

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

BEFORE THE
COASTAL RESOURCES COMMISSION
CRC-23-16

In re: REQUEST BY **TOWN OF OAK**)
ISLAND FOR APPROVAL OF BEACH)
MANAGEMENT PLAN)

FINAL DECISION

I. REQUEST

Petitioner, the Town of Oak Island (“Town”) has requested that the Coastal Resources Commission (“Commission”) approve its Beach Management Plan pursuant to 15A NCAC 07J .1200 *et seq.* In support of its request, on April 24, 2023 the Town submitted its Beach Management Plan dated April 19, 2023 and Appendices A–D prepared by Moffatt & Nichol (BMP). The Plan is available at <https://www.oakislandnc.gov/residents-visitors/beach-information/crc-beach-management-plan> (last checked June 16, 2023).

On June 5, 2023, the Department of Environmental Quality, Division of Coastal Management (DCM) submitted a memorandum to the Commission outlining the approval process required under the Commission’s rules and providing its recommendation on whether to approve the BMP (Staff Recommendation). The Division noted that after reviewing the Town’s BMP, staff determined that “all required elements are addressed.” However, DCM recommended delaying approval of the BMP on the grounds that “several state and federal agencies have expressed concerns about the use of [Frying Pan Shoals as] a sand source” and that the Town is currently in negotiation with the Bureau of Ocean Energy Management regarding another site to be used as a backup sand source.

This matter was heard at the regularly scheduled meeting of the Commission on June 15, 2023 in New Bern, North Carolina. Pursuant to the authority in the Commission’s Internal Operating Procedures, the Chair delegated authority to Commissioner Robert Emory to serve as

Acting Chair during the June 15, 2023 meeting of the North Carolina Coastal Resources Commission and for the action items addressed during that meeting. Pursuant to that authority, Acting Chair Robert Emory signed this final agency decision which reflects the action taken by the Commission during its meeting.

The BMP (including Appendices A-D) and the Staff Recommendation comprise the written record on which the Commission based its decision. The Commission considered the written record, including comments provided in the BMP, Appendix D, and information provided at the Commission meeting by Sam Morrison, Technical Director–Dredge Services, Moffatt & Nichols; Ken Richardson, DCM Shoreline Management Specialist; and Elizabeth White, Mayor of the Town of Oak Island.

II. STANDARD OF REVIEW

Under the Coastal Area Management Act (CAMA), the Commission may designate as areas of environmental concern, natural hazard areas where uncontrolled or incompatible development could reasonably endanger life or property and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind, and water. N.C.G.S. § 113A-113(b)(6). The Commission has developed regulations to provide management policies and standards for ocean hazard areas that serve to minimize unreasonable danger to life and property and achieve a balance between the financial, safety, and social features that are involved in hazard area development. 15A NCAC 7H .0303(a). Under the Commission’s rules, “[a] petitioner subject to a pre-project vegetation line pursuant to 15A NCAC 7H .0305, may petition the Commission to approve a Beach Management Plan ” which applies to “all pre-project vegetation lines with the Ocean Hazard Area” within “petitioner’s jurisdiction.” 15A NCAC 07J .1201(a) and (c).

The Commission requires that a BMP include the following information:

- (1) A review of all beach fill projects in the area of the BMP including the initial large-scale beach fill project associated with the pre-project vegetation line, subsequent maintenance of the initial large-scale projects(s), and beach fill projects occurring prior to the initial large-scale projects(s).
- (2) A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over the project design life.

15A NCAC 7J .1201(d). In considering whether to approve the BMP, the Commission considered the information the Town provided on each of these requirements and the Commission “shall approve a [BMP] if the request contains the information required and meets the criteria.” 15A NCAC 07J .1203(b).

Once a complete request for BMP is received, the Commission must consider the request no later than its second scheduled meeting after DCM deems the request complete. 15A NCAC 7J .1201(f). The Commission’s final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which a decision on the request is reached. 15A NCAC 7J .1203(b).

III. FACTS

1. On April 24, 2023, the Town of Oak Island (Town) filed with DCM a complete request for approval of its a BMP by the Commission. The BMP includes a review of Beach Fill Projects/Background, a review of the proposed design and monitoring, a review of sediment

sources, a review of the Town's financial plan, and a review of public comments received.

2. In the BMP, the Town discussed prior initiatives performed by itself or in cooperation with the USACE to maintain its beaches including the following projects:

- Brunswick County Beaches Coastal Storm Damage Reduction (50-year project)
- Wilmington Harbor Sand Management Plan
- 2001 Sea Turtle Habitat Restoration Project
- Lockwoods Folly Habitat Restoration Project
- FEMA Hurricane Matthew Emergency Dune Project
- Lockwoods Folly Inlet, AIWW Inlet Crossing
- 2020/2021 Beach Renourishment Project
- 2021/2022 Beach Renourishment Project

(BMP pp 1–20; Staff Recommendation p 1)

3. The BMP provided data on the Town's ongoing monitoring program using survey data collected on a yearly basis to compute the shoreline location change at +1.8 ft NAVD88 (which is designated as the Mean High Water elevation). (BMP, pp 20–23)

4. The BMP provided information on the Town's Beach and Inlet Management Plan (BIMP) which includes modeling to determine the volume of material required to protect infrastructure, triggers for renourishment, and the anticipated nourishment cycles necessary to provide equal protection to all portions of the Town's oceanfront over the next thirty years. (BMP, pp 23–27) In summary, assuming an extra thirty percent buffer "to account for material losses/compaction, overbuild on the beach, and general inefficiencies associated with the dredging process," the Town estimated that it will require 16,055,000 cubic yards over the next thirty years to maintain its beach. (BMP, p 27 at Table 4–4)

5. The Town performed "an extensive sediment sampling program in 2019 to identify the native beach sediment characteristics and verify the compatibility and quantity of the existing sediment sources adjacent to" the Town. (BMP, p 31) The town identified offshore sources for

sediment at Frying Pan Shoals, which lies both within and outside State waters, the Old and New Ocean Dredged Material Disposal Sites, Lockwoods Folly Inlet Complex, Jay Bird Shoals, and Yellow Banks. Together the total preliminary volume available from these sites over the thirty-year plan is 98,552,000 cubic yards. (BMP, pp 55 at Table 9–3) However, there are constraints on the use of material from the Lockwoods Folly Inlet Complex. (BMP, p 55). And, after reviewing the BMP, DCM alerted the Commission that “Frying Pan Shoals has not been previously used as a borrow area for beach nourishment and several state and federal agencies have expressed concerns about the use of this sand source.” (Staff Recommendation, pp 1-2) During the hearing, the Commission was informed of the Town’s ongoing discussions with the Bureau of Ocean Energy Management regarding another offshore borrow site which could be used as a backup sand source for the Town’s BMP. (*see also*, Staff Recommendation, p 2). In moving to approve the BMP, the Commission considered that the volume of material required for construction during the next 6-year renourishment cycle is 1.65 Mcy (BMP, pp 27–28) which is available to the Town without requiring the use of Frying Pan Shoals burrow site.

6. The BMP provides information on “the financial plan the Town . . . has developed to pay for and maintain the [BMP].” (BMP, pp 49– 53) This includes a total of \$40 million dollars from the following funding streams: State Grant, Accommodations Tax Fund, Sand Tax Fund, and the Town’s General Fund. (BMP, pp 52-53)

7. In Appendix D, the Town includes the public comments received through the Public Hearing process and provided its responses. (BMP, Appendix D pp 618-714) In summary, a total of 87 issues were raised by approximately thirteen individuals. (*Id.* pp 620-25)

8. In its Staff Recommendation, DCM stated that it had reviewed the Town’s BMP

“and determined that all required elements were addressed within the BMP.” (Staff Recommendation, p 1). However, because of the ongoing negotiations with BOEM, the Division recommended that the Commission’s approval of the BMP be delayed until negotiations are complete. (Staff Recommendation, p 2)

IV. CONCLUSIONS OF LAW

1. The Town provided the Commission with a complete request for a beach management plan and this request was considered by the Commission no later than the second scheduled meeting following receipt of the complete request as required by 15A NCAC 7J .1201(f). As summarized in the Fact section above, the Town’s BMP includes the detailed data and information required by 15A NCAC 7J .1201(d)(1) through (4) and .1203(b).

2. In order to maintain the benefits associated with its BMP, the Town is required to “provide a progress report to the Coastal Resource Commission every five years from the date the Beach Management Plan is approved.” 15A NCAC 07J .1204(a). The effective date the BMP was approval is **June 22, 2023**, the date of this final decision. If on review of the progress report, the Commission determines that any of the criteria under which the BMP was authorized are not being met or if a progress report is not timely received, then the BMP shall be automatically revoked. 15A NCAC 07J .1204(b).

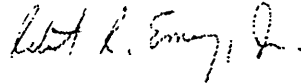
V. DECISION

For the reasons stated herein, Petitioner's request for approval of its Beach Management Plan is **GRANTED**. To keep the regulatory benefits afforded by the Commission’s approval of the Town’s BMP, the Town must provide a progress report no later than five years after the date of this decision. Should the Town choose not to seek a renewal of its BMP, or if upon review of

the progress report the Commission determines the criteria in 15A NCAC 07J .1201(d)(1) through (4) are not being met, the regulatory benefits afforded by the Commission's approval of the Town's BMP, including the ability to measure setbacks from the vegetation line, will expire.

This the 22nd day of June, 2023.

COASTAL RESOURCES COMMISSION



Robert R. Emory, Jr., Acting Chair

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing FINAL DECISION upon the parties by the methods indicated below:

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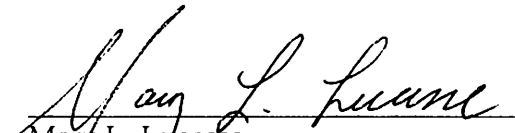
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This the 22nd day of June 2023.



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