

NC COASTAL RESOURCES COMMISSION

December 17, 2014

NOAA/NCNERR Administration Building

Beaufort, NC

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, December 17th

8:30 COASTAL RESOURCES ADVISORY COUNCIL MEETING (Auditorium)

9:30 COMMISSION CALL TO ORDER* (Auditorium)

Frank Gorham, Chair

- Roll Call
- Approval of October 22-23 and November 19, 2014 Meeting Minutes
- Executive Secretary's Report
- Chairman's Comments
- CRAC Report

Frank Gorham, Chair

Braxton Davis

Frank Gorham, Chair

Debbie Smith, CRAC Chair

10:00 VARIANCES

- Hysong - (CRC-VR-14-14) Oak Island, Oceanfront setback

Heather Coats, Brenda Menard

10:30 ACTION ITEMS

- Fiscal Analysis 15A NCAC 7H .1500 GP for Excavation of Upland Basins – Excavation and Bulkheads (CRC-14-36)
- Static Line Exception Reauthorization – Town of Ocean Isle (CRC-14-37)
- Local Gov't Comments on Proposed Amendments to 15A NCAC 7B CAMA Land Use Planning Guidelines (CRC-14-38)
- **Land Use Plan Amendments and Certifications**
 - City of Southport Land Use Plan Certification (CRC-14-39)
 - Carolina Beach Land Use Plan Amendment (CRC-14-40)

Tancred Miller

Ken Richardson, Christine Goebel

Mike Lopazanski

Mike Christenbury

Mike Christenbury

11:30 PUBLIC HEARING

- 15A NCAC 15A NCAC 7K .0208 Single Family Residences Exempted

Frank Gorham, Chair

11:45 PUBLIC INPUT AND COMMENT

12:00 LUNCH

1:15 CRC Science Panel

- Sea Level Rise Report – Update
- Science Panel Inlet Hazard Area Study - Draft Final Report (CRC-14-41)

Dr. Margery Overton

2:15 BREAK

2:30 Rule Development

- Static Vegetation Line Alternatives – Subcommittee Report (CRC-14-42)
- State Ports Inlet Management AEC Discussion – Beneficial Use
- 15A NCAC 7H .0205 Coastal Wetlands – Occasional Flooding Criteria

Rudi Rudolph

Greg Lewis

Larry Baldwin, David Moyer

4:45 Inlet Management

- Dredging Window Study Update

Ken Willson, CB&I

5:15 OLD/NEW BUSINESS

Frank Gorham, Chair

5:30 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. The Commission will proceed through the agenda until completed.*



N.C. Division of Coastal Management

www.nccoastalmanagement.net

Next Meeting: February 18-19, 2015; TBD

NC COASTAL RESOURCES COMMISSION (CRC)

October 22-23, 2014

Hilton Wilmington Riverside
Wilmington, NC

Present CRC Members

Frank Gorham, Chair

Renee Cahoon, Vice-Chair

Neal Andrew

Larry Baldwin

Suzanne Dorsey

Marc Hairston

Greg Lewis

Jamin Simmons

Harry Simmons

John Snipes (absent 10/23)

Bill White

Present CRAC Members

Debbie Wilson, Chair

Spencer Rogers, Vice-Chair

Rudi Rudolph, Vice-Chair

Jett Ferebee

Bill Morrison

Kris Noble

Bobby Outten

Dave Weaver

Present Attorney General's Office Members

Christine Goebel

Jill Weese

Mary Lucasse

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 also 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. All duly appointed Commissioners were present. The Chairman stated he had no conflicts, but knows several of the attorneys and consultants who will appear before the CRC at this meeting on a personal or professional basis including some that have worked with him in his capacity as Figure Eight HOA President. Chairman Gorham further stated he is on the Energy Policy Council that makes recommendations to the Governor and the Legislature on energy matters and is in the oil and gas industry, but not involved in anything in North Carolina. Neal Andrew stated he has no conflict, but would like to disclose that he knows members on both sides of the Town of Carolina Beach variance request both personally and professionally. Renee Cahoon stated

she has a conflict with the Toloczko variance request and will recuse herself on that matter. Based upon this roll call Chairman Gorham declared a quorum.

Commissioner William White read the evaluation of his statement of economic interest received from the State Ethics Commission which indicated that they did not find an actual conflict of interest, but only the potential for conflict; however, the potential conflict identified does not prohibit his service. Commissioner White also reported that he will be sensitive to any potential conflicts of interest that could arise from the fact that his son lives in Manteo in Pirates Cove and is the owner of an offshore charter boat operating out of the Oregon Inlet Fishing Center.

CHAIRMAN'S COMMENTS

Chairman Gorham welcomed Commissioner Bill White to the CRC. Commissioner White stated he was born in Bertie County and has worked with Weyerhaeuser in forestry management procurement. He has been retired for 11 years and has recently gone into the real estate business.

VARIANCE REQUESTS

Palm Cove LLC (CRC VR 14-19) Sunset Beach, Pier in Inlet Hazard AEC

Holley Snider, Christine Goebel

Holley Snider, DCM field representative, gave the Commission an overview of the property. Christine Goebel of the Attorney General's Office represented staff. Attorney Clark Wright was present and represented Petitioners.

Ms. Goebel reviewed the stipulated facts stating Petitioners have interest in a ten lot subdivision at the eastern end of Sunset Beach which have frontage on both the Atlantic Ocean and Jinks Creek. The owners of lots 2-10 sought a CAMA permit in order to build a 9-slip community docking facility at lots 2 and 3 on Junks Creek to be shared by the owners of lots 2-10. On May 27, 2014, DCM denied Petitioners' application based on the proposal's inconsistency with the Commission's rules prohibiting docks and piers in an inlet hazard AEC (15A NCAC 7H .0309 and 7H .0310) and because the proposed facility did not meet the Commission's exception to its general rule which allows piers and docks in an inlet hazard AEC only if they are small scale and if the location includes features characteristics of estuarine shorelines per 7H .0310(c). Petitioners seek a variance to allow the proposed 9-slip community docking facility as proposed in their application. Ms. Goebel stated that staff and Petitioners do not agree on any of the four statutory criteria which must be met in order to grant the variance request. First, strict application of the development rules will not cause petitioners unnecessary hardship. This property is entirely within the inlet hazard area. These areas are especially vulnerable to erosion, flooding and other adverse effects of sand, wind and water because of their proximity to the inlet. The Commission's rules allow for an exception when the proposed development is small scale and exhibits estuarine shoreline characteristics. Neither of these factors are present in this case. Second, staff argues that hardships are not a result of conditions peculiar to the property. Lot 1 is a transitional area between the estuarine shoreline characteristics and the ocean shoreline characteristics. Before the permit for lot 1 was granted in 2005, staff visited the site and found estuarine characteristics. Site visits were made for the current permit decision and there were no estuarine shoreline characteristics on lots 2 and 3. Third, staff argues that Petitioners have caused their own hardship as they should not have had a reasonable expectation that a pier permit would be issued for lots 2-10 given that their location is adjacent to an ocean inlet within the designated inlet hazard AEC and ocean erodible AEC. DCM staff makes each determination regarding shoreline characteristics based on conditions during site visits and does not draw the lines based on platted lots and where a subdivision begins or ends. Final Staff argues that granting this variance would not be within the spirit, purpose or intent of the CRC's

rules, would not secure public safety and would not preserve substantial justice. The limitations placed on the CRC's exception for development within the Inlet Hazard AEC are reasonable and a nine-slip pier would not be within the spirit, purpose or intent of the CRC's rules. Stipulated Facts 17-19 point to the fact that this shoreline does not have estuarine shoreline characteristics.

Clark Wright of Davis, Hartman, Wright represented Petitioners and stated in the relevant rules and statutes that the Commission is given, staff does not include Section 128 of CAMA which states that nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States. We are here about an effort by my clients to avoid this CRC and the agency carrying out a taking. The fundamental issue is riparian rights. A fundamental element of riparian rights as opposed to littoral rights is the right to pier out to have access to deep water. Staff objects to the variance based on the fact that we don't comply with the current use standards. Of course we don't and that is what a variance is. Ms. Goebel stated that this is a transition area. Lot 1 was found to be appropriate for a dock. Petitioners have gathered the owners of these lots and committed them to file a restrictive covenant that will permanently prohibit any further piers, docks or development in exchange for putting one small 9-slip HOA facility. DCM did not deny the permit based on any of the comments that came in. We will make sure that the Shellfish Sanitation requirements are met. We have minimized all impacts that relate to the purposes of the rules and we have preserved riparian rights in the most minimal way with an absolute prohibition on any further development.

Renee Cahoon made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner an unnecessary hardship. As part of the motion, Commissioner Cahoon required that if a variance is granted it include the condition that a covenant prohibiting construction of future piers and docks on any of the lots 2-10 be included in the Final Order. Jamin Simmons seconded the motion. The motion passed with seven votes in favor (Andrew, Hairston, J. Simmons, Baldwin, Cahoon, Gorham) and three opposed (Lewis, Snipes, Dorsey)(White abstained).

Renee Cahoon made a motion that the hardship result from conditions peculiar to the petitioner's property. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Andrew, Hairston, J. Simmons, Baldwin, Cahoon, Gorham) and three opposed (Lewis, Snipes, Dorsey)(White abstained).

Renee Cahoon made a motion that hardships do not result from actions taken by the petitioner. Larry Baldwin seconded the motion. The motion passed with seven votes in favor (Andrew, Hairston, J. Simmons, Baldwin, Cahoon, Gorham) and three opposed (Lewis, Snipes, Dorsey)(White abstained).

Renee Cahoon made a motion that the variance granted subject to the condition that not future piers and docks be permitted on lots 2-10 will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; secure the public safety and welfare; and preserve substantial justice. Harry Simmons seconded the motion. The motion passed with seven votes in favor (Andrew, Hairston, J. Simmons, Baldwin, Cahoon, Gorham) and three opposed (Lewis, Snipes, Dorsey)(White abstained).

This variance request was granted with conditions.

Town of Carolina Beach (CRC VR 14-10), Oceanfront setback

Robb Mairs, Jill Weese

Robb Mairs, DCM Field Representative, gave the Commission an overview of the property. Jill Weese of the Attorney General's Office represented DCM Staff. Attorney Noel Fox was present and represented the Town of Carolina Beach.

Ms. Weese reviewed the stipulated facts of this variance project stating Petitioners came before the CRC earlier this year regarding the replacement and extension of the boardwalk. At the February meeting the CRC granted the replacement of the existing boardwalk, but denied the section of the variance petition requesting a northern extension to the boardwalk. In May the Town submitted a revised permit application to construct a northern extension. On May 6, DCM denied the permit application because the proposed development extended oceanward of the ocean hazard setback distance and did not meet any of the applicable exceptions listed in 15A NCAC 7H .0309(a). Petitioners now seek a variance to construct a northern extension of the boardwalk 16 feet wide. However, petitioner has stated it is willing to limit the width to eight feet if required by the Commission. Petitioners have contacted the five adjacent property owners or their representative Boards. The Town officials have met with the Cabana HOA to continue discussion of issues and concerns. The Town also met with Mr. Avarette and his daughters regarding their concerns. Staff has some concerns about the extent of the public opposition to the project, however to the extent that the comments express concerns about the location of the northern extension Staff believe all of these concerns were considered and addressed prior to its decision to support the variance. Staff's position focuses solely on whether the proposed development activity is consistent with the spirit, purpose and intent of the rules. Staff and Petitioners agree on all four statutory criteria which must be met in order to grant the variance request.

Noel Fox, Town Attorney for Carolina Beach, stated she is joined by the Mayor and members of Council, the project manager and Assistant Town Manager. The Petitioner has no disagreement with what Staff has recommended in this variance request. **Renee Cahoon made a motion 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 failed with four votes in favor (Andrew, Hairston, H. Simmons, Cahoon) and six opposed (J. Simmons, Baldwin, Gorham, Lewis, Snipes, Dorsey).**

Greg Lewis made a motion that hardships result from conditions peculiar to Petitioner's property. Neal Andrew seconded the motion. The motion failed with four votes in favor (Andrew, Hairston, H. Simmons, Cahoon) and six opposed (J. Simmons, Baldwin, Gorham, Lewis, Snipes, Dorsey).

Greg Lewis made a motion that hardships do not result from actions taken by the Petitioner. Neal Andrew seconded the motion. The motion failed with four votes in favor (Andrew, Hairston, H. Simmons, Cahoon) and six opposed (J. Simmons, Baldwin, Gorham, Lewis, Snipes, Dorsey).

Following discussion with the Commission, the Town of Carolina Beach withdrew its request for a variance.

Topsail Reef HOA (CRC VR 14-11), North Topsail Beach, Sandbags

Tara McPherson, Christine Goebel

Tara McPherson gave an overview of the property. Christine Goebel of the Attorney General's office represented Staff. Attorney Clark Wright was present and represented Petitioners in this variance request.

Ms. Goebel reviewed the stipulated facts stating Petitioners in this case are Topsail Reef Homeowners Association. This is an eight-building condominium complex located on the oceanfront at the north end of North Topsail Beach and just outside of the Inlet Hazard Area AEC. Petitioners installed sandbags in 2012 and received a variance from the CRC to install a larger structure than allowed by rule in front of buildings 1-5. Petitioner installed sandbags in a 6 feet by 20 feet structure in front of Buildings 6-8. Petitioner sought a major modification to Major Permit No. 39-01 in order to increase the size of the sandbag structure in front of Buildings 6-8. Petitioner's request was denied as it did not meet the Commission's sandbag size limits. Petitioners now seek a variance to allow the placement of sandbags in the configuration proposed in their modification request. Ms. Goebel informed the Commission that staff and petitioners agree on three of the four variance criteria. The one area of disagreement is Staff's position that any hardships do not result from conditions peculiar to the petitioner's property. Specifically, the CRC's rules reflect that inlets are especially volatile and known to move regularly. Erosion at this site is typical of that at inlets and the adjacent oceanfront shoreline. Therefore, any hardship are not the result of conditions peculiar to the site. Ms. Goebel informed the Commission that between the 2012 variance and this request, the CRC rules were amended to allow sandbag structures to remain for up to eight years. Therefore, if the request is granted Staff agrees that the time should be measured eight years from the time the original permit was issued in 2012 and not from the date of this variance request.

Clark Wright agreed that the hardships are the result of peculiar site conditions. The erosion rate at this site is averaging 8-12 feet per month. This started in May 2013 when the Town's inlet relocation project was complete. The erosion directly correlates to the inlet relocation project. Mr. Wright reviewed the stipulated facts which Petitioners contend supports the granting of the variance request. Petitioners are comfortable with a condition being put in the variance order that states the property owner must come up with the funding to implement this within a set timeframe.

The Commission discussed the need to include as a condition on any variance granted that the HOA provide document within nine months that the HOA had approved funding the proposed sandbag project or the variance will expire.

Larry Baldwin made a motion that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner an unnecessary hardship. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Larry Baldwin made a motion that hardships result from conditions peculiar to the petitioner's property. Harry Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Larry Baldwin made a motion that hardships do not result from actions taken by the Petitioner. Harry Simmons seconded the motion. The motion passed unanimously (Andrew,

Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Larry Baldwin made a motion that granting the variance request subject to the condition previously discussed 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. Harry Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

This variance request was granted with the condition that within nine months the HOA must approve project funding or the variance will expire. The sandbags for buildings 1-8 will be removed by May 4, 2020.

Bugg (CRC VR 14-12), Salter Path, Oceanfront Setback

Roy Brownlow, Jill Weese

Roy Brownlow gave an overview of the property. Jill Weese of the Attorney General's office represented staff reviewed the stipulated facts stating Petitioner owns an existing house and property in Salter Path within the Hoffman Beach Subdivision. Petitioner proposes to add 428 square feet to the existing total floor area. The Carteret County LPO denied Petitioner's permit application pursuant to 15A NCAC 7H .0306(a)(1) and 7H .0306 (a)(2) which establish the ocean hazard setback for development in the Ocean Hazard AEC. Petitioner's proposed development meets all of the conditions set forth in 15A NCAC 7H .0306(a)(8) for a static line exception except subsection (D) which requires that no portion of a building or structure extend oceanward of the landward-most adjacent structure. Petitioner seeks a variance allowing him to use the exception to the static line in order to make the additions proposed in his permit application. Ms. Weese stated that staff and Petitioner agree on all four statutory criteria which must be met in order to grant the variance. Petitioner John Bugg was present and represented himself before the Commission simply requesting that the Commission grant the variance request.

Renee Cahoon made a motion that strict application of the applicable development rules will cause the Petitioner an unnecessary hardship. John Snipes seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Renee Cahoon made a motion that hardships result from conditions peculiar to the petitioner's property. John Snipes seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Renee Cahoon made a motion hardships do not result from actions taken by the petitioner. John Snipes seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Renee Cahoon made a motion 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. John Snipes seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

The variance request was granted.

**Toloczko (CRC VR 14-13), Nags Head, Oceanfront Setback
Frank Jennings, Jill Weese**

**Renee Cahoon recused herself from discussion and voting on this variance request.

Frank Jennings gave an overview of the property. Jill Weese of the Attorney General's office represented staff. Attorney Charlotte Mitchell was present and represented Petitioners in this variance request. Ms. Weese stated the Toloczkos own property located at 119 E. Sea Gull Street in Nags Head. Petitioner proposes to develop a driveway and parking area constructed of oyster shells seaward of the first line of stable natural vegetation. On August 27, DCM denied petitioner's permit application because of its inconsistency with 15A NCAC 7H .0309(a). Ms. Weese reviewed the stipulated facts of this variance request and stated staff and petitioner disagree on three of the four variance criteria which must be met in order to grant the variance. In summary, Ms. Weese argued that granting this variance will not result in an unnecessary hardship, that the hardship is not caused by conditions peculiar to the property, and that granting the requesting is not consistent with the spirit, purpose and intent of the Commission's rules. Moreover, the requested development would likely require constant maintenance and conflict with the goal of protecting public safety and welfare.

Charlotte Mitchell, Law Office of Charlotte Mitchell, represented Petitioners. Ms. Mitchell stated this property is located within the boundaries of the Nags Head beach nourishment project. This property will be used by the property owner and renters and not everyone can be expected to have a four wheel drive vehicle. Limiting access is a hardship and it would protect public safety and welfare by providing a usable driveway for emergency response vehicle and would preserve substantial justice by providing access to non- four wheel drive vehicle

Larry Baldwin made a motion that strict application of the applicable development rules cause the petitioner an unnecessary hardship. Jamin Simmons seconded the motion. The vote was tied with five votes in favor (J. Simmons, Baldwin, H. Simmons, Gorham, Lewis) and five opposed (Andrew, Hairston, Snipes, White, Dorsey). Therefore, the motion failed.

Larry Baldwin made a motion that hardships result from conditions peculiar to the petitioner's property. Jamin Simmons seconded the motion. The motion failed with one vote in favor (Baldwin) and nine opposed (Andrew, Hairston, J. Simmons, H. Simmons, Gorham, Lewis, Snipes, White, Dorsey).

Larry Baldwin made a motion that hardships result from actions taken by the petitioner. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Gorham, Lewis, Snipes, White, Dorsey).

Larry Baldwin made a motion 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 public safety and welfare; and preserve substantial justice. Jamin Simmons seconded the motion. The motion failed with two votes in favor (J. Simmons, Baldwin) and eight opposed (Andrew, Hairston, H. Simmons, Gorham, Lewis, Snipes, White, Dorsey).

This variance request was denied.

PETITION FOR RULEMAKING

Petition for Rulemaking Procedures (CRC 14-27)

Tancred Miller

Tancred Miller stated the Administrative Procedure Act gives the public the ability to petition the Commission to amend, adopt or repeal a rule. The CRC has 120 days from the time the petition is received. The CRC can approve or deny the petition for rulemaking. If the petition is denied then it is subject to judicial review. CRC rule 7J .0605 codifies what needs to be included in a petition for rulemaking. The DCM Director prepares a recommended response for the CRC to consider. If the petition is denied then a response is sent to the Petitioner. If the CRC approves the petition then DCM moves forward with formal rulemaking.

Petition for Rulemaking – Amend 15A NCAC 7H .0208(6) Piers and Docking Facilities

DCM Staff Recommendation (CRC 14-28)

David Moye

David Moye stated the first time the pier and dock rules were amended was 1995 this same issue of second story use came up. The current language, amended in 1998, currently says that piers and docking facilities should be single-story. The CRC considered pier length, alignment, congestion and maximum development when amending this rule. At the time we were seeing many people developing to the maximum extent of the rule. Piers were allowed to go out 400 feet, there was only a 1/3 the width of the waterbody limitation on pier length, there was no structural limitation on one versus two stories, the platform square footage was 500 square feet, the boathouse square footage was 500 square feet, but there was very little flexibility. DCM Staff looked at the permits and that information was presented to the CRC and amendments were made in 1998 to limit square footage of platform and pier length. One of the things put into rule was the elimination of second story use. Prior to that discussion we had a number of structures on the water that were greater than one story. The CRC voted to modify the rules and in January 1996 proposed rule language was brought before the CRC for discussion. Included in these changes was the prohibition on second story use. Restricting to single story structures would reduce congestion and impacts to adjoining property owners. No negative comments were received specifically related to the removal of second story use. The rule became effective in 1998. The CRC has not heard any variances for the construction of a second story use except for in urban waterfront areas. The Commission has since adopted urban waterfront rules that allow for second story use.

Petition for Rulemaking – Amend 15A NCAC 7H .0208(6) Piers and Docking Facilities

Warren Eadus, Quible & Associates

Warren Eadus stated Brian Rowe is the petitioner and has proposed to strike out 7H .0208(6)(f). This would still limit use but would require a CAMA Major Permit decision. DCM has three reasons that we shouldn't have second story use. The biggest reason is that it promotes non-water dependent uses. I would argue that adding walls would make it habitable, not a roof. The view shed is subjective. Congestion was another concern of DCM. I fail to see how a deck on top of a pier would add to congestion. It gets people out onto our resource and marine contactors would love to go out and build some of these. We feel like this is unobtrusive.

Greg Lewis made a motion to deny the petition for rulemaking. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

CRC RULE DEVELOPMENT

Fiscal Analysis 15A NCAC 7K .0208 Single Family Residences Exempted (CRC 14-29)

Mike Lopazanski

Mike Lopazanski stated this rule exempts from CAMA permit requirements the construction of single family structures along the Coastal Shoreline AEC. If the structure is sited greater than 40 feet landward of normal high water or normal water level, there is no land disturbing activities within the 40 foot buffer area, consistent with other CAMA standards and local land use plans then the construction is eligible for the exemption. These exemptions require a notification and signed statement of no objection from the adjacent property owners. The exemption allows construction of an accessway perpendicular to the water as long as it complies with 7H .0209. The time frame associated with the exemption is one year. The amendments to this rule remove the requirement for a signed statement of no objection, expand the timeframe of the exemption to three years, and allow house to water accessways to be constructed of materials other than wood. The fiscal analysis indicates that DCM issues an average of 123 exemptions of this type per year. Of these we estimate about six permits a year get elevated to the Minor Permit process because the property owner do not have signed statements from adjacent property owners. There is a \$100 fee associated with the Minor Permit. There would be a \$600 savings to property owners in permit fees as well as the time savings to everyone. There would be no effect on NCDOT permitting. DCM could save \$540 in local government reimbursements. Local governments would see a net loss of \$1,140 because of the loss of reimbursements and permit fees. The overall fiscal impact of this rule change is \$4,000 savings over a ten year period.

Renee Cahoon made a motion to approve the fiscal analysis for 15A NCAC 7K .0208 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Fiscal Analysis High Hazard Flood AEC 15A NCAC 7H .0304(2) and Repeal of 15A NCAC 7K .0213 Single Family Residences Exempted from CAMA Permits

Mike Lopazanski

Mike Lopazanski stated single family residences are eligible for this exemption provided they are not located in the ocean erodible area or are not in an inlet hazard area, are constructed on pilings, do not require other approvals for construction, have signed the AEC hazard notice and pay the \$50 fee. FEMA establishes the V-Zones on the Flood Insurance Rate Maps. The National Flood Insurance Program requires compliance with the NC Building Code. The NC Building Code sets the standards for piling supported structures. The CRC has moved ahead to repeal the High Hazard Flood AEC since the CRC's rules defer to the NC Building Code making the High Hazard Flood AEC redundant. The fiscal analysis indicates that there are a little over 10,000 properties solely within the High Hazard Flood AEC. This action would remove those properties from CRC jurisdiction. We issue an average of 24 exemptions in this area every year and collect a \$50 exemption fee. We issue an average of one Major Permit within the High Hazard Flood AEC. Property owners would realize a \$1,600 savings in permit fees, there would be time savings to all parties, there would be no effect on NCDOT permitting, DCM would see a \$200 per year savings, and local governments would see a \$1,800 loss in reimbursement fees for not issuing the exemptions. The fiscal impact over a ten year period is \$11,000.

Harry Simmons made a motion to approve the fiscal analysis for 15A NCAC 7H .0304 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously

(Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Harry Simmons made a motion to repeal 15A NCAC 7K .0213. Renee Cahoon seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

Inlet Management Study Priorities – Draft Final Report (CRC 14-33)

Mike Lopazanski

Mike Lopazanski stated the CRC was directed to study the feasibility of creating a new AEC for the Cape Fear River region. During that study we focused on regulatory concerns of the various stakeholders involved as well as some of their proposed strategies for dealing with those concerns. After concluding that study the CRC undertook a more comprehensive review of inlet related issues. There are some related initiatives that we have rolled into this study including the Inlet Hazard Area Study that the Science Panel is working on to look at the feasibility of eliminating the inlet hazard areas and incorporating development standards as well as developing erosion rates. The study relies heavily on work by the Science Panel. We weren't able to have a draft report ready at this meeting, but we will have it at the December meeting. There is also the related issue of different permit mechanisms that were put in place to streamline inlet dredging projects. During the study the CRC identified ten inlet management topics. This information was used as the context for four regional public meetings. The goal of the meetings was to solicit stakeholder input on a range of management options as well as regulatory reforms that we could use to address inlet management and to build on the recommendations that we received from the Cape Fear region study. At the last CRC meeting, the stakeholder input was organized into short and long-term priorities. Staff further prioritized action items. These action items will directly address our inlet management related issues, are within CRC and DCM jurisdiction, will build on current initiatives we already have underway, and include both short and long-term actions. We are currently working with the Science Panel on the Inlet Hazard Area Study. Staff has been focused on developing a methodology for calculating the erosion rate in the inlet areas. We are likely to see a recommendation from the Science Panel saying that you cannot just eliminate the inlet hazard area. There needs to be a management area in which to apply specific development standards. For the deep draft Port or navigation inlet hazard area we found that we initially wanted to separate deep draft from shallow draft because they had different management objectives associated with them. The determination was made to go ahead and look at the State Port inlets specifically (Cape Fear River Inlet and Beaufort Inlet). We have received comments from various stakeholders. We have some specific comments from the US Army Corps of Engineers as well as the State Ports that will need to be addressed. We are in the preliminary stages of establishing a new AEC and are proposing more stakeholder involvement. The Division relies on other agencies to provide comments when it comes to the timing of dredging and beach related projects to minimize the effects on biological activity. There is currently a consultant study underway that is looking at the feasibility of expanding the dredging windows. A workshop was held and Commissioner Dorsey will provide an update on the workshop. We have had a lot of discussion on the alternatives to the static line. We have a static line exception in place that provides some relief by allowing smaller scale development provided that local governments have a demonstrated commitment to long-term beach nourishment. We will consider two alternatives to either eliminate the static line or make amendments to the static line exception to provide additional relief to communities that have had large-scale projects. At the December meeting we will review the Science Panel report related to the inlet hazard areas and

incorporate that into the inlet management study report. This report will be sent to the Department, the Governor, and the Legislature.

Renee Cahoon made a motion to approve the Inlet Management Study Final Report. John Snipes seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, Snipes, White, Dorsey).

PRESENTATION OF COASTAL ISSUES TO GOVERNOR MCCRORY

Frank Gorham

Frank Gorham welcomed Governor McCrory on behalf of the Coastal Resources Commission. Chairman Gorham stated that there are over 100 elected officials and business community leaders present today from all 20 CAMA counties. After regional town hall meetings we identified the top issues for coastal communities. Some of these issues are not within the jurisdiction of the CRC but are the responsibility of other State agencies or the federal government. But the town people don't care who has jurisdiction, they just need assistance with these issues. We have compiled a coastal issues panel consisting of Chris Dumas, Harry Simmons, Layton Bedsole, Ken Willson, Willo Kelly, and Todd Roessler. We picked panelists that work in the trenches every day. Chairman Gorham thanked Governor McCrory for attending and for caring about the issues.

Governor McCrory stated the main reason I am here is to listen and learn. There are so many complex issues that the CRC is dealing with at this point in time. We have experts in certain fields here. Some of these issues conflict with each other; some of the issues are federal, state or local issues. As the Chairman said, the jurisdiction of many of these issues is confusing. We are here to figure out how to balance all of these complex issues to develop a long-term vision for coastal North Carolina. I will quote my Dad who was a small town city council member in Ohio before we moved to North Carolina in 1966. He said the following, "We must walk the fine line between continuing our economic prosperity while also protecting the environment and quality of life which brought many of us here." It is not necessarily a straight line, right and wrong; it is a balance because we need to have economic prosperity while protecting what brought many of us here. That is where the controversy comes in - where to draw the line. One way to help determine that line is to learn as many issues as you can on all sides of that line and recognize the complexities and that there are no simple solutions. As Governor I have many, many issues. I am responsible for as part of a \$20 billion budget, I have eight major departments reporting to me in addition to three other departments that aren't cabinet departments, and each of those often has conflicting objectives and visions. We meet every Tuesday morning to discuss the issues and learn from each other as a team effort. I want to show a brief video that we have shown across the State relating to the goals we have in the Department of Transportation for our 25 year infrastructure plan which we just announced a few weeks ago. Tony Tata, Secretary of Transportation, has been traveling the State along with me communicating this all the way from the Tennessee boarder and Georgia boarder all the way to the coast. I thought it would be good for everyone to see this video because the State into several different sections and talks about Coastal Carolina, then the East, the Piedmont, and the West. There are some unique challenges in each of these areas and yet they are all intersected. The video is about our long-term plans for transportation, but you will see the intersection on economic development issues regarding our Ports, travel and tourism, and other factors.

At this time the Governor presented the 25-Year Vision: Comprehensive Solutions
<http://www.youtube.com/watch?v=ZtLdYx9L5i0>

This is just a brief outline of some of our thinking regarding some of the complexities and issues in the coastal area. Each area has specific issues, but the coastal area has more intricate issues that we have to deal with than any other part of the State. You have the natural dynamics that are often out of our control. We need to present our vision for how to address these issues and then get consensus for that vision. We have to form partnerships with our fellow states and with the federal government in economic development and environmental issues. Neither of these issues recognizes local and state boundaries. This is part of the 25-year vision plan.

Economic Value of the Coast, Dr. Chris Dumas

Chris Dumas, UNCW Department of Economics and Finance, stated he was happy that the Governor's video talked about infrastructure because I would like to think of our beaches, inlets and waterways as infrastructure. Similar to bridges and highways, they allow the public to access resources. The Inter Coastal Waterway (ICWW) is an interstate infrastructure. Inlets and ICWW are used by non-locals and out of state folks as well as our beaches. It costs money to maintain this infrastructure, but the benefits are very large, often larger than the costs. This presentation will focus on the benefits from beach recreation, commercial fishing, charter/headboat fishing, and private fishing. The value of beach recreation spreads across the State. Statewide \$1.4 billion of direct expenditures is related to beach recreation and 35,000 jobs are directly supported by beach recreation. 25% of beach users in North Carolina are from out of state. This brings new dollars to the state. Commercial fishing occurs throughout the state. In Carolina Beach \$4.6 million is generated from fishing revenues and seafood processing and it supports 425 jobs in that local area. At Oregon Inlet in Dare County \$82.7 million is generated by commercial fishing and seafood processing supports 1325 jobs in Dare County. These are jobs that are important to these local regions. We did a study in 2009 where we looked at the sport fishing industry in North Carolina. We surveyed 150 charter/headboat captains and 1,300 passengers. We found that there are over 70,000 vessel trips serving 431,000 passengers per year in North Carolina. These passengers spend \$65 million on fees, an additional \$155 million on food and lodging in coastal areas, and support 1445 captain and crew jobs. The number of jobs supported coast-wide by the sport fishing industry is 4,900. This industry is directly dependent on having navigable inlets all along the coast. About 50% of passengers say that for-hire fishing was the primary reason for their visit. About 50% of passengers are from out of state and about 90% of charter and 60% of headboat visitors spent at least one night in the coastal area. There are hundreds of thousands of private boats that use our waterways and inlets for recreation and sport fishing every year. We did a study in 2007 focused on the larger (16-foot in length and larger) private boats that are most affected by navigability problems in the waterways and inlets. We surveyed over 1,600 private boaters on the AIWW. There are over 204,000 private boats that are registered in North Carolina near the AIWW. These vessels take over 134,000 trips per year and about 14% of these trips are taken by non-North Carolina residents. North Carolina residents spend \$47 million in the coastal area. There is \$60.5 million in direct spending and 4,000 jobs supported from private boat recreation. In the waterway study we asked our boating survey respondents what they would do if waterway navigability became worse. We found that we would see a 45% reduction in trips by North Carolina residents and a 30% reduction in trips by non-residents coming to North Carolina which translates to about \$103 million reduction in sales statewide and 1,600 jobs lost. We asked if they would be willing to pay for an additional sticker to put on their boat if that money was dedicated to waterway and inlet maintenance. Of the survey respondents, 74% of residents said yes and would pay an average amount of \$90 per year and 69% of non-residents would pay an average of \$99 per year.

Reduced Funding for Coastal Projects, Mayor Harry Simmons

Harry Simmons, Mayor of Caswell Beach, stated this presentation will be about beach project funding. Photos were shown of the beach in Caswell Beach in January of 1997. In 2001, we put a lot of sand on the beach and it made a big difference. Most of that beach width is still there. Photos were shown of North Topsail Beach before and after putting sand on the beach. The lessons of Superstorm Sandy show us that wide beaches, high dunes and elevated homes can limit storm damages. This combination results in the least storm damage and the least overall community misery. Wide beaches and high dunes provide storm protection while elevated homes limit or even eliminate the impacts of flooding. In fiscal year 2014, the federal government appropriated \$120 million, not counting Sandy Recovery funding, for coastal storm damage reduction. For fiscal year 2015, the Administration's proposed funding will only be \$20 million. There is a possibility that we will see \$75 million in 2015 but that assumes that Congress actually passes an Appropriations Bill. The recent "no earmarks" rule prevents congressmen and senators from doing much about the problem and the Office of Management and Budget (OMB) are the biggest federal problems. Congress is still supportive of beach projects; however the career employees at OMB, not elected by anyone, have a cultural bias against beach projects that is not supported by the data. By the way of comparison, fighting forest fires in America is federally budgeted at almost \$2 billion each year. North Carolina must prepare for less federal funding by identifying one or more sustainable state funding sources, much like we did for shallow draft inlets and the AIWW. The lessons learned from Sandy tell us that building wider and higher beaches with dunes can help protect North Carolina's coastal infrastructure, homes and businesses from storms. If federal funding is to be less, we must pick up that slack with state funding. All of us in attendance today must become engaged in finding the solutions. Solutions will involve finding new money. Possible sources of this new money include sales tax increases, food and beverage taxes, and offshore energy revenues. It will cost more to regain ground if we wait too late to start these efforts. Much of what I have mentioned can be found in an existing document already paid for with state funds. This document is the Beach and Inlet Management Plan and was created about 7-8 years ago and is not being fully utilized. Some of the numbers that Chris Dumas just showed you can from this same report. It needs to be updated and will take some money to do that, but it breaks down the entire state by sections and talks about what needs to be done in each of the sections.

Dredging Policies, Ken Willson and Layton Bedsole

Ken Willson, Client Program Manager CB&I, stated two years ago we started working on a voluntary initiative based on the lack of federal funding for dredging. We have seen a decrease in federal funding for quite some time and started looking at ways that we could make these projects more affordable for local communities. Harry talked about increased funding which is one way to make projects more affordable, but the other is how to decrease the cost of the projects. This group that I have been working with has been looking at one of the most obvious ways to decrease the cost and that is expanding the dredge windows. Right now we only have about 4 ½ months out of the year to dredge sand. Winter is the worst times of the year for dredgers to be working in the offshore area. It is the most dangerous time and you pay a premium for putting these guys out there in the most dangerous time. We understand the dredge windows are there for a real reason to keep up with the balance of economics and the environment. We know there was a project in Nags Head in 2011 using technology and proper conservation measures that can have minimal to no impact to the resources. We thought it would be a worthwhile effort to look at the data to see if it could be updated or see if there is new technology or new information. We have a working document. We did a quick economic analysis to look at the potential benefits to the costs of dredging using some efficiency curves that have been developed by the Corps of Engineers using existing projects and dredge costs. We looked at the projects that have already been estimated by the Corps and looked at

what they would cost if we could use the best part of those efficiency curves being in the summer as opposed to the winter. What we found was that we could see anywhere from 14-35% reduction in the costs of these projects if we could build them year round. When we look at the environmental information perhaps we can't build these things year round, but even widening those windows could see some relief for the costs of these projects. We also wanted to give some context to the summary of the authorized beach nourishment projects in North Carolina. Only about 26% of our coast is actively being nourished. We are lucky enough to have a lot of undisturbed areas in North Carolina that are not being impacted. We wanted to look at the impacts of dredging and beach management in context so when we talk about dredging all year long then we aren't talking about dredging and disturbing all of the beaches every year. Included is an assessment of potential impacts and mitigative protocol. We are letting environmental agencies and interest groups review this working document to seek out the folks that are willing to find the balance. We know there are folks on either side that are going to dig in their heels and are not interested in finding common ground. We are working to bridge the gap.

Layton Bedsole, New Hanover County Shore Protection Coordinator, stated the federal government gets dollars on October 1 and once they get their dollars, then they begin their planning and specifications and putting together bid packages. Once the bids are assessed and awarded then a contract is negotiated. Then the mobilization begins at the sites. That can take months. The past couple of years the Corps' contractors have been late coming to North Carolina. They have been arriving in late January or the middle of February. The magnitude of our projects immediately puts the completion of the project outside of the window. That frustrates the Corps, it makes the local stakeholders' jobs more difficult to get ready for the season, and the resource agencies are perturbed. If we could tweak the process by which the Corps gets their funds then the contractor would have more time to get to the site to work within the entire environmental window. If we were to open up the entire window to construction perhaps we may actually get better prices.

Governor McCrory asked what the counter argument was to this proposal. Ken Willson responded that if we go longer then we get into turtle windows when they are nesting and there are some bird issues. Renee Cahoon stated Nags Head did their project from May to October with one turtle take, and that turtle was just seen in the water and not taken. Frank Gorham stated we can mitigate the damage to the turtle. Governor McCrory suggested talking to the Interior Secretary about this issue.

Flood & Wind Insurance, Willo Kelly

Willo Kelly, Outer Banks Home Builders Association/Outer Banks Association of Realtors, stated flood insurance is a federal issue, but wind insurance is derived from homeowners insurance. The affordability of homeowners insurance is a statewide issue. There needs to be a balance in protecting the policy holder and keeping rates affordable while also maintaining a viable and sustainable insurance industry and market in this State. The rate making process is flawed. We have a policy holder versus industry stance. The cost of property insurance plays a vital role in housing affordability, investments in our communities and our overall economic health. It impacts one's ability to obtain or maintain a mortgage. Insurance rates are based on overall risk, reasonable profit, and cost of reinsurance. We are forced to buy insurance if we have a mortgage from a for-profit company and we have no control over their overhead and expenses. When we buy reinsurance that money goes out of the state of North Carolina and out of this country. In 2008 we were looking at a double digit rate increase for the third time in six years. There are 32 counties and the City of Charlotte that had not seen a rate increase in 20 years until the rates went into effect last July. There is no separate rate making process for wind rates, it is included as part of the homeowners insurance rate. Eighty-two counties pay a homeowners insurance premium that includes fire, liability and

wind. In the 18 counties in eastern North Carolina, over seventy percent of policy holders have a separate policy through the Beach Plan. In the rate filing there is an exclusionary rate just for wind in those counties. The 2011-2013 NOAA Severe Weather Report Maps indicate that the entire state is at risk of severe weather and catastrophes. Looking at the coastal property insurance pool (Beach Plan) right now there is \$90 billion in exposure. That exposure number is made up of not only the dwelling value structures it also includes personal property at 40% and it also includes other structures and loss of use. We only have \$14 million in losses in 2013 and paid out half of the premiums earned in reinsurance costs. The Beach Plan wind pool is not for rich vacation homeowners. They only make up 10% of the total plan, 73% percent of the policy holders in the beach plan do not live on the barrier islands. We need more transparency of data, to pass legislation allowing the Insurance Commissioner authority to lower the rate, and reconvene the General Assembly because the Insurance Commissioner announced on Monday that our rates should be lower than what they are but he has no authority to lower rates. We need to discuss the creation of a statewide task force on insurance.

Increasing Federal Regulation, Todd Roessler

Todd Roessler, Kilpatrick Townsend & Stockton Attorneys at Law, stated this presentation will focus on the issues revolving around the Endangered Species Act (ESA). My understanding of this issue has been informed by my representation of local governments on coastal issues. The ESA has been around for a number of years and was originally passed in 1973. The ESA seeks to protect and conserve listed species and their habitat. There are two key provisions. Section 9 is the Take Prohibition which says that you can't take a listed species. Take is broadly defined and involves more than killing, it includes harming or harassing. The Take Prohibition applies to both federal and non-federal activities. The second provision is the Consultation Provision. This says that for any federal activity there needs to be consultation with the Fish and Wildlife Service or National Marine Fisheries before they implement that activity. What this provision tries to do is avoid jeopardy to a listed species. It also prevents any adverse modification of critical habitat. This provision only applies to federal agency activity. Some of the species of concern in North Carolina are the piping plover, loggerhead turtle, Atlantic sturgeon, and red knots. The controversy is not limited to North Carolina but is up and down the east coast. It has shut down beaches for recreational use, halting beach renourishment projects, and brings uncertainty to the process. I will review the process for designating critical habitat for the loggerhead turtle and some of the statements federal agencies made and what the local concerns are. The first statement is that it is not a big deal and consultation only applies to federal agency activities. This is true, but you have to remember Section 9 Take Prohibition applies to non-federal activities. With respect to critical habitat almost any activity at the coast is going to involve some kind of federal activity. The second point made by the federal agency is that you don't have to worry about designation of critical habitat because there will be no additional management measures. This is highly questionable. When you look at how they designated critical habitat for the loggerhead they listed a number of threats to critical habitat. Anything that happens at the beach is considered a threat. There may be additional management considerations that need to be put in place to address those threats. Consultation is required to avoid jeopardy and to prevent adverse modification of critical habitat. You can't say that we are already looking at jeopardy so you don't have to worry about critical habitat. Those standards are different. Lastly there is a citizen suit provision in the ESA. This allows non-governmental organizations to file a suit and say that there are additional management considerations that are required to address this critical habitat issue. In the economic analysis that was done by the federal agencies, the US Fish and Wildlife Service said that designation of critical habitat for the loggerhead turtle will result in \$1.2 million of impacts over the next ten years. That comes down to \$26,000 annually for North Carolina. There are a number of reasons for that. The first is the method they use to evaluate

economic impacts. It vastly underestimates the economic impacts. There are a number of activities that occur at the coast that could be impacted by this designation. Our beaches drive our economy and it is important that this is addressed. The last point is that both Fish and Wildlife Service and National Marine Fisheries have taken the position that designation of critical habitat will not affect the coastal zone of North Carolina or any other state. This is important because under the Coastal Zone Management Act there is what is called a consistency determination. When a federal activity is impacting the coastal zone, the federal agency has to make a consistency determination. It gives DCM an opportunity to evaluate the information and determine whether the activity is consistent with North Carolina law. Without that consistency determination the State cannot evaluate what the impacts of this designation would be. Both Fish and Wildlife Service and National Marine Fisheries have proposed revisions to the critical habitat regulations. There is a lot of concern about this. We are asking the State to support the local concerns. There is a number of ways the state can do this. We can support the federal legislation to amend the Endangered Species Act. We could also improve coordination with federal agencies. The State could also support the statewide programmatic biological opinion. That is a document that looks at the impacts on listed species and their habitat statewide. That would prevent each local government from going through this process individually and provide more predictability. We request the State challenge the lack of consistency determination. It is not just the loggerhead that this will impact. Without the consistency determination the State's hands are tied and they cannot evaluate what the impacts of these designations are.

Governor McCrory stated there are three initiatives regarding offshore drilling. My first goal is to find out what we have and over the next two years do some seismic testing. Once we find out what we have then we will come up with the right process and procedures to get it. A parallel track is to get federal assurance to do revenue sharing similar to the Gulf States. The current laws will not allow us to share that money. There is no way North Carolina will do this without sharing the revenue. If we get that agreement then we would not implement it until part of that revenue share goes to the people who will have it in their back yard. The legislature can use this money for beach renourishment and dredging. A big issue that we are having that affects all of us and is really impacting NCDOT and DENR is lawsuits. We are spending so much on lawyers that we could be spending on cleaning up the environment or beach renourishment. It is stalling projects and increasing their costs. I need your help in finding out who is funding these lawsuits. The dilemma we have is even if we started taking actions on some of today's recommendations then the lawsuits will delay much of the action. Now is the time to be pragmatic and realistic. The CRC needs to come up with some specific, detailed proposals and I, as Governor, will go to Washington DC or make the invitations for them to come here to see North Carolina's unique concerns. We can also form coalitions with other states that are dealing with the same problems. In January I will be going to DC for the National Governor's Association and will be glad to work on these issues. The best way to deal with the federal government is to do it as a coalition.

The Commission recessed and resumed meeting on Thursday, October 23, 2014

MINUTES

Renee Cahoon made a motion to approve the minutes of the July 2014 Coastal Resources Commission meeting. Harry Simmons seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Hairston, Lewis, J. Simmons, H. Simmons, White).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I would like to extend a special welcome to our newest commissioner, Bill White, who has been appointed to the Coastal Forestry seat on the commission. Commissioner White, the staff looks forward to working with you, I hope that we can get together soon so that we can provide an overview of the Division of Coastal Management and I also hope that you will let us know if you need anything at all to help you get up to speed on the work of the Commission.

I thought the panel yesterday afternoon with the Governor went very well, speakers did a great job, and I appreciate the significant time and effort that the speakers, commissioners, and DCM staff contributed to pull that event together. Obviously this is a very busy meeting, and given the amount of materials that staff were preparing, I did not ask them to help me pull together the usual DCM "Update Memo." However, we have passed out copies of our recent fall newsletter that includes many updates on activities within the Division. In it you'll find an overview of the ongoing work on the CRC inlet management study and the Science Panel's work on the sea level rise study; an overview of our recent round of public access grants and Clean Marina certifications, a legislative update, and an update on key litigation involving the Division. As you may remember, the 2014 Regulatory Reform Act was signed into law around the time of our last meeting and included a provision repealing Inlet Hazard Areas in a few locations. You'll hear more about that as we discuss the inlet management study this afternoon. The Act also removed the automatic stay on CAMA permits that are appealed by 3rd parties, and staff have made the appropriate changes to our notification letters and procedures. Also, on October 6 the NC Supreme Court heard oral arguments on the Riggings HOA v. CRC regarding a variance request to allow sandbags to remain indefinitely at the site on Kure Beach. A decision on that case is expected early next year. Also in the newsletter we were pleased to announce that we've partnered with East Carolina University on a two year grant from the Bureau of Ocean Energy Management to evaluate offshore geological and geophysical data in northeastern NC to help identify potential sand resources and benthic habitat areas. In yesterday's meeting, we continued our work to reduce regulatory burdens by seeking your approval of fiscal analyses for two of the rule changes proposed by staff this year. Today we'll be discussing rules related to coastal wetlands and beginning our discussion of proposed changes to your Land Use Planning rules. We'll be starting to get into more details of these significant changes following on the broad outline I provided at your last meeting. Staff have also been working to present some details in response to your proposed review of the beachfront "static line" and the creation of a new jurisdictional area for inlets that are managed for navigation for the two State Ports. We also staffed a meeting that was hosted by Commissioner Dorsey in Wilmington to discuss next steps on the study of dredging windows. We'll conclude with an overview discussion of our Coastal Reserve program. Staff have also been busy with activities related to the potential for offshore energy development. In particular, the Division undertook a federal consistency review of a proposal to conduct seismic surveys by the National Science Foundation along transects offshore of Morehead City and Cape Hatteras. While these surveys were not intended to explore for potential oil and gas reserves, the technology and procedures used were very similar to those used for oil and gas exploration, so this was the first proposal of its kind in several decades. The Division found that

the proposal was consistent to the maximum extent practicable with the policies of the NC Coastal Management Program, but requested additional mitigation measures to match those proposed by BOEM for companies conducting surveys related to oil and gas development. We also submitted a formal request to NOAA to review future proposals for offshore seismic surveys related to offshore energy exploration, and we anticipate a decision on that request by the end of the month. Regardless, we have already had several meetings with geological and geophysical survey companies regarding future seismic surveys, with the shared goal of minimizing any potential resource impacts or conflicts with other ocean activities, such as commercial fishing and fishing tournaments. To give you a feel for the size of these operations, a seismic survey vessel can be trailed by a mile-wide array of around two dozen “streamers” with acoustic equipment that are five to seven miles in length. The ships may operate somewhat continuously over the course of several months. Additional proposals are anticipated over the next two years.

I want to welcome Brandon Puckett, our new Research Coordinator for the Coastal Reserve program, who started in August at our Beaufort office. Brandon has an Environmental Science degree from NCSU, a Masters from Maryland and a Ph.D. in Marine Science from NCSU, so he brings extensive experience in research/monitoring in NC estuaries and we’re excited to have him join DCM. I also want to welcome Greg Daisy to our Division; Greg is our new representative for DOT projects out of the Elizabeth City office but couldn’t be here today. For those who can make it, our Coastal Training Program is hosting a workshop for Real Estate professionals on December 9 at Jennette’s Pier in Nags Head. Please let us know if you would like more information on that event.

DENR will hold a public hearing at 9am, October 29, to receive public comments on a proposal to amend the State Dedicated Nature Preserve on Bald Head Island, N.C., which is a site that we manage within the Coastal Reserve Program. The hearing will be held at the Bald Head Island Conservancy, with a satellite location at the Deep Point Marina in Southport, N.C., for those unable to travel to the island. The agency will propose to amend the boundary of the dedicated area to facilitate the location of water supply wells for the Village of Bald Head Island. Also included in the proposal are measures to protect trust resources such as rare and listed plant species and community types within the dedicated area near the proposed well sites. The Division issued a permit to the Village of Bald Head Island earlier this week for a terminal groin. That’s the first permit issued pursuant to the terminal groin legislation passed in 2011 and we certainly learned a great deal along the way as we worked through the requirements of the law. Finally, we are planning for the next Commission meeting to be held at the NOAA Auditorium on Pivers Island in Beaufort on December 17-18.

CHAIRMAN’S COMMENTS

Chairman Gorham stated he had a chance to talk to the Governor’s staff this morning. The Governor was pleased with the number of people in attendance, impressed with the panel members, and will wait for the CRC’s report. The CRC needs to do a better job of assigning priorities to DCM. We cannot continue to add to the list of priorities without removing other priorities since

DCM has a limited staff available to work on these issues. There are still two vacant Commission seats.

ACTION ITEMS

15A NCAC 7H .0205 Coastal Wetlands – Occasional Flooding Criteria (CRC 14-31)

David Moye

David Moye stated we have a process for determining the extent of coastal wetlands using field and biological indicators that has been in place for 40 years. Staff has been trained through classroom education and through field training with the Division to identify coastal wetlands. The definitions of coastal wetlands in the N.C. General Statutes and the N.C. Administrative Code are basically the same and uses a two part test.. The first part of the test is whether any of the ten species of coastal wetlands plants have been identified on the site. The second part is whether the area is subject to regular or occasional flooding by tidal influence or wind tides. There are provisions within the rules that discount hurricanes or tropical storm tides. The reason for that was very simple. No one wanted areas flooded during hurricanes or tropical storm tides to be identified as coastal wetlands because that is only going to happen in an extreme event. If you look at what the Corps of Engineers does, they have field sheets to determine soil, plants, and water in the hole. They make note of their findings and give the property owner notice in writing whether they have delineated wetlands on their property. We have never had that type of process. The Corps goes through this process, but when it comes to putting out flags it is still subjective. If we can put this information into a rule then it would codify in rule the field verified information that we have always looked for. We have also developed a tear sheet, similar to what the Corps uses, so the field staff can note the indicators used and the species present. A copy of this information will be provided to the property owner. That will give them an opportunity to challenge that call to the District Manager and up to the Division Director if necessary.

Chairman Gorham asked Larry Baldwin, David Moye, and Craig Bromby to look at the process and if there is a need to provide an opportunity to appeal to the CRC following a wetland delineation.

Mary Lucasse noted that in the proposed rule amendment “and” should be changed to “or” in the list of indicators.

Harry Simmons made a motion to send amendments to 15A NCAC 7H .0205 as revised to public hearing. Renee Cahoon seconded the motion. The motion passed unanimously (Andrew, Hairston, J. Simmons, Baldwin, H. Simmons, Cahoon, Gorham, Lewis, White, Dorsey).

PUBLIC INPUT AND COMMENT

Steven Edwards stated he works for the Town of Oak Island and is a CAMA LPO and supports repeal of the static vegetation line.

Julie Damron, Shane Johnson, Sherri Pridgen, Peggy Stone, Steve Shuttleworth commented on problems with the static line in Carolina Beach and support using the development line that Carolina Beach already has to determine setbacks.

Robert Broome, NC Association of Realtors, commented on the adverse impacts of the static line exception for single family residences and duplexes.

Frank Rush, Town Manager of Emerald Isle, commented on concerns about the static line exception process and setbacks associated with the static line exception. Emerald Isle supports a development line.

Proposed Amendments to 15A NCAC 7B CAMA Land Use Planning Guidelines and 7L Land Use Planning Grants (CRC 14-32)

Mike Lopazanski

Mike Lopazanski stated North Carolina participates in a federally approved Coastal Management Program. It is a comprehensive resource management program administered by NOAA. It combines regulatory and planning components as part of the methodology used to look at comprehensive resource management and address growth and development issues. When it came to developing North Carolina's program the question was how to design a program that addressed both State and national concerns in an area with a tradition of local government autonomy and a strong advocacy of private property rights. The state legislature originally proposed that a professional staff would make the regulatory and planning decisions, however in order to address the initial opposition to CAMA, a compromise was reached where a local and state partnership was seen as essential to achieving resource protection and promoting economic development. The program that was designed for North Carolina emphasized local government control, utilized a citizen commission, and involved the folks that were affected by the program. Prior to the adoption of CAMA, most of the rural counties and small towns in eastern North Carolina had very little comprehensive planning or regulations. A lot of local governments were opposed to land use planning. Planning was seen as an essential component to the North Carolina Coastal Program. In the development of land use plans, the CRC sets the standards and the local governments are responsible for developing local policies based on the issues identified by the CRC. It is important to look at the changes to the program over time as it has evolved. We are at a point where most of the local governments are participating in some level of planning and at one point there were 72 land use plans. At the last meeting Braxton Davis presented some broad changes to incorporate into the land use plans that would provide increased flexibility for the planning content and format, clarifying that amendments and updates would be voluntary, and facilitate a new process for the review of CAMA Major Permits as well as ways to streamline plan approval. We partnered with the Coastal Federation and BASE in series of workshops to solicit recommendations from the local governments. Based on the interactions with local governments we have tried to reduce the overall burden on local governments and shift the emphasis to local policy development. We are instituting shorter timelines through the review of amendments and updates as well as having the certifications and updates delegated to the Division. Another major change will be the shift from the traditional CAMA land use plan to allow comprehensive planning effort that incorporates the elements of the 7B Guidelines into a comprehensive plan that will serve as their CAMA land use plan. In 7L we want to identify funds to make available on an annual basis for planning and management projects to address public access, plans, local ordinance development, and waterfront development plans.

We have taken these proposed amendments and let local governments review them. At the December meeting we will bring comments received to the Commission. After any changes by the Commission, we will request approval to go to public hearing with the proposed amendments.

Static Vegetation Line Alternatives (CRC 14-34)

Mike Lopazanski/Ken Richardson

Mike Lopazanski stated one of the priority items in the inlet management study report was to look at the static line and static line alternatives. Setbacks in North Carolina use a graduated system. The structure size dictates the distance from the first line of stable natural vegetation based on the erosion rate. The Division updates the erosion rates every five years and the minimum erosion rate is always two feet per year. Setbacks are calculated from the first line of stable vegetation and is determined in the field on a lot by lot basis. When there is a large scale beach fill project, it results in the first line of stable natural vegetation being surveyed in and this pre-project vegetation line becomes the static line which is used as the measurement line from which setbacks are measured. If the vegetation line is landward of the static line then the vegetation line will ultimately dictate the setback. In the current rule, a large-scale beach nourishment project is defined as greater than 300,000 cubic yards of sand or any storm protection project constructed by the US Army Corps of Engineers. In concert with the change to the graduated setbacks in 2009, there was recognition that the static line was having an impact on property owners as well as the increasing commitment of local governments to beach fill projects. The static line exception was created as a mechanism to provide some local relief to property owners by allowing limited development based on the existing vegetation line and a local government's documented commitment to long term beach nourishment projects. In addition to being allowed to use the existing vegetation line, development is limited in that it cannot be any further seaward than the landward most adjacent neighbor. The CRC authorizes the static line exceptions and reviews the exceptions every five years. Should a local government choose not to maintain their beach the small scale development provision puts fewer structures at risk.

There isn't much difference between the two alternatives that have been proposed. The Chairman has proposed eliminating the static line and utilizing a development line. Staff has proposed removing some of the restrictions associated with the static line exception. The main difference between the two proposals is the demonstrated commitment on the part of local governments to maintain their beach projects. The Chairman's proposal would eliminate the 300,000 cubic yard rule, no new development would be seaward of an existing development line determined by the local governments after being reviewed by the Division and Commission, the vegetation line would be used for setbacks in the absence of a development line, the graduated setbacks would remain, new or replaced structures would be sited based on the vegetation line or the development line whichever is further landward, and there would be no development on public trust areas. Staff has proposed amending the existing static vegetation line exception rules, by repealing the 2,500 square foot limitation on structures as well as the five year waiting period so that a static line exception could become retroactive to when a project was completed, allowing the CRC to amend the definition of a large-scale beach fill project, retain the need for commitment to a demonstrated long-term maintenance to their beach projects, and keep the graduated setbacks.

Ken Richardson utilized aerial photography to illustrate for the Commission communities that have static lines and static line exceptions and their impact on oceanfront development. He also showed examples of the existing line of development, some unique areas that could be problematic and examples of considerations that will need to be made in the establishment of a development line.

Chairman Gorham directed staff to consider a combination of both recommendations that would not have a cubic yard limitation, have no size limitation, and would require the existing static line remain until the community has a development line approved by the CRC. If communities do not want to present a development line then they would remain under the current procedures. The CRC

would then define the process and requirements of the development line and what would represent a commitment to maintain the beach. Chairman Gorham asked that comments and input be provided to staff on this proposal.

State Ports Inlet Management Areas of Environmental Concern – Draft Rule (CRC 14-35)

Heather Coats

Heather Coats stated this process was initiated with the Cape Fear River AEC Feasibility Study. One of the recommendations of that study was to expand the scope and to look at all inlets through a comprehensive Inlet Management Study. A recommendation of the Inlet Management Study was to establish an AEC for the State's two deep draft ports taking into account the priority placed on maintaining the federal channels for access to the State Ports, specifically looking at erosion control structures, beneficial use of dredged materials, and beach management. Subsequently Senate Bill 734 was recently passed which removed these two inlets from the Inlet Hazard Area of Environmental Concern. She advised that the Division met with the local governments adjacent to these two inlets and they identified their priorities for rule changes. Carteret County commented that protecting development from erosion is not an issue at Beaufort Inlet, however there was a desire for better sand management of the inlet. There was concern expressed about the location of the nearshore dredged material disposal site that is used for the federal project which is believed by Carteret County to be too far offshore to provide benefit to the littoral system. Most of the Town of Caswell Beach's comments were centered around Fort Caswell which is now listed on the federal National Register of Historic Places. There has been erosion at Fort Caswell and they would like to see more flexibility in addressing dune erosion and protecting threatened structures. There was also mention of reducing setbacks in the area of Fort Caswell that has historic seawall protection. The Village of Bald Head Island commented on wanting more flexibility with beach bulldozing. The passing of the recent legislation removing them from the inlet hazard area now allows them to use the General Permit for beach bulldozing on all of Bald Head Island. Sand bag rules were discussed extensively, specifically when they can be used and what constitutes an imminently threatened structure, what they can protect with sandbags and the size of the bags. Sand management was also discussed. The Village's contention was that dredge material should go to the area most adversely impacted by erosion. Ms. Coats stated that the Division also took into account the Chairman's proposal for beneficial use language that came from the Inlet Management Study. It is important to note that the draft rule was developed as a result of the meetings with the local governments. We have not met with the Army Corps of Engineers, the State Ports Authority, State Parks and National Parks Service. We have sent a copy of the draft rule language prior to the meeting, however it should be noted that there has been very little time for the parties involved to review it. In consideration of creating a new AEC the Division looked at the Ocean Hazard category. There are currently four AECs within the Ocean Hazard Areas. We would add a fifth category to 7H .0304 to include State Ports Inlet Management Area. The proposed definition would be the areas adjacent to and within inlets providing access to a State Port via a channel maintained by the US Army Corps of Engineers. These areas are unique due to the influence of a federally mandated fixed 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, 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 CRC and available without cost from DCM or on DCM's website. This was developed with regard to the language and recommendations of the inlet management study and we also felt the boundaries would be best established by using maps. 7H .0309 lists the exceptions to use standards in all ocean hazard areas. The only change is to add the State Ports Inlet Management Areas to the exception for

development on lots platted prior to June 1, 1979. In 7H .0313 we define the use standards for the State Port AEC. To address beneficial use we stated that clean, beach-quality material dredged from navigational channels within the Stated 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. This language came straight from the Dredge and Fill Law. This language was previously proposed and rejected by NOAA for the purposes of federal consistency determinations. We sent the rule language out for review and almost immediately heard back from the State Port Authority and the Corps expressing their concerns regarding the beneficial use portion that was included. Specifically the Port is extremely concerned about the lack of flexibility in the rule in regards to utilizing the offshore dredged material disposal sites during times of bad weather or when dredging small volumes of material. There is a fear that if this rule were implemented it could hinder dredging efforts at these inlets and could result in the State or local government having to assume some of the additional costs for dredging of these two inlets, which is currently 100% federally funded. The State Ports also submitted comments requesting that the Corps' concerns be fully vetted before moving forward with AEC rule development. Comments on the draft language were also received from local governments. Carteret and Caswell recommended removing the language that references active nearshore beach or inlet shoal system and shallow active nearshore area as did the Village of Bald Head Island. Carteret and Caswell did recommend adding 'to the maximum extent practicable' for possible approval by NOAA. The next use standard requires that all development in the State Ports Inlet Management Areas 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 7H .0309. Comments on behalf of Caswell and Carteret recommended that the language clearly except erosion control structures from setback requirements. The third use standard addresses imminently threatened structures and the language comes from the current definition of what we already considered imminently threatened and adds the provision for protecting dunes. The sandbag language used in the use standards is standard language used with other sandbag structures. It does allow sandbags constructed by a local government to remain in place for up to eight years and requires their removal within 30 days at the end of the allowable time period.

Justin McCorkle, Assistant District Counsel for the US Army Corps of Engineers Wilmington District, stated that he has been heavily involved in navigation projects for the past 12 years. I would like to start by saying that our district has a wonderful working relationship with DCM and have nothing but the deepest respect for the folks that we have dealt with. They have always been responsive to us. We want to continue the dialogue. We have been maintaining Wilmington Harbor since 1829. We have been maintaining the Morehead City Harbor since 1910. For more than a century that has been the central mission of the Wilmington District. Other things come and go but the maintenance of those two harbors is what keeps the Wilmington District going. Nationally they are not near the top of the ranks. In 2012, Wilmington was nationally number 64 and Morehead City was number 86 and typically dredging projects down that low don't get big increases in their budgets. There is a pot of money that has not been growing, but the share that those ports are going to get is not going to expand. While that is happening, dredging costs are going up and we are getting the same amount or less money to maintain these ports and every year the amount of dredging funds we receive goes down. We have had to take some actions in the past 10 years that we never would have thought of. In Morehead City right now we are having discussions with the State Port Pilots because they are on a draft restriction. It is a 42 foot project and they are somewhere in the low 30's in terms of the ships that can come in. The 40 foot ships cannot come

into Morehead City right now. We can't do anything about it until January. Please understand that most of this comes from the Corps wanting desperately to keep these ports open. We have been working hard with all of our partners the last couple of decades to work on the beneficial use issue. Right now, we are putting millions of cubic yards of sand on the beaches of Atlantic Beach, Bald Head Island, and Caswell Beach at 100% federal expense. If this rule amendment goes into effect with our plans as they exist right now, I don't think there is anyone in the room who will tell you that it will cost the same to do it. We can't put all the sand on beaches at federal expense and keep these ports open. Depending on how you define shallow, nearshore area and define it to mean something other than what we are using right now, then the cost to put it in the nearshore goes up too. If we are asked to put all the sand on the beaches every time we dredge then we are talking about doubling the costs, particularly in Morehead City. I don't think that the federal government is going to go along with doubling the costs. You can talk to your Representatives and see if they would be willing to do it. If not then we have no plan to maintain Morehead City Harbor. That concerns us. Asking us to do our dredging differently to benefit the beaches at the expense of the ports is a difficult decision. When the Dredge and Fill Law attempted to do it in 2005, NOAA did not approve it. We would expect that they would not approve it if asked again because we can't afford to do it this way. We are putting plenty of sand on all of the beaches right now. Atlantic Beach, Bald Head Island, and Caswell Beach are in great shape. We need to have some flexibility. We are doing everything we can. We appreciate the debate and appreciate the discussions, but this is more than a federal versus state issue. We need to make sure we have some more discussion and make the State Ports part of that decision because the cost of maintaining those ports helps to determine which ports get funded. You need to make sure it is a State position that you want to maintain these channels in this way because my guess is that what will have to happen is the State will have to come up with the funding mechanism.

Braxton Davis stated that this was presented to the CRC for a first time discussion and staff intends to continue the discussion. Greg Lewis stated he would go back and consult with the Towns and the Port at Morehead City. Frank Gorham said the current plan is to vote at the December meeting to approve the rule language for public hearing. Larry Baldwin stated the feds are concerned about the restraints imposed by the proposed rule language. The Chairman directed staff to have some meetings with the Corps and anyone else who would like an opportunity to provide comments on the draft language. Mike Lopazanski stated the focus of the discussion has been all about beneficial use parts of the language, but we haven't talked at all about the development standards within the Port AEC and he has concerns about whether this can be ready by the December meeting. We still need to talk about sandbag provisions, maps, talk with stakeholders, and look at what would encompass the AEC. Greg Lewis stated we need to do this correctly and if it doesn't happen by the next meeting then we don't need to rush it. Braxton Davis stated there would need to be a workshop for a broader stakeholder group. It will take time to organize something where we have engaged all stakeholders and not just the most obvious ones. The Chairman and DCM Director would put together a game plan for how we should proceed, send it out to the CRC and then decide if it would be on the December agenda.

Dredging Window Study Update

Suzanne Dorsey

Suzanne Dorsey stated until October 10, the conversation that has been going on about dredge windows has been mainly between shoreline protection folks and engineering firms. I thought it was important to bring in the state and federal agencies that will have some say over the dredge windows as well as the other stakeholders and advocacy groups. There are 22 volunteer groups that deal with sea turtles. The CRC Chair directed me to focus on common ground and I will add some

innovation to that. In terms of common ground I think with the dredge windows we have to look at the Jones Act. Issues arising under the Jones Act are not likely to be resolved. In our discussions we talked about developing a biological opinion that divides the State into two distinct areas. The northern part of our State is primarily impacted by nesting shorebirds. The southern part of our State is impacted by sea turtles. There may be some ability to write a biological opinion that separates mitigation tools and risks associated with these two different areas of our State. The next piece is to find a way for the Corps to start earlier. Then we would have all the agencies behind you and all the advocacy groups around you which would meet everyone's needs. We can do better than starting in January or February with a three months window. We should put high priority on working with the Corps on this. If we are looking for innovation then we are not going to find that from the agencies. If we want to deal with the Endangered Species Act, the problem is that each turtle makes a difference. Where can we add turtles and add to the population? What can we do that is innovative? We need new ideas and solutions to solve these difficult problems. Working with innovation like shoreline management takes dollars. This will only happen if dollars are put towards it. The savings that we talk about in opening up dredge windows can be converted to innovation. We need an understanding of the timeline and there is a lot more to do. We need to understand the policy and then we need direction on specific strategies with which to move forward.

Ken Willson stated that until the meeting a couple of weeks ago this effort was between coastal consultants and managers. There has been a lot of good exchange over the last two weeks. We have gotten some feedback from US Fish and Wildlife Service and have been promised some data from Coastal Federation and Audubon. If we can get that information as soon as possible then we will add it to what we have and be able to give the CRC our conclusions on what the data says. The conclusions will always be able to be interpreted. Shorebirds are a far more complicated issue than the turtles. There is room to expand the window on either side and have successful nest relocation programs, but it gets complicated when we bring shorebirds into it.

Braxton Davis stated the programmatic biological opinion applies to routine projects. DCM's approach to the critical habitat issue has been to sponsor the development of a programmatic biological assessment that the Corps can submit to the Fish and Wildlife Service to address all threatened and endangered species on the coast of North Carolina and the mitigation options and standards that are in place for sand placement on beaches. By doing so, we can address critical habitat all at once. It should be a positive step forward to addressing some of the critical habitat issues. It does not address the in-water dredging piece which is reviewed by the National Marine Fisheries Service. We have assembled an interagency state-federal review team to develop this assessment.

NC Coastal Reserve Program

Neal Andrew/Braxton Davis/Jim Leutze

Neal Andrew stated I asked that this topic be added to our agenda for several reasons. The first is that I have a personal interest in Masonboro Island. The Coastal Reserve program encompasses 10 areas along our coast line and all of these sites are important coastal resources. The State law that created the NC Coastal Reserve in 1989 includes a statement of purpose. This statement lists four principal purposes and one is to provide new information on coastal ecosystem processes to decision makers as a basis for the promotion of sound management of coastal resources. It seems to me that the CRC is the group of decision makers that this statement references. Therefore, I want to learn more about what role the CRC has in the Coastal Reserve, the type of information that can be provided to the CRC, and begin discussion on whether the CRC should have a larger oversight role. As an example, the Reserve program is in the very early stages of updating its five-year

management plan. Will the CRC be participants in this management plan update? I believe it should and mine is not an isolated opinion. NOAA who is the Coastal Reserve's major funder, has recently recommended that DCM and the Reserve work towards informing the CRC of its capabilities and supports the CRC's research needs. The second principal purpose is to accommodate traditional recreational activities as long as they do not disturb the Reserve environment. I readily admit one of my interests in the Reserve program is to protect public access and traditional recreational use at the Reserve sites. In the eight years that I have been following and/or been a member of the Masonboro Local Advisory Committee, the number one concern that has been raised with me is that recreational use appears to be getting watered down over the course of the five-year management plan updates. It has also been reported to me that there are similar concerns at other Reserve sites. Although I remain concerned about the changes that have been made over the years to the management plans that have marginalized and defused public recreation on the Reserves, I am encouraged by the very good working relationship between Masonboro.org and the Coastal Reserve staff. The main reason for this is the leadership of the Director of the Division of Coastal Management, Braxton Davis. In a 2012 meeting Braxton facilitated a discussion between Masonboro.org and the Reserve staff that led to all issues being put on the table and the two groups realizing that they have a lot of common ground. It is from this meeting that a partnership was formed to provide educational programs that increased the public's awareness of coastal ecosystems. In the past two years the Island Explorer Program has taken over 350 fifth graders to the island for educational field trips. Masonboro.org has provided the funding and resources to transport students to the island and the Reserve staff has provided the coastal education component. It would be great to think that with the CRC's assistance this could be developed into a statewide program.

Dr. Jim Leutze, Chancellor Emeritus of UNCW and past member of CRC, stated the CRC balances conservation and development. Some of these discussions began 10 years ago when the CRC first adopted a policy of education and how to utilize the Coastal Reserves. I have always been a strong advocate of balancing retaining the Reserves in their pristine manner as well as public access. If you look at New Hanover County there are not a lot of open beaches. There are very few places where the average citizen can go to a pristine beach and Masonboro Island is one of those. The issue has shifted over time. Initially the issue was the Fourth of July and everyone leaving their trash. Masonboro.org was formed, in part, to pick up the trash and talk to people. I strongly support the research aspect on Masonboro Island and for a period of years UNCW had a grant to study the human impact on the island. Before they came to final conclusions the funding was cut off. Their preliminary conclusions were that human activities were not having a negative impact on the island. A few years ago we had the discussion over the role of the CRC. We decided that we needed a balance between research, human activity and pristine areas but we were told that we had no role. I thought that was upside down and the CRC should be consulted about Reserve policy. I advocate cooperation. The CRC should be the public voice that looks for a balance between public access and maintaining the pristine environment.

Braxton Davis stated in South Carolina the Reserves were not part of the State's coastal program. The Reserve program was established under the same federal law, the Coastal Zone Management Act. Because the Reserve program is in the Division of Coastal Management we have the chance to bring the work and research of the Reserves to the CRC. I am proud of the model that North Carolina has for this and it is talked about at the national level a lot. I knew Rebecca Ellin when I was in South Carolina from her leadership at the national level as the President of the National Estuarine Research Reserve Association. She has done a lot of good things with the program. There are ten sites and six of those are State Reserves and four make up the National Estuarine Research

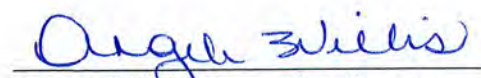
Reserve in North Carolina. The program is managed from four offices with 12 employees. Estuarine Research Reserves were designated in 1985. Masonboro Island was added to the National Estuarine Research Reserve in 1991. The Reserve rules were established in 1986, but CAMA created the Coastal Reserve Program because there was an interest in adding additional State sites to a system of Reserves beyond the NERRS components. That was done in 1989. The amendments to CAMA required that the system be carried out in coordination with the NERRS and administered by DENR. CAMA also directed the Department to consult with and seek the ongoing advice of the CRC. The Department may by rule define the areas to be included in this system and set standards for its use. The Reserves are also dedicated as State Nature Preserves which are under the Natural Heritage Program. This designation is for nine of the ten sites and there are additional use standards for these areas. The Departmental rules for the Coastal Reserve are found in 15A NCAC 70. The purposes of the Reserve are to protect the represented coastal ecosystems, to conduct relevant research, education, and to accommodate compatible traditional recreational use. We have local advisory committees (LACs) set up for each of the ten Reserves. This is required as part of the Departmental rules. the LACs are advisory groups that provide input and recommendations on program site activities. Research and monitoring is a major focus of the Reserves. As part of the national system there is a standard set of system-wide, long-term monitoring programs. A lot of the focus areas are on water quality, marsh monitoring, estuarine shoreline stabilization, and are part of a national system that NOAA established as Sentinel Sites for sea level rise monitoring. The Coastal Training Program is set up in the NERRS where we do science based training for local officials, realtors, and agency staff. There are also K-12 education programs that include field trips and teacher workshops. We have general public opportunities by offering summer field trips. We have stewardship staff that work directly on threatened and endangered species protection, non-native invasive species, signage, and outreach.

CAMA states that all lands and waters within the system shall be primarily used for research and education. Other public uses such as fishing, hunting, navigation and recreation shall be allowed to the extent consistent with these primary uses. Improvements and alterations to the land shall be limited to those consistent with these uses. We have free and open access to these sites year around. We have hunting allowed at two of the sites, 53 commercial vendors providing access to the sites. We have tried to restrict major, organized, planned events with excess noise. While there may be changes in the management plans over time, there have been no discussions of any public access restrictions. Our perception is that recreation has increased over time with coastal growth. The management plan update is required every five years and this plan will cover 2016-2021. The stakeholder engagement for that includes public meetings, local advisory committee meetings, non-local advisory committee partner surveys, education training needs assessments. There is also a formal comment period and public meetings. The LACs will meet to be briefed on the management plan updates and get their perspectives on all aspects of the program to get their input.

With no further business, the CRC adjourned.

Respectfully submitted,


Braxton Davis, Executive Secretary


Angela Willis, Recording Secretary

NC COASTAL RESOURCES COMMISSION (CRC)

Special Meeting

November 19, 2014

DENR – Wilmington Regional Office

Participating CRC Members

Frank Gorham, Chair

Renee Cahoon, Vice-Chair (attending by conference call)

Neal Andrew

Larry Baldwin (attending by conference call)

Suzanne Dorsey

Greg Lewis (attending by conference call)

Jamin Simmons (attending by conference call)

Harry Simmons

Bill White (attending by conference call)

Participating Attorney General's Office Members

Christine Goebel

Mary Lucasse

CALL TO ORDER/ROLL CALL

Frank Gorham called the meeting to order reminding Commissioners of the need to state any conflicts due to Executive Order Number One and also 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. Commissioners Marc Hairston and John Snipes were absent. No conflicts were reported. The Chairman stated he knows Tom Jarrett and Ken Willson; however he has not discussed these variance requests with them. Based upon this roll call Chairman Gorham declared a quorum.

VARIANCE REQUESTS

West Beach Drive – Joint Request by Four Homeowners (CRC-VR 14-15)

Christine Goebel/Heather Coats

Heather Coats, DCM Field Representative, gave the Commission an overview of the property. Christine Goebel of the Attorney General's Office represented staff. Attorney Barry Golob, admitted *pro hac vice* was present and represented Petitioners. Ms. Goebel stated Petitioners own four adjacent oceanfront homes in Oak Island. On May 21, 2014, Petitioners were each issued CAMA General Permits for the installation of sandbags in front of their homes and each installed their bags by the end of May. On September 24, Petitioners jointly submitted an application for a CAMA Major Permit seeking to install additional sandbags in excess of the size limits for sandbags in order to create a sandbag structure with a maximum base width of 30 feet and an

elevation of 15.7 feet NAVD 88. On October 24, DCM denied Petitioners' permit application due to its inconsistency with the Commission's size limit rules for sandbags. Petitioners submitted a variance request seeking permission to install larger bags as described in the permit application. Ms. Goebel reviewed the stipulated facts of this variance request and informed the Commission that Staff and Petitioners agree on three of the four variance request which must be met in order to grant the variance. Staff and Petitioners disagree on the second variance criteria. Specifically, it is Staff's position that it is not peculiar for conditions on the property to be influenced by inlet processes. The Commission's rules reflect that inlets are especially volatile and are known to regularly move causing both erosion and accretion.

Attorney Golob reviewed the stipulated facts which he contends supports the granting of this variance request stating hardships are caused by conditions are peculiar to the property specifically the aggressive lunar tides and accelerated erosion immediately in front of these four properties. The Town of Oak Island is putting together a dredging and beach nourishment project intended to provide relief from the erosion.

Chairman Gorham asked Mr. Golob if he could commit to a six month timeframe to begin construction of the sandbag project. Mr. Golob agreed.

Harry Simmons made a motion that the Commission affirmatively find that strict application of the applicable development rules, standards or order issued by the Commission cause the Petitioner an unnecessary hardship. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

Harry Simmons made a motion that any hardships result from conditions peculiar to the Petitioner's property. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

Harry Simmons made a motion that hardships do not result from actions taken by the Petitioner. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

Harry Simmons made a motion that subject to the condition that the proposed development begin within six-month

the variance 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. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

This variance request was granted with the condition that construction begin on the development within six months.

Town of North Topsail Beach (CRC-VR 14-16)

Christine Goebel/Jason Dail

Jason Dail, DCM Field Representative, gave an overview of the property. Christine Goebel of the Attorney General's Office represented Staff. Attorney Brian Edes was present and represented the Town of North Topsail Beach. Ms. Goebel stated the Town 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 there was accelerated erosion in this area. During the summer of 2014, the Town began to research various options to protect the 20 structures in this area from erosion. On October 3, 2014 Petitioner completed a CAMA Major Permit application seeking to develop a sandbag structure larger than those allowed by the Commission's sandbag rule size limits. On October 24, 2014 DCM issued Emergency CAMA Major Permit authorizing sandbags at this location but conditioned them to meet the Commission's rules limiting size. Petitioner now seeks a variance to allow the placement of sandbags in the configuration proposed in their permit application. Ms. Goebel reviewed the stipulated facts of this variance request and stated that Staff and Petitioner agree on three of the four variance criteria which must be met in order to grant the variance request. Staff and Petitioners disagree that any hardships are a result from conditions peculiar to the Petitioner's property. The site is and has been located within the Inlet Hazard AEC for the New River Inlet since it was adopted and is clearly influenced by inlet processes. The Commission's rules note that inlets are especially volatile and are known to regularly move causing both erosion and accretion. Thus, it is staff's position that any hardships are not caused by conditions peculiar to the property.

Brian Edes, Town Attorney for the Town of North Topsail Beach, stated Petitioners are in agreement with Staff on three of the criteria. Mr. Edes reviewed the stipulated facts which the Town contends supports the granting of this variance request. The record indicates that the hardships are peculiar to the site based on accelerated erosion, overwash flooding, and the impact of the 2013 Phase I completion of the channel realignment and renourishment project. We need at least five years to see benefits from Phase I.

Chairman Gorham asked Mr. Edes if the Town would commit to begin the project within six months. Mr. Edes agreed.

Harry Simmons made a motion that the Commission affirmatively find that strict application of the applicable development rules, standards or orders issued by the Commission would cause Petitioner an unnecessary hardship. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

Harry Simmons made a motion that the Commission affirmatively find that hardships result from conditions peculiar to the Petitioner's property. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

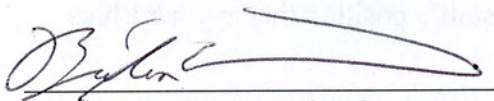
Harry Simmons made a motion that the Commission affirmatively find that any hardships do not result from actions taken by the Petitioner. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

Harry Simmons made a motion that the Commission affirmatively find that subject to the condition that the Town begin the project within six months, granting the variance 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. Suzanne Dorsey seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, White).

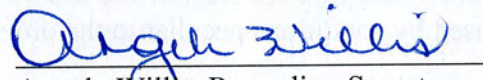
This variance request was granted with the condition that construction on the development begin within six months.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

MEMORANDUM

CRC-14-36

TO: Coastal Resources Commission
FROM: Tancred Miller
DATE: December 2, 2014
SUBJECT: Fiscal Analysis 15A NCAC 7H .1500 GP for Excavation of Upland Basins –
Excavation and Bulkheads

At a prior meeting, the CRC approved staff-proposed changes to 15A NCAC 07H .1500 for public hearing. 7H.1500 authorizes excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. The permit is limited to development off of existing manmade systems.

The proposed amendments to 7H.1500 will: 1) allow for the construction of a bulkhead around the newly excavated boat basin, 2) allow for excavation of boat basins adjacent to primary nursery areas with coordination with the appropriate fishery resource personnel, and 3) extend the time frame of the permit from 90 days to 120 days to be consistent with other GPs.

Staff has completed the required fiscal & regulatory impact analysis and submitted it to the department and the Office of State Budget and Management (OSBM) for review and approval. The CRC is also required to approve the fiscal analysis before the amendments can be published in the NC Register and opened up for public comment.

The draft fiscal & regulatory impact analysis is attached. Staff is hoping to get DENR and OSBM approval prior to the CRC's December meeting, so that the CRC will have the opportunity to approve the analysis and proceed with rulemaking.

Fiscal & Regulatory Impact Analysis

Excavation of Upland Basins

Amendments to 15A NCAC 7H .1501 & .1505

General Permit for Excavation within or Connecting to Existing Canals, Channels, Basins or Ditches
in Estuarine Waters, Public Trust Waters, and Estuarine Shoreline AECs

Purpose & Specific Conditions

Prepared by

Tancred Miller

NC Division of Coastal Management
(252) 808-2808 Ext. 224

December 1, 2014

Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission (CRC).
Title	General Permit for Excavation within or Connecting to Existing Canals, Channels, Basins or Ditches in Estuarine Waters, Public Trust Waters, and Estuarine Shoreline AECs
Citation	15A NCAC 7H .1501 & .1505
Description of the Proposed Rule	7H.1500 authorizes excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. The permit is limited to development off of existing manmade systems.
Agency Contact	Tancred Miller Coastal & Ocean Policy Manager Tancred.Miller@ncdenr.gov (252) 808-2808 ext 224
Authority	113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl).
Necessity	The CRC is proposing to amend its rules governing excavation of upland basins. The CRC is seeking to provide financial and administrative relief to applicants who wish to perform upland excavation in conjunction with stabilization of the basin shoreline. The amendments will allow both activities to occur under a single General Permit instead of two.
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private property owners: Yes

Summary

The CRC is proposing to amend General Permit (GP) 7H.1500 to: 1) allow for the construction of a bulkhead around the newly excavated boat basin, 2) allow for excavation of boat basins adjacent to primary nursery areas with coordination with the appropriate fishery resource personnel, and 3) extend the time frame of the permit from 90 days to 120 days to provide greater flexibility in the use of the General Permit associated with upland boat basins.

Currently under the CRC's rules, construction of a boat basin up to 50' by 50' off a manmade system is allowable under this permit. Generally this means the property owner is digging up their own high ground to put in a boat slip and in most cases the newly excavated area is bulkheaded to prevent sloughing of the bank into the basin. Currently under the rules, a bulkhead GP is also required in addition to the excavation GP resulting in a total permit fee of \$800 for the work. In addition, currently this GP does not allow for any new basin excavation within or with connections to Primary Nursery Areas. After consulting with staff from the NC Wildlife Resources Commission as well as DCM's Fishery Resource Specialists, it was the consensus of the aforementioned agency staff that new excavation in a PNA could be allowable, with coordination to determine whether any type of moratorium should be required for the project. A third component that was discussed at the last CRC meeting was modifying the expiration date of this GP from the current 90 days to 120 days to make it consistent with other GPs.

Based on a review of permitting activity over the past six years, a total of three projects would have been eligible to receive the benefit of conducting both activities under the single GP. Staff does not anticipate any increased rate of utilization following the amendments.

The economic impacts of this proposed rule change are potential benefits to property owners will be a \$400 savings in permit fees per project. Property owners will also receive a time benefit as the GP will be valid for 120 days instead of 90. Total cost savings will be \$1,200 over six years, or \$200 per year. Assuming an annual maximum savings of \$200, the 10-year net present value of the proposed rule change is approximately \$1,400.

These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be an insignificant impact on Division of Coastal Management permit receipts.

The proposed effective date of these amendments is July 1, 2015.

Description of Rule Amendment

15A NCAC 7H SECTION .1500 is the section title and is being amended for formatting and to clarify that the section applies to the Coastal Shoreline Area of Environmental Concern.

7H .1501 is being amended for grammar.

7H .1502 is being amended to extend the permit validity from 90 days to 120 days, to be consistent with the CRC's other GPs.

7H .1504 is being amended to allow new basins with connections to primary nursery areas (PNAs), subject to coordination with the Division of Marine Fisheries or Wildlife Resources Commission. Staff does not recall any proposed basin excavation projects that were denied because they would have connected to PNAs; therefore, this amendment merely codifies the existing practice of coordinating with the appropriate agencies in order to permit the proposed development. This rule is also being amended to reflect that the Division of Marine Fisheries is the agency that sets closure policy for shellfish waters.

7H .1505 is being amended for the following reasons:

1. To establish that the agency will use the definition of submerged aquatic vegetation that is adopted by the Marine Fisheries Commission;
2. To remove the provision that the Division of Coastal Management establishes development moratoria to protect biological activity;
3. To codify that excavation may be permitted within or with connections to PNAs following consultation with the Division of Marine Fisheries of the Wildlife Resources Commission;
4. To allow for the construction of bulkheads to stabilize the basin shoreline under the same GP;
5. To establish the maximum waterward alignment of bulkheads under this GP;
6. To codify allowable bulkhead materials;
7. To establish sources and procedures for backfilling bulkheads, consistent with GP 7H .1100; and
8. To establish the maximum bulkhead length that can be permitted under this GP. The maximum total length that can be constructed under this GP is 500 feet, consistent with GP 7H .1100.

Cost or Neutral Impacts

Private Property Owners:

The proposed rule amendments would apply to riparian property owners seeking a Coastal Area Management Act (CAMA) permit for the excavation of upland basins in conjunction with shoreline stabilization. In the past six years, there have been approximately three projects that would have been eligible to receive a single permit for the two activities. The average number of permit applications over this timeframe (0.5 per year) is considered to be typical and it is assumed that this rate will continue into the future. A GP under 7H .1100 for the construction of a bulkhead for shoreline stabilization is \$400, while a permit for a riprap revetment under the same rule is either \$200 or \$400 depending on the location of the revetment relative to normal high water or normal water level. For the purpose of this analysis staff assumes that bulkheads will continue to be the stabilization method most commonly used in conjunction with upland basin excavation.

In order to estimate the potential cost savings to property owners, it is assumed that the property owners who perform upland basin excavations will always choose to install bulkheads at the same time. The \$400 difference in permit fees is estimated to save property owners \$200 per year. No other cost savings to private property owners is anticipated.

Consistent with other GPs, development activity under this GP will be extended from 90 days to 120 days. The additional 30 days is an added convenience to property owners, but a financial impact of the additional time cannot be quantified.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the agency declares that the proposed amendments to 15A NCAC 7H .1500 will not affect environmental permitting for the NC Department of Transportation. While NCDOT would be eligible for the GP and its associated uses, it is unlikely that NCDOT will be involved in such a project. In the past six years, there have been no permits issued to NCDOT for this activity.

Local Government:

While local governments would be eligible for the GP and its associated uses, they are typically not involved in projects of this scale. In the past six years, there have been no GPs issued to local governments for this activity. Local governments do not receive revenues from GP application fees, and will not experience any loss of revenue from this action.

Division of Coastal Management:

The Division of Coastal Management's permit review process will not be changed by these amendments as property owners will still need to obtain a CAMA GP. The Division will experience a \$200 per year decrease in permit receipts but this is not seen as significant, and will realize a modest time-savings benefit by not having to review two separate applications and issue two separate permits. This streamlining is consistent with the intent of the General Permit process.

Cost/Benefits Summary

Private Citizens:

The amended basin excavation rule would apply when riparian property owners are seeking a Coastal Area Management Act (CAMA) permit for the construction of an upland basin that also includes the construction of an erosion control structure typically permitted under 7H .1100. Based on a review of CAMA Major Permits for the past six years, a total of three projects could have benefitted from having both activities authorized under a single permit.

The economic impacts of this proposed rule change are potential benefits to property owners which will be an average of \$200 per year in permit fees. Property owners will also receive a time benefit as the time allowed for construction under GP 7H .1500 will be extended from 90 days to 120 days. Assuming an annual maximum savings of \$200, the 10-year net present value of the proposed rule change is approximately \$1,400.

APPENDIX A

SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS, CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS, AND ESTUARINE COASTAL SHORELINE AEC'S AECS

15A NCAC 07H .1501 PURPOSE

This permit will allow excavation within existing canals, channels, basins and ditches in estuarine and public trust waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities. This general permit ~~is being~~ was developed according to the procedures outlined in Subchapter 7J .1100, and ~~will apply~~ applies to the estuarine waters and public trust waters areas of environmental concern.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);
Eff. July 1, 1984;
Amended Eff. December 1, 1987.
Amended Eff. July 1, 2015.*

15A NCAC 07H .1502 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. Applicants shall provide their name and address, the site location and the dimensions of the project area.

(b) The applicant must provide:

- (1) Confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) Confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the proposed area of excavation and spoil disposal. Written authorization to proceed with the proposed development can be issued during this site visit. All excavation must be completed within ~~90~~ 120 days of the date of permit issuance, or the general authorization expires.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);
Eff. July 1, 1984;
Amended Eff. January 1, 1990; December 1, 1987.
Amended Eff. July 1, 2015.*

15A NCAC 07H .1504 GENERAL CONDITIONS

(a) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(b) This general permit will not be applicable to proposed maintenance excavation when the Department determines that the proposed activity will adversely affect adjacent property.

(c) This permit will not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

~~(d) New basins within or with connections to primary nursery areas are not allowed.~~

~~(e)~~(d) No new basins will be allowed that result in closure of shellfish waters according to the closure policy of the Division of ~~Environmental Health~~ Marine Fisheries.

~~(e)~~(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization, nor,

to abide by regulations adopted by any federal or other state agency.

~~(g)(1)~~ Development carried out under this permit must be consistent with all local requirements, AEC rules, and local Land Use Plans current at the time of authorization.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);
Eff. July 1, 1984;
Amended Eff. May 1, 1990; December 1, 1987;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994.
Amended Eff. July 1, 2015.*

15A NCAC 07H .1505 SPECIFIC CONDITIONS

Proposed maintenance excavation must meet each of the following specific conditions to be eligible for authorization by this general permit.

- (1) New basins will be allowed only when they are located entirely in highground and join existing manmade canals or basins.
- (2) New basins will be no larger than 50' in either length or width and no deeper than the waters they join.
- (3) New basins must be for the private non-commercial use of the land owner.
- (4) Maintenance excavation must involve the removal of no more than 1,000 cubic yards of material as part of a single and complete project.
- (5) All excavated material must be placed entirely on high ground above the mean high tide or ordinary high water line, and above any marsh or other wetland.
- (6) All spoil material must be stabilized or retained so as to prevent any excavated material from reentering the surrounding waters, marsh or other wetlands.
- (7) The proposed project must not involve the excavation of any marsh, submerged aquatic vegetation (as defined by the Marine Fisheries Commission), or other wetlands.
- (8) Maintenance excavation must not exceed the original dimensions of the canal, channel, basin or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor deeper than connecting channels.
- ~~(9) No excavation may occur during times designated by the N.C. Division of Coastal Management for protection of fish, shellfish or wildlife resources.~~
- ~~(10)~~(9) No maintenance excavation may take place within prime shellfish areas as designated by the N.C. Division of Marine Fisheries.
- ~~(11)~~(10) Proposed excavation must not promote or provide the opportunity for a change in existing land use at the time of project review.
- ~~(12)~~(11) New basins and canals must maintain required setbacks between septic tank systems and surface waters.
- (12) Maintenance excavation as well as excavation of new basins shall not be allowed within or with connections to primary nursery areas without prior approval from the Division of Marine Fisheries or Wildlife Resources Commission (whichever is applicable).
- (13) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin to stabilize the shoreline from erosion.
- (14) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal water level at any point along its alignment.
- (15) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other suitable materials approved by the Division of Coastal Management.
- (16) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.
- (17) Construction of bulkhead authorized by this general permit in conjunction with bulkhead authorized under 15A NCAC 07H .1100 shall be limited to a combined maximum shoreline length of 500 feet.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);
Eff. July 1, 1984;
Amended Eff. September 1, 1988; December 1, 1987.
Amended Eff. July 1, 2015.*



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

December 03, 2014

MEMORANDUM

CRC-14-37

TO: Coastal Resources Commission

FROM: Ken Richardson, DCM GIS Analyst

SUBJECT: Town of Ocean Isle Static Line Exception 5-Year Progress Report

Petitioner, the Town of Ocean Isle (“Town”) requests that its static line exception be reauthorized by the Coastal Resources Commission, based on the information found within the attached 5-year progress report. The granting of such a request by the Commission would result in the continued application of 15A NCAC 07H.0306(a)(8) to proposed development projects along the affected area of the town, instead of the static or pre-project vegetation line of 07H.0305(f) and 07H.0306(a)(1).

The Town’s original static line exception was granted by the Commission on January 25, 2010. Rule 15A NCAC 07J.1204(b) requires that the 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)(1) through (d)(4).” Specifically, these four criteria require a showing by the Petitioner of (1) a summary of all beach fill projects in the area proposed for the exception, (2) plans and related materials showing the design of the initial fill projects, and any past or planned maintenance work, (3) documentation showing the location and volume of compatible sediment necessary to construct and maintain the project over its design life, and (4) identification of the financial resources or funding sources to fund the project over its design life. 15A NCAC 07J.1204(b) also states that the Commission shall consider design changes to the initial large-scale beach fill project, design changes to the location and volume of compatible sediment, and changes in the financial resources or funding sources necessary to fund the large-scale beach fill project.

Based on the Town’s 5-year progress report and additional exhibits attached, Staff recommends that the conditions in 15A NCAC 07J.1201(d)(1) through (d)(4) have been met, and there have been no changes in the last five years that should result in the Town’s static line exception being revoked. Staff recommends that the Commission renew the Town’s static line exception for another five years.

The following information is attached to this memorandum:

Attachment A: Relevant Procedural Rules

Attachment B: Staff’s Report to the Commission

Attachment C: Petitioner’s 5-Year Progress Report

Attachment D: Town of Ocean Isle Interlocal Agreement for Contingency Plan Beach Nourishment

ATTACHMENT A: Relevant Procedural Rules

SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

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

(a) Any local government 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 25 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 Eff. March 23, 2009.

15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) 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.

(b) 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 Eff. March 23, 2009.

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 Eff. March 23, 2009.

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 Eff. March 23, 2009.

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 Eff. March 23, 2009.

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 Eff. March 23, 2009.

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:

- (8) 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. A development setback measured from the vegetation line provides 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. 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) of this Paragraph, a local government or community 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)(2)(A) 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).

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.**

ATTACHMENT B: Staff's Report to the Commission

I. Description of the Affected Area

The Town of Ocean Isle Beach (Town) is located on a barrier island in Brunswick County, North Carolina. The town's land area is approximately 3.4 square miles in size (with water, 4.5 square miles), and is approximately 5 miles long extending from Tubbs Inlet on the west to Shallotte Inlet on the east. The island is generally oriented in a west-east direction. Tubbs Inlet is relatively small, and classified as a migratory inlet with a 200 year history of moving in a westward direction. In 1970, the inlet was moved to the east approximately 3,280 feet (Cleary & Marden, 2001). Shallotte Inlet has a stable history with periodic changes resulting from the reorientation of the ebb channel.

Currently, the static line extends for approximately 3.2 miles from just east of the intersection of Duneside Drive and W. Beach Drive (western end of the static line, 135 W. Beach Dr.) to just east of the "former" intersection of Shallotte Boulevard and E. 2nd Street (eastern end of the static line, 110 Shallotte Boulevard). The eastern end of the static line is seaward of the first line of stable-natural vegetation due to erosion.

Initially, the static line was mapped in December of 1999; however, due to the effects Hurricane Floyd (Sept. 1999) had on the position of the vegetation line, the static line was later delineated by DCM Staff using aerial photographs from June, 1998 (15A NCAC 07H .0305(a)(6):

"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."

The current average annual erosion setback for 91% of the affected area is 2.0 feet per year, 8% is 4.0 feet per year (starting just east of Lumberton Street), and the remaining 1% is 6.5 feet per year (between Charlotte Street & Shallotte Boulevard).

Since January 25, 2010, when the static line exception was granted, four permits have been issued using the static line exception; three for new homes, and one to extend an open deck. There are currently nine vacant lots that would benefit from using the static line exception.

II. Summary of Past Nourishment Project and Future Project Maintenance

Beach fill history at Ocean Isle began in February, 2001 with the placement of 1,952,600 cubic yards of fill over 28,000 feet, or 5.3 miles. Beach width was increased by 125 feet in areas with a full construction profile, and an additional 50 feet in areas where advanced maintenance fill was placed. The project is scheduled to be completed every three years. However, the initial project performed so well that it was not until 2006 that the next project occurred.

Maintenance dredging at Shallotte Inlet started in November, 2006, with approximately 409, 530 cubic yards of fill placed on the beach from Shallotte Boulevard to approximately Southport Street, with subsequent projects in 2009 (500,000 cubic yards) and 2014 (800,000 cubic yards) (Table 1).

III. Summary of Petitioner’s Evidence Supporting the Four Factors

The Commission’s rule 15A NCAC 07J.1204(b) indicates that the 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)(1) through (d)(4).” Specifically, these four criteria require a showing by the Petitioner of (1) a summary of all beach fill projects in the area proposed for the exception, (2) plans and related materials showing the design of the initial fill projects, and any past or planned maintenance work, (3) documentation showing the location and volume of compatible sediment necessary to construct and maintain the project over its design life, and (4) identification of the financial resources or funding sources to fund the project over its design life.

15A NCAC 07J.1204(b) also states that the Commission shall consider design changes to the initial large-scale beach fill project, design changes to the location and volume of compatible sediment, and changes in the financial resources or funding sources necessary to fund the large-scale beach fill project. Staff’s summary and analysis of Petitioner’s response to these four criteria and any design changes or funding changes in the last five years follows.

A. Summary of fill projects in the area- First factor per 15A NCAC 07J.1201(d)(1)

The Town’s original static line exception application report (Town, 2010) lays out the summary of fill projects in the area as follows:

Project Nourishment History

- a. 2001. The initial stage of construction for the project started in February 2001 and was completed on May 7, 2001. The project consisted of placing 1,952,600 cubic yards of fill over 28,000 feet of shoreline. The project protected approximately 3 1/4 miles of beach along Ocean Isle. The beach was increased in width by 125 feet in areas with a full construction profile. Advanced maintenance fill was also placed at the time of construction which added an additional 50 feet of width to the beach. (See Figure 2 and 3)

Although the project is scheduled to be completed every 3 years, the initial project performed so well that the first periodical nourishment was not considered necessary until 6 years after the completion of the initial project construction.

- b. 2006-2007. Beginning in November 2006 the first project maintenance dredging began. Approximately 409,530 cubic yards of sand was placed on the beach from Station 10 to Station 70 (Shallotte Boulevard to approximately Southport Street). (See Figure 7.)
- c. 2009. Beginning in the winter of late 2009 and finishing in early 2010, this project placed approximately 500,000 cubic yards of sand from Station 10 to Station 130. (See Figure 8)

- d. 2014. Completed in the early spring of 2014, this maintenance project placed over 800,000 cubic yards of sand on the strand. The material was placed from Station 10 to Station 90 (See Figure 6)
- e. Ocean Isle Beach Historic Funding Sources. The source of funds used for each of the nourishment events is listed in Table 1.

Nourishment Dates	Borrow Area	Placement Area (Stations.)	Pay Yardage (cy)	Cost of Operation	Cost Per Cubic
02/2001	Shallotte Inlet	10 to 180	1,952,600	\$5,135,338.00	\$2.63
11/06 - 12/06	Shallotte Inlet	10 to 72	540,347	\$2,019,176.26	\$4.94
11/09 - 03/10	Shallotte Inlet	10 to 130	509,200	\$5,923,077.00	\$7.00
12/13-04/14	Shallotte Inlet	10 to 90	800,000	\$7,045,750	\$8.81

Table 1. Ocean Isle Beach Nourishment History. Placement Stations in 100's Feet.

5-Year Progress Report: Fill Projects

One additional beach nourishment project has taken place since the Commission granted the Town of Ocean Isle Beach a static line exception in January, 2010. A project was constructed between December 2013 and April 2014, during which 800,000 cubic yards of sand was placed on the beach (Figure 1.).

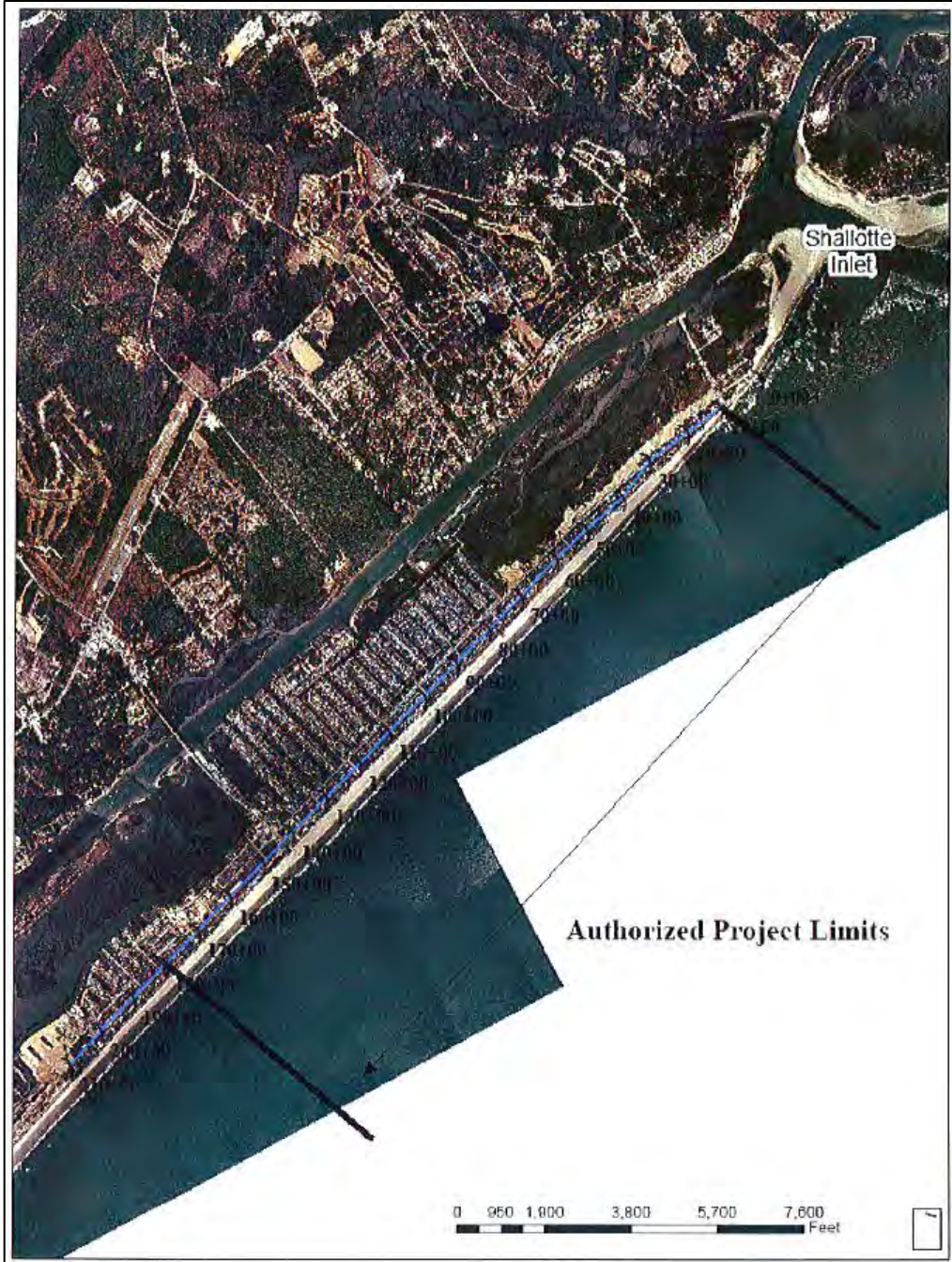


Figure 1. Ocean Isle Beach project limits and USACE Baseline Stations.

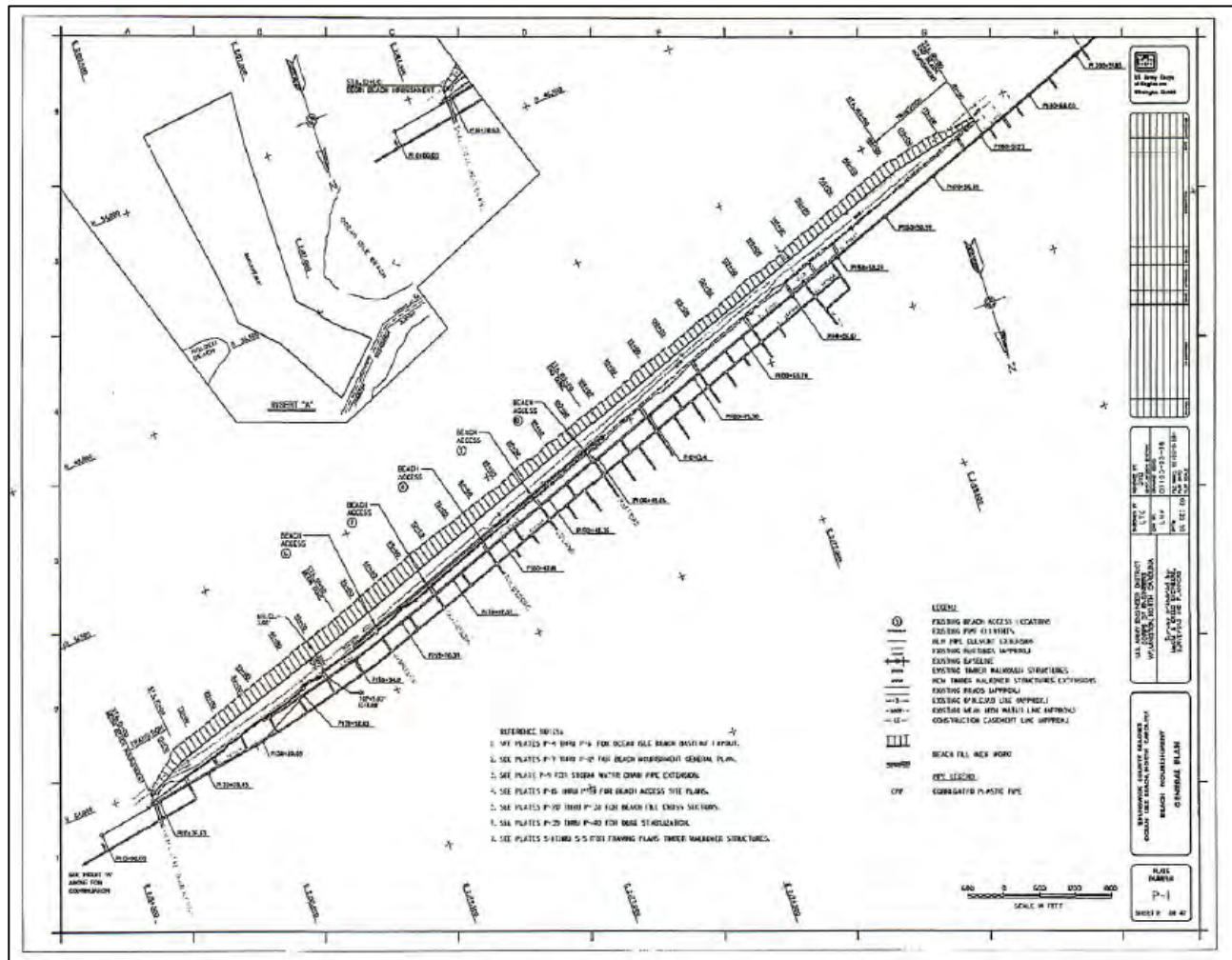


Figure 2. 2001 General Plan

B. Design of the initial fill projects and past/planned maintenance- Second factor per 15A NCAC 07J.1201(d)(2)

The Town's original static line exception application report (Town, 2010 & 2014) provides information about the design of the beach fill project for Ocean Isle Beach, and how that project has performed in the past, as follows:

Project Performance

Overall, the Town of Ocean Isle Beach Erosion Control and Hurricane Wave Protection Project has performed very well. The first Inlet and Shoreline Monitoring Report, prepared in December 2002 showed that approximately 262,000 cubic yards of beach fill was lost during the first year over the entire project area. This represented about 15% of the initial placement volume. Most of the area had experienced losses ranging from less than 50 cubic yards to over 21,000 cubic yards. Some of the larger losses occurred in reaches near the ends of the project, which was not unexpected. (Information taken from *Ocean Isle Beach Nourishment Project: Inlet and Shoreline Monitoring Report No. 1, December 2002*)

A May 2004 survey indicated that the east end of the beach fill placement (Stations 10-80) lost approximately 302,000 cubic yards, while the western part (Stations 90-180) gained 203,000 cubic yards. That represented a net loss of about 99,000 cubic yards over the original fill area between December 2001 and May 2004. In summing the volume changes along the entire beach length, Ocean Isle had about 1,794,000 cubic yards more in the active beach system than since the start of the project. (Information taken from *Ocean Isle Beach Nourishment Project: Inlet and Shoreline Monitoring Report No. 2, June 2005*)

Since the initial project construction, no additional beach fill has been considered necessary west of Station 130. Included are selected profiles and surveys from the initial project, the 2006 project, the 2009 nourishment project and the 2014 project. (Figures 3, 4 and 5)

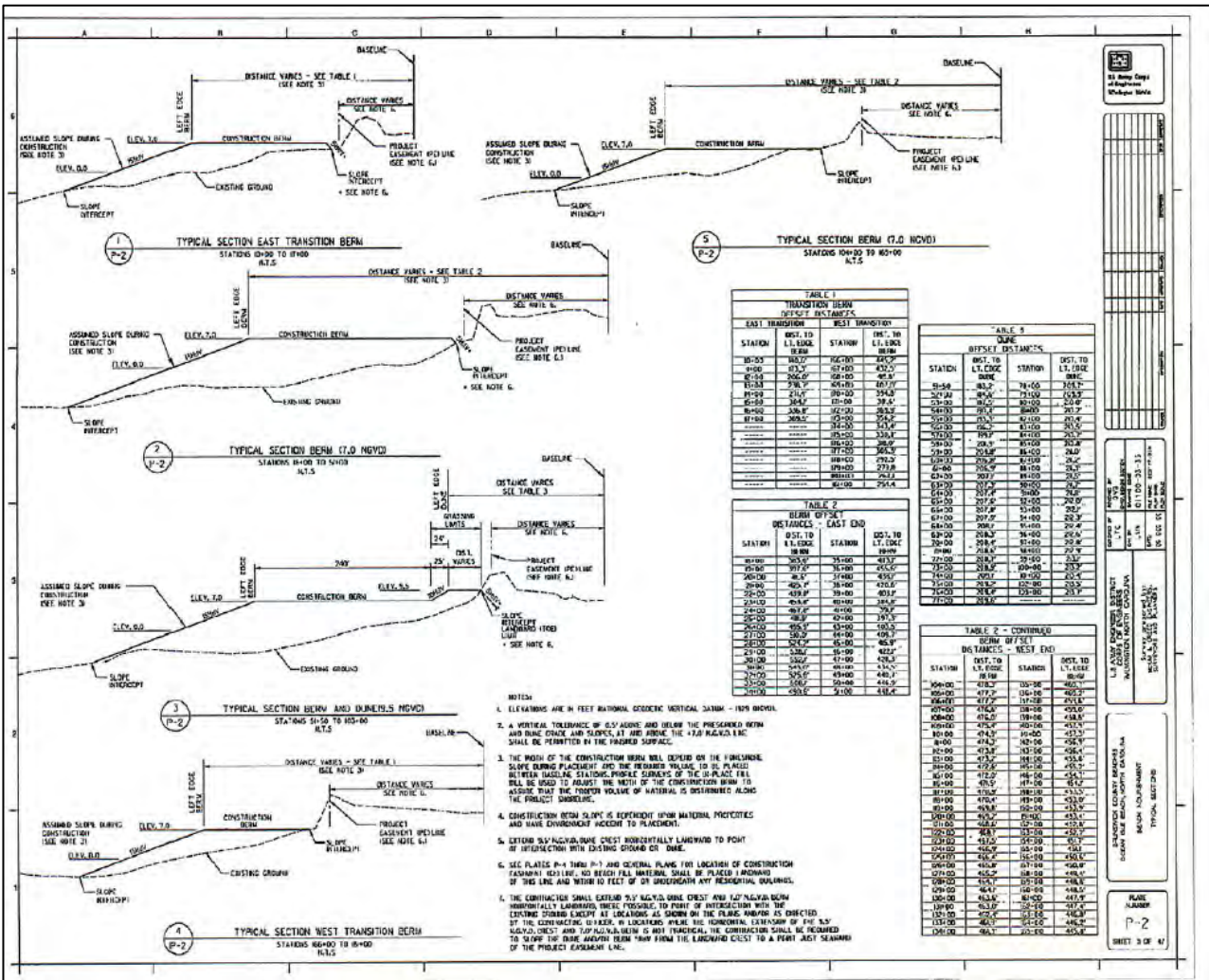


Figure 3. Selected 2001 Profiles

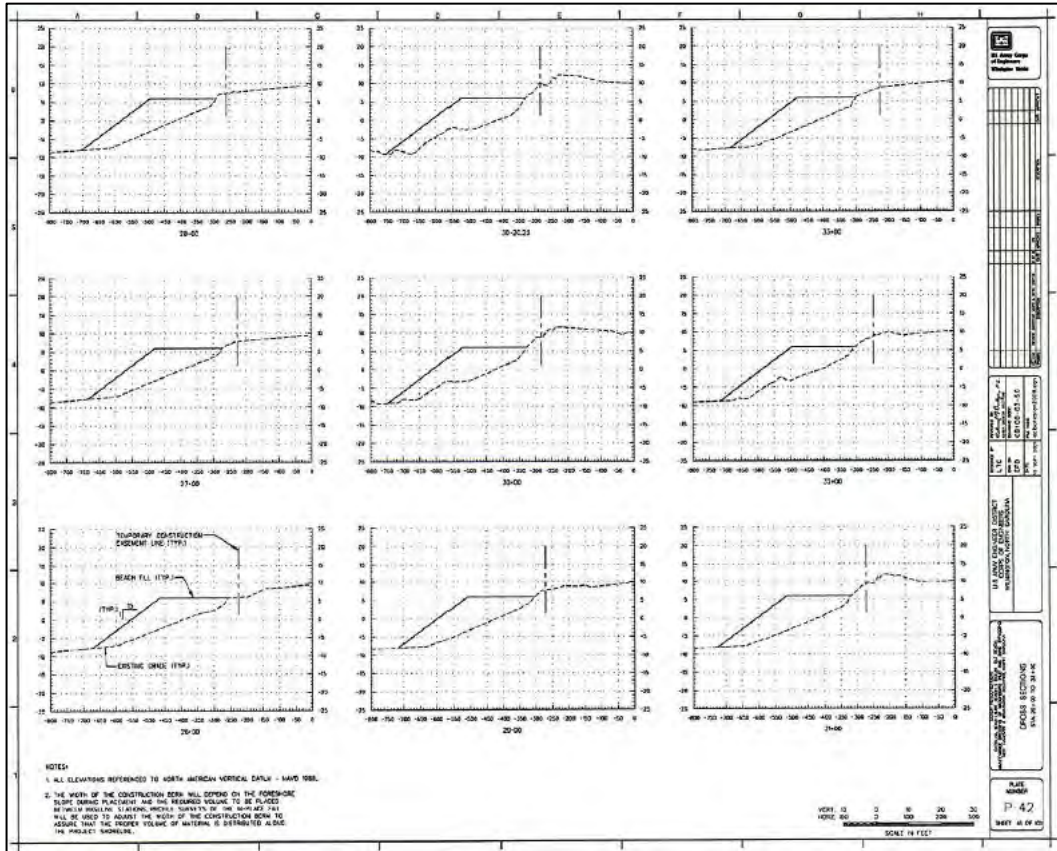


Figure 4. 2006 Station Profiles

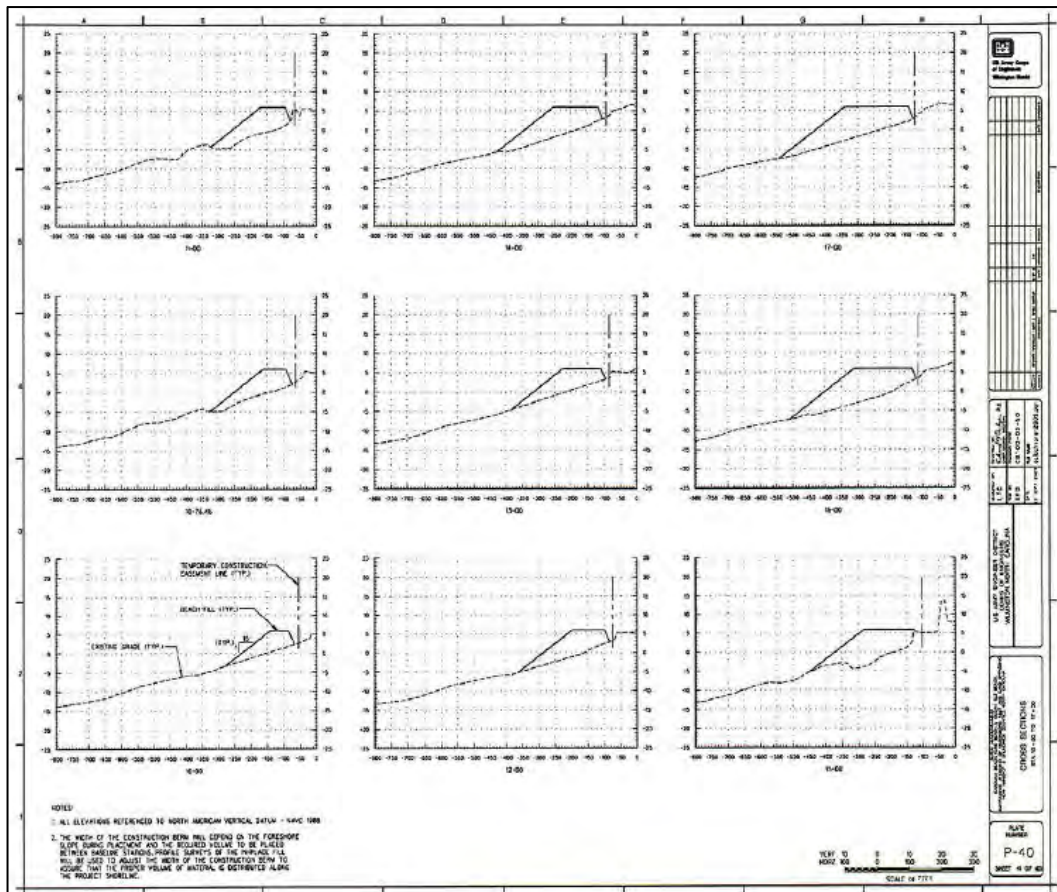


Figure 5. 2009 Station Profiles



Figure 6. 2014 Pre and Post Pro Images

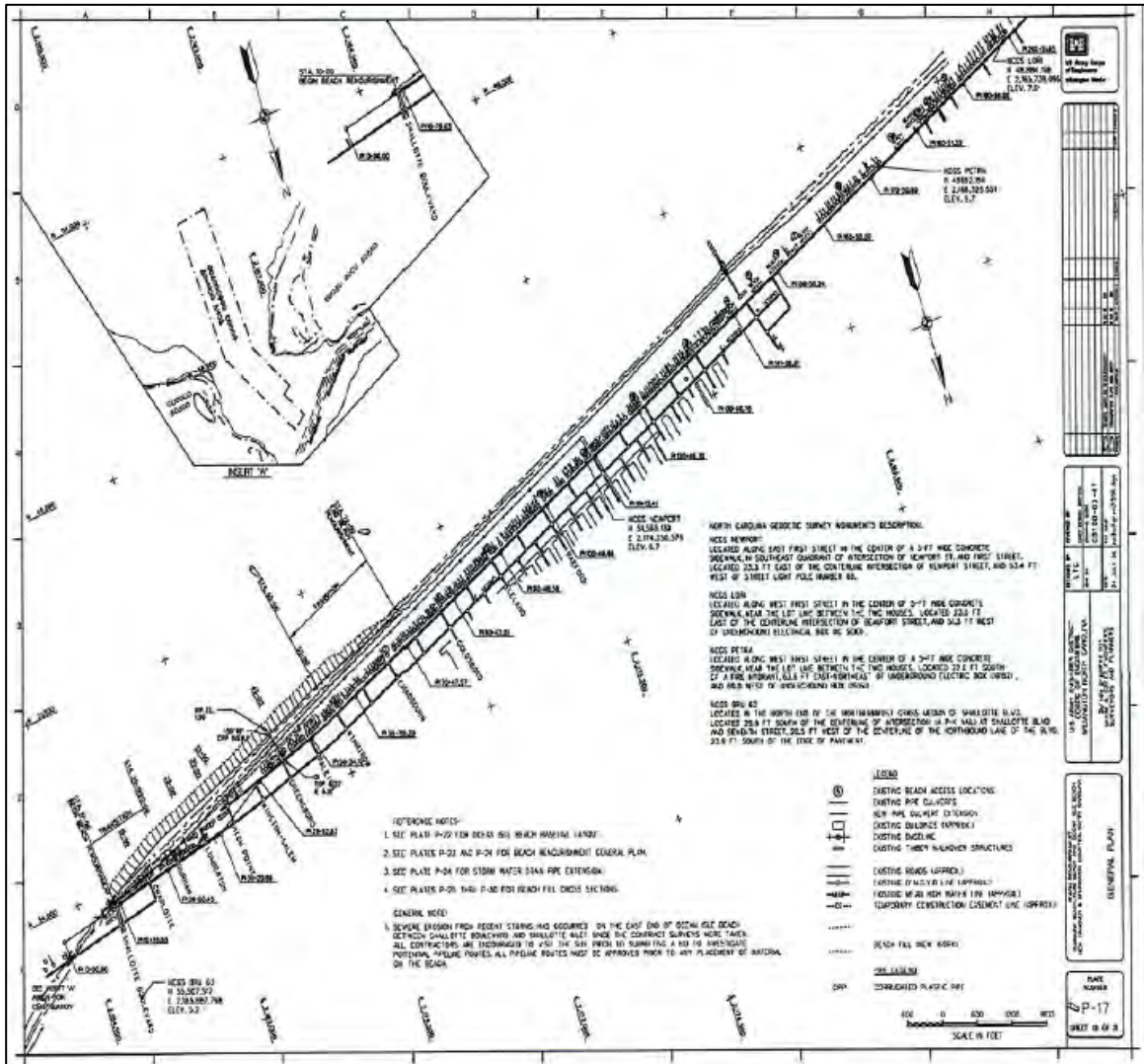


Figure 7. 2006 General Plan

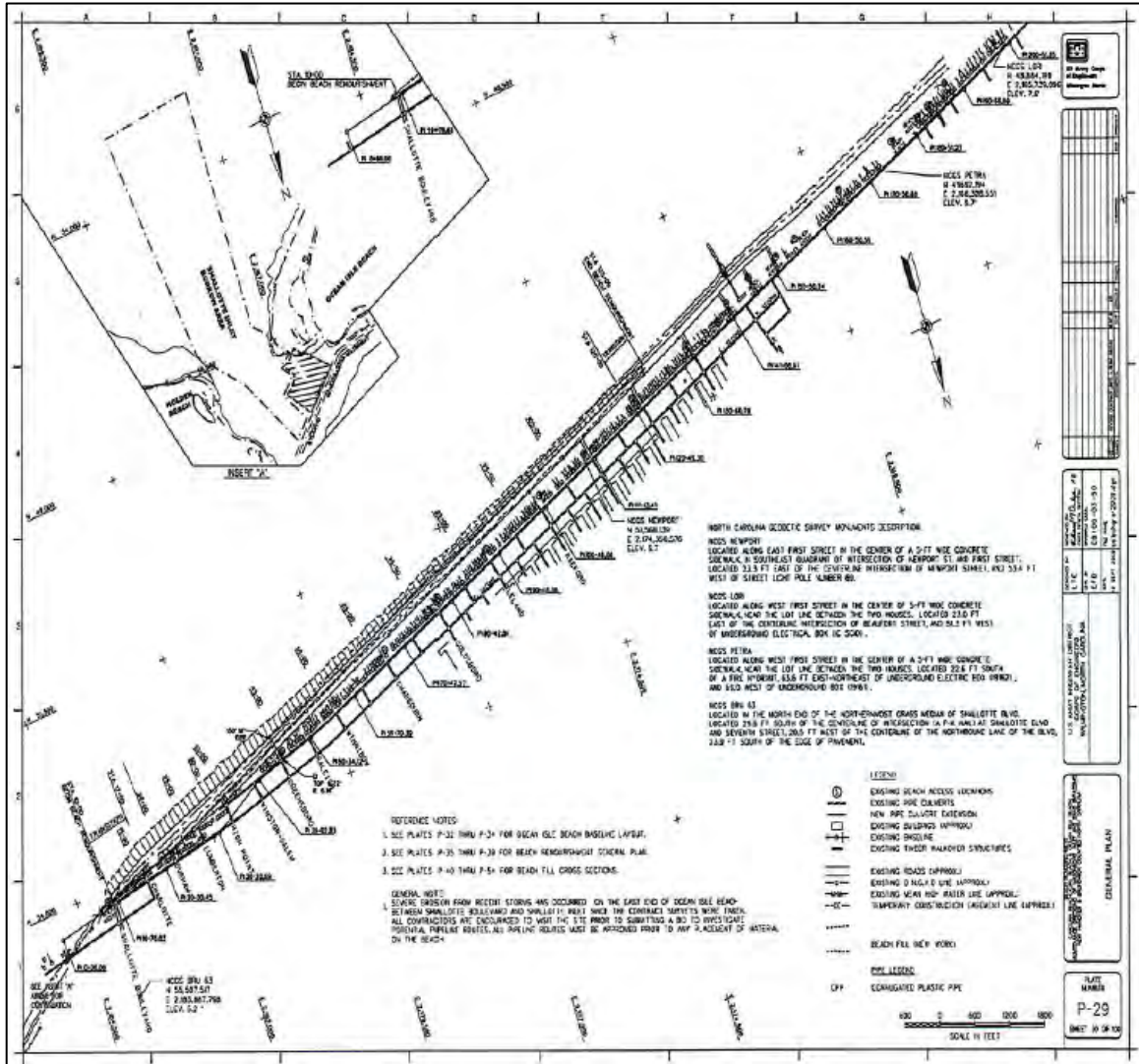


Figure 8. 2009-2010 General Plan

5-Year Progress Report: Project Design and Performance

There have been no design changes to the initial large-scale beach fill project following the granting of the static line exception in January 2010 by the Commission.

**C. Compatible Sediment-
Third factor per 15A NCAC 07J.1201(d)(3)**

The Town's original static line exception application report (Town, 2010) provides information about the availability of compatible sediment for future beach fill projects as follows:

Borrow Material Sources

The sediment trap/borrow area located in Shallotte Inlet, which has been used for the initial and subsequent projects is shown in Figure 9. The material contained in the vibracores for the projected 2009 project had the following composite characteristics:

Mean (M) = 2.03 (phi)
Silt = 2.4%
Shell = 4.1%

The material taken from Shallotte Inlet and placed on Ocean Isle Beach meets the requirements of the State sediment criteria stipulated in 15A NCAC 07H.0312.

Approximately 1.6 million cubic yards of beach quality sand were available from the Shallotte Inlet for the initial project construction. There showed to be a sufficient amount of sand from Shallotte Inlet to handle the initial project construction and subsequent maintenance. Shallotte Inlet showed to have good quality sand available to a maximum dredging depth of about 15 feet below NGVD. The average 3-year maintenance renourishment volume was estimated to be about 370,000 cubic yards. Based on the past performance of the sediment trap/borrow area, the material collected in Shallotte Inlet is sufficient to satisfy future nourishment needs of Ocean Isle Beach indefinitely.

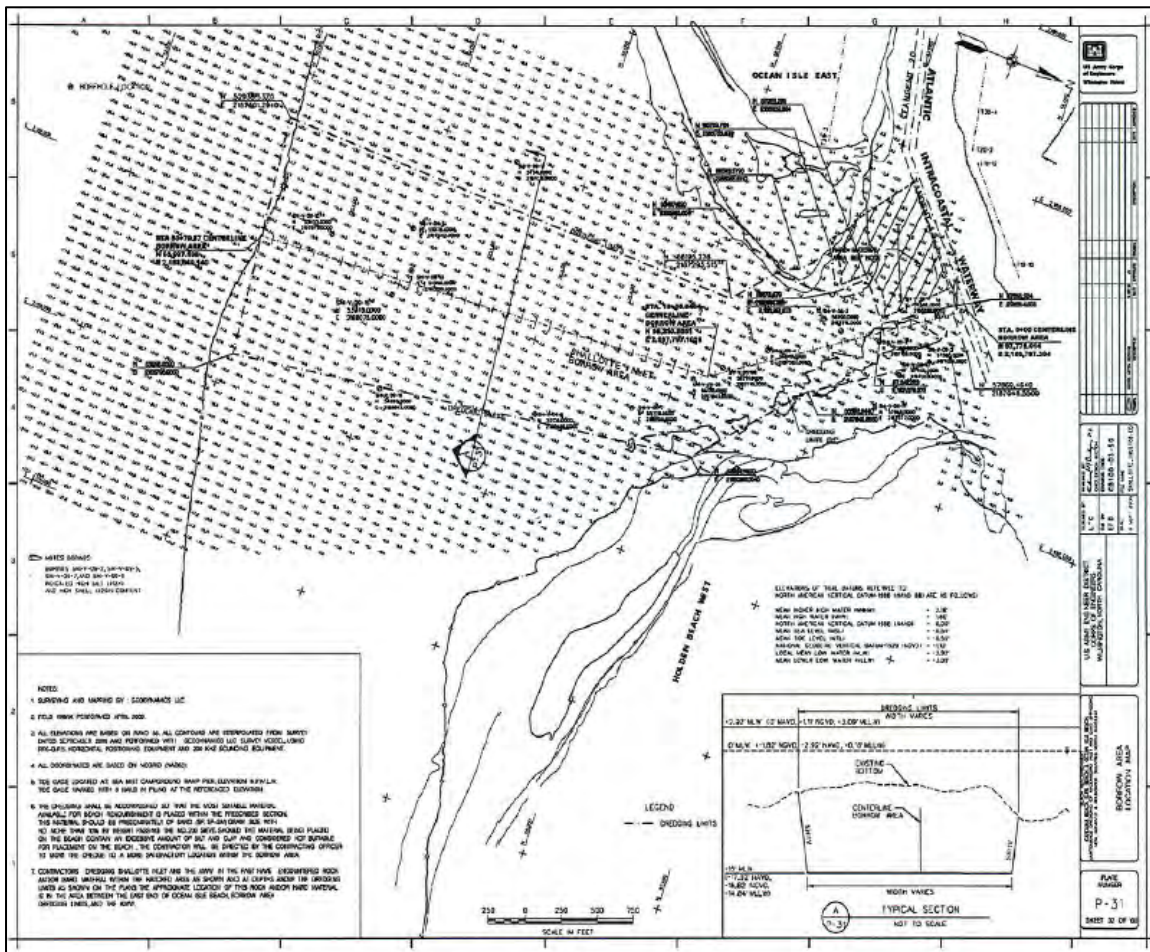


Figure 9. Shallotte Inlet Borrow Area

5-Year Progress Report: Compatible Sediment

There have been no design changes to the location and volume of compatible sediment following the granting of the static line exception by the Commission in January 2010.

D. Financial Resources- Fourth factor per 15A NCAC 07J.1201(d)(4)

Authorized by House Bills 426 (1984) and 859 (1997), the Town adopted a Resolution (No. 2010-15) on July 13, 2010 to levy an additional 2% room occupancy tax to be used only for beach renourishment and protection. Additionally, the Town's Beach Renourishment Fund also receives an annual contribution from the General Fund in the amount of \$400,000.

5-Year Progress Report: Financial Resources

The primary funding mechanism remains unchanged. Town adopted a Resolution (No. 2010-15) on July 13, 2010 to levy an additional 2% room occupancy tax to be used only for beach renourishment and protection. Total annual revenue generated from the Town's accommodation tax is \$1,807,338. Of that total, \$1,122,935 is earmarked specifically for beach nourishment, which includes the annual contribution from the Town's General Fund (\$400,000). The Town's current amount in reserve for its Beach Renourishment Fund is \$5,300,178.

IV. Staff's Recommendation

The Commission, through 15A NCAC 07J.1204(c), directs Staff to provide a recommendation to the

Commission whether the conditions defined in 15A NCAC 07J.1201(d)(1) through (d)(4) have been met and whether any design or funding changes in the last five years should result in the static line exception being revoked. Based on the Town's 5-year progress report and additional exhibits attached, Staff recommends that the conditions in 15A NCAC 07J.1201(d)(1) through (d)(4) have been met, and there have been no changes in the last five years that should result in the Town's static line exception being revoked. Staff recommends that the Commission renew the Town's static line exception for another five years.

V. References

ATTACHMENT C:



October 15, 2014

NC Division of Coastal Management
Attn: Mr. Braxton Davis, Director
400 Commerce Avenue
Morehead City, NC 28557

RE: Static Line Exception Reauthorization

Dear Mr. Davis,

The Town of Ocean Isle Beach previously received approval for the static line exception in January 2010. Pursuant to 15A NCAC 07J .1204(a), the Town is required to provide a progress report to the Coastal Resources Commission at intervals no greater than five (5) years from the date the static line exception is authorized.

Attached is the Town's progress report static line exception. Since receiving the static line exception in 2010, the Town has had two (2) storm damage reduction projects. The static line exception has been of great benefit to the Town and its property owners. We believe the information provided in the attached progress report meets all the required criteria for reauthorization by the Coastal Resources Commission.

Should you have any questions or need more information please contact me at 910-579-2166.

Sincerely,

Daisy L. Ivey
Town Administrator

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DCM-MHD CITY

Ocean Isle Beach, NC Static Line Exception Progress Report

October 2014



Prepared by:
The Town of Ocean Isle Beach



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Town of Ocean Isle Beach, NC Static Line Exception Progress Report

1. PURPOSE

The Town of Ocean Isle Beach (Town) applied for and received an exception from the static line pursuant to NCGS 113A-107, 113(b)(6), 113A-124 and 15A NCAC 7J .1200 from the North Carolina Coastal Resources Commission on January 25, 2010. This progress report is a requirement in order to have this exception reauthorized.

2. PROJECT DESCRIPTION/AUTHORIZATION

The project for hurricane-flood control from Cape Fear to the North Carolina-South Carolina State Line, was authorized in House Document Number 511, Eighty-ninth Congress, by Section 203 of the Flood Control Act of 1966, Public Law 89-789, dated November 7, 1966 to provide hurricane protection, shore protection, and Federal participation in the cost of periodic nourishment for the first 10 years of project life at Holden Beach, Long Beach, Ocean Isle Beach, Sunset Beach, and Yaupon Beach in Brunswick County, NC.

Funding to initiate construction of the Ocean Isle Beach portion of the Brunswick County Beaches Project was provided by the Energy and Water Development Appropriations Act, 2000, Public Law 106-60, and House Report 253, Energy and Water Development Appropriations Bill, One-Hundred-Sixth Congress, First Session.

The initial project was to have a dune with a crown width 25 feet at an elevation of 9.5 feet NGVD extending for 5,150 feet. The dune was fronted by a berm with a width of 50 feet at elevation 7 feet NGVD for a distance of 5,150 feet, then, to its west, shall have a berm with a crown width of 50 feet at elevation 7 feet NGVD for a distance of 2,600 feet, and then a berm with a crown width of 25 feet at an elevation 7 feet NGVD for a distance of 2,400 feet. The dune and berm shall have transitions of 4,200 feet on the eastern end and 2,800 feet on the western end. The total project covered over 28,000 feet of shoreline (Figure 1).

Periodic beach nourishment was authorized by Section 934 of the Water Resources Development Act of 1986, Public Law 99-662, for a period that does not exceed 50 years after initiation of construction, for water resources development projects for which such nourishment has been authorized for a limited period. Construction of the Ocean Isle Beach project was initiated in 2001; therefore, Federal cost-sharing for beach nourishment is authorized to continue until 2051.

The 2001 initial nourishment was used in this static line exception application as the project construction start date. Therefore, for the purposes of this progress report, the Ocean Isle Beach project has been in existence for 13 years.

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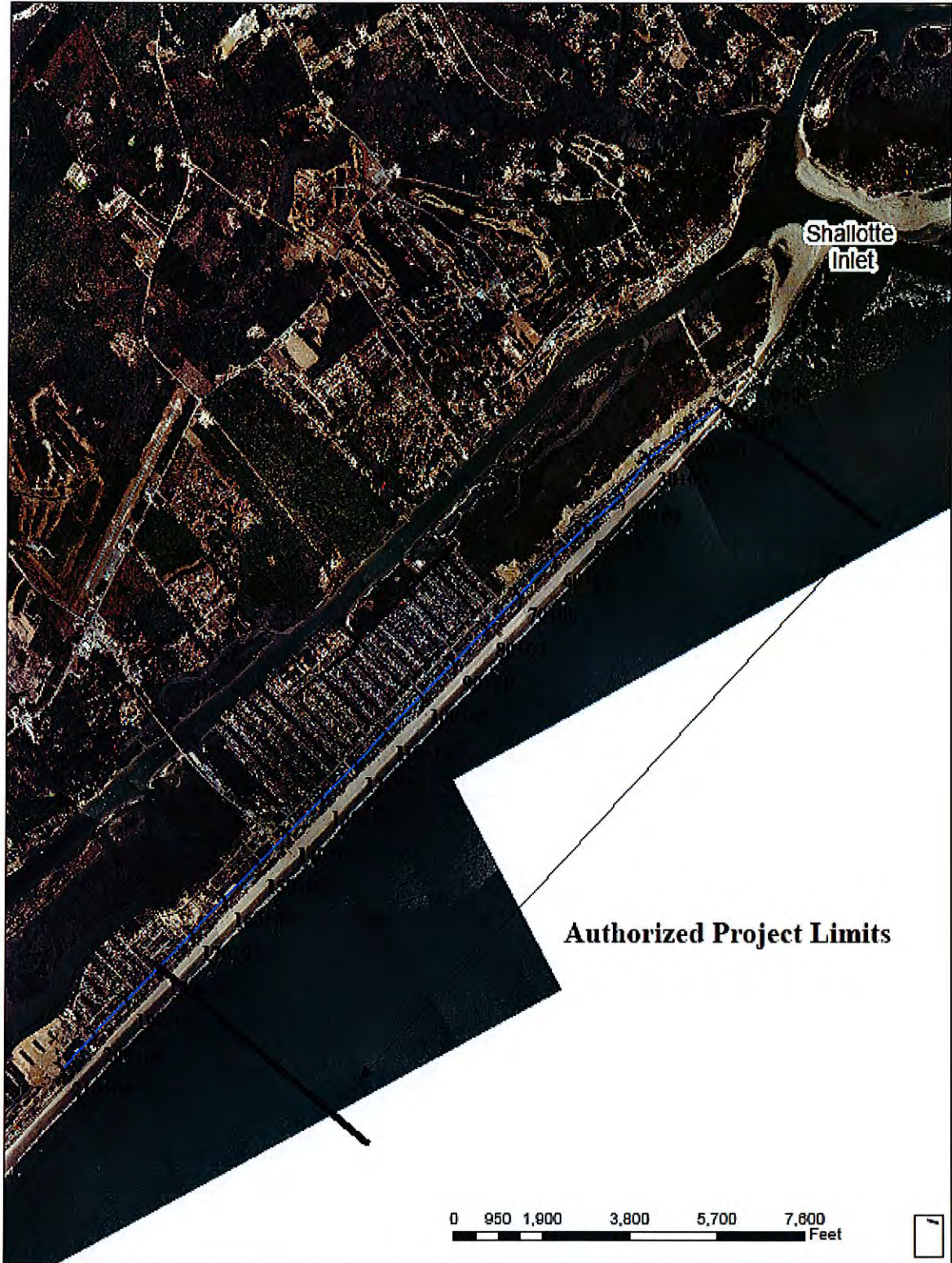


Figure 1. Ocean Isle Beach project limits and USACE Baseline Stations.

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Ocean Isle Beach, NC Static Line Exception Progress Report

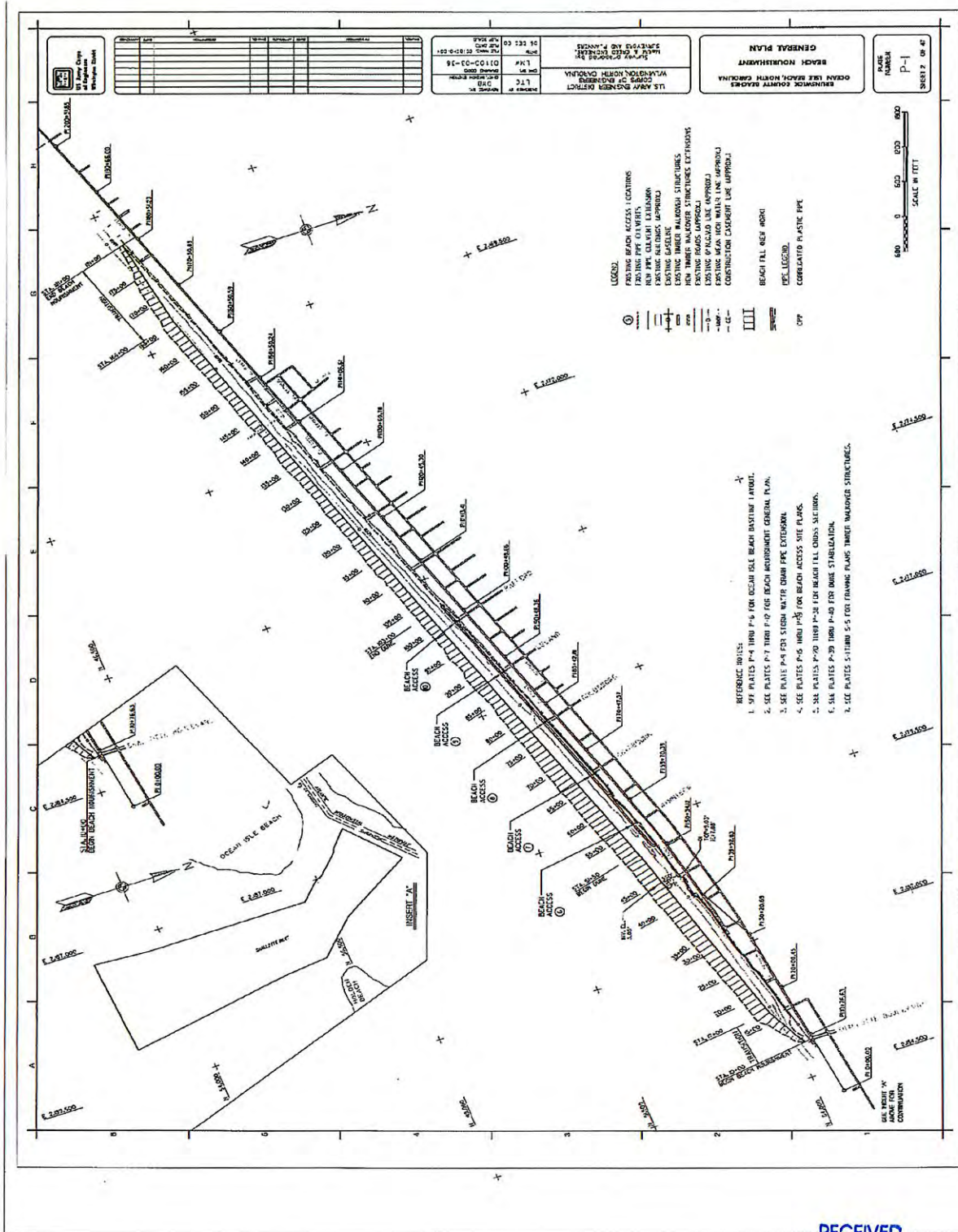


Figure 2a. 2001 General Plan.

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Ocean Isle Beach, NC Static Line Exception Progress Report

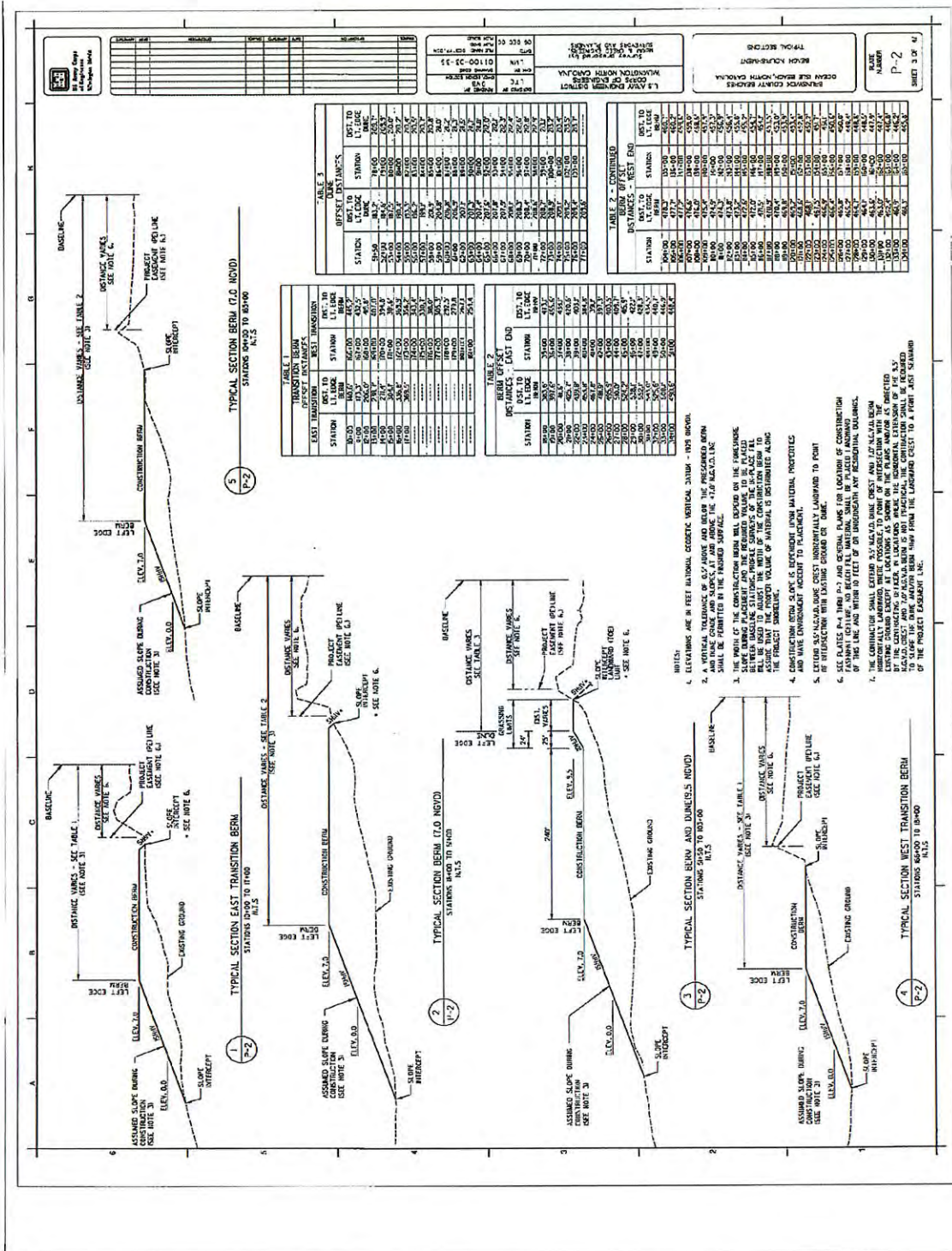


Figure 2b. Selected 2001 Profiles.

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3. TOWN STATIC LINE AND EASEMENT LINE

One of the conditions for federal participation in the project was the assurance the beach would remain open to the public for the life of the project. Most all property within the project area was deeded to the Mean High Water Line (MHW) which created a problem for the U.S. Army Corps to initiate the project. Prior to the initial project, the U.S. Army Corps required that the Town obtain perpetual easements from the affected property owners in the project area. All easements necessary for the construction of the Ocean Isle Beach Nourishment Project were completed as of November 7, 2000. There were a total of 231 affected tracts.

The NC Coastal Resources Commission (CRC) adopted rules governing the establishment of a static vegetation line for beach communities that undertake a large-scale beach nourishment project. A large scale project is defined by the CRC 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 initial static line for Ocean Isle Beach was conducted in December 1999, but has since been altered. As stated in 15A NCAC 07H .0305(a)(6), *“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.”* The location of the current static vegetation line for Ocean Isle Beach is shown in Figures 3a-3f.

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Figure 3a. Ocean Isle Beach Base and Static Vegetation Lines.

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Figure 3b. Ocean Isle Beach Base and Static Vegetation Lines.

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Figure 3c. Ocean Isle Beach Base and Static Vegetation Lines.

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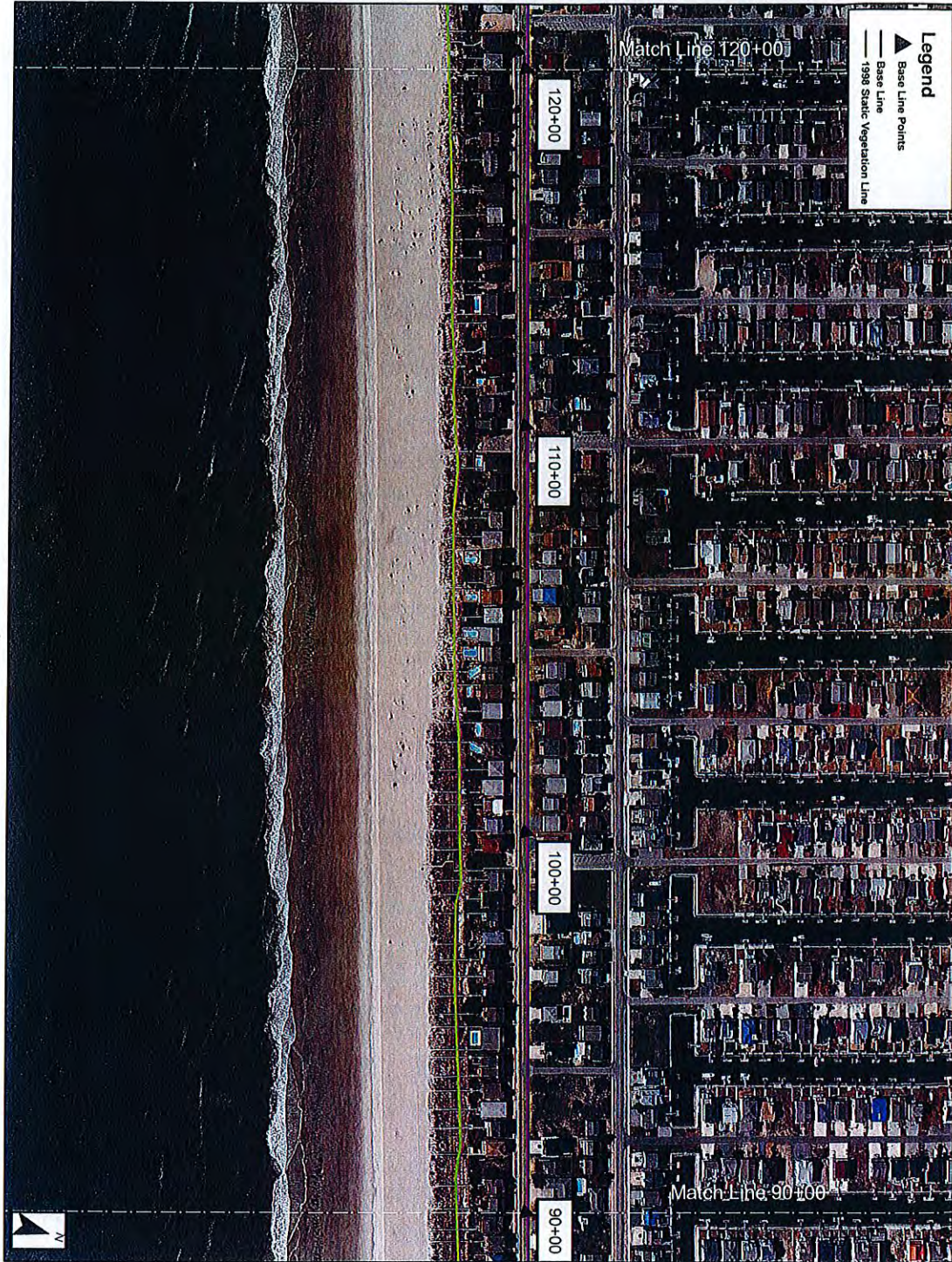


Figure 3d. Ocean Isle Beach Base and Static Vegetation Lines.

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Figure 3e. Ocean Isle Beach Base and Static Vegetation Lines.

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Figure 3f. Ocean Isle Beach Base and Static Vegetation Lines.

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4. PROJECT NOURISHMENT HISTORY

a. 2001. The initial stage of construction for the project started in February 2001 and was completed on May 7, 2001. The project consisted of placing 1,952,600 cubic yards of fill over 28,000 feet of shoreline. The project protected approximately 3 ¼ miles of beach along Ocean Isle. The beach was increased in width by 125 feet in areas with a full construction profile. Advanced maintenance fill was also placed at the time of construction which added an additional 50 feet of width to the beach. (See Figure 2a-2b.)

Although the project is scheduled to be completed every 3 years, the initial project performed so well that the first periodical nourishment was not considered necessary until 6 years after the completion of the initial project construction.

b. 2006-2007. Beginning in November 2006 the first project maintenance dredging began. Approximately 409,530 cubic yards of sand was placed on the beach from Station 10 to Station 70 (Shallotte Boulevard to approximately Southport Street). (See Figure 4.)

c. 2009. Beginning in the winter of late 2009 and finishing in early 2010, this project placed approximately 500,000 cubic yards of sand from Station 10 to Station 130. (See Figure 5)

d. 2014. Completed in the early spring of 2014, this maintenance project placed over 800,000 cubic yards of sand on the strand. The material was placed from Station 10 to Station 90 (See Figure 6)

e. Ocean Isle Beach Historic Funding Sources. The source of funds used for each of the nourishment events listed in Table 1 is provided in Table 2.

Table 1. Ocean Isle Beach Nourishment History

Nourishment Dates	Borrow Area ¹	Placement Area (Stations.) ²	Pay Yardage (cy)	Cost of Operation	Cost Per Cubic Yard
Feb. 2001	Shallotte Inlet	10 to 180	1,952,600	\$5,135,338.00	\$2.63
Nov. 06– Dec. 06	Shallotte Inlet	10 to 72	540,347	\$2,019,176.26	\$4.94
Dec. 09 - March 10	Shallotte Inlet	10 to 130	509,200	\$5,923,077.00	\$7.00
Dec. 13 – April 14	Shallotte Inlet	10 to 90	800,000	\$7,045,750	\$8.81

¹ Borrow area shown on Figure 7.

² Stations in 100's feet (Figure 1).

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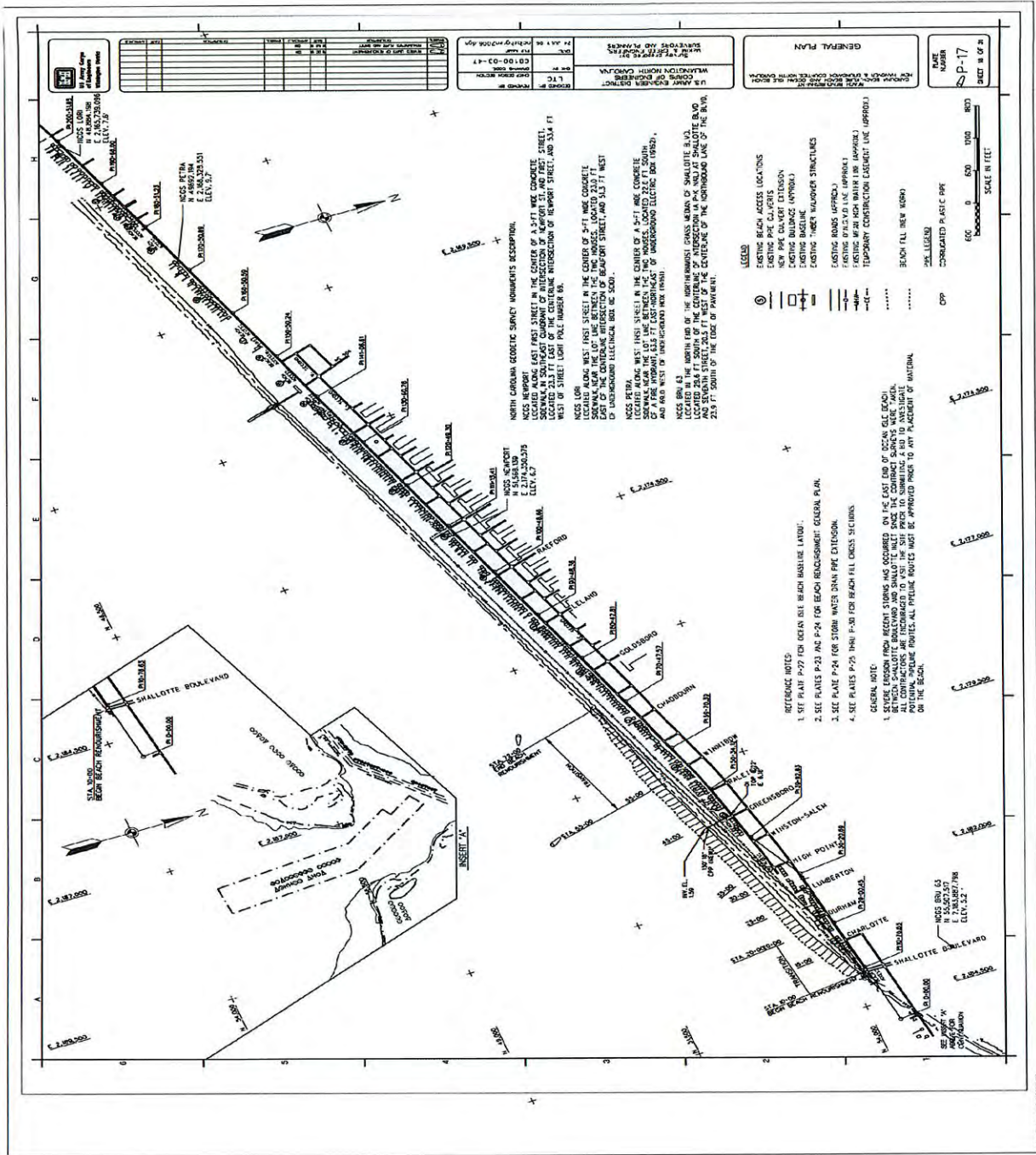


Figure 4. 2006 General Plan.

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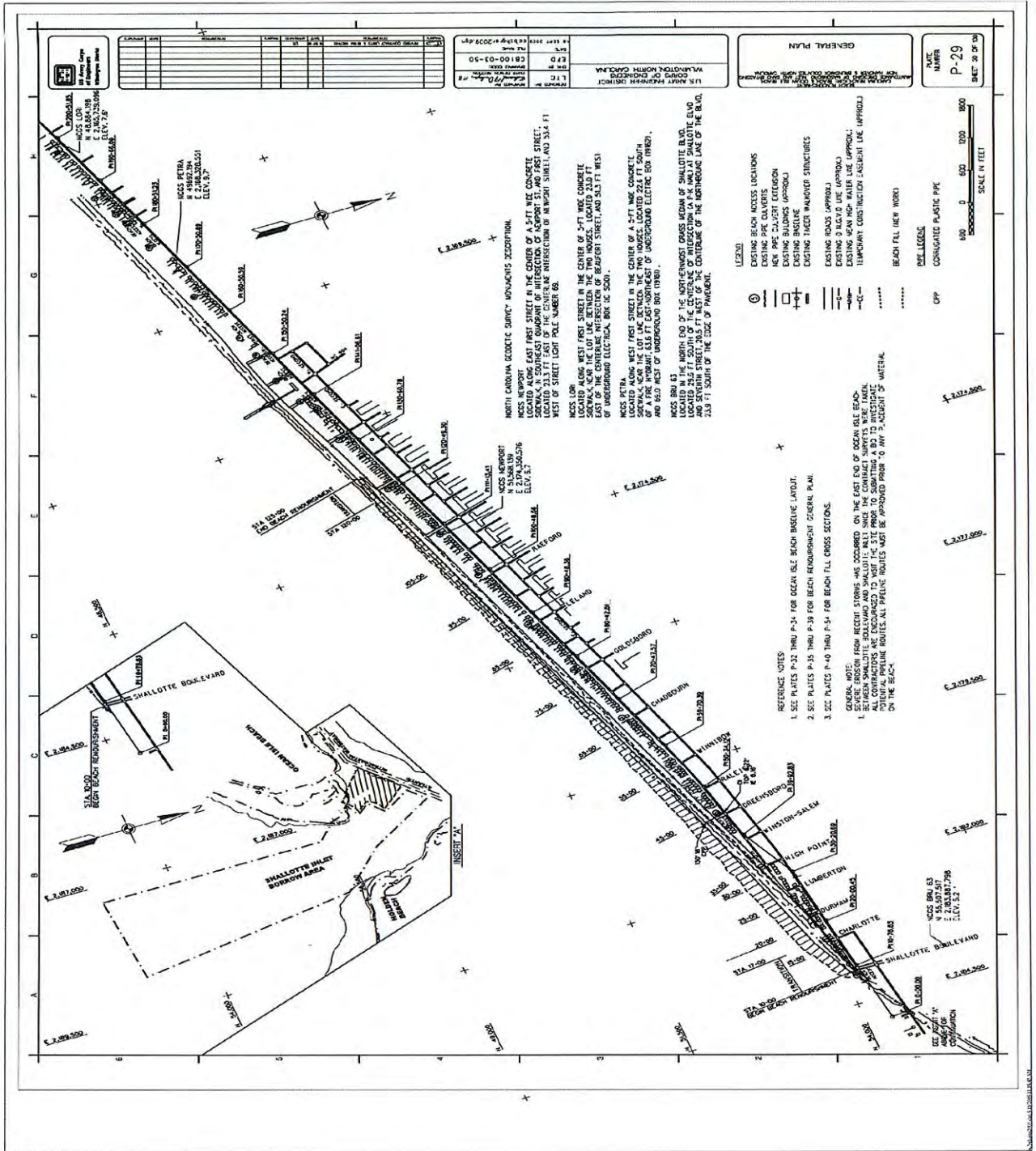


Figure 5. 2009-2010 General Plan.

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Figure 6. 2014 Pre and Post Project Images

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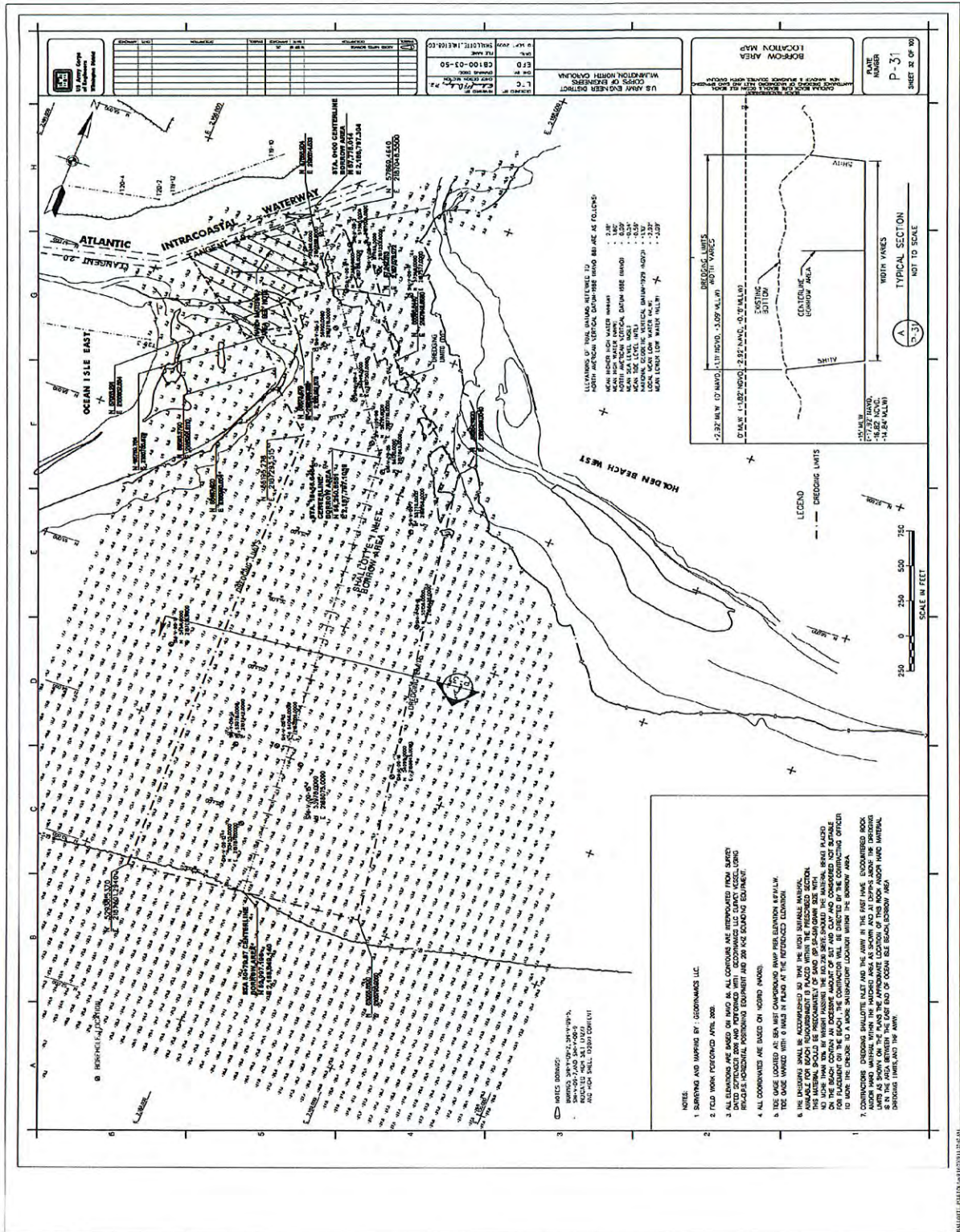


Figure 7. Shallotte Inlet Borrow Area.

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Table 2. Ocean Isle Beach Funding Sources

Nourishment Dates	Federal Funding Source	Non-Federal	Cost of Operation
Feb. 2001	\$3,337,969	\$1,797,369	\$5,135,338
Nov. 06– Dec. 06	\$1,312,464.26	\$706,712	\$2,019,176.26
2009-2010	\$3,850,000	\$2,073,077	\$5,923,077
Dec. 13 – April 14	\$4,604,500	\$2,441,250	\$7,045,750

5. PROJECT PERFORMANCE

Overall, the Town of Ocean Isle Beach Erosion Control and Hurricane Wave Protection Project has performed very well. The first Inlet and Shoreline Monitoring Report, prepared in December 2002 showed that approximately 262,000 cubic yards of beachfill was lost during the first year over the entire project area. This represented about 15% of the initial placement volume. Most of the area had experienced losses ranging from less than 50 cubic yards to over 21,000 cubic yards. Some of the larger losses occurred in reaches near the ends of the project, which was not unexpected. (Information taken from *Ocean Isle Beach Nourishment Project: Inlet and Shoreline Monitoring Report No. 1, December 2002*)

A May 2004 survey indicated that the east end of the beachfill placement (Stations 10-80) lost approximately 302,000 cubic yards, while the western part (Stations 90-180) gained 203,000 cubic yards. That represented a net loss of about 99,000 cubic yards over the original fill area between December 2001 and May 2004. In summing the volume changes along the entire beach length, Ocean Isle had about 1,794,000 cubic yards more in the active beach system than since the start of the project. (Information taken from *Ocean Isle Beach Nourishment Project: Inlet and Shoreline Monitoring Report No. 2, June 2005*)

Since the initial project construction, no additional beach fill has been considered necessary west of Station 130. Included are selected profiles and surveys from the initial project, the 2006 project, the 2009 nourishment project and the 2014 project. (Figures 2b, 8a and 8b)

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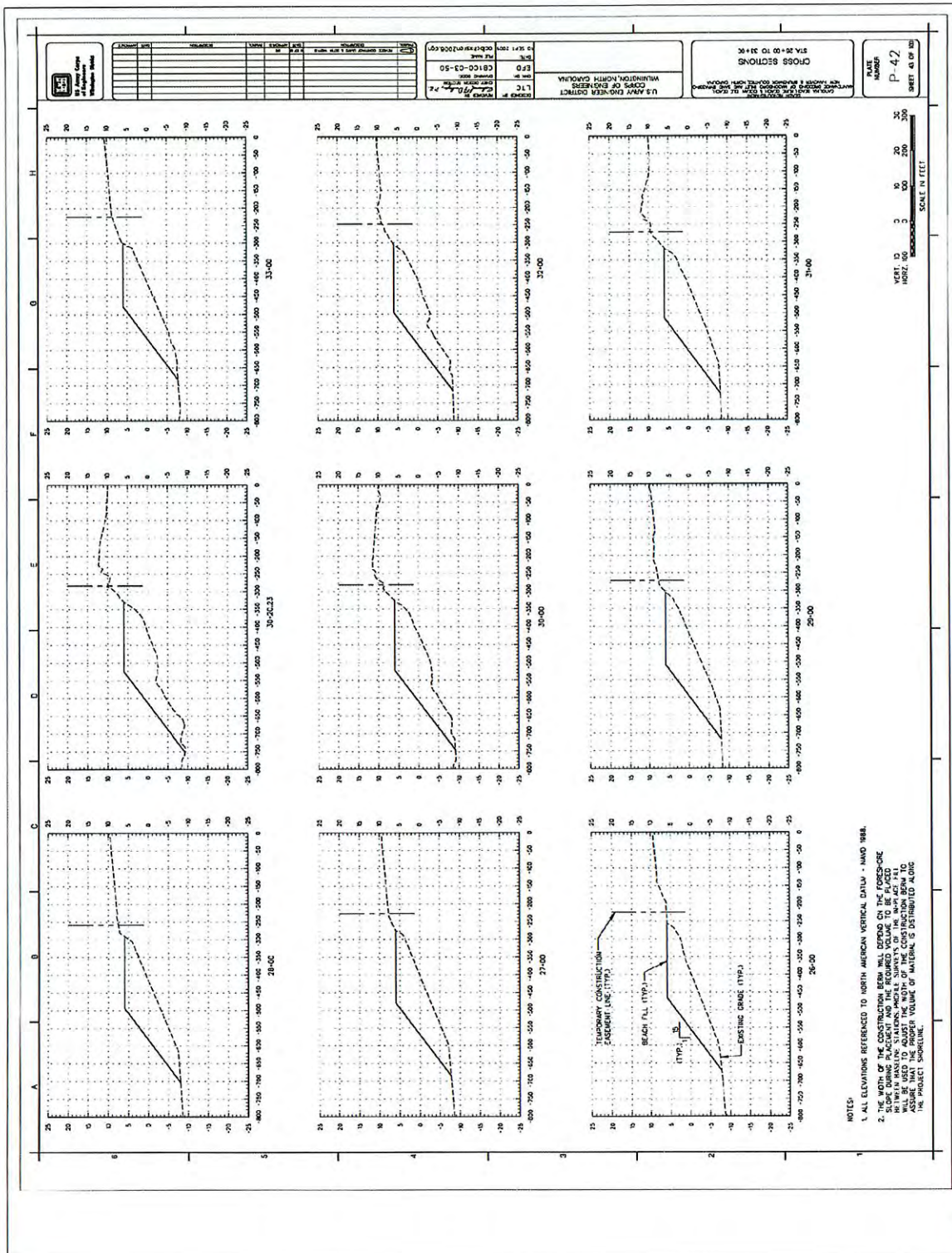


Figure 8a. 2006 Station Profiles.

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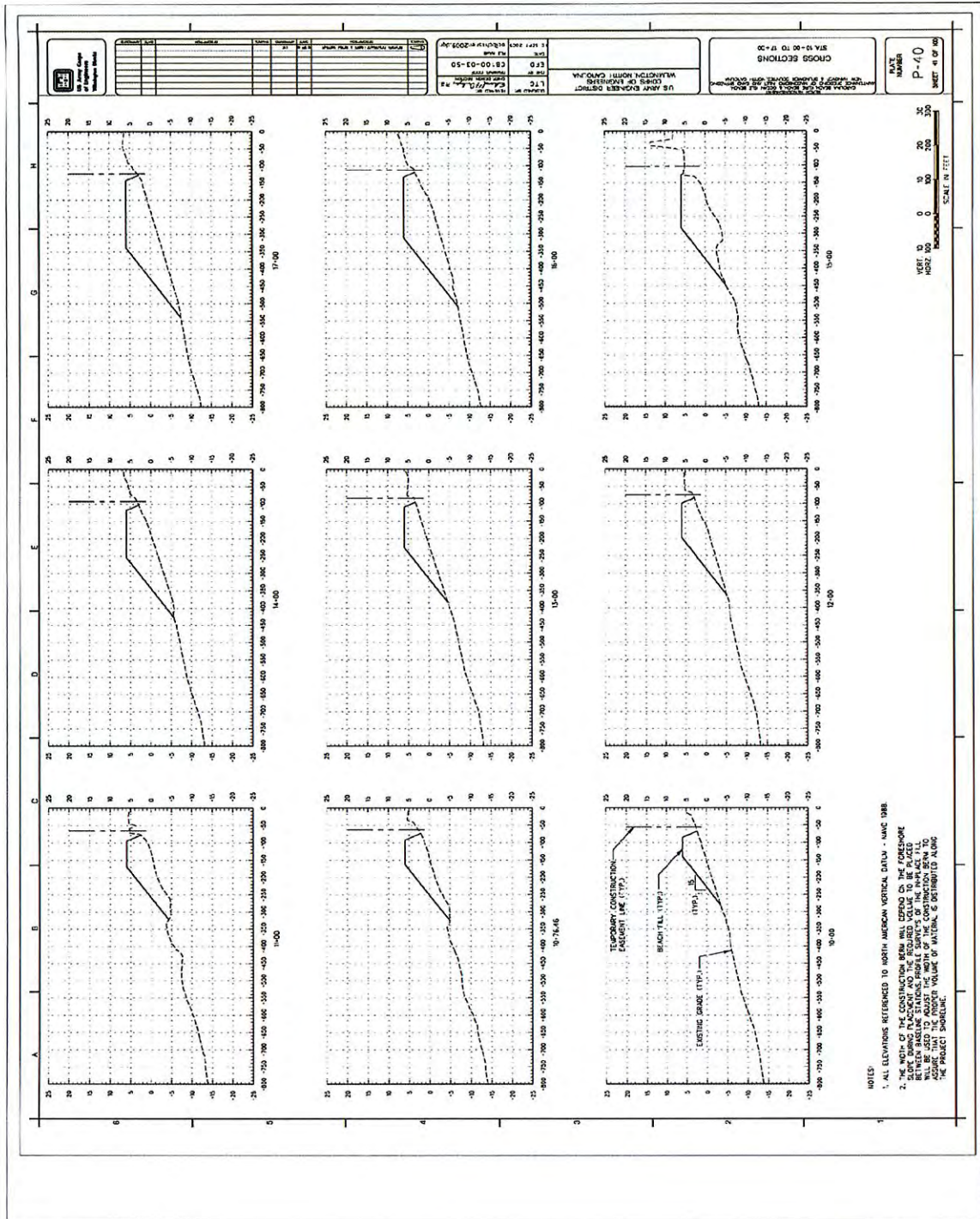


Figure 8b. 2009 Station Profiles.

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6. FINDINGS

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

(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 work;

Towns Response: There have been no design changes following the granting of the static line exception in 2010 by the Coastal Resources Commission.

- (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 .0201(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 person meeting applicable State occupational licensing requirements for the work; and

Town's Response: There have been no design changes to the location and volume of compatible sediment following the granting of the static line exception in 2010. Based on the past performance of the sediment trap/borrow area, the material collected in Shallotte Inlet is sufficient to satisfy future nourishment needs of Ocean Isle Beach indefinitely.

- (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.

Town's Response: Ocean Isle Beach has an established beach renourishment fund that is used to fund beach nourishment projects on Ocean Isle Beach. This fund is presently funded each year through contributions from the Town's General Fund and Accommodations Tax Fund. In previous years it has also been funded by earmarking various amounts of property tax collections. For example one cent of the Town's 2009

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tax rate may have been earmarked specifically for this fund. The present balance in this fund exceeds \$5.6 million.

House Bill 426 allowed the Town of Ocean Isle Beach the authority to levy a room occupancy and tourism development tax in the amount of three percent (3%) to be used for "tourism-related expenditures". Session Law 1997-364 Section 11(b) authorized the Town of Ocean Isle Beach Board of Commissioners to levy an additional room occupancy tax of up to two percent (2%) of the gross receipts from the rental of accommodations. The proceeds of this additional tax can only be used for beach renourishment and protection. On July 13, 2010, the Board of Commissioners voted to levy the additional two percent (2%) occupancy tax. This tax became effective on January 1, 2011. Included is a copy of Session Law 1997-364 and a copy of the Resolution levying the additional two percent (2%) tax.

7. SUMMARY

The Town of Ocean Isle Beach satisfied all of the requirements for the static line exception as stipulated in 15A NCAC 07J .1201 in 2010. By virtue of this progress report, the Town of Ocean Isle Beach has demonstrated the project has been maintained during the past five-year period and has not deviated from the original project design. We have also demonstrated our commitment to funding future projects. The Town asks that our Static Line Exception be reauthorized.

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Town of Ocean Isle Beach

Resolution No. 2010-15

Date Adopted: July 13, 2010

**RESOLUTION TO LEVY AN ADDITIONAL 2% OCCUPANCY TAX
FOR TOWN OF OCEAN ISLE BEACH**

WHEREAS, on January 1, 1984 House Bill 426 was enacted which authorized the Town of Ocean Isle Beach to levy a three (3%) occupancy tax for the Town's tourism related expenditures; and

WHEREAS, in 1997, House Bill 859 also granted the Town of Ocean Isle Beach authorization to levy an additional two percent (2%) room occupancy tax; and

WHEREAS, the Town of Ocean Isle recognizes its unique opportunity to promote economic development, create jobs and enhance the prosperity of the Town through revenue generated by travel and tourism; and

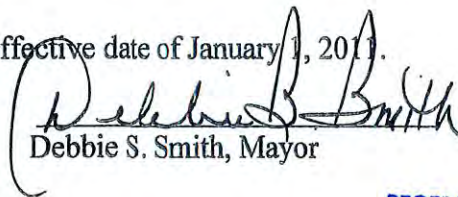
WHEREAS, the Town of Ocean Isle Beach, with its seaside charm and family-friendly atmosphere seeks to promote broader community appeal throughout the state, region and nation; and

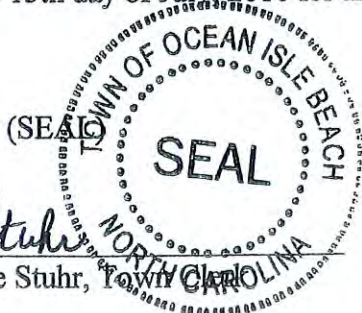
WHEREAS, the Board of Commissioners for the Town of Ocean Isle Beach determine it is in the best interest of Ocean Isle Beach to enact an additional two percent (2%) room occupancy tax; which would increase the current occupancy tax of three percent (3%) to five percent (5%); and

WHEREAS, the additional two percent (2%) will be allocated to the Town of Ocean Isle Beach to be used only for beach renourishment and protection within the Town of Ocean Isle Beach. This will provide three percent (3%) for travel and tourism and two percent (2%) will be allocated for beach renourishment

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Town of Ocean Beach hereby levy an additional two percent (2%) occupancy tax of the gross receipts derived from the rental of any room, lodging or accommodation furnished by a hotel, motel, inn, tourist camp or similar place within the Town, that is subject to sales tax imposed by the state under North Carolina General Statute 105-164.4(a) (3) for the uses and purposes hereinabove set forth. .

Adopted this 13th day of July, 2010 for an effective date of January 1, 2011.


Debbie S. Smith, Mayor



ATTEST:


Sue Stuhr, Town Clerk

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GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-364
HOUSE BILL 859

AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO AUTHORIZE CERTAIN MUNICIPALITIES IN BRUNSWICK COUNTY TO LEVY OR INCREASE LOCAL OCCUPANCY TAXES, AND TO AUTHORIZE PERSON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Brunswick County occupancy tax. (a) Authorization and scope. The Brunswick County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the county that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose, or to accommodations subject to a municipal room occupancy tax at the rate of six percent (6%).

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Brunswick County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Brunswick Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection to promote travel and tourism in Brunswick County. No more than ten percent (10%) of the funds remitted to the Authority under this subsection may be used for the Authority's administrative expenses, including salaries and benefits.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

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market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 2. Brunswick Tourism Development Authority. (a) Appointment and membership. When the board of commissioners of Brunswick County adopts a resolution levying a room occupancy tax under Section 1 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have 10 members appointed by the Brunswick County Commissioners as follows:

- (1) Five individuals who are currently involved in the promotion of travel and tourism, selected by the Brunswick County Commissioners.
- (2) Five individuals selected jointly by the South Brunswick Islands Chamber of Commerce and the Southport-Oak Island Chamber of Commerce.

The resolution shall provide for the members' terms of office and for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair. Members of the Authority shall serve without compensation.

The Authority shall meet monthly and shall adopt rules of procedure to govern its meetings. The Finance Officer for Brunswick County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 1 of this act to promote travel and tourism in Brunswick County as provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. County administrative provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255 and Section 2 of ratified House Bill 337, 1997 General Assembly, is further amended by adding the phrases "Brunswick," and "Person," in their proper alphabetical order.

Section 4. Conforming change. Section 2(a2) of Chapter 664 of the 1991 Session Laws, as enacted by Chapter 617 of the 1993 Session Laws, is repealed.

Section 5. Municipal administrative provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the

tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the municipalities in Brunswick County.

Section 6. Shallotte occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of Shallotte may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from

the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of Shallotte shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Shallotte Tourism Development Authority. The Authority shall use at least one-half of the funds remitted to it under this subsection to promote travel and tourism in Shallotte and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 7. Shallotte Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of Shallotte adopts a resolution levying a room occupancy tax under Section 6 of this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have five members appointed by the board of aldermen. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen of the Town of Shallotte shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Shallotte shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 6 of this act for the purposes provided in Section 6 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of Aldermen of the Town of Shallotte on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 8. Caswell Beach occupancy tax changes. Section 1 of Chapter 664 of the 1991 Session Laws reads as rewritten:

"Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Caswell Beach may ~~by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Caswell Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Caswell Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(e) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~(e)(c) Use of Proceeds. The town may use the proceeds of a tax levied under this act subsection (a) of this section only for tourism-related expenditures. As used in this act, section, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.~~

~~The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 9. Holden Beach occupancy tax changes. Section 1 of Chapter 963 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Holden Beach Town Council may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar

accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~-105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Holden Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Holden Beach Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection.~~ Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.

~~(c) Administration.~~ The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Holden Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

The tax collector may collect any unpaid taxes levied under this ~~act~~ section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties.~~ A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there

shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)(c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The funds received by the town pursuant to this act proceeds of the tax levied under subsection (a) of this section shall be allocated to a special fund and used only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.~~

~~The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.~~

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Holden Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 10. Ocean Isle Beach occupancy tax changes. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Ocean Isle Beach only, is reenacted and rewritten as Section 11 of this act.

Section 11. Ocean Isle Beach occupancy tax. (a) Authorization and scope. The Board of Commissioners of the Town of Ocean Isle Beach may levy a room occupancy tax of up to **three percent (3%)** of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

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(b) **Authorization of additional tax.** In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Ocean Isle Beach may levy an additional room occupancy tax of up to **two percent (2%)** of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The town council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 12. Sunset Beach occupancy tax changes. Section 1 of Chapter 956 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Sunset Beach Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)-105-164.4(a)(3)~~ and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Sunset Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance

with the provisions of this section. The Town of Sunset Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Sunset Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this act section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)(c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The funds received by the town~~

~~pursuant to this act shall be allocated~~ town shall allocate the proceeds of the tax levied pursuant to subsection (a) of this section to a special fund and ~~used shall use them only~~ for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of the tax levied pursuant to subsection (a1) of this section only for beach renourishment and protection.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Sunset Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 13. Yaupon Beach occupancy tax changes. Section 1 of Chapter 820 of the 1991 Session Laws reads as rewritten:

"Section 1. Yaupon Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Yaupon Beach may ~~by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Yaupon Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Yaupon Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(e) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

~~(e)(c) Use of Proceeds. The town may use the proceeds of a tax levied under this act subsection (a) of this section only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.~~

~~The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.~~

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a~~

calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

~~(g) Repeal. The Board of Commissioners of the Town of Yaupon Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 14. Person County occupancy tax. (a) Authorization and scope. The Person County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Person County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. Of the net proceeds that accrue during the first four years that a tax is levied under this section, the Authority may use up to two-thirds only for the following tourism-related expenditures: (i) constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county, and (iii) supporting the May Festival and other festivals designed to attract tourists from outside the county. The Authority shall use the remaining net proceeds that accrue during the first four years that a tax is levied under this section only to promote travel and tourism in Person County.

Of the net proceeds that accrue after this four-year period, the Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Person County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes

administrative expenses incurred by the Authority in engaging in the listed activities.

- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Section 15. Person Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under Section 14 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act.

The Authority shall be composed of six members, three appointed by the Person County Board of Commissioners and three appointed by the Roxboro City Council. One of the three members appointed by each governing body must be an owner or manager of a Person County hotel or motel. The remaining members must be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall determine the compensation, if any, to be paid to members of the Authority.

The initial terms of the members who are owners or managers of a hotel or motel shall be three years. Each governing body shall designate one of its remaining appointees to serve an initial term of two years and the other to serve an initial term of one year. Thereafter, all terms shall be three years. Vacancies shall be filled in the same manner as original appointments, and members appointed to fill vacancies shall serve for the remainder of the unexpired term.

At its first meeting and at the first meeting of each calendar year, the membership of the Authority shall elect one member to serve as chair until the first meeting of the following calendar year. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Person County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 14 of this act for the purposes provided in Section 14 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

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s/ Harold J. Brubaker
Speaker of the House of Representatives

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North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC – 14 - 38

MEMORANDUM

To: Coastal Resources Commission
From: Maureen Meehan, DCM Morehead City District Planner
Date: November 25, 2014
Subject: Local Government Comments and Proposed Amendments to 15A NCAC 7B CAMA Land Use Plan Guidelines and 7L Planning Grants

At the October CRC meeting, Staff presented proposed amendments to the 7B CAMA Land Use Planning Requirements and 7L Local Planning and Management Grants. The draft language was the result of comments and input gathered at two regional workshops held during the previous year in which input on the CAMA Land Use Planning Program was requested from local elected officials, local planning staff, consultants, and other interested stakeholders. The intent of the re-write of the 7B Land Use Planning Requirements is to increase flexibility for plan content and format, clarify that updates and amendments are voluntary, develop options for CAMA Major Permit Review, streamline plan approval, amendment, and update processes, integrate planning efforts, and improve the Technical Manual. As outlined at the October meeting, the proposed amendments address the following major themes:

- Significantly reduce the regulatory burden on local governments while maintaining coastal management standards for local planning activities;
- Shift emphasis toward local government directed policy and implementation in support of coastal management goals and objectives while reducing data and analysis requirements;
- Institute shorter timelines for state review and certification to speed up the land use plan and amendment review process; and
- Delegate land use plan and amendment certification authority to the Division, reducing the need for CRC involvement while maintaining CRC oversight and standard-setting roles.

Staff distributed draft language and solicited comments on the proposed amendments in early October 2014. Local government officials, planners, and all participants at the Land Use Planning Workshops were asked to submit comments. Further, per the request of the CRC, Frank Rush, Town Manager of Emerald Isle sent the proposed changes to beach town managers.

DCM received written comments from 15 local governments (seven municipalities and five counties) and three interested parties. The majority of the comments were in support of the changes. Comments are organized below to follow the 7B rule language and are paraphrased (copies of the full comments are attached). DCM staff responses are found after each rule section. Many of the local governments stated that their comments from the workshops were

incorporated into the draft rules; therefore DCM recommends that the draft language be approved for public hearing. Staff will then prepare the required fiscal analysis for review at the February 2015 CRC meeting.

Comments and DCM Response

Planning Options

- Remove authorization requirement by County or Secretary in order for municipalities to develop individual plans for certification. “Wilmington contracts with the county to enforce the state building code within the city. Remove redundant ‘(c) Municipalities may seek certification for these plans if all requirements found in 15A NCAC 07B and G.S. 1130A-110 are met.’ Include ...Municipalities may develop "and seek certification for" individual land use plans... in (a). (Wilmington)

DCM Response: *The authorization for municipalities to develop individual plans reflects CAMA 113A-110(c). Once authority is delegated, no further action is needed. DCM is not opposed to removing the requirement, but it would also have to be amended in the CAMA.*

Organization of the Plan

- Matrix showing the location of required elements in the land use plan or comprehensive plan should not be a requirement. (Wilmington)

DCM Response: *The matrix is intended to assist local governments in meeting rule requirements while maintaining document format flexibility. A template will be included in the updated Technical Manual.*

Key Issues

- Replace the entire second sentence "At a minimum...of this Rule." with, "This description shall include those topics described in Subparagraph (d)(2) (Land Use Management Topics) of this Rule and may include any Local Areas of Concern." ... revisions are necessary to reflect how important local areas of concern are to the planning process. (Nags Head)

DCM Response: *The “Local Areas of Concern” Management Topic has been removed as a requirement; however, we do understand the desire of some local governments to acknowledge their importance in the local plan. To address this concern, “may also include local areas of concern” as been inserted under key issues .0702 (b)(2). DCM also prefers listing each management topic at this location rather than relying on the citation.*

Population, Housing and Economy

- Discussion of data and trends is overly prescriptive. Analysis should be that which the jurisdiction determines is needed for their specific situation and policy formulation. (Wilmington)
- We were curious about the population projections being changed to 30 year forecasts instead of 25 year. Could you provide some insight on this? (New Hanover County)

- Will the DCM staff assist with the thirty year projection of seasonal population? Important information, but difficult to figure out at the local level. This comment may be more appropriate for the technical manual. (Currituck County)

DCM Response: *Discussion on population, housing and economic data and trends provides a baseline of information to support local policy. The plan is intended to cover a 30 year period, which is why the population projections have been extended an additional 5 years. DCM intends to provide assistance on population projections.*

Natural Systems

- Except for those identified by local government, this is all data generated and housed within DENR. If required to include it in the local plan, it should be packaged and provided by DCM. (Wilmington)

DCM Response: *DCM intends to assist local governments in obtaining the most recent data available.*

Environmental Conditions

- Status and changes of surface water quality, current situation and trends on closures of shellfishing waters, and areas experiencing chronic wastewater treatment system malfunctions are all data generated by and housed within DENR. If required to include it in the local plan, it should be packaged and provided by DCM. (Wilmington)
- Define "Environmentally fragile areas" and "Valuable natural resource areas". (Wilmington)

DCM Response: *DCM intends to assist local governments in obtaining the most recent data available. "Environmentally fragile areas" is defined under .0702 (c)(2)(A)(ix) and "valuable natural resources areas" is defined within the paragraph. Both are described as "may include, but are not limited to," and may be defined by the local government.*

Existing Land Use and Development

- An existing land use map which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, agriculture, and forestry; and descriptions that shall include estimates of the land area allocated to each land use and characteristics of each land use category – this rule is overly prescriptive - locality should be permitted to map what is needed for specific situation and policy development needs. (Wilmington)
- .0702 (c) (3) (A) Why is “undeveloped” being excluded as a land use category to be mapped? (Morehead City)

DCM Response: *The rule uses the permissive "may" when addressing categories used on the existing land use map. The local government has flexibility in mapping what is needed for policy development. "Undeveloped" was removed from the category list to encourage use of more specific categories. For further clarification, “vacant” has been included on the list of possible categories under .0702 (c)(3)(A).*

Community Facilities

- Requiring public and private water supply and wastewater systems information in the Wilmington plan beyond what is necessary for policy development is unnecessary and redundant. Wilmington is serviced by an independent quasigovernmental utility authority that operates under its own comprehensive plan. Perhaps CAMA should require independent utility authorities to prepare limited plans to address their service area or DCM should review the utility plan in conjunction with the city's plan. (Wilmington)
- Some transportation systems appear to have been excluded, transit and bike/pedestrian. DOT includes all modes of transportation in the comprehensive transportation planning process and it seems CAMA should follow suit. (Morehead City)
- Requiring transportation information in the city plan beyond what the city needs for policy development is unnecessary and redundant. Wilmington is served by the Wilmington MPO which operates under its own comprehensive plan. Perhaps DCM should include the MPO plan as part of their plan review for Wilmington. (Wilmington)
- Wilmington has a separate NPDES Phase II plan approved by the State. Perhaps DCM should review the stormwater plan as part of the plan review for Wilmington. (Wilmington)

DCM Response: *Discussion of community facilities (public and private water supply and wastewater systems, transportation systems, and stormwater systems) provides a baseline of information to support local policy. DCM is not authorized to review other plans. Concerning transportation systems, in order to include transit and bike/ pedestrian modes, "planned highway and rail systems" has been replaced with "planned multimodal systems" in .0702 (c)(4)(B).*

Management Topics (MT)

- We suggest adding an additional management topic: management options for the estuarine shoreline and ocean beach. (NC Coastal Federation)

DCM Response: *Estuarine shorelines and ocean beaches can be addressed under the Land Use Compatibility and Natural Hazard Management Topics as well as in policies of local areas of concern, at the discretion of local governments.*

Land Use Compatibility

- .0702(d)(2)(B) This may be because of the strikeouts, but the sentence just doesn't seem to read well. Also, may want to consider including the language under (ii)(II) (policies shall provide direction to assist local decision-making and consistency for zoning, divisions of land, and public and private projects) as part of the management goal. (Morehead City)

DCM Response: *DCM agrees that difficulties in readability may be due to the knockout format. A copy of the proposed rule without strikeouts is included in this report. Since they are locally adopted, it is expected that all policies, not just those for land use compatibility, will provide direction for local decision-making.*

Infrastructure Carrying Capacity

- Wilmington has limited authority over the water and sewer infrastructure systems and cannot be held accountable for this management topic. Meet requirements of "relevant" and not "each" Management Topic. (Wilmington)

DCM Response: *Management Topics are designed to meet CAMA goals and each is considered relevant. Intergovernmental and interagency coordination in meeting Management Topics is encouraged.*

Natural Hazards

- Addressing this management topic in the comprehensive plan is unnecessary and redundant. Wilmington has a hazard mitigation plan developed jointly with the County. Perhaps to address this, DCM should review the Hazard Mitigation Plan. (Wilmington)

DCM Response: *Management Topics are designed to meet CAMA goal and each is considered relevant. Hazard mitigation policies relevant to land use and development should be included in the plan. DCM is not authorized to review other plans.*

Water Quality

- Requiring the comprehensive plan to address this management topic is unnecessary and redundant. Wilmington has a NPDES Phase II permit approved by the state that addresses non-point source pollution. In addition, the city has adopted watershed specific restoration plans that have been reviewed by DENR. Perhaps to address this, DCM should review the Phase II plan and watershed plans. (Wilmington)
- The planning objective listed appears to be more restrictive than the management goal. Maintenance and protection of existing water quality is not included in the objective but is clearly mentioned in the goal. (Morehead City)
- We suggest that wording for management topic Water Quality be revised to state that "Policies that establish strategies and practices to prevent or reduce the volume of polluted stormwater entering coastal waters". This will better reflect the efforts of several local governments who are actively tackling stormwater runoff by mimicking the natural hydrology of the land. (NC Coastal Federation)
- We also request that one of the planning objectives under the Water Quality management topic should remain "to protect open shellfishing waters and restoring closed or conditionally closed shellfishing waters" as stated in the current 7B language. (NC Coastal Federation)

DCM Response: *Management Topics are designed to meet CAMA goals and each is considered relevant. Water quality policies relevant to land use and development should be included in the plan. DCM is not authorized to review other plans. To more clearly align the goal for the management topic with the objective, the objective statement has been reworded from "improve" water quality to "maintain or improve" water quality in .0702(d)(2)(E)(ii). Policies specific to stormwater volume and shellfishing waters can meet the planning objective for the management topic, and may be included at the option of the local government.*

Local Areas of Concern

- On Page 11, in subparagraph (d) (2), keep a place holder for "F. Local Areas of Concern." ... revisions are necessary to reflect how important local areas of concern are to the planning process. [Nags Head]

DCM Response: *“Local Areas of Concern” has been removed as a required Management Topic; however, DCM understands the desire of some local governments to acknowledge their importance in the local plan. To address this concern, “In addition to the management topics outlined below, plans may also include policies that address local areas of concern.” has been inserted into the first paragraph of .0702 (d)(2) Management Topics.*

Action Plan / Implementation Schedule

- Fiscal year schedule and the steps local government will take to implement the policies are overly prescriptive. (Wilmington)
- Remove use of an action plan to prepare the implementation status report. Any reporting should be as needed by the community to account to their elected board and not to DCM. (Wilmington)

DCM Response: *Implementation accountability is to the local government. DCM implementation review is limited to reporting. Implementation reports provide DCM and the CRC with a performance measure on local policy implementation and indicate areas where funding and technical assistance may be needed.*

Land Use Plan Amendment, Review and Certification

- Plan submission to DCM should be voluntary, should be allowed to occur after plan adoption by the local governing board, and DCM review should not be in the critical path toward local adoption. DCM review and comments should be for instructional purposes and not dictates. Wilmington is developing a local plan that meets the requirements of the city strategic plan, City Council, and the desires of the community. (Wilmington)
- Can a jurisdiction prepare and adopt a small area plan or district plan that meets the CAMA planning requirements and therefore supersedes the general land use plan for that specific area? (Currituck County)
- Review period of 30 calendar days. After review period ends, comments shall be provided to the local government within 45 days. This would significantly delay the local plan adoption process... (Wilmington)
- Modify the time period for which comments shall be provided from division to local government from 45 to 30 days. (Nags Head)

DCM Response: *CAMA requires each county to provide a land use plan while municipalities are delegated the authority at their request. DCM provides review and comments to ensure that the CRC’s land use plan requirements are met. The proposed 7B Rule updates are meant to provide increased flexibility so that local plans can meet the land use plan rules. Local governments can prepare and adopt small area plans or district plans for certification as an addendum to their certified land use plan. The time period for Division comments is consistent*

with the timeframe for CAMA Major Permit reviews. It is meant to provide sufficient time for routing, compiling of other agency comments, and preparation of the DCM staff review.

Notice to DCM Prior to Public Hearing Published Notice

- 0801(a) Practically, the “no less than 5 business day” language may cause a problem with newspaper deadlines. (Morehead City)
- Remove written notice to Secretary or designee no less than 5 business days prior to publication notice. Insert notice of public hearing that meets local government public notice requirements. (Wilmington)

DCM Response: *The "no less than 5 business day" notice lets DCM know that a plan or amendment is being advertised for public hearing. DCM is unclear on concerns as we use this for staff notification purposes.*

Certification by Division

- District Planners written report to the Secretary on the locally adopted land use plan or amendment and either recommendation for certification or identification on how the plan or amendment does not meet procedures and conditions for certification - Instead of outright rejection, identify relevant portions of the plan that are suitable for future agency consistency determinations. (Wilmington)
- Plans should be certified that contain polices that address "relevant" Management Topics rather than "each" Management Topic. (Wilmington)
- .0801 and .0802 Need to make sure there is not any conflict with GS 113A-110. (Morehead City)
- What is the process proposed for Division staff to update the CRC about the plans now that certification will be shifted from the Commission to staff? (NC Coastal Federation)

DCM Response: *If during plan review it is determined that a locally adopted plan does not meet the procedures and conditions for certification and will not be recommended for certification, the Division will provide the local government with information on the deficiencies and how to rectify them. It is likely that an amendment to CAMA will be required to delegate certification authority to the Secretary, mimicking the permit granting authorization. Notice of individual plan and amendment certifications will be provided in the Executive Secretary's/Division Director's report to the CRC.*

Use of the Plan

- The local option for consistency review is a major departure (not a bad idea). If a local government chooses to review consistency internally, will the DCM staff provide training or parameters? (Currituck County)

DCM Response: *DCM intends to provide training in use of the plan for consistency review.*

Required Periodic Implementation Status Report

- Accountability for implementation should be the local elected board and its citizens and not to CRC. (Wilmington)

- .0803 Under this section the local government is asked to identify any unforeseen land use issues that have arisen and also identify the consistency of existing land use and development ordinances with current land use plan policies. Will you require the local government to amend its land use plan in the event there is a major land use issue or a conflict with land use plan consistency? (Morehead City)
- .0803 ... Also, understanding the fact that land use plans do not have an update schedule and are supposed to be long term plans, is it possible to provide extend the reporting from a 2 year cycle to a 5 year cycle? (Morehead City)

DCM Response: *Implementation accountability is to the local government. DCM implementation review is limited to reporting. Local governments will not be required to amend a land use plan in the event that there is a major land use issue or conflict with land use plan consistency. A two year implementation reporting cycle is preferred, because policy is used in permit decisions. DCM intends to send reminders to local governments when implementation reports are due. To clarify, the start date of the reporting cycle, "from the date of initial certification" has been added to 7B.0803 (a).*

Grant Funding Priorities

- If land use plans are not certified or implementation reports are not filed in a timely manner, can funding be withheld for not just LUP updates, but also implementation projects (e.g., public access improvements)? (Currituck County)

DCM Response: *Funding will be withheld for projects receiving grant funds under 7L rules. Funding for public beach and waterfront access grant projects approved under the 15A NCAC 7M .0300 Shorefront Access Policies rules will not be withheld.*

Technical Manual

- A new Technical Manual is much needed. (Consultant)
- We request that DCM assemble a working group to provide input and assistance in revising the technical manual and in developing a clearinghouse of coastal issue tools, trainings and data. This working group should meet yearly to discuss current and emerging planning issues and priorities in order to establish areas of focus for the DCM planning staff. The working group should include coastal stakeholders as well as key coastal state and federal resource agencies. Tools such as the recently developed watershed restoration plan guidebook and current information on estuarine shoreline, public access and ocean beach management options could all be useful inclusions. (NC Coastal Federation)
- We would also like the opportunity to review and comment on revisions to the CAMA land use planning technical manual, when available. (Nags Head)
- I'm a little surprised the required land suitability map was removed. While the much of the analysis requirements are removed, hopefully some of this will carry forward to the technical manual as optional approaches. (Currituck County)
- Additionally, our overall assessment was that the changes did not adversely impact NHC (New Hanover County); however it could thwart smaller communities' need for a framework. Perhaps a

guide to CAMA plans or a framework for smaller communities would be helpful. (New Hanover County)

DCM Response: *DCM agrees that an updated Technical Manual is needed. Although a strategy for updating the manual has not been decided, the Division has noted the interest in having a working group involved in its development. Opportunity to review and comment on revisions to the manual will be provided. Although they will not be required, the intent is to include analysis options in the technical manual. A plan framework for smaller communities will also be considered for the manual.*

Topics of Interest

- We need to encourage the growth of native aquatic grasses and reeds that are primary nursery areas for fish, shrimp, and crabs. If property owners are going to put up seawalls and breakwaters they need to be encouraged to replant aquatic grasses in front to provide nursery habitat. (Neuse River Keeper)
- We need strict enforcement of the cutting of buffer zones. Too many property owners are denuding their waterfronts for that "perfect view". (Neuse River Keeper)
- Also rain water needs to be held on the property where impervious surfaces have been created and not channeled directly into waterways bring with it fertilizers, pesticides, herbicides, and petrochemicals. (Neuse River Keeper)

DCM Response: *Each of these topics of interest will be considered for inclusion in the updated Technical Manual.*

Attachments

Attachment 1 - Comments from Local Government Representatives

Attachment 2 - Proposed Amendments to Subsections 7B and 7L – Strike through and underline

Attachment 3 - Proposed Amendments to Subsections 7B and 7L – Clean Copy

Attachment 1

From: Jessica Fiester [<mailto:planner@atlanticbeach-nc.com>]
Sent: Friday, October 17, 2014 3:06 PM
To: Meehan, Maureen
Cc: Trace Cooper
Subject: RE: Land Use Planning Guideline Feedback

Maureen,

Personally, I think these changes are awesome. Attached is a letter of support from Atlantic Beach Planning Staff. Thank you!

Jessica



POST OFFICE BOX 10
ATLANTIC BEACH, NC 28512

(252) 726-4456
Fax (252) 726-7043

INSPECTION & PLANNING DEPARTMENT
125 West Fort Macon Road, Atlantic Beach, NC 28512

Donna Turner
inspectionsdirector@atlanticbeach-nc.com

Jessica Flester
planner@atlanticbeach-nc.com

October 17, 2014

To Whom it May Concern:

On behalf of the Planning Department in Atlantic Beach, I provide this letter in support of the proposed changes to 15A NCAC 7B CAMA Land Use Planning Requirements and 7L Local Planning and Management Grants.

I have thoroughly reviewed the proposed changes that will be presented to the Coastal Resources Commission on October 23, 2014. As the Local Permitting Officer for the last 8 years and a planner who has both prepared and gone through the update process of a CAMA Land Use Plan, I am pleased to see the direction these updates may move the program.

I commend the potential change to add the flexibility of utilizing existing plans for the base of which to add your requirements. This should make the process less overwhelming for those who may be "starting from scratch." I also feel this change increases relevancy to a specific jurisdiction, potentially making this plan a useable tool rather than just a state mandate.

I am pleased to see you are considering having the director certify the plan. This may eliminate time-consuming trips to meetings by local government officials and a lengthy waiting period for certification. I also endorse the removal of interval requirements for updates. These updates are often unnecessary and are sometimes expensive to complete with a consultant. Our plan in Atlantic Beach really has no reason to go through an update at this point in time. Despite not being updated since March 2010, little has changed in our policies or land-use that would impact the content. If an update was required next year there would be very little value to us in completing it.

I feel the addition of the forthcoming technical manual will be an asset in locating information and a useful guideline to go from when doing updates. Along the same lines, the proposed matrix of required elements will make it easier to create and update the plans. The updated list allows for more applicability and eliminates the current "one size fits all" parameters that are cumbersome and outdated.

Thank you for the consideration of our comments as you update your policies.

Kindest regards,

A handwritten signature in black ink that reads "Jessica A. Flester". The signature is written in a cursive, flowing style.

Jessica A. Flester, MPA, CZO
Director of Planning & Zoning

From: Linda Staab [mailto:lindastaab@bizec.rr.com]
Sent: Wednesday, November 05, 2014 11:17 AM
To: Meehan, Maureen
Subject: RE: Land Use Planning Guideline Feedback

Hey Maureen,

I had the opportunity to review the Land Use Plan Guidelines and am excited to see that the process has been simplified. Thanks for taking the time to talk with me yesterday about my questions/comments. Below is the list of outstanding questions/comments:

.0702 (c) (3) (A) Why is "undeveloped" being excluded as a land use category to be mapped?

.0702(c)(4)(B) Some transportation systems appear to have been excluded, transit and bike/pedestrian. DOT includes all modes of transportation in the comprehensive transportation planning process and it seems CAMA should follow suit.

.0702(d)(2)(B) This may be because of the strikeouts, but the sentence just doesn't seem to read well. Also, may want to consider including the language under (ii)(II) as part of the management goal.

.0702(d)(2)(E)(ii) The planning objective listed appears to be more restrictive than the management goal. Maintenance and protection of existing water quality is not included in the objective but is clearly mentioned in the goal.

.0801(a) Practically, the "no less than 5 business day" language may cause a problem with newspaper deadlines and it also may not accomplish the goal based upon our conversation.

.0801 and .0802 Need to make sure there is not any conflict with GS 113A-110.

.0803 Under this section the local government is asked to identify any unforeseen land use issues that have arisen and also identify the consistency of existing land use and development ordinances with current land use plan policies. Will you require the local government to amend its land use plan in the event there is a major land use issue or a conflict

with land use plan consistency? Also, understanding the fact that land use plans do not have an update schedule and are supposed to be long term plans, is it possible to provide extend the reporting from a 2 year cycle to a 5 year cycle?

Again, I would like to say that the changes appear to make the whole land use plan update process much easier for local governments.

Thank you for taking the time to update the regulations and giving local governments the opportunity to review the proposed changes.

Linda

Linda V. Staab
Director of Planning and Inspections
Town of Morehead City

From: Donna Creef <donnac@darenc.com>
Sent: Thursday, November 06, 2014 8:43 AM
To: Owens, Charlan
Cc: Warren Judge; Bobby Outten
Subject: Re: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Charlan -- thank you for the opportunity to provide comments on the proposed revisions to the CAMA land use planning guidelines. I have reviewed the proposed changes and am pleased with the flexibility that has been worked into the language and the removal of some of the extremely onerous mapping requirements. The DCM staff obviously were paying attention to the feedback of the local governments at workshop earlier this spring. Having a more flexible timeline for an update, a set number of days for the State review, and a certification by the DCM director versus the CRC are all options that would be supported by Dare County. As previously noted during my comments at the spring workshop, the mapping requirements for land suitability maps were cumbersome and needed to be reconsidered. Dare County has always stressed that land use plans were not ordinances but policy development documents and the removal of LUP requirements to include dwelling densities, building heights, and other dimensional standards typically found in zoning ordinances is a welcome change.

I will continue to monitor the progress of these revisions and appreciate all of the thought and effort put into the draft revisions by the DCM staff.

Donna Creef
Planning Director
Planning Department
P.O. Box 1000 Manteo, NC 27954
252.475.5873 phone
www.darenc.com

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.



From: Warren Judge <warrenj@darenc.com>
Sent: Thursday, November 06, 2014 9:19 AM
To: Owens, Charlan
Cc: Bobby Outten; Donna Creef
Subject: Re: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Charlan,

Thank you for the opportunity to submit comments on the proposed revisions to the CAMA land use planning guidelines. I know I speak for our entire Board of Commissioners when I tell you that we are very encouraged with the direction of the changes and the flexibility in the language. It is also very encouraging to see removal of some of the extreme mapping requirements. As this document moves forward, as presented and fine tuned, to Public Hearing Dare County should be able to stand before the Hearing in support.

I always found the land use plan to be an obstacle to work around as the bureaucracy to develop and obtain final approval, made the plan out of date on some policies by the time it was approved. Removing densities, building heights and other standards which are in our zoning ordinances from the Land Use Plan requirements is change for the better and allows Governing Boards to adapt to changing demands and desires of the people. I truly believe this will help us work towards the future in a more efficient manner with expedience.

I will continue to read as you continue to fine tune and I look forward to speaking at the Public Hearing(s) and submitted written comments of support as this comes to that process early next year.

And finally thank you, thank you and your staff and team as it is obvious you have listened to us. It is refreshing when we spend time giving input, and then see the results and know that you were listening.

Sincerely,

Warren Judge
Chairman, Dare County Board of Commissioners
252-473-8250

From: Traci White
Sent: Thursday, November 06, 2014 9:44 AM
To: Owens, Charlan
Cc: Scott Sauer; Kathy Vinson; Dr. Nayland Collier (altosax-61yg@live.com); Greg Hughes (gregoryhughes@embarqmail.com)
Subject: RE: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Charlan:

I have reviewed the proposed changes to the CAMA Land Use Planning Rules. My comments are below.

The proposed rule changes address the issues that were discussed at the workshop that I attended. I believe the changes will benefit all CAMA jurisdictions by giving the flexibility to our communities that they need to keep their plans current and functional. Also, our communities will benefit by allowing plans to serve a comprehensive purpose based on locally identified needs, without the burden of extreme technical analysis that is difficult for the general public and sometimes, public officials, to understand. The plans will serve the purpose of meeting CAMA guidelines while catering to each jurisdiction's unique needs. In addition, I think the rule changes will enhance communication between DCM, local officials, and the public to produce more effective plans.

Thank you and the DCM staff for addressing our concerns. I look forward to a much smoother, more timely planning process in the future.

Traci B. White, CFM
Director of Planning & Inspections
Bertie County
PO Box 530
106 Dundee ST
Windsor, NC 27983
252-794-5336 (Department)
252-794-6185 (Office Direct)
252-794-5361 (Fax)
www.co.bertie.nc.us

-----Original Message-----

From: bill.hines@ec.rr.com [mailto:bill.hines@ec.rr.com]

Sent: Thursday, November 06, 2014 10:31 AM

To: Meehan, Maureen

Subject: Re: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Maureen,

We need to encourage the growth of the native aquatic grasses and reeds that are primary nursery areas for fish, shrimp and crabs. If property owners are going to put up seawalls and breakwaters they need to be encouraged to replant the aquatic grasses in front to provide nursery habitat. We need strict enforcement of the cutting of buffer zones. Too many property owners are denuding their waterfronts for that "perfect view". Also rain water needs to be held on the property where impervious surfaces have been created and not channeled directly into the waterways bring with it fertilizers, pesticides, herbicides and petrochemicals.

Rapid development encouraged by short-term profits will cost all of us in the end. The depredation of the Chesapeake should be our warning before our North Carolina environment falls to the same profit driven problems.

Bill Hines

Neuse Riverkeeper Foundation

From: Wes Haskett <WHaskett@southernshores-nc.gov>
Sent: Friday, November 07, 2014 3:24 PM
To: Owens, Charlan
Cc: Peter Rascoe; Lopazanski, Mike
Subject: RE: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Good afternoon, Charlan. I believe the proposed changes address the concerns discussed at the May 22nd workshop. Please keep us informed on the progress of the amendments. Thank you!

Wes Haskett
Town Planner/Code Enforcement Officer
Town of Southern Shores
(252) 261-2394 (ph)
(252) 255-0876 (fx)
www.southernshores-nc.gov

From: Ben Woody <Ben.Woody@CurrituckCountyNC.gov>
Sent: Monday, November 10, 2014 10:49 AM
To: Owens, Charlan
Cc: dgodfrey@perquimanscountync.gov
Subject: RE: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Charlan,

The changes look great. I only have a few comments:

- Can a jurisdiction prepare and adopt a small area plan or district plan that meets the CAMA planning requirements and therefore supersedes the general land use plan for that specific area?
- Will the DCM staff assist with the thirty year projection of seasonal population? Important information, but difficult to figure out at the local level. This comment may be more appropriate for the technical manual.
- I'm a little surprised the required land suitability map was removed. While the much of the analysis requirements are removed, hopefully some of this will carry forward to the technical manual as optional approaches.
- The local option for consistency review is a major departure (not a bad idea). If a local government chooses to review consistency internally, will the DCM staff provide training or parameters?
- If land use plans are not certified or implementation reports are not filed in a timely manner, can funding be withheld for not just LUP updates, but also implementation projects (e.g., public access improvements)?

Thanks,

Ben E. Woody, AICP
Planning & Community Development
Currituck County
153 Courthouse Road, Suite 110
Currituck, North Carolina 27929
(252) 232.6029
www.currituckgovernment.com

From: Joe Heard <JHeard@townofduck.com>
Sent: Monday, November 10, 2014 11:41 AM
To: Owens, Charlan
Subject: RE: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Charlan,

I've had the opportunity to review and discuss the proposed amendments with Town Manager Chris Layton.

The Town of Duck is satisfied with the proposed amendments. I'm very pleased with how many of the issues identified at the Northern programs meeting have been addressed by the proposed changes. These changes will definitely help streamline the planning process, create more functional plans for the communities involved, and minimize planning costs.

You're welcome to contact me for further comments or clarification.

Joe Heard, AICP
Director of Community Development
Town of Duck
P.O. Box 8369
Duck, NC 27949
(252)255-1234
jheard@townofduck.com

From: Andy Garman <andy.garman@nagsheadnc.gov>
Sent: Monday, November 10, 2014 5:08 PM
To: Owens, Charlan
Cc: Cliff Ogburn
Subject: Nags Head Comments on LUP Guidelines
Attachments: DCMLUPGuidelines_NHComments.pdf

Charlan,

Attached are comments from the Town of Nags Head on the proposed LUP guidelines. Thank you for the opportunity to review and comment. Please do not hesitate to contact us if you have any questions.

Andy Garman
252-449-2006

Robert C. Edwards
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager



Town of Nags Head

Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

M. Renée Cahoon
Commissioner

John Ratzenberger
Commissioner

Marvin Demers
Commissioner

November 10, 2014

Ms. Charlan Owens
DCM NE District Planner
1367 US 17 South
Elizabeth City, NC 27909

Dear Ms. Owens:

On behalf of the Town of Nags Head, we appreciate the opportunity to provide the following comments on the proposed revisions to 15A NCAC 7B – the Division of Coastal Management’s CAMA Land Use Plan Guidelines as well as 7L related to Planning Grants. We attended the northern region workshop in May of this year and are pleased to see that many of our comments have been incorporated into the revised rules.

Specifically, we agree that coastal management goals should be incorporated into local plans rather than these goals driving the format and contents of the plan. We have found that the organization of the town’s plan changed significantly from the 2000 to 2010 plan due to the format prescribed in the Division’s technical guidelines for the preparation of CAMA land use plans. This has resulted in a document that is less usable for strategic planning or policy implementation over the previous plan. It is important to keep in mind that these plans are often the primary land use or comprehensive planning tool that coastal communities will develop. Therefore, local concerns must form the basis of the plan and the format must reflect local priorities. The town also commends the Division on simplifying the technical analysis requirements, many of which can be redundant, too general, or do not reflect local conditions. Finally, the proposed review and approval timeframes address many of the town’s concerns related to the time it took for the town’s plan to be reviewed and adopted during the last revision cycle.

In addition to the general comments provided above, the town would like to suggest specific language revisions to the proposed guidelines:

1. On page 4: 15A NCAC 07B.0702, (b) (2). Key issues.

Replace the entire second sentence ("At a minimum..... of this Rule.) with, "This description shall include those topics described in Subparagraph (d)(2) (Land Use Management Topics) of this Rule and may include any Local Areas of Concern."

On Page 11, in subparagraph (d)(2), keep a place holder for "F. Local Areas of Concern."

Together, these two revisions are necessary to reflect how important local areas of concern are to the planning process.

2. On page 13: 15A NCAC 07B.0000 State Review and Comment on Draft Plan.

Modify the time period for which comments shall be provided from division to the local government from 45 to 30 days.

Again, thank you for the opportunity to provide comments on the proposed amendments to the division's land use planning guidelines. We trust the division will keep the town informed throughout this process. We would also like the opportunity to review and comment on revisions to the CAMA land use planning technical manual, when available.

Should you need any additional information, please feel free to contact me at 252-441-5508.

Sincerely,

A handwritten signature in black ink, appearing to read "Cliff Ogburn", with a long horizontal flourish extending to the right.

Cliff Ogburn
Town Manager

-----Original Message-----

From: Scott Sherrill [<mailto:admin@townofpks.com>]

Sent: Monday, November 17, 2014 8:11 AM

To: Meehan, Maureen

Cc: Brian Kramer

Subject: PKS Comments

Dear Maureen:

We are generally in favor of the revisions to North Carolina's Coastal Area Management Act Planning Regulations that will soon be considered by the Coastal Resources Commission. We believe that the revisions allow greater flexibility for municipalities to cover topics of importance to municipalities, but continue to make sure that the interests of the Coastal Resources Commission and the Division of Coastal Management are met. With the status of future funding for planning uncertain, the new regulations will make it easier for municipalities and other regulated bodies to keep their plans updated without spending tens of thousands of state and local dollars on consultants.

We further appreciate the revisions that will enable faster approval and turnaround time on amendment and update reviews. We believe that Division of Coastal Management review will be adequate and efficient given the clear standards local plans have to meet.

Thank you for your efforts,

*Scott Sherrill, Town Clerk/Planning Administrator Town of Pine Knoll Shores
100 Municipal Circle
Pine Knoll Shores, NC 28512
252-247-4353, ext 11
admin@townofpks.com

From: Lauren Kolodij [<mailto:laurenk@nccoast.org>]
Sent: Monday, November 17, 2014 9:57 AM
To: Christenbury, Mike; Meehan, Maureen
Cc: todd; Dick Bierly; Lauren Hermley
Subject: CAMA LUP comments

hi Mike and Mo, thank you for the opportunity to comment on the proposed CAMA LUP revisions. Please let me know if you have any questions about our comments. I am happy to provide further explanation if something is unclear. Thank you. Lauren

Lauren Kolodij
Deputy Director
N.C. Coastal Federation
3609 Hwy 24
Newport, NC 28570
www.nccoast.org
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**North Carolina
Coastal Federation**
Working Together for a Healthy Coast

Memorandum

November 17, 2014

To: Mike Christenbury

From: Lauren Kolodij

Subject: CAMA LUP Rule Revisions

Thank you for the opportunity to comment on the proposed revisions to the 7B State Guidelines for Land Use Planning. We commend the Division staff for their efforts to revise the planning program including hosting regional workshops, engaging stakeholders, and developing the proposed 7B language.

The N. C. Coastal Federation agrees that revisions to the current CAMA planning process are needed. During our initial conversations with Division staff we referenced Independent studies of the effectiveness of land use plans that stressed that plans that are voluntarily developed and adopted by local governments are much more effective than state-mandated plans. They found that local governments feel more ownership and investment in plans that they do themselves.

The revised rule language greatly reduces the prescriptive requirements for local governments in developing the plans. We have heard positive feedback about this new approach that should make the planning process less burdensome.

In addition to the proposed 7B revisions we understand that staff plans to update the current technical manual to provide better assistance to local governments. We encourage you to develop and promote useful planning tools, offer user-friendly technical support and coastal issue trainings and engage in partnerships that assist local governments wanting to plan.

We request that the DCM assemble a working group to provide input and assistance in revising the technical manual and in developing a clearinghouse of coastal issue tools, trainings and data. This working group should meet yearly to discuss current and emerging planning issues and priorities in order to establish areas of focus for the DCM

planning staff. The working group should include coastal stakeholders as well as key coastal state and federal resources agencies. Tools such as the recently developed watershed restoration plan guidebook and current information on estuarine shoreline, public access and ocean beach management options could all be useful inclusions.

In addition to stressing the importance of providing assistance to local governments via the tools listed above, we offer the following comments on the proposed 7B language.

(1) What is the process proposed for Division staff to update the CRC about the plans now that certification will be shifted from the Commission to staff?

(2) The land use plan management topics continue to include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas and water quality. We suggest adding an additional management topic: management options for the estuarine shoreline and ocean beach.

(3) We suggest that wording for management topic (E) Water Quality be revised to state that "Policies that establish strategies and practices to prevent or *reduce the volume of polluted stormwater entering coastal waters*". This will better reflect the efforts of several local governments who are actively tackling stormwater runoff by mimicking the natural hydrology of the land.

We also request that one of the planning objectives under the Water Quality management topic should remain to "protect open shellfishing waters and restoring closed or conditionally closed shellfishing waters" as stated in the current 7B language.

We may have additional comments as the revision process proceeds and thank you for the opportunity to provide feedback on this first draft.

-----Original Message-----

From: Phil Prete [<mailto:Phil.Prete@wilmingtonnc.gov>]

Sent: Monday, November 17, 2014 4:51 PM

To: Christenbury, Mike

Subject: RE: 07B rules

Comments are made directly on the proposed revisions. Let me know if you have any trouble with the file or have any questions about the comments. Thanks for the opportunity to review.

Phil

Philip J. Prete, R.E.P.

Senior Planner | Long Range, Environmental and Special Projects City of Wilmington

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PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

SUBCHAPTER 7B – STATE GUIDELINES FOR LAND USE PLANNING

SECTION .0600 - INTRODUCTION

15A NCAC 07B .0601 AUTHORITY

This Subchapter establishes the rules that local governments shall follow in developing and adopting a land use plan or comprehensive plan that meets the Coastal Resources Commission's (CRC) planning requirements.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002.

SECTION .0700 – LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0701 PLANNING OPTIONS

(a) Each county within the coastal area may prepare and adopt a land use plan or comprehensive plan that meets the planning requirements adopted by the Coastal Resources Commission (CRC). The Secretary shall prepare and adopt a land use plan that meets the CRC's planning requirements for each county that chooses not to prepare and adopt a land use plan. Municipalities may develop and seek certification for individual land use plans or comprehensive plans that meet the CRC's requirements ~~if:~~

- ~~(1) the County delegates this authority to the municipality; or~~
- ~~(2) the Secretary grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.~~

Comment [PJ1]: Wilmington contracts with the county to enforce the state building code within the city.

(b) A County shall accept a municipality's locally adopted policies and implementation actions for inclusion in the County land use plan for the municipality's jurisdiction if requested to do so by any municipality not preparing its own land use plan. Inclusion of a municipality's adopted policies and implementation actions shall occur either at the time of County land use plan preparation or a subsequent County land use plan amendment. The municipality's policies and implementation actions are limited to its jurisdiction and may differ from the County's policies and implementation actions.

~~(c) Municipalities may seek certification for these plans if all requirements found in 15A NCAC 07B and G.S. 113A-110 are met.~~

Comment [PJ2]: Redundant

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002.

15A NCAC 07B .0702 LAND USE PLAN ELEMENTS

~~(a) Organization of the Plan. Include a matrix in the land use plan or comprehensive plan that shows the location of the required elements.~~

Comment [PJ3]: Should not be a requirement.

(b) Community Concerns and Aspirations: The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community.

- (1) Significant existing and emerging conditions: Describe the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: Describe the land use and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, and water quality, as described in Subparagraph (d)(2) (Land Use Plan Management Topics) of this Rule.
- (3) A community vision: Describe the general physical appearance and form that represents the local government's plan for the future. Include objectives to be achieved by the plan and identify changes that may be needed to achieve the planning vision.

(c) Existing and Emerging Conditions. The purpose of this element is to provide a sound factual base necessary to support the land use and development policies included in the plan. Describe the following:

- (1) Population, Housing, and Economy. Include discussion of the following data and trends:
 - (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- (iii) Key population characteristics;
- (iv) Age;
- (v) Income; and
- (vi) Thirty year projections of permanent and seasonal population, in five year increments.
- (B) Housing stock: Estimate current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured).
- (C) Local economy: Describe employment by major sectors and community economic activity.
- (2) Natural systems. Describe the natural features and discuss the environmental conditions of the planning jurisdiction, to include:
 - (A) Natural features-
 - (i) Areas of Environmental Concern (AECs);
 - (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
 - (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations, and Division of Marine Fisheries (DMF) shellfish growing areas and water quality conditions;
 - (iv) Flood and other natural hazard areas;
 - (v) Storm surge areas;
 - (vi) Non-coastal wetlands including forested wetlands, shrub-scrub wetlands and freshwater marshes;
 - (vii) Water supply watersheds or wellhead protection areas;
 - (viii) Primary nursery areas;
 - (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
 - (x) Additional natural features or conditions identified by the local government.
 - (B) Environmental conditions:
 - (i) Water quality:
 - (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Resources Basin Planning Branch Reports, Clean Water Act 303(d) List, and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Marine Fisheries;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
 - (ii) Natural hazards:
 - (I) Areas subject to recurrent flooding, storm surges and high winds; and
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities.
 - (iii) Natural resources:
 - (I) Environmentally fragile areas or areas where resource functions are being impacted as a result of development; and
 - (II) Valuable natural resource areas that are being impacted or lost as a result of incompatible development. These may include, but are not limited to the following: coastal wetlands, protected open space, and agricultural land.
- (3) Existing Land Use and Development. Include a map and descriptions of the following:
 - (A) Existing land use patterns, which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, agriculture, and forestry. Land use descriptions shall include estimates of the land area allocated to each land use; and

Comment [PJ4]: Overly prescriptive. Analysis should be that which the jurisdiction determines is needed for their specific situation and policy formulation.

Comment [PJ5]: This is all data generated by and housed within DENR. If required to include it in the local plan, it should be packaged and provided by DCM.

Comment [PJ6]: This is all data housed by the state. If local governments are required to present it in the plan, it should be packaged and provided.

Comment [PJ7]: This is not defined

Comment [PJ8]: This is not defined.

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- (B) characteristics of each land use category
- (B) Historic, cultural, and scenic areas designated by a state or federal agency or by local government.
- (4) Community Facilities. Evaluate existing and planned capacity, location, and adequacy of community facilities that serve the community’s existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. These shall include:
 - (A) Public and private water supply and wastewater systems. Describe existing public and private systems, including existing condition and capacity. Describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health. Indicate future needs based on population projections. Map existing and planned service areas
 - (B) Transportation systems. Map the existing and planned highway and rail systems and port and airport facilities. Describe any highway segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels. Describe highway facilities on the current thoroughfare plan and facilities on the current transportation improvement plan. Describe the impact of existing facilities on land use patterns.
 - (C) Stormwater systems. Describe the existing public stormwater management system. Identify existing drainage problems and water quality issues related to point-source discharges of stormwater runoff.
- (d) Future Land Use. This element of the plan is intended to guide the development and use of land in a manner that achieves the goals of the CAMA through local government land use and development policies, including a future land use map.
 - (1) Policies.
 - (A) Community Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government land use policies as required in .0702 (b) and (c).
 - (B) Policies shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules.
 - (C) Policies that exceed use standards and permitting requirements found in Subchapter 7H – State Guidelines for Areas of Environmental Concern shall be identified in the plan.
 - (2) Land Use Plan Management Topics. The purposes of the CRC’s management topics are to ensure that land use plans support the goals of the CAMA, define the CRC’s expectations for land use policies, and provide a basis for land use plan review and certification. Each management topic-includes two components: a management goal and planning objectives.
 - (A) Public Access:
 - (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
 - (ii) Planning Objectives: Policies that address access needs and opportunities, with strategies to develop public access and provisions for all segments of the community, including persons with disabilities. Oceanfront communities shall establish access policies for beach areas targeted for nourishment.
 - (B) Land Use Compatibility:
 - (i) Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, avoids risks to public health, safety and welfare, and are consistent with the capability of the land.
 - (ii) Planning Objectives: Policies that characterize future land use development patterns and establish mitigation criteria and concepts to minimize conflicts.
 - (C) Infrastructure Carrying Capacity:
 - (i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
 - (ii) Planning Objectives: Policies that establish service criteria and ensure improvements minimize impacts to AECs and other fragile areas.
 - (D) Natural Hazard Areas:

Comment [PJ9]: Overly prescriptive – locality should be permitted to map what is needed for specific situation and policy development needs.

Comment [PJ10]: Wilmington is serviced by an independent quasigovernmental utility authority that operates under its own comprehensive plan. Requiring this in the Wilmington plan beyond what is necessary for policy development is unnecessary and redundant. Perhaps CAMA should require independent utility authorities to prepare limited plans to address their service area or DCM should review the utility plan in conjunction with the city’s plan.

Comment [PJ11]: Wilmington is served by the Wilmington MPO which operates under its own comprehensive plan. Requiring this in the city plan beyond what the city needs for policy development is unnecessary and redundant. Perhaps DCM should include the MPO plan as part of their plan review for Wilmington.

Comment [PJ12]: Wilmington has a separate NPDES Phase II plan approved by the State. Perhaps DCM should review the stormwater plan as part of plan review for Wilmington.

Comment [PJ13]: Wilmington has limited authority over the water and sewer infrastructure systems and can not be held accountable for this management topic.

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.
 - (ii) Planning Objectives: Policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from erosion, high winds, storm surge, flooding, or other natural hazards.
- (E) Water Quality:
- (i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.
 - (ii) Planning Objectives: Policies that establish strategies and practices to prevent or control nonpoint source pollution and improve water quality
- (3) Future land use map. Depict the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure. Include designations with descriptions of land uses and development
- (e) Tools for Managing Development. The purpose of this element is to describe the management tools and actions the local government will use to implement the land use plan.
- (1) Guide for land use decision-making. Describe the role of the land use plan policies including the future land use map in local decisions regarding land use and development.
 - (2) Existing development program. Describe the community's existing development management program, including local ordinances, codes, plans, and policies. {
 - (3) Action plan and implementation schedule. Describe the actions that will be taken by the local government to implement policies that meet the CRC's Management Topic goals and objectives. Specify the fiscal year(s) in which each action is anticipated to start and finish. Describe the specific steps the local government plans to take to implement the policies, including the adoption and amendment of local ordinances, plans, and special projects. ~~The action plan shall be used to prepare the implementation status report for the land use plan.~~

Comment [PJ14]: Wilmington has a hazard mitigation plan developed jointly with the County. Addressing this management topic in the comprehensive plan is unnecessary and redundant. Perhaps to address this, DCM should review the Hazard Mitigation Plan.

Comment [PJ15]: Wilmington has a NPDES Phase II permit approved by the state that addresses non-point source pollution. In addition, the city has adopted watershed specific restoration plans that have been reviewed by DENR. Requiring the comprehensive plan to address this management topic is unnecessary and redundant. Perhaps to address this, DCM should review the Phase II plan and watershed plans.

Comment [PJ16]: Overly prescriptive.

Comment [PJ17]: Any reporting should be as needed by the community to account to their elected board and not to DCM.

History Note: Authority G.S. 113A-102; 113A-107(a); 113A-110, 113A-111, 113A-124; Eff. August 1, 2002; Amended Eff. April 1, 2003.

SECTION .0800 –LAND USE PLAN AND AMENDMENT REVIEW AND CERTIFICATION

15A NCAC 07B .0000 STATE REVIEW AND COMMENT ON DRAFT PLAN

(a) Procedure for Agency Review and Comment. The Division shall review all draft land use plans submitted for consistency with the CRC's requirements for land use plans ~~prior to local adoption~~. The Division shall provide notice to the CRC, other State and Federal Agencies, and adjacent jurisdictions (including non CAMA areas and if applicable, out of state areas) that the plan is available for review and comment. [The review period shall be 30 calendar days. After the review period ends, comments shall be provided to the local government within 45 calendar days.]

Comment [PJ18]: This would significantly delay the local plan adoption process. Plan submission to DCM should be voluntary, should be allowed to occur after plan adoption by the local governing board, and DCM review should not be in the critical path toward local adoption. DCM review and comments should be for instructional purposes and not dictates. Wilmington is developing a local plan that meets the requirements of the city strategic plan, City Council, and the desires of the community.

15A NCAC 07B .0801 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

(a) Notice of Public Hearing. The local government shall provide ~~the Secretary or his designee written~~ notice of the public hearing ~~for local adoption and a copy of the proposed land use plan or amendment, no less than 5 business days prior to publication of a public hearing notice that meet the local governments public notice requirements.~~ The public hearing notice shall include, per .0802(a)(2), disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the land use plan.

(b) Final Plan Content. The final land use plan or amendment shall be adopted by the elected body of each participating local government.

(c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary or his designee the locally adopted land use plan a certified statement of the local government adoption action, and documentation that it has followed the public hearing process required in G.S. 113A-110.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124; Eff. August 1, 2002.

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

Amended Eff. January 1, 2007; February 1, 2006

15A NCAC 07B .0802 CERTIFICATION AND USE OF THE PLAN

(a) Secretary Certification of Land Use Plans and Amendments:

- (1) The Division District Planner shall submit a written report to the Secretary on the locally adopted land use plan or amendment and either recommend certification or identify ~~how the plan or amendment does not which portions of the plan~~ meet the procedures and conditions for certification.
- (2) The public shall have an opportunity to submit written objections; or comments on the locally adopted land use plan or amendment prior to action by the Secretary. Written objections shall be received by the Division no more than 30 calendar days after local adoption of the land use plan or amendment, ~~and~~ shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule and shall identify the specific plan elements that are opposed. Written objections or comments shall be sent by the Division to the local government submitting the land use plan or amendment. Written objections shall be considered in the certification of the local land use plan or amendment.
- (3) The Secretary shall certify land use plans and amendments following the procedures and conditions specified in this Rule. The Secretary shall certify plans and amendments which:
 - (A) are consistent with the current federally approved North Carolina Coastal Management Program;
 - (B) are consistent with the Rules of the CRC;
 - (C) do not violate state or federal law; and
 - (D) contain policies that address ~~each relevant~~ Management Topics.
- (4) If the land use plan or amendment does not meet certification requirements the Secretary shall within 45 calendar days inform the local government how the plan or amendment does not meet the procedures and conditions for certification.

Comment [PJ19]: Instead of outright rejection, identify relevant portions of the plan that are suitable for future agency consistency determinations.

Comment [PJ20]: See comments above regarding management topics.

(b) Copies of the Plan. Within 90 calendar days of certification of a land use plan or an amendment the local government shall provide one (1) printed and one (1) digital copy of the land use plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

(c) Use of the plan. Once certified, the land use plan shall be utilized in the review of CAMA permits in accordance with G. S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

- (1) Local administration. The local government reviews CAMA permits for consistency with the land use plan.
- (2) Joint administration. The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for CAMA permit consistency reviews.
- (3) Division administration. The Division reviews CAMA permits for consistency with the land use plan policies, including the future land use map and implementation actions.

(d) Plan updates and amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124; Eff. August 1, 2002.

Amended Eff. April 1, 2008; September 1, 2006.

~~**15A NCAC 07B .0803 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS**~~

~~(a) Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report every two years. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan.~~

~~The Implementation Status Report shall also identify:~~

- ~~(1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified 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 land use plan; and~~
- ~~(4) Consistency of existing land use and development ordinances with current land use plan policies.~~

Comment [PJ21]: Accountability for implementation should be to the local elected board and its citizens and not to CRC..

History Note: Authority G.S. 113A-112; 113A-124;

From: Rigby, Jennifer [<mailto:jrigby@nhcgov.com>]

Sent: Monday, November 17, 2014 5:07 PM

To: Christenbury, Mike

Subject: Comments on CAMA Changes

Mike,

Our office really did not have many comments on the CAMA changes. We were curious about the population projections being changed to 30 year forecasts instead of 25 year. Could you provide some insight on this?

Additionally, our overall assessment was that the changes did not adversely impact NHC; however, it could thwart smaller communities need for a framework. Perhaps a guide to CAMA plans or a framework for smaller communities would be helpful.

Have a nice afternoon!

Jennifer

Jennifer Rigby | Long Range Planner

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From: Kathy Vinson [mailto:kbvinson@ec.rr.com]
Sent: Monday, November 17, 2014 5:35 PM
To: Christenbury, Mike
Subject: RE: Proposed Changes to CAMA Land Use Planning Rules

Mike,

Thank you for the opportunity to comment on the proposed 7B changes.

I think the proposed rules are a vast improvement. With the current rules we had hoped to simplify the process, clarify requirements, and do away with "one size fits all" constraints. A lot of time and effort went into developing the current rules, but in the end we missed the mark (by a long shot). I think the proposed rules will help meet those old goals and improve coastal land use planning.

The proposed rules should make it easier for local governments to appreciate and participate in the planning process and to develop plans that are actually useful and serve as blueprints for future growth. One complaint I have heard over the years is that the CAMA planning process requires local governments to adopt policies that please the State, not policies that represent what is important to the local government. The new proposals seem to emphasize local issues and desires. The reduced analysis and mapping requirements should also help local governments complete the process with reduced costs.

The new procedures for reviewing and approving local plans are certainly less time consuming and will be less frustrating for local governments.

A new Technical Manual is much needed. The old manual remained on the DCM website for several years, but seemed to serve little purpose. Although it was endorsed by staff and subsequently adopted by the CRC, local governments were sometimes told that the manual was not correct or was not applicable. This occurred after plans were prepared based on its guidance.

All in all, this seems like a simpler but more useful process. It should eliminate some of the criticism of past planning processes and will hopefully be helpful to coastal local governments.

Thanks again for the opportunity to comment. Please call if you would like to discuss any of my comments.

Kathy

From: Loy, Greg <GREG@kdhnc.com>
Sent: Friday, November 21, 2014 4:43 PM
To: Owens, Charlan
Subject: RE: CAMA Land Use Planning Rules - Request for Input on Proposed Amendments

Charlan,

I believe comments from our workshop have been captured and included in the proposed planning guidelines. I apologize for my late comment.

Greg Loy

Planning Director
PO Box 1719
Kill Devil Hills, NC 27948

252.449.5318 Phone
252.441.4102 Fax

Greg

ATTACHMENT 2 CRC - 14 - 38
PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

SUBCHAPTER 7B – CAMA STATE GUIDELINES FOR LAND USE PLANNING

SECTION .0600 - INTRODUCTION

15A NCAC 07B .0601 AUTHORITY

This Subchapter establishes the rules that local governments shall follow in developing and adopting a Coastal Area Management Act (CAMA) land use plan or comprehensive plan that meets the Coastal Resources Commission's (CRC) planning requirements.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;

Eff. August 1, 2002.

REMOVED specification of a "CAMA" land use plan at this location and throughout 7B. Land use plans are to be community plans that meet CAMA requirements rather than CAMA plans prepared by the community.

~~15A NCAC 07B .0602 EXAMPLES~~

~~Examples included in this Rule are for illustrative purposes and neither represents a prioritization nor a limitation of issues.~~

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;

Eff. August 1, 2002.

SECTION .0700 – CAMA LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0701 PLANNING OPTIONS

(a) Each county within the coastal area may prepare and adopt a CAMA land use plan or comprehensive plan that meets the planning requirements adopted by the Coastal Resources Commission (CRC). The CRC Secretary shall prepare and adopt a CAMA Land Use Plan land use plan that meets the CRC's planning requirements for each county that chooses not to prepare and adopt a CAMA Land Use Plan land use plan. Municipalities may develop individual CAMA Land Use Plans land use plans or comprehensive plans that meet the CRC's requirements if:




- (1) the County delegates this authority to the municipality; or
- (2) the CRC Secretary grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.

~~(b) The minimum types of plans presumed for municipalities, based on population, growth rates and the presence of Areas of Environmental Concern (AECs) are illustrated in Figure 1. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (e.g., water quality concerns), shall be considered when determining the type of plan to be prepared.~~

REMOVED requirement for the type of plan to be provided. The type of plan used to meet CAMA requirements will be determined by the community.

Figure 1: TYPES OF CAMA PLANS PRESUMED FOR MUNICIPALITIES

POPULATION	GROWTH RATE [§]	AREAS OF ENVIRONMENTAL CONCERN (AECs)		DO NOT MEET STATUTORY THRESHOLD IN §113A-110(e) ^{§§§}
		OCEAN HAZARD AREAS	NON-OCEAN HAZARD AREAS ^{§§§}	
≥ 5,000	N/A	■	■	■
≥ 2,500	HIGH	■	■	■
> 1,000 and < 2,500	HIGH	■	▨	■
< 1,000	HIGH	■	▨	■
≥ 2,500	MODERATE	■	▨	■
< 2,500	MODERATE	■	▨	■
≥ 2,500	LOW	■	▨	■
< 2,500	LOW	■	▨	■

Minimum Core Plan Presumed  Core or Workbook plan  Fold into County CAMA Land Use Plan 

[§] GROWTH RATE (Source: Office of State Planning)

High $\geq 18.4\%$
 Moderate $> 9.2\%$ and $< 18.4\%$
 Low $\leq 9.2\%$

^{§§} Estuarine Waters, Coastal Shorelines, Public Trust Areas, and Coastal Wetlands

^{§§§} 113A-110(e) provides that municipalities may develop individual plans if (1) the County delegates this authority to the municipality or (2) the CRC grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.

~~(e) Types of Plans~~

- ~~(1) Workbook plan: This is a simplified CAMA Land Use Plan that addresses the following elements:~~
- ~~(A) statement of community concerns, aspirations and vision;~~
 - ~~(B) existing land use map;~~
 - ~~(C) land suitability analysis;~~
 - ~~(D) local growth and development policies addressing each Management Topic and applicable Areas of Environmental Concern; and~~
 - ~~(E) future land use map.~~
- ~~The Division of Coastal Management (DCM) shall provide a workbook plan template to municipalities preparing this type of plan containing all required data and examples of policy alternatives.~~
- ~~(2) Core plan: This plan addresses all of the plan elements in Rule .0702 of this Section (Elements of CAMA Core and Advanced Core Land Use Plans) in a complete and thorough manner. This type of plan is the standard CAMA Land Use Plan required for all 20 coastal counties.~~
- ~~(3) Advanced core plan: The plan prepared by local governments that, due to consideration of specific local conditions, elect to exceed the core plan requirements in two or more areas. This plan also may be used to help meet the requirements of other planning programs, such as the Environmental Protection Agency's (EPA) Phase II Stormwater requirements or hazard mitigation plans, that address the CAMA goals, or to address issues of local concern. (i.e. location of a new industry or redevelopment after storm events.)~~
- ~~(d) Counties preparing a CAMA Land Use Plan shall prepare a core plan at a minimum.~~
- ~~(e) Municipalities that contain AECs may prepare a Workbook Plan, Core Plan, or Advanced Core Plan, depending on the presumptive type of plan shown in Figure 1. However, the type of plan to be prepared may change depending on needs that are identified in the scoping process described in 15A NCAC 07L. Municipalities with Ocean Hazard AECs that choose to plan shall prepare a minimum of a Core Plan. Municipalities with only Non-Ocean Hazard AECs that choose to plan shall prepare a Core Plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only Non-Ocean Hazard AECs that choose to plan and are at or below the population and growth rate thresholds shown in Figure 1 may prepare a Core Plan or a Workbook Plan.~~
- ~~(f)(b) A County shall accept a municipality's locally adopted policies and implementation actions for inclusion in the County CAMA Land Use Plan land use plan for the municipality's jurisdiction if requested to do so by any municipality not preparing an individual its own CAMA Land Use Plan land use plan. Inclusion of a municipality's adopted policies and implementation actions shall occur either at the time of County CAMA Land Use Plan land use plan preparation or a subsequent County CAMA Land Use Plan land use plan amendment. The municipality's policies and implementation actions are limited to its jurisdiction and may differ from the County's policies and implementation actions.~~
- ~~(g)(c) Municipalities may seek ERC certification for these plans if all requirements found in 15A NCAC 07B and G.S. 113A-110 are met.~~

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124; Eff. August 1, 2002.

15A NCAC 07B .0702 ELEMENTS OF CAMA CORE AND ADVANCED CORE LAND USE PLANS

ELEMENTS

- (a) Organization of the Plan. ~~The elements in this Rule provide general direction for development of the CAMA Core and Advanced Core Land Use Plans. A detailed Table of Contents shall be included and if the local government does not follow the outline described in this Rule, include a matrix shall be included in the land use plan or comprehensive plan that shows the exact location of the following required elements.~~
- (b) Community Concerns and Aspirations. ~~The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community.~~
 - (1) Significant existing and emerging conditions: ~~The plan shall include a description~~ Describe of the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
 - (2) Key issues: ~~The plan shall include a description of~~ Describe the land use and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and may also include local areas of concern as described in Subparagraph (d)(32) (Land Use Plan Management Topics) of this Rule.
 - (3) A community vision: ~~This shall consist of a description of~~ Describe the general physical appearance and form that represents the local government's plan for the future. ~~The community vision shall include statements of general objectives to be achieved by the plan. These objectives shall serve as the foundation for more specific objectives and policies stated elsewhere in the CAMA Land Use Plan. The objectives shall include and identify changes that the local government feels are may be needed to achieve the planning vision.~~
- (c) Analysis of Existing and Emerging Conditions within the planning jurisdiction. The purpose of this element is to provide a sound factual and analytical base that is necessary to support the land use and development policies included in the plan. ~~The analysis shall be based upon the best available data or mapping information from state, federal and local sources. This element shall describe~~ Describe the following:
 - (1) Population, Housing, and Economy. ~~The plan shall include~~ Include an analysis and discussion of the following data and trends:
 - (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics;
 - (iv) Age; and
 - (v) Income; and
 - (vi) Thirty year projections of permanent and seasonal population in five year increments.
 - (B) Housing stock:

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- (f) Estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured); ~~and~~
~~(ff) Building permits issued for single-family, multifamily, and manufactured homes since last plan update.~~
- (C) Local economy: Describe Employment employment by major sectors and description of community economic activity.
- (D) ~~Projections: Short term (five and ten year) and long term (20 year) projections of permanent and seasonal population.~~
- (2) Natural systems analysis. ~~The purpose of Describe the natural systems analysis is to describe and analyze the natural features and discuss the environmental conditions of the planning jurisdiction, and to assess their capabilities and limitations for development. This analysis shall include:~~
- (A) ~~Mapping and analysis of natural Natural features. The 14-digit hydrological units delineated by the Natural Resources Conservation Service shall be used as the basic unit of analysis of natural features. Maps of the following natural features shall be developed with data provided by DCM or other state agencies for analysis and plan development. These maps may be reproduced and included in the CAMA Land use plan at the option of the local government. If the maps are not included in the plan, they shall be made available to the public:~~
- (i) Areas of Environmental Concern (AECs);
 - (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
 - (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HOW, and ORW) and related use support designations, and Division of ~~Environmental Health (DEH)~~ Marine Fisheries (DMF) shellfish growing areas and water quality conditions;
 - (iv) Flood and other natural hazard areas;
 - (v) Storm surge areas;
 - (vi) Non-coastal wetlands including forested wetlands, shrub-scrub wetlands and freshwater marshes;
 - (vii) Water supply watersheds or wellhead protection areas;
 - (viii) Primary nursery areas; ~~where mapped;~~
 - (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
 - (x) Additional natural features or conditions identified by the local government.
- (B) ~~Composite map of environmental conditions:~~
- (i) ~~Composite map of environmental conditions: The plan shall include a map that shows the extent and overlap of natural features listed in Part (c)(2)(A) of this Rule and, based on the local government's determination of the capabilities and limitations of these features and conditions for development, shows the location of the following three categories of land:~~
- _____ REMOVED mapping requirement for natural features. Maps are optional.
- _____ ELIMINATED analysis requirements for natural features.
- _____ REMOVED requirements for a map classifying environmental constraints on the land.

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- (I) ~~Class I land containing only minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices;~~
 - (II) ~~Class II land containing development hazards and limitations that may be addressed by methods such as restrictions on types of land uses; special site planning; or the provision of public services; and~~
 - (III) ~~Class III land containing serious hazards for development or lands where the impact of development may cause serious damage to the functions of natural systems.~~
- (E B) ~~(i) The CAMA Land Use Plan shall describe or list the features or conditions selected by the local government for inclusion in each class.~~
- Environmental conditions. ~~The plan shall provide an assessment of the following environmental conditions and features, and discuss their limitations or opportunities for development:~~
- (i) Water quality:
 - (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Quality Resources Basinwide Water Quality Plans Basin Planning Branch Reports, Clean Water Act 303(d) List, and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of ~~Environmental Health~~ Marine Fisheries;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
 - (ii) Natural hazards:
 - (I) Areas subject to ~~storm hazards such as~~ recurrent flooding, storm surges and high winds; and
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities; ~~and~~
 - (III) ~~Where data is available, estimates of public and private damage resulting from floods and wind that has occurred since the last plan update.~~
 - (iii) Natural resources:
 - (I) Environmentally fragile areas ~~(as defined in Part (e)(2)(A)(ix) of this Rule)~~ or areas where resource functions may be are being impacted as a result of development; and
 - (II) Valuable natural resource areas that are being impacted or lost as a result of incompatible development. Areas containing potentially valuable

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- (3) Analysis of Existing Land Use and Development. The purpose of the analysis of land use and development is to ~~Include a map and descriptions of describe and quantify existing patterns of land uses, identify potential land use and land use/water use conflicts, determine future development trends, and project future land needs. The plan shall include the following mapping and analysis of existing land use:~~ natural resources. These may include, but are not limited to the following: beach quality sand deposits, coastal wetlands, protected open space, and agricultural land that may be impacted or lost as a result of incompatible development. _____ ELIMINATED analysis requirements for exist inland uses.
- (A) ~~A map of Existing land use patterns, which may including include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, vacant, agriculture, and forestry; confined animal feeding operations; and undeveloped;~~
 (B) ~~The land L and use analysis descriptions shall include the following:
 (i) Table that shows estimates of the land area allocated to each land use; and
 (ii) Description of any land use conflicts; characteristics of each land use category
 (iii) Description of any land use water quality conflicts;
 (iv) Description of development trends using indicators. These development trends may include, but are not limited to the following: building permits and platted but un-built lots; and
 (v) Location of areas expected to experience development during the five years following plan certification by the CRC and a description of any potential conflicts with Class II or Class III land identified in the natural systems analysis.~~
 (EB) ~~Historic, cultural, and scenic areas designated by a state or federal agency or by local government. These areas and sites shall be located on either the existing land use map or a separate map; and~~
 (D) ~~Projections of future land needs. The analysis shall include short term (five and ten year) and long term (20 year) projections of residential land area needed to accommodate the planning jurisdiction's projected future permanent and seasonal population (population projections as defined in Part (e)(1)(D) of this Rule (Analysis of Existing and Emerging Conditions). The projections of land needs may be increased up to 50% to allow for anticipated growth and to provide market flexibility. For local governments experiencing low or no growth (as shown in Figure 1 in 15A NCAC 07B .0701), the projections of land needs may consider economic strategies in the final calculations.~~ _____ REMOVED requirement to project future land needs.
- (4) Analysis of Community Facilities. The purpose of the analysis of community facilities is to evaluate ~~Evaluate existing and planned capacity, location, and adequacy of key community facilities that serve the community's existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. This~~ These analysis shall include: _____ REDUCED analysis requirements for community facilities.
- (A) ~~Public and private water supply and wastewater systems. The analysis of water and sewer systems shall include a description and map(e) of Describe existing public and private~~

- systems, including existing condition and capacity; location of pipelines; documentation of Describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health. Indicate future needs based on population projections. Map existing and planned service areas and future needs based on population projections. If any required information is not available for private systems, the local government shall so state in the plan and this factor may be eliminated from the analysis.
- (B) ~~Transportation systems. The analysis of the transportation system shall include a map Map showing: the existing and planned multimodal systems highway systems and port and airport facilities; Describe any highway segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels; Describe highway facilities on the current thoroughfare plan; and or facilities on the current transportation improvement program plan. The analysis shall also assess Describe the impact of existing planned highway or other transportation facilities on growth levels and development land use patterns. Stormwater systems. The analysis of public and permitted private stormwater systems shall include identification of Describe the existing public stormwater management system. Identify existing drainage problems in the planning area; identification of and water quality issues related to point-source discharges of stormwater runoff; and an overview of potential stormwater system requirements for local governments subject to the EPA's Storm Water Phase II Final Rules.~~
- (D) ~~Other facilities. The local government may include additional facilities and services such as solid waste and health and safety in the analysis.~~
- (5) ~~Land Suitability Analysis. The purpose of the land suitability analysis is to determine the planning area's supply of land suited for development based on the following considerations: natural system constraints; compatibility with existing land uses and development patterns; the existing land use and development criteria of local, state, and federal agencies and the availability and capacity of water; sewer, stormwater management facilities, and transportation systems. The analysis shall include a land suitability map showing vacant or under-utilized land that is suitable for development. The following factors shall be considered to assess land suitability:~~
- (A) ~~Water quality;~~
 - (B) ~~Land Classes I, II, and III summary environmental analysis;~~
 - (C) ~~Proximity to existing developed areas and compatibility with existing land uses;~~
 - (D) ~~Potential impact of development on areas and sites designated by local historic commissions or the North Carolina Department of Cultural Resources as historic, culturally significant, or scenic;~~
 - (E) ~~Land use and development requirements of local development regulations, CAMA Use Standards and other applicable state regulations, and applicable federal regulations; and~~
 - (F) ~~Availability of community facilities, including water, sewer, stormwater and transportation~~
- (6) ~~Review of Current CAMA Land Use Plan. The purpose of the review of the current CAMA Land Use Plans is for the local governing body to review its success in implementing the policies and programs~~

REMOVED requirements for mapping and analysis of land suitability for development.

REMOVED requirements for a review of the current land use plan as part of the submittal for a land use plan update.

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adopted in the plan and the effectiveness of those policies in achieving the goals of the plan. The review shall include consideration of the following factors:

- (A) ~~Consistency of existing land use and development ordinances with current CAMA Land Use Plan policies;~~
- (B) ~~Adoption of the land use plan's implementation measures by the governing body; and~~
- (C) ~~Efficacy of current policies in creating desired land use patterns and protecting natural systems.~~
- (D) ~~Plan for the Future Future Land Use. This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and the goals of the CAMA through local government land use and development policies, including a future land use map. Policies affecting AECs shall also be used in making CAMA permit decisions. The plan for the future includes the local government's goals, land use and development policies, and future land use map:~~
 - (1) ~~Land use and development goals Policies. The following shall be considered in the development of the plan's goals:~~
 - (A) ~~Community concerns and aspirations Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government land use policies as required in .0702 (b) and (c). identified at the beginning of the planning process; and~~
 - (B) ~~Needs and opportunities identified in the analysis of existing and emerging conditions.~~
 - (2) ~~Policies:~~
 - (A-B) ~~Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The CAMA Land use plan shall demonstrate how the land use and development goals, policies and future land use map, as required in Subparagraph (d)(4) of this Rule, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.~~
 - (B) ~~The plan shall contain a description of the type and extent of analysis completed to determine the impact of CAMA Land Use Plan policies on the management topics: a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.~~
 - (C) ~~The plan shall contain a statement that the governing body either accepts state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the CAMA Land use plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on Federal and State laws and regulations it shall reference these in the plan. Policies that exceed use standards and permitting requirements found in Subchapter 7H – State Guidelines for Areas of Environmental Concern shall be identified in the plan.~~

REMOVED policy analysis requirement.

(32)

Land Use Plan Management Topics. The purposes of the CRC's management topics are to ~~ensure~~ ensure that ~~CAMA Land Use Plans~~ land use plans support the goals of the CAMA, to define the CRC's expectations for the land use planning process policies, and to provide a ~~give the CRC a substantive~~ basis for land use plan review and certification of ~~CAMA Land Use Plans~~. In addition to the management topics outlined below, plans may also include policies to address local areas of concern. Each of the following management topics (Public Access, Land Use Compatibility, Infrastructure Capacity, Natural Hazard Areas, Water Quality, and Local Areas of Concern) includes three two components: a management goal, and a statement of the CRC's planning objectives, and requirements for the CAMA Land Use Plans:

(A) Public Access:

(i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.

(ii) Planning Objectives: ~~Develop comprehensive policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction. Policies shall that address access needs and opportunities, with include strategies to develop public access, and identify feasible funding options.~~

(iii) ~~Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local criteria for frequency and type of access facilities. These policies shall contain and provisions for public access for all segments of the community, including persons with disabilities, and Oceanfront communities shall establish access criteria policies for beach areas targeted for nourishment.~~

(B) Land Use Compatibility:

(i) Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development ~~minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare, and is~~ are consistent with the capability of the land based on ~~considerations of interactions of natural and manmade features.~~

(ii) Planning Objectives:

(1) ~~Adopt and apply local development policies that balance protection of natural resources and fragile areas with economic development.~~

(2) ~~Policies shall provide direction to assist local decision making and consistency for zoning, divisions of land, and public and private projects.~~

(iii) ~~Land Use Plan Requirements:~~

(1) ~~Policies that characterize future land use development patterns and Establish building intensity and density criteria, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.~~

CONSOLIDATED Management
Topic Land Use Plan Requirements
into the Planning Objectives to
reduce redundancy.

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- (4F) ~~Establish~~ establish local mitigation criteria and concepts to minimize conflicts. ~~These may include, but are not limited to the following: cluster subdivision design, enacting local buffers, impervious surface limits, and innovative stormwater management alternatives.~~
- (C) Infrastructure Carrying Capacity:
- (i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
 - (ii) Planning Objectives: Policies that Establish establish level of service policies and criteria for infrastructure consistent with Part (e)(3)(D) (Projections of Future Land Needs) of this Rule and ensure improvements minimize impacts to AECs and other fragile areas.
 - (iii) ~~Land Use Plan Requirements:~~
 - (4) ~~Identify/establish service area boundaries for existing and future infrastructure.~~
 - (4F) ~~Correlate future land use map categories with existing and planned infrastructure such as wastewater, water infrastructure and transportation.~~
- (D) Natural Hazard Areas:
- (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.
 - (ii) Planning Objectives: Develop policies Policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise other natural hazards.
 - (iii) ~~Land Use Plan Requirements:~~
 - (4) ~~Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.~~
 - (4F) ~~Correlate existing and planned development with existing and planned evacuation infrastructure.~~
- (E) Water Quality:
- (i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.
 - (ii) Planning Objectives: Adopt policies Policies that establish strategies and practices to prevent or control nonpoint source pollution and maintain or improve water

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quality for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired.

- (iii) ~~Land Use Plan Requirements:~~
 - (1) ~~Devise policies that help prevent or control nonpoint source discharges (sewage and storm water) such as, but not limited to the following: impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.~~
 - (2) ~~Establish policies and land use categories aimed at protecting open shellfishing waters and restoring closed or conditionally closed shellfishing waters.~~

- (F) ~~Local Areas of Concern:~~
 - (i) ~~Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning.~~
 - (ii) ~~Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs.~~
 - (iii) ~~Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options.~~

(43)

Future land use map. This map depicts ~~Depict~~ application of the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure policies. The local government shall include Include such categories and designations with descriptions of land uses and development as are required to accurately illustrate the application of its policies. At a minimum, the map shall show the following:

- (A) ~~14 digit hydrological units encompassed by the planning area;~~
- (B) ~~areas and locations planned for conservation or open space and a description of compatible land uses and activities;~~
- (C) ~~areas and locations planned for future growth and development with descriptions of the following characteristics:~~
 - (i) ~~predominant and supporting land uses that are encouraged in each area;~~
 - (ii) ~~overall density and development intensity planned for each area; and~~
 - (iii) ~~infrastructure required to support planned development in each area.~~
- (D) ~~areas in existing developed areas for infill, preservation, and redevelopment;~~
- (E) ~~existing and planned infrastructure, including major roads, water, and sewer.~~

The local government may use additional or more detailed categories if required to depict its land use policies. If the future land use map shows development patterns or land uses that are not consistent with the natural systems analysis, or the land suitability analysis, then the plan shall include a description of the steps that the local government shall take to mitigate the impacts. In addition, the plan shall include an estimate of the cost of any community facilities or services that shall be extended or developed. The amount of land allocated to various uses shall be calculated and compared to

ELIMINATED the Local Areas of Concern Management Topic. Additional policies are provided at the option of the local government.

REDUCED Future Land Use Map requirements.

~~the projection of land needs. The amount of land area thus allocated to various uses may not exceed projected needs as delineated in Part (c)(3)(D) of this Rule (Projections of Future Land Needs).~~

~~(c) Tools for Managing Development. This element of the plan provides a description of The purpose of this element is to describe the management tools that and actions the local government selects and the actions to be taken will use to implement the CAMA Land Use Plan land use plan. It also includes a five-year schedule for implementation. This element shall include:~~

- ~~(1) Guide for land use decision-making. Describe the specific role and the status of the land use plan policies, and including the future land use plan map, in local decisions regarding land use and development.~~
 - ~~(2) Existing development program. Describe the community's existing development management program, including local ordinances, codes, plans, and policies, state and federal laws and regulations, and the role that the existing management program plays in implementing the plan. This description shall also include the community's approach to coordinating these codes and rules to implement the land use and development policies.~~
 - ~~(3) Additional tools. Describe any of the following additional tools selected by the local government to implement the CAMA land use plan policies:

 - ~~(A) Ordinances:~~
 - ~~(i) Amendments or adjustments in existing development codes required for consistency with the plan;~~
 - ~~(ii) New ordinances or codes to be developed;~~
 - ~~(B) Capital improvements program. New, upgraded or expanded community facilities, such as but not limited to the following: water, sewer, stormwater, transportation, and other facilities, and policies regarding connections to and extensions of community facilities;~~
 - ~~(C) Acquisition program. Planned acquisition of property, easements, or rights of way; and~~
 - ~~(D) Specific projects to reach goals.~~~~
- ~~(43) Action plan and implementation schedule. Describe the priority actions that will be taken by the local government to implement policies that meet the CAMA Land Use Plan CRC's Management Topic goals and objectives, and specify Specify the fiscal year(s) in which each action is anticipated to start and finish. The document shall contain a description of Describe the specific steps that the local government plans to take to involve the public in monitoring implementation of the CAMA Land Use Plan implement the policies, including the adoption and amendment of local ordinances, plans, and special projects that affect AECs. The action plan shall be used to prepare the implementation status report for the CAMA Land Use Plan land use plan.~~

*History Note: Authority G.S. 113A-102; 113A-107(a); 113A-110, 113A-111, 113A-124;
 Eff. August 1, 2002;
 Amended Eff. April 1, 2003.*

SECTION .0800 – CAMA LAND USE PLAN AND AMENDMENT REVIEW AND CRC CERTIFICATION

15A NCAC 07B .0000 STATE REVIEW AND COMMENT ON DRAFT PLAN

(a) Procedure for Agency Review and Comment. The Division shall review all draft land use plans for consistency with the CRC's requirements for land use plans prior to local adoption. The Division shall provide notice to the CRC, other State and Federal Agencies, and adjacent jurisdictions (including non CAMA areas and if applicable, out of state areas) that the plan is available for review and comment. The review period shall be 30 calendar days. After the review period ends, comments shall be provided to the local government within 45 calendar days.

ESTABLISHED timeframe for state review and comment on draft land use plans.

15A NCAC 07B .0801 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

(a) Notice of Public Hearing. The local government shall provide the Secretary or his designee written notice of the public hearing for local adoption and a copy of the proposed land use plan or amendment, no less than 5 business days prior to publication of a public hearing notice. The public hearing notice shall include, per .0802(a)(2), disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the land use plan.

(a) Public Hearing Notice Requirements. The local government shall provide documentation to DCM that it has followed the process required in G.S. 113A-110; and such notice shall include per .0802(b)(3), the disclosure of the public opportunity to provide written comment following local adoption of the Land Use Plan.

(b) Final Plan Content. The final decision on local policies and all contents of the CAMA Land Use Plan consistent with the CAMA land use planning rules land use plan or amendment shall be made adopted by the elected body of each participating local government.

(c) Transmittal to the CRC Division for Certification. The local government shall provide the Executive Secretary of the CRC or his designee with as many copies of the locally adopted land use plan, as the Executive Secretary requests, and a certified statement of the local government adoption action, and documentation that it has followed the public hearing process required in G.S. 113A-110, no earlier than 45 days and no later than 30 days prior to the next CRC meeting. If the local government fails to submit the requested copies of the locally adopted land use plan and certified statement to the Executive Secretary within the specified timeframe, the local government may resubmit documents within the specified timeframe for consideration at the following CRC meeting.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;

Eff. August 1, 2002.

Amended Eff. January 1, 2007; February 1, 2006

15A NCAC 07B .0802 PRESENTATION TO COASTAL RESOURCES COMMISSION FOR CERTIFICATION AND USE OF THE PLAN

(a) Re-Certification. If the CRC adopts new CAMA Land use plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.

(b) Committee Designated by CRC Secretary to Review Certification of Local Land Use Plans and Amendments:

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- (1) ~~The appropriate DCM Division District Planner shall submit a written report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan. Secretary on the locally adopted land use plan or amendment and either recommend certification conditional certification or non certification or identify how the plan or amendment does not meet the procedures and conditions for certification.~~
- (2) ~~The local government shall submit its draft Land Use Plan to the committee designated by the CRC. The public shall have an opportunity to submit written objections or comments or statements of support on the locally adopted land use plan or amendment prior to action by the committee designated by the CRC Secretary. Written objections shall be received by DCM the Division no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting no more than 30 calendar days after local adoption of the land use plan or amendment, and shall be limited to the criteria for CRC certification as defined in Subparagraph (e)(3) of this Rule. Written objections and shall identify the specific plan elements that are opposed. A copy of any Written objections or comments shall be sent by the DCM Division to the local government submitting the CAMA Land Use Plan land use plan or amendment. Written objections shall be considered in the certification of the local land use plan or amendment.~~
- (43) ~~The Secretary shall certify land use plans and amendments following the procedures and conditions specified in this Rule. The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review. The Secretary shall certify plans and amendments which:~~
- (A) ~~are consistent with the current federally approved North Carolina Coastal Management Program;~~
 - (B) ~~are consistent with the Rules of the CRC;~~
 - (C) ~~do not violate state or federal law; and~~
 - (D) ~~contain policies that address each Management Topic.~~
- (4) ~~If the land use plan or amendment does not meet certification requirements the Secretary shall within 45 calendar days inform the local government how the plan or amendment does not meet the procedures and conditions for certification.~~
- (b) ~~Copies of the Plan. Within 90 calendar days of certification of a land use plan or an amendment the local government shall provide one (1) printed and one (1) digital copy of the land use plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.~~
- (c) ~~Use of the plan. Once certified, the land use plan shall be utilized in the review of CAMA permits in accordance with G. S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:~~
- (1) ~~Local administration. The local government reviews CAMA permits for consistency with the land use plan.~~

IMPORTANT – Land use plans and amendments are to be certified by the Secretary. No action by the CRC is required.

ESTABLISHED timeframe for a certification decision on a locally adopted land use plan or amendment.

OPTION for local governments to choose the procedure to review CAMA permits for consistency with the land use plan.

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- (2) ~~Joint administration. The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for CAMA permit consistency reviews.~~ _____ CLARIFIED that plan updates and amendments are voluntary.
- (3) ~~Division administration. The Division reviews CAMA permits for consistency with the land use plan policies, including the future land use map and implementation actions.~~ _____
- (d) ~~Plan updates and amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.~~ _____

~~(e) CRC Certification:~~

- (1) ~~The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.~~ _____ REMOVED requirement for certification action by the CRC.
- (2) ~~Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally, certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.~~
- (3) ~~The CRC shall certify plans which:
(A) are consistent with the current federally approved North Carolina Coastal Management Program;
(B) are consistent with the Rules of the CRC;
(C) do not violate state or federal laws;
(D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and
(E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.~~
- (d) ~~Non-Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.~~
- (e) ~~Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.~~

History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;
Eff. August 1, 2002.

Amended Eff. April 1, 2008; September 1, 2006.

15A NCAC 07B .0803 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

(a) Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report every two years from the date of initial certification. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan.
The Implementation Status Report shall also identify:

- (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified 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 land use plan; and
- (4) Consistency of existing land use and development ordinances with current land use plan policies.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

SECTION .0900 CAMA LAND USE PLAN AMENDMENTS

15A NCAC 07B .0901 CAMA LAND USE PLAN AMENDMENTS

(a) Normal Amendment Process:

(1) The CAMA Land Use Plan may be amended and only the amended portions submitted for CRC certification. If the local government amends half or more of the policies of the CAMA Land Use Plan, a new locally adopted plan shall be submitted to the CRC. Local public hearing and notice requirements shall be in the same manner as provided in 15A NCAC 07B .0801(a). Except for Land Use Plans that were certified prior to August 1, 2002, amendments and changes to the Local Land Use Plan shall be consistent with other required elements for the local land use plan per the requirements of Rule .0702 of this Subchapter.

(2) The local government proposing an amendment to its CAMA Land Use Plan shall provide to the Executive Secretary of the CRC or her/his designee written notice of the public hearing, a copy of the proposed amendment (including text and maps as applicable), and the reasons for the amendment no less than five business days prior to publication of the public hearing notice. After the public hearing, the local government shall provide the Executive Secretary or her/his designee with a copy of the locally adopted amendment no earlier than 45 days and no later than 30 days prior to the next CRC meeting for CRC certification. If the local government fails to submit the requested documents as specified above and the resolution provided in Subparagraph (5) of this Paragraph to the Executive Secretary within the specified timeframe, the local government may resubmit the documents within the specified timeframe for consideration at the following CRC meeting.

RELOCATED from 7L and REVISED.

REMOVED this SECTION.
Amendments have been
incorporated into 7B .0800

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- (3) ~~For joint plans, originally adopted by each participating jurisdiction, each government retains its sole and independent authority to make amendments to the plan as it affects its jurisdiction.~~
 - (4) ~~CRC review and action on CAMA Land Use Plan amendments shall be in the same manner as provided in 15A NCAC 07B-.0802 (b), (c), (d) and (e), except amendments to Land Use Plans which were certified prior to August 1, 2002 are exempt from part .0802(e)(3)(D).~~
 - (5) ~~The local resolution of adoption shall include findings which demonstrate that amendments to policy statements or to the Future Land Use Plan Map (FLUP) have been evaluated for their consistency with other existing policies.~~
- ~~(b) Delegation of CRC Certification of Amendments to the Executive Secretary:~~
- (1) ~~A local government that desires to have the Executive Secretary instead of the CRC certify a CAMA Land Use Plan amendment shall first meet the requirements in Subparagraphs (a)(1) through (5) of this Rule and the following criteria defined in Parts (b)(1)(A) through (D) of this Rule. The local government may then request the Executive Secretary to certify the amendment. The Executive Secretary shall make a determination that all criteria have been met, and mail notification to the local government and CRC members, no later than two weeks after receipt of the request for certification. The CRC's delegation to the Executive Secretary of the authority to certify proposed amendments is limited to amendments that meet the following criteria:~~
 - (A) ~~Minor changes in policy statements or objectives for the purpose of clarification of intent;~~
 - (B) ~~Modification of any map that does not impose new land use categories in areas least suitable for development as shown on the Land Suitability Map;~~
 - (C) ~~New data compilations and associated statistical adjustments that do not suggest policy revisions; or~~
 - (D) ~~More detailed identification of existing land uses or additional maps of existing or natural conditions that do not affect any policies in the CAMA Land Use Plan.~~
 - (2) ~~If the Executive Secretary certifies the amendment, the amendment becomes final upon certification of the Executive Secretary, and is not subject to further CRC review described in 15A NCAC 07B-.0802 (Presentation to CRC for Certification).~~
 - (3) ~~If the Executive Secretary denies certification of the amendment, the local government shall submit its amendment for review by the CRC in accordance with the regular plan certification process in 15A NCAC 07B-.0802 (Presentation to CRC for Certification).~~
 - (c) ~~Any amendments to the text or maps of the CAMA Land Use Plan shall be incorporated in context in all available copies of the plan and shall be dated to indicate the dates of local adoption and CRC certification. The amended CAMA Land Use Plan shall be maintained as required by G.S. 113A-110(g).~~
 - (d) ~~Within 90 days after certification of a CAMA Land Use Plan amendment, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common border, and to the regional planning entity.~~
 - (e) ~~A local government that receives Sustainable Community funding from the Department pursuant to 15A NCAC 07L shall formulate and submit to the CRC for certification a CAMA Land Use Plan Amendment during its first year as a Sustainable Community.~~

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

*Eff. August 1, 2002.
Amended Eff. November 1, 2009; February 1, 2006.*

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

SUBCHAPTER 7L - LOCAL PLANNING AND MANAGEMENT GRANTS

SECTION .0100 – PURPOSE AND AUTHORITY

15A NCAC 07L .0101 AUTHORITY

The rules in this Subchapter are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the Department of Environment and Natural Resources (DENR) in the Secretary's capacity as executive head of the state agency designated by the Governor to administer state funds and to receive and administer federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone Management Act.

History Note: Authority G.S. 113A-112; 113A-124;

Eff: September 1, 1978;

Amended Eff: August 1, 2002; October 1, 1991.

IMPORTANT – No CRC responsibilities are designated in 7L. DCM staff act as grant administrators for contracts between local governments and NCDENR.

15A NCAC 07L .0102 PURPOSE

The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the DENR program of grants for local Coastal Area Management Act (CAMMA) land use plans or comprehensive plans and coastal planning and management projects within North Carolina's coastal area. These funds are made available to assist local governments in developing and implementing CAMMA land use plans and management strategies for their coastal resources, as mandated and encouraged by the CAMMA. Funds are to be used in refining and carrying out local land use planning and management programs by local governments within the 20 counties defined by the CAMMA.

History Note: Authority G.S. 113A-112; 113A-124;

Eff: September 1, 1978;

Amended Eff: August 1, 2002; June 1, 1980.

REMOVED specification of a "CAMMA" land use plan at this location and throughout 7L. Land use plans should be community plans that meet CAMMA requirements as opposed to CAMMA plans prepared by the community.

SECTION .0200 – GENERAL STANDARDS

- 15A NCAC 07L .0201 ELIGIBLE APPLICANTS
- 15A NCAC 07L .0202 PRIORITIES FOR FUNDING
- 15A NCAC 07L .0203 ELIGIBLE PROJECTS
- 15A NCAC 07L .0204 PROJECT DURATION
- 15A NCAC 07L .0205 CONSISTENCY WITH PLANS AND GUIDELINES
- 15A NCAC 07L .0206 RELATION TO OTHER FUNDING

History Note: Authority G.S. 113A-112; 113A-124;

Eff: September 1, 1978;

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

*Amended Eff. November 1, 1984; June 1, 1982; March 13, 1981; June 1, 1980;
Repealed August 1, 2002.*

SECTION .0300 – APPLICATION PROCESS

- 15A NCAC 07L .0301 APPLICATION FORM
- 15A NCAC 07L .0302 SUBMITTAL
- 15A NCAC 07L .0303 PROCEDURE FOR PRELIMINARY APPROVAL OR DISAPPROVAL
- 15A NCAC 07L .0304 ASSISTANCE IN COMPLETING APPLICATIONS

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. October 1, 1991; May 1, 1990; November 1, 1984; June 1, 1982; March 13, 1981;

June 1, 1980;

Repealed August 1, 2002.

SECTION .0400 – GRANT ADMINISTRATION

- 15A NCAC 07L .0401 CONTRACT AGREEMENT
- 15A NCAC 07L .0402 ACCOUNTABILITY
- 15A NCAC 07L .0403 PAYMENT
- 15A NCAC 07L .0404 PROGRESS REPORTS AND GRANT MONITORING
- 15A NCAC 07L .0405 PROJECT COMPLETION REPORT

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. March 13, 1981; June 1, 1980; September 1, 1978;

Repealed August 1, 2002.

SECTION .0500 - GENERAL STANDARDS

15A NCAC 07L .0501 ELIGIBLE APPLICANTS

- (a) Applications for grants for local planning and management funds may be made by the following:
- (1) Coastal Counties as defined in CAMA; and
 - (2) Municipalities within coastal counties.

(b) Two or more eligible applicants may submit a joint application for funds to carry out jointly sponsored or regional projects.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0502 CONSISTENCY WITH PLANS AND RULES

All proposed projects must be consistent with CAMA, state rules and standards implementing CAMA, certified local CAMA land use plans certified by the Coastal Resources Commission (CRC), and the state's federally approved coastal management program.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0503 PRIORITIES FOR FUNDING CAMA LAND USE PLANS AND IMPLEMENTATION PROJECTS

(a) In funding local planning and management grants, DENR shall follow the general priorities set out in 15A NCAC 07L .0503(b). Examples of the types of eligible projects are listed and have been placed in the appropriate priority category. Any applications for project funding not specifically identified and placed in a priority category shall be assigned the appropriate priority category by DENR upon receipt of the application. Funding priorities and eligibility for the Sustainable Communities Component of the planning program are described in 15A NCAC 07L .0512.

(b) General priority categories for local planning and management grants are as follows:

- (1) The highest priority includes projects directly mandated by statute, including initial and updated CAMA land use plans, local participation in projects initiated by DENR, and projects DENR indicates urgently need local attention in order to meet CRC management topics. In general, grants for projects in this priority category, except CAMA Workbook land use plans, shall be funded for no more than 85 percent of the total project cost, although lower funding percentages may be awarded. The type of CAMA land use plan to be funded and the corresponding percentage of funding shall be based on community characteristics as determined during the scoping process described in 15A NCAC 07L .0505 to be held prior to project application.

- (2) The second priority includes projects directly related to carrying out the explicit goals of CAMA, for which DENR indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement the CAMA 2 land use plan such as public facilities planning or land use regulations preparation. Grants for projects in this category shall be for no more than 65 percent of the total project cost, although lower funding percentages may be awarded.

REMOVED specified land use plan certification by the CRC, to be consistent with proposed changes to 7B for Secretary certification.

REMOVED funding percentages based on priority, to be REPLACED with a minimum local match requirement.

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

- (3) The third priority includes projects related to improving local coastal management and land use management capabilities. ~~Grants for projects in this priority category shall be for no more than 50 percent of the total project cost, although lower funding percentages may be awarded.~~
- (c) In addition, DENR shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories:
- (1) project's contribution towards meeting CRC management topics;
 - (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards;
 - (3) applicant's urgency of need;
 - (4) past history of applicant's implementation of CAMA planning and management activities;
 - (5) feasibility of successful completion of project by the applicant;
 - (6) past experience with this program as well as present management and administrative capabilities;
 - (7) potential applicability of the project to other coastal area municipalities and counties; and
 - (8) geographic distribution of applicants.
- (d) ~~In priority categories two and three, the proportion of the grant awarded to total project costs shall be the same for all similar projects. For example, if one waterfront access plan is funded at a 60 percent level, all waterfront access plans shall be funded at a 60 percent level. The only exception to this involves multi-year projects which may receive a lower level of funding within a given priority category after the initial year.~~
- (e) ~~Generally, available funds shall first be allocated to projects in priority category one; then, if there are funds remaining, grants shall be made to projects in priority category two; and then, if there are funds remaining, grants may be made to projects in priority category three. However, the factors listed in Paragraph (c) of this Rule shall also be considered in funding decisions. Sustainable Communities projects shall be funded as described in 15A NCAC 07L .0512. The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Local government contributions for land use plan and implementation projects shall be at least 25 percent of the project costs except for Tier I designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.~~
- (f) ~~Any local government whose CAMA land use plan is not certified by the CRC due to failure to meet the criteria listed in 15A NCAC 07B .0803 or that has not submitted the most recent Required Periodic Implementation Status Report as described in 15A NCAC 07B, shall not receive further funding under this program until these inconsistencies are corrected.~~
- (g) ~~Any local government that is not implementing its certified CAMA land use plan shall not receive additional funding under this program. CAMA land use plan implementation shall be documented through periodic Implementation Status Reports provided to the Division of Coastal Management (DCM), as described in 15A NCAC 07L .0511 (Required Periodic Implementation Status Reports). A local government that is deemed by the DCM Planner to not have implemented its current CAMA land use plan may seek a review by the Director of the DCM to determine if the current CAMA land use plan implementation is acceptable to receive future funding.~~

ADDED a local government minimum match requirement of 25%, with a 10% minimum match for economically distressed communities.

IMPORTANT – A local government must have a certified land use plan and be up to date on Implementation Reports to receive funding. However, demonstrated implementation is not required to receive funding, since funding is sometimes needed to implement the land use plan.

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

~~(b) All funding decisions shall be based on availability and amount of state and federal appropriations.~~

History Note: Authority G.S. 113A-112; 113A-124;

Eff. August 1, 2002.

15A NCAC 07L .0504 ELIGIBLE PROJECTS

(a) The lists in Paragraph (b) of this Rule constitute types of projects that will be considered for funding. Each type of project listed has been assigned to one of the priority categories described in 15A NCAC 07L .0503 (Priorities For Funding CAMMA Land Use Plans and Implementation Projects.) These lists are not intended to be exhaustive or restrictive. Local governments may apply for funds for any related projects that will improve local planning and management capabilities.

(b) Examples of eligible projects and their associated priority category include:

- (1) Priority Category-Type 1
 - (A) Those activities specifically designated by DENR on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state rules for land use planning;
 - (B) Adopting, amending, or updating CAMMA land use plans to reflect changed conditions (these may include, but are not limited to: necessary data collection, public participation, policy development).
- (2) Priority Category-Type 2
 - (A) Adopting or amending ordinances to further secure compliance with state rules in AECs;
 - (B) Beach access plans and studies (these may include, but are not limited to: inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights);
 - (C) Erosion control plans and studies (these may include, but are not limited to: mapping, erosion rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies);
 - (D) Studies and planning leading to the nomination of new AECs as described in 15A NCAC 07H .0503, or locally significant environmental areas;
 - (E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing waterfront parks and public areas (these may include, but are not limited to: site design, use studies, cost analysis);
 - (F) Preparing, adopting, or amending ordinances necessary to carry out certified CAMMA land use plans, state rules, and the state coastal zone management plan (including but not limited to regulations on or for zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, environmental impact statements);
 - ~~(G) Hazard mitigation plans.~~

REMOVED. Hazard Mitigation
Plans are funded through the
State Hazard Mitigation Office.

- (3) Priority Category-Type 3
 - (A) Initial water and sewer plans and studies;
 - (B) Land use related capital facilities programming;
 - (C) Base mapping as a management tool;
 - (D) Other planning, studies, and data acquisition supportive of coastal planning and management including but not limited to public education or involvement on coastal issues; solid waste planning; port planning; sport and commercial fishing studies;
 - (E) Enforcement of ordinances adopted to carry out certified CAMMA land use plans;
 - (F) Coordination of local coastal management activities with other local management activities (these may include, but are not limited to: internal coordination, city-county coordination);
 - (G) Other coastally related management projects.

*History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.*

15A NCAC 07L .0505 – SCOPING OF PLANNING NEEDS

- ~~(a) If a local government intends to request funding from DENR for the development or update of a CAMMA land use plan a scoping meeting shall occur between the local government and the DCM. This meeting shall occur prior to the submission of a grant application. The scoping meeting shall determine the extent of planning needs and the type of plan to be produced and funded.~~
- ~~(b) The discussion and recommendations from the scoping meeting shall be presented at a regular meeting of the local governing board where action shall be taken to accept or modify the recommendations. Standard public meeting notification procedures common to the local government in question are sufficient public notice for these purposes, provided the notification specifically states that the scoping recommendations shall be discussed and acted upon. In addition, notification of the public meeting shall be provided to the DCM District Planner. Public input shall be accepted and considered at this meeting.~~
- ~~(c) Assuming federal and state appropriations remain at or close to the 2001-02 fiscal year appropriations, DENR intends to provide funds for local governments to update their CAMMA land use plans every six years. In the case of existing plans, the scoping process shall take place during the fourth year after the last certification. The local government may request scoping before the fourth year if special circumstances are identified in the Implementation Status Report described in 15A NCAC 07L .0511 Required Periodic Implementation Status Reports.~~
- ~~(d) The community characteristics to be discussed during the scoping process to help determine the type of plan to be prepared shall include:
 - (1) The capacity of the local government to administer the planning process;
 - (2) Population growth rate as projected by the State Planning Office;
 - (3) Development trends, such as number and type of building permits issued, number of lots subdivided, number of CAMMA permits issued since certification of the current CAMMA land use plan, and new and proposed industry;~~

REMOVED. Identification of planning needs is not necessary for all funding opportunities. If necessary, it will be included in a Request for Proposals (RFP).

- (4) ~~Extent of AEGs;~~
- (5) ~~Water quality considerations including: Division of Water Quality (DWQ) classifications (outstanding resource waters, high quality waters) and current conditions (as per Basinwide Water Quality Plans, Use Support Designations); and Division of Marine Fisheries (DMF) primary nursery areas and current conditions (as per Coastal Habitat Protection Plans); and shellfishing waters and their current conditions;~~
- (6) ~~Natural and manmade hazards and other issues affecting land use; and~~
- (7) ~~Natural and environmental constraints (these may include, but are not limited to: hydric soils and well head protection areas) which affect land use.~~

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

~~15A NCAC 07L .0506 PUBLIC PARTICIPATION~~

- (a) ~~Local Governments receiving DENR funding for CAMA land use plan preparation shall be responsible for the development and implementation of a Citizen Participation Plan. Local governments shall employ a variety of educational efforts and participation techniques to assure that all socioeconomic segments of the community and non-resident property owners have opportunities to participate during plan development;~~
- (b) ~~Extent of Required Effort. Prior to the start of CAMA land use plan development, the local governing board shall develop and adopt a Citizen Participation Plan. Interested citizens shall have an opportunity to participate in the development of the CAMA land use plan through oral and written comments as provided for in the Citizen Participation Plan. Copies of informational CAMA land use plan materials shall be provided at all meetings of the planning group. The Citizen Participation Plan shall be available to the public throughout the planning process. At a minimum, the Citizen Participation Plan shall include the following:
 - (1) ~~Designation of the principal local board, agency, department or appointed group that shall take the lead role in preparing or updating the CAMA land use plan, including a contact name, address, and telephone number;~~
 - (2) ~~A specific date and time for an initial public information meeting or series of meetings;
 - (A) ~~During the meeting(s) a local government updating its plan shall discuss the statements of local policy in the current CAMA land use plan, the effect of those policies on the community, and the ways the plan has been used to guide development during the past planning period. The local government shall explain the process by which it will report to the public and solicit the views of a wide cross-section of citizens in the development of updated policy statements;~~
 - (B) ~~Written notice of the public information meeting(s) shall be published in a newspaper of general circulation in the planning jurisdiction twice prior to the public information meeting(s). The first notice shall appear not less than 30 days prior to the public information meeting(s). The second notice shall appear not less than 10 days prior to the meeting. Notice of the meeting shall also be conveyed to local~~~~~~

REMOVED. Public participation is not necessary for all funding opportunities. If necessary, it will be included in a Request for Proposals (RFP).

~~Coastal Resources Advisory Council (CRAC) member(s) and to the appropriate DCM District Planner.~~

~~(C) The local government shall offer an opportunity for public comment during the public information meeting(s).~~

~~(D) The tools to be used to report planning progress to the public during CAMMA land use plan development, such as newspaper reports, local government newsletters, radio or television announcements or other reporting methods shall be described at the initial public meeting. More than one means is required.~~

~~(3) A description of the methods and techniques that shall be used to solicit public participation and input, such as citizen surveys, questionnaires, informational brochures, community outreach, town meetings or other proactive methods. The Citizen Participation Plan shall describe the results that are expected from the methods and techniques that are used. More than one means is required and at least one effort shall be made to solicit input from non-resident landowners.~~

~~(4) A general outline of the meeting schedule for the group developing the CAMMA land use plan, as designated in Subparagraph (b)(1) of this Rule.~~

~~(e) All regular meetings of the designated planning group where the CAMMA land use plan is discussed shall offer time on the agenda for public comment. A list of the names of speakers offering public comment and a copy of any written comments provided shall be kept on file by the local government and provided to the DCM staff for use in the CAMMA land use plan review process.~~

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0507 MINIMUM CAMMA LAND USE PLANNING AND FUNDING REQUIREMENTS

~~(a) Each year DCM shall develop a list of local governments with whom DCM shall initiate a scoping process during the upcoming five years and the year in which DENR expects to have funds available for each local government desiring to seek DENR funding.~~

~~(b) To receive funding from DENR, counties shall, at a minimum, prepare a CAMMA Core land use plan, as described in 15A NCAC 07B.~~

~~(c) To receive funding under this grant program for CAMMA Core land use plan development, municipalities must have AECs within their jurisdiction and meet the population and growth rate thresholds as shown in Figure 1. To receive funding under this grant program, municipalities with Ocean Hazard AECs must, at a minimum, prepare a CAMMA Core land use plan. Additionally, municipalities with non-Ocean Hazard AECs shall, at a minimum, prepare a CAMMA Core land use plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only non-Ocean Hazard AECs that are at or below the population and growth rate thresholds shown in Figure 1 may prepare a CAMMA Core land use plan or a Workbook Plan as~~

REMOVED. Funding requirements specific to community characteristics and the type of land use plan to be provided are no longer needed.



described in 15A NCAC 07B. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource protection issues (such as water quality concerns) being addressed by the municipality, shall be considered during the scoping process described in 15A NCAC 07L .0505 when determining the final planning option to be funded.

(d) Municipalities that do not meet the minimum plan making authority of G.S. 113A-110(e) or those with no AECs within their planning jurisdiction shall not be funded for individual plans except under special circumstances and if funds are available. Examples of special circumstances include: the existence of non-AEC fragile areas (such as federally regulated wetlands, historic and cultural resources, critical wildlife habitats and scenic areas), land use compatibility problems or unexpected growth pressures, such as the relocation of major industry to the area.

(e) Figure 1 illustrates the criteria DENR shall use to determine the minimum types of plans that shall be expected and funded for municipalities.

Figure 1: PRESUMED MINIMUM FUNDING FOR MUNICIPAL CAMA LAND USE PLANS

POPULATION	GROWTH RATE ²	AREAS OF ENVIRONMENTAL CONCERN (AECs)		AECs NOT PRESENT OR DO NOT MEET 113A-110(e)
		OCEAN HAZARD AREAS	NON OCEAN HAZARD AREAS ^{2a}	
≥ 5,000	N/A	Black	Black	Light Gray
≥ 2,500	HIGH	Black	Black	Light Gray
>1,000 and < 2,500	HIGH	Black	Diagonal Hatching	Light Gray
< 1,000	HIGH	Black	Diagonal Hatching	Light Gray
≥ 2,500	MODERATE	Black	Diagonal Hatching	Light Gray
< 2,500	MODERATE	Black	Diagonal Hatching	Light Gray
≥ 2,500	LOW	Black	Diagonal Hatching	Light Gray
< 2,500	LOW	Black	Diagonal Hatching	Light Gray

Core Plan  Core or Workbook plan to be determined in  No Funding
the scoping process

- (f) CAMMA Land Use Plans shall be funded as follows:
- (1) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3), shall be used to determine the economic status of counties. Counties designated as Tier 1 and Tier 2 shall be considered economically distressed. Economically distressed counties that prepare a CAMMA Core land use plan shall be funded at no more than 75 percent of the project costs, although lower percentages of funding may be provided. Counties that prepare a CAMMA Core land use plan and do not have a Tier 1 or Tier 2 designation shall be funded at no more than 65 percent of the project cost, although lower percentages of funding may be provided.
 - (2) Municipalities preparing CAMMA Core land use plans shall be funded at no more than 60 percent of the project cost, although lower percentages of funding may be provided.
 - (3) Counties and municipalities preparing CAMMA Advanced Core land use plans, as described in 15A-NCAC 07B, shall be funded at no more than 75 percent, except for Tier 1 and Tier 2 designated counties preparing CAMMA Advanced Core land use plans. If so designated, these County plans shall be funded at no more than 85 percent, although lower funding percentages may be provided. Eligibility for funding to prepare a CAMMA Advanced Core land use plan shall be determined during the scoping process and shall be based on the level of planning proposed by the local government. To be considered for funding to prepare a CAMMA Advanced Core land use plan, the proposal must demonstrably maintain or improve local environmental conditions and advance the local government towards implementation of its currently-certified CAMMA land use plan.
 - (4) Municipalities preparing CAMMA Workbook land use plans may receive no more than three thousand dollars (\$3,000.00) for map preparation only.
 - (5) Local governments that choose to combine individual plans into joint or regional plans shall be eligible for funding not to exceed the amount that would have been provided for individual plans.

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

**15A-NCAC 07L-0508 STATE TECHNICAL ASSISTANCE, REVIEW AND COMMENT ON
PRELIMINARY DRAFT PLAN**

- (a) Educating Local Officials: At the beginning of the planning process, DCM shall provide opportunities for educating local officials about the CAMMA land use planning rules, through such means as workshops and training videos.
- (b) Maps and Data: DCM shall provide maps and data to assist with developing the CAMMA land use plan. This data may include population, natural resources, water quality, economic activity, and transportation

REMOVED,
RELOCATED to 7B and REVISED
since State technical assistance is
relevant to the land use planning
guidelines.

~~infrastructure for counties, and where available, for municipalities. Local governments may supplement this data with additional, or more recent, data from federal, state, local, and other sources.~~

~~(e) Procedures for Agency Review and Comment. DCM shall review all draft CAMA land use plans for technical accuracy and consistency with the CRC's requirements for CAMA land use plans and shall provide notice to the CRC and other State and Federal Agencies that the plan is available for review and comment.~~

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0509 INTERGOVERNMENTAL COORDINATION

~~(a) Notification of Adjacent Jurisdictions (including non-CAMA areas, and if applicable, out of state areas): Each local government receiving funding for CAMA land use planning from DENR shall solicit comments on its preliminary draft CAMA land use plan or updates submitted for state review from adjacent jurisdictions and applicable regional planning entities. Solicitation shall be made in writing and a copy of the draft CAMA land use plan shall accompany the request. The review period shall be, at a minimum, 45 calendar days. After the review period ends, any comments from the adjacent planning jurisdictions and regional planning entities shall be provided to the local governing body and to the applicable DCM District Planner. Additionally, within 90 days after CRC certification of a CAMA land use plan, the local government shall provide one copy of its plan to each jurisdiction with which it shares a common border and with the regional planning entity.~~

~~(b) Coordination of Policies: Where watershed(s) that contain an AEC fall within more than one planning jurisdiction, the jurisdictions shall coordinate the development of land use policies affecting shared AECs to the greatest extent practical.~~

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

15A NCAC 07L .0510 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

~~(a) Public Hearing Requirements For Local Governments Receiving Funding From DENR For Land Use Planning. Local adoption of the CAMA land use plan requires a public hearing. Notice of the hearing shall state the date, time, place, proposed action, and that copies of the document may be reviewed at a particular office in the county courthouse, county office buildings, or town hall during designated hours. Any other public facility where the document can be reviewed such as a library or community center shall be designated in the notice. The notice must appear at least twice in a newspaper of general circulation in the planning jurisdiction. The first notice must appear not less than 30 days prior to the hearing. The second notice must appear not less than 10 days prior to the hearing. Written notice of the public hearing shall be posted on the local government's principal bulletin board 30 days prior to the hearing or, if there is no such bulletin board, at the door of the governing body's usual meeting room. If possible, an electronic hearing notice shall be provided on the World Wide Web at the time of the original notice.~~

~~(b) 30 Day Local Review Period. Copies of the proposed CAMA land use plan or update (final draft) shall be available for public review at the time the first notice is provided and in the place(s) listed in the notice. At~~

REMOVED, RELOCATED TO 7B
and REVISED as part of the
procedure for land use plan
review.

REMOVED.
Public hearing and local adoption
requirements are covered in the land
use planning guidelines.

least one copy of the draft plan shall be available for checkout for a 24 hour period by residents and property owners of the planning jurisdiction.
(c) ~~Minor editorial changes after the public hearing are acceptable without re-advertising the notice. Substantive changes such as re-wordings that alter the basic intent of policy statements or changes in timelines for actions in the original notice shall require a new public hearing. This notice shall be advertised in the same manner as the original.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~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.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~15A NCAC 07L .0512 SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM~~

- ~~(a) Sustainable Communities Component: Under conditions outlined in this rule, DENR may provide additional financial support for plans that exceed the minimum requirements of 15A NCAC 07B. This Rule establishes a Sustainable Communities Component of the planning program, which provides funds to selected communities to support actions to implement the CRC-certified CAMA land use plans of selected local governments.~~
- ~~(b) The Sustainable Communities Component brings current techniques in coastal management and sustainability to the North Carolina coast. Local governments designated as Sustainable Communities shall execute multi-year land/water projects that are consistent with CRC management topics and the CRC-certified~~

REMOVED, RELOCATED to 7B
and REVISED.
Implementation status reports are relevant to the land use planning guidelines.

REMOVED. 07L.0504
ELIGIBLE PROJECTS is
sufficient to cover the types of
planning and management
projects to be funded.

~~CAMA local land use plan. Examples of sustainable projects include but are not limited to: oyster re-seeding projects, establishment of greenway systems, and eco-tourism projects.~~

~~(c) The CRC may identify priority issue areas and goals on which Sustainable Communities projects shall focus. These focus areas shall be provided in the Notice of Availability of Funds and Request for Proposals.~~

~~(d) The following factors shall be considered by DENR in the selection of Sustainable Communities: merit of proposal and its relevance to CRC management topics; proposed education and public participation throughout the life of the project; financial and administrative capacity of the local government to implement the project; and past history of CAMA land use plan implementation by that local government.~~

~~(e) DENR shall accept applications for the Sustainable Communities Component once every three years from counties and municipalities whose CAMA land use plans have been certified within the past three years. During the first year the Sustainable Communities Component is offered, local governments with CAMA land use plans older than three years will be eligible to apply. DENR shall make final selections of no more than four communities per funding cycle, based on recommendations of the CRC and the CRA. Every effort shall be made to select local governments on an equitable geographic distribution throughout the coastal area.~~

~~(f) Selected communities shall document their methodology and progress throughout the length of the planning program and provide yearly progress reports to DENR.~~

~~(g) Sustainable Communities shall receive the following assistance: planning grant funds for the initial phase of the project and a local CAMA land use plan addendum for up to 80 percent of the project costs; not to exceed forty thousand dollars (\$40,000); priority funding consideration for Planning and Management Grant Funds for related projects for two of the following three years; provided funds are available for priority two and priority three projects, for a maximum of twenty thousand dollars (\$20,000) for each grant; and DCM support for all grant applications to other agencies for project funding.~~

~~(h) DCM will catalog, advertise and distribute summary reports on projects funded under this program to other local governments in the coastal area.~~

History Note: Authority G.S. 113A-112; 113A-124;

Eff. August 1, 2002.

~~15A NCAC 07L 0513 PROJECT DURATION~~

~~(a) CAMA Core and Advanced Core land use plans may be funded over a two year period. Funding during the first year will be to prepare background material, with second year funding primarily used for policy development.~~

~~(b) Other planning and management projects may be approved for up to three years. However, individual grants will usually be for a period of one year. Where the project exceeds one year, the annual grant application shall set forth annual objectives, products and budgetary requirements. If a project requires more than one year to complete, and is funded for its first year, this action does not commit DENR to subsequent funding throughout the estimated duration of the project, except that multi year CAMA land use plans will be given priority funding for Phase II.~~

~~(c) In the event that any local planning and management funds remain or become available after the initial disbursement of funds, DENR may provide additional grants to local governments to supplement existing~~

REMOVED. A timeframe for funding
will be included in a Request for
Proposals (RFP) and specified in a
grant contract prepared by NCDENR.

~~projects or to initiate new projects based on need and ability of the local government to initiate a new project. All previous unfunded applications will be considered for available supplemental funding. In addition, applications for supplemental funding may be submitted by local governments at specified times during the year.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~15A-NCAC 07L-0514 RELATION TO OTHER FUNDING
Applicants may combine these funds with other local, state, and federal funds to finance appropriate projects. However, these funds may not be used as "local matching funds" for other state or federal grants, except that Sustainable Community funds may be used for match if allowed by other state or federal programs.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~SECTION .0600 APPLICATION PROCESS~~

~~15A-NCAC 07L-0601 APPLICATION FORM~~

- ~~(a) At least 30 days prior to each new land use planning and management grant period, DENR shall distribute to each eligible applicant a grant application form and notice of availability of funds.~~
- ~~(b) The grant application form shall request a project description, project objectives, project deliverables, project budget, consistency of the proposed project with the certified CAMA land use plan (if applicable), and other information as deemed necessary by DENR. A project narrative that more completely describes the proposed project may supplement the form. Incomplete, vague or inadequate applications may not be processed.~~
- ~~(c) The grant application form shall be signed by a person who has been authorized by the local government to enter into contracts relating to the implementation of CAMA.~~
- ~~(d) A separate application form shall be completed for each proposed project.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~15A-NCAC 07L-0602 ASSISTANCE IN COMPLETING APPLICATIONS AND SUBMITTAL~~

~~Local governments may contact the DCM offices for further assistance and information in completing grant applications. Completed applications shall be submitted to the appropriate office as described in the Notice of Availability of Funds and Request for Proposals.~~

REMOVED matching limits with other grants to allow flexibility in the use of grant funds.

REMOVED this SECTION.
A Request for Proposals (RFP) will specify an application process specific to the funding available.

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~15A NCAC 07L .0603 PROCEDURE FOR APPROVAL OR DISAPPROVAL~~

- ~~(a) DENR shall, within 90 days after the deadline for receiving applications, notify all applicants as to the status of the application. If deemed necessary, DENR may request the applicant to submit additional information or agree to a revised project proposal or project budget.~~
- ~~(b) No approval of a grant application shall be deemed to be final prior to execution of the contract agreement required by 15A NCAC 07L .0701.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~SECTION .0700 – GRANT ADMINISTRATION~~

~~15A NCAC 07L .0701 CONTRACT AGREEMENT~~

- ~~(a) Prior to the disbursement of funds, the local government and DENR will become parties to the contract.~~
- ~~(b) DENR shall prepare the contract and submit it to the local government following tentative approval of the grant application. The contract shall specify the amount of the grant, the work to be performed under the grant, and all terms and conditions of the grant. The contract must be executed by a person who is authorized by the local government to enter into contracts, and then returned to DENR. The contract is effective, and approval of the grant application final, when signed by the Secretary of DENR or the Secretary's designee.~~
- ~~(c) Subcontracts shall be reviewed and approved by DENR prior to execution by the local government. Past work history with DENR of the proposed subcontractor will be considered in reviewing the subcontract. No subcontracts may be made without the written approval of DENR.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~15A NCAC 07L .0702 PROGRESS REPORTS AND GRANT MONITORING~~

- ~~(a) Specific requirements for progress reports will be set out in each contract with grantees.~~
- ~~(b) A progress report will be required of all grantees prior to the distribution of funds.~~
- ~~(c) DENR shall make such site visits and consultations as deemed necessary.~~

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

~~15A NCAC 07L .0703 PAYMENT~~

REMOVED this SECTION. Grants
are administered according to
contracts prepared by NCDENR.

(a) Payment by DENR will be made periodically as specified in the contract upon the submittal of a requisition for payment and DCM certification that reasonable and satisfactory progress is being made on the project. Payments will be proportional to the work demonstrated by the grantee to have been completed.

(b) DENR may withhold payment at any time if the grantee is in violation of the terms of the contract or cannot demonstrate satisfactory progress towards completion of the project.

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

~~15A NCAC 07L .0704 PROJECT COMPLETION REPORT~~

(a) ~~A project completion report shall be required for all projects. DENR shall transmit information concerning the content and format of this report to all grantees at least 60 days prior to the due date for the report.~~

(b) ~~A draft project completion report shall be submitted to DENR with or prior to submission of the final requisition for payment. This report shall include an assessment by the local government of the consistency of the project with the certified CAMA land use plan and the rules of the CRC. If the project is found to be inconsistent by DENR, the local government shall include a satisfactory plan for creating consistency, including timelines for implementation. Final payment will not be made to the local government until this information is provided.~~

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

~~15A NCAC 07L .0705 ACCOUNTABILITY~~

~~Grantees will be subject to accounting techniques and procedures similar to those applicable to DENR as grantees of federal funds administered by the National Oceanic and Atmospheric Administration. The requirements of the General Statutes, OMB Circular A-102 and the National Oceanic and Atmospheric Administration's administrative grants standards shall be followed.~~

History Note: Authority G.S. 113A-112; 113A-124; Eff. August 1, 2002.

ATTACHMENT 3
PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

SUBCHAPTER 7B – STATE GUIDELINES FOR LAND USE PLANNING

SECTION .0600 - INTRODUCTION

15A NCAC 07B .0601 AUTHORITY

This Subchapter establishes the rules that local governments shall follow in developing and adopting a land use plan or comprehensive plan that meets the Coastal Resources Commission's (CRC) planning requirements.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002.

SECTION .0700 –LAND USE PLANNING REQUIREMENTS

15A NCAC 07B .0701 PLANNING OPTIONS

(a) Each county within the coastal area may prepare and adopt a land use plan or comprehensive plan that meets the planning requirements adopted by the Coastal Resources Commission (CRC). The Secretary shall prepare and adopt a land use plan that meets the CRC's planning requirements for each county that chooses not to prepare and adopt a land use plan. Municipalities may develop individual land use plans or comprehensive plans that meet the CRC's requirements if:

- (1) the County delegates this authority to the municipality; or
 - (2) the Secretary grants this authority upon application from a municipality that is currently enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.
- (b) A County shall accept a municipality's locally adopted policies and implementation actions for inclusion in the County land use plan for the municipality's jurisdiction if requested to do so by any municipality not preparing its own land use plan. Inclusion of a municipality's adopted policies and implementation actions shall occur either at the time of County land use plan preparation or a subsequent County land use plan amendment. The municipality's policies and implementation actions are limited to its jurisdiction and may differ from the County's policies and implementation actions.
- (c) Municipalities may seek certification for these plans if all requirements found in 15A NCAC 07B and G.S. 113A-110 are met.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002.

15A NCAC 07B .0702 LAND USE PLAN ELEMENTS

(a) Organization of the Plan. Include a matrix in the land use plan or comprehensive plan that shows the location of the required elements.

(b) Community Concerns and Aspirations. The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community.

- (1) Significant existing and emerging conditions: Describe the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: Describe the land use and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and may also include local areas of concern as described in Subparagraph (d)(2) (Land Use Plan Management Topics) of this Rule.

- (3) A community vision: Describe the general physical appearance and form that represents the local government's plan for the future. Include objectives to be achieved by the plan and identify changes that may be needed to achieve the planning vision.
- (c) Existing and Emerging Conditions. The purpose of this element is to provide a sound factual base necessary to support the land use and development policies included in the plan. Describe the following:
- (1) Population, Housing, and Economy. Include discussion of the following data and trends:
- (A) Population:
- (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics;
 - (iv) Age;
 - (v) Income; and
 - (vi) Thirty year projections of permanent and seasonal population, in five year increments.
- (B) Housing stock. Estimate current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured)
- (C) Local economy: Describe employment by major sectors and community economic activity.
- (2) Natural systems. Describe the natural features and discuss the environmental conditions of the planning jurisdiction, to include:
- (A) Natural features
- (i) Areas of Environmental Concern (AECs);
 - (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
 - (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations, and Division of Marine Fisheries (DMF) shellfish growing areas and water quality conditions;
 - (iv) Flood and other natural hazard areas;
 - (v) Storm surge areas;
 - (vi) Non-coastal wetlands including forested wetlands, shrub-scrub wetlands and freshwater marshes;
 - (vii) Water supply watersheds or wellhead protection areas;
 - (viii) Primary nursery areas;
 - (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
 - (x) Additional natural features or conditions identified by the local government.
- (B) Environmental conditions
- (i) Water quality:

- (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Resources Basin Planning Branch Reports, Clean Water Act 303(d) List, and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Marine Fisheries;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
- (ii) Natural hazards:
 - (I) Areas subject recurrent flooding, storm surges and high winds; and
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities.
 - (iii) Natural resources:
 - (I) Environmentally fragile areas or areas where resource functions are being impacted as a result of development; and
 - (II) Valuable natural resource areas that are being impacted or lost as a result of incompatible development. These may include, but are not limited to the following: coastal wetlands, protected open space, and agricultural land.
- (3) Existing Land Use and Development. Include a map and descriptions of the following:
- (A) Existing land use patterns, which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, vacant, agriculture, and forestry. Land use descriptions shall include estimates of the land area allocated to each land use and characteristics of each land use category.
 - (B) Historic, cultural, and scenic areas designated by a state or federal agency or by local government.
- (4) Community Facilities. Evaluate existing and planned capacity, location, and adequacy of community facilities that serve the community's existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. These shall include:
- (A) Public and private water supply and wastewater systems. Describe existing public and private systems, including existing condition and capacity. Describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health. Indicate future needs based on population projections. Map existing and planned service areas.
 - (B) Transportation systems. Map the existing and planned multimodal systems and port and airport facilities. Describe any highway segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels. Describe highway

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- facilities on the current thoroughfare plan or facilities on the current transportation improvement plan. Describe the impact of existing facilities on land use patterns.
- (C) Stormwater systems. Describe the existing public stormwater management system. Identify existing drainage problems and water quality issues related to point-source discharges of stormwater runoff
- (d) Future Land Use. This element of the plan is intended to guide the development and use of land in a manner that achieves the goals of the CAMA through local government land use and development policies, including a future land use map.
- (1) Policies.
- (A) Community Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government land use policies as required in .0702 (b) and (c).
- (B) Policies shall be consistent with the goals of the CAMA. shall address the CRC management topics for land use plans, and comply with all state and federal rules. Policies that exceed use standards and permitting requirements found in Subchapter 7H – State Guidelines for Areas of Environmental Concern shall be identified in the plan.
- (2) Land Use Plan Management Topics. The purposes of the CRC's management topics are to ensure that land use plans support the goals of the CAMA, define the CRC's expectations for land use policies, and provide a basis for land use plan review and certification. In addition to the management topics outlined below, plans may also include policies to address local areas of concern. Each management topic includes two components: a management goal and planning objective.
- (A) Public Access:
- (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
- (ii) Planning Objectives: Policies that address access needs and opportunities, with strategies to develop public access and provisions for all segments of the community, including persons with disabilities. Oceanfront communities shall establish access policies for beach areas targeted for nourishment.
- (B) Land Use Compatibility:
- (i) Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, avoid risks to public health, safety and welfare, and is consistent with the capability of the land.
- (ii) Planning Objectives: Policies that characterize future land use development patterns and establish mitigation criteria and concepts to minimize conflicts.
- (C) Infrastructure Carrying Capacity:

- (i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
 - (ii) Planning Objectives: Policies that establish service criteria and ensure improvements minimize impacts to AECs and other fragile areas.
- (D) Natural Hazard Areas:
- (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.
 - (ii) Planning Objectives: Policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from erosion, high winds, storm surge, flooding, or other natural hazards.
- (E) Water Quality:
- (i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.
 - (ii) Planning Objectives: Policies that establish strategies and practices to prevent or control nonpoint source pollution and maintain or improve water quality
- (3) Future land use map. Depict the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure. Include designations with descriptions of land uses and development
- (e) Tools for Managing Development. The purpose of this element is to describe the management tools and actions the local government will use to implement the land use plan.
- (1) Guide for land use decision-making. Describe the role of the land use plan policies including the future land use map, in local decisions regarding land use and development.
 - (2) Existing development program. Describe the community's existing development management program, including local ordinances, codes, plans, and policies.
 - (3) Action plan and implementation schedule. Describe the actions that will be taken by the local government to implement policies that meet the CRC's Management Topic goals and objectives. Specify the fiscal year(s) in which each action is anticipated to start and finish. Describe the specific steps the local government plans to take to implement the policies, including the adoption and amendment of local ordinances, plans, and special projects. The action plan shall be used to prepare the implementation status report for the land use plan.

History Note: Authority G.S. 113A-102; 113A-107(a); 113A-110, 113A-111, 113A-124;
Eff. August 1, 2002;
Amended Eff. April 1, 2003.

SECTION .0800 – LAND USE PLAN AND AMENDMENT REVIEW AND CERTIFICATION

15A NCAC 07B .0000 STATE REVIEW AND COMMENT ON DRAFT PLAN

(a) Procedure for Agency Review and Comment. The Division shall review all draft land use plans for consistency with the CRC's requirements for land use plans prior to local adoption. The Division shall provide notice to the CRC, other State and Federal Agencies, and adjacent jurisdictions (including non CAMA areas and if applicable, out of state areas) that the plan is available for review and comment. The review period shall be 30 calendar days. After the review period ends, comments shall be provided to the local government within 45 calendar days.

15A NCAC 07B .0801 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

(a) Notice of Public Hearing. The local government shall provide the Secretary or his designee written notice of the public hearing for local adoption and a copy of the proposed land use plan or amendment, no less than 5 business days prior to publication of a public hearing notice. The public hearing notice shall include, per .0802(a)(2), disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the land use plan.

(b) Final Plan Content. The final land use plan or amendment shall be adopted by the elected body of each participating local government.

(c) Transmittal to the Division for Certification. The local government shall provide the Secretary or his designee the locally adopted land use plan, a certified statement of the local government adoption action, and documentation that it has followed the public hearing process required in G.S. 113A-110.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124; Eff. August 1, 2002.

Amended Eff. January 1, 2007; February 1, 2006

15A NCAC 07B .0802 CERTIFICATION AND USE OF THE PLAN

(a) Secretary Certification of Land Use Plans and Amendments:

(1) The Division District Planner shall submit a written report to the Secretary on the locally adopted land use plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification.

(2) The public shall have an opportunity to submit written objections or comments on the locally adopted land use plan or amendment prior to action by the Secretary. Written objections shall be received by the Division no more than 30 calendar days after local adoption of the land use plan or amendment, shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan elements that are opposed. Written objections or comments shall be sent by the Division to the local government submitting the land use plan or amendment. Written objections shall be considered in the certification of the local land use plan or amendment.

(3) The Secretary shall certify land use plans and amendments following the procedures and conditions specified in this Rule. The Secretary shall certify plans and amendments which:

- (A) are consistent with the current federally approved North Carolina Coastal Management Program;
- (B) are consistent with the Rules of the CRC;
- (C) do not violate state or federal law; and

- (D) contain policies that address each Management Topic.
- (4) If the land use plan or amendment does not meet certification requirements the Secretary shall within 45 calendar days inform the local government how the plan or amendment does not meet the procedures and conditions for certification.
- (b) Copies of the Plan. Within 90 calendar days of certification of a land use plan or an amendment the local government shall provide one (1) printed and one (1) digital copy of the land use plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.
- (c) Use of the plan. Once certified, the land use plan shall be utilized in the review of CAMA permits in accordance with G. S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:
 - (1) Local administration. The local government reviews CAMA permits for consistency with the land use plan.
 - (2) Joint administration. The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for CAMA permit consistency reviews.
 - (3) Division administration. The Division reviews CAMA permits for consistency with the land use plan policies, including the future land use map and implementation actions.
 - (d) Plan updates and amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

15A NCAC 07B .0803 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

- (a) Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report every two years from the date of initial certification. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan.
- The Implementation Status Report shall also identify:
- (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified 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 land use plan; and
 - (4) Consistency of existing land use and development ordinances with current land use plan policies.

History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

SUBCHAPTER 7L - LOCAL PLANNING AND MANAGEMENT GRANTS

SECTION .0100 – PURPOSE AND AUTHORITY

15A NCAC 07L .0101 AUTHORITY

The rules in this Subchapter are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the Department of Environment and Natural Resources (DENR) in the Secretary's capacity as executive head of the state agency designated by the Governor to administer state funds and to receive and administer federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone Management Act.

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. August 1, 2002; October 1, 1991.

15A NCAC 07L .0102 PURPOSE

The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the DENR program of grants for local land use plans or comprehensive plans and coastal planning and management projects within North Carolina's coastal area. These funds are made available to assist local governments in developing and implementing land use plans and management strategies for their coastal resources, as mandated and encouraged by the CAMA. Funds are to be used in refining and carrying out local land use planning and management programs by local governments within the 20 counties defined by the CAMA.

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. August 1, 2002; June 1, 1980.

SECTION .0200 – GENERAL STANDARDS

- 15A NCAC 07L .0201 ELIGIBLE APPLICANTS
- 15A NCAC 07L .0202 PRIORITIES FOR FUNDING
- 15A NCAC 07L .0203 ELIGIBLE PROJECTS
- 15A NCAC 07L .0204 PROJECT DURATION
- 15A NCAC 07L .0205 CONSISTENCY WITH PLANS AND GUIDELINES
- 15A NCAC 07L .0206 RELATION TO OTHER FUNDING

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. November 1, 1984; June 1, 1982; March 13, 1981; June 1, 1980;

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

Repealed August 1, 2002.

SECTION .0300 – APPLICATION PROCESS

- 15A NCAC 07L .0301 APPLICATION FORM
- 15A NCAC 07L .0302 SUBMITTAL
- 15A NCAC 07L .0303 PROCEDURE FOR PRELIMINARY APPROVAL OR DISAPPROVAL
- 15A NCAC 07L .0304 ASSISTANCE IN COMPLETING APPLICATIONS

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. October 1, 1991; May 1, 1990; November 1, 1984; June 1, 1982; March 13, 1981;

June 1, 1980;

Repealed August 1, 2002.

SECTION .0400 – GRANT ADMINISTRATION

- 15A NCAC 07L .0401 CONTRACT AGREEMENT
- 15A NCAC 07L .0402 ACCOUNTABILITY
- 15A NCAC 07L .0403 PAYMENT
- 15A NCAC 07L .0404 PROGRESS REPORTS AND GRANT MONITORING
- 15A NCAC 07L .0405 PROJECT COMPLETION REPORT

History Note: Authority G.S. 113A-112; 113A-124;

Eff. September 1, 1978;

Amended Eff. March 13, 1981; June 1, 1980; September 1, 1978;
Repealed August 1, 2002.

SECTION .0500 - GENERAL STANDARDS

15A NCAC 07L .0501 ELIGIBLE APPLICANTS

- (a) Applications for grants for local planning and management funds may be made by the following:
- (1) Coastal Counties as defined in CAMA; and
 - (2) Municipalities within coastal counties.
- (b) Two or more eligible applicants may submit a joint application for funds to carry out jointly sponsored or regional projects.

History Note: Authority G.S. 113A-112; 113A-124;
Eff: August 1, 2002.

15A NCAC 07L .0502 CONSISTENCY WITH PLANS AND RULES

All proposed projects must be consistent with CAMA, state rules and standards implementing CAMA, certified local land use plans and the state's federally approved coastal management program.

History Note: Authority G.S. 113A-112; 113A-124;
Eff: August 1, 2002.

15A NCAC 07L .0503 PRIORITIES FOR FUNDING LAND USE PLANS AND IMPLEMENTATION PROJECTS

- (a) In funding local planning and management grants, DENR shall follow the general priorities set out in 15A NCAC 07L .0503(b). Examples of the types of eligible projects are listed and have been placed in the appropriate priority category.
- (b) General priority categories for local planning and management grants are as follows:
- (1) The highest priority includes projects directly mandated by statute, including initial and updated land use plans, local participation in projects initiated by DENR, and projects DENR indicates urgently need local attention in order to meet CRC management topics.
 - (2) The second priority includes projects directly related to carrying out the explicit goals of CAMA, for which DENR indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement a land use plan such as public facilities planning or land use regulations preparation. (3) The third priority includes projects related to improving local coastal management and land use management capabilities.
- (c) In addition, DENR shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories:
- (1) project's contribution towards meeting CRC management topics;
 - (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards;
 - (3) applicant's urgency of need;
 - (4) past history of applicant's implementation of CAMA planning and management activities;

- (5) feasibility of successful completion of project by the applicant;
 - (6) past experience with this program as well as present management and administrative capabilities;
 - (7) potential applicability of the project to other coastal area municipalities and counties; and
 - (8) geographic distribution of applicants.
- (d) The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Local government contributions for land use plan and implementation projects shall be at least 25 percent of the project costs except for Tier 1 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.
- (e) Any local government whose land use plan is not certified due to failure to meet the criteria listed in 15A NCAC 07B or that has not submitted the most recent Required Periodic Implementation Status Report as described in 15A NCAC 07B, shall not receive further funding under this program until these inconsistencies are corrected.

*History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.*

15A NCAC 07L .0504 ELIGIBLE PROJECTS

- (a) The lists in Paragraph (b) of this Rule constitute types of projects that will be considered for funding. Each type of project listed has been assigned to one of the priority categories described in 15A NCAC 07L .0503 Priorities For Funding Land Use Plans and Implementation Projects. These lists are not intended to be exhaustive or restrictive. Local governments may apply for funds for any related projects that will improve local planning and management capabilities.
- (b) Examples of eligible projects and their associated priority category include:
- (1) Priority Category-Type 1
 - (A) Those activities specifically designated by DENR on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state rules for land use planning;
 - (B) Adopting, amending, or updating land use plans to reflect changed conditions (these may include, but are not limited to: necessary data collection, public participation, policy development).
 - (2) Priority Category-Type 2
 - (A) Adopting or amending ordinances to further secure compliance with state rules in AECs;
 - (B) Beach access plans and studies (these may include, but are not limited to: inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights);

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

- (C) Erosion control plans and studies (these may include, but are not limited to: mapping, erosion rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies);
- (D) Studies and planning leading to the nomination of new AECs as described in 15A NCAC 07H .0503, or locally significant environmental areas;
- (E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing waterfront parks and public areas (these may include, but are not limited to: site design, use studies, cost analysis);
- (F) Preparing, adopting, or amending ordinances necessary to carry out certified land use plans, state rules, and the state coastal zone management plan (including but not limited to regulations on or for zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, environmental impact statements);
- (3) Priority Category-Type 3
 - (A) Initial water and sewer plans and studies;
 - (B) Land use related capital facilities programming;
 - (C) Base mapping as a management tool;
 - (D) Other planning, studies, and data acquisition supportive of coastal planning and management including but not limited to public education or involvement on coastal issues; solid waste planning; port planning; sport and commercial fishing studies;
 - (E) Enforcement of ordinances adopted to carry out certified land use plans;
 - (F) Coordination of local coastal management activities with other local management activities (these may include, but are not limited to: internal coordination, city-county coordination);
 - (G) Other coastally related management projects.

*History Note: Authority G.S. 113A-112; 113A-124;
Eff. August 1, 2002.*



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

MEMORANDUM

CRC- 14 - 39

To: Coastal Resources Commission
From: Michael Christenbury, Wilmington District Planner
Date: December 2, 2014
Subject: Certification of the City of Southport CAMA Land Use Plan UPDATE

Recommendation:

Certification of the City of Southport Land Use Plan Update with the determination that the City 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 City of Southport is requesting Certification of the Southport CAMA Land Use Plan Update. The City is located in southeastern Brunswick County, at the mouth of the Cape Fear River.

This 2014 land use plan is an update to the currently certified 2007 CAMA Land Use Plan, which was written under the current 7B Land Use Plan guidelines. Recognizing the importance of keeping the land use plan up-to-date, in January 2013, the Southport Board of Aldermen tasked the City of Southport Planning Board to perform a thorough review of the 2007 Land Use Plan. The review of the current plan took place in the spring and summer of 2013 by the Planning Board, with a particular focus on the plan goals, policies and implementation actions. Additionally, updates were made to key economic, demographic, housing, mapping and community facilities data in response to both the 2010 decennial census and localized changes that have occurred since 2007.

To gain the views of the citizens that live and work in Southport, the City held several meetings jointly by the Board of Aldermen and the Planning Board to gain public input. These meetings were held in late 2013 and early 2014. Following the public participation period, the City then made final recommended changes to the plan during the summer of 2014.

The City of Southport held a duly advertised public hearing and voted by resolution to adopt the CAMA Land Use Plan Update. DCM Staff reviewed the Plan and has determined that the City 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. Staff recommends Certification of the Southport CAMA Land Use Plan Update.

The Southport Land Use Plan may be viewed at:

<http://portal.ncdenr.org/web/cm/brunswick-county>

NC Division of Coastal Management
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North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

MEMORANDUM

CRC- 14 - 40

To: Coastal Resources Commission
From: Michael Christenbury, Wilmington District Planner
Date: December 2, 2014
Subject: Certification of an Amendment to the 2007 Carolina Beach CAMA Land Use Plan

Recommendation:

Certification of an Amendment to the Carolina Beach CAMA Land Use Plan (previously certified by the CRC on November 30, 2007) 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 Carolina Beach is seeking certification of an amendment to the 2007 Carolina Beach CAMA Land Use Plan. The Town amended the Land Use Plan (LUP) to allow for dry stack storage facilities within the Town of Carolina Beach, and to be consistent with the town's Harbor Management Plan which allows dry stack storage facilities.

Specifically, the Town is proposing the following:

POLICY 34 AMENDED TO:

Policy 34:

The town shall support dry stack storage facilities that offer significant benefits to the community for increase boating access and recreational opportunities to the marina while maintaining the Town's natural and scenic resources. The town shall encourage and promote standards that protect adjacent properties and the community by addressing design, impacts on transportation, infrastructure capacity, size and appropriate open space requirements. Accommodating facilities shall meet all applicable development standards and are held to remain consistent with the policies and goals of this plan.

The Town of Carolina Beach held a duly advertised public hearing on October 14, 2014 and voted by resolution to adopt the Land Use Plan Amendment. DCM Staff reviewed the amendment 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. Staff recommends Certification of the amendment to the 2007 Carolina Beach CAMA Land Use Plan.

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North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC-14-42

December 2, 2014

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Static Vegetation Line Alternatives – Subcommittee Proposal

At the previous CRC meeting, the Commission continued its discussion of alternatives to the present strategy for managing oceanfront development which includes utilization of a Static Vegetation Line in determining the siting of oceanfront structures. You will recall that the current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE)) be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission. The origins and rationale for the Static Line were presented at the previous meeting and the background memo (CRC-14-34) is attached as reference.

Two alternatives to the present regulatory framework have been discussed, with the first being a repeal of static lines and utilization of a “development line” as initially proposed by the CRC Chair. The Commission could replace the existing static line provision with a “development line” to be established by local governments and potentially approved by the CRC. The general concept was that no new development or expansion of existing structures would be allowed seaward of the established development line. In addition, new or replacement structures, and the allowable expansion of existing structures, would be determined based on the graduated setback from the existing vegetation line, or the development line, whichever is farther landward.

A second alternative was proposed by DCM staff (potential rule language attached) and focused more narrowly on three amendments to the existing static line exception provisions. The CRC could 1) eliminate the 2,500 square foot maximum building size limit under the static line exception, 2) eliminate the five year waiting period after an initial beach project (making areas retroactively eligible to petition for the exception), and 3) increase the existing 300,000 yds³ trigger for the static line as the definition of “large-scale beach fill projects.” The trigger would change to a volume per linear foot along the beachfront, based on additional analysis and discussion with the Commission. Under the existing Static Line Exception process, structure setbacks would continue to

be based on the graduated setbacks from first line of stable and natural vegetation and be sited no farther seaward than the landward-most adjacent structure. As is currently the case, local governments would petition the Commission to be allowed the exception which would be approved based on demonstrating a commitment to long-term beach fill.

At the last CRC meeting, a subcommittee was appointed by the CRC Chair (Rudy Rudolph – CRAC, Spencer Rogers - CRAC, Steve Foster – Oak Island, Frank Rush – Emerald Isle, David Kellam – Figure Eight Island) to further develop the option of repealing static lines and utilizing a development line. The subcommittee met in Morehead City on October 31st and had subsequent email discussions. A concept document was drafted (attached) for CRC consideration. An excerpt from this subcommittee report follows:

“The proposal envisions communities choosing between three categories:

- (1) **Graduated setbacks associated with SNV (existing rules)** - community that does not have a static line, and has/will not receive nourishment, nor wants a Development Line.*
- (2) **Static line (existing rules)** – community that has received nourishment in the past, has a static line and either is moving forward with a Development Line, or wishes to keep the static line.*
- (3) **Development Line (new rule)** – communities that have a static line and wish to remove it with a Development Line, or a community that receives initial nourishment that wishes to have a Development Line.”*

As this proposal differs somewhat from the Chair’s original proposal, there are several areas that may need to be considered by the Commission for further discussion, for example:

- Will criteria be developed by the CRC for both the content and the approval of the proposed “Shoreline Management Plans”?
- Will the process for establishing a Development Line be locally driven (standards & criteria) or will the Commission develop a process for establishing and approving such lines?
- What would the local “governing documents” encompass and how would development lines be incorporated?
- If Development Lines will be submitted to DCM for review prior to CRC final determination, what standards or criteria should be used by DCM in the review?
- What are the implications of removing the graduated setback for larger structures?
- The proposal states that Development Lines will be reviewed by the CRC in concurrence with future land use plans. There are currently no provisions for Development Lines in the CAMA Land Use Plans and municipal governments are not required to participate in the land use planning program.

- The proposal states that conflicts with the Development Line would not be reviewed by the CRC until and unless a proposed variance is supported by the local government. CAMA currently allows any person to seek a variance from the Commission for activities otherwise prohibited by its rules. This provision may be in conflict with CAMA and may also send the issue immediately to a contested case hearing under the Administrative Procedures Act.
- While the location of residential/commercial development has always been the purview of local government, the state has historically maintained responsibility for siting of development with the intent of minimizing losses of life and property resulting from storms and long-term erosion and preventing encroachment of permanent structures on the public beach. The overriding objective has been to preserve the natural conditions of the barrier dune and beach system and reduce public costs of inappropriately sited development. If local governments are to be given authority to make siting determinations, will there be standards or criteria developed by the Commission that meet similar objectives?

DCM Staff appreciate the work of the Commission and the appointed subcommittee, and recognize that the suggested rule changes are initial draft proposals that are intended for further discussion and exploration at upcoming meetings. Staff's initial questions above are only intended as potential discussion points – at this time, the Division and Department do not have a formal position on any proposals other than the changes proposed by the Division, as described above.

Greg "Rudi" Rudolph will present an overview of the subcommittee's proposal at the upcoming CRC meeting. I look forward to the Commission's discussion of this important issue.

The general consensus of the meeting on Friday, October 31, 2014 of the ad-hoc group appointed by the CRC chairman to consider the prior Option One of removal of the static line is outlined below.

1. The goal is to provide Towns/Communities the ability to eliminate the "static line" from coastal management processes or consideration where the locally proposed and implemented shoreline management plan meets the purposes of CAMA management and setback rules. The proposed method will replace the present vegetation line referenced development standards with a fixed, community implemented development line.

2. Existing Static vegetation lines would remain until such time as they have been replaced (via the process) by a "Development Line".

3. Local communities/towns will have the option to establish a detailed, surveyed development line along their beach front. This Development Line (and any other associated regulations) would be incorporated into the governing documents of the town or community. The development line would restrict ALL residential/commercial development from being seaward of this line..

**Generally speaking it is the expectation the Development Line would follow existing development and allow all homes to be built to this alignment. The Development Line would be established and maintained by the local governing body. Proposed Development Lines would be submitted to DCM for review before a final determination by the CRC. Upon final establishment of a Development Line, the existing static line would automatically be eliminated and replaced by the Development Line.*

4. In addition to the placement of Development Line. Development would also be required to comply with the 30 times the annual erosion rate standard as it relates to stable natural vegetation (SNV) as currently utilized by DCM.

5. Development would be restricted to the more restrictive of the Development Line OR the 30 times the erosion rate as it relates to SNV.

6. Beach paths, decks, gazebo's would NOT be regulated by this Development Line but rather by existing DCM rules implemented by the local governing body.

7. Development lines will be reviewed by the CRC in concurrence with future land Use Plans.

8. Individual proposals for owners to conflict with the CRC approved local development standards would be reviewed by the CRC process if only if the local governing body supports the change and refers it to the CRC for consideration. CRC would not review individual proposals not supported by the local governing body.

**It is the intent of the Development Line to allow for a more controlled line and not allow for new lot development seaward of existing development. It is also the intent to involve the local government body in the decision and management process.*

8. Graduated setbacks, size limitations, residential/commercial shall be the determination of the local governing authority.

OTHER

The ad-hoc committee came to consensus and unanimously supported moving forward with formulating rule language similar to the above. It is understood there will be particular issues that will arise in specific

areas. Most of those issues will be resolved by the local governing body prior to submission of a Development Line.

Any community currently under "static line" guidance would remain so until such time as a "Development Line" has been established by local governing body and received concurrence by DCM.

It is envisioned that any given community will fall under the following three rules:

- (1) **Graduated setbacks associated with SNV (existing rules)** - community that does not have a static line, and has/will not receive nourishment, nor wants a Development Line.
- (2) **Static line (existing rules)** – community that has received nourishment in the past, has a static line and either is moving forward with a Development Line, or wishes to keep the static line.
- (3) **Development Line (new rule)** – communities that have a static line and wish to remove it with a Development Line, or a community that receives initial nourishment that wishes to have a Development Line.

It is possible with the scenarios above that only minor changes will need to occur to existing rules governing graduated setbacks and the static line.

There is a desire to get some level of commitments from the local governing body to continue to maintain healthy beaches. That commitment is highly encouraged but should not be a mandate. The threat of non-conforming properties and local governance is considered as an incentive by itself to establish a nourishment/shore protection plan.

Other issues that local development lines may need to consider include: public trust issues on beachfill placed seaward of the mean high water line and beachfill construction easements.

Attendance:

Greg "rudi" Rudolph
Frank Rush
Steve Shuttleworth
Spencer Rogers
David Kellam
Ken Richardson
Steve Foster
Steve Edwards

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.

(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 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. 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) 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) 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.
- (3) 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, 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. 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) 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 whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.
- (5) 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.
- (6) 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) 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) 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. A development setback measured from the vegetation line provides 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. 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) of this Paragraph, a local government or community 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)(2)(A) of this Rule;
 - ~~(B) Total floor area of a building is no greater than 2,500 square feet;~~
 - ~~(C)~~(B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
 - ~~(D)~~(C) 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)~~(D) 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)~~(E) 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 NCAC 07H .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 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 25 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
Eff. March 23, 2009.*

15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) 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.

(b) 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
Eff: March 23, 2009.

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
Eff: March 23, 2009.

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
Eff. March 23, 2009.

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
Eff. March 23, 2009.

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
Eff. March 23, 2009.*



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC-14-34

October 2, 2014

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski, Ken Richardson
SUBJECT: Static Vegetation Line Alternatives

Over the course of the Inlet Management Study, the Commission discussed developing an alternative to the present management strategy for siting oceanfront development adjacent to beach fill projects. The current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE), be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission.

Background

The first line of stable natural vegetation (FLSNV) has been used as an oceanfront setback delimiter since 1979. The focus was placed on "natural" vegetation due to dunes being artificially pushed seaward of their natural equilibrium and vegetated in an effort to reduce setback restrictions. The first application of the FLSNV on a nourished beach came about in 1981 with the completion of the Wrightsville Beach Hurricane Protection Project.

Over the course of several meetings, the CRC previously determined that the post-project vegetation was not "stable and natural" and should not be used for measuring oceanfront setbacks and directed staff to utilize the pre-project vegetation line for siting oceanfront development. This directive was supported by subsequent rule interpretations by the CRC. In connection with a 1995 contested case regarding a minor permit denial, an Administrative Law Judge urged the Commission to codify this method of measuring setbacks on nourished beaches. The CRC then developed rule language that was based on three primary rationales: 1) there is evidence that nourished beaches have a higher erosion rate than natural ones, 2) there is no assurance that funding for any nourishment project will be available for future maintenance work as the original project erodes away, and 3) structures would more likely be damaged by erosion since their siting was tied to an artificially forced system. The intent of the static line provisions were to recognize that beach nourishment is an erosion response necessary to protect

existing development, and should not be a stimulus for new development or the seaward encroachment of development on sites that are not otherwise suitable for building.

The original static line provisions were tied to large-scale beach nourishment projects, defined as one that: 1) places >200,000 yds³ of sediment at an average ratio >50 yds³/linear ft.; or 2) is a hurricane protection project constructed by the USACE. By 2005, the Division and Commission were beginning to notice how the increasing number of beach fill projects was affecting oceanfront erosion rate calculations. The long-term average of shoreline change is analyzed over a period of approximately 50 years in what is commonly referred to as the "end point method". This method measures the distance of an early shoreline (typically 1940s or 1950s) and compares it to the current location of the shoreline. The Division was noting that many of the shorelines were substantially farther seaward than they would have been without recent beach fill and the net effect was a lower erosion rate due to the most recent shoreline being biased by successive beach fill projects.

In 2006 the Commission began to review the static line triggers noting that in order to avoid a static vegetation line, municipalities had the ability to design projects with sediment volumes less than 200,000 yds³ or, more commonly, sediment distributions greater than 200,000 yds³ with an average distribution under 50 yds³/ft. The Commission discussed that while high-frequency beach fill projects can be designed to offset smaller volumes, the large-scale beach fill projects lasted longer and would have fewer environmental impacts. There was a concern that the triggers created a disincentive for large-scale projects for municipalities wanting to avoid the restrictions associated with static vegetation lines. In order to address this possibility, the Commission directed staff to examine the past history of beach projects in order to gauge how large-scale projects should be defined. The analysis showed that between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance projects disposed of less than 300,000 yds³ of sediment. All but one of the larger projects was associated with Oregon Inlet. As a result of the study, the Commission re-defined large-scale beach fill projects to be greater than 300,000 cubic yards or a storm protection project constructed by the USACE with the intent that a beach disposal or typical inlet navigation project would not trigger a static line.

In addition, the Commission found that in some communities with a long-term commitment to beach fill, proposed development on many lots 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. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development (up to 2,500 square feet) in areas with a long-term commitment to beach nourishment to be measured from either the natural vegetation line or the static line, making more lots developable in these areas. Today, there are fourteen communities and one state park with Static Vegetation Lines; Ocean Isle, Oak Island, Caswell Beach, Bald Head Island, Kure Beach, Carolina Beach, Wrightsville Beach, Topsail Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, Atlantic Beach, Nags Head, and Fort Macon State Park.

Two alternatives to the present regulatory framework involving the use of static lines in siting oceanfront development have been discussed. The first alternative has been repeal of static lines and utilization of a “development line.” The second alternative proposed by DCM staff has been amendment of the existing static line exception provisions. Both alternatives are outlined below. In addition, proposed rule language has been attached showing possible amendments to the current static line exception rules. Staff will discuss both alternatives at the upcoming meeting in Wilmington.

Static Line Alternatives

Alternative 1 – Repeal Static Line Provisions

The Commission could replace the existing static line provision with a “development line” established by local governments and approved by the CRC seaward of which no new development will be allowed. New or replacement structures would be sited based on the graduated setback from the existing vegetation line, or the development line, whichever is further landward.

Pros:

- Allows infill development.
- Some non-conforming structures could be replaced.
- Unbuildable lots could potentially become buildable.
- Could be implemented in areas that were developed during the same time period with similarly sized structures.
- Removes administrative requirement for communities to present long-term erosion control strategies to the CRC.

Cons:

- No assurance of beach fill project maintenance
- In some cases, existing development is not only non-conforming but also on the public trust beach.
- Could be difficult to implement in areas with complex lot geometry (flag lots, cul de sacs, etc.), where plat shape dictates structure placement.
- A “development line” can be difficult to determine where a mix of commercial, high-density, and residential development occurs.
- Areas constructed at different times with dissimilar plans, or constructed when the initial setback differed, could make a development line complicated.
- Potential for seaward encroachment of development in areas likely to experience erosion, storm surge, or in close proximity to inlets.

Alternative 2 – Amend Static Line Exception Provisions

The CRC could amend the existing static line exception rules and eliminate the 2,500 square foot maximum building size limit, as well as the five year waiting period, making areas retroactively eligible to petition for the exception. In addition, the Commission could increase the 300,000 yds³ trigger for large-scale beach fill projects. Structure setbacks would be based on the graduated setbacks from first line of stable and natural vegetation and be no farther seaward than the landward-most adjacent structure. As is

currently the case, local governments would petition the Commission to be allowed the exception which would be approved based on demonstrating a commitment to long-term beach fill.

Pros:

- Allows infill development.
- Continued assurance that the community is committed to maintaining the beach fill projects subject to periodic Commission review.
- Most local governments with static lines have already been approved for static line exceptions by the Commission.
- Repealing the 2,500 square foot maximum structure size limitation would allow development similar to areas without large-scale beach fill projects.
- Repealing the five year waiting period would allow local governments to be eligible for the exception immediately upon completion of a beach fill project.
- Some unbuildable lots may become buildable.
- Some non-conforming structures could be replaced.
- By increasing the sediment volume trigger, communities without a Static Vegetation Line may pursue larger projects in hopes of added protection.

Cons

- Local governments that are not currently approved for a static line exception will need to petition the CRC for the exception.
- There will be a continued responsibility on the part of the Commission and local government to periodically review the status of erosion control / beach fill projects.
- Allowance for larger-scale development in areas likely to experience erosion, storm surge, or in close proximity to inlets.



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

December 3, 2014

MEMORANDUM

CRC – Information Only

TO: Coastal Resources Commission
FROM: Charlan Owens, AICP, DCM Elizabeth City District Planner
SUBJECT: Town of Southern Shores 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 Town of Southern Shores implementation status report is available on DCM's Land Use Planning web page at: <http://portal.ncdenr.org/web/cm/dare-county> . It is not provided 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.