The State Government Ethics Act mandates that at the beginning of any meeting the Chair remind all the members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or potential conflict, please state so at this time.

Wednesday, September 23rd

9:00 COASTAL RESOURCES ADVISORY COUNCIL MEETING (HR Training Room) Debbie Smith, Chair

10:15 Commission Call to Order* (HR Training Room) Frank Gorham, Chair
- Roll Call
- Chair’s Comments
- Approval of July 16, 2015 Meeting Minutes Braxton Davis
- Executive Secretary’s Report
- CRAC Report

10:30 Action Items
- Approval of Fiscal Analysis – Development Line and Static Line Amendments (CRC-15-24) Ken Richardson
- Town of Pine Knoll Shores LUP Certification (CRC-15-16) Mike Lopazanski
- City of Jacksonville LUP Amendment (CRC-15-17) Mike Lopazanski

11:00 Beach Management
- Sandbag Rules and Policies (CRC-15-18) Mike Lopazanski
- Update on USACE & Carteret County MOA Justin McCorkle, USACE
- Commission Discussion

12:00 LUNCH

1:15 Public Input and Comment

1:30 CRC Rule Development
- Amendments to Ocean Erodible AEC – Recession Line (CRC-15-20) Mike Lopazanski
- Pile Supported Signs in Coastal Wetlands (CRC-15-21) Tancred Miller

3:00 BREAK

3:15 CRC Rule & Policy Discussion
- Minor Modifications to Major Projects (CRC-15-22) Doug Huggett
- Grandfathering of Multi-family Structures Steve Shuttleworth, Shuttleworth Realty

4:15 Old/New Business

4:30 Adjourn

Executive Order 34 mandates that in transacting Commission business, each person appointed by the governor shall act always in the best interest of the public without regard for his or her financial interests. To this end, each appointee must recuse himself or herself from voting on any matter on which the appointee has a financial interest. Commissioners having a question about a conflict of interest or potential conflict should consult with the Chairman or legal counsel.

* Times indicated are only for guidance and will change. The Commission will proceed through the agenda until completed.
NC COASTAL RESOURCES COMMISSION (CRC)
July 16, 2015
NOAA/NCNERR Auditorium
Beaufort

Present CRC Members
Frank Gorham, Chair
Renee Cahoon, Vice-Chair

Neal Andrew       Janet Rose
Gwen Baker        Harry Simmons
Larry Baldwin     John Snipes
Suzanne Dorsey    Bill White
Greg Lewis

Present CRAC Members
Debbie Smith, Chair
Spencer Rogers, Vice-Chair
Rudi Rudolph, Vice-Chair
John Brodman
Jett Ferebee
J. Michael Moore
David Moye
Kris Noble
Bobby Outten
Frank Rush
Dave Weaver
Lee Wynns

Present Attorney General’s Office Members
Mary Lucasse
Christine Goebel

CALL TO ORDER/ROLL CALL
Frank Gorham called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Marc Hairston and Jamin Simmons were absent. No conflicts were reported. Based upon this roll call Chairman Gorham declared a quorum.
MINUTES
Renee Cahoon made a motion to approve the minutes of the April 2015 Coastal Resources Commission meeting. Harry Simmons seconded the motion. The motion passed unanimously (Gorham, Andrew, Baker, Baldwin, Cahoon, Dorsey, Lewis, Rose, H. Simmons, Snipes, White).

EXECUTIVE SECRETARY’S REPORT
Braxton Davis, DCM Director, gave the following report:

Since your last meeting, permit activity has continued to be up overall in comparison with past years. We closed our last fiscal year at the end of June with an overall increase of 7% compared with the prior fiscal year, and that trend has continued over the first few weeks of July. The most significant update on the regulatory side of DCM since your April meeting involves our permitting of projects along Highway 12 in the Outer Banks. On June 15th, a settlement was announced for the ongoing legal challenges relating to the construction of the Bonner Bridge over Oregon Inlet in Dare County. The Division of Coastal Management, the Attorney General’s office, NCDOT, the Federal Highway Administration, and the Southern Environmental Law Center were all very involved in discussions leading to this settlement, which should allow for the legal challenges related to the construction of a new bridge over Oregon Inlet (and other roadwork along NC 12 on Hatteras Island) to be dismissed following the completion of certain tasks by both NCDOT and DCM. DCM has been, and continues to work closely, with NCDOT staff to ensure that these various tasks are completed in a rapid fashion, at which time the appeal and resulting stay on the CAMA permit issued for the Bonner Bridge replacement will be dismissed. Both Doug Huggett and Christy Goebel spent significant time working on the appeal and settlement, and we sincerely appreciate the professionalism, hard work, time, and effort that they put into this over the past several months in particular. Also since your last meeting, DCM has conditionally certified that two additional proposals for offshore seismic surveys are consistent with the relevant enforceable policies of North Carolina’s coastal management program (CGG Services and TGS). So, to date, proposals by a total of four companies (including Spectrum Geo Inc. and GX Technology) have now been conditionally certified as consistent with our program. These companies proposed to conduct separate 2D seismic surveys off the North Carolina coast to gather geological and geophysical data related to offshore oil and gas resources. In addition to our federal consistency review process, these companies are also required and are in the process of obtaining a federal permit from the Bureau of Ocean Energy Management, as well as an Incidental Harassment Authorization (under the Marine Mammals Protection Act) from the National Marine Fisheries Service, before these seismic surveys can be conducted offshore of North Carolina. On the policy and planning side of DCM, staff are proceeding with the rulemaking process and preparing fiscal analyses for several rules associated with the proposed Development Line and Static Line amendments (7H .0304; .0305; .0306; and 7J .1200). Once drafted, the fiscal analysis must be approved by DENR and OSBM. The legislatively-mandated Periodic Review Report for your 7B Land Use Planning Guidelines was approved by the Rules Review Commission in June, and has now been forwarded to the Administrative Procedures Oversight Committee for final approval. Pending that approval, the Commission will be able to publish the rule amendments, hold a public hearing and adopt the rules by the November meeting. The proposed effective date of the re-written land use planning guidelines is January 1, 2016. Staff has also held eight public hearings associated with the repeal of the High Hazard Flood AEC, and the amendments to the 7K .0208 Single Family Exemption rules. In response to our annual Public Beach and Coastal Waterfront Access Grant notice of funding, we received pre-applications for 26 projects from 22 local governments totaling over $2.4 million dollars this year. The division had $640,000 available for
the cycle when a previously funded acquisition project was cancelled, which unencumbered an additional $300,000. A total of nine local governments have been invited to submit a final application for the 2015-2016 cycle, with final awards of over $900,000 to be made by December. Timed with the July 4th holiday, the Division also released its mobile-friendly version of our popular online public access map. Developed by Ken Richardson at DCM, the new mobile version provides information for more than 400 access sites along the North Carolina coast. The interactive map includes the location of each site, a site photo, number of parking spots and any applicable parking fees, restroom and shower facilities, and other amenities. Following the press release, the application had just under 4,000 hits in the first 24 hours and within the first week, nearly 6,000 hits. Since the holiday, beach access information is being viewed 220 times daily on average. The Division spent no additional funds to create the site. Information on how to access the mobile web application is available on the documents table. The Coastal Reserve program is continuing its work on the draft 5-year management plan update for the N.C. National Estuarine Research Reserve. The draft is being informed by comments received from each of the Local Advisory Committees, and from the National Oceanic and Atmospheric Administration (NOAA), on the strategic plan outline developed this spring. The writing and review processes are taking a little longer than anticipated; so we now expect to seek input on the full draft management plan from DENR, the Local Advisory Committees, the CRC, and NOAA during the upcoming fall/winter timeframe. A 30-day public comment period, and public meetings on the final draft, will be held prior to final publication in 2016. The Division is also continuing its efforts to increase awareness of and promote the use of "living shorelines" for estuarine shoreline stabilization in our state. During May and June of this year, the Reserve’s Coastal Training Program held four workshops for real estate professionals, marine contractors, and other technical professionals in Beaufort and Wilmington where participants learned about the benefits and limitations of using living shorelines for erosion control; design standards and best practices; permitting requirements; and case studies. Presentations and video from the Beaufort workshops are available on the Reserve’s Coastal Training Program website, and similar workshops will be held along the northern coast this fall. Coastal Reserve summer programming is also underway, including free public field trips and the Summer Science School programs. Details are available on the Reserve’s website on the event calendar.

Legislative Update
The General Assembly passed a continuing resolution that is effective until Aug. 14 to give legislators time to come to consensus on a budget.

Senate Budget:
Includes items from S160 (ports/inlets) and S453 (regulatory reform), with a few changes and additions:

- From S160, the section regarding a boundary change for the Zeke’s Island Reserve now recognizes that the department must request approval from NOAA for the boundary change, and offers to add a corresponding amount of acreage to the northern boundary of Zeke’s Island from adjacent acreage at Fort Fisher State Recreation Area.
- From S453, regarding sandbag rules, a section has been added to allow the replacement, repair or modification of damaged temporary erosion control structures that are either legally placed with a current permit or with an expired permit where the status of the permit is being litigated by the property owner.
- New section: DCM would be directed to study and develop a proposed strategy for preventing, mitigating, and remediating the effects of beach erosion. The study should consider efforts by other states and countries to prevent beach erosion and ocean overwash,
and to nourish and sustain beaches. A report would be due to appropriations committees and Legislative Research by February 15, 2016.

- DCM is directed to work with the Division of Marine Fisheries to create a new permitting process for oyster restoration projects, instead of a CAMA major development permit.
- In addition to transferring DENR’s parks, zoo, aquariums and museum to the Dept. of Cultural Resources, the budget also includes a study of transferring other DENR programs, including the Coastal Reserves, to DCR.
- A provision would allow petitions for a ballot referendum to eliminate municipal service districts could impact funds for beach nourishment projects in some communities.

**H346 – Counties/Public Trust Areas**

Gives counties authority to enforce ordinances within public trust areas on ocean beaches – Signed by the Governor June 11.

On June 1st, after 11 years with DCM in various roles, Jonathan Howell moved from his job as an assistant major permits coordinator into his new position as the District Manager of the Division’s Washington Regional Office, replacing David Moye who retired at the end of last year. Also on June 1st, and after nearly 8 years with the Division, Daniel Govoni moved from his position as an assistant major permits coordinator into a new role working for Tancred Miller as a policy analyst. The Division is in the process of hiring replacements for both of the now-vacant assistant major permit coordinator positions. June 1st also marked the date when Gregg Bodnar began work with the Major Permits and federal Consistency as a fisheries resources specialist. Gregg worked at DMF in various roles for over 10 years, most recently as the Interim Artificial Reef Program Coordinator. Greg has very valuable experience working with CAMA permits, and we are excited to welcome him aboard with CAMA. We are not so happy to report that Mo Meehan, our Morehead City District Planner, is leaving DCM to work in her family’s business in Southport. We greatly appreciate her service to the Division over the years and wish her the very best in her new endeavors. Finally, we are planning for the next Commission meeting to be held in Wilmington on September 22-23 at the New Hanover County Government Center.

**VARIANCES**

**Carteret County (CRC-VR 15-04), pile supported sign in coastal wetlands**

**Ryan Davenport/Christine Goebel**

Ryan Davenport, DCM field representative, gave an overview of the property and site conditions. Christy Goebel of the Attorney General’s office represented the Division and stated the Petitioner is Carteret County, as represented by the Down East Council. The Carteret County Manager as well as members of the Down East Council are present today, but will not make oral argument. Ms. Goebel stated the Down East Council is a representative group of all 13 downeast communities. Petitioners propose to install a welcome sign near the North River Bridge on US Highway 70. The proposed site for the sign is within a Coastal Wetlands Area of Environmental Concern. Carteret County owns the property where the sign is proposed, which is covered in Coastal Wetland species. Down East is defined by the Carteret County ordinances. On May 18, 2015, the County through Counsel applied for a CAMA minor development permit to install the sign on the proposed site. On May 28, 2015, DCM denied the permit application due to the Commission’s rules which limit development in Coastal Wetlands AECs to water-dependent uses, and because the sign is not water-dependent the proposed development was inconsistent with 15A NCAC 7H .0205(d). Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and Petitioner agree on all four variance criteria which must be met in order to grant the variance.
Renee Cahoon made a motion to support staff’s position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner an unnecessary hardship. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

Renee Cahoon made a motion to support staff’s position that hardships result from conditions peculiar to petitioner’s property. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

Renee Cahoon made a motion to support staff’s position that hardships do not result from actions taken by the Petitioner. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

Renee Cahoon made a motion to support staff’s position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission, will secure the public safety and welfare; and preserve substantial justice. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

This variance request was granted.

Chairman Gorham commented that this type of variance request could be worked out between the attorneys and staff and not be elevated to the Commission for approval. Braxton Davis stated a review of this proposal was required by other agencies and this proposal could actually have been evaluated as a Major Permit, however this was reviewed as a Minor Permit and we allowed D.O.T. and Scenic Bi-ways to review the application. Because signs are not water dependent, a rule change could be discussed to allow certain signs. Harry Simmons commented that the initial discussions about signs when developing the current rule were to limit the locations of commercial signs.

North Topsail Beach (CRC-VR 15-05), geotextile tube

Jason Dail/Christine Goebel

Jason Dail, DCM field representative, reviewed the site conditions and gave an overview of the property. Christy Goebel of the Attorney General’s office represented staff and stated that the Town Attorney, Brian Edes, is present and will represent the Town of North Topsail Beach. Ms. Goebel stated the Commission heard an expedited variance request from the Town for the same area last November. Petitioner holds oceanfront easements for the area north of Topsail Reef Condos toward the New River Inlet in connection with their Inlet Management Plan. Following the Phase I channel realignment and nourishment project which was completed in early 2013, and in response to recent accelerated erosion in this area, the Town began to research various options to protect the 20 structures in this area from erosion during the summer of 2014. The Town sought, and was granted a variance from the Commission to install a sandbag structure larger than allowed by the Commission’s rules, up to 45 feet wide and +12 feet NAVD. As part of the resulting permit, the Town asked for, and was granted, authorization to install a geotextile tube the length of the sandbag project as a construction method. Following completion of the project, the Town indicated that it wanted to keep the tube in place until sometime in the future. On March 26, 2015, DCM issued a Notice of Violation (NOV) to the Town for failure to comply with the permit condition requiring
removal of the geotextile tube following construction of the sandbag structure. As part of the NOV restoration plan, DCM agreed to first let the Town seek a variance from the Commission to keep the tube before taking additional enforcement steps. Subsequently, the Town submitted a permit modification request to keep the tube, which was denied by DCM through a letter dated June 2, 2015. On June 3, 2015, DCM received petitioner’s complete variance application seeking to keep the geotextile tube. Ms. Goebel reviewed the stipulated facts of the variance request and stated staff and Petitioner do not agree on any of the four variance criteria which must be met in order to grant the variance request. Ms. Goebel stated DCM acknowledged in the November 2014 variance petition that accelerated erosion at the site was causing the petitioner and the 20 adjacent property owners an unnecessary hardship, however the only hardships at issue in this variance request are those caused by not being allowed to retain the geotextile tubes in addition to the larger, previously authorized sandbag structure. The variance granted in November 2014 allowed the petitioner to construct a sandbag structure with a base width of 45 feet and a height sufficient to achieve an elevation of +12 feet NAVD. However, instead of building a structure as large as that allowed by the Commission, the petitioner downsized their project and constructed a sandbag structure approximately 30 feet wide and with less elevation than the +12 feet NAVD allowed by the variance. Staff disagrees with petitioner that any hardships are caused by conditions peculiar to the property as the site is within a CRC-designated Inlet Hazard Area of Environmental Concern and these dynamic shoreline changes commonly occur in all inlet hazard areas along the coast of North Carolina. This site is clearly influenced by inlet processes and the Town agrees that the erosion is typical of this inlet. Staff believe that the petitioners have caused their own hardships. The hardships claimed by the Town seek to keep the tubes as more than a temporary construction method. It was made clear during the discussion regarding the geotubes and their use that this was temporary and that permitting would be limited to the temporary construction period only. The Town and its contractor assured that they understood this condition. Staff’s position is that any hardships result from actions taken by the petitioner including their decision to scale down from the previously authorized sandbag structure. The spirit, purpose and intent of the Commission’s rules for the Ocean Hazard Area is to allow temporary erosion control structures only for imminently threatened structures and limit the size of individual sandbags and the overall dimensions. The installation and design standards of the Commission’s rules reflect the temporary nature of these structures and what is allowed is only to the extent necessary to protect the property for a short period of time. Public safety and welfare would not be protected by granting this variance. Staff has raised public safety concerns and access concerns about geotextile tubes.

Brian Edes, Town Attorney, stated in October 2014, DCM staff made a site visit and a determination that the conditions at the end of North Topsail Beach had deteriorated to the point that emergency action was warranted. In mid-November the CRC granted a variance to the Town at an expedited hearing. Public hearings were held in October on assessment resolutions and the Town ultimately passed a resolution to assess half of the cost of the revetment project against the benefited property owners. At that time, the estimated total projects cost was roughly 2.3 million dollars. At that point we did not have the variance in hand so we had not bid the project. The bids came in higher than the Town had anticipated. The contractor advised the Town that the conditions had digressed to the point that we had to stabilize the area. The geotube was being discussed regardless of the Town’s funds. The revetment was smaller than the variance allowed because the Town did not have the funds. DCM granted the condition for the geotextile tube to be installed and construction commenced. A modification was requested to allow the tube to stay. DCM would not allow it and we asked if it could stay until the Onslow County project was performed that would add sand to the area. The cost of the project is approximately three million dollars and according to our best information if we were to excavate out the tube at the foot of the revetment that will
compromise the integrity of the revetment and lead to its failure. We were surprised that staff did not defer to the CRC’s finding that this area is peculiar. There isn’t any evidence in the materials that the Town caused the burial of the geotube. Due to the erosion and scour going on at the site it became submerged. The tube will now require excavation. When you begin to excavate the tube then it will compromise the integrity of the revetment. If this variance is allowed then the geotubes will stay, at most, through the Onslow County project which is anticipated to occur in January or February of 2016. If the variance is denied then there is a strong likelihood that the revetment will be compromised and fail. The policy of the Commission and of the State is to take into consideration the cost. The Town didn’t have the money to build the size revetment as approved during the last variance.

Chairman Gorham asked if the Town would consider a condition of a drop-dead date for removal of the tube. Brian Edes agreed on behalf of the Town. Commissioner Lewis asked if the Onslow County Board of Commissioners appropriated money in the budget for this project and what assurance the CRC has that this same situation won’t occur again. The Town Manager, Stuart Turille, confirmed funding was available. Commissioner Lewis further stated that in the future the Commission should verify funding prior to granting a variance. The problem with this project arose due to inadequate funding. Commissioner Cahoon stated she still has concerns about funding and that scaled-back projects don’t work. Commissioner Lewis stated the Town has agreed to remove all of the geotubes no later than June 30 and that funds will be secured to do the project as proposed.

Harry Simmons made a motion to support Petitioner’s position that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioners an unnecessary hardship. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

Harry Simmons made a motion to support Petitioner’s position that hardships result from conditions peculiar to the petitioner’s property. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

Harry Simmons made a motion to support Petitioner’s position that hardships do not result from actions taken by the petitioner. Gwen Baker seconded the motion. The motion passed with eight votes in favor (Baldwin, Rose, Lewis, H. Simmons, Gorham, Dorsey, Baker, White) and three votes opposed (Snipes, Andrew, Cahoon).

Harry Simmons made a motion to support Petitioner’s position that the variance requested will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Commissioner Simmons placed a condition on the approval to require removal of the geotube when the end of the Onslow County dredging project is completed or by June 30, 2016, whichever is earlier; and that funding should be secured for the entire project. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

This variance request was granted with conditions.
PUBLIC INPUT AND COMMENT
Bill Price of Pine Knoll Shores made a comment about local data and sea level rise (written comments provided).

CRAC REPORT
Rudi Rudolph stated the CRAC voted positively on three things. The first was a discussion on proposed sandbag provisions for the State Port AEC that is being developed. Based on our conversation at the April meeting, Staff brought a couple of rule amendment options. The CRAC focused on the sandbag components for local governments. The CRAC agreed with the proposed sandbag provisions, but did think that there should be greater constraints on minimum bag sizes. The second discussion was about sandbags in general across the coast. Everyone agrees that the ocean erodes because of different circumstances yet there is currently one standard for every circumstance. The CRAC agreed unanimously that the CRC should review the sandbag policy for the entire State. The third discussion by the CRAC was about recognizing Bill Morrison, former Chair of the CRAC and long-time member. There were also two nominations that were submitted to the CRAC for the CRC to consider. The resumes for these two nominees will be forwarded to the full Commission for consideration at the next meeting.

CRC RULE DEVELOPMENT
State Ports Inlet Management AEC – Beneficial Use, Sandbag Use & Boundary
Heather Coats
Chairman Gorham advised the Commission he had attended a meeting with Harry Simmons, Neal Andrew, Gwen Baker, Rudi Rudolph, Justin McCorkle, Todd Miller, Mayor Sayre, Braxton Davis, Doug Huggett, and Heather Coats. Everyone agreed on the concept of moving forward on a Memorandum of Understanding that could be used anytime the Corps was planning to remove sand from the system to allow a local community to provide funds that could be used to place the sand on the beach.

Heather Coats stated this began in 2012 in response to legislation passed which directed the CRC to study the feasibility of creating a new AEC for lands adjacent to the Cape Fear River Inlet. A final recommendation of that study was to roll it into a more inclusive study, the Inlet Management Study. A priority identified in the Inlet Management Study was to recommend development of a new AEC for the State’s two deep-draft inlets, Cape Fear and Beaufort Inlets, specifically taking into account the priority placed on maintaining the federal channels for access to the State Ports and looking at erosion control measures, beneficial use of dredged materials, beach management, and protection of coastal resources. In developing the draft rule language for the State Port Inlet Management AEC, we met with the local governments to first identify the local needs. We then sent the draft rules to a more inclusive group to include the US Army Corps of Engineers, State Ports Authority, National Park Service, and Fort Macon. The new rules for the AEC, as originally drafted, essentially revolved around two main topics. The first was the beneficial use of dredged materials essentially requiring use of all beach compatible material to be placed on the adjacent beaches or nearshore areas. The second main topic was sandbags. There has been a lot of discussion about the beneficial use portion of the rule. We have a group working with the Corps to draft a MOA, which you will hear about from Justin McCorkle. The CRAC discussed the sandbag rules at this meeting. The changes to the sandbag rules modify the definition of imminently threatened to allow local governments to protect primary and frontal dunes. Under the current rules only structures and limited infrastructure can be protected. The amendments to the sandbag rules would also allow a couple of other options for the Director to make a determination of imminently threatened in cases of accelerated erosion. The changes would eliminate the sandbag size restrictions, but keep the
overall structure size at a maximum of six feet in height with a twenty foot base width. A recommendation of the CRAC was to keep the minimum sandbag size restriction in place. The rules would also allow sandbags to remain in place for up to eight years, regardless of whether the community is pursuing an inlet relocation or beach renourishment project. The sandbags can remain in place if fully covered by sand and if they do not interfere with the use of the public trust beach. There is also a standard provision that unneeded sandbags will be removed within 30 days from the day that they are determined to be unnecessary.

Chairman Gorham directed staff to look at a policy that would take into consideration the pros and cons of covering sandbags as part of a renourishment project. If we are going to take the position that if they are covered then they can stay, but we take the position that you can’t cover them with nourishment then it doesn’t make any sense. Commissioner Lewis stated the CRC needs to look at sandbag uses. A lot of Commissioners are new and the word temporary has not turned out to be temporary. After discussion, Chairman Gorham stated an hour of time will be allocated at the September CRC meeting for sandbags. The Commission can go through the sandbag rules line by line. Commissioner Dorsey stated we have the wrong tool for the job that we are trying to accomplish. The discussion should be broadened to find out where sandbags should be used and where and what are the consequences to our State for looking at alternatives to sandbags. Braxton Davis stated this has been a longstanding issue for North Carolina and other states. The State Ports Inlet Management AEC allows you to take two inlets that have unique issues and consider new ways to manage those areas that currently aren’t contemplated in the rest of the State. After that we can go through the broader sandbag rules. If you prefer, we can go back and have an overall sandbag discussion. Chairman Gorham stated we need to work on the Ports AEC, but we also need to learn about sandbags and work within what the law allows us to do.

Justin McCorkle, USACE District Counsel, stated the Commission approached the Corps to try to work proactively to put together a framework for what may not be a solution to the issue, but at least a step forward that may allow for some federal/non-federal partnership in putting sand on the beaches. We have been working toward coming up with some parameters under which we might get some non-federal funding to supplement the federal funds that we have to do our federal base plan so that in a year where we would be planning to put beach quality material somewhere other than the beach then non-federal sponsors could show up and provide the funds to move that sand. The Corps is not in a position to negotiate the terms of an agreement because those types of agreements depending on their scope and might need Congressional notification and would certainly need some review by our headquarters. What we are finding increasingly with beach communities and ports around the country is that having initial conversations to understand the potential scope of these things heads off questions that I will get from headquarters as we move forward. The Colonel made me available to help a working group put together some parameters of a proposed agreement that might allow us to move forward on several issues. There are certain situations where either the Corps has inadequate funding to do its base plan or inadequate funding to put sand on the beach or the base plan is to put the sand elsewhere. There are times where according to our environmental documents and our plan where we need to put sand in an alternate location, but in both Wilmington and Morehead City there are ample opportunities when there is plenty of sand in the channel and the beach is a perfectly good alternative in terms of a location and we don’t have the funds to put it there so we either do not dredge at all or put the sand in another location. If the Corps is faced with a funding situation we are talking about the potential for the State, in partnership with local communities, to be able to come in and provide the funds to do a variety of things. The proposed MOA would allow for non-federal funds to move a beach placement location within the federally authorized limits. The MOA would also allow for an additional amount of sand to come out of the
channel and extend the beach placement area if a non-federal interest could provide the funds. We are working towards coming up with a scope that would lead to a letter of intent that would come from the State of North Carolina to the Corps asking to move forward on putting the parameters together for some sort of MOA. There are still some details that need to be worked out, particularly regarding what situations would be a NCDOT lead effort and what situations would be a DENR led effort. Those discussions need to be ongoing. We discussed at the meeting the possibility that this would also allow for DOT to fund additional dredging if the state found it necessary at State Ports. From our prospective there is a lot of good in this. I was pleased that the local interests agree with it and we have some momentum going forward. This would be a multi-project, multi-year Memorandum of Agreement. The next step would be bringing in the State Ports and the Department of Transportation to figure out what their interest is and do we want this to cover them or do we just want this to be strictly a beneficial use MOA. If they want to participate then we would need to figure out the details of how that might work and who will be the lead. The next step would be to craft a letter of intent to send to the Corps to begin the process of getting an MOA together.

Commissioner Simmons asked if there was any interest from the Corps’ side to tie this in with the ongoing regional sediment management effort. Mr. McCorkle responded that from the district perspective we have seen money for study, but not a lot of availability of funding for implementation. If we are taking extra sand out of the channel and putting it on the beach then it has benefits, maybe not the cost-benefit ratio for the navigation project, but they are there for the beach and we have the coastal storm damage reduction umbrella. Commissioner Baldwin asked if there would be one MOA set up or multiple with different localities. Mr. McCorkle stated the opportunity already exists for local communities to enter into a one time, single use MOA or potentially a multiple use, longer term MOA, as has been done with Bald Head Island this past year. Atlantic Beach wants to do something in the near-term before we can get a big one put together. The thought of the group was an overarching MOA that would cover a lot of this stuff and take away the need to get permission every time. Currently for a contributing funds MOA our goal is to get an agreement processed in 120 days if there are no tweaks and everything is done exactly the way we do it for a navigation dredging project. Commissioner Baker stated we have spent a lot of time talking about the procedural side of this, but there is also a political side of this that we cannot ignore at the state and federal level. This current Administration is not particularly in favor of beach nourishment projects and there is ample opportunity for this to be shot down. Many of us in the room have roles to play if we want to pursue this. Chairman Gorham asked the working group to approach the Ports and DOT to see if they would like to be included. Chairman Gorham stated there was beneficial use language that was being incorporated into the State Port Management AEC rule that we were warned would not get through NOAA. Temporarily back off on that language until the working group gets through this MOA concept. Braxton Davis stated a financial MOA like this would fall under the Division of Water Resources. Darren England is on the working group and would be the best point of contact for the State to get in touch with the Ports and DOT to figure out their relative roles in drafting the letter of intent. Rudi Rudolph stated one thing we were concerned about, and still isn’t resolved, is that the Corps doesn’t get enough money to put the sand on the beach and we still don’t have any tools to make that happen. The financial burden shifts to the local governments because the State hasn’t stepped in. One of the positive concepts of the MOA includes all of the dredging within both deep draft inlets. If the State is going to start contributing money for the inner harbor then it is an easier transition for them to contribute money to put sand on the beach. We need the state funding component in this and the more agencies that are involved in getting the sand out of the channel, then the better chance we have to get this done. Chairman Gorham directed staff to prepare a draft of the rule language regarding the Port AEC, taking out the beneficial use language we added and including the input on the sandbag provisions for the next meeting. Braxton Davis
added that staff was tasked with developing the potential boundaries for the AEC. The boundary options might have been influenced by the beneficial use pieces. Where does the Commission want the sandbag rules to apply? (Heather Coats displayed the proposed boundaries for the AEC). Heather stated there wasn't much debate about the lateral boundaries for Beaufort Inlet. The Science Panel’s proposed inlet hazard area boundaries were used. The boundaries extend from Fort Macon and covers Shackelford Banks. For the Cape Fear Inlet we have Caswell Beach to the west extending through the discharge canal and then Bald Head Island to the east. Commissioner Simmons suggested that the boundaries go even farther west for Caswell Beach and include the entire town. Chairman Gorham asked staff to send the boundaries out to the Commission for comments.

**ACTION ITEMS**

**Adopt 15A NCAC 7H .0304 AECs Within Ocean Hazard Areas – Repeal of High Hazard Flood AEC (CRC 15-13)**

**Mike Lopazanski**

Mike Lopazanski stated this family amendment will repeal the High Hazard Flood Area in 7H .0304 as well as 7K .0213 for the single family exemption. The high hazard flood AEC is identified as the V-Zones on the flood insurance rate maps and historically the CRC has required all residential and commercial structures within the high hazard flood AEC to adhere to the construction standards and state building code when it comes to flood prevention. Over time the state building code has been strengthened. The AEC is now duplicative of what is already being required. This amendment will affect about 10,000 properties coast-wide, although not all of these properties will fall out of CRC jurisdiction because some of these areas are still within the Coastal Shoreline AEC and would still require a permit for development. A public hearing was held in each of the eight oceanfront counties. No comments were received during the comment period. Staff recommends adoption of the amendment.

Harry Simmons made a motion to adopt amendments to 15A NCAC 7H .0304. Renee Cahoon seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).

**Town of Carolina Beach LUP Amendment (CRC 15-14)**

**Mike Christenbury**

Mike Christenbury stated the Town of Carolina Beach is seeking certification of an amendment to the Carolina Beach Land Use Plan. The Town amended the Land Use Plan to modify the future characteristics of the Marina Mixed Use District on the Future Land Use Map. The amendment removes the prescribed density characteristics. The Town held a duly advertised public hearing on June 9, 2015 and voted unanimously by Resolution to adopt the amendment. Staff has reviewed the amendment and has determined that the Town has met the requirements outlined in the guidelines and that there are no conflicts with state or federal law or the State’s Coastal Management program. DCM did not receive any comments on the amendment. Staff recommends certification of the amendment.

Renee Cahoon made a motion to certify the amendment to Town of Carolina Beach Land Use Plan. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Rose, Lewis, Snipes, Andrew, H. Simmons, Cahoon, Gorham, Dorsey, Baker, White).
OLD/NEW BUSINESS

Update on NCNERR Management Plan
Rebecca Ellin stated the document is in the process of being written. Input was solicited from the Local Advisory Committees on the strategic plan which is just a small portion of the management plan, but it provides the framework. We also received comments from NOAA. There are a number of reviews that NOAA will weigh in on. Once a solid draft is put together then we will seek the Department’s input, the Commission’s input, the Local Advisory Committee’s input, and NOAA’s input. After all of the comments are reviewed then we will have a 30-day public comment period that will be advertised in the Federal Register and we will hold three public meetings throughout the coast to seek input on the final draft version. The early reviews should take place in the fall/winter of this year. Neal Andrew requested that the Commission be provided a summary of the comments received during the process.

Update on Development Line Rulemaking
Ken Richardson stated progress is being made with the development line and static line amendment fiscal analysis. I hope to have a draft ready by the end of the month. After staff review, it will go to the Department and OSBM for review. Once the fiscal analysis is approved by DENR and OSBM, it will come to the CRC for approval. Following CRC approval, the rule amendment and fiscal analysis will be published in the NC Register. A public hearing will be held and following the required 60 day public comment period, the Commission can adopt the final amendments.

Frank Gorham stated the next meeting will be September 22-23 at the New Hanover County Government Center in Wilmington. The last scheduled meeting for 2015 will be November 17-18 in Carteret County. Chairman Gorham further stated a working group should be established to look at some statutory recommendations to the legislature. If you are interested in being on this working group contact the Chairman.

With no further business, the CRC adjourned.

Respectfully submitted,

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary
September 8, 2015

MEMORANDUM

TO: Coastal Resources Commission

FROM: Ken Richardson, Shoreline Management Specialist

SUBJECT: Fiscal Analysis Update for the Proposed Development Line Procedures & Amendments to the General Use Standards for Ocean Hazard Areas and Static Vegetation Line Exception Procedures

Staff have prepared and submitted the fiscal analysis for the proposed Development Line Procedures (15A NCAC 07J.1301, 15A NCAC 07J.1302, and 15A NCAC 07J.1303), and amendments to the General Use Standards for Ocean Hazard Areas (15A NCAC 07H.0306) and Static Vegetation Line Exception Procedures (15A NCAC 07J.1201) to both the Department of Environment and Natural Resources (DENR) and Office of State Budget and Management (OSBM).

Once the fiscal analysis has been approved by both DENR and OSBM, the CRC will have the opportunity to approve it. The proposed rules will then be published in the North Carolina Register, followed by a public hearing/comment period of sixty days. Once the comment period has closed, the CRC will review all comments and may adopt the proposed rules. The proposed rules will then be submitted to the Rules Review Commission (RRC) for their approval. Depending on timing, the RRC will review the proposed rule within one to two months. If RRC approves, the rules go into effect; and if they object, then changes are required. Assuming no major changes are needed, the rule will go into effect in late spring or early summer.
ATTACHMENT A: Relevant Procedural Rules

PROPOSED DEVELOPMENT LINE PROCEDURES AND AMENDMENTS TO THE GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS AND STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS
The ocean hazard AECS contain all of the following areas:

1. Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The landward extent of this area is determined as follows:
   - a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term average erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net; and
   - a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

2. The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

3. Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
   - the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
   - the former location of Mad Inlet, which closed in 1997. In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.

4. Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:
   - An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action.
The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-item(1)(a) of this Rule.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004;
April 1, 2004; August 1, 1998.

15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS
(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
   (A) the growth of vegetation occurs, or
   (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.
(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section.

Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

(A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
(B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(10) Development Line. The line established in accordance with 15A NCAC 07J.1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have approved development lines, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H.0306(a)(2).

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07J.0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.
15A NCAC 07H .0306  GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission’s Rules shall be located according to whichever of the following is applicable:

(1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line whichever is applicable.

(2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with sub-sections (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.

(3) In no case shall a development line be created or established below the mean high water line.

(4) The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;
(B) The total square footage of parking elevated above ground level; and
(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(2)(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
(C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;

(I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward; and

(L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
(i) the structure was originally constructed prior to August 11, 2009;
(ii) the structure as replaced does not exceed the original footprint or square footage;
(iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2)(5) of this Rule;
(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(5)(A) of this Rule; and
(v) the structure is rebuilt as far landward on the lot as feasible.

(3)(6) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune, or the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

(4)(7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune, or landward of the ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.

(5)(8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

(6)(9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

(7)(10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

(8)(11) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill.
A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H.0305 shall be measured landward from the static vegetation line as defined in this Section unless a development line has been approved by the Coastal Resources Commission.

However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and (A)(5) of this Paragraph, a local government or community group of local governments involved in a regional beach fill project, or qualified owner’s association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one (1) mile of ocean shoreline, may petition the Coastal Resources Commission for a “static line exception” in accordance with 15A NCAC 07J.1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J.1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
(B) Total floor area of a building is no greater than 2,500 square feet;
(C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
(D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
(E) With the exception of swimming pools, the development defined in 15A NCAC 07H.0309(a) is allowed oceanward of the static vegetation line; and
(F) Development is not eligible for the exception defined in 15A NCAC 07H.0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H.0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

(d) Development shall comply with minimum lot size and setback requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC07H.0303.

(g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

(1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
(2) restore the affected environment; or
(3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2013.
SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government, group of local governments involved in a regional beach fill project, qualified owner’s association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one (1) mile of ocean shoreline, or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after five years have passed since the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

1. A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

2. Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 30 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

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. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

4. Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST
The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

1. A description of the area affected by the static line exception request;
2. A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
3. A summary of the evidence required for a static line exception; and
4. A recommendation to grant or deny the static line exception.

The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

1. The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.
2. A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
3. Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.
(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

1. Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
2. Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been
designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

(1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

(2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner’s progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of
Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124
SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE
(a) Any local government, group of local governments involved in a regional beach fill project or qualified owner’s association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of this Section. A qualified owner’s association is an owner’s association defined in NCGS 47F-1-103-(3) that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one (1) mile of ocean shoreline.

(b) A development line request applies to the entire large scale project area as defined in 15A NCAC 7H .0305(a)(7), and at the petitioner’s request may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.

(c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner’s oceanfront jurisdiction.

(d) An existing structure that is oceanward of an approved development line can remain in place until damaged greater than fifty percent in accordance with 15A NCAC 7J .0210; and can only be replaced landward of the development line, and must meet the applicable ocean hazard setback requirements as defined in 15A NCAC 067 H .0309(a).

(e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the executive director of the DCM. A complete request shall include the following:

1. A detailed survey of the development line using on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner’s association.

2. The survey shall include the development line and static vegetation line.

3. Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata;

(f) Once a development line is approved by the Coastal Resources Commission, only the petitioner can request a change or reestablishment of the position of the development line.

(g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

Eff.

15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE
(a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:

1. A representative for the petitioner shall orally present the request described in 15A NCAC 07J .1301. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations.

2. Additional persons may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in 15A NCAC 7J .0301. The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next
scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124 Eff.

15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES
A list of development lines in place for petitioners and any conditions under which the development lines exist, including the date(s) the development lines were approved, shall be maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124 Eff.
Fiscal Analysis

General Identification and Description of Landforms
15A NCAC 7H .0305

General Use Standards for Ocean Hazard Areas
15A NCAC 07H .0306

Requesting the Static Line Exception
15A NCAC 07J .1201

Development Line Procedures
15A NCAC 07J .1301
15A NCAC 07J .1302
15A NCAC 07J .1303

Prepared by

Ken Richardson
Shoreline Management Specialist
Policy & Planning Section
NC Division of Coastal Management
(252) 808-2808

September 8, 2015
### Basic Information

<table>
<thead>
<tr>
<th>Agency</th>
<th>DENR, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>PROPOSED DEVELOPMENT LINE PROCEDURES AND AMENDMENTS TO THE GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS AND STATIC VEGETATION LINE EXCEPTION PROCEDURES</td>
</tr>
<tr>
<td>Citation</td>
<td>15A NCAC 7H .0305, 15A NCAC 07H .0306, 15A NCAC 07J .1201, and 15A NCAC 07J .1301 - .1303</td>
</tr>
<tr>
<td>Description of the Proposed Rule</td>
<td>15A NCAC 07J .1300 (1301, 1302, and 1303) creates procedures for requesting, approving, and managing an oceanfront Development Line, and establishes an alternative to the Static Vegetation Line Exception 15A NCAC 07J .1200 for oceanfront communities receiving a large scale beach fill project. Amendments to the General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306 and Static Vegetation Line Exception Procedures 15A NCAC 07J .1200 are proposed for the purpose of easing requirements by eliminating the mandatory 5-year waiting period and the 2,500 maximum square footage limit on structures.</td>
</tr>
</tbody>
</table>
| Agency Contact  | Ken Richardson  
Shoreline Management Specialist  
Ken.Richardson@ncdenr.gov  
(252) 808-2808 ext 225 |
| Authority       | G.S. 113A-107; 113A-113; 113A-124 |
| Necessity       | The Coastal Resources Commission proposes the Development Line Procedures and amendments to current rules collectively allow local government to have less restrictive management options following a large scale beach fill project. |
| Impact Summary  | State government: No  
Local government: Yes  
Substantial impact: No  
Federal government: No |
The North Carolina Coastal Resources Commission (CRC) requires that oceanfront development be set back from a defined reference line that is generally either the oceanward edge of natural vegetation, or a surveyed line for communities that have completed large beach nourishment projects.

The CRC is proposing amendments to create another reference line called a Development Line that would allow a local government to delineate the most oceanward location for new development. Development Line Procedures will be contained in Title 15A NCAC 7J .1300. This action also requires an amendment to 15A NCAC 07H .0305, General Description of Landforms, which is the CRC’s rule that defines various coastal features and reference lines, and 15A NCAC 07H .0306 to establish use standards for the Development Line.

In addition to establishing the Development Line procedures and use standards, the CRC is also amending their existing rules governing Static Line Exception Procedures contained in 15A NCAC 07J .1201 and 15A NCAC 07H .0306. The intent of these amendments is to provide local governments with additional flexibility in managing oceanfront development.

Should a local government choose to adopt a Development Line for CRC approval, the costs to do so are anticipated to be minor. The economic benefits of adopting a Development Line for private property owners can range from moderate to significant depending on where a local government’s chooses to site the Development Line, but are not accurately quantifiable.

This proposal will have no impact on Department of Transportation projects or on DCM permit receipts.

The estimated effective date of these rules is July 01, 2016.

Description of Proposed Actions

Residential and commercial development built adjacent to the ocean shoreline may be vulnerable to erosion and storm surge. Under the NC Coastal Area Management Act (CAMA), hardened erosion protection structures are generally not allowed on the ocean shoreline; therefore, local governments use beach fill (nourishment) as a means to protect oceanfront property from storm damage and to address chronic erosion issues.

While the first line of stable-natural vegetation (FLSNV) has been used as an oceanfront setback measurement line since 1979, the CRC determined that the vegetation on nourished beaches was not “stable and natural” and should not be used for measuring oceanfront setbacks. In 1995 the CRC codified a method of measuring setbacks on nourished beaches that utilizes the surveyed pre-project vegetation line, which became known as the “static line.” The CRC’s static line rule was based on three primary issues: 1) evidence that nourished beaches can have higher erosion rates than natural ones, 2) no assurance that funding for future nourishment projects would be available for maintenance work as the original project erodes away, and 3) structures could be more vulnerable to erosion damage since their siting was tied to an artificially-forced system. The intent of the static line provisions has been to recognize that beach nourishment is an erosion response necessary to protect existing development but should not be a stimulus for new development on sites that are not otherwise suitable for building. Once a static line is established it does not expire.
Prior to 2009, a community that completed construction of a large-scale beach fill project was required to measure construction setbacks from the static line or the first line of stable-natural vegetation, whichever was more landward. Over time, the Commission found that some communities had demonstrated a long-term commitment to beach nourishment and maintenance of their nourished beaches. Due to this long-term commitment, the vegetation had become stable and migrated oceanward of the static line. In many cases, proposed development on lots within these communities could meet the required setback from the natural vegetation line, but could not be permitted since they did not meet the setback from the static vegetation line.

To recognize local government efforts to address erosion through long-term beach nourishment and offer relief from the static line requirements, the CRC adopted Static Vegetation Line Exception Procedures in 2009. The procedures require local communities to petition the CRC for an exception to the static line that allows property owners within that community to measure construction setbacks from the first line of stable-natural vegetation instead of the static line, under specific conditions. To qualify for the exception, communities must demonstrate that they have a source of sand and a funding mechanism to continue beach nourishment for at least 30 years. The CRC also requires communities to update this information every five years in order to maintain the exception.

Several local governments have applied for and received Static Line Exceptions, and have now had them in place for up to six years. Some of these local governments have since expressed concerns regarding difficulties and costs associated with the static vegetation line rules and its exception procedures. The CRC is proposing new Development Line rules and amendments to the Static Vegetation Line Exception procedures to address these concerns.

**DEVELOPMENT LINE (new)**

The CRC is adding a new section for Development Line Procedures, 15A NCAC 07J .1300.

1. **15A NCAC 07J .1301 Requesting the Development Line**
   Describes the procedures for who may request a Development Line, how it is to be delineated, what information needs to be provided to the CRC, and who may request changes to the Development Line. Also explains where requests are to be submitted and when the CRC will consider them.

2. **15A NCAC 07J .1302 Procedures for Approving the Development Line**
   Describes the process for presenting requests to the CRC, and the criteria and timeframe for a CRC decision. Specifies how and when petitioners will be notified of the CRC’s decision. Indicates how petitioners may appeal a CRC decision.

3. **15A NCAC 07J .1303 Local Governments and Communities with Development Lines**
   States that the Division of Coastal Management will maintain a list of approved development lines and related information about them, and make this information available for public inspection upon request.

**STATIC VEGETATION LINE EXCEPTION (amendments)**

Additional amendments to the General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306 and Static Vegetation Line Exception Procedures 15A NCAC 07J .1201 are proposed for the purpose of easing regulatory burdens. The amendments eliminate the mandatory 5-year waiting
period before communities can apply for a Static Line Exception, and remove the 2,500 maximum square footage limit on structures built under the exception. An amendment to 07J.1201 also allows groups of local governments to petition the CRC jointly for a Static Line Exception in order to benefit adjacent communities such as those on Bogue Banks by enabling them to share costs. The most significant proposed amendments to the static line exception rules are as follows:

1. **Waiting period.** The rule currently requires communities to wait at least five years after they receive a static vegetation line before they may submit a request for a Static Vegetation Line Exception. The proposed amendment eliminates this waiting period, allowing communities to apply immediately after their static line is established.

2. **Building size restriction.** Total floor area for new construction authorized under a Static Vegetation Line Exception is currently limited to 2,500 square feet. The proposed amendment removes this limitation.

3. **Requesting an exception.** Only individual local governments may currently request a Static Vegetation Line Exception from the CRC. The proposed amendments will allow groups of local governments and qualified property owners’ associations to request exceptions.

**Anticipated Impacts**

**Local Governments:**

The primary cost impacts to local government are the one-time costs of adopting a Development Line, versus the initial and recurring five-year reporting costs of requesting and maintaining a Static Vegetation Line Exception. Requesting a Development Line or Static Vegetation Line Exception is voluntary for communities; therefore, these new rules do not require local governments to incur any additional expenditures unless they choose to do so.

Under the proposed amendments, local governments will have three oceanfront development setback options: 1) continue to measure setbacks from the Static Vegetation Line or FLSNV, whichever is applicable; 2) request a Static Vegetation Line Exception from the CRC and measure setbacks from first FLSNV or Static Line, whichever is more restrictive, and no construction oceanward of the landward-most adjacent neighbor; or 3) request a Development Line from the CRC and measure setbacks from first line of stable-natural vegetation, with no construction oceanward of the Development Line.

The proposed Static Vegetation Line Exception rule amendments and Development Line Rule are two voluntary options offered to local governments that want to utilize the existing first line of stable and natural vegetation rather than the pre-project static vegetation for the siting of oceanfront development. Therefore, the fiscal impact of this proposal to local governments is a result of choosing between the two options for utilizing the existing vegetation and the comparative costs involved.

Currently there are 16 communities with static vegetation lines; Ocean Isle, Oak Island, Caswell Beach, Bald Head Island, Kure Beach, Carolina Beach, Wrightsville Beach, Topsail Beach, North Topsail Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, Atlantic Beach, Rodanthe, and Nags Head. Of those, eight have CRC-approved Static Vegetation Line Exceptions (Ocean Isle, Carolina Beach, Wrightsville Beach, Emerald Isle, Indian Beach, Salter Path, Pine
Knoll Shores, and Atlantic Beach). If a local government elected to use the Development Line option, they would bear the costs for a one-time adoption and surveying of the Development Line at an estimated range between $1,000 and $12,000 depending on length of line, compared to the initial authorization costs (average $9,000) and five-year reauthorization report costs (average $3,500) for the Static Vegetation Line Exception (Table 1).

<table>
<thead>
<tr>
<th>Location</th>
<th>SVL Exception Costs</th>
<th>Estimated DL Costs</th>
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<tr>
<td>Oak Island</td>
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<tr>
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<td>N/A</td>
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<tr>
<td><strong>Sum</strong></td>
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<tr>
<td><strong>Average</strong></td>
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<td><strong>3,510</strong></td>
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Table 1. This table illustrates costs associated with compiling necessary information needed to generate reports to the CRC for Static Vegetation Line Exception requests; and compares estimated costs\(^1\) (length of SVL in miles times $1,200) associated with surveying a Development Line. Towns with not applicable (N/A) costs are those that currently do not have a SVL Exception.

Assumptions:

SVL Exception costs are real expenditures reported by communities with Static Vegetation Line Exceptions (Table 1), and are used for the following assumptions to estimate costs for those communities without an exception, or those considering the Development Line option.

- All other costs and benefits between a Static Vegetation Line Exception and a Development Line are equal except for the initial costs to adopt, and ongoing reporting costs for a Static Vegetation Line Exception.
- Communities without an Exception can anticipate an average first-time cost of approximately $9,000 to assemble require information to be submitted to the CRC for an approval based on current information.

\(^{1}\) Cost to survey a Development Line are not quotes, and should only be used as guidance based on feedback from contractors; $270 per hour, or $4,000 per day (Geodynamics, 2015); and $1,200 per mile (CB&I, 2015).
• Communities choosing to seek a SVL re-authorization every five-years can anticipate average costs to be approximately $3,500.

• Based on estimated costs (*CB&I and Geodynamics*), a Development Line is likely to cost approximately $1,200 per mile, or $4,000 per day to survey. Averaging lengths of current static vegetation lines, it is assumed that an average total cost to survey a Development Line to be approximately $5,000.

• The Static Vegetation Line Exception and the Development Line address non-conforming lots similarly in that each have to meet construction setbacks measured from the first line of stable and natural vegetation.

• Local governments interested in Static Vegetation Line Exceptions and Development Lines are already undertaking beach fill projects and in some cases already assuming the costs of long-term commitments to beach nourishment.

Public infrastructure (e.g., parking lots and public utilities) has a minimum setback factor of sixty (60) feet or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Ocean Hazard AEC, the proposed amendments will not change the CRC’s approach to permitting that activity.

**Private Property Owners:**

The static vegetation rules apply only when oceanfront property owners are seeking a Coastal Area Management Act (CAMA) permit for the purpose of development. Development includes construction of new a structure, or replacement of an existing structure defined as requiring more than fifty percent (50%) repair or re-construction.

Private property owners may experience some unquantified loss of value or opportunity cost if the community in which their property is located has a static line and chooses not to apply for a static line exception or adopt Development Line that they would benefit from. Forgoing a Static Line Exception or Development Line could leave private property owners in nonconforming status; potentially impacting their property value and development options.

These proposed amendments to the Static Line Exception and new Development Line rules will benefit oceanfront property owners by allowing the potential utilization of a more favorable measurement line for new or re-development. These potential benefits are tied to complex factors that drive local, regional, national and global real estate markets, and any attempt to estimate them would be speculative on the part of the Division.

If a community with a Static Vegetation Line Exception or Development Line maintains its beach fill project and vegetation grows oceanward, oceanfront property owners could see a positive effect on their property value.

**NC Department of Transportation (DOT):**

Pursuant to G.S. 150B-21.4, no impacts to NCDOT permitting are anticipated from the proposed amendments to 15A NCAC 7H .0305, 15A NCAC 07H .0306 and the proposed new Development Line rule 15A NCAC 07J .1200. The new and amended rules do not create any new procedures or restrictions that would affect NCDOT permits. Development such as roads, parking lots, and other public infrastructure such as utilities continue to have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event NC DOT needs to build or maintain a road located within an Ocean
Hazard AEC, the proposed amendments will not change the CRC’s approach to permitting that activity.

Division of Coastal Management:

The Division of Coastal Management’s permit review process will not be changed by these amendments and DCM does not anticipate changes in permitting receipts due to the proposed action.

Cost/Benefit Summary

The proposed amendments to 15A NCAC 7H .0305, 15A NCAC 07H .0306, 15A NCAC 07J .1201 and adding the proposed Development Line rule 15A NCAC 07J .1300, will have modest cost impacts on local governments depending on whether they choose to adopt a Development Line or apply for a Static Line Exception. The benefits to local governments and private property owners are assumed to be the same regardless of which option is selected, as are the opportunity costs if neither option is chosen.

- Development Line requires an estimated initial cost of $5,000 to adopt; and no cost to maintain.
- Static Line Exception requires average initial cost of $9,000 to adopt; and an average five-year recurring cost of $3,500 to maintain.
Appendix A

PROPOSED DEVELOPMENT LINE PROCEDURES AND AMENDMENTS TO THE GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS AND STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
   (A) the growth of vegetation occurs, or
   (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated
landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:
   (A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
   (B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(10) Development Line. The line established in accordance with 15A NCAC 07J.1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have approved development lines, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H.0306(a)(2).

(b) For the purpose of public and administrative notice and convenience, each designated minor development permitting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined 15A NCAC 07I.0500, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. January 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2008; August 1, 2002; August 1, 1998.

15A NCAC 07H .0306  GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS
(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission’s Rules shall be located according to whichever of the following is applicable:
   (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line whichever is applicable.
   (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with sub-sections (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
   (3) In no case shall a development line be created or established below the mean high water line.
The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H.0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;
(B) The total square footage of parking elevated above ground level; and
(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

With the exception of those types of development defined in 15A NCAC 07H.0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
(C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
(I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
(J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
(K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J.1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward; and
(L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:

(i) the structure was originally constructed prior to August 11, 2009;
(ii) the structure as replaced does not exceed the original footprint or square footage;
(iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2)(5) of this Rule;
(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(5)(A) of this Rule; and
(v) the structure is rebuilt as far landward on the lot as feasible.
If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune, or the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune, or landward of the ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.

If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line provides may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section unless a development line has been approved by the Coastal Resources Commission.

However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and (2)(A)(5) of this Paragraph, a local government or community, group of local governments involved in a regional beach fill project, or qualified owner’s association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one (1) mile of ocean shoreline, may petition the Coastal Resources Commission for a “static line exception” in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;

(B) Total floor area of a building is no greater than 2,500 square feet;

(C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;

D) No portion of a building or structure, including roof overhangs and elevated portions that
are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

c) Development shall not cause irreversible damage to historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources with knowledge of the property.

d) Development shall comply with minimum lot size and set back requirements established by local regulations.

e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC07H .0303.

g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

1. minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
2. restore the affected environment; or
3. compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AEC's, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).
SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government, group of local governments involved in a regional beach fill project, qualified owner’s association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one (1) mile of ocean shoreline, or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after five years have passed since the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

1. A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;

2. Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 3025 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

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. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

4. Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a complete static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE
(a) Any local government, group of local governments involved in a regional beach fill project or qualified owner’s association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H.0305, may petition the Coastal Resources Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of this Section. A qualified owner’s association is an owner’s association defined in NCGS 47F-1-103-(3) that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one (1) mile of ocean shoreline.

(b) A development line request applies to the entire large scale project area as defined in 15A NCAC 7H.0305(a)(7), and at the petitioner’s request may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.

(c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner’s oceanfront jurisdiction.

(d) An existing structure that is oceanward of an approved development line can remain in place until damaged greater than fifty percent in accordance with 15A NCAC 7J.0210; and can only be replaced landward of the development line, and must meet the applicable ocean hazard setback requirements as defined in 15A NCAC 067 H.0309(a).

(e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the executive director of the DCM. A complete request shall include the following:

1. A detailed survey of the development line using on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner’s association.
2. The survey shall include the development line and static vegetation line.
3. Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata.

(f) Once a development line is approved by the Coastal Resources Commission, only the petitioner can request a change or reestablishment of the position of the development line.

(g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

15A NCAC 07J.1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

(a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:

1. A representative for the petitioner shall orally present the request described in 15A NCAC 07J.1301. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations.
2. Additional persons may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in 15A NCAC 7J.0301. The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
A list of development lines in place for petitioners and any conditions under which the development lines exist, including the date(s) the development lines were approved, shall be maintained by the Division of Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124
Eff..
MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Coastal Resources Advisory Council Appointments

The Coastal Resources Advisory Council (CRAC) was created by the N.C. Coastal Area Management Act (CAMA) of 1974. The CRAC originally was a 45-member standing stakeholder group with representatives from each of the 20 coastal counties and was intended to be a state-local advisory board to guide the development of coastal policies and regulations.

Session Law 2013-360 vacated the membership of the CRAC and reduced the council to 20 members. The law gave the CRC the sole authority to appoint CRAC members, and allows local governments to nominate individuals. At the February 2014 CRC meeting in Nags Head, the CRC appointed 10 individuals to the CRAC. Since that time, additional members have been appointed to the council, which now totals 13 members. At your July meeting the council recommended two additional members; Johnny Martin and Beth Midgett, whose information is included in your meeting materials.

As directed by the session law, terms for all CRAC members expired on June 30, 2015. The CRC has the sole discretion to reappoint council members, provided that one-half of the membership at the beginning of any two-year term are residents of counties in the coastal area. The Chair and Vice-Chair of the CRAC are to be elected annually by the council.

Staff is requesting that the Commission discuss reappointments and new appointments for the next two-year terms. New terms will be presumed to expire on June 30, 2017.

Current council members:

Debbie Smith, Chair
16 Causeway Dr.
Ocean Isle Beach, NC 28469

Spencer Rogers, Vice Chair
5600 Marvin Moss Lane
Wilmington, NC 28409

Greg “Rudi” Rudolph, Vice Chair
P.O. Box 4297
Emerald Isle, NC 28594

John Brodman
P.O. Box 2649
Atlantic Beach, NC 28512
Jett Ferebee
701 Treybrooke Circle
Greenville, NC 27834

J. Michael Moore
103 Pelican Court
Surf City, NC 28445

David Moye
2241 Jane Dr.
Greenville, NC 27858

Kris Noble
30 Oyster Creek Rd.
P.O. Box 188
Swan Quarter, NC 27885

Robert Outten
P.O. Box 1000
Manteo, NC 27954

Frank Rush
7500 Emerald Dr.
Emerald Isle, NC 28594

Ray Sturza
P.O. Box 1215
Kill Devil Hills, NC 27948

Dave Weaver
4929 Pine St.
Wilmington, NC 28403

Lee Wynns
P.O. Box 6
Colerain, NC 27924
(a) Creation. -- There is hereby created and established a council to be known as the Coastal Resources Advisory Council.

(b) Membership and Terms. -- The Coastal Resources Advisory Council shall consist of not more than 20 members appointed or designated by the Coastal Resources Commission. Counties and cities in the coastal area may nominate candidates for consideration by the Commission. The terms of all Council members serving on the Council on January 1, 2013, shall expire on July 31, 2013. A new Council shall be appointed in the manner provided by this subsection with terms beginning on August 1, 2013, and expiring on June 30, 2015. Members may be reappointed at the discretion of the Commission, provided that one-half of the membership at the beginning of any two-year term are residents of counties in the coastal area.

(c) Functions and Duties. -- The Advisory Council shall assist the Secretary and the Secretary of Administration in an advisory capacity:

(1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules, and

(2) On such other matters arising under this Article as the Council considers appropriate.

(d) Multiple Offices. -- Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(e) Chairman and Vice-Chairman. -- A chairman and vice-chairman shall be elected annually by the Council.

(f) Compensation. -- The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c.771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 249, ss. 1, 2; 1989, c.727, s. 127; c. 751, s. 8(14a); 1991 (Reg. Sess., 1992), c. 959, s. 26; 1995, c. 123, s. 4; c. 504, s. 7.)
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Johnny D. Martin, PE
Coastal/Hydraulic Engineer

KEY FEATURES
Coastal Engineering
Beach Nourishment Planning & Design
Shoreline Protection
Dredging
Hydrologic/Hydraulic Engineering
Stormwater System and BMP Design

EDUCATION
MS Civil Engineering (Water Resources), North Carolina State University, 1997
BS Civil Engineering, North Carolina State University, 1992

REGISTRATION
North Carolina, 23487, 1998
Georgia, 30233, 2005
Virginia, 0402 044-159, 2005

AFFILIATIONS
North Carolina Beach and Inlet Waterway Association
American Water Resources Association
National Council of Examiners for Engineering and Surveying, Water Resources Board
North Carolina American Public Works Association, Water Resources Division

EXPERIENCE
Johnny Martin has been serving as a Coastal/Hydraulic Engineer with Moffatt & Nichol for over 21 years. He received both a Bachelor of Science and a Master of Science degree in Civil Engineering with a concentration in Coastal/Water Resources from North Carolina State University. During his tenure at M&N, he has spent a majority of his time involved in both coastal engineering design and hydrologic and hydraulic modeling for projects on both US coasts and internationally. Recently, he has served as the project manager for the NC Beach and Inlet Management Plan, the Terminal Groin Study, the Carteret County Master Beach Nourishment Plan, and the Post-Irene Renourishment Project.

REPRESENTATIVE PROJECT EXPERIENCE
North Carolina Beach and Inlet Management Plan, North Carolina. Project manager for this statewide study developing a beach and inlet management plan for North Carolina’s ocean coastline of over 320 miles and 19 active inlets. Gathered, compiled, and analyzed relevant coastal datasets, including beach nourishment, dredging, and shoreline erosion. Developed management regions and strategies and conducted stakeholder process, including facilitating 10 public meetings. The final comprehensive plan covered beach and inlet management strategies, regional approaches, economic valuation, vulnerability assessment, and funding methodologies.

Bogue Banks Master Beach Nourishment Plan, Carteret County, NC. Project manager responsible for the development of a multi-decadal programmatic EIS for shoreline management and infrastructure protection for Carteret County along Bogue Banks. The project will incorporate all of Bogue Banks’ beach nourishment and inlet management needs, and acquire permits that will cover these needs and the use of required sand sources for the next 30-50 years. The project will also be used to update and maintain static-line exceptions as well as FEMA engineered beach designation.

Post-Irene Nourishment, Emerald Isle and Pine Knoll Shores, North Carolina. Project manager for the field investigations, coastal engineering design, permitting support, final design, bid document creation, and construction observation services to nourish beaches impacted by Hurricane Irene. The findings helped to determine which reaches of beach should receive nourishment and how large the fill template along each reach should be to offset the hurricane's effects. The final project consisted of approximately 1 million cy placed over 6.6 miles.

Hyde County Shoreline Protection and Intertidal Marsh Creation, Ocracoke Island, North Carolina. Assistant project manager and lead coastal and stormwater engineer for stabilization of an eroding shoreline on Ocracoke Island by creating intertidal/upland marsh protected by segmented offshore breakwaters. Led the coastal engineering aspects of planning, permitting, preliminary/final design, and construction documents involving two rows of segmented offshore breakwaters, marsh/upland vegetation plantings, and shoreline reclamation. Also provided permitting and stormwater system design for the proposed parking area and upland development inland of the 30-ft-wide Zone 1 Tar-Pamlico Buffer. Stormwater system
included site grading to direct drainage and stormwater management controls including energy dissipation, stormwater treatment, and runoff diffusion.

Terminal Groin Study, North Carolina. Project manager for this study to evaluate the applicability and feasibility of terminal groins as an erosion control device in the State of North Carolina. This study led to aiding the North Carolina General Assembly to develop terminal groin guidelines and a pilot program.

Oregon Inlet Economic Study, Dare County, NC. Senior coastal engineer who coordinated the project and provided QA/QC of the draft and final reports. This study involved a significant literature review and data collection effort, on-site and telephone interviews with individuals knowledgeable of inlet usage and related economic impacts, and detailed economic modeling and analyses. Moffatt & Nichol was supported by Dr. Chris Dumas (UNCW), Dr. John Whitehead (Appalachian State), and Dr. Craig Landry (ECU) who completed all the economic impact analysis. Various economic sectors which rely on Oregon Inlet (i.e., commercial, recreational, and tournament fishing, seafood packing and processing, boat building, tourism, and offshore drilling and wind energy) were considered in the analyses which determined the number of jobs, sales output, wage income, and tax values associated with each sector. The economic impact was assessed for current channel conditions as well as estimated for the potential economic impact the inlet could bring if it were to be fully maintained to its authorized depth or the potential economic impact that could be lost if the channel were not maintained. A draft and final report was completed which presented the findings of the economic study on the dollar value, jobs, and tax value that Oregon Inlet brings to Dare County, the surrounding region, and the State of North Carolina.

IQC: Shoreline Protection Projects, Norfolk, Virginia. Assistant project manager and lead coastal engineer under this five-year on-call contract for 13 of 21 shoreline protection tasks completed for the City of Norfolk.

- Ocean View Permit and Design Sand Borrow Investigation, Norfolk, Virginia. Using the results of the earlier survey task, he oversaw the design effort to develop potential borrow sites (develop quantities and sizes) for use in beach nourishment. Directed permit application preparation. During agency review, he directed responses to address agency questions and requests for information and attended meetings with various regulatory agencies to acquire permits.

- Ocean View Shoreline Survey and Analysis, Norfolk, Virginia. Lead coastal engineer for QA/QC of surveys, coastal engineering analysis, and project report.

- Ocean View 800 Block Breakwater Design, Norfolk, Virginia. Assistant project manager and lead coastal engineer who completed final design and construction documents for the 800 Block breakwater. Provided bid assistance and construction observation as well as review of contractor submittals. Reviewed as-built plans.

- East Ocean View Beach Renourishment, Norfolk, Virginia. Lead coastal engineer for repair of storm-induced erosion involving planning, permitting, analysis, design, and construction documents for full-scale beach restoration. Utilized 359,000 cubic yards of beach fill placed along 5,500 linear feet of shoreline. Oversaw MIKE21 wave modeling to generate wave climate for Ocean View Beach based on offshore wave data for use in SBEACH and GENESIS. Utilized SBEACH to analyze profile response to numerous storm scenarios and based on those results, completed preliminary design of a beach profile restoration template.

- Ocean View 800 Block Beach Restoration Study, Norfolk, Virginia. Assistant project manager and lead coastal engineer for a study to restore an erosion
“hot spot.” Managed data collection, including new surveys and sediment sampling. Directed sand compatibility analysis and numerical modeling using GENESIS to determine a long-term shoreline change rate and estimate future shoreline changes. Oversaw DELFT3D modeling to analyze sediment transport patterns/morphological changes. Developed beach restoration alternatives. Provided report presenting preferred alternative with opinions of probable costs.

- **West Ocean View Dune Restoration and Central Ocean View Beach Restoration, Norfolk, Virginia.** Lead coastal engineer for a dune and beach restoration project to repair storm-induced erosion involving planning, permitting, analysis, design, construction documents, and PCAS to restore the beach using approximately 428,000 cy of material obtained two offshore borrow sites and placed along 18,300 ft of beach. Directed sand compatibility analysis and prepared beach profile template, preliminary design, permit application, response to regulatory agency inquiries, final design, and construction documents.

- **Virginia Dare Memorial Bridge over Croatans Sound, Manteo, North Carolina.** Hydraulic engineer who provided hydraulic design for two different alternatives for this 8.3-kilometer-long bridge involving a two-dimensional hydrodynamic model (RMA-2 with FastTabs) of the Albemarle-Crotans-Pamlico Sound (5400 mi2) complex, scour analysis for both alternatives, and drainage analysis to capture first one-inch of runoff for both conventional and concrete-segmental designs. Hydrodynamic model developed to forecast effects of multiple hurricane events with different storm tracks/intensities on the Sound with a focus on current velocities generated in the vicinity of the new bridge alignment. Statistical analyses were performed on these results to develop design current velocities as input to the bridge substructure design. Current velocities used in the scour analyses of both alternatives. Hydrodynamic model was calibrated and run with collected field data. Assisted in preparing the Bridge Survey Report, which summarized hydraulic design parameters including water surface elevations, velocities, and scour.

- **Whitbread Subdivision Stormwater Management System Design and Implementation, Currituck County, North Carolina.** Project manager for preliminary/final design, design report, and construction documents for Phase 1 construction of the recommended/selected alternative involving two pump stations. Alternative was a groundwater lowering system utilizing a typically-dry basin collection system for infiltration with a lift station and force mains to convey groundwater and infiltrated stormwater to one of two existing soundside ponds with eventual sheet flow to Currituck Sound. Total system utilized five such basins with capability for two additional basins. Designed infiltration basin and infiltration trench (utilizing HDPE pipe) beneath the basin accompanying lift stations. Basins were planted with indigenous plantings. Prepared permit applications for stormwater and ground disturbance. Senior QA/QC engineer for Phases 2, 3, & 4 of construction involving a total of seven pump stations.

- **Pipers Island Stormwater Master Plan, Beaufort, North Carolina.** Project manager and lead hydraulic engineer for development of stormwater master plan involving schematic designs of multiple BMP alternatives for use to manage island stormwater runoff. Recommended BMP alternatives varied by island location and ranged from cisterns to stormwater treatment wetlands to proprietary systems.

- **Stormwater Pilot Study for State-Maintained Stormwater Ocean Outfalls, Coastal Counties, North Carolina.** Project manager for a pilot project to improve effluent water quality from the state-maintained ocean outfalls. Study examined implementing innovative technologies and filtering mechanisms as a means of
on-site/off-site hydraulic/hydrologic conditions for three restoration alternatives. Reviewed DMSTA analyses also used to estimate P-load reduction for various alternatives. Data collected included measured rainfall, phosphorus concentrations, stream flows, stage, and GIS coverages including topography, land use, soils, and hydrography. Site water control structures and channels were surveyed and incorporated into the GIS for mapping and modeling purposes.

Cape Fear River Basin Model, North Carolina. Project manager and hydraulic engineer for development of a link-node water use model of the entire Cape Fear River watershed. The model incorporates measured gage data, weather data, and water use data to account for the water balance at all locations within the model. Included routines for the management of reservoirs and other impoundments. Drought management policies will be incorporated into the model as a means of refining state decision processes with regard to water allowances during extreme periods for individual system users.

Harris Lake Water Quality Monitoring, Raleigh, North Carolina. Senior hydraulic engineer for this water quality monitoring study examining potential impacts of expanding Harris Lake by pumping water from the Cape Fear River into the lake to increase its sustained yield. Provided guidance for development and QC of water resources modeling analysis completed as part of the 401 Water Quality Certification process and to fulfill the NRC's Request for Additional Information associated with the application for expansion of the Shearon Harris Nuclear Power Plant (the plant uses the lake for cooling water). Model was 2-D, laterally-averaged hydrodynamic and water quality model, CE-QUAL-W2 used to forecast water quality impacts of adding water to Harris Lake. This model was coupled with a Generalized Watershed Loading Function (GWFL) model to predict pollutant loads.

IQC: Hydraulic Engineering Services for the Panama Canal, Panama. Lead hydraulic engineer for various planning studies associated with the proposed third lane along the Panama Canal, which will be capable of accommodating Post-panamax container vessels.

- Disposal Sites Alternatives Assessment. Hydraulic engineer who provided a study of alternative upland dredged material placement sites resulting from the creation of the third lane. Performed hydrologic analyses for individual sites to determine potential drainage impacts of material placement. Performed statistical analysis of nearly 100 years of rainfall data to determine design rainfall depths for each site. Determined appropriate land use coefficients for subsequent HEC-HMS modeling by calibrating model for a known flood event using a nearby 73 sq. mi. watershed. Estimated flood hydrographs at each site using HEC-HMS for routing rainfall-runoff processes. Determined preliminary required drainage channel dimensions using flood hydrographs peak discharges and limiting velocities.

- Lock Water Saving Basins, Balboa, Panama. Hydraulic engineer who completed hydraulic analyses using complex in-house spreadsheet models to determine preliminary configurations for new locks with WSBs, conduit sizings connecting locks and WSBs, and filling/emptying times of locks and WSBs given various water levels. Modeled water usage/savings for new lock/WSB configurations given various water levels. Also utilized the LOCKSIM numerical model (Tennessee Valley Authority-developed, fully-dynamic program that simulates lock filling/emptying operations) to simulate existing Panama Canal lock operations. Model was calibrated with measured Canal filling/emptying curves. Modified the LOCKSIM model to simulate operation of third lane locks with WSBs and compared results of the two models (spreadsheet versus LOCKSIM) for the improved (third lane) condition.
Experience - Vacation Rental Property Management, Midgett Realty, 1997 to present, all facets of managing an inventory of over 530 homes in a dynamic coastal Island environment.

Civic - Dare County Planning Board Member, Hatteras Island representative, 2004 to present
Citizens Action Committee to Replace Bonner Bridge, Advisory Committee to Dare County Board of Commissioners, Chair 2006 to present. Hatteras Island Local Emergency Planning Committee, 2013 to present
Dare County Community Rating System Committee, 2014-2015
North Carolina Vacation Rental Managers Association, Board of Directors 2009-2010

Volunteer - Bridge Moms advocacy for replacement of Bonner Bride, Oregon Inlet, Vice Chair 2010-2015
Hurricane Isabel Hatteras Village Dune line Recovery 2003-2004
Hatteras Island Chapter Ducks Unlimited 1988-2008, retired as Chair

Education - B.A. Philosophy (Major), History (Minor), Salisbury State University, 1988
North Carolina Real Estate Brokers License 1999
MEMORANDUM

To: Coastal Resources Commission
From: Mike Lopazanski, Policy and Planning Section Chief
Date: September 2, 2015
Subject: Certification of an Update to the 2008 Pine Knoll Shores CAMA Land Use Plan

Recommendation:
Certification of the Town of Pine Knoll Shores Land Use Plan with the determination that the Town has met the substantive requirements outlined in the 15 NCAC 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State’s Coastal Management Program.

Overview
The Town of Pine Knoll Shores is requesting Certification of their updated Land Use Plan. The Town is located centrally on Bogue Banks in Carteret County. The Town is located between the towns of Atlantic Beach and Indian Beach.

The Town’s current plan was certified by the CRC on November 20, 2008. The update of the Pine Knoll Shores Land Use Plan was initiated in 2014 when it was recognized that more recent background data and local input on development patterns within the town were available. The plan being considered for certification builds on the existing certified plan. Goals, objectives, and policies remain based on the existing plan, but further shape the Town’s needs and vision for the future.

To gain the views of the citizens that live and work in Pine Knoll Shores, the Town created a land use plan working group, which held open meetings and recommended amendments to the plan. After amendments were agreed upon, the Town of Pine Knoll Shores held a duly advertised public hearing and voted unanimously by resolution to adopt the Land Use Plan. DCM Staff reviewed the Plan and has determined that the Town has met the substantive requirements outlined in the 15A NCAC 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State’s Coastal Management Program.

The Pine Knoll Shores Land Use Plan may be viewed at:

http://portal.ncdenr.org/c/document_library/get_file?uuid=5c8610a1-10eb-425a-b60f-7df9f9d4aafe&groupId=38319
MEMORANDUM

To: Coastal Resources Commission
From: Michael Christenbury, Wilmington District Planner
Date: September 2, 2015
Subject: Certification of a 2nd Amendment to the 2011 City of Jacksonville CAMA Land Use Plan

Recommendation:
The City of Jacksonville is seeking Certification of a 2nd amendment to the 2011 Jacksonville CAMA Land Use Plan (LUP). The City amended the LUP to modify the Future Land Use Map designations on 39 parcels of land to reflect previously adopted rezoning requests since the LUP was last amended and Certified by the CRC on August 30, 2012.

The City of Jacksonville held a duly advertised public hearing on July 21, 2015 and voted unanimously by resolution to adopt the Land Use Plan Amendment. DCM Staff reviewed the amendment and has determined that the City has met the substantive requirements outlined in the CRC’s 15A NCAC 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State’s Coastal Management Program. Staff recommends Certification of the amendment to the 2011 City of Jacksonville CAMA Land Use Plan.

Overview

Attachments: Resolution of Adoption
City Staff Report
Changes to Future Land Use Map designations
RESOLUTION (2015-14)

RESOLUTION OF JACKSONVILLE, NORTH CAROLINA,
AUTHORIZING AN AMENDMENT TO THE CAMA LAND USE PLAN

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 0.24 acres of the Future Land Use Map as
"Neighborhood Commercial" from "Low Density Residential", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 102.5 acres of the Future Land Use Map as "Mixed
Use" from "High Density Residential", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 4.66 acres of the Future Land Use Map as "Mixed
Use" from "Medium Density Residential", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 3.37 acres of the Future Land Use Map as
"Public/Institution" from "Low Density Residential", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate .89 acres of the Future Land Use Map as "Mixed
Use" from "High Density Residential", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 37.27 acres of the Future Land Use Map as "Mixed
Use" from "Conservation" and "Mixed Use", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 2.01 acres of the Future Land Use Map as
"Regional Commercial" from "Park", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 118.25 acres of the Future Land Use Map as
"Neighborhood Commercial" from "Conservation" and "Neighborhood Commercial", and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the
Future Land Use Map, to designate 3.77 acres of the Future Land Use Map as "Medium
Density Residential" from "Conservation" and "Medium Density Residential", and

WHEREAS, the City conducted a duly advertised public hearing on the draft
amendment to the CAMA Land Use Plan at the Regular Meeting of the City Council on
July 21, 2015; and

WHEREAS, the amendment to the Future Land Use Map has been evaluated for its
consistency with other existing policies and no internal inconsistencies exist; and

WHEREAS, the amendment is consistent with the currently approved North
Carolina Coastal Management Program and the rules of the Coastal Resources

WHEREAS, the amendment is consistent with the management topics outlined in the City’s Land Use Plan; and

WHEREAS, the amendment does not violate any state or federal laws,

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Jacksonville, North Carolina, has unanimously adopted the draft CAMA Land Use Plan amendment; and

BE IT FURTHER RESOLVED that the City Manager of Jacksonville, North Carolina is hereby authorized to submit the adopted CAMA Future Land Use Plan amendment to the State for certification as described above.

Adopted this 21st day of July 2015.

Sammy Phillips, Mayor

ATTEST:

Carmen K. Miracle, City Clerk
Request for City Council Action

**Subject:** Public Hearing *(legislative)* CAMA Land Use Plan - Land Use Map Amendment – Annual Update

**Department:** Development Services

**Presented by:** Abagail Barman, Senior Planner

**Presentation:** Yes

---

**Issue Statement**

The City of Jacksonville is requesting amendments to the *CAMA Future Land Use Plan* - Land Use Map pursuant to previously adopted rezoning requests, mapping errors, and changing development patterns. In total, 39 parcels consisting of 272.95 acres designations are requested to be changed.

The City of Jacksonville is requesting amendments to the *CAMA Future Land Use Plan* - Land Use Map pursuant to previously adopted rezoning requests, mapping errors, and changing development patterns. In total, 39 parcels consisting of 272.95 acres designations are requested to be changed.

**Financial Impact**

None

**Action Needed**

Conduct Public Hearing

Consideration of the *CAMA Land Use Plan* - Land Use Map amendments

**Recommendation**

Planning Advisory Board and City staff recommend approval of the request to amend the Land Use Map as outlined in the resolution.

Approved: ☑️ City Manager ☐ City Attorney

**Exhibits:**

A Proposed Resolution
B Planning Advisory Board Draft Minutes June 2, 2015
C CAMA Land Use Table
D 1-9 Existing CAMA Land Use Map
E 1-9 Proposed CAMA Land Use Map
Introduction

The City of Jacksonville is requesting amendments to the CAMA Future Land Use Plan - Land Use Map pursuant to previously adopted rezoning requests, mapping errors, and changing development patterns. In total, 39 parcels consisting of 272.95 acres within the City of Jacksonville limits would be changed as shown on the table below:

<table>
<thead>
<tr>
<th>Location</th>
<th>Number of parcels and acreage</th>
<th>Existing FLU</th>
<th>Proposed FLU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sherwood Rd.</td>
<td>1, .24 acres</td>
<td>Low Density Residential</td>
<td>Neighborhood Commercial</td>
</tr>
<tr>
<td>2. Western Blvd.</td>
<td>2, 102.49 acres</td>
<td>High Density Residential</td>
<td>Mixed Use</td>
</tr>
<tr>
<td>3. Drummer Kellum Rd.</td>
<td>3, 4.66 acres</td>
<td>Medium Density Residential</td>
<td>Mixed Use</td>
</tr>
<tr>
<td>4. Bayshore Blvd.</td>
<td>3, 3.37 acres</td>
<td>Low Density Residential</td>
<td>Public/Institutional</td>
</tr>
<tr>
<td>5. Ward St.</td>
<td>3, .89 acres</td>
<td>High Density Residential</td>
<td>Mixed Use</td>
</tr>
<tr>
<td>6. Jacksonville Landing Area</td>
<td>15, 37.27 acres</td>
<td>Conversation and Mixed Use</td>
<td>Mixed Use</td>
</tr>
<tr>
<td>7. Gateway Dr. South</td>
<td>1, 2.01 acres</td>
<td>Park</td>
<td>Regional Commercial</td>
</tr>
<tr>
<td>8. South Marine Blvd.</td>
<td>7, 118.25 acres</td>
<td>Conversation and Neighborhood Commercial</td>
<td>Neighborhood Commercial</td>
</tr>
<tr>
<td>9. Leonard St.</td>
<td>4, 3.77 acres</td>
<td>Conversation and Medium Density Residential</td>
<td>Medium Density Residential</td>
</tr>
</tbody>
</table>

Sherwood Road, Western Boulevard, Drummer Kellum Road, Bayshore Boulevard, Ward Street, and Gateway South Drive, and requests are pursuant to a previously adopted rezonings. The Jacksonville Landing Area and South Marine Boulevard requests are pursuant previously adopted rezonings and changing development patterns in the respective area. The Leonard Street request will correct a mapping error.
Procedural History

• On September 4, 2012 City Council conducted a public hearing and rezoned 105 Sherwood Rd. from R-7 to B-1.

• On February 4, 2014 City Council conducted public hearings and rezoned a portion of a property located off Western Blvd. from TCA and B-1 to increase the portion of B-1.

• On May 7, 2014 City Council conducted public hearings and rezoned 211 Drummer Kellum Rd. from CU-B2 to B-2.

• On June 17, 2014 City Council conducted a public hearing and rezoned 4 parcels on Bayshore Blvd. from R-7 to O&I.

• On August 19, 2014 City Council conducted public hearings and rezoned 3 parcels on Ward St. from DTR to DTB.

• On August 19, 2014 City Council conducted public hearings and rezoned 110 South Marine Blvd. from RSF-7 and CC to CC.

• On November 11, 2014 City Council conducted public hearings and rezoned property located on Gateway DR. South. from OI to CC.

• On March 3, 2015 City Council conducted public hearings and rezoned property near 242 South Marine Blvd. from RSF-7 to CC.

• On June 8, 2015 the Planning Advisory Board will provide a recommendation on this request.

• On July 21, 2015 City Council will conduct a public hearing and then consider this request.

Stakeholders

• Owners of the 39 parcels
• City of Jacksonville - Administrator of the CAMA Future Land Use Plan.
• Surrounding property owners

Land Use Assessment

CAMA Future Land Use Plan

The CAMA Future Land Use Plan represents a long range vision for community growth 20 to 30 years in to the future. Created by staff, professional consultants and community stakeholders, the CAMA Future Land Use Plan is the most comprehensive depiction of future growth for the City and its ETJ. The following describes the contexts for which amendments to the Future Land Use Map are requested.
1) 105 Sherwood Road- The CAMA Future Land Use Map identifies the subject parcels as low density residential (LDR). The properties to the North, West and East (across Sherwood Road) are designated LDR as well. To the South of the subject property, the area is designated as Neighborhood Commercial (NC). This property was acquired by an adjacent property to expand the commercial site. Due to the existing development activity and land uses on the site, the most complimentary future land use is Neighborhood Commercial. Amending the Future Land Use Map from LDR to NC will most accurately reflect existing development patterns.

2) Property located off Western Boulevard - The CAMA Future Land Use Map identifies the subject parcels as High Density Residential (HDR). The properties to the North, South and East are designated mixed use (MX). The properties to the East are also HDR. Mixed Use designations allow for integration of residential and commercial uses. Western Blvd. generates a lot of commercial interest. The subject parcels are of adequate size and depth to support commercial development along Western Blvd. and incorporated residential uses behind. Staff recommends MX as a more fitting future land use designation for the recently rezoned parcel and adjacent parcel.

3) Parcels off Drummer Kellum Road- The CAMA Future Land Use Map identifies the subject parcels as Medium Density Residential (MDR). All of the surrounding properties are MDR. The properties further to the South are Mixed Use (MX). Due to the surrounding commercial development patterns, and recently approved rezoning staff believes that MX is a more appropriate designation for these parcels.

4) Parcels located off Bayshore Boulevard- The CAMA Future Land Use Map identifies the subject parcels as Low Density Residential (LDR). All of the surrounding properties are designated as Office (O) or LDR. 400 Bayshore is under the same ownership as the subject parcels and is currently designated Institutional/Public (P). The CAMA states Institutional/Public includes uses owned and maintained by government at all levels, including schools, maintenance facilities, and public utilities; and semi-public uses such as churches and nonprofit organizations where the public is generally invited. Given the approval of the rezoning request and the common ownership with 400 Bayshore Boulevard staff recommends changing these parcels P.

5) Properties on Ward Street- The CAMA Future Land Use Map identifies the subject parcels as High Density Residential (HDR). The properties to the North across Ward are designated as Mixed Use. To the West and South the properties are HDR as well. The property to the East is designated as Institutional/Public (P). The recently approved rezoning request supports changing the future land use designation to MX.

6) Properties including and surrounding Jacksonville Landing- The CAMA Future Land Use Map identifies the subject parcels as Mixed Use (MX) and Conversation (C). The properties to the South, East, and West are designated as Mixed Use as well. Staff believes Mixed Use is a better future land use designation based on recent rezonings and development interest in the area.
7) Properties off Gateway Dr. South- The CAMA Future Land Use Map identifies the subject parcel as Park (P). The properties to the North are designated as Park as well. The parcels to the South, East, and West are designated Regional Commercial (RC). The CAMA states Park includes uses owned and maintained by the City of Jacksonville and/ or Onslow County in which recreation, sports and leisure activities take place. These places are open to the public. Regional Commercial is intended for services, large-scale retail and wholesaling activities that serve the entire community and the region. RC areas should have access to a major thoroughfare. The subject parcel was recently sold to an adjacent property owner and rezoned for commercial use. Therefore staff believes RC is a better Future Land Use designation.

8) Properties off South Marine Boulevard- The CAMA Future Land Use Map identifies the subject parcels as Neighborhood Commercial (NC) and Conservation (CVS). The properties to the South, East and West are designated as NC. To the North the property is identified as CVS. Staff believes given the recent rezoning approvals, the development interest in this area, and the proximity to other NC designations these parcels should also be designated NC.

9) Properties off Leonard Street- The CAMA Plan identifies the subject parcel as Medium Density Residential (MDR) and Conversation (CVS). Unfortunately, it was recently discovered that a portion of this parcel was designated CVS by a mapping error. Changing the future land use designation to MDR will correct this error.

Public Hearing Notification

In accordance with the North Carolina General Statutes, public Hearing Notifications were advertised within the Jacksonville Daily News.

Options

Approve the Amendment as requested (RECOMMENDED).

- Pros: The amendment request will create designations that will compliment recently established zoning districts and existing and future development. City Council directed staff to include these amendments within our updates as a result of the previous rezoning decisions.
- Cons: Future land use designations will not follow previous rezoning decisions by City Council.

Deny the Amendment Request.

- Pros: None.
- Cons: Denial of the amendment request will create land use designations that are in conflict with existing, planned development patterns and previous rezonings.

Defer Consideration of the Amendment Request – (Provide staff with direction on the specific information Planning Advisory Board would like to receive).

- Pros: Would allow Staff time to address any concerns the Board, nearby property owners or applicants may have.
- Cons: None.
WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 0.24 acres of the Future Land Use Map as “Neighborhood Commercial” from “Low Density Residential”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 102.5 acres of the Future Land Use Map as “Mixed Use” from “High Density Residential”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 4.66 acres of the Future Land Use Map as “Medium Density Residential”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 3.37 acres of the Future Land Use Map as “Public/Institution” from “Low Density Residential”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate .89 acres of the Future Land Use Map as “Mixed Use” from “High Density Residential”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 37.27 acres of the Future Land Use Map as “Mixed Use” from “Conservation” and “Mixed Use”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 2.01 acres of the Future Land Use Map as “Regional Commercial” from “Park”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 118.25 acres of the Future Land Use Map as “Neighborhood Commercial” from “Conservation” and “Neighborhood Commercial”, and

WHEREAS, the City desires to amend its 2011 CAMA Land Use Plan, specifically the Future Land Use Map, to designate 3.77 acres of the Future Land Use Map as “Medium Density Residential” from “Conservation” and “Medium Density Residential”, and

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WHEREAS, the amendment is consistent with the currently approved North Carolina Coastal Management Program and the rules of the Coastal Resources Commission; and

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WHEREAS, the amendment does not violate any state or federal laws,

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Jacksonville, North Carolina, has unanimously adopted the draft CAMA Land Use Plan amendment; and

BE IT FURTHER RESOLVED that the City Manager of Jacksonville, North Carolina is hereby authorized to submit the adopted CAMA Future Land Use Plan amendment to the State for certification as described above.

Adopted this 17th day of July 2015.

______________________________
Sammy Phillips, Mayor

ATTEST:

______________________________
Carmen K. Miracle, City Clerk
Public Hearing (legislative) Map Amendment – CAMA Land Use Plan - Land Use Map Amendment - Annual Update

The City of Jacksonville is requesting amendments to the CAMA Future Land Use Plan - Land Use Map pursuant to previously adopted rezoning requests, mapping errors, and changing development patterns. In total, 39 parcels consisting of 272.95 acres within the City of Jacksonville limits would be changed as shown on the table below:

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</tr>
<tr>
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<td>2, 102.49 acres</td>
<td>High Density Residential</td>
<td>Mixed Use</td>
</tr>
<tr>
<td>12. Drummer Kellum Rd.</td>
<td>3, 4.66 acres</td>
<td>Medium Density Residential</td>
<td>Mixed Use</td>
</tr>
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Sherwood Road, Western Boulevard, Drummer Kellum Road, Bayshore Boulevard, Ward Street, and Gateway South Drive, and requests are pursuant to a previously adopted rezonings. The Jacksonville Landing Area and South Marine Boulevard requests are pursuant previously adopted rezonings and changing development patterns in the respective area. The Leonard Street request will correct a mapping error.
Public Hearing Notifications will be advertised within the Jacksonville Daily News.

City staff recommends the Planning Advisory Board move to recommend approval of the request to amend the Land Use Map as outlined in the resolution.

Thomasine Moore moved to approve the CAMA Future Land Use Map amendment as outlined in the resolution. Theresa VanderVere seconded the motion.

The motion to approve the CAMA Future Land Use Map amendment as outlined in the resolution was unanimously approved by the Board Members present.
# Exhibit 38: Future Land Uses

<table>
<thead>
<tr>
<th>Category</th>
<th>Description (Predominate and Supporting Land Uses)</th>
<th>Lot Size</th>
<th>Average Lot Size</th>
<th>DUs/Acre</th>
<th>Wastewater / Water Infrastructure</th>
<th>Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Density Residential (LDR)</td>
<td>Primarily single-family detached residential development with home occupations, schools, churches and other non-profit organizations.</td>
<td>10,000 sq. ft. to 40,000 sq. ft.</td>
<td>20,000 sq. ft.</td>
<td>1-6 DUs/Acre</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Streets designed for lower level of service appropriate for low-traffic, single-family areas.</td>
</tr>
<tr>
<td>Moderate Density Residential (MDR)</td>
<td>Composed of moderate-density residential development serving as a transition between commercial and low-density residential land uses. Mixed use residential and commercial development may occur adjacent to NC, RC and IND areas.</td>
<td>5,000 sq. ft. to 10,000 sq. ft.</td>
<td>7,500 sq. ft.</td>
<td>7-15 DUs/Acre</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Streets and roadways arranged to provide adequate flow for commercial areas, while maintaining moderate-density appropriate design.</td>
</tr>
<tr>
<td>High Density Residential (HDR)</td>
<td>Consists of high-density residential structures and mixed use structures with commercial and service establishments on the lower floors. HDR areas shall be located within downtown and adjacent to Regional Commercial centers.</td>
<td>Up to 5,000 sq. ft.</td>
<td>2,500 sq. ft.</td>
<td>16+ DUs/Acre</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Streets and roadways arranged generally in a traditional street grid, more focus on pedestrian activity.</td>
</tr>
<tr>
<td>Neighborhood Commercial (NC)</td>
<td>Provides small areas for office and professional services combined with limited retail uses, designed in scale with surrounding residential uses. Land allocated to NC uses shall have access to a thoroughfare and be integrated with the adjacent residential uses.</td>
<td>5,000 sq. ft. to 20,000 sq. ft.</td>
<td>12,500 sq. ft.</td>
<td>50% building coverage</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Streets and roadways arranged generally in a traditional street grid, more focus on pedestrian activity.</td>
</tr>
</tbody>
</table>
### Mixed Use (MX)

Intended for development that blends two or more of the following uses: residential, commercial, cultural and institutional. Mixed-use development should allow for greater variety and density, reduce distances between housing, workplaces, retail businesses and other destinations, encourages more compact development, strengthen neighborhood character, and promote pedestrian and bicycle friendly environments. MX development can be vertically or horizontally integrated. However, horizontal MX should ensure that the differing uses are located close enough that they are walkable and accessible in ways that the users are not dependent on independent auto travel.

<table>
<thead>
<tr>
<th>Lot Size</th>
<th>Average Lot Size</th>
<th>DUs/Acre</th>
<th>Wastewater / Water Infrastructure</th>
<th>Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>None</td>
<td>50%+ building coverage</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Streets and roadways arranged generally in a traditional street grid, more focus on pedestrian activity. Shared access between developments encouraged.</td>
</tr>
</tbody>
</table>

### Regional Commercial (RC)

Intended for services, large-scale retail and wholesaling activities that serve the entire community and the region. RC areas should have access to a major thoroughfare.

<table>
<thead>
<tr>
<th>Lot Size</th>
<th>Average Lot Size</th>
<th>DUs/Acre</th>
<th>Wastewater / Water Infrastructure</th>
<th>Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>None</td>
<td>25% building coverage</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Priority on major thoroughfares, easy access. Shared access between developments encouraged.</td>
</tr>
</tbody>
</table>

### Office (O)

Provides areas for single buildings and office parks of several buildings. Small retail components may be included to serve on-site employees. O areas should have access to a major thoroughfare.

<table>
<thead>
<tr>
<th>Lot Size</th>
<th>Average Lot Size</th>
<th>DUs/Acre</th>
<th>Wastewater / Water Infrastructure</th>
<th>Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>None</td>
<td>30% building coverage</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Access to rest of the transportation system emphasized. Shared access between developments encouraged.</td>
</tr>
</tbody>
</table>

### Industrial (IND)

Provides sites for light industrial activities adjacent to commercial districts and major thoroughfares. IND areas will fulfill economic development strategies by providing opportunities for base employment activities.

<table>
<thead>
<tr>
<th>Lot Size</th>
<th>Average Lot Size</th>
<th>DUs/Acre</th>
<th>Wastewater / Water Infrastructure</th>
<th>Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>None</td>
<td>30% building coverage</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service. (Pre-treatment?)</td>
<td>Access to major thoroughfares and transportation systems emphasized.</td>
</tr>
</tbody>
</table>
### Category

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Lot Size</th>
<th>Average Lot Size</th>
<th>DUs/Acre</th>
<th>Wastewater / Water Infrastructure</th>
<th>Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public / Institutional (P)</td>
<td>Includes uses owned and maintained by government at all levels, including schools, maintenance facilities, and public utilities; and semi-public uses such as churches and non-profit organizations where the public is generally invited</td>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service.</td>
<td>Transportation demands in this category are very use-specific, requiring individual analysis and planning.</td>
</tr>
<tr>
<td>Conservation (C)</td>
<td>Includes land of significant environmental or conservation value, including floodplains and wetlands. Allowable uses include piers, dock, boat ramps, parks and the like.</td>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
<td>Wells or rural water. On-site wastewater systems.</td>
<td>Streets generally discouraged to preserve the area and discourage development.</td>
</tr>
<tr>
<td>Park (P)</td>
<td>Includes uses owned and maintained by the City of Jacksonville and/ or Onslow County in which recreation, sports and leisure activities take place. These places are open to the public</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Centralized water service with adequate fire flow. Centralized wastewater service. Occasionally wells or rural water for areas outside of the city.</td>
<td>Access to rest of the transportation system emphasized with easily identifiable paths or roadways to the facility.</td>
</tr>
</tbody>
</table>

### Commercial Nodes

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Commercial Node</td>
<td>Located at the intersections of highways and principal thoroughfares these nodes will attract the highest density development. This is the most desirable location for land uses including: Regional Commercial, Mixed Use, High Density Residential, Office and Downtown.</td>
</tr>
<tr>
<td>Community Commercial Node</td>
<td>Located at the intersections of principal thoroughfares these nodes will attract high and moderate density development. This is the most desirable location for land uses including: Mixed Use, Moderate Density Residential, Office, Public/ Institutional and Neighborhood Commercial.</td>
</tr>
<tr>
<td>Neighborhood Commercial Node</td>
<td>Located at the intersections of collector streets these nodes will attract moderate density development. This is the most desirable location for land uses that serve a primarily local neighborhood network. Land uses in these nodes include: Neighborhood Commercial, Office, Public/ Institutional and Moderate Density Residential.</td>
</tr>
</tbody>
</table>
Disclaimer: This Map is intended to use for planning purposes only. City of Jacksonville or its individual departments are not liable for any data inaccuracies. Once again this map should not be used for any legal boundary determinations and data displayed on this map is collected from various different sources.
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1 inch = 500 feet
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Bayshore Blvd. Existing

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Legend
- Parcels selection
- Conservation
- Park
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Public/Institutional
- Office
- Mixed Use
- Neighborhood Commercial
- Regional Commercial
- Industrial

1 inch = 116 feet

Exhibit D-4
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Legend
- Parcels selection
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- Office
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- Industrial

1 inch = 167 feet

Exhibit D-9
Sherwood Rd. Proposed

Legend
- Parcels selection
- Conservation
- Park
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Public/Institutional
- Office
- Mixed Use
- Neighborhood Commercial
- Regional Commercial
- Industrial

Subject Parcel

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1 inch = 83 feet
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1 inch = 500 feet
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1 inch = 333 feet
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MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Sandbag Rules and Policies

As you are aware, the Coastal Area Management Act and your rules prohibit most permanent erosion control structures along oceanfront beaches due to the likelihood of a gradual loss of the intertidal beach and the potential for increased erosion along adjacent and downdrift properties. Sandbags have been allowed as a temporary erosion control measure since 1985 and the CRC has struggled with balancing the needs of property owners to protect oceanfront structures with protecting the public’s use of the state’s ocean beaches ever since. Sandbags were intended to provide temporary protection to imminently threatened structures and were not envisioned as a permanent protective measure for chronic oceanfront erosion.

You will recall from our earlier review of the development and evolution of the CRC’s sandbag rules, that the CRC has maintained an understanding that coastal property owners need a way to temporarily protect their homes from beach erosion and has generally been accommodating of property owners and local government as more permanent solutions, such as beach nourishment or inlet relocation have been pursued. This accommodation has often been perceived as a lack of enforcement of the temporary erosion control rules on the part of the Division and Commission.

From a policy standpoint, the Commission has tried to manage sand bags from a time limit perspective, keeping in mind that both by rule and law, they are a temporary erosion control measure requiring justifiable limits. The Commission has also attempted to address protection of the public’s use of the state’s ocean beaches by limiting the dimensions of temporary erosion control structures.

Since local governments have been pursuing beach nourishment as a viable solution to chronic erosion issues, the policy focus has shifted from time limits to a discussion of necessity and at what point do sandbags need to be removed. Your current rules require them to be removed in event of a beach nourishment project which has brought up the question of covering them during the project. As was discussed during the April, 2015 meeting, this is complicated by the necessity of easements being granted by private property owners as well as the involvement of public funds. Discussions of covering sand bags has also called into question the necessity and practicality of requiring them to be covered and vegetated in order to remain in place.

Sand bags have also recently been a focus of the proposed State Ports Inlet Management AEC use standards which have included an expanded use of sand bags to protect natural features (dunes) in addition to structures, expanding the definition of imminently threatened, and to allow the use of geo-textile tubes.
While erosion at inlet areas are still a major concern, recent beach nourishment projects and the lack of major hurricanes have alleviated some of the issues surrounding the use of sandbags on the oceanfront compared to five years ago. The Commission is in a position to address its overall policy on use of sandbags in a manner that considers when they should be used, what can be protected, and the circumstances under which they should be removed or left in place.

To facilitate discussion at the upcoming meeting, I have summarized your rules regarding temporary erosion control structures below and included the evolution of the rules you may recall from our February 2015 meeting. I have also attached the rules as well. I looking forward to this important policy discussion at our meeting in Wilmington.

**Summary of Current Sandbag Rules**

**Use of Sandbags**

Under your current rules, sandbags may be used to protect imminently threatened roads and right of ways as well as buildings along with their associated septic systems. A structure is considered imminently threatened if its foundation or septic system is less than 20 feet from the erosion scarp. Buildings and roads more than 20 feet from the erosion or in areas where there is no erosion scarp may also be consider imminently threatened when sites conditions such as a flat beach profile or accelerate erosion increase the risk of imminent damage to the structure. This determination is at the discretion of the DCM Director. Sandbags may not be used to protect structures such as pools, decks, gazebos, or any amenity that is not the principal structure.

**Siting and Size of Sandbags**

Your rules also govern the siting and size of sandbags structures as well as the dimensions of individual bags. Sandbags are required to be located landward of mean high water and be parallel to the shoreline. The sandbag structure cannot extend more than 20 feet past the building being protected and the dimensions of the sandbag structure are limited to 20 feet wide at the base and six feet in height. Soldier pilings and other anchoring devices are not allowed. The bags themselves are required to be tan in color and 7-15 long when measured flat.

**Sand Bag Time Limits**

Sand bags may remain in place for two years if they are protecting a structure that is less than 5,000 square feet floor area or up to five years for structures greater than 5,000 square feet and for bridges and roads. The time limit is extended to eight years if the sand bags are located in a community that is actively pursuing a beach nourishment or an inlet relocation or stabilization project (terminal groin). To be consider actively pursuing one of these projects, a community must have one of the following; an active CAMA permit; identified in an USACE Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study with a commitment of local or federal money; a favorable economic evaluation report for a federal project; or in the planning stages for a project designed by the USACE, or a locally contracted engineer with a commitment of local or state fund and identification of funding sources to complete the project. Time limits on sand bag permits are calculated from the date of the placement of the first bag(s).

**Removal of Sand Bags**

Sand bags must be removed within 30 days of notification by the Division if:

- Time has expired.
The community is no longer considered to be pursuing a beach nourishment or inlet relocation/stabilization project (standard time limits applied).

The sand bags are no longer necessary due to relocation or removal of the threatened structure.

Completion of a beach nourishment or inlet relocation/stabilization project.

Removal of sand bags is not required if they are covered by dunes with stable and natural vegetation.

**Evolution of Sandbag Rules**

**1984-1985**

As the CRC began development of rules prohibiting the placement of permanent shoreline stabilization structures along the oceanfront, sandbags were allowed to be used as a temporary means of protecting imminently threatened structures. This policy was in accordance with the 1984 recommendations of the CRC Outer Banks Erosion Task Force that stated:

“Temporary measures to counteract erosion, such as beach nourishment, sandbag bulkheads and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures should be compatible with public use and enjoyment of the beach.”

The purpose of allowing the sandbags was to provide for the temporary protection of a structure until the owner could make arrangements to move the structure or until the beach and dune system could naturally repair itself. As the CRC developed the rule, it was noted that “temporary” would normally require time limits on projects. At that time, Staff explained that due to enforcement problems, limits on structural types, including the ephemeral nature of materials used for sandbags, was a more practical method of ensuring removal of the structure from the beach.

The original 1985 rule included some of the current provisions such as the definition of imminently threatened, the 20’ seaward limit, adjacent property owner notification and no interference with use of the beach. The rule also included a provision requiring removal if the sandbag structure remained exposed for more than six months. The only other limit on the dimension of the structure was that it be no more than 15’ wide and that it be above the high tide line.

**1987**

In March of 1987, the CRC requested information on the effects of sandbag structure design and placement were having on the beach.
During the early 1990’s, the Commission began hearing numerous complaints that sandbags were not being used as a temporary measure but as a permanent shoreline erosion measure. Many citizens complained that sandbags were blocking pedestrian access along the beach and in some cases sandbags were being fortified to become massive immovable structures. The temporary nature of sandbags was indirectly addressed in September 1991 when the CRC discussed the definition of threatened structures and considered requiring the relocation or demolition of a threatened structure 2-3 years from its designation.

A 1994 inventory of sandbags showed that approximately 15,000 linear feet of ocean shoreline were protected by sandbag structures with some of the structures being in place for as long as eight years. While most sandbag structures complied with the rules, some were installed without authorization and did not comply with the standards. Staff provided the CRC with an analysis of the problems associated with the sandbag rules including what types of structures can be protected by sandbags, when do sandbags interfere with the public use of the beach, monitoring burial, the limitation on width of the sandbag structure but not the height and most importantly, how long is temporary.

In 1995, the CRC amended the rules to address the size and physical location of sandbags, the types of structures that were eligible for protection, as well as the time they could remain in place if they were not covered by dunes with stable, natural vegetation. The rule was amended to allow a sandbag structure to remain in place up to two years if it was protecting a small structure (less than 5,000 square feet floor area) and up to five years for larger structures. The rule also allowed the sandbags to remain for five years if they were located in a community actively pursuing a beach nourishment project. Existing sandbags installed prior to May 1, 1995 were grandfathered and allowed the full time period prior to removal.

While most of the beachfront communities qualified for the five-year time period, some sandbags structures in unincorporated areas were subject to removal in 1997. However, due to Hurricanes Bertha and Fran in 1996, the CRC extended the deadline to May 1998 for those areas declared federal disasters. This deadline was again extended to September 1998 after Hurricane Bonnie.

In 1997, four sites in Dare and Currituck Counties were subject to having their sandbags removed. Several of the owners applied for variances from the CRC but their petitions were denied and all the sandbag structures were subsequently removed.

Over the next couple of years the CRC began to receive variance requests from property owners wanting their sandbag structures to remain in place. In Onslow County, six property owners were granted variances to allow their sandbags to remain in place until August 31, 2001.
2000

With the majority of sandbags subject to removal in 2000, the Division began preparing to notify property owners of the approaching deadline. Records indicated that 141 properties were to be subject to removal. The Division believed this number to be low since prior to 1995, the majority of sandbag permits were processed by local governments and their record keeping abilities varied greatly and in some cases, was nonexistent. A post Hurricane Floyd inventory revealed that 236 temporary sandbag structures had been permitted since the early 1980’s.

In January 2000, Dare County submitted a Petition for Rule Making to the CRC requesting that properties protected by sandbags in communities pursuing beach nourishment be given an additional extension to 2006. The Division consulted with the CRC Science Panel and received a recommendation to grant an extension, but only to sandbag structures that currently conform to the size limits. Given the time it takes for communities to complete the necessary steps for a beach nourishment project, the CRC granted a coast-wide extension on sandbag permits in these areas to May 2008. The CRC also refined what it meant for a community to be actively pursuing beach nourishment. A community is considered to be actively pursuing beach nourishment if it has:

1. been issued a CAMA permit, where necessary, approving such project, or
2. been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary, or
3. received a favorable economic evaluation report on a federal project approved prior to 1986.

The CRC further added the stipulation that if beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits.

2005

The majority of sandbag structures were located in areas included in beach nourishment projects or studies, however, some structures needed to be removed by their owners prior to the May of 2008 deadline. In North Topsail Beach, an area within the Coastal Barriers Resource Act (CoBRA) Zone containing a significant number of sandbag structures was dropped by the US Army Corps of Engineers from further study. North Topsail Beach applied for permits to conduct a privately funded nourishment project to cover this area as was the case on the east end of Ocean Isle Beach and in the vicinity of The Point in Emerald Isle.

At this time, staff reported to the CRC that 251 sandbag structures had been permitted since 1996, 146 of these since 2001. Prior to 1995, local governments permitted
sandbag structures and there was some question as to the accuracy of record keeping. For this reason, staff estimated that there were approximately 320 sandbag structures on the coast.

2006

Staff reported that enforcement of the six-foot height limitation on structures had become an issue. Owners were allowed to maintain the six-foot height of the structure as the bags become damaged or sink into the sand. During erosion episodes, the submerged bags once again became exposed, greatly increasing the overall height of the structure. Enforcement was also further being complicated by the fact that the bags can become covered or exposed before any enforcement action can be taken. The CRC directed the DCM staff, to measure the height of the sandbag wall from the base of the structure to the top rather than from the existing beach to the top, in order to ensure sandbag structures do not exceed six feet in height, unless otherwise permitted.

2007

With the May 2008 deadline approaching, the Division once again prepared to notify property owners of the requirement for removal. However, the situation along the ocean beaches was somewhat different than in 2000. The extensive beach nourishment that occurred along the coast during the intervening years presented a new set of challenges to ensuring compliance with the Commission’s rules. Many sand bags structures were not removed prior to nourishment activities so the bags became covered with sand. Technically, these sand bag structures were out of compliance since the rule requires them to be covered and vegetated. It had also become typical to find sand bag structures where the bags are inter-laced across properties as adjoining properties become imminently threatened. Since the removal date is dictated by when the first bags are placed, long sand bag structures often have varying expiration dates across properties. Varying expiration dates could also be found when sand bags protecting large structures (5 years) are tied in with those protecting a small structure (2 years). Given the intricacies of ensuring compliance with the current rule, staff sought guidance from the Commission on how to address the upcoming deadline, the nuances of enforcement and compliance with the current rule and how aggressively to pursue removal of buried bags or bags that become exposed.

In addition to the current time limits and removal deadlines, the Commission discussed the possible utilization of degradable materials rather than polypropylene as a means of ensuring the eventual removal of sandbags from the oceanfront. DCM research revealed issues associated with the use of biodegradable textiles for sandbags, primarily concern over the length of time biodegradable bags can withstand the combination of elements present in the coastal environment. The complex nature of coastal beaches makes it difficult to predict how long a biodegradable sandbag would last, as a variety of assailants including; microorganisms, temperature, moisture, humidity, seawater composition and wave energy act upon beaches. In addition, pathogenic viruses, bacteria, and fungi are present in stormwater runoff. The combination of these reactants leads to the increased degradability of natural fibers used in sandbag installations.
The CRC ultimately decided that the current rule would be enforced and all uncovered sandbags would have to be removed in May 2008. Sandbag permits could still be applied for throughout this process and there was interest modifying the sandbag rules.

**November 2007**

DCM sent letters to 371 property owners with active sandbag structure permits in preparation for the May 1, 2008 deadline for the removal of certain sandbag structures.

**March - 2008**

DCM begins to inventory sandbag structures, to determine which ones will need to be removed. Sandbags structures subject to removal are prioritize based on how long they have been in place, condition of the bags, and whether they are an impediment to the public's use of the beach. This prioritization is used to notify property owners that their sandbags must be removed.

The CRC receives a Petition for Rulemaking from the Landmark Hotel Group requesting amendments to the sandbag rules that would allow specific provisions for their use in protecting commercial structures and to allow indefinite maintenance of the structures. The CRC denied the petition.

**May 2008**

The CRC receives a Petition for Rulemaking from the law firm Kennedy Covington Lodbell & Hickman L.L.P. representing property owners from Figure Eight Island, Nags Head and Ocean Isle Beach. The petition requested amendments to the sandbag rules to remove the time limits on sandbags and change the "actively pursuing beach nourishment" provision to a long-term erosion response plan that is modeled after the proposed static line exception. The petition also created a new sandbag management strategy for the inlet hazard areas where the maintenance of sandbags would be tied to an inlet relocation plan or an inlet-monitoring plan. The Division was supportive of the request to create a new strategy inside inlet hazard areas due to limited effectiveness of beach fill project and while the petition was denied, the CRC directed staff to incorporate some provisions of the petition that would improve the current rule language.

**Variance Requests:**
By the May 2008 CRC meeting, the Division had received 29 sandbag variances requests.

**Comprehensive Beach Management Task Force Subcommittee Report:**
Recommends from the subcommittee include conditioning certain CAMA permits to preclude the use of sandbags under the single-family exception and consideration of alternative sandbag structure design.
July 2008

The CRC approves amendments to the sandbag rules [15A NCAC 7H .0308(a)(2)] to allow sandbags to remain in place for eight years if the community is actively seeking an inlet relocation project; require sandbags to be removed when the structure is no longer threatened, when the structure is removed or relocated, or upon completion of an inlet relocation or beach nourishment project; and to allow structures to be protected more than one time in an inlet area. Additional language was also added to the criteria by which a community would be considered pursuing a beach nourishment or inlet relocation project.

September 2008

DCM sends 20 letters to property owners requesting removal of sandbag structures that have exceeded their time limits. In addition, the GIS map depicting sandbag locations is made available on the Division’s web site.

October 2008

As a result of Hurricane Hanna and an unnamed storm, Senator Basnight’s office submitted a letter to the CRC stating, “If a storm exposes sandbags that had been covered and vegetated, I believe the affected property owner should be allowed to return his or her property to its pre-storm condition.” In response to the storms, the CRC, under the authority of the Secretary’s Emergency General Permit that was issued September 29, 2008, allowed sandbags which were previously covered and vegetated that became exposed and were in compliance prior to either Hurricane Hanna or the unnamed storm, to be re-covered with sand under Emergency General Permit 15A NCAC 7H .2500.

January 2009

Administrative Law Judge dismissed a motion to stay enforcement by 18 recipients of sandbag removal letters. The homeowners sought permission to repair their sandbag structures while they pursue variance relief, and also sought to keep DCM from going forward with enforcement. After the ruling, the Division sent Notices of Violation to homeowners who received the first round of sandbag removal letters in September 2008.

August 2009

Session Law 2009-479 (House Bill 709) establishes a moratorium on certain actions of the Coastal Resources Commission (primarily enforcing time limits) preventing the removal of a temporary erosion control structure that is located in a community that is actively pursuing a beach nourishment project or an inlet relocation project. The moratorium did not prohibit the Commission from:

- Granting permit modifications to allow the replacement, within the originally permitted dimensions, of temporary erosion control structures that have been damaged or destroyed.
• Requiring the removal of temporary erosion control structures installed in violation of its rules.
• Requiring that a temporary erosion control structure be brought back into compliance with permit conditions.
• Requiring the removal of a temporary erosion control structure that no longer protects an imminently threatened road and associated right-of-way or an imminently threatened building and associated septic system.

While the imposition of the moratorium stopped enforcement action on sandbag structures due to time limits, it did not prevent the removal of sandbags that were out of compliance with other provisions of rules, such as structure dimensions and lack of necessity. Due to the large number of sandbag structures with expiring permits, the Division developed a protocol for prioritizing structures for removal in a rational and orderly manner. Structures were prioritized based on whether or not they were covered, vegetated, or impeded public access, as well as their age and physical condition.

Of the 19 structures with sandbags initially prioritized by the Division for removal (one of the 20 was a duplicate) prior to the moratorium:

• Five had been demolished.
• Two were relocated.
• Nine were condemned.
• One was abandoned and condemned.
• Two remained occupied.

2011 – Sandbag Stakeholder Committee

Division engage stakeholders which included representatives of the Commission, Advisory Council, local government, and property owner representatives in an effort to discuss how sandbag structures were being managed, nuances of the temporary erosion control structure rules and to facilitate possible changes in the implementation of the Commission’s sandbag policy. The Committee focused on specific issues including the requirement for removal of sandbags prior to nourishment projects, the covered and vegetated requirements and the possible use of other criteria in the permitting and removal of sandbags such as beach elevation and shoreline recession.

Refinement of the issues led to discussions of FEMA and how insurance payouts related to the National Flood Insurance Program (NFIP) as well as building standards (piling depths) may be contributing to the problem. There was general agreement that while the focus has been on the sandbag structures protecting houses, it is houses on the public beach that continues to be the core issue. Since the NFIP does not pay the insurance claim until there is a loss, there is no incentive for the property owner to remove the structure prior to that event. Adding to the problem is the fact many of the structures are held by out of state owners or are owned by LLCs. In most cases it is the local government’s responsibility to pursue removal of structures once they are condemned and there is considerable difficulty in locating owners, or the structures are simply abandoned. There has been little financial help for local governments as the state is under no obligation to assist the local government with removal of the structures from the public beach.
While many of the issues were more thoroughly considered during the stakeholder meetings, no specific recommendations were offered. See attached Sandbag Stakeholder Committee Summary Report (CRC-11-09).

August 2011

Recognizing that the state has had a great deal more experience with the timeframes involved in securing a beach fill project and the degree of effort and commitment involved on the part of the beach communities in securing the funding and easements, the CRC amended the sandbag rules to:

- Extend the eight-year timeframe to the oceanfront in communities actively pursuing a beach nourishment project.
- Remove the one time per property restriction for oceanfront structures (under the same conditions already applied in the Inlet Hazard Areas).
- Expanded the activities a community could be actively pursuing that would warrant an extended permit time limit to include an inlet stabilization project in accordance with G.S. 113A-115.1 (CAMA amendment associated with terminal groin legislation).
- Retained the two- and five-year timeframes for structures located outside of areas seeking nourishment projects.
(a)(2)  Temporary Erosion Control Structures:

(A)  Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B)  Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C)  Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D)  Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E)  Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee in accordance with Part (2)(A) of this Subparagraph.

(F)  Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.

(G)  Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment, inlet relocation or stabilization project if it has:

(i)  an active CAMA permit, where necessary, approving such project; or

(ii)  been identified by a U.S. Army Corps of Engineers’ Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(iii)  received a favorable economic evaluation report on a federal project; or

(iv)  is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.
TO: Coastal Resources Commission

FROM: Heather Coats, Assistant Major Permits Coordinator, Wilmington Office

SUBJECT: Proposed State Port Inlet Management Area of Environmental Concern (AEC)

At the July 2014 CRC meeting, the Commission directed DCM staff to develop management objectives and use standards for new a AEC associated with the two inlets in North Carolina with federally maintained shipping channels, Beaufort Inlet and the Cape Fear River Inlet. This was in response to one of the recommended priorities of the Inlet Management Study.

Staff first met with representatives from the adjacent local governments to solicit input regarding the application of current rules and new management strategies they believe would address the unique circumstances experienced at these inlets. Discussion with the Village of Bald Head Island revolved around needs previously discussed as part of the Cape Fear River AEC Feasibility Study. Essentially, the Village expressed an interest in more flexible sandbag rules—particularly the ability to protect dunes in addition to primary structures and infrastructure as well as the allowable location and size of sandbags and sandbag structures. They also stated that new rules for the AEC should advocate the beneficial use of dredged material as part of CZMA (Coastal Zone Management Act) federal consistency concurrence.

The discussion with representatives from the Town of Caswell Beach and the NC Baptist Assembly at Ft. Caswell primarily focused on the federal designation of Ft. Caswell as a national historic site and the need for more flexibility on the property to address erosion and other issues including the potential AEC boundaries.

The main topic of discussion with Carteret County’s Shore Protection Manager was beneficial use of beach-compatible dredged material and the limitations of the current federal Dredged Material Management Plan (DMMP) at Beaufort Inlet. It was expressed that the US Army Corps of Engineers should not be allowed to degrade the inlet environment simply because of a lack of funding.
Staff then drafted an AEC definition and rule language for a new State Port Inlet Management AEC for CRC discussion at your October 2014 meeting. The draft rule language also addressed action taken by the legislature (SL2014-120) to remove the Inlet Hazard Area designation for inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

Over the past year, much discussion focused on the beneficial use rule language requiring beach-compatible dredged materials to be placed on active nearshore, beach or inlet shoal system and whether the rule should further require all sand be placed on adjacent beaches. Strong objections were received from the US Army Corps of Engineers, who stated that removing flexibility for channel maintenance would be a serious detriment to the continued operation of the NC State Port at Morehead City. Much discussion with the US Army Corps of Engineers has since occurred, resulting in an interest in developing a Memorandum of Agreement (MOA) which would allow the state and local governments to provide supplemental funding to place additional sand on the beach. A working group was created to initiate development of a draft MOA. Pending development of a long-term MOA to help resolve this issue, the Commission directed DCM staff to tentatively delete the beneficial use language from the draft rule (Justin McCorkle with the USACE will provide an update on the development of a long-term MOA).

The Coastal Resources Advisory Council (CRAC) also discussed the remaining components of the draft AEC rule language including the sandbag provisions at their April and July, 2015 meetings. They recommended the AEC definition specify that it included the Cape Fear Inlet and Beaufort Inlet. It was also recommended that a minimum sandbag size be established, in accordance with current sandbag rule language.

At the July, 2015 CRC meeting, the Commission directed DCM staff to amend the draft boundaries of the proposed AEC to include all of Caswell Beach and revise the use standards for the proposed AECs. This latest draft (attached) reflects requested changes from both the May and July meetings as well as staff edits to address consistency with your other rules.

Per the Chairman’s request, the State Ports Inlet Management AEC draft rule language has been sent to the Commission in advance of the September meeting packet. Staff is looking forward to discussing the details of the proposed AEC, including AEC boundaries, at the upcoming meeting in Wilmington.
15A NCAC 7H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECS contain all of the following areas:

(1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net; and

(b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

(2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

(3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:

(a) the location of a former inlet which has been closed for at least 15 years,
(b) inlets that due to shoreline migration, no longer include the current location of the inlet,
(c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.

(4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources
Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-item (1)(a) of this Rule.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its prestorm designation.

(5) State Ports Inlet Management Area. Areas adjacent to and within the Beaufort and Cape Fear Inlets, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of a federally mandated fixed maintained channel location and the critical nature of maintaining adequate shipping access to North Carolina’s State Ports. As such, these areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization, and the beneficial use of sand within the littoral system. The State Ports Inlet Management Areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management or the internet at the website referenced in Sub-item(1)(a) of this Rule.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

(1) campsites;
(2) driveways and parking areas with clay, packed sand or gravel;
(3) elevated decks not exceeding a footprint of 500 square feet;
(4) beach accessways consistent with Rule .0308(c) of this Subchapter;
(5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
(6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
(7) temporary amusement stands;
(8) sand fences; and
(9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted seaward of the applicable setback line in ocean erodible areas and State Ports Inlet Management Areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

(1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
(2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;
(3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
(4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.

(A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
(B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof covered decks and porches that are structurally attached shall be included in the calculation of footprint;
(C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfcstone may also be used;
(D) No portion of a building’s total floor area, including elevated portions that are cantilevered,
knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

(5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

c) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

(1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
(2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences. For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

(d) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

(1) piers providing public access; and
(2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

e) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
(3) The pier house shall be limited to a maximum of two stories;
(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted on those nonoceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.
15A NCAC 07H .0313 USE STANDARDS FOR STATE PORTS INLET MANAGEMENT AREAS

(a) State Ports Inlet Management areas as defined by Rule .0304 of this Section are areas adjacent to and within the Beaufort and Cape Fear Inlets, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. Due to the unique influence of a federally mandated fixed maintained channel location and the critical nature of maintaining adequate access to North Carolina’s state ports, development within these areas shall be permitted in accordance with the following standards:

1. Clean, beach-quality material dredged from navigational channels within State Ports Inlet Management Areas shall not be removed permanently from the active nearshore, beach or inlet shoal system. This dredged material shall be disposed of on the ocean beach or shallow active nearshore area where it is environmentally acceptable and compatible with other uses of the beach.

Alternate (1) - To the maximum extent practicable, clean, beach-quality material, as defined by 15A NCAC 07H .0312(3), dredged from navigation channels within State Ports Inlet Management Areas shall be placed on the adjacent ocean beaches where: (i) it is environmentally acceptable and compatible with other uses of the beach and (ii) in a manner that minimizes shoaling and replicates the natural littoral system and avoids detrimental changes in the littoral and sediment transport processes.

2. All development in the State Ports Inlet Management Areas shall be set back from the first line of stable natural vegetation or static vegetation line a distance equal to the setback required in the ocean hazard area, except for development exempted from the ocean setback rules in 15A NCAC 7H .0309.

3. Notwithstanding the use standards for temporary erosion control structures described in 15A NCAC 07H .0308(a)(2), a local government may apply for a permit to seek protection of an imminently threatened frontal or primary dune, public structures and/or infrastructure within a State Ports Inlet Management Area. For the purpose of this rule, a frontal or primary dune or infrastructure shall be considered imminently threatened in a State Ports Inlet Management Area if:
   i. its foundation, septic system, right-of-way in the case of roads, or waterward toe of dune is less than 20 feet away from the erosion scarp; or
   ii. site conditions, such as flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure as determined by the Director of the Division of Coastal Management; or
   iii. the frontal or primary dune or infrastructure will be imminently threatened within six (6) months as certified by persons meeting applicable State occupational licensing requirements; or
   iv. the rate of erosion from the erosion scarp or shoreline within 100 feet of the infrastructure, frontal or primary dune was greater than 20 feet over the preceding 30 days.

4. Sandbags structures used to construct temporary erosion control structures shall have a base width not exceeding 20 feet, and a height not to exceed six feet. Individual sandbags shall be tan in color and be a minimum of three feet wide and seven feet in length when measured flat.

5. Temporary sandbag erosion control structures constructed by a local government may remain in place for up to eight years from the date of approval. The local government shall be responsible for removal of the temporary erosion structure within 30 days of the end of the allowable time period. Removal of temporary erosion control structures is not required if they are fully covered by sand and found not to be interfering with or negatively impacting public use and enjoyment of the public trust beach.

6. Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, an inlet relocation or stabilization project, it shall be removed by the local government within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

7. Established common-law and statutory public rights of access to the public trust lands and waters in deep draft inlet management areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

8. Except where inconsistent with the above standards, all other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the State Ports Inlet Management Areas.

9. In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the State Ports Inlet Management Area, such
as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated State Ports Inlet Management Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 7H .1100, and .1200.
* Draft Concept *

State Port Area of Environmental Concern (AEC) at Beaufort Inlet

Legend

State Port AEC *DRAFT CONCEPT*

Area Description

Science Panel Final Proposed IHA (2010)

2012 Image

Note: This map illustrates a conceptual depiction of the proposed State Port Area of Environmental Concern (AEC) at Cape Fear Inlet. The solid red area is the CRC Science Panel’s 2010 proposed Inlet Hazard Area (IHA).
Draft Concept
State Port Area of Environmental Concern (AEC)
at Cape Fear Inlet

Legend
State Port AEC (*DRAFT CONCEPT*)
Area Description
- Science Panel Final Proposed IHA (2010)
- Science Panel Original Proposed IHA (2008)
- Concept State Port AEC (added to IHA)

2012 Image
Note: This map illustrates a conceptual depiction of the proposed State Port Area of Environmental Concern (AEC) at Cape Fear Inlet. The solid red area is the CRC Science Panel's 2010 proposed Inlet Hazard Area (IHA), the red-crosshatch area is the Science Panel's originally proposed IHA, and the yellow-crosshatch area is an extension of the proposed IHA expanding the full length of Bald Head Island's south-beach, and to the city limits of Caswell Beach.
MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Amendments to 15A NCAC 07H .0304 Extent of the Ocean Erodible AEC and the 100-year Storm Recession Line within Ocean Hazard Areas

The Coastal Area Management Act (CAMA; G.S. 113A) requires permits for development in Areas of Environmental Concern (AEC) as designated by the CRC. AECs are the foundation of the CRC's permitting program for coastal development and are defined in CAMA (G.S. 113A-113) as areas of natural importance that may be susceptible to erosion or flooding; or may have environmental, social, economic, or aesthetic values that make it valuable to the state. The CRC classifies areas as AECs to protect them from incompatible development that may cause irreversible damage to property, public health, or the environment. AECs cover almost all coastal waters and about three percent of the land in the 20 coastal counties.

The CRC has established four broad categories of AECs:
- The Estuarine and Ocean System;
- The Ocean Hazard System;
- Public Water Supplies; and
- Natural and Cultural Resource Areas.

The Ocean Hazard System is comprised of oceanfront lands and the inlets that connect the ocean to the sounds. The CRC has designated three subcategories within the ocean hazard AEC (you will recall that the High Hazard Flood AEC was repealed this year):

1. **The Ocean Erodible AEC** (15A NCAC 7H .0304(1)) covers North Carolina's beaches and any other oceanfront lands that are subject to long-term erosion and significant shoreline changes. The seaward boundary of this AEC is the mean low
water line. The landward limit of the AEC is measured from the first line of stable natural vegetation and is determined by adding a distance equal to 60 times the long-term, average annual erosion rate for that stretch of shoreline, to the distance of erosion expected during a major storm (100-year storm) which varies from 25 - 330 feet.

2. **The Inlet Hazard AEC** (15A NCAC 7H .0304(2)) covers the lands next to ocean inlets. Each area is mapped based on a statistical analysis of inlet migration, previous inlet locations, narrow or low lands near the inlet, and the influence of man-made features, such as jetties and channel dredging projects.

3. **Unvegetated Beach Area.** (15A NCAC 7H .0304(3)) Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis.

The Ocean Hazard AEC includes General (7H .0306) and Specific (7H .0308) Use Standards for the siting of development along the state’s ocean shoreline. These standards include provisions for setbacks, dune protection, erosion control activities, sandbags, beach nourishment, beach bulldothing, dune establishment and stabilization, accessways, and construction standards. Several changes have been proposed to 15A NCAC 07H.0304 AECs within Ocean Hazard Areas over the last couple of years including repeal of the High Hazard Flood AEC, de-designation of Mad Inlet as an Inlet Hazard Area and the proposed creation of the State Ports Inlet Management AEC. Staff is now proposing an additional amendment to 7H.0304(1)(a) Ocean Erodible Area of Environmental Concern (OEA) to alter the formula used to calculate the width of the OEA that is necessary for consistency with the setback factors found in 15A NCAC 07H.0306 General Use Standards for Ocean Hazard Areas.

The OEA boundary is delineated oceanward by mean low water (MLW) and landward by a distance measured from the first line of stable and natural vegetation (FLS&NV) equal to 60 times the long-term annual erosion rate (ER). The landward extent of the OEA also includes the distance of shoreline recession (SR) that would be generated from a 100-year storm event. The shoreline recession model used to calculate the SR has a minimum and maximum value of 25 and 330 feet, respectively. The current OEA width formula can be simplified as: OEA = [(60 x ER) + SR].

However, simply changing the OEA formula erosion rate factor from 60 to 90 may substantially increased the AEC and therefore the Commission’s permitting jurisdiction. Upon further consideration and analysis, the Division believes that the extent of this increase is beyond what is necessary to achieve the management objectives of the Ocean Hazard Area – reduction of the loss of life and property due to hazards associated with the Atlantic shoreline. Staff believes that while the OEA formula does need to be changed for consistency with the 7H .0306 setback rules, use of the 100-year storm recession line may no longer be needed. An increase from 60 to 90 times the erosion rate would provide the necessary CAMA jurisdiction to implement the management objectives of the Ocean Hazard Area.
The Ocean Hazard AEC includes General (7H.0306) and Specific (7H.0308) Use Standards for the siting of development along the state’s ocean shoreline. These standards include provisions for setbacks, dune protection, erosion control activities, sandbags, beach nourishment, beach bulldozing, dune establishment and stabilization, accessways, and construction standards. Reducing the OEA, will not impact the implementation of these standards.

The inclusion of the 100-year storm recession line is linked to the early days of the coastal program and the initial development of AECs. The intent of the recession line was to protect the dunes after 30 years of erosion based on modeling. The effort was a precursor to the development of erosion rates along the coast and was intended to delineate the Commission’s regulatory area of the OEA. The recession line has not been updated and the FEMA revisions to the V-zones during the 1990’s added dune erosion to the modeling. As this proposed action concerns the permitting jurisdiction of the Commission, particularly the landward edge as opposed to the seaward edge, Staff believes this recession line can be removed from the calculation without significantly affecting the management objectives. By increasing the OEA erosion rate multiplier 90, large development (greater than 100,000 square feet) will be sited beyond the OEA and therefore, meeting the setback requirement.

Removing the recession line from the calculation will also provide a degree of regulatory relief to some areas of the coast, most notably Brunswick County where approximately 3,200 lots will no longer be within the OEA. The most modest decrease in jurisdiction will be in Currituck County where the OEA will encompass 44 fewer properties. Coastwide, there will be a net reduction of approximately 7,500 that fall within the Ocean Hazard AEC. Again, it is important to keep in mind that the impact of this action is on the landward edge of the OEA affecting large scale development. At the upcoming meeting in Wilmington, I will have specific examples of how this amendment would change the width of the AEC from its current dimensions. Attached is a copy of 7H.0304 with this proposed amendment highlighted. I have also included an analysis of the number of properties affected by this action.

I look forward to answering any questions you may have regarding this action at our upcoming meeting.
### Number of Properties Affected by Proposed AEC Modification

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<th>Brunswick County</th>
<th>Current Ocean Hazard AEC ((60*ER)+SR) Number of Lots</th>
<th>Potential Ocean Hazard AEC ((90*ER) + SR) Number of Lots</th>
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<th>Proposed Ocean Hazard AEC ((90 \cdot ER)) Number of Lots</th>
<th>Difference Between Current and Proposed Number of Lots</th>
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<td>Kitty Hawk</td>
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<td>Southern Shores</td>
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<td></td>
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<tr>
<td>Number of Lots</td>
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<th>Currituck County</th>
<th>Current Ocean Hazard AEC ([(60 \times ER) + SR]) Number of Lots</th>
<th>Potential Ocean Hazard AEC ([(90 \times ER) + SR]) Number of Lots</th>
<th>Proposed Ocean Hazard AEC ((90 \times ER)) Number of Lots</th>
<th>Difference Between Current and Proposed Number of Lots</th>
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<td>576</td>
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<td>Wildlife Refuge - VA</td>
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| Statewide Totals: | 20072 | 23124 | 15572 | -7552 |
The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
   (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 60; 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net; and
   (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

(2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
   (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
   (b) the former location of Mad Inlet, which closed in 1997. In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photocopies are available at no charge.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:
   (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-Item (1)(a) of this Rule.
   (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified, or re-establishment of the vegetation, the area shall return to its pre-storm designation.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985; Temporary Amendment Eff. October 10, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997; Temporary Amendment Eff. October 22, 1997;
Amended Eff. September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.
MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Pile-Supported Signs in Coastal Wetlands

At the July meeting you heard a request for a variance to your Coastal Wetlands rule, 07H .0205. Following that hearing the Commission asked staff to propose an amendment to the rule that would enable staff to issue permits for similar types of projects instead of making applicants go through the variance process. A proposed amendment is attached that would make pile-supported signs an allowable use in the Coastal Wetlands Area of Environmental Concern. Only local governments would be eligible to receive a permit from the division.

The rule drafting process revealed some issues about this potential amendment that staff would like to discuss with the Commission:

The Commission’s rule, 07H .0208, states in section (a)(1) that “Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas.” The rule goes on to describe water-dependent uses as including: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.” Staff does not interpret the Commission’s intent as wanting to make pile-supported signs a water-dependent use, as little justification exists to do so on an unrestricted basis, especially in coastal wetlands. The Commission’s buffer rule, 07H .0208(d)(10), describes the types of development that is allowable inside the 30-foot buffer, including pile-supported signs. The buffer rule does not, however, authorize those types of development within coastal wetlands.

The Commission’s Coastal Wetlands rule 07H .0205(c) states that the management objective of the CRC for coastal wetlands is to conserve and manage them “so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.” Staff wants to confirm whether the Commission views pile-supported signs as consistent with this objective, and, that they should be permittable by staff. Staff does not appear to have the authority to regulate sign content.

Other concerns with the potential amendment for pile-supported signs in coastal wetlands include deciding what criteria should be used to create development standards; for example, sign dimensions, lighting, density, and wetlands alteration at the sign location. Staff looks forward to a discussion with the Commission at the September meeting.
COASTAL WETLANDS

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators including but not limited to the observation of tidal water (including wind tides) on the site, changes in elevation, presence of periwinkle (Littoraria spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain the following marsh plant species:

1. Cord Grass (Spartina alterniflora),
2. Black Needle rush (Juncus roemerianus),
3. Glasswort (Salicornia spp.),
4. Salt Grass (Distichlis spicata),
5. Sea Lavender (Limonium spp.),
6. Bulrush (Scirpus spp.),
7. Saw Grass (Cladium jamaicense),
8. Cat-tail (Typha spp.),
9. Salt Meadow Grass (Spartina patens),
10. Salt Reed Grass (Spartina cynosuroides).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DENR pursuant to G.S. 113-230(a).5.

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained.

Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational businesses along the seacoast.

The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing suspended and inorganic particles to settle out. In this manner, the nutrient storehouse is maintained, and sediment harmful to marine organisms is removed. Also, pollutants and excessive nutrients are absorbed by the marsh plants, thus providing an inexpensive water treatment service.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere.

Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws. Pile-supported signs may be allowed when requested by a local government.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this paragraph. Mowing or cutting of coastal wetlands by academic institutions associated with research efforts is
allowed subject to approval from the Division of Coastal Management. Alteration of coastal wetlands is governed according to the following provisions:

(1) Alteration of coastal wetlands is exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
   
   (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
   
   (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
   
   (C) Alteration of the substrate is not allowed;
   
   (D) All cuttings/clippings shall remain in place as they fall;
   
   (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
   
   (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.

(2) Coastal wetland alteration not meeting the exemption criteria of this Rule requires a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have an adverse impact on the habitat or fisheries resources.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124; Eff. September 9, 1977; Amended Eff. November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978.

Amended Eff. TBD, 2016
MEMORANDUM

TO: Coastal Resources Commission

FROM: Doug Huggett
        Major Permits Coordinator

SUBJECT: Minor Modifications to CAMA Major Permits

At times, permittees wish to modify their CAMA Major Permits after the permit has been issued. These modifications may be due to design and/or engineering recommendations, change in the purpose and need, or even a change in economic conditions or project funding. From time to time questions arise as to how modification requests are processed.

The first factor in determining processing procedures is to assess whether the proposed modification is considered “major” or “minor”. When determining whether a modification request is considered a major modification, several factors are considered, including the scope and scale of the proposed modifications, number of resource and permit agencies that may have an interest in the proposed changes, public interest and/or need for additional public review and comment, etc. If a project is considered to be a major modification, processing of the request is driven by the Commission’s rules stating that “Modification requests which, in the opinion of the Department, are major will require a new application.” Thus, major modification requests follow the same processing requirements as a new permit application.

If it is determined that the proposed changes are not considered major, then staff is allowed some discretion on processing requirements, specifically as they relate to notification requirements and agency coordination. These types of modifications are deemed Minor Modifications. Examples and considerations required in determining minor modifications are as follows:

- Depending on the additional impacts associated with proposed changes, staff will determine what additional agency coordination requirements are needed. For example, a proposed project change that will impact additional wetlands usually involves additional coordination with wetland permitting agencies.
- If a proposed location of a docking facility is moving closer to an adjacent riparian property, or potentially represents an impact to navigation rights of neighboring properties, additional adjacent property owner notifications are generally required.
- Staff will review the original permit file to determine if public or adjacent property owner concerns were raised on the original project that would necessitate additional notification requirements.
- Based upon the knowledge of their work areas, field staff will determine if additional
  coordination with the local government and/or CAMA land use plan review is necessary.

In making these decisions on minor permit processing requirements, staff must balance the need for the thorough review of the proposed project versus the need of the applicant to obtain rapid approval of the proposed changes. Therefore, staff attempt to require adjacent property notifications only in those cases where such notifications would appear to serve a valid purpose. If notification is required, 30 days is required by 15A NCAC 07J .0204(b)(5)(A) to allow landowners to comment. Given the subjective nature of this decision process, staff acknowledges that from time to time decisions may be made that do not satisfy all concerned parties. However, such occasions are relatively rare, and lessons learned from such occasions are then factored into future decisions on minor modification processing procedures. I look forward to answering any questions you may have at the upcoming meeting.
September 4, 2015

The Honorable Frank Gorham
N.C. Coastal Resources Commission
400 Commerce Avenue
Morehead City, NC 28557

RE: Grandfathering of Multifamily Structures

Dear Chairman Gorham:

On behalf of the 457 members of the Carteret County Association of REALTORS®, I am writing to express our support for amending the General Use Standards for Ocean Hazard Areas as proposed by the Wilmington Regional Association of REALTORS® and the North Carolina Association of REALTORS®. The proposed change is scheduled for consideration at the Coastal Resources Commission meeting on September 23.

An oversight in the wording of the ocean hazard setback rules unfairly renders certain residential properties as “legal non-conforming” based upon the property’s number of individual units, rather than its use or size. This oversight causes tremendous difficulty for sellers and buyers of affected residential properties, as Fannie Mae and Freddie Mac will not insure mortgage loans on legal non-conforming residential property.

Part (a)(2)(L) of 15A NCAC 07H .0306 allows replacement of a single-family or duplex residential structure with a total floor area greater than 5,000 square feet, provided that the structure meets the following criteria:

(i) the structure was originally constructed prior to August 11, 2009;
(ii) the structure as replaced does not exceed the original footprint or square footage;
(iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2) of this Rule;
(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and
(v) the structure is rebuilt as far landward on the lot as feasible.

DENR legal counsel has opined that residential structures with more than two attached units – even though they meet the criteria in (i)-(v) above – do not qualify for the protections afforded by part (a)(2)(L) to other residential properties of the same total floor area and use.
This proposed solution:
- **Does not** apply to any structures built after August 11, 2009;
- **Does not** allow construction of new residential structures in the ocean hazard setback area; and
- **Does not** allow replacement of residential structures larger than the original footprint or square footage.

The Carteret County Association of REALTORS® urges you and your fellow commissioners to correct the inequity created by the omission of multifamily structures from the protections afforded to other residential property owners in 15A NCAC 07H.0306(a)(2)(L).

Thank you for your consideration of our comments.

Sincerely,

Kathy Perry, 2015 President
Carteret County Association of REALTORS®
September 4, 2015

The Honorable Frank Gorham
NC Coastal Resources Commission
400 Commerce Avenue
Morehead City, NC 28557

RE: Grandfathering of Multifamily Structures

Dear Chairman Gorham:

On behalf of the 2,225 members of the Wilmington Regional Association of REALTORS®, I am writing to express our support for amending the General Use Standards for Ocean Hazard Areas as proposed by our association and the North Carolina Association of REALTORS®. The proposed change is scheduled for consideration at the Coastal Resources Commission meeting on September 23.

An oversight in the wording of the ocean hazard setback rules unfairly renders certain residential properties as “legal non-conforming” based upon the property’s number of individual units, rather than its use or size. This oversight causes tremendous difficulty for sellers and buyers of affected residential properties, as Fannie Mae and Freddie Mac will not insure mortgage loans on legal non-conforming residential property.

Part (a)(2)(L) of 15A NCAC 07H .0306 allows replacement of a single family or duplex residential structure with a total floor area greater than 5,000 square feet, provided that the structure meets the following criteria:
(i) the structure was originally constructed prior to August 11, 2009;
(ii) the structure as replaced does not exceed the original footprint or square footage;
(iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2) of this Rule;
(iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and
(v) the structure is rebuilt as far landward on the lot as feasible.

DENR legal counsel has opined that residential structures with more than two attached units – even though they meet the criteria in (i)-(v) above – do not qualify for the protections afforded by part (a)(2)(L) to other residential properties of the same total floor area and use.

Part (a)(2)(L) should be amended to apply to all residential structures with a total floor area greater than 5,000 square feet, regardless of the number of attached units. This proposed solution:

- **Does not** apply to any structures built after August 11, 2009;
- **Does not** allow construction of new residential structures in the ocean hazard setback area; and
- **Does not** allow replacement of residential structures larger than the original footprint or square footage.

The Wilmington Regional Association of REALTORS® urges you and your fellow commissioners to correct the inequity created by the omission of multifamily structures from the protections afforded to other residential property owners in 15A NCAC 07H .0306(a)(2)(L).

Thank you for your consideration of our comments.

Sherri Pickard, President  
Will Leonard, Chair  
Govt. Affairs Committee
MEMORANDUM  
CRC – Information Only

TO: Coastal Resources Commission

FROM: Charlan Owens, AICP, DCM Elizabeth City District Planner

SUBJECT: Camden County Land Use Plan (LUP) Implementation Status Report

Background
Local governments submit an implementation status report every two (2) years following the date of LUP certification per the following:

**15A NCAC 07L .0511 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS**
(a) To be eligible for future funding each local government engaged in CAMA land use planning shall complete a CAMA land use plan Implementation Status Report every two years as long as the current plan remains in effect. DCM shall provide a standard implementation report form to local governments. This report shall be based on the action plan and schedule provided in 15A NCAC 07B -Tools for Managing Development.
(b) The Implementation Status Report shall identify:
   (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified CAMA land use plan;
   (2) Any actions that have been delayed and the reasons for the delays;
   (3) Any unforeseen land use issues that have arisen since certification of the CAMA land use plan;
   (4) Consistency of existing land use and development ordinances with current CAMA land use plan policies; and
   (5) Current policies that create desired land use patterns and protection of natural systems.
(c) Results shall be made available to the public and shall be forwarded to DCM.

The Camden County implementation status report is available on DCM’s Land Use Planning web page at: [http://www.nccoastalmanagement.net/web/cm/camden-county](http://www.nccoastalmanagement.net/web/cm/camden-county). It is not included in the CRC packet.

Discussion
The implementation status report does not require approval by the CRC, but must be made available to the public and forwarded to DCM. The report is based on the LUP Action Plan and identifies activities that the local government has undertaken in support of the LUP’s policies and implementation actions. Staff has reviewed the submitted report and finds that the community has met the minimum requirements.