



TOWN OF CHINCOTEAGUE, INC.

September 29, 2015

Julia Wellman
DEQ Central Office, 6th Floor
Office of Environmental Impact Review
629 East Main Street
Richmond, Virginia, 23219

RE: Federal Consistency Determination
Chincoteague NWR Final CCP/EIS
Public Comment

Dear Ms. Wellman:

The U.S. Fish and Wildlife Service (FWS) submitted a federal consistency determination (FCD) dated August 2015 for the comprehensive conservation plan and environmental impact statement on the 15-year management of the Chincoteague and Wallops Island National Wildlife Refuges. According to the FCD, the project is consistent with the enforceable policies of the Virginia Coastal Zone Management Act (CZM) Program. The Town has concern with VA CZM program taking a no action approach toward land within the State.

NOAA Coastal Zone Management Act Guidelines for determining federal consistency require the evaluation of **coastal effects** caused by proposed federal actions. Case law has established that these effects must be 'reasonably foreseeable'. The FWS Chincoteague and Wallops Island NWR final plan is to reverse 50 years of stabilizing beach and dune management in favor of encouraging an unstable continuous primary phase of ecological succession otherwise known as 'over wash'.

The **coastal effects** of this change in federal land management will restore the conditions of 1962 when a major coastal storm over washed Assateague Island decimating natural habitats and crushing the coastal community of Chincoteague Island. The destruction caused by the '62 Storm has served as a benchmark for FEMA flood risk studies and led to 50 years of active federal management along the barrier island coast to encourage stability of the primary frontal dune system as mandated by Congress in 1965.

Federal actions by the National Park Service are also reasonably predictable and well established at the north end of Assateague Island. Natural coastal processes are managed through a system of elevated beach berms for coastal resiliency, along with limited over wash zones that benefit wildlife habitat. This balanced approach would be consistent with the enforceable policies of Virginia's CZM program, however it is not the solution proposed by the USFWS in the Final CCP/EIS.

Virginia State Code (§28.2-1400 through §28.2-1420) and adopted guidelines (effective September 26, 1980) protect and encourage primary frontal dunes in order to responsibly care for natural land resources that are placed in the public trust. The USFWS proposes in the final CCP/EIS to

“explore the implementation of resiliency strategies informed by the latest science available”.

Does this statement satisfy a federal consistency review?

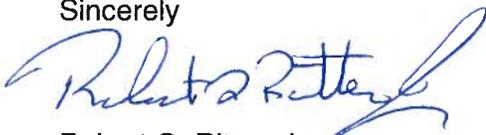
FWS indicated that in response to public comment, any text in the final CCP/EIS recommending removal of dunes or creating breaches in the barrier island have been removed from the 15 year plan. This change is consistent with enforceable policies of the Virginia CZM program. The question remains: will the discontinuance of active federal management for stability and adopting a strategy to ‘let nature take its course’ result in consistency with the enforceable policies of the Virginia CZM program and protection of Virginia’s barrier island system?

Below are some questions we think DEQ should consider:

- Inform EPA and the FWS that the incomplete environmental review and cumulative impact analysis for federal actions is not legally sufficient to determine federal consistency with the enforceable policies of the Virginia CZM program at this time.
- Advise EPA and the FWS that active management to protect and restore the full range of barrier island characteristics including elevated beach berms and stabilized dunes would be consistent with Virginia’s CZM enforceable policies and guidelines
- Recommend EPA and the FWS to review federal consistency under Virginia’s CZM program as it applies to all coastal areas with future NEPA analysis, not just the 1 mile recreational beach.
- Request EPA and the FWS to allow State review of proposed Habitat Management Plans and Biological Opinions that are prepared following the Final CCP/EIS to determine federal consistency.
- The Virginia Coastal Primary Sand Dune and Beach Act specifically states that VMRC “shall preserve and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction,” the legal intent of the legislation was to prevent the *manmade* or *artificial* destruction of the primary dunes. The General Assembly should to clarify the intent of the Dune Act as including all forms of despoliation or destruction, including the doctrine of ‘demolition by neglect’. In order for the doctrine to be implemented for primary sand dunes, the Virginia CZM program should develop and support proposed revisions to the Dune and Beach Act, VMRC should alter and update the adopted guidelines to include an affirmative maintenance provision, and the General Assembly should adopt enabling legislation for VMRC and localities. (see 2015 report Virginia’s Primary Dunes: Demolition by Neglect by *College of William & Mary Law Student, Ben Willis*)
- Request NOAA support for a Barrier Island SAMP process for the Eastern Shore of Virginia to apply NACCS recommendations for coastal resilience (‘latest science available’) and CZM goals for the long term active management of Virginia’s barrier island system

If you have any questions or concerns please do not hesitate to call me at 757-336-3159.

Sincerely



Robert G. Ritter, Jr.
Town Manager, Town of Chincoteague, Virginia