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Governor
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Secretary
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Director

NORTH CAROLINA
Environmental Quality

CRC-22-12

April 14, 2022

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Proposed Amendments to Ocean Hazard AEC - Beach Management Plans - Comments and Staff Response

Since November 2020, the Commission has been discussing rule amendments associated with the development of local and subregional Beach Management Plans to replace and improve upon the existing Development Line and Static Line Exception rules. Included in this approach are additional provisions for regulatory relief associated with CRC-approved beach management plans, as well as efforts to further streamline and simplify the Ocean Hazard AEC rules. The proposed amendments were based on recommendations of the CRC Subcommittee on Development Line and Static Line Implementation and Division staff. Guidance to DCM Staff from the Commission included:

- Retain State oversight in areas where beach nourishment projects are completed;
- Reflect increased regulatory flexibility for construction setbacks where beach communities demonstrate a local commitment to maintaining beach nourishment projects;
- Prevent beach nourishment projects from becoming a stimulus for new development in unsuitable areas;
- Minimize seaward encroachment of new or expanded structures;
- Utilize the landward-most adjacent neighbor rule to limit seaward encroachment provided that there is flexibility to address unique circumstances (curved shorelines, development around cul-de-sacs, or peculiar lot configurations) utilizing a sight-line or average line of construction approach.

A public hearing on these amendments was held on February 10, 2022. The Division has received one written comment in opposition to the amendments from Ward and Smith, P.A. on behalf of the Figure Eight Island Homeowners Association (attached).

Public Comments

Ward and Smith, P.A., on behalf of the Figure Eight Island Homeowners Association, stated that their primary objection is that "…*ocean hazard setback issues relevant to property development are being conflated with beach management practices and that local governments and communities are burdened by these amendments. The development line rules have worked and should not be abandoned.*"

Over the past two years, the Commission has discussed issues associated with the implementation of CRC's Static Vegetation Line (SVL), Static Line Exception (SLE), and Development Line (DL) rules. These have included the siting of exceptions listed in 07H.0309 (such as decks, dune walkovers, gazebos, and parking areas) in communities with approved DLs; and whether communities are able to have both a DL and a SLE. The most notable issue has been that the DL rules do not require a long-term commitment to the maintenance of beach nourishment and that the DL can allow significant seaward encroachment of new development, including the expansion of existing structures. While this is not always the case, the Commission's rules set minimum standards for development across all oceanfront communities, and existing development patterns along the beachfront vary. Finally, there have also been issues related to the precision of lines established across whole communities, where in some cases the Development Line has intersected with small portions of various structures. This could result in future challenges related to permit determinations for reconstruction or replacement of those structures.

When the Commission began considering implementation of graduated oceanfront setbacks in 2009, there was recognition that beach nourishment was becoming a common, and if maintained, successful approach to managing beach erosion in many locations. However, the Commission was still concerned that beach nourishment created an artificial situation that could lead to seaward encroachment of structures that could put lives and property at risk, and lead to the encroachment of structures onto the public trust beach, particularly when there was not a long-term commitment to maintenance of nourishment projects. The provisions of the SLE were adopted to provide relief from the SVL, ensure long-term commitment to maintenance through a periodic (five-year) CRC review, and limit seaward encroachment through the landward-most adjacent neighbor provision. The proposed rules for Beach Management Plans retain these provisions, which were supported by the CRC Subcommittee on Development Line and Static Line Implementation.

The proposed Beach Management Plan rules also do not prohibit local governments from implementing more restrictive lines of construction on the oceanfront, which are in effect in several oceanfront communities and can be more restrictive than the minimum standards adopted by the Commission. The rules acknowledge the long-term success of continued beach nourishment project maintenance and provide regulatory relief by allowing oceanfront setbacks to be measured from the existing vegetation line rather than by the more restrictive pre-project vegetation line (formerly static vegetation line). Local governments with existing construction lines or those wishing to establish more restrictive construction lines will not be prevented from doing so and these lines would be used by the Division for the siting of oceanfront development.

Ward and Smith, P.A. also state that "*Prior to 2015, local governments expressed concerns with the difficulties and costs associated with the static line exception rules. The development line rules were adopted to address those concerns*."

Twenty-three oceanfront communities (~80% of all oceanfront communities in NC) currently have static vegetation lines. Once their project is finalized, the addition of Surf City's SVL will bring the total to 24 (~86%). Eight of these communities already have a CRC-approved Static Line Exception. The proposed Beach Management Plan rules allow these communities to continue to utilize the Static Line Exception provisions until they expire, at which point they will be eligible to petition the CRC for an approved Beach Management Plan. DCM has reviewed available documentation and determined that the majority of the remaining 15 oceanfront communities either already have a beach and/or inlet management plan, or have the information needed that can be used to create a plan with minimal effort and cost. Additionally, these communities also perform regular surveys to monitor beach sediment losses and gains. DCM strongly encourages local and sub-regional beach planning to ensure predictable funding, identify future sand sources and avoid sand use conflicts, and improve efficiencies / reduce costs of projects. As funds and/or grants become available, DCM intends to advocate for funding of the development of subregional sediment studies and plan development to assist beach communities in these areas.

Ward and Smith, P.A. further state that "*Despite limiting the options for local jurisdictions, the new Beach Management Plan Amendments still have gaps. For example, the recommendation to now require evidence of funding sources in approving a Beach Management Plan does not account for non-governmental community associations. The funding sources listed are all tax-based funding sources. The rules and process still allow for a community association to seek a Beach Management Plan, but they do not explain how funding sources must be identified when a local government is not involved.*"

The proposed Beach Management Plan requirements do not limit or require specific types of funding that can be used to support beach nourishment projects and their maintenance. The proposed rule amendments expand on the examples of financial resources that may be identified and discussed in a beach management plan. The Commission would consider on a case-by-case basis whether, for example, FEMA post-disaster assistance eligibility, HOA assessments, or other mechanisms are appropriate for funding long-term beach maintenance. This represents a key component of the Commission's role in retaining oversight of oceanfront construction setbacks based on long-term trends, erosion issues, and community responses during each five-year review period.

A question was also raised regarding the Commission's ability to approve an exception for a particular segment of any beach or inlet within a beach community. DCM has discussed this with Commission Counsel and believes that this is an available option under the proposed rule language. For example, a community may manage one ocean inlet with a terminal groin project, while the other inlet receives a one-time beach placement project with no long-term maintenance plan. The Commission could limit granting of the exception (allowing use of a post-project vegetation line) only to a specific shoreline segment protected by the groin project.

Finally, questions have arisen regarding the trigger for establishing a "pre-project vegetation line." DCM continues to be open to redefining this trigger or threshold, and does not intend to create any disincentive for "beneficial use" projects, where beach compatible sand dredged from adjacent waterways can be placed on adjacent beaches (in fact, this is required under the State Dredge and Fill Act). In past meetings, DCM staff presented the existing rationale for the 300,000 cubic yard trigger, but this could be revisited. However, even with beneficial use projects, Staff note the importance of not using artificially influenced natural features as a reference point for construction setbacks, unless there is a plan for maintaining the more seaward position of that feature.

For these reasons, Staff recommends adoption of the proposed Beach Management Plan rules and I look forward to discussing these comments at our upcoming meeting in Manteo.

WARD AND SMITH, P.A.

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February 9, 2022

Braxton C. Davis, Director
Coastal Resources Commission
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

RE: Public Comment
2022 NC Reg. Text 604973
Proposed Beach Management Plan Amendments
Our File 954082-00003

Dear Director Davis:

We represent Figure "8" Beach Homeowners' Association, Inc. ("Association"). We submit this letter for consideration as public comment in connection with the Coastal Resources Commission's consideration of proposed amendments to 15A NCAC 7H .0104; .0304; .0305; .0306; .0308; .0309; .0310; and 7J .1200; .1202; .1203; .1204; .1205; .1206; .1301 ("Beach Management Plan Amendments").

We oppose the proposed Beach Management Plan Amendments. The primary reasons for our objection are that ocean hazard setback issues relevant to property development are being conflated with beach management practices and that local governments and communities are burdened by these amendments. The development line rules have worked and should not be abandoned.

We appreciate that there have been issues with the implementation of the development line and static line exception rules, and clarity and improvements to those rules are appropriate. However, eliminating the development line framework takes local decision-making away from towns and communities, and the added regulatory burden of moving into a beach management plan process puts towns and communities, especially associations who are not municipalities, into a difficult position. There is no reason for this burden when the development line rules have worked.

Prior to 2015, local governments expressed concerns with the difficulties and costs associated with the static line exception rules. The development line rules were adopted to address those concerns. The Beach Management Plan Amendments are bringing back, or heightening, these difficulties and costs.

The abandonment of the development line rules also will bring more local governments and communities under additional CRC oversight of beach management issues. This appears to be the intention, especially if the large-scale beach fill project definition remains at a volume of sediment greater than 300,000 cubic yards. But beach management should not be incentivized or designed solely so local jurisdictions can achieve ocean hazard setback improvements for property development. This new framework twists together competing objectives to encourage greater State oversight. This is not a best practice for our beaches. Beach management should be pursued and designed for its own benefit.

The Beach Management Plan Amendments also do not appear to meet the stated objective of resolving implementation issues. Obviously, removing an option away from local jurisdictions will lessen implementation issues, but it does not mean that the remaining framework will be any easier to implement. The Beach Management Plan Amendments appear to only shift the implementation issues, instead of resolving them. Despite limiting the options for local jurisdictions, the new Beach Management Plan Amendments still have gaps. For example, the recommendation to now require evidence of funding sources in approving a Beach Management Plan does not account for non-governmental community associations. The funding sources listed are all tax-based funding sources. The rules and process still allow for a community association to seek a Beach Management Plan, but they do not explain how funding sources must be identified when a local government is not involved. The new Beach Management Plan Amendments only appear to create new implementation issues.

Thank you for your consideration of our comments.

Yours very truly,

Alex Dale

Alex C. Dale

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cc: Figure "8" Beach Homeowners' Association, Inc. (via email)