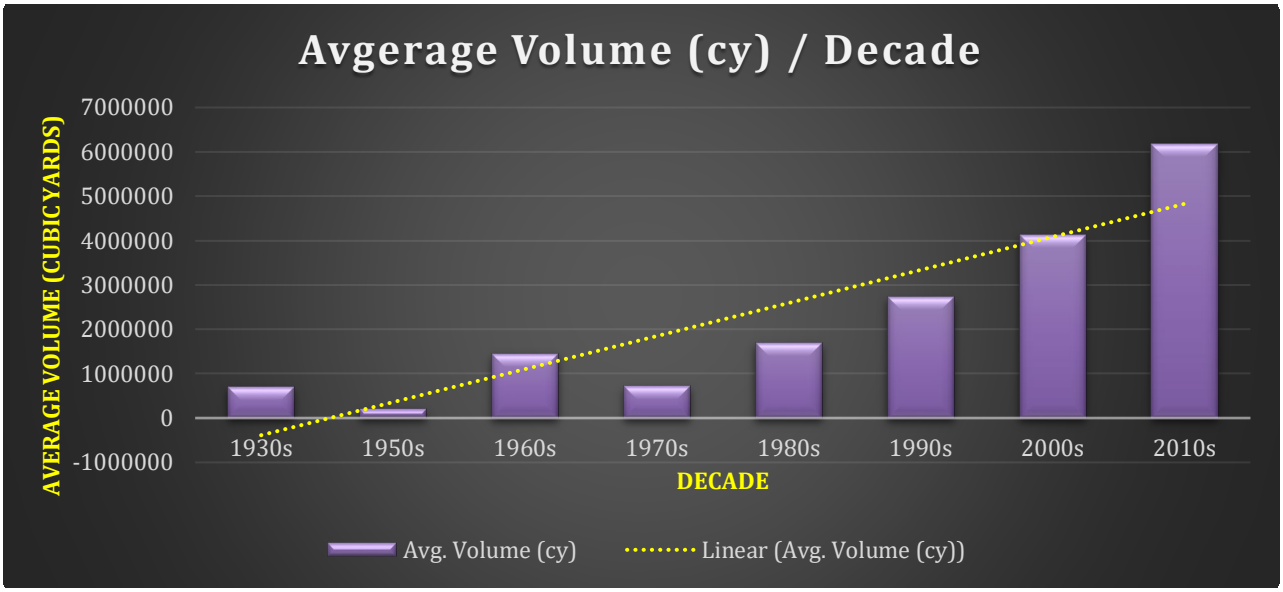


Figure 6. *This graph illustrates the average volume (cubic yards) of sediment per decade that was placed on NC's beaches from 1939 to 2019.*



2. **CRC questioned the realistic ability of Towns to identify funding or sand sources (do they have a taxing authority?).**

    a. **Staff update (2020):** Given that most of NC's beach communities are investing more in larger beach re-nourishment projects, they have also gone through efforts to identify sand sources and a mechanism for which to help fund those projects. Currently, over 60% of NC's oceanfront beach communities have identified a reliable tax source to pay for all, or at least a portion of their projects. These sources include an occupancy tax at the county or local level, or property taxes collected from those within a specific municipal district. In addition to those annual recurring tax sources, many municipalities also set aside a portion of their annual General Fund budget to be used specifically for beach nourishment. USACE Costal Storm Damage Reduction (CSDR) projects are still cost-share funded (65% federal, and 35% local), which does offset cost for some communities. It is important to note that beach communities are taking this investment very seriously, and most (>60%) are performing annual beach profile surveys in an effort to document how much sand is lost or gained each year. This is done in an effort to meet the qualifications for FEMA's Public Assistance Program that will fund 75% of the re-nourishment project to replace sediment lost during a major storm event; and for those communities who qualify and are considered an "engineered beach," this can serve as a source of relief because they've not lost all of their initial investment, and they are not having to fund 100% of the post-storm project. Based on trends, DCM Staff are expecting that more communities will are committing to maintain large-scale projects.

3. **CRC concerned that cost associated with generating Static Line Exception re-authorization reports is costly, and those funds could be used for other nourishment expenses.**

    a. **Staff update (2020):** Based on the 2016 fiscal analysis (CRC Memo 16-06) associated with the development line rules and static vegetation line exception (SVLE) rule amendments, the average cost to develop the initial Static Vegetation Line Exception authorization report is $8,847; and the average cost update those reports for SVLE re-authorizations is $3,510. Currently seven communities have an active SVLE. In addition, a Bogue Banks Master Plan has been approved for 50 years and there is ongoing development of a beach plan for Oak Island (see (https://www.oakislandnc.com/wp-content/uploads/2016/12/MoffattNichol_060316.pdf).

    b. The last three re-authorizations reports were completed by Town staff and did not require additional expenses (Wrightsville Beach in 2019, Ocean Isle in 2020, and Carolina Beach in 2020). Given that most oceanfront communities are installing larger projects, monitoring their beaches on a regular basis (annually, or other), and have documented plans to maintain their beaches, the information that the CRC requires to evaluate SVL Exceptions is more readily available to Town staff, which could make it easier for the reports to be generated internally, and not contracted out with additional cost. This includes identification of potential sand sources, a mechanism to fund, or partially fund projects, and monitoring data to report project performance.

LOCATION	Number of Oceanfront Structures Adjacent to SVL	Structures Seaward of SVL	% Structures Seaward of SVL
Ocean Isle *(SVL Exception)*	268	5	1.9%
Holden Beach	335	0	0.0%
Oak Island	526	74	14.1%
Caswell Beach	83	0	0.0%
Bald Head Island	89	8	9.0%
Kure Beach	205	0	0.0%
Carolina Beach *(SVL Exception)*	227	0	0.0%
Wrightsville Beach *(SVL Exception)*	194	4	2.1%
Topsail Beach	337	0	0.0%
North Topsail Beach	544	30	5.5%
Emerald Isle *(SVL Exception)*	362	92	25.4%
Indian Beach *(SVL Exception)*	46	0	0.0%
Salter Path *(SVL Exception)*	31	2	6.5%
Pine Knoll Shores *(SVL Exception)*	198	6	3.0%
Atlantic Beach *(SVL Exception)*	286	0	0.0%
Fort Macon	5	0	0.0%
Buxton	54	40	74.1%
Rodanthe (at Mirlo Beach) – Pea Island	50	25	50.0%
Nags Head	764	85	11.1%
Kill Devil Hills	156	24	15.4%
Kitty Hawk	208	84	40.4%
Southern Shores	29	0	0.0%
Duck	108	0	0.0%
TOTAL:	**5105**	**479**	9.4%