NC COASTAL RESOURCES COMMISSION
May 10-11, 2016
Dare County Government Complex
Manteo, 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.

Tuesday, May 10th

12:30 COASTAL RESOURCES ADVISORY COUNCIL MEETING (Rm #238) — Debbie Smith, Chair

1:30 PUBLIC HEARING (TBD)
- 15A NCAC 7H .0304 Ocean Erodible AEC - OEA Calculation

2:00 Commission Call to Order* (TBD) — Frank Gorham, Chair
- Roll Call
- Chair's Comments
- Approval of February 9-10, 2016 Meeting Minutes — Frank Gorham, Chair
- Executive Secretary's Report — Braxton Davis
- CRAC Report — Debbie Smith, Chair

2:30 Legislative Studies
- Cape Fear Estuarine Resource Restoration "The Rocks" Update *(CRC-16-17)* — Rebecca Ellin
- Beach Erosion Study – Update *(CRC-16-18)* — Ken Richardson
- Oyster Restoration Permitting *(CRC-16-19)* — Doug Huggett

3:15 2015 Coastal Habitat Protection Plan (CHPP) Update
- EMC Requested Changes & Conditional Approval *(CRC-16-20)* — Mike Lopazanski
- Commission Discussion

3:30 Oceanfront Shoreline Management
- Update on Amendments to 15A NCAC 7H .0306 Grandfathering Provisions for Multi-Family and Commercial Oceanfront Structures *(CRC-16-21)* — Tancred Miller
- Commission Discussion

4:30 CRC Science Panel
- CRC Science Panel – Projects & Vacancies *(CRC-16-24)* — Ken Richardson

5:00 RECESS

Wednesday, May 11th

9:00 Commission Call to Order* (TBD) — Frank Gorham, Chair
- Roll Call
- Chair's Comments

9:15 CRC Rule Development
- NC APA and Rulemaking Overview — Jennifer Everett, DEQ
- Use of Geotextile Tubes for Temporary Erosion Control *(CRC-16-22)* — Tancred Miller
- Proposed Amendments to Sandbag Rules *(CRC-16-23)* — Mike Lopazanski
- Commission Discussion

11:00 BREAK

11:15 Beach Management

- Beneficial Use/Generic MOU Study Group Update — Rudi Rudolph

11:45 Public Input and Comment — Frank Gorham, Chair

12:00 LUNCH

1:30 PUBLIC HEARING — Frank Gorham, Chair

- 15A NCAC 7H .1801; 7H .1802; 7H .1804; 7H .1805 Beach Bulldozing General Permit and 15A NCAC 7H .2505; Emergency General Permit
- 15A NCAC 7H .2704; 7H .2705; 7H .2701 - Marsh Sill General Permit
- 15A NCAC 7H .0205 Coastal Wetlands

2:00 Beach Management

- Update on State Ports Inlet Management AEC Development *(CRC-16-25)* — Heather Coats
- Summary of Local Gov't Discussion of Development Line *(CRC-16-26)* — Ken Richardson

2:45 Action Items

- Adopt 15A NCAC 7H .0304 Ocean Erodible AEC - OEA Calculation — Frank Gorham, Chair

3:00 Old/New Business — Frank Gorham, Chair

3:15 Adjourn

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

**** Times indicated are only for guidance and will change. The Commission will proceed through the agenda until completed.***

N.C. Division of Coastal Management
www.nccoastalmanagement.net
Next Meeting: July 12-13, 2016; Beaufort

NC COASTAL RESOURCES COMMISSION (CRC)

February 9-10, 2016
DoubleTree
Atlantic Beach, NC

Present CRC Members

Frank Gorham, Chair
Renee Cahoon, Vice-chair
Neal Andrew, Second Vice-chair
Larry Baldwin
Denise Gibbs
Marc Hairston
Greg Lewis
Phil Norris
Russell Rhodes
Jamin Simmons
John Snipes
Bill White

Present CRAC Members

Debbie Smith, Chair
Rudi Rudolph, Vice-chair
Spencer Rogers, Vice-chair
John Brodman
Jett Ferebee
Beth Midgett
Mike Moore
David Moye
Kris Noble
Bobby Outten
Ray Sturza
Dave Weaver

Present Attorney General's Office Members

Mary Lucasse
Christine Goebel

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Gwen Baker was absent. Larry Baldwin stated he would recuse himself from the SCS Ventures, LLC variance request. Denise Gibbs read her evaluation of statement of economic interest received from the NC Ethics Commission into the record. Based upon this roll call Chairman Gorham declared a quorum.

Chairman Gorham recognized and welcomed Dr. Devon Eulie and her graduate class in Foundations of Coastal Management from UNCW.

VARIANCES

Gray (CRC-VR 15-10), North Topsail Beach

Christine Goebel

Christine Goebel of the attorney General's office represented staff and stated petitioner, Dowell Gray, Jr., is present and will represent himself in this variance request. Ms. Goebel gave an overview of the property located in North Topsail Beach. The property is near, but not adjacent to Stump Sound, part of the AIWW. At this location, Stump Sound is designated as an Outstanding Resource Water (ORW) and petitioner is within the ORW Shorelines AEC as defined in 15A NCAC 07H .0209(f). In October 2015, petitioner applied for a CAMA minor permit to construct a single family residence on this lot. On November 13, 2015, DCM denied petitioner's CAMA permit application as the proposed development exceeded the 25% impervious surface limit in the Commission's rules at 15A NCAC 07H .0209(f)(10). Petitioner is seeking a variance from the 25% impervious surface limit. Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and petitioners agree on two of the four statutory criteria which must be met in order for the variance request to be granted. Staff disagree with petitioner that hardships are caused by conditions peculiar to the property and staff contends that any hardships are a result of actions taken by the petitioner since the built upon area could be reduced by removing the roof from the proposed 150 square foot covered porch.

Mr. Gray spoke on his own behalf and requested the Commission grant his variance request.

Renee Cahoon made a motion that the Commission affirmatively find that strict application of the applicable development rules, standards or orders issued by the Commission will cause the petitioner an unnecessary hardship. Bill White seconded the motion. The motion passed with eleven votes in favor (Hairston, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis) and one opposed (Rhodes).

Renee Cahoon made a motion that the Commission affirmatively find that hardships result from conditions peculiar to the petitioner's property. Larry Baldwin seconded the motion. The motion passed with eleven votes (Hairston, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis) and one opposed (Rhodes).

Renee Cahoon made a motion that the Commission affirmatively find that the hardships do not result from actions taken by the petitioner. Jamin Simmons seconded the motion. The motion passed with ten votes in favor (Hairston, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes) and two opposed (Rhodes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that granting 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 (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

This variance request was granted.

SCS Ventures, LLC (CRC-VR-15-12), Wilmington
Christine Goebel
***Larry Baldwin recused himself from discussion and voting on this variance request.*
Christine Goebel of the Attorney General's office represented staff and stated Charles Baldwin is present and will represent the petitioner in this variance request. Robb Mairs, DCM field representative, gave an overview of the property. Ms. Goebel stated SCS Ventures, LLC owns an existing marina in New Hanover County along River Road south of the City of Wilmington on the Cape Fear River. The existing marina was originally constructed by a prior owner in 2005-2006 pursuant to a CAMA Major Permit. In 2013-2014, another prior owner sought a permit modification and CAMA variance in order to extend the existing forklift pier to the -6 foot mean low water depth or -5 foot mean low water depth. The Commission denied this request in May 2014. In April 2015, petitioner applied for a permit modification for a redesigned project which extended the pier to the 1/3 width mark and shifted the structure extension to the south. On December 4, 2015, DCM denied petitioner's application based on the proposal's inconsistency with the Commission's ¼ width rule at 15A NCAC 07H .0208(b)(6)(G)(iii) and the rate to deep water rule at 15A NCAC 07H .0208(b)(H). Petitioner now seeks a variance from these rules in order to construct the pier as proposed in their 2015 CAMA Major Permit application. Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and petitioner agree on all four statutory criteria which must be met in order for the variance request to be granted.

Charles Baldwin of Brooks Pierce represented petitioner and gave an overview of the site location. Mr. Baldwin reviewed the stipulated facts which petitioner contends supports the granting of this variance request.

Renee Cahoon made a motion that the Commission affirmatively find that strict application of the applicable development rules, standards, or orders issued by the Commission will cause the petitioner an unnecessary hardship. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that hardships result from conditions peculiar to the petitioner's property. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that hardships do not result from actions taken by the petitioner. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Renee Cahoon made a motion that the Commission affirmatively find that that granting the variance requested by the petitioner will be consistent with the spirit, purpose and intent of the rules, standards or order issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

This variance request was granted.

2015 Coastal Habitat Protection Plan (CHPP) Update (CRC 16-01)
Jimmy Johnson

Jimmy Johnson with the Albemarle Pamlico National Estuary Partnership stated the CHPP was enacted under the Fisheries Reform Act of 1997. Part of this Statute required the Department to develop a habitat plan to enhance fisheries and fisheries production. The Statute also required the CHPP be updated every five years. The CHPP before you today for adoption is the third revision. The Plan includes the status and trends of the habitat, the threats to the habitats, and the condition of the habitats. This is an ongoing process as the document will continue to include new studies that are ongoing and may require changes to the recommendations in the document. The overarching goal of the CHPP is the long-term enhancement of coastal fisheries. This is done by addressing habitat and water quality needs. The Plan describes six specific habitats, explains why they are important to fisheries and water quality, and the status of those habitats. The e recommendations in the CHPP are the important part of the plan that subject to CRC approval. The two members from the CRC are on the CHPP Steering Committee, Larry Baldwin and John Snipes. This update contains no requests for any regulatory rule changes. Public comment took place in late November and the entire month of December. We received comments from Commissioners Baldwin and Snipes on behalf of the CRC and have addressed those comments. Next week this document will be before the Marine Fisheries Commission and then before the Environmental Management Commission at the beginning of March for their approval. Following the adoption of the Plan by the three Commissions, the CHPP will go to the General Assembly. Braxton Davis stated the CHPP can be viewed as a state of the coast report that most states do not have. This document provides guidance to the three Commissions and fosters communication and coordination between the commissions.

Chairman Gorham thanked Larry Baldwin and John Snipes for their involvement with the CHPP.

Frank Gorham made a motion to adopt the 2015 CHPP Update. Neal Andrew seconded the motion. The motion passed with eleven votes in favor (Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis) and one opposed (Hairston).

Frank Gorham made a motion to reappoint Larry Baldwin and John Snipes to the CHPP Steering Committee. Renee Cahoon seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

SEA LEVEL RISE FINAL REPORT
Science Panel Report on Public Comments (CRC16-02)
Tancred Miller

Tancred Miller stated this is the second Statewide Sea Level Rise Study and that we are the only State that has done two assessments. The first report was completed in 2010 by the Science Panel. Session Law 2012-202 instructed the Commission to direct its Science Panel to deliver a five-year updated assessment to the original March 2010 report no later than March 31, 2015. The law asked the Science Panel to consider all relevant literature and data from federally-maintained tide gauges, and mandated the reporting of regional rates of sea level rise as well as a discussion of predictive modeling and opportunities for public comment. The Commission was also directed to look at the economic and environmental costs and benefits of adopting or not adopting sea level rise policy recommendations. The CRC determined at their April 2015 meeting that since there are no regulations or policies under consideration, it is not feasible to study potential costs or benefits at

this time. Any future regulatory changes will undergo a fiscal impact analysis as required under the Administrative Procedure Act. The final report is due to the Environmental Review Commission by March 1, 2016. The Commission took the charge from the legislature and developed a process for the update. The Commission transmitted a charge to the Science Panel that included the requirements of the Session Law and added in a request to limit the projection to 30 years. This projection will be a rolling 30-year time table that will be updated every five years. The next update will be done in 2020. The Commission instituted a technical peer review process for the 2015 update. Drs. Robert Dean and James Houston agreed to serve on the peer review committee. If the Commission approves the final report, this report as well the accompanying documents will be delivered to the Department and will subsequently be submitted as a complete package to the General Assembly's Environmental Review Commission.

Neal Andrew made a motion to approve and submit the Sea Level Rise Assessment Report 2015 Update to the Department of Environmental Quality. Larry Baldwin seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Chairman Gorham asked that a letter be sent to the members of the Science Panel and the peer review committee thanking them for their time and participation in the updated sea level rise assessment report.

CHAIR COMMENTS

Chairman Gorham stated a task force will be set up to review the variance process. If any Commissioners have an attorney that would be helpful on the task force, please send him the names so he can set up the task force.

MINUTES

Renee Cahoon made a motion to approve the minutes of the November 2015 Coastal Resources Commission meeting. Marc Hairston seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Hairston, Lewis, Norris, Simmons, Snipes, White)(Rhodes abstained).

John Snipes made a motion to approve the minutes of the December 8, 2015 special meeting of the Coastal Resources Commission. Neal Andrew seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Hairston, Lewis, Norris, Rhodes, Simmons, Snipes, White).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I would like to extend a special welcome to Commissioners Rhodes and Gibbs. Staff at the Division of Coastal Management look forward to working with you, and I hope to get together with you soon to provide an overview of our agency. We had a pretty rough weekend. To be quite honest the storm that developed took many of us by surprise. Hurricane force winds out of the north caused some minor flooding on the sound side in some areas, but in particular, we had significant beach erosion and overwash at Kitty Hawk and on Hatteras Island, where rain combined with overwash to create standing water and flooding problems. Staff met with DOT, which will be doing dune repair. At this time, we do not anticipate any requests for additional sandbag structures.

Notable permit actions since your last meeting include the rapid issuance of an emergency Major permit at Ocean Isle Beach allowing for the replacement of a failing bulkhead that was jeopardizing the structural stability of an adjacent structure. An emergency Major permit was also issued to the Department of Transportation for the protection of a failing section of US 70 in eastern Carteret County. Finally, DCM issued separate major permits for beach nourishment projects to Dare County and the Towns of Duck, Kitty Hawk, and Kill Devil Hills. The permit issued to Dare County was for nourishment activities to take place in the Buxton area. In addition, as a follow-up to the variance granted by the Commission in December, the Division has issued the permit to the State Port Authority authorizing the expansion of the turning basin at the Port of Wilmington. Yesterday, our office issued a federal consistency concurrence for dredging operations at the Port of Morehead City around Beaufort Inlet. In this case, due to the fact that the original bids for the project came in more than two times higher than the budgeted amount, the Corps has made a one-time request to dispose of all beach quality sand dredged from the inlet into the Offshore Dredged Materials Disposal Site (ODMDS) a little more than 3 miles offshore. In issuing our federal consistency concurrence, the Division considered the urgency of the dredging operations for the continued operation of the Port and safe navigation of ship traffic through the inlet, as well as the Corps' initial efforts toward beneficial use of the dredged materials.

DCM Policy staff are working on the various legislative reports that were included as part of the budget bill. You'll be hearing updates on two of those studies at this meeting, including the Cape Fear Estuarine Restoration study and the Beach Erosion Control study. We will also be following up on the budget bill's requirement that the Commission amend your sandbag rules by finalizing temporary rules and beginning the development of new permanent rules. One other study in the budget bill requires DCM and the Division of Marine Fisheries, in consultation with representatives of nongovernmental conservation organizations, to simplify oyster restoration project permitting by creating a new permitting process specifically designed for oyster restoration projects. A team of staff from DCM and DMF met with nongovernmental conservation organizations on February 1st to discuss various options. We are currently preparing our implementation report that must be submitted to the legislature by May 1. It is expected that staff will be coming to the Commission at the May meeting to initiate possible rule-making efforts necessary to implement our selected option or options.

As you can see from the list of action items, Staff are also continuing the rulemaking process and have completed fiscal analyses for a number of rules. Included in the action items are also a couple of land use plan certification that contain policies which may exceed state rules regarding buffers. Recent legislation set forth in S.L. 2015-246, Riparian Buffer Reform, places limitations on local government riparian buffer requirements. With a few exceptions, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency. The two land use plan up for certification may contain a policy that is counter to this recent legislative action. Staff is working with the local governments to resolve the issue and will request that the land use plans be certified to the extent that they are not inconsistent with the new legislation.

We are pleased to announce that for the first time in several years, the Division is notifying local governments in the 20-county coastal area that grant funding will be made available for Local Planning and Management projects for the upcoming 2016-17 fiscal year. The Division has $75,000 available for grants of up to $15,000. Local governments are invited to apply for funding for projects that are anticipated to begin July 1, 2016 and to be completed by June 30, 2017. The

primary objective of the planning and management grant program is to provide funding to assist local governments in developing and implementing land use plans and management strategies for their coastal resources that are consistent with the state guidelines. A solicitation for projects will be sent to local governments later this week with proposals due to the Division on April 1, 2016. DCM has also notified local governments in the 20-county coastal area that grant funding is available for Public Beach and Coastal Waterfront Access projects for the upcoming 2016-17 fiscal year. Local governments are invited to apply for funding for projects that are anticipated to begin after November 2016 and to be completed within eighteen months. DCM estimates that approximately one million dollars will be available for public beach and coastal waterfront access projects in FY 2016-17. Pre-applications are due to the Division by March 16, 2016.

On the Coastal Reserves front, the Division learned last week that it will be awarded a grant of $339,000 from the USFWS' National Coastal Wetlands Program to acquire the Woodley tract in Tyrrell County for incorporation into the Buckridge Coastal Reserve. The Woodley tract includes 2,040 acres and a combination of habitats including Low Pocosin, Tidal Swamp, and Estuarine Fringe Pine Forest, two of which are imperiled according to the NC Natural Heritage Program and support a number of sensitive species. Acquisition will be accomplished through a partnership with the U.S. Air Force and The Nature Conservancy in which the Readiness and Environmental Protection Integration Program will provide 50% of the purchase price of the tract to match the USFWS grant, and will help secure operational boundaries around the Dare County Bombing Range. Additionally, this acquisition will strengthen the link between more than 400,000 acres of protected upland and aquatic habitat in the area.

Our next meeting will be in Manteo on May 10-11 at the County Government Complex.

CRAC REPORT

Debbie Smith, CRAC Chair, stated the CRAC met to discuss sandbags. The only change the CRAC would like to suggest to the Commission outside of the recommendations from the last CRAC meeting was that the time frame for all sandbag permits should be eight years regardless of the size of the structure. This would give any property owner a more reasonable length of time to address other solutions. At the last meeting a resume was provided for Todd Roessler for consideration. The CRAC would like to recommend Mr. Roessler for appointment to the CRAC.

Larry Baldwin made a motion to appoint Todd Roessler to the Coastal Resources Advisory Council. Renee Cahoon seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

CRC RULE DEVELOPMENT

Update on Amendments to 15A NCAC 7H .0306
Grandfathering Provisions for Multi-family Oceanfront Structures (CRC 16-03)
Tancred Miller

Tancred Miller stated the CRC approved rule language at the last meeting to move forward to public hearing. The concept was to grandfather multi-family residential oceanfront structures constructed prior to August 11, 2009, with a maximum square footage of 10,000 square feet. The rule language approved at the November 2015 meeting would have also applied to single-family and duplex residential structures that were the focus of S.L 2012-202. This session law directed the Commission to grandfather single-family and duplex residential structures over 5,000 square feet, but did not specifically authorize the Commission to set a maximum size limit. Staff has revised the draft language to accomplish the action the Commission wants to take on multi-family structures,

without contravening what the Commission was directed to do under S.L. 2012-202. The Commission will need to approve this revised rule language for public hearing.

Shane Johnson, Wilmington Regional Association of Realtors, stated the Association researched the number of properties impacted by the proposed rule for legal, non-conforming structures by reaching out to local planning and tax officials. Ten communities responded. It appears from the responses that the impact will average out to about 17 per community. While this number is low, it still has a large impact on the real estate community.

Tancred Miller stated staff will begin developing the fiscal analysis for this proposed amendment. To complete the fiscal analysis, the Division will need to determine the number of multi-family residential structures on the oceanfront that are between 5,000 and 10,000 square feet and were constructed prior to August 11, 2009. A GIS analysis will also have to be performed on the location of the relevant structures relative to the applicable setback lines. Once we know the number of structures that will be affected by the rule change, we will need to estimate the value of granting grandfather status to nonconforming structures. We are working with the towns directly to get this information. The fiscal analysis will be reviewed by the Commission once it is completed. If the fiscal analysis determines that this rule change would create a substantial economic impact then, per the Administrative Procedure Act, the Commission is required to consider alternatives.

Braxton Davis stated staff presented concerns with this proposal at the last meeting. The concern for this provision is separating out residential versus commercial. A condominium complex would be allowed to rebuild, but a bed and breakfast of the same size would not. Staff recommends that in fairness, all structures of a certain size, regardless of use, should be considered. Also, as in alternative 3, there should be some incentive for communities to have a beach plan in place that shows that they have a long-term plan for beach renourishment or erosion control to justify the grandfathering of their structures.

John Snipes stated that he agrees that it should be based on size and not use. Greg Lewis stated that since there is no request for changes to the regulations for commercial properties, we could address that at a later date. Renee Cahoon stated she would also like to explore the inclusion of commercial properties.

Neal Andrew made a motion to approve the revisions to the draft rule language, as presented, for public hearing. Larry Baldwin seconded the motion. John Snipes added a friendly amendment to include commercial structures up to 10,000 square feet. The friendly amendment was accepted by Commissioners Andrew and Baldwin. The revised motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Sandbag Rules and CRAC Recommendations
Mike Lopazanski

Mike Lopazanski stated the CRC's rules allow individual property owners to use sandbags for temporary erosion control of imminently threatened structures. Sandbags are considered temporary by law. Time limits are from two to eight years depending on whether the structure being protected is in a community seeking beach nourishment, inlet relocation or stabilization. The CRC has been struggling with sandbags for a long time. The Commission has recognized that property owners need a way to temporarily protect their structures, but it has been difficult to enforce the time limits. Another question facing the Commission has been when do sandbags need to be removed?

Legislation was recently passed that directed the CRC to adopt temporary rules to expand the use of temporary erosion control structures. At the same time the CRC has been taking a comprehensive look at the sandbag rules with the CRAC directed by the Chairman to look at the sandbag rules and provide alternative management recommendations, particularly on enforcement issues related to the removal of sandbags.

Regarding the legislation for rule change, the budget bill directs the Commission to allow sandbags even if there is no imminently threatened structure, allow sandbags to span from one property boundary to another regardless of proximity to a threatened structure, and require the termination dates for all sandbag permits be calculated from the date the last bags were placed. In drafting rules to meet the legislative directive, Staff have added some caveats to address concerns relating to these changes. Specifically, when allowing sandbags where there are no imminently threatened structures or adjacent to a property that already has sandbags, the bags may not be placed any further oceanward than the landward most sandbag structure. This is an attempt to keep them from creeping out onto the beach since there is no siting criteria. Staff also had some concerns with the repair, replacement or modification of bags under litigation and have added language that states the modification would be limited to the permitted dimensions.

Chairman Gorham asked about the option for geotextile tubes. Mike Lopazanski stated this was also considered during the State Port Inlet AEC discussion. The current rules do not allow for geotextile tubes. When geotextile tubes have been discussed this in the past, there were concerns about the stability of the structure and the Commission had chosen not to allow tubes as temporary erosion control. Spencer Rogers stated the major factor addressing the temporary nature is the size limits. If the Commission wants to consider geotextile tubes, then there are aprons and anchors attached. The Commission would have to define what the tube dimensions would be similar to the size limits for the other bags. The Commission would not be permitting them as good structures or stable engineering. There are some engineering issues with these tubes. The tubes reduce the amount of fabric so there will be less debris on the beach when they go away. They could potentially be less expensive for the property owner. Jett Ferebee stated the geotextile tube is a faster process, but cannot speak to whether they are more effective. Spencer Rogers added that given the way the regulations are going; I don't see a problem if the Commission wanted to move in that direction. Braxton Davis stated we have talked about doing it as a trial approach in the inlet management area for the Cape Fear River. There is always the concern of allowing a seawall-type structure. Mike Lopazanski added that there are other engineering concerns such as aprons and anchors. It is also easier to repair individual bags versus one enormous bag. These considerations would have to be factored into allowing the use of geotextile tubes. Chairman Gorham asked staff to include geotextile tubes and then receive comments during the public hearing process. If the Commission finds out that this isn't a good option, then we can remove it. Mike Lopazanski stated there needs to be some time to consider the standards for these tubes. Braxton stated staff will prepare some draft rule language with the addition of geotextile tubes for the next meeting and will look into the use of geotextile tubes in other states for the Commission's review and discussion. Larry Baldwin asked if the Office of Administrative Hearings could be added to the draft language to define litigation.

Mike Lopazanski stated the Commission and Advisory Council have spent a lot of time discussing time limits for sandbags, the provisions used for the removal of temporary erosion control structures, the covered and vegetated requirements, as well as what to do about sandbags in advance of a beach nourishment project. The Advisory Council discussed removing the square footage reference and the associated time limits. Currently permittees have a two-year time limit if you have structure less than 5,000 square feet or five years if the structure is greater than 5,000 square feet.

These provisions were tied to the old setback rules. Staff suggested setting the time limit to five years regardless of the size of the structure. The CRAC recommends changing the time limit to eight years for all structures that are not within an area with a planned beach nourishment or inlet relocation or stabilization project. There is still a provision in the rule that states if you are not in an area that has a planned project then it can only be protected once regardless of change of ownership. Debbie Smith stated the shorelines change naturally all the time and realtors are not required to disclose if sandbags have previously been installed on a property. It is unfair to a new property owner to not be permitted for sandbags if the need arises again years later. Spencer Rogers stated this is a major hidden defect in buying coastal property and was added in the real estate commission's last revision to the disclosure statement. A vast majority of people don't know about this until closing. Chairman Gorham asked about any problems that could arise out if this provision were taken out of the rule. Mike stated the incentive is for the community to undertake a project to address a chronic erosion issue. If this provision is removed, there would no longer be an incentive for the local government to address the underlying issue. Braxton Davis stated at the end of eight years the sandbags need to come out or the permit can be renewed if there is a planned project in place. If you come up with a project within eight years, then the permit can be renewed. What if there isn't an effort towards a project within eight years? Greg Lewis stated the temporary sandbag rules allow people to save their property from natural events and develop a plan. If the structure isn't moved and there is no plan for a beach project, then the sandbags become permanent. If we are going to allow them to use sandbags, which I agree with, then there must be a mechanism to force them to come up with a solution within the time frame. Renee Cahoon stated, at some point the sandbags end up on the public trust. These become a hazard on the beach. Just because they are covered at one point doesn't mean they won't be exposed by a storm. Mike Lopazanski stated when bags are no longer considered necessary the current rule requires the bags to be removed if the structure is relocated or taken down. The CRAC discussed only removing the exposed bags and not digging up the beach in these cases. Braxton asked what are the triggers for removing sandbags? One is a significant impact to the public trust beach. The other would be immediately following a renourishment project. Right after a project goes in, if you still have bags that are above grade then these bags need to come out. The other trigger would be after the eight-year time limit, if you still have not come up with some kind of project for your community then it is reasonable to say that those bags need to come out if they are above grade. Commissioner Cahoon makes a good point that just because they are buried doesn't mean they always will be. Mike Lopazanski stated the CRAC agreed that if the bags were covered and vegetated then the sandbags could remain. The CRAC suggested changes to the language that requires the removal of bags that are above grade upon the completion of a beach project. This would allow the local government to work with property owners on how the bags could be covered once the project is completed.

After discussion, the Commission agreed to set the time limit on all sandbag structures at eight years from the date of permit issuance, then require removal of any exposed sandbags and allow the property owner to reapply for a permit if necessary. The one time per property provision should be removed. Staff will prepare draft rule language for the Commission to review at the next meeting.

LEGISLATIVE STUDIES

Cape Fear Estuarine Resource Restoration "The Rocks" Update
Rebecca Ellin

Rebecca Ellin stated Session Law 2015-241, Section 14.6(h), laid out the findings of the General Assembly and the steps articulated in this section of the bill. The General Assembly found that the New Inlet River Dam was constructed by the Army Corps of Engineers in the late 19th century and is made up of two components. The first is the northern component which extends from Federal

Point to Zeke's Island. The second is the southern component that extends southwestward from Zeke's Island and separates the New Inlet from the main channel of the Cape Fear River. The southern component of the New Inlet Dam impedes the natural flow of water between the Cape Fear River and the Atlantic Ocean that occurred prior to the emplacement of the dam. The General Assembly found that it was necessary to consider removal of the southern component of the New Inlet Dam in order to reestablish the natural hydrodynamic flow between the Cape Fear River and the Atlantic Ocean. The Cape Fear Estuarine Resource Restoration section of the bill laid out several steps that would be required to consider removal of the southern component. First, DEQ was required to notify the US Army Corps of Engineers of the State's intent to study the removal of the southern component of the New Inlet Dam. Second, DEQ was to issue a Request for Information for a firm capable of conducting an analysis of the costs and benefits of removing the southern component of the Dam, including necessary permits and approvals. Third, the bill required DEQ to request approval from the National Oceanic and Atmospheric Administration (NOAA) to adjust the boundary for the Zeke's Island component of the NC National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary from the Reserve, and adding equivalent acreage to the northern boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreational Area. Lastly, if NOAA approves the boundary adjustment, the NC Coastal Resources Commission is then required to amend the Reserve Component rule, 15A NCAC 07O .0105, as further described in the Act. The Division sent a letter to Colonel Landers, USACE, on November 30, 2015, describing the intent of the State to study the removal of the southern component of the Dam. We received a letter from Justin McCorcle, USACE, on January 28. The response letter includes a summary of the history of the New Inlet Dam and Swash Defense Dam. According to the ACOE, the southern component is a different dam structure that works in tandem with the New Inlet Dam. The letter also describes an overview of the Wilmington Harbor project. The Corps' perspective on Section 14.6(h) of this bill is also included as well as an overview of the regulatory process that would be required in order to implement this project and a list of unresolved issues that should be addressed by the State. Some of the issues include the identification of a clear purpose and need for the project, shoaling and the need for maintenance of navigation channel, financing of the project and project maintenance, consideration of alternatives, evaluation of direct and indirect environmental impacts, and establishing who will be representing the State on this project. This is a complex project as it is proposed and a lot of different state agencies would need to be involved. The Request for Information was published by DEQ on January 8 and it closed four weeks later on February 4. Two firms responded to this request. The Division sent a letter to NOAA on November 30, 2015. In this letter we requested information on the process and the specific submission requirements to request a boundary change to the NC National Estuarine Reserve system. Per the response letter, considering a boundary change is an involved process. The detailed information that is needed for us to fully evaluate the NOAA requirements including the ecological, research, education and management implications to the proposed boundary change is not currently available. A detailed study would be required to justify a request for a boundary change from NOAA. We also sent a letter to the Director of the Division of Parks and Recreation. The purpose of this letter was to make him aware of the legislation and articulate the Department's intent to work collaboratively with the Division of Parks and Recreation on a potential boundary change because of the involvement with the Fort Fisher State Recreation area. We received a response back from Parks and more information was requested on how the proposed project may affect Fort Fisher State Recreation area and the Bald Head Island State Natural area. No action has been taken on the rule change step in the legislation. It is the Department's understanding that the Reserves' rules are departmental rules and the CRC does not have the authority to amend 15A NCAC 07O. The report is due to the General Assembly on April 1 and the draft is due to the Department on March 1. We

are aware than many communities have passed resolutions against this section of the Appropriations Act and we are not aware of any resolutions in support of it. Chairman Gorham asked Commissioner Andrew to contact Senator Lee and find out who is requesting this study.

Beach Erosion Study Update (CRC 16-05)
Ken Richardson
Ken Richardson stated Session Law 2015-241 also included a section directing the Division to look at beach erosion. In September 2015, the Division was charged with studying and developing recommendations to address preventing, mitigating, and remediating the effects of beach erosion. The law requires DCM to report the results to the Environmental Review Commission, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Committee on Agriculture, Natural and Economic Resources, and the Fiscal Research Division by February 15, 2016. This report is not an erosion rate report. The Department is still reviewing the report provided by the Division. The report addresses the natural and human causes of beach erosion, historical shoreline change in North Carolina, the Commission and Division's history in reviewing beach erosion, and looks at mitigation and prevention strategies from other states as well as North Carolina. We have also included in the report a summary of past studies and comments received. We invited the public to comment on beach erosion in general. The comment period ended December 31, 2015 and we appended the comments to the report. The report will be available to the public review on February 15, 2016 and if the Commission would like, we can present the findings and recommendations at the May CRC meeting.

BEACH MANAGEMENT
Beneficial Use/Generic MOU Study Group Update
Rudi Rudolph, Justin McCorcle
Rudi Rudolph stated as part of the development of the State Port Inlet Management AEC, Carteret County proposed beneficial use standard language. It was aimed at addressing the concerns at the Morehead City harbor about dumping the sand in the ODMDS. The Corps raised issues about the beneficial use standard language. At the Chairman's' request, a beneficial use working group was established to discuss the possible development of an agreement where the state and local governments could contribute funds to facilitate beneficial use. The working group met January 13 at the Ports Authority. The Appropriations Act mandated in Section 14.6(b) that the State Ports Authority shall negotiate with the Army Corps of Engineers a memorandum of agreement to allow for the non-federal funding of dredging and maintenance at the State Ports. This MOA would be used as a vehicle for any non-federal group to provide funds to the Corps for any additional dredging or beneficial use of dredged material. The Appropriations Act also created the Deep Draft Fund, but they didn't endow the fund with any money. Federal funds available are down in the President's budget. We need the State to find a dedicated funding source to dredge the harbors and put the sand back on the beach. We don't think it makes a lot of sense for the State Port Inlet AEC to wait on our beneficial use language.

PUBLIC INPUT AND COMMENT
No comments were received.

PUBLIC HEARING
15A NCAC 07H .0304 Ocean Erodible AEC – OEA Calculation
Mike Lopazanski stated this proposed amendment alters the formula for calculating the width of the AEC. The dune recession model has not been updated since it was first developed and dune recession is now incorporated by FEMA. The factor in the calculation has been changed from 60 to

90 to correspond with the maximum setback factor in the erosion rate setback calculations. This amendment will result in a decrease in the CRC's permitting jurisdiction in the south and slightly increase the jurisdiction in the north.

Penny Hooper, Croatan Group of Sierra Club, spoke in favor of the rule amendment.

Chairman Gorham designated Mike Lopazanski as hearing officer for the public hearings scheduled outside of Commission meetings for 15A NCAC 07H .0304.

ACTION ITEMS

Review of Public Comments and Adopt Development Line Rules
15A NCAC 7H .0305, 7H .0306, 7J .1201, 7J .1301, 7J .1302, 7J .1303 (CRC 16-06)
Ken Richardson

Ken Richardson stated when a town implements a large-scale beach project they receive a static vegetation line which establishes a line from which the construction setback is measured. A lot of communities have concerns about the static line. Communities that are proactive in managing their beaches are eligible for a static line exception. The exception requires the community to come before the Commission every five years to review their beach management plan. The development line was proposed as an alternative. With the development line there is no proven commitment to beach management. It allows the community to measure from the first line of stable and natural vegetation.

The fiscal analysis has been completed, approved by DEQ and OSBM. The public comment period has ended. The comments we received in support of the development line were hopeful it would make non-conforming homes conforming. Those opposed were focused on oceanward encroachment of structures and the lack of commitment by the community to have a long-term beach plan.

Renee Cahoon made a motion to amend 15A NCAC 7H .0305, 7H .0307, 7J .1201, and adopt 15A NCAC 7J .1301, 7J .1302, and 7J .1303. Neal Andrew seconded the motion. The motion passed with eleven votes in favor (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Lewis) and one opposed (Snipes).

Approval of Fiscal Analysis for Amendments to Beach Bulldozing GP and Emergency GP
15A NCAC 7H .1801, 7H .1802, 7H .1804, 7H .1805, 7H .2505, 7H.2704, 7H.2705 (CRC 16-07)
Ken Richardson

Ken Richardson stated at the last meeting the Commission voted to support the amendments for beach bulldozing as well as the emergency General Permit. These amendments are consistent with the Army Corps regional general permit. These amendments allow for beach bulldozing below mean high water and landward of mean low water, and alters the time window that requires interagency coordination.

Renee Cahoon made a motion to approve the fiscal analysis for Amendments to 15A NCAC 7H .1801, 7H .1802, 7H .1804, 7H .1805, 7H .2505, 7H .2704 and 7H .2705. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Approval of Fiscal Analysis for Amendments to Marsh Sill GP
15A NCAC 7H .2701, 7H .2704, 7H .2705 (CRC 16-08)
Daniel Govoni

Daniel Govoni stated the Commission approved amendments to the marsh sill General Permit at the November meeting. There has been an ongoing effort to streamline this General Permit to remove the more time-consuming conditions. The Division of Marine Fisheries is comfortable that the resource impacts associated with a marsh sill authorized under the General Permit are relatively minor and has agreed that there is no longer a need to review each potential marsh sill GP. The Division of Water Resources has revised and reissued their General Water Quality Certifications which no longer requires written concurrence for marsh sill projects that receive a CAMA General Permit. DCM does not anticipate any economic impacts as a result of these proposed amendments.

Renee Cahoon made a motion to approve the fiscal and regulatory impact analysis for the amendments to the Marsh Sill General Permit. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Approval of Fiscal Analysis for Amendments to Coastal Wetlands
15A NCAC 7H .0205 (CRC 16-09)
Daniel Govoni

Daniel Govoni stated the Commission approved amendments to 7H .0205 at its October 2014 meeting to codify how regular and occasional flooding of marshes is being determined. The term occasional flooding is currently used in the rule but is not defined and this has led to some confusion. Precise definitions of "regular" and "occasional" flooding are impractical since it is impossible to monitor the precise frequency and extent of tidal inundation across the state's more than 2.5 million acres of coastal wetlands. DCM has determined, and DEQ and OSBM have concurred, that this amendment will have little to no impact on state or local governments.

Renee Cahoon made a motion to approve the fiscal and regulatory impact analysis for the amendment to 15A NCAC 7H .0205. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Town of Emerald Isle LUP Amendment Certification (CRC 16-11)
Rachel Love-Adrick

Rachel Love-Adrick stated the Town of Emerald Isle is seeking certification of amendments to their 2004 CAMA Land Use Plan. The Town amended the LUP to modify the Future Land Use Map designations on two parcels of land to reflect newly adopted zoning requests since the LUP was last amended and certified by the CRC on February 12, 2009. The Town held two duly advertised public hearings. Staff has determined that the Town has met the substantive requirements outlined in the 7B LUP Guidelines and there are no conflicts with state or federal law or the state's coastal management program. Staff recommends certification of the amendment.

John Snipes made a motion to certify the Town of Emerald Isle's Land Use Plan Amendment. Greg Lewis seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Perquimans/Hertford/Winfall LUP Certification (CRC 16-12)
Charlan Owens
Charlan Owens stated this is a Joint Land Use Plan. The Hertford and Winfall town councils unanimously adopted the LUP at separate, duly advertised public hearings on November 9, 2015. The Perquimans County Board of Commissioners unanimously adopted the LUP at their duly advertised public hearing on November 16, 2015. Since the adoptions, DCM has become aware of a change in state law that has resulted in a potential conflict with county and town water quality policies. DCM represented to the Commission that it has asked the County to review the policy in the 2015 Joint LUP Update to resolve any potential conflicts with the recent state law regarding riparian buffers. DCM recommended the Commission certify the Plan based on DCM's representations that any provision of the 2015 Joint LUP Update in conflict with the new riparian buffer law will not be enforced.
John Snipes made a motion to certify the Perquimans County/Town of Hertford/Town of Winfall Joint Land Use Plan based on DCM's assertion that only provisions in the 2015 Joint LUP Update consistent with State and federal law will be enforced. Bill White seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Bertie County LUP Certification (CRC 16-13)
Charlan Owens
Charlan Owens stated Bertie County has submitted its Land Use Plan for certification. The County LUP covers unincorporated areas of Bertie County as well as seven towns. The remaining area is covered under the Town of Windsor's certified LUP. The Bertie County Board of Commissioners unanimously adopted the LUP at their duly advertised public hearing on January 4, 2016. Since that hearing DCM has become aware that recent changes in state law have resulted in a potential conflict with the county's water quality policy. Bertie County has been asked to resolve this potential conflict with the recent state law regarding riparian buffers. Staff recommends a conditional certification based on the determination that the Plan has met the substantive requirements of the 7B LUP Guidelines, there are no conflicts evident with state or federal law, and it is consistent with the State's coastal management program. DCM explicitly notes that the conditional certification of the 2016 LUP Update reflect that the provision in the LUP relating to a 75-foot buffer will not be enforced in a manner inconsistent with State Law.

Bill White made a motion to conditionally certify the Bertie County Land Use Plan. Phil Norris seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Resolution Delegating LUP Certification to DCM (CRC 16-14)
Mike Lopazanski
Mike Lopazanski stated the CRC completed the process of amending the 7B Land Use Planning rules. One of these amendments delegated authority for the certification of Land Use Plans to the Department/Division. This amendment could not be included as the necessary amendment to the Coastal Area Management Act was not enacted by the General Assembly in their last session. Given the lack of statutory authority, the wording of the rule language was revised to reflect that the Commission would continue to certify Land Use Plans. The Commission has requested that a resolution be sent to the Department requesting that a delegation of authority from the Commission to the Department Secretary to certify Land Use Plans be included in its legislative requests during the next session.

Renee Cahoon made a motion to approve the resolution requesting the Department include a legislative request that LUP certification authority be delegated by the Commission to the DEQ Secretary. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Adoption of 15A NCAC 7L Local Planning and Management Grant Program Amendments (CRC 16-15)
Mike Lopazanski
Mike Lopazanski stated the 7L amendments were approved by the Commission at the November 2015 meeting and sent to the Rules Review Commission. During their review, the RRC attorneys suggested several technical changes that included the deletion of a rule which seemed unnecessary as well as combining two rules which deal with similar subject matter. DCM staff agreed with the RRC staff and made the technical changes. Since these changes were not part of the package of amendments approved by the CRC in November, the Division requested that the RRC extend the time for review in order that the Commission have time to approve these additional amendments. If the Commission approves these amendments, they will be resubmitted to the RRC for consideration at their February 18, 2016 meeting with a proposed effective date of March 1, 2016.

Neal Andrew made a motion to approve the additional amendments to Subchapter 7L. Larry Baldwin seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

Public Comment/Adopt Sandbag Temporary Rules: 15A NCAC 7H .0308 Specific Use Standards for Ocean Hazard Areas; 15A NCAC 7H .1704 GP for Emergency Work; and 7H .1705 Specific Conditions (CRC 16-16)
Mike Lopazanski
Mike Lopazanski stated these amendments were approved by the Commission at its November 2015 meeting. A public hearing was held December 10, 2016. A total of five written comments were received and all were opposed to the amendments. The comments received opposed sandbags generally. The Town of Nags Head commented that each location should be able to choose for themselves which means and methods it chooses to protect its ocean shorelines. NC Coastal Federation and the Southern Environmental Law Center submitted several concerns with these temporary rules. Lopazanski advised that DCM is required to consult with the Corps for these permits during the moratorium period from April through November. There may be an issue with permitting sandbags on a vacant lot as this is not included in their general permit. It is possible that it will require an individual authorization from the Corps. The public comment period ended December 22, 2016.

Renee Cahoon made a motion to adopt the temporary rule amendments for 15A NCAC 7H .0308, 7H .1704, and 7H .1705. Neal Andrew seconded the motion. The motion passed unanimously (Hairston, Rhodes, Simmons, Norris, Baldwin, Andrew, Cahoon, Gorham, Gibbs, White, Snipes, Lewis).

With no further business, the CRC adjourned.

Respectfully submitted,

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary

Coastal Management
ENVIRONMENTAL QUALITY

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

MEMORANDUM **CRC-16-17**

TO: N.C. Coastal Resources Commission

FROM: Rebecca Ellin, Coastal Reserve Program Manager

DATE: April 27, 2016

SUBJECT: Cape Fear Estuarine Resource Restoration Update

The Department of Environmental Quality submitted its report on implementation of Session Law 2015-241 Section 14.6.(h), Cape Fear Estuarine Resource Restoration, to the Environmental Review Commission, House of Representatives Appropriations Subcommittee on Agriculture and Natural and Economic Resources, Senate Appropriations Subcommittee on Natural and Economic Resources, and the Fiscal Research Division on April 6, 2016. The report is located on the Department's website at https://deq.nc.gov/about/divisions/coastal-management/coastal-management-hot-topics/reports.

The report details the Department's implementation of the four steps of the legislation (paraphrased):

(1) Notify the U.S. Army Corps of Engineers of the State's intent to study the removal of the Southern Component of the New Inlet Dam;
(2) Issue a Request for Information for a firm capable of conducting an analysis of the costs and benefits of removing the Southern Component of the Dam, including necessary permits and approvals;
(3) Request approval from the National Oceanic and Atmospheric Administration (NOAA) to adjust the boundary for the Zeke's Island component of the N.C. National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary from the Reserve, and adding equivalent acreage to the northern boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreation Area; and
(4) If NOAA approves the boundary adjustment described above, the N.C. Coastal Resources Commission is then required to amend the Reserve Components Rule (15A NCAC 07O .0105) as further described in the Act.

The report is not a study of the proposal to consider removal of the Southern Component of the New Inlet Dam, nor does it provide any recommendations regarding the proposal. The report is consistent with what I presented to you at the February 10, 2016 N.C. Coastal Resources Commission meeting. As of the date of this memorandum, the Department is awaiting further direction from the General Assembly.

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

May 10, 2016

MEMORANDUM **CRC-16-18**

TO: Coastal Resources Commission

FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Beach Erosion Study, North Carolina 2015 Appropriations Act (S.L. 2015-241, Section 14.101.(a))

At the February 2016 CRC meeting, the Commission was updated on the Division's progress in meeting the General Assembly's directive for the Department of Environmental Quality (DEQ) and Division of Coastal Management (DCM) to "study and develop a proposed strategy for preventing, mitigating, and remediating the effects of beach erosion" (S.L. 2015-241, Section 14.101.(a)). The law required DCM to report the results to the Environmental Review Commission, the chairs of the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division, by Feb. 15, 2016.

DCM Staff prepared this report by reviewing relevant literature and previous studies in North Carolina, by visiting an experimental structural approach to mitigating beach erosion in South Carolina, and by drawing upon 40 years of coastal program experience in shoreline change analysis, and permitting beachfront development and engineering projects. The draft report was submitted to the Department on January 15, 2016 for internal review and delivered to the legislative recipients by the February 15, 2016 deadline. The report can be downloaded from the Division's web page at:
https://deq.nc.gov/about/divisions/coastal-management/coastal-management-hot-topics/reports

The Executive Summary (attached) outlines the causes of beach erosion and provides a review of past efforts by the Division and the state to address the issue. Also included are recommended mitigation strategies which range from addressing data gaps, formalizing regional beach management, and maximizing the beneficial use of dredged material.

I look forward to discussing the details of the report and recommendations at your upcoming meeting in Manteo.

Coastal Erosion Study
Division of Coastal Management
North Carolina Department of Environmental Quality

Executive Summary

Beach Processes

Beaches gain sand (accrete), and lose sand (erode) through a variety of natural forces and human actions. It is important to differentiate between beach erosion and shoreline migration, because while they may appear the same, they are in fact the results of different geological, biological, and physical processes. Beach erosion can be defined as a net loss of sand from a beach, while shoreline migration is simply a horizontal shift in the position of the shoreline. Shoreline migration can occur with or without an actual loss of sand from the beach; for example, sea-level rise can cause shoreline migration without reducing the volume of sand from the beach. Beach erosion can result from wave and current action (especially during storm events), wind, or an interruption of sand transport pathways as a result of an engineered structure. Interrupting the natural process of barrier island overwash can also adversely impact a barrier island's ability to maintain its width and elevation, by taking the overwashed sand that would otherwise have stayed on high ground, and placing it back onto the active shoreface where it is subject to continued erosional forces.

Beaches in North Carolina, and elsewhere along the U.S. coast, are in a state of constant fluctuation due to normal erosional actions of wind, water, and sediment supply. The region's geologic makeup is a significant factor regarding sediment supply: North Carolina's northern coast is flatter and more sediment rich than the steeper, sediment-poor southern coast. North Carolina's combination of simple and complex barrier islands, shoreface orientation, and inlet systems also influence the sediment budgets among the state's beaches (Riggs & Ames, 2003). Some inlets, for example, tend to migrate in the same general direction over time, while others oscillate back and forth. This difference influences whether the beaches adjacent to the inlets experience chronic or short-term erosion or accretion, and presents enormous management challenges and costs for property owners, local governments, and the state.

Erosion Influences

Human activities also contribute to beach erosion and accretion, inlet dynamics, and property impacts. Inlet dredging and relocation, placing structures on the beach that interfere with sediment transport, and beach nourishment are some of the activities that impact sediment budgets. The trend in North Carolina in recent years has been towards more active beach management. Of the approximately 160 miles of developed oceanfront shoreline in the state, about 120 miles have received beach nourishment, and local communities are increasingly planning for regular beach nourishment projects. There are currently 11 permanent erosion control structures along the oceanfront, mostly constructed for inlet stabilization, bridge approaches, and historic structures. The N.C. General Assembly passed legislation in 2011 and 2015 to allow up to six additional terminal groins to be built for inlet stabilization and erosion control. There are also approximately 290 sandbag revetments along the oceanfront, protecting imminently-threatened structures from further erosion and collapse. Additionally, legislation was passed in 2015 to expand the ability to

use sandbags for erosion control along the oceanfront, and for potentially longer periods of time than have been previously allowed (see S.L. 2015-241, Section 14.6(p)).

Research and Studies

Efforts to understand and mitigate coastal erosion are not new to North Carolina. Since the 1800s, there have been many attempts by federal, state, and local governments, and academia, to study and address coastal erosion. The Coastal Resources Commission (CRC), created in 1974 when the General Assembly adopted North Carolina's Coastal Area Management Act (CAMA), has been actively addressing beach erosion since its inception. DCM, along with other government agencies and academia, has been calculating annual average erosion rates for decades, which the CRC uses as the basis for oceanfront construction setbacks. The erosion rate calculations and construction setbacks seek to balance private property rights with life and property protection, and with public trust rights of access to the beach.

In 1984, in recognition of the need to learn more about beach erosion and mitigation strategies, the CRC created the Outer Banks Erosion Task Force and charged them with examining how coastal processes influence shoreline movement over time, reviewing strategies for addressing beach erosion, and offering recommendations for beach management. Although the Task Force focused on the Outer Banks, some of their recommendations are applicable along other sections of the coast. One of the Task Force's key conclusions was that permanent erosion control structures can have a negative influence on adjacent shorelines and beaches, and could limit or eliminate public access and use of the beach. Therefore, the Task Force recommended that beach nourishment should be the state's preferred method for addressing beach erosion.

The North Carolina Department of Environmental Quality (DEQ) has also taken a long-term approach to the conservation and management of the state's beaches and inlets through the N.C. Beach and Inlet Management Plan (BIMP). The Division of Water Resources (DWR) coordinated with DCM and a private engineering firm to produce the original BIMP, which compiled much of the information needed to address the natural resources, funding mechanisms, and strategies for the comprehensive management of the state's ocean and inlet shorelines. Although there have been many studies addressing erosion-related issues specific to geographic regions within North Carolina, the BIMP was the first statewide compilation of data associated with the management of the state's beaches and inlets. S.L. 2015-241 also mandated an update of the 2011 BIMP, and appropriated up to $250,000 to complete the task. The BIMP update is scheduled to be completed by Dec. 1, 2016, and DCM anticipates that the new BIMP report will complement and expand upon this shorter-term study.

Mitigation Strategies

The Legislature's charge to "develop a proposed strategy for preventing, mitigating, and remediating the effects of beach erosion" is a challenging one. Preventing beach erosion essentially requires locking sand in place, contrary to its natural tendency to be transported by water and wind.

Locking sand in place in one location interferes with its ability to move and replenish sand lost along adjacent beaches, which transfers an erosion problem to a different location.

Mitigating and remediating beach erosion include a suite of activities that are already in use in North Carolina, as well as others that are being actively developed. Current activities in use in North Carolina and elsewhere include beach nourishment, sandbag placement, hard structures (*e.g.*, terminal groins, seawalls, and jetties), inlet realignment, and relocation. Some localities outside North Carolina use offshore breakwaters, wave energy dissipaters, and experimental technologies.

Based on a review of historical N.C. studies, lessons learned from other coastal states, DCM experience and public comments, the following strategies should be considered:

1. Identify data and knowledge gaps in erosion hazard assessments and modeling, and the potential effects of these gaps on policy and decision making; and support additional data collection to establish subregional sediment budgets.

2. Formalize beach management at the local and subregional levels; for example, encourage beach communities to develop local beach management plans and necessary inter-local agreements; invest in local beach management staff, partnerships, and monitoring efforts; create or maintain dedicated sources of beach management funding; and explore opportunities for regional collaboration with neighboring communities.

3. Employ sensible construction setbacks to account for beach erosion and shoreline migration, taking into account the life expectancy of the structure, the range of mitigation options available, and the feasibility of their implementation.

4. Regularly evaluate the combined budgetary needs for erosion response projects, taking into consideration the prevailing and expected cost-share percentages among funding entities; and establish stable and predictable funding sources sufficient to meet statewide needs.

5. Maximize the amount of beach-compatible dredged material that is beneficially used in mitigating beach erosion.

6. Continue to streamline permitting for beach projects at the federal and state levels as a way to decrease permit processing times, permitting costs, and emergency situations.

7. Provide dedicated state agency staff support and technical assistance for local and regional beach management efforts.

As evidenced from past efforts, a state-level beach management strategy is needed to better understand local and regional sediment budgets, maintain a healthy ecosystem, protect the public's right to access and use the beach, protect property rights, and afford property owners (both public and private) with storm protection. Any new strategy should focus on continued investments in beach nourishment as the preferred alternative for mitigating beach erosion. The two largest obstacles associated with this approach are having dedicated, predictable funding sources and the identification of long-term supplies of beach-compatible sand resources.

Concurrently with the drafting of this report, DCM invited public input on the subject of beach erosion, and the charge from the Legislature. The invitation resulted in a substantial response from local governments and other interested parties, underscoring the importance of this issue to North Carolina's coastal communities, and the desire to develop a comprehensive strategy.

Download Report

Coastal Management
ENVIRONMENTAL QUALITY

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

CRC-16-19

April 25, 2016

MEMO TO: Coastal Resources Commission

FROM: Doug Huggett
Manager, Major Permits Section

SUBJECT: Simplifying Oyster Restoration Permitting

Section 14.10A.(a) of *The Current Operations and Capital Improvements Appropriations Act of 2015* (Session Law 2015-241) directed the N.C. Division of Marine Fisheries and the N.C. Division of Coastal Management of the Department of Environmental Quality to create, in consultation with representatives of nongovernmental conservation organizations, a new permitting process for oyster restoration projects to replace the need for a Coastal Area Management Act major development permit under G.S. 113A-118.

As a first step in the process of developing a new permit process for oyster restoration projects, staff from the divisions of Marine Fisheries and Coastal Management met twice. It was first determined that the portion of Session Law 2015-241 that requires a new permit process "instead of a major development permit" did not allow for streamlining of the existing Coastal Area Management Act major permit application review process. Because Coastal Area Management Act General Permits are an expedited form of a major development permit, the idea of developing a new general permit for oyster restoration projects was similarly determined to be inconsistent with the language of Session Law 2015-241. Other options studied ranged from a complete exemption of oyster restoration from all state regulatory reviews, to the development of a new oyster restoration leasing program within the Division of Marine Fisheries that is similar to the division's existing shellfish leasing program.

Ultimately an option was chosen that both divisions believed would allow for the quickest state approval process for oyster restoration projects, while allowing for at least a minimum acceptable level of agency review. Under this option, oyster restoration projects would be added as an activity exempted from Coastal Area Management Act permitting requirements under 15A

NCAC 07K Section.0200. In the exemption process, the Division of Coastal Management would review projects for navigation, riparian corridor issues, and public trust rights, while the Division of Marine Fisheries would review projects for viability, site suitability, and fisheries resource impacts. If the project satisfies the criteria of oyster restoration and there are no issues identified by either division, the Division of Coastal Management could issue the project proponent an exemption letter. If any issues are identified by either division, a major development permit application may be required.

The benefits of this option include a more rapid state approval process for the applicant. The level of information necessary from the applicant should also be significantly reduced in comparison to the informational requirements of the existing major permit application process. The exemption process would also result in a cost savings to the applicant through the elimination of the existing $400 permit application processing fee. Concerns with this exemption process involve the elimination of the public notice component of the review process, as well as concerns about how eliminating the requirement to obtain a major development permit could impact permitting requirements of the Army Corps of Engineers.

During coordination with the N.C. Division of Water Resources, the Army Corps of Engineers and various nongovernmental conservation organizations, the Army Corps of Engineers indicated that for oyster restoration projects that do not go through the major development permit application review process, federal regulation of oyster restoration projects would likely take place through one or more Nationwide Permits, which would require project applicants to submit a "Preconstruction Notification" to the Army Corps of Engineers for review. The Army Corps of Engineers further indicated that the Nationwide Permit review process would likely take just as long if not longer than the state's current major permit application process. For more complex oyster restoration projects, an individual permit application could be required — a process that is generally more extensive and time-consuming than the existing joint state/federal review process. It should be noted that concern was expressed by the Army Corps of Engineers on most of the other discarded options for the development of a new oyster restoration project permit process.

Based upon this discussion, the nongovernmental conservation organizations expressed the belief that simply exempting oyster restoration projects from the major development permit review process would not simplify or expedite the ability to receive federal approval for these efforts. Based upon this finding, these organizations recommended that the major permit review process for oyster restoration be reviewed and clarified to ensure its consistent and predictable application.

The divisions of Coastal Management and Marine Fisheries share the concerns expressed by the nongovernmental conservation agencies, but do not believe that the legislative mandate allows for the continued use of the major development application process, either in its current form or in a streamlined fashion, for oyster restoration projects. Therefore, it is the recommendation of both divisions that development of the proposed exemption process for oyster restoration projects best meets the requirements of Session Law 2015-241. This position was provided in an implementation report that was submitted to the North Carolina Environmental Review Commission on May 1st, 2016.

The following draft rule language is being provided for your information at this time. Staff are not recommending any formal action until such time as the North Carolina legislature has had ample opportunity to fully study the implementation report, and if necessary to provide additional guidance or make alterations to Session Law 2015-241.

DRAFT

15A NCAC 07K.0214 EXEMPTION FOR OYSTER RESTORATION PROJECTS

(a) Oyster restoration projects that are constructed subject to the following criteria are exempt from the permit requirements Coastal Area Management Act;

(1) The primary purpose of the oyster restoration project is to create habitat that over time resembles natural oyster habitat in structure and function;

(2) The oyster restoration project may only utilize loose or bagged shell, suitably sized marl, or clean processed recycled concrete no larger than 4 inches in diameter:

(3) Shoreline stabilization projects (e.g. living shorelines, marsh sills), and subtidal oyster restoration or artificial reef projects that are constructed from engineered structures (e.g. concrete reef balls, module units) are not consider an oyster restoration project for the purposes of this exemption.

(b) In order to be eligible for the exemption described in Paragraph (a), of this Rule, the Department of Environmental Quality shall be notified. Notification may be in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Notification shall include:

(1) The name, address, and telephone number of the project proponent

(2) The location of the work including the county, nearest community, and water body;

(3) The dimensions of the proposed project, design including materials and construction schedule and methodology.

(c) Before issuing this exemption,

(1) The North Carolina Division of Coastal Management shall coordinate with the North Carolina Division of Marine Fisheries to verify that the oyster restoration project is appropriately sited and designed.

(2) The North Carolina Division of Coastal Management shall determine that the proposed oyster restoration project will not adversely impact public trust or navigational rights.

(d) Failure to satisfy requirements listed in this Rule shall require the proposed project to obtain a CAMA Major Development Permit.

(e) Construction of the activities authorized by this exemption shall be completed by December 31 of the third year of the issuance date of this exemption.

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

CRC-16-20

April 27, 2016

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: 2015 Coastal Habitat Protection Plan (CHPP) Update

You will recall from your February 2016 meeting that the draft 2015 Coastal Habitat Protection Plan (CHPP) was presented to you by Jimmy Johnson, the Department's CHPP Coordinator, at which time the Commission adopted the document. The CHPP was also presented to Environmental Management Commission (EMC) for adoption. However, the EMC conditionally endorsed the document requesting the following:

- Further clarification regarding the differences between dredging as a fishing activity and dredging for navigation
- Replace Department of Environmental Natural Resources (NCDENR) with the Department of Environmental Quality (DEQ) where appropriate
- Clarification or removal of "voluntary" as it is associated with Best Management Practices and other methods for natural resource management

Changes have been made to the CHPP to incorporate the EMC's request. These changes have been reviewed by the attorneys for the respective Commissions and per advice of legal counsel, the Chairs of the Marine Fisheries, Environmental Management, and Coastal Resources Commissions were asked to name two members each to a Conference Committee to discuss the above changes to the CHPP. Chairman Gorham has nominated Commissioner Larry Baldwin and Commissioner John Snipes to participate in this Committee.

The Committee is scheduled to meet on May 2, 2016. If the Conference Committee decides that substantial changes have been made to the document, then an updated CHPP will be presented again to the respective commissions for adoption. At your upcoming meeting in Manteo an update from the meeting of the CHPP Conference Committee will be provided.

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

CRC-16-21

April 24, 2016

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Update on Amendments to 15A NCAC 7H .0306: Grandfathering Provisions for Commercial and Multi-Family Oceanfront Structures

At your February 2016 meeting, the Commission approved a proposed amendment to 7H .0306 that would extend grandfather protection to commercial and multi-family residential structures up to 10,000 square feet, provided:

(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.

Since the approval of the proposed amendment, Staff has been gathering and processing the data needed to perform the required fiscal impact analysis. Raw data has been collected directly from each of the seven coastal counties with oceanfront development and includes the following parameters:

1. Location of structure
2. Original date of construction
3. Size of structure
4. Use (commercial vs. residential)
5. If residential, number of individual units
6. Property value
7. Conforming or non-conforming status

The raw data acquired from the counties included all of these parameters, along with several others, and required an extensive amount of processing in order to distill the necessary information. The processed data needed to be put in Excel spreadsheet format to make analysis possible and also required a GIS and visual analysis on a lot-by-lot basis.

While DCM has acquired all necessary data for the seven oceanfront counties, we are still in the processing phase in which we are extracting the structure counts, property values, and other information needed for the fiscal analysis. At the May meeting, Staff will show the Commission the types of data that have been extracted, and explain how they will be used in the forthcoming fiscal impact analysis. Staff will also update the Commission on the expected timeline for the rulemaking process.

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

May 11, 2016

MEMORANDUM **CRC-16-24**

TO: Coastal Resources Commission

FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Science Panel – Projects and Vacancies

The purpose of the Coastal Resources Commission (CRC) Science Panel (Panel) is to provide the CRC scientific data and recommendations regarding coastal processes including erosion, accretion, sand transport and the interactions of wind, waves and currents with the shoreline. The Panel is charged with the following: 1) reviewing the current state of knowledge of coastal processes and ecological functions of coastal North Carolina; 2) assessing the current methodologies being used by North Carolina and others to define and identify areas subject to adverse impacts coastal processes associated with development in public trust areas of North Carolina; 3) reviewing the scientific basis of the CRC's rules as applied by the Division of Coastal Management (DCM) to development in the coastal area; and 4) developing recommendations for the CRC on topics that include the following:

1. Opportunities to incorporate current information on North Carolina coastal processes in the CRC rules for Estuarine and Ocean Areas;

2. New coastal engineering technologies or methods;

3. Specific projects as assigned by the CRC or requested by the Panel. When the CRC assigns a project, it should provide the Panel with specific questions it needs answered and any necessary timelines. The Panel should maintain the flexibility to propose projects and scopes of work to the CRC for approval.

Science Panel Vacancies

Currently, the Science Panel has five vacancies. At full membership (15), the Science Panel is comprised of individuals having professional expertise in coastal science or engineering, and retains the option to add additional members on an ad hoc basis to expand the expertise of the Panel for specific studies if deemed necessary by the CRC Chair in consultation with the Panel.

As per the Charge to the Panel, nominations for new members and ad hoc members may be made by CRC members, current Science Panel members, DCM staff, or the Coastal Resources Advisory Council at any public meeting of the CRC. New members and ad hoc members will be appointed by the CRC Chair based on a review of the nominee's relevant expertise and credentials with respect to coastal hazards processes. New and replacement members will be appointed as needed. Panel members should serve staggered terms of four years to ensure continuity. New member terms should be for four years, with re-appointments for additional four-year terms when mutually agreed upon by the Panel member and CRC Chair. Regular attendance or participation by other means is important, and a Panel member may be asked to step down after prolonged non-participation, or at the discretion of the CRC Chair.

If the Commission wishes to fill current vacancies on the Panel, the Division will send the call for nominations for the remaining vacancies immediately following this meeting.

Next Steps for the Science Panel in Summer 2016: Inlet Management Priorities

Background:

The 2012 N.C. General Assembly directed the CRC to study the feasibility of creating a new Area of Environmental Concern (AEC) for the lands adjacent to the mouth of the Cape Fear River. Session Law 2012-202 required the CRC to consider the unique coastal morphologies and hydrographic conditions of the Cape Fear River region, and to determine if any action is necessary to preserve, protect, and balance the economic and natural resources of this region through the elimination of current overlapping AECs by incorporating appropriate development standards into one single AEC unique to this location.

During the course of this study, the CRC found that while the Cape Fear River Inlet did present a unique set of challenges, other inlets may have similar issues. The CRC therefore decided to undertake a comprehensive review of inlet-related issues with the expectation of developing additional management tools that will allow the CRC to more proactively address the issue confronted by local governments in these dynamic areas.

The 2014 comprehensive review on inlet management related issues included a number of related initiatives and legislative mandates that were currently underway.

The CRC sought input on inlet management from a wide array of stakeholders that included sand managers, local governments, engineers, dredging industry representatives, the US Army Corps of Engineers and those with an interest in environmental impacts associated with inlet management. Stakeholders provided the CRC with an overview of their concerns and ideas regarding inlet management, including in-water (dredging), erosion control alternatives, and development standards on adjacent lands.

The CRC utilized the information gathered from the regional meetings, stakeholders and public comments to develop a list of short-term and long-term priorities contained within the N.C Coastal Resources Commission, Inlet Management Study, Findings and Policy Options document. The study resulted a list of priorities, two of which are related to the Science Panel's work: Erosion Rate Calculations for Inlet Hazard Areas and Inlet Management Plans.

Two of these priorities share an interdependence in terms of developing management strategies. In order to address the long-term priority of establishing inlet management plans, it is necessary to first identify what makes areas adjacent to inlets dissimilar to other areas along the ocean shoreline. Historically, the Science Panel has used inlet shoreline change rates as an integral part of the Science Panel's methodology for delineating those areas influenced by inlet related processes (2010 Proposed Inlet Hazard Areas). It should be noted that inlet erosion rates were identified as a short-term priority in the CRC's 2014 comprehensive of review of inlet issues.

Science Panel Project:

At the May-2014 CRC meeting, the Commission tasked the Panel with completing its Inlet Hazard Area Study. As a result, the panel agreed upon a method for calculating inlet shoreline change rates for areas adjacent to inlets using a linear regression method that incorporates multiple shorelines, versus the end-point method currently used to calculate rates on the oceanfront which only uses two shorelines (early and current). The panel did not make any changes to their initially proposed updated Inlet Hazard Areas.

As recommended in 2014 Inlet Management Issues Study, staff proposes to work with the Science Panel and re-analyze shoreline change rates to include available data collected after 2009, and present results to the Science Panel at the August 25, 2016 Panel meeting. In addition, staff proposes using those data to reanalyze the transition point on the oceanfront shoreline where inlet related processes no longer have a dominate effect on the shoreline. If warranted by the addition of newer data, staff will also work with the Panel to adjust its proposed IHA boundaries if needed. Once approved by the Panel, staff will present findings to the Commission.

Current Science Panel Members:

Dr. Margery Overton, Chair	Department of Civil, Construction, and Environmental Engineering, N.C. State University
Stephen Benton	Division of Coastal Management (retired), Raleigh
Dr. William Cleary	Center for Marine Science, University of North Carolina at Wilmington (Retired)
Tom Jarrett, P.E.	Coastal Planning & Engineering, Wilmington, N.C.
Dr. Charles "Pete" Peterson	Institute of Marine Sciences, University of North Carolina at Chapel Hill
Dr. Stan Riggs	Department of Geology, East Carolina University
Spencer Rogers	North Carolina Sea Grant, Wilmington
Greg "Rudi" Rudolph	Shore Protection Office, Carteret County
William Birkemeier	Field Research Facility, ERDC/CHL, US Army Corps of Engineers (Retired)
Dr. Elizabeth Judge Sciaudone, PE	N.C. State University

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

CRC-16-22

April 24, 2016

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Use of Geotextile Tubes for Temporary Erosion Control—State Experiences

In response to questions raised about the use of geotextiles tubes during the Commission's discussion of proposed amendments to the sandbag rules at the February 2016 meeting, DCM submitted the following question to other coastal states in an effort to assess their experiences with the use and performance of geotextile tubes for temporary erosion control.

> ***"Does your state allow the use of geotextile sand tubes for temporary erosion control on oceanfront/lake front beaches?"***

Nine states responded, and DCM Staff followed up by phone with the states that reported some experience with tubes. The responses are summarized below, and generally confirm what DCM has previously reported on the use and performance of geotextile tubes in oceanfront applications.

Alabama
Not allowed.

Connecticut
Allowed under very limited circumstances.
The state discourages the use of hard structures, and geotextile tubes fall within a gray area of hard versus soft. Jurisdiction is a complicating factor, since the state regulates below mean high water, and local governments control above mean high. The state contact could recall only one example of a geotextile tube being used on the oceanfront, and it did not perform effectively.

Louisiana
Allowed, depending on location.
Also called "Boudin Bags" in Louisiana, with specific conditions determining their applicability. Examples of use in the state include oil spill response, adding temporary levee height, and dune restoration/protection. The Louisiana Coastal Protection and Restoration Authority (CPRA) has found that they do not help, and in most cases hurt, when they are used within a dynamic front face shoreline profile. However, if used further back in the dune area (and behind) they seem to perform much better.

New Jersey
Allowed only on state-owned lands, or where the state has easements from private property owners. Experience has been generally positive in preventing scour. They have seen some damage to bags, e.g., in Sun Isle City where a tube was torn open and rendered ineffective. Tubes are not used in lot-scale applications; installations are much larger in size.

New York
A few have been allowed.
Experience has been mostly negative in ocean front and high energy environments. The structures tend to fail under environmental stress such as waves, they induce scouring of sand on beaches, and they are vulnerable to vandalism. They also disrupt normal littoral sediment contributions and transport. When they have been permitted it is usually in situations where development is imminently threatened and there is either not enough time to work out a better solution or there are insufficient alternatives available. Pre-construction agreements on what to do with these structures when they fail have sometimes been lacking or insufficient. The employment of these structures is governed by regulatory programs and by Local Waterfront Revitalization Programs.

Ohio
Allowed.
While tubes are allowable in Ohio, the respondent reports that they not aware of any permit applications and have no experience to report. Previous discussions have occurred regarding the potential use of geotextile tubes along Ohio's Lake Erie shore. Proposed uses varied and included the following:

- Toe protection along a State Park beach shore in place of an existing low crested armor stone structure in an effort to soften the shore area
- Creation of a diked area in shallow water to create a wetland area as part of a plan for re-use of dredge material
- Temporary toe protection along a 65-foot-high glacial bluff until a permanent solution could be designed and permitted

Discussions also included the use of materials other than sand, such as dredge material that may not meet general standards for beach nourishment due to the percentage of clays and silts. The main concerns related to the above proposals include damage from ice, the lack of sand resources (sand to fill the tubes would need to come from an upland source and could not be harvested from the beach area or nearshore unless harvested as part of a federal dredging project) and, in the event that damage to the geotextile material occurs, the need for maintenance/cleanup of the geotextile material.
In general, the use of geotextile tubes has not been recommended along the Ohio shore of Lake Erie, however, there may be well-protected, low energy sites in which their use may be appropriate.

Oregon
Allowed.
While tubes are allowable in Oregon, the state reports that they have not issued any permits and have no experience to report. The respondent does not believe that tubes would be effective because of the state's high energy wave environment. Only development that existed prior to Jan. 1, 1977 is eligible for a beachfront protective structure. Other development is not eligible for protective structures, even temporary structures. Many "eligible" developments are not granted a permit based on stringent permitting requirements, which include exhausting other options (including moving the structure) prior to permitting a beachfront protective structure.

Puerto Rico
Allowed.
There has been one successful experience, that lasted until winter swells affected the tubes stability. There are also two segments where placement of geotextile tubes is being proposed as means of temporary protection of a coastal road close to Old San Juan and a resort building in Southeast Puerto Rico.

Washington
Allowed.

The respondent was only aware of one application. A granite revetment was installed in 1995, and wave refraction caused erosion of the adjacent dune. Two large tubes spanning 700 feet were installed in 1998 as a temporary, emergency measure. The tubes became exposed in 2010 and failed due to perforations from debris and/or vandalism. Repair was not successful.

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

CRC-16-23

April 27, 2016

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Proposed Amendments to 7H .0308 Temporary Erosion Control Structures

The Commission adopted temporary amendments to your rules governing the use of sandbags as temporary erosion control structures (15A NCAC 7H .0308; 7H .1704 and 7H .1705) in accordance with the legislative directive in S.L. 2015-241 on February 10, 2015. The Rules Review Commission (RRC) reviewed the amendments at their February 18, 2016 meeting and declined to approve the amendments, citing the CRC's non-compliance with S.L. 2015-241, Section 14.6(q) which required the CRC to adopt temporary rules no later than December 31, 2015 (RRC letter to Chairman Gorham attached).

The temporary amendments were to go into effect February 26, 2016 and Staff had planned to begin permanent rulemaking with the Commission relative to these amendments and additional revisions at the May 2016 meeting. You will recall that the Commission and Advisory Council has been discussing the sandbag rules for much of 2015 including time limits for permits, provisions for removal when no longer necessary, and the allowance for structures to remain beyond permitted time limits when "covered and vegetated."

Also discussed at the February meeting was the provision that an imminently threatened structure be permitted only once [7H .0308(2)(M)] unless it is located in a community that is actively pursuing a remedy to their erosion issue. Upon further review, Staff believe that this provision does not preclude a property from being protected should it once again become threatened and beach nourishment or other strategy is being pursued by the local community.

The attached draft rule language includes the legislative provisions discussed at the February 2016 meeting (highlighted) as well as the additional amendments discussed by the CRAC and CRC (**bold**). The new draft amendments would be intended to:

- Remove the distinction between structures greater or less than 5,000 square feet, setting the time limit at eight years for all structures that are not within an area with a planned beach nourishment or inlet relocation/stabilization project;

- Remove the “vegetated” requirement for sandbag structures to remain beyond their permitted time when covered by sand dunes;
- Require that only sandbags exposed above grade be removed at the expiration of the permit;
- Modify the “no longer necessary” provisions to require the removal of sandbags exposed above grade upon completion of a beach nourishment or inlet relocation/stabilization project.

We look forward to discussing these proposed amendments at our upcoming meeting in Manteo.

North Carolina
Coastal Resources Commission

February 19, 2016

Dear Commissioners:

I am writing to report that the Rules Review Commission ("RRC") met February 18, 2016 and reviewed the temporary sandbag rules, 15A NCAC 7H .0308, .1704, and .1705, that we adopted at our last meeting. Our attorney, Mary Lucasse, attended the meeting and responded to questions. During the discussion on the temporary sandbag rules, the RRC expressed concern that the Coastal Resources Commission had not adopted the temporary rules by the December 31, 2015 deadline established by Session Law 2015-241, Section 14(q). In response, Ms. Lucasse explained that the Commission had complied with the requirements for temporary rulemaking set forth in the Administrative Procedures Act ("APA"), N.C. Gen. Stat. §150B 21.1. Nonetheless, the Rules Review Commission felt that the specific date set forth in the Session Law was controlling based on the principle of statutory construction which provides that a specific statute take precedent over a general statute. Since the General Assembly included a date in the session law, the RRC felt it had to give that provision effect even if doing so resulted in a very short timeline that was inconsistent with the timeline established by the APA for temporary rulemaking.

In addressing questions from the RRC, Ms. Lucasse explained the steps taken by the Coastal Resources Commission to expeditiously adopt the temporary rules and the status of permanent rulemaking. The RRC had a robust discussion on the matter before deciding that the Coastal Resources Commission did not have statutory authority to adopt the temporary rule after December 31, 2015. I have attached a copy of that decision for your review.

In response to this decision, the Coastal Resources Commission may submit new findings or a rewritten rule. However, I am not convinced that there are any applicable findings other than what has already been submitted. If no additional material is submitted, the Commission may appeal the decision to superior court. Although I think the RRC's decision is wrong, appealing this decision is not worth the time or expense in light of the fact that we are moving forward expeditiously with permanent sandbag rules. Mary Lucasse and Braxton Davis concur in the decision to focus on adopting permanent rules instead of appealing the decision on the temporary rules.

If you have any questions regarding this information, please direct them to our attorney, Mary Lucasse. Please do not respond to me directly to avoid any violation of the Open Meeting Law. If there is overwhelming interest in having a discussion on whether to appeal, we can schedule a special meeting. The deadline to file an appeal is March 18, 2016.

Sincerely,

Frank D. Gorham III

Frank Gorham, III

Division of Coastal Management
Department of Environmental Quality
400 Commerce Ave., Morehead City, North Carolina 28557
Phone 252-808-2808 FAX 919-733-1495

Environmental Quality

STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 18, 2016

Via Email Only: frankgorhamCRC@gmail.com
Frank Gorham, Chairman
142 Beach Road South
Wilmington, NC 28411

Re: 15A NCAC 07H .0308, .1704, .1705

Dear Chairman Gorham:

At the February 18, 2016, meeting of the Rules Review Commission, the Commission reviewed amendments to the rules referenced above filed by the Coastal Resources Commission (CRC) on February 11, 2016. The Findings of Need forms filed with these rules indicate that the rules were adopted by the Board on February 10, 2016, after completing the process for adopting a temporary rule. The Commission declined to approve these amendments to the rules because the CRC failed to comply with G.S. 150B-21.9(a)(1) and with Session Law 2015-241, Section 14.6.(q).

The findings of need forms for the rules state that the temporary rules were mandated by Session Law 2015-241, Section 14.6.(q), which states the following:

> **SECTION 14.6.(q)** The Coastal Resources Commission shall adopt temporary rules to implement subsection (p) of this section no later than December 31, 2015. The Commission shall also adopt permanent rules to implement this section.

The Commission disapproved the above-captioned rule amendments because the adoption date of each rule was after December 31, 2015, and, therefore, the CRC lacked the statutory authority for this temporary rule making. *See* G.S. 150B-21.9(a)(1).

Please respond to this letter in accordance with the provisions of G.S. 150B-21.1(b1) or (b2). If you have any questions regarding the Commission's action, please do not hesitate to contact me.

Sincerely,

Jason Thomas
Commission Counsel

cc: Renee Cahoon, Vice Chair – cahooncrc@gmail.com
Jennifer Everett, Rule-making Coordinator – jennifer.everett@ncdenr.gov
Mike Lopazanski, Agency Contact – mike.lopazanski@ncdenr.gov
Mary L. Lucasse, Esq. – MLucasse@ncdoj.gov

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.

(C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.

(D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.

(E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.

(F) Project construction shall be timed to minimize adverse effects on biological activity.

(G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

(H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:

(i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this Rule;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the ~~short or long range~~ significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of ~~any unavoidable~~ significant adverse impacts on adjoining properties and on public access to and use of the beach.

(J) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;

(ii) dredging alone is not practicable to maintain safe access to the affected channel;

(iii) the structure is limited in extent and scope to that necessary to maintain the channel;

(iv) the structure shall not ~~adversely impact~~ have significant adverse impacts on fisheries or other public trust resources; and

(v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the ~~short or long range~~ significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission

pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;

(ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

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

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph ~~shall~~ may be used to protect ~~only~~ imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure.

(C) ~~Temporary~~ Nothwithstanding Part (2)(B) of this Subparagraph, temporary erosion control structures shall be used to protect only the principal structure ~~and~~ and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

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

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

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

(G) An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach

nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be eligible for an additional eight-year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the most recent erosion control structure is installed. For the purpose of this Rule:

(i) a building and septic system shall be considered as separate structures.

(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of sandbags shall begin at the time that the most recent section is installed in accordance with Part (F) or (H) of this Subparagraph.

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

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

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

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

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

If beach ~~nourishment,~~ nourishment or inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph. The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.

~~(H)~~(I) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment ~~project,~~ project or an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade** ~~**it**~~ shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

~~(I)~~**(J)** Removal of temporary erosion control structures is not required if they are covered by dunes ~~**with stable and natural vegetation**~~.

~~(J)~~**(K)** The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

~~(K)~~**(L)** Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

~~(L)~~**(M)** Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

~~**(M) An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Part (G)(H) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter Subchapter, and the community in which it is located is actively pursuing a beach nourishment, nourishment or an inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial most recent erosion control structure is installed. For the purpose of this Rule:**~~

~~**(i) a building and septic system shall be considered as separate structures.**~~

~~**(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of sandbags shall begin at the time that the most recent section is installed in accordance with Part (F) or (G) of this Subparagraph.**~~

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph. Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.

15A NCAC 07H .1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

(1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.

(2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.

(3) Any permitted erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case of ~~roads.~~ roads, except as provided under 15A NCAC 07H .0308. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee.

(4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(5) Structural work shall meet sound engineering practices.

(6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

(b) Individuals shall allow authorized representatives of the Department of ~~**Environment and Natural Resources**~~ **Environmental Quality** to make inspections at any time deemed necessary to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions in these Rules.
(c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
(d) This permit shall 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.
(e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.
(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1;*
Eff. November 1, 1985;
Amended Eff. December 1, 1991; May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. May 1, 2010; August 1, 1998; July 1, 1994;

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

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

(2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph ~~shall~~ may be used to protect ~~only~~ imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, ~~or,~~ or right-of-way in the case of ~~roads,~~ roads is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no farther waterward than the most landward adjacent temporary erosion control structure.

(3) ~~Temporary~~ Notwithstanding Part (a)(2) of this Subparagraph, temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

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

(5) ~~Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected.~~ The landward side of such temporary erosion control structures shall not be located more than 20 feet ~~seaward~~ waterward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Subparagraph (1) of this Paragraph.

(6) Temporary erosion control structures may remain in place for up to ~~**two years after the date of approval if they are protecting a building with a total floor area of 5,000 square feet or less and its associated septic system, or for up to five**~~ **eight** years for a building ~~**with a total floor area of more than 5,000 square feet**~~ and its associated septic system. Temporary erosion control structures may remain in place for up to ~~**five**~~ **eight** years if they are protecting a bridge or a road. The termination date

of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits. The property owner shall be responsible for removal of **any portion of the temporary erosion control structure exposed above grade** ~~**the temporary structure**~~ within 30 days of the end of the allowable time period.

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

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

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

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

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

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph. The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.

(8) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, or an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade** ~~**it**~~ shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(9) Removal of temporary erosion control structures is not required if they are covered by dunes ~~with stable and natural vegetation~~.

(10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed 6 feet.

(12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(14) An imminently threatened structure may be protected only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this ~~Subparagraph~~ Subparagraph, and the community in which it is located is actively pursuing a beach ~~nourishment,~~ nourishment or an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently

threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the ~~initial~~ most recent erosion control structure is installed. For the purpose of this Rule:

(A) a building and septic system shall be considered as separate structures.

(B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of sandbags shall begin at the time that the most recent section is installed in accordance with Subparagraph (6) or (7) of this Rule.

(15) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule. Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

(1) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(2) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure.

(3) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

(1) Work permitted by this general permit shall be subject to the following limitations:

(A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Subparagraph (a)(1) of this Rule. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure;

(C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC ~~7H .0208;~~ 7H .0208; and

(D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

(2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1;
Eff. November 1, 1985;
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. May 1, 2013; May 1, 2010; August 1, 2002.Temporary Amendment Eff. July 3, 2000; May 22, 2000;

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0205, .1801, 1802, .1804, .1805, .2505, .2701, .2704, and .2705.

Link to agency website pursuant to G.S. 150B-19.1(c): *http://nccoastalmanagement.net/web/cm/proposed-rules*

Proposed Effective Date: *September 1, 2016*

Public Hearing:
Date: *May 11, 2016*
Time: *1:30 p.m.*
Location: *Dare County Government Complex, 954 Marshall C. Collins Dr., Manteo, NC 27954*

Reason for Proposed Action: *15A NCAC 07H .0205 is the Coastal Resources Commission's (CRC) rule that defines coastal wetlands, describes their significance and management objectives, and establishes use standards. The CRC is proposing to amend its rule governing coastal wetlands in order to describe how "regular and occasional flooding" of wetlands shall be determined. The terms "regular" and "occasional" flooding are currently used in the rule, but are not defined and this has led to confusion. 15A NCAC 07H .1800 (.1801, .1802, .1803, .1804, and .1805) defines procedures for requesting and approving a General Permit (GP) for the purpose of beach bulldozing above the Mean High Water (MHW); and also defines general and specific permit conditions. Currently, specific conditions only allows this activity above MHW. However, the U.S. Army Corps of Engineers (USACE) also has a General Permit for this activity allowing beach bulldozing below MHW. The Coastal Resources Commission proposes the amendments to current rules to permit beach bulldozing below MHW, and align the CRC's General Permit conditions with those in the USACE General Permit. Section 07H .2700 defines the specific development requirements for the construction of marsh sills. The proposed amendments will remove unnecessary coordination requirements and would also remove redundant and unnecessary conditions. The CRC is proposing to amend its rules governing the construction of marsh sills in order for this general permit to become consistent with other general permits that govern construction of shoreline stabilization methods such as bulkheads.*

Comments may be submitted to: *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, email Braxton.Davis@ncdenr.gov*

Comment period ends: *May 16, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
  Analysis submitted to Board of Transportation
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥$1,000,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0205 COASTAL WETLANDS

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

(1) Cord Grass (Spartina alterniflora),
(2) Black Needlerush (Juncus roemerianus),
(3) Glasswort (Salicornia spp.),

(4) Salt Grass (Distichlis spicata),
(5) Sea Lavender (Limonium spp.),
(6) Bulrush (Scirpus spp.),
(7) Saw Grass (Cladium jamaicense),
(8) Cat-tail (Typha spp.),
(9) Salt Meadow Grass (Spartina patens),
(10) Salt Reed Grass (Spartina cynosuroides).

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

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

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

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

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

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

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

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

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

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

(1) Alteration of coastal wetlands is exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
  (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
  (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
  (C) Alteration of the substrate is not allowed;
  (D) All cuttings/clippings shall remain in place as they fall;
  (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
  (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
(2) Coastal wetland alteration not meeting the exemption criteria of this Rule requires a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have an adverse impact on the habitat or fisheries resources.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124.

SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING MARK IN THE OCEAN HAZARD AEC

15A NCAC 07H .1801 PURPOSE

This permit will allow beach bulldozing needed to reconstruct or repair frontal and/or primary dune systems. For the purpose of this general permit, beach bulldozing is defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to repair damage to frontal and/or primary ~~dunes caused by a major storm event.~~ dunes. This general permit is being developed according to the procedures outlined in Subchapter 7J .1100 and will apply only to the Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC.

Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1.

15A NCAC 07H .1802 APPROVAL PROCEDURES

(a) The applicant ~~must~~ shall contact the Division of Coastal Management ~~or local permit officer (LPO)~~ and complete an application ~~form~~ requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and ~~his~~ their name and address.

(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 on-site meeting is held with the applicant and ~~appropriate LPO or~~ Division of Coastal Management representative so that the existing first line of stable natural vegetation can be appropriately marked and recorded on the application. Written authorization to proceed with the proposed development may be issued during this visit. All bulldozing must be completed within 30 days of the date of permit issuance or the general authorization expires.

Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1.

15A NCAC 07H .1804 GENERAL CONDITIONS

~~(a) Any future setback determinations which may be required shall be made using the first line of stable natural vegetation established prior to the bulldozing activity.~~

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

~~(c)~~(b) 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. If a shipwreck is unearthed, all work shall stop and both the ~~Division of Archives and History and Coastal Management~~ Department of Natural and Cultural Resources and the Division of Coastal Management shall be contacted immediately.

~~(d)~~(c) This permit does not eliminate the need to obtain any other required state, local or federal authorization.

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

Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1.

15A NCAC 07H .1805 SPECIFIC CONDITIONS

(a) The area in which this activity is being performed must maintain a slope ~~of adequate grade so as to not endanger the public or the public's use of the beach and should follow~~ that follows the pre-emergency slopes as closely as ~~possible.~~possible so as not to endanger the public or the public's use of the beach. The movement of material by a bulldozer, front-end loader, backhoe, scraper or any type of earth moving or construction equipment shall not exceed ~~1~~ one foot in depth measured from the pre-activity surface elevation.

(b) The activity must not exceed the lateral bounds of the applicant's property unless ~~he has~~ the written permission of the adjoining ~~landowner(s).~~ property owner(s) is obtained.

(c) Movement of material from seaward of the mean ~~high~~ low water line is not authorized.

(d) The activity must not ~~demonstratively~~ increase erosion on neighboring properties.

(e) Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The fill areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

(f) In order to minimize adverse impacts to nesting sea turtles, no work shall occur within the period of ~~May~~ April 1 through November 15 of any year, without the ~~prior~~ approval of the Division of Coastal Management, in coordination with the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service and the United States Army Corps of Engineers, that the work can be accomplished without adversely impacting sea turtle nests or suitable nesting habitat.

(g) If one contiguous acre or more of oceanfront property is to be excavated or filled, an erosion and sedimentation control plan must be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1.

SECTION .2500 - EMERGENCY GENERAL PERMIT, TO BE INITIATED AT THE DISCRETION OF THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR REPLACEMENT OF STRUCTURES, THE RECONSTRUCTION OF PRIMARY OR FRONTAL DUNE SYSTEMS, AND THE MAINTENANCE EXCAVATION OF EXISTING CANALS, BASINS, CHANNELS, OR DITCHES, DAMAGED, DESTROYED, OR FILLED IN BY HURRICANES OR TROPICAL STORMS, PROVIDED ALL REPLACEMENT, RECONSTRUCTION AND MAINTENANCE EXCAVATION ACTIVITIES CONFORM TO ALL CURRENT STANDARDS

15A NCAC 07H .2505 SPECIFIC CONDITIONS

(a) The replacement of a damaged or destroyed structure shall take place within the footprint and dimensions that existed immediately prior to the damaging hurricane or tropical storm. No structural enlargement or additions shall be allowed.

(b) Structure replacement, dune reconstruction, and maintenance excavation authorized by this permit shall conform to the existing use standards and regulations for exemptions, minor development permits and major development permits, including general permits. These use standards include, but are not limited to:

(1) 15A NCAC 07H .0208(b)(6) for the replacement of docks and piers;

(2) 15A NCAC 07H .0208(b)(7) for the replacement of bulkheads and shoreline stabilization measures;

(3) 15A NCAC 07H .0208(b)(9) for the replacement of wooden and riprap groins;

(4) 15A NCAC 07H .1500 for maintenance excavation activities; and

(5) 15A NCAC 07H .1800 for beach bulldozing ~~landward of the mean high water mark.~~ Ocean Hazard AEC.

(c) The replacement of an existing dock or pier facility, including associated structures, marsh enhancement breakwaters or groins shall be set back 15 feet from the adjoining property lines and the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(q), illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable. The setback may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before replacement of the structure begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the structure.

Authority G.S. 113A-107; 113A-118.1.

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF MARSH SILLS

15A NCAC 07H .2701 PURPOSE

A general permit pursuant to this Section shall allow for the construction of ~~riprap~~ marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 7J .1100 and according to the rules in this Section. Marsh sills are generally shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2704 GENERAL CONDITIONS

(a) Structures authorized by a permit issued pursuant to this Section shall be ~~riprap or stone~~ marsh sills conforming to the standards in these Rules.

(b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.

(c) The placement of ~~riprap or stone~~ marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.

(d) This permit shall 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.

(e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 07H. 0200, and local land use plans current at the time of authorization.

Authority G.S. 113A-107; 113A-118.1.

15A NCAC 07H .2705 SPECIFIC CONDITIONS

(a) A general permit issued pursuant to this Section shall be applicable only for the construction of ~~riprap or stone~~ marsh sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall consist only of native species.

~~(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.~~

~~(c)~~(b) ~~On shorelines where no fill is proposed, the~~ The landward edge of the sill shall be positioned no more than 5 feet waterward ~~of the waterward depth contour~~ of locally growing ~~wetlands or to mid-tide depth contour, whichever is greater.~~ wetlands. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the ~~mean high water or~~ normal high water or normal water line.

~~(d) On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.~~

~~(e)~~(c) The permittee shall maintain the authorized sill ~~and existing or planted wetlands~~ including wetlands and tidal inundation in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification from the Division of Coastal Management.

~~(f)~~(d) The height of sills shall not exceed ~~six~~ 12 inches above ~~mean~~ normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is ~~greater.~~higher.

~~(g)~~(e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

~~(h) Sills shall be porous to allow water circulation through the structure.~~

~~(i)~~(f) The sills shall have at least one five-foot ~~drop-down or~~ opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot ~~drop-down or~~ separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these ~~drop-down~~ opening requirements shall be allowable following coordination with the ~~N.C. Division of Marine Fisheries and the National Marine Fisheries Service.~~ N.C. Division of Coastal Management.

~~(j)~~(g) The ~~riprap~~ sill structure shall not exceed a slope of a one and a half foot rise over a ~~two~~ one foot horizontal distance and a minimum slope of a one ~~and a half~~ foot rise over a ~~one~~ two foot horizontal distance. The width of the structure on the bottom shall be no wider than ~~15~~ 12 feet.

~~(k) For the purpose of protection of public trust rights, fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.~~

~~(l) The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.~~

~~(m)~~(h) For water bodies ~~more narrow~~ narrower than 150 feet, no portion of the structures shall ~~not~~ be positioned offshore more than one sixth (1/6) the width of the waterbody.

~~(n)~~(i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.

~~(o)~~(j) The sill shall not interfere with leases or franchises for shellfish culture.

~~(p)~~(k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the ~~mean~~ normal high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge. Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(q) The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.~~

~~(r)~~(l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above ~~mean~~ normal high water or normal water level.

~~(s)~~(m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the ~~riprap~~ sill structure. Material used to construct the sill shall not be stockpiled directly on existing wetlands or in open water unless fully contained in a containment structure supported by construction mats.

~~(t)~~(n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.

~~(u)~~(o) No excavation or ~~filling of any native submerged aquatic vegetation is authorized by this general permit.~~ filling, other than that necessary for the construction and proper bedding of the sill structure, is authorized by this general permit.

~~(v)~~(p) No excavation of the shallow water bottom or any wetland is authorized by this general permit.

~~(w) No more than 100 square feet of wetlands may be filled as a resulted of the authorized activity.~~

~~(x) Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.~~

~~(y)~~(q) The ~~riprap~~ sill material shall consist of clean ~~rock~~ rock, marl, oyster shell, or masonry materials such as granite or broken ~~concrete.~~concrete or other materials that are approved by the N.C. Division of Coastal Management. ~~Riprap~~ Sill material shall be free of loose sediment or any ~~pollutant.~~ pollutant, excluding rebar. The ~~structures~~ sill material shall be of sufficient size and slope to prevent its movement from the ~~site~~ approved alignment by wave or current action.

~~(z) If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land disturbing activity.~~
~~(aa) In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.~~
~~(bb) Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement shall be required for the proposed activity.~~
~~(cc)~~(r) Following issuance of this general permit, the permittee shall contact the ~~N.C. Division of Water Quality and the~~ U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the ~~appropriate agency(s)~~ U.S. Army Corps of Engineers that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.

Authority G.S. 113A-107; 113A-118.1.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0366.

Link to agency website pursuant to G.S. 150B-19.1(c): *www.ncwildlife.org*

Proposed Effective Date: *September 1, 2016*

Public Hearing:
Date: *March 31, 2016*
Time: *10:00 a.m.*
Location: *WRC Headquarters 5th Floor, 1751 Varsity Drive, Raleigh, NC 27606*

Reason for Proposed Action: *The Macon County Board of Commissioners made formal application to the WRC requesting an extension of a no wake zone surrounding the Lakes End Cove dock on Lake Nantahala, to create a no wake zone within all of Lakes End Cove, shore to shore from a line near the mouth of the of the cove. County leaders and leaders of Nantahala Township held a public hearing on November 10, 2015 and submitted a Resolution to the WRC, requesting an amendment to 15A NCAC 10F .0366(a)(1) to enlarge the no wake zone to the area within the entire cove for purposes of mitigating hazards to swimmers caused by motorboat traffic around the dock.*

Comments may be submitted to: *Betsy Haywood, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 707-0013, email betsy.haywood@ncwildlife.org*

Comment period ends: *May 16, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).
☒ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Local funds affected**
☐ **Substantial economic impact (≥$1,000,000)**
☒ **Approved by OSBM**
☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0366 MACON COUNTY
(a) Regulated Area. This Rule applies to the following waters of Nantahala Lake:
(1) ~~That area within 50 yards of the Lakes End Boat Dock~~ Lakes End Cove shore to shore, beginning at a line from a point on the northwest shore at 35.19602 N, 83.64184 W to a point on the southeast shore at 35.19544 N, 83.64053 W.
(2) That area within 100 yards from the end of the Mountain Shadows Community ~~Dock~~ Dock.
(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed in the waters of the regulated area specified in Paragraph (a) of this Rule.
(c) Placement and Maintenance of Markers. The Board of Commissioners of Macon County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

Authority G.S. 75A-3; 75A-15.

Coastal Management
ENVIRONMENTAL QUALITY

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

April 25, 2016

CRC-16-25

TO: Coastal Resources Commission

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

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

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

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

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

The main topic of discussion with Carteret County's Shore Protection Manager was beneficial use of beach-compatible dredged material and the limitations of the current federal Dredged Material Management Plan (DMMP) at Beaufort Inlet. Concerns were expressed that the US Army Corps of Engineers should not be allowed to degrade the inlet environment simply because of a lack of funding.

Staff then drafted an AEC definition and rule language for a new State Port Inlet Management AEC for CRC discussion at your October 2014 meeting. The draft rule language also addressed action taken by the legislature (SL2014-120) to remove the Inlet Hazard Area designation for inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

Over the first year of AEC development, much discussion focused on the beneficial use rule language requiring beach-compatible dredged materials to be placed on active nearshore, beach or inlet shoal system and whether the rule should further require all sand be placed on adjacent beaches. Strong objections were received from the US Army Corps of Engineers, who stated that removing flexibility for channel maintenance would be a serious detriment to the continued operation of the NC State Port at Morehead City. Much discussion with the US Army Corps of Engineers has since occurred, resulting in the establishment of a working group created to facilitate and streamline the MOA process.

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

Subsequently, the 2015 Appropriations Bill (S.L. 2015-241) required that the CRC adopt specific amendments to the current sandbags rules under temporary rulemaking authority. Because much of the State Ports Inlet Management AEC draft rules pertain to sandbag use standards, State Ports Inlet Management AEC development has been suspended pending an evaluation of the current sandbag rules applicable to all Ocean Hazard AECs. During this time, Deborah Ahlers was elected to serve as the Town of Caswell Beach's new mayor. Staff met with Mayor Ahlers and the Town Administrator, Chad Hicks, in April to discuss the history of the State Ports Inlet Management AEC development and the Town's previous comments. Mayor Ahlers and Mr. Hicks reaffirmed the Town's previous position and only wished to reiterate the Town's desire to have its entire jurisdiction within the limits of the AEC, rather than limiting the boundary to the proposed expanded Inlet Hazard Area, as previously established by the Science Panel. This is due to erosion that has historically occurred west of the Science Panel's boundary. The Town wants to have the ability to use the less restrictive sandbag rules to protect its main road, Caswell Beach Road, if needed in the future as a response to erosion.

Staff is looking forward to providing a status update at the upcoming meeting in May.

15A NCAC 7H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

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

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

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

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

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

~~(a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and~~

~~(b) the former location of Mad Inlet, which closed in 1997.~~

(a) the location of a former inlet which has been closed for at least 15 years,

(b) inlets that due to shoreline migration, no longer include the current location of the inlet,

(c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

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

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

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources

Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-item (1)(a) of this Rule.

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

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

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

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

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

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

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

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

(A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
(B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof covered decks and porches that are structurally attached shall be included in the calculation of footprint;
(C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used;
(D) No portion of a building's total floor area, including elevated portions that are cantilevered,

knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

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

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

(1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;

(2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences. For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

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

(1) piers providing public access; and

(2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

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

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;

(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;

(3) The pier house shall be limited to a maximum of two stories;

(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;

(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;

(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

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

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

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and

(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

15A NCAC 07H .0313 USE STANDARDS FOR STATE PORTS INLET MANAGEMENT AREAS

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

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

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

1. All development in the State Ports Inlet Management Areas shall be set back from the first line of stable natural vegetation or static vegetation line a distance equal to the setback required in the ocean hazard area, except for development exempted from the ocean setback rules in 15A NCAC 7H .0309.
2. Notwithstanding the use standards for temporary erosion control structures described in 15A NCAC 07H .0308(a)(2), a local government may apply for a permit to seek protection of an imminently threatened frontal or primary dune, public and private structures and/or infrastructure within a State Ports Inlet Management Area. For the purpose of this rule, a frontal or primary dune or infrastructure shall be considered imminently threatened in a State Ports Inlet Management Area if:
   i. its foundation, septic system, right-of-way in the case of roads, or waterward toe of dune is less than 20 feet away from the erosion scarp; or
   ii. site conditions, such as flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure as determined by the Director of the Division of Coastal Management; or
   iii. the frontal or primary dune or infrastructure will be imminently threatened within six (6) months as certified by persons meeting applicable State occupational licensing requirements ; or
   iv. the rate of erosion from the erosion scarp or shoreline within 100 feet of the infrastructure, frontal or primary dune was greater than 20 feet over the preceding 30 days.
3. Sandbags structures used to construct temporary erosion control structures shall have a base width not exceeding 20 feet, and a height not to exceed six feet. Individual sandbags shall be tan in color and be a minimum of three feet wide and seven feet in length when measured flat.
4. Temporary sandbag erosion control structures constructed by a local government may remain in place for up to eight years from the date of approval. The local government shall be responsible for removal of the temporary erosion structure within 30 days of the end of the allowable time period. Removal of temporary erosion control structures is not required if they are fully covered by sand and found not to be interfering with or negatively impacting public use and enjoyment of the public trust beach.
5. ~~Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, an inlet relocation or stabilization project, it shall be removed by the local government within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.~~
5. Established common-law and statutory public rights of access to the public trust lands and waters in deep draft inlet management areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;
6. Except where inconsistent with the above standards, all other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the State Ports Inlet Management Areas.
7. In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the State Ports Inlet Management Area, such

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


Atlantic Ocean
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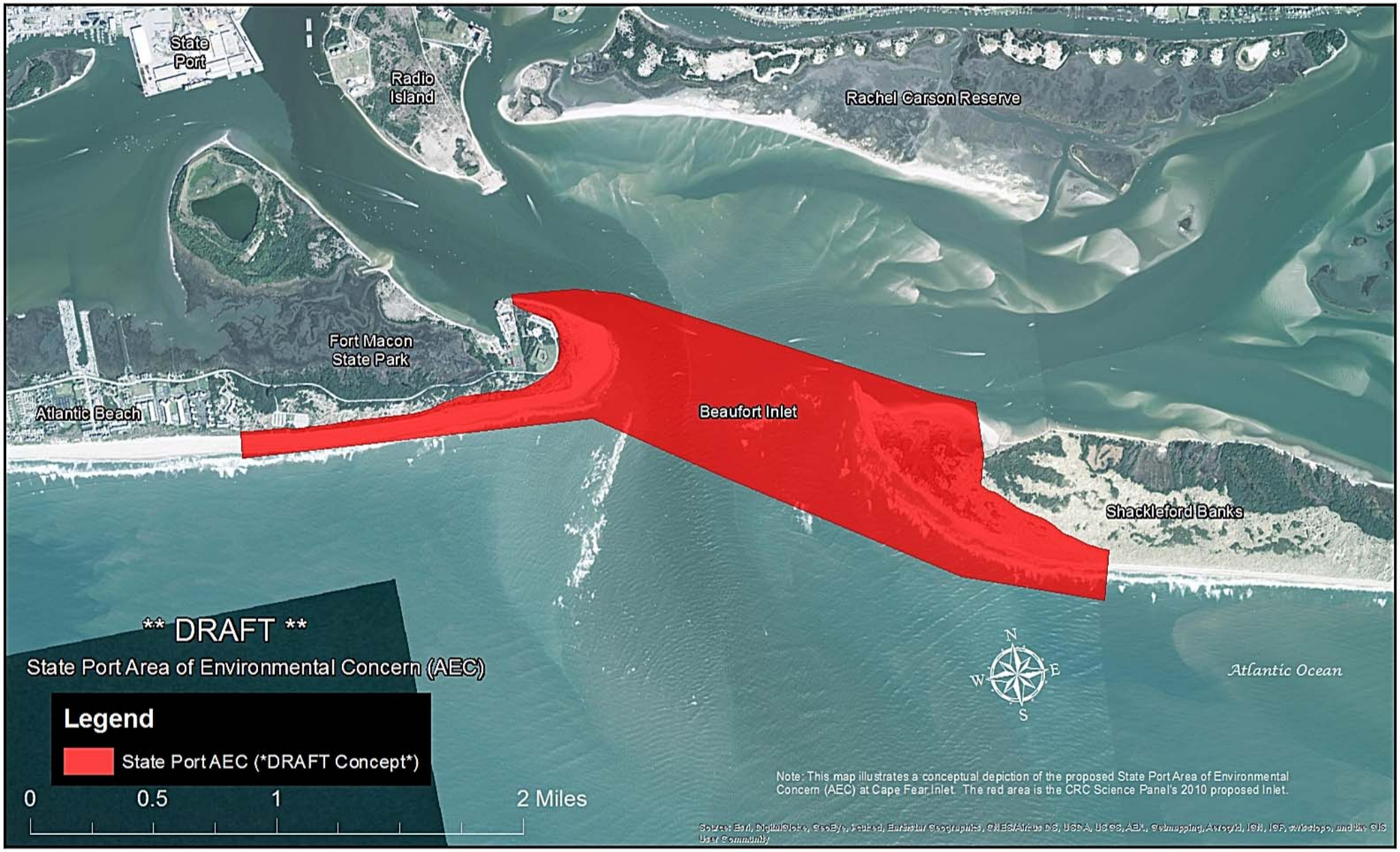
Oak Island
Caswell Beach
Cape Fear Inlet
Bald Head Island
Cape Fear
** DRAFT **
State Port Area of Environmental Concern (AEC)
Legend
State Port AEC (*DRAFT Concept*)
Area Description
Proposed IHA (final version)
Proposed IHA (first version)
DRAFT Concept State Port AEC Extension (BHI request)
0
0.5
1
2 Miles
Note: This map illustrates a conceptual depiction of the proposed State Port Area of Environmental Concern (AEC) at Cape Fear Inlet. The red area is the CRC Science Panel's 2010 proposed Inlet Hazard Area (IHA); the red-crosshatch area is the Science Panel's originally proposed IHA; and the yellow crosshatch area is an extension of the proposed IHA expanded the full-length of Bald Head Island's south-beach
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community


State Port
Radio Island
Rachel Carson Reserve
Fort Macon State Park
Atlantic Beach
Beaufort Inlet
Shackleford Banks
** DRAFT **
State Port Area of Environmental Concern (AEC)
Legend
State Port AEC (*DRAFT Concept*)
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Atlantic Ocean
Note: This map illustrates a conceptual depiction of the proposed State Port Area of Environmental Concern (AEC) at Cape Fear Inlet. The red area is the CRC Science Panel's 2010 proposed Inlet.
Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

May 11, 2016

MEMORANDUM **CRC-16-26**

TO: Coastal Resources Commission

FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Summary of Local Government's Discussion of the Development Line

One of the Coastal Resources Commission's priorities identified in its 2014 Inlet Management Study was to consider alternative approaches to the Static Vegetation Line (SVL) and SVL Exception rules in place at that time. Since that time, the Commission has created new rules for the establishment of Development Lines by local governments and amended the SVL Exception rules, which became effective on April 1, 2016. Although both alternatives allow construction setbacks to be measured from First-Line of Stable and Natural Vegetation (FLSNV), each has differences in terms of how they are approved, managed and applied at the property level. The following serves as a general comparison of the two alternatives available to local governments when large-scale beach fill projects (equal to, or greater than 300,000 cubic yards) are constructed, to include related feedback and questions:

Approval & Application of Static Vegetation Line Exception Rules (includes amendments):

- A Static Vegetation Line represents where the FLSNV is located within one year prior to the completion of the large-scale beach fill project. Once established, the SVL never expires, nor is it updated. Without a SVL Exception, setbacks are measured from the SVL, or FLSNV, whichever is most landward (15A NCAC 07H.0305(a)(6)).

- The CRC approves a SVL Exception when a local government submits a 30-year beach plan that includes; initial large-scale beach fill project design, identification of sand sources and financial resources to maintain the project, summary of project performance and any maintenance design modifications). Once approved by the CRC, the local government is then required to request a recurring authorization from the Commission every five years (15A NCAC 07J.1200).

- With an approved SVL Exception:
    - Oceanfront construction setbacks are measured from the FLSNV using graduated setback requirements (15A NCAC 07H.0306(a)(5)).

    - For new construction, no portion of a building or structure can extend oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure, an average line of construction can be determined

by the DCM on a case-by-case basis. This rule serves to limit seaward encroachment of new structures (15A NCAC 07H.0306(a)(12)(C)).

- Swimming pools are not allowed oceanward of SVL (15A NCAC 07H.0306(a)(12)(D)).
- Structures greater than or equal to 5,000 square feet require a minimum setback of 120 feet, or 60 times the shoreline erosion rate in place at the time of permit issuance. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward (15A NCAC 07H.0306(a)(5)(K)).

Approval & Application of Development Line Rules:

- Development Lines (DVL) are delineated by the local government and approved by the CRC. Once approved, the CRC cannot make or request changes (15A NCAC 07J.1301(f))
  - Development Lines must apply to the entire large-scale project area, and at the local government's request, may be extended to include the entire oceanfront jurisdiction or legal boundary (15A NCAC 07J.1301(b))
  - The Development Line is delineated by local governments using an adjacent neighbor sight-line approach, that results in an average line of structures. In areas where the seaward edge of development is not linear, the local government may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the seaward-most structure. This rule serves to limit seaward encroachment of new structures (15A NCAC 07J.1301(c)).
- Oceanfront construction setbacks are measured from the FLSNV using graduated setback requirements (15A NCAC 07H.0306(a)(5))
- Although the location of the vegetation line prior to the large-scale beach fill project (SVL) must also be submitted to the CRC, the line will not serve as the reference point for measuring oceanfront setbacks.
- Without a SVL, pools are not restricted from being sited in the setback area.

Local Government Discussions:

Since the effective date (April 1st) of the rule amendments, Staff have met, or communicated via e-mail, with several local governments in an effort to assist them with understanding how to delineate the Development Line, as well as how each option could be applied in their community. Based on these discussions, the following have been primary questions and/or issues raised:

- **Why did the 300,000 cubic yards definition of "large-scale" remain unchanged?** Prior to 2008, a large-scale beach fill project was defined as one that placed more than a total volume of 200,000 cubic yards of material at an average ratio of more than 50 cubic yards of material per linear foot of shoreline, or a Hurricane Protection Project constructed by the U.S. Army Corps of Engineers (USACE). In order to avoid static lines, some local governments were designing projects that did not qualify as "large-scale," thus avoiding the establishment of a static vegetation line. While high-

frequency maintenance projects could be designed to avoid the static vegetation line, larger projects last longer and less frequent projects have fewer environmental impacts. In 2008, the definition of "large-scale" was changed to 300,000 cubic yards. The CRC increased the total volume threshold based on the fact that during the 30-year period between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance projects disposed of less than 300,000 cubic yards of material. All but one of the larger projects was associated with dredging Oregon Inlet and placing sand on Pea Island. The intent was to ensure that beach disposal of typical inlet navigation projects in NC does not trigger a static vegetation line. When the CRC-appointed subcommittee met in early 2015 to discuss development line rule language, the committee discussed changing the volume trigger to 100 cubic yards per linear foot, and felt that would potentially increase the definition of "large-scale" to the point that no-one would need a development line or SVL Exception, and since the 300,000 cubic yards was based on data, the committee agreed to keep the 300,000 cubic yard standard.

- **Can pools be placed seaward of a Development Line?** There is no language in the Development Lines rules restricting pools seaward of the Development Line. Towns asked this question because pools are currently not allowed seaward of a Static Vegetation Line, and were curious how Development Line rules might affect the placement of pools. If a Town has a CRC-approved Development Line, pools can be placed in accordance with CAMA rules which apply to those without a SVL (15A NCAC 07H.0309(a)).

- **How should a Development Line be delineated?** Development Line rules specify that an "*adjacent neighbor sight-line*" approach be used, or where structures are not linear, "*an average line of construction*" be used on a case-by-case basis; restricted to not seaward of the seaward-most structure, and; not to be delineated below the mean high water line. When applied, this will likely result in a less restrictive interpretation "*average line of construction*" or "*landward-most adjacent neighbor*" as specified within SVL Exception rules. Staff believes they understand the intent of the Commission's Development Line rules, and have offered guidance to local governments who are currently mapping or considering a DVL (15A NCAC 07J.1300), (15A NCAC 07H.0306(a)(12)(C).

- **Can the Development Line extend beyond the boundaries of large-scale beach fill projects?** Yes. However, in some cases, applying Development Lines rules to areas that currently do not have a SVL, could make rules more restrictive than what is currently allowed. For example, in locations with an erosion rate of 2 feet per year, and ample vegetation between the structure and FLSNV, a DVL could potentially restrict property owners to adjacent neighbors, while current setback requirements would allow a more seaward placement of structures.

- **How are construction setbacks measured?** Both the DVL and SVL Exception rules allow oceanfront construction setbacks to be measured from FLSNV. However, only the SVL Exception allows structures greater than 5,000 square feet to meet a minimum setback of 120 feet, or 60 times the erosion rate at the time of permit issuance, whichever is greater (15A NCAC 07H.0306(a)(5)(K)).

- **Do grandfathering rules apply to structures adjacent to a Development Lines?** Yes. Structures meeting the grandfathering criteria specified in CRC rules are not excluded if they are adjacent to a DVL (15A NCAC 07H.0306(a)(5)(L)).

- **What are the real benefits of a DVL?**

- Pros: #1) cost savings of not having to compile information relative to a 30-year beach maintenance plan and submitting it to the CRC on a 5-year recurring cycle; #2) gives local government the ability to establish the seaward limit of development within limits of CRC DVL rules; pools are no longer restricted to being placed landward of the SVL; #3) setbacks no longer measured from the Static Vegetation Line and; #4) No long-term commitment to beach nourishment.
- Cons: if the DVL is extended beyond the limits of the large-scale beach fill project, the result could mean more restrictive rules than what is currently allowed for those property owners.

In summary, several local governments are actively mapping their proposed DVLs and working with elected officials to get their Development Line incorporated into local ordinances, while others are still weighing their options before acting.

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemburg, North Carolina 28385

(d) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(e) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

(1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section ~~is~~ are exempt from this written test requirement;

(2) A student shall pass each test by achieving 70 percent correct answers; and

(3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

Authority G.S. 17C-6; 17C-10.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0304.*

Link to agency website pursuant to G.S. 150B-19.1(c): *http://www.nccoastal management.net/web/cm/proposed-rules*

Proposed Effective Date: *July 1, 2016*

Public Hearing:
Date: *February 10, 2016*
Time: *1:30 p.m.*
Location: *Carteret County, DoubleTree by Hilton, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512*

Public Hearing:
Date: *February 18, 2016*
Time: *3:00 p.m.*
Location: *Pender County, Surf City Town Hall, 214 N. New River Drive, Surf City, NC 28445*

Public Hearing:
Date: *February 18, 2016*
Time: *5:00 p.m.*
Location: *Onslow County, Onslow County Public Library, 1330 Hwy 210, Sneads Ferry, NC 28460*

Public Hearing:
Date: *March 3, 2016*
Time: *1:00 p.m.*
Location: *Brunswick County, Oak Island Town Hall, 4601 E. Oak Island Drive, Oak Island, NC 28465 (Council Room)*

Public Hearing:
Date: *March 3, 2016*
Time: *5:00 p.m.*
Location: *New Hanover County, New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403 (Finance Conference Room #500)*

Public Hearing:
Date: *April 6, 2016*
Time: *1:00 p.m.*
Location: *Hyde County, Ocracoke Volunteer Fire Department, 822 Irvin Garrish Hwy, Ocracoke, NC 27960*

Public Hearing:
Date: *May 9, 2016*
Time: *5:00 p.m.*
Location: *Currituck County, Outer Banks Center for Wildlife Education, 1160 Village Lane, Corolla, NC 27927*

Public Hearing:
Date: *May 10, 2016*
Time: *1:30 p.m.*
Location: *Dare County, Dare County Administration Building, 954 Marshall C. Collins Drive, Manteo, NC 27954*

Reason for Proposed Action: *15A NCAC 07H .0304 outlines the subcategories of Areas of Environmental Concern (AEC) within the broader Ocean Hazard AEC. The proposed rule change amends the formula for calculating the width of the Ocean Erodible AEC. The Coastal Resources Commission (CRC) is proposing to alter the formula used to calculate the width of the Ocean Erodible Area (OEA) for consistency with the setback factors found in 15A NCAC 07H .0306 and to delete utilization of an outdated dune recession that is no longer necessary due to FEMA incorporation of dune recession into the National Flood Insurance Program V-Zones.*

Comments may be submitted to: *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, phone (252) 808-2808*

Comment period ends: *May 10, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected**
- ☐ **Substantial economic impact (≥$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 – OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

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

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times ~~60~~; 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at ~~http://www.nccoastalmanagement.net; and~~ http://www.nccoastalmanagement.net.

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

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

(a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and

(b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard

area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of ~~Environment and Natural Resources,~~ Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photocopies are available at no charge.

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

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

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified, or re-establishment of the vegetation, the area shall return to its pre-storm designation.

Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 - BOARD OF BARBER EXAMINERS

***Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the North Carolina Board of Barber Examiners intends to adopt the rules cited as 21 NCAC 06F .0126, 06G .0106, 06O .0118-.0122, readopt with substantive changes the rules cited as 21 NCAC 06B .0501-.0503, .0505, 06F .0101-.0102, .0109, .0114, .0121, .0123-.0125, 06I .0105, 06J .0101, 06K .0104, 06L .0104, .0112, .0115-.0116, .0118, 06N .0104, .0106, 06O .0102-.0106, .0108-.0117, 06P .0103, 06Q .0101, and readopt without substantive changes the rules cited as 21 NCAC 06A .0102, 06B .0101, .0103, .0105, .0202, .0204, .0301-.0302, .0305-.0309, 06C .0101, .0201-.0205, .0501-.0504, .0601, .0701, .0801, .0807-.0808, .0903-.0907, .0909, 06D .0101, 06F .0103-0104, .0110-.0111, .0113, .0116, .0118-.0120, .0122, 06G .0103, 06H .0101-.0102, 06I .0101, 06J .0102-.0103, .0106, .0108-.0110, 06K .0101, .0103, .0110-.0111, 06L .0102-.0103, .0105-.0109, .0111, .0113-.0114, .0117, .0119-.0120, 06M .0102, 06N .0101-.0103, .0105, .0107-.0112, 06O .0101, .0107, 06P .0101-.0102, 06Q .0102-.0104, 06R .0101, 06S .0101.*

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: http://reports.oah.nc.us/ncac.asp.

Link to agency website pursuant to G.S. 150B-19.1(c): *NCBarbers.com*

Proposed Effective Date: *May 1, 2016*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): The Rules were reviewed previously in 2013. The Board has reviewed the revisions at public Board meetings on August 18, 2014, June 23, 2015 and October 20, 2015. Notice of each review was notice 15 days in advance of the meetings. If an individual wishes to have a public hearing concerning this rulemaking, please send written request to: W. Bain Jones, Jr. North Carolina Board of Barber Examiners, 5809-102 Departure Drive, Raleigh, NC 27616*

Reason for Proposed Action: *Barber Schools wish to provide instruction concerning additional education for barber students, apprentices, and individuals desiring to be instructors. 21 NCAC 06F .0126 addresses course work that can be offered beyond the 1528 hours required to complete Barber School. This rule defines the course work and outlines the procedure for the school to follow to obtain the Board approval of the course work. 21 NCAC 06O .0118-.0122 establishes penalties for violations of noted statutes in each rule. There was previously no penalty for these violations.*

Comments may be submitted to: *W. Bain Jones, Jr., 5809-102 Departure Drive, Raleigh, NC 27616, phone (919) 981-5210, fax (919) 981-5068, email wjones@ncbarbers.com*

Comment period ends: *March 15, 2016*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1).

Environmental Quality

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

NC COASTAL RESOURCES ADVISORY COUNCIL
May 10, 2016
Dare County Government Complex
Manteo, NC

12:30	**CALL TO ORDER** (TBD) • Roll Call • Approval of February Meeting Summary	Debbie Smith
12:35	**Temp. Erosion Control Structures**	Mike Lopazanski
1:00	**Geotubes**	Tancred Miller
1:25	**Old/New Business**	Debbie Smith
1:30	**Adjourn**	

Next Meeting: July 12-13, 2016; Beaufort

Coastal Management
ENVIRONMENTAL QUALITY

PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS

NC Coastal Resources Advisory Council
February 9, 2016
Hilton Double Tree, Atlantic Beach, NC
Meeting Summary

Attendance

Debbie Smith (Chair)	Spencer Rogers (Vice Chair)
Jett Ferebee	Rudi Rudolph (Vice Chair)
John Brodman	Ray Sturza
Robert Outten	Dave Weaver
David Moye	J. Michael Moore
Beth Midgette	Kris Nobles

Call to Order
Debbie Smith called the meeting to order with 12 members in attendance. Minutes were approved unanimously.

CRAC Appointments
Debbie Smith recommended Todd Roessler as a potential Council member. The Council voted unanimously to recommend to the CRC Todd Roessler as a Council member.

Sandbags
Staff presented a Legislative update regarding House Bill 97, specifically as it pertains to sandbags. Additionally, staff presented temporary rule language and proposed rule amendments. Staff concluded the presentation detailing the history of sandbag rules in North Carolina and the Council began discussing sandbag rules in general. Major points of discussion included the expiration requirement for sandbags and enforcement of removing sandbags.

Debbie Smith commented that she does not believe 5 years is enough time to conclude solutions to actively pursue beach renourishment.

Ray Sturza made a motion to amend the rules to allow for 8 years which was second by Jett Ferebee. 9 were in favor and 2 opposed.

Adjourn
With no further business the Council adjourned at 10:00 am and joined the CRC meeting.