NC COASTAL RESOURCES COMMISSION (CRC)

April 29-30, 2015
Dare County Government Complex
Manteo, NC

Present CRC Members

Frank Gorham, Chair
Renee Cahoon, Vice-Chair

Neal Andrew
Gwen Baker
Larry Baldwin
Renee Cahoon
Suzanne Dorsey
Greg Lewis
Janet Rose
Harry Simmons
Jamin Simmons (present at 1:15 4/30)
John Snipes
Bill White

Present CRAC Members

Spencer Rogers, co-vice chair
Rudi Rudolph, co-vice chair
John Brodman
Jett Ferebee
Kris Noble
Bobby Outten
Frank Rush
Ray Sturza
Dave Weaver
Lee Wynns

Present Attorney General's Office Members

Mary Lucasse
Christine Goebel

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Gwen Baker read her 2014 Evaluation of Statement of Economic Interest which indicated that there were no actual conflicts and any potential conflicts would not preclude service. Marc Hairston was absent. No actual conflicts were reported. Based upon this roll call Chairman Gorham declared a quorum.

CHAIRMAN COMMENTS

Chairman Gorham reminded Commissioners to review the schedule for upcoming public hearings for 15A NCAC 7H .0304. Mike Lopazanski has been appointed hearing officer for each of the eight public hearings, but if there is a hearing in your area and you would like to attend please do so. The order of the items on the agenda may be moved up in order to finish earlier and allow those attending the meeting to get home earlier.

MINUTES

Renee Cahoon made a motion to approve the minutes of the February 18-19, 2015 Coastal Resources Commission meeting. Harry Simmons seconded the motion. The motion passed unanimously (Gorham, Andrew, Baker, Baldwin, Cahoon, Dorsey, Lewis, Rose, H. Simmons, Snipes, White)(J. Simmons absent for vote).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

First of all, welcome back to Commissioner Baker, who joined us briefly last year, and has now been reappointed to the Engineering slot on the Commission.

I will first provide a brief summary of DCM's work since the last meeting, followed by a brief legislative update. Permit activity has increased slightly this year compared with 2014, especially over the past few weeks. Several notable Major Permits were issued since your last meeting, including one to the City of Havelock authorizing construction of a public access facility that includes a kayak launch, a pedestrian bridge, picnic shelters, a community center, amphitheater, restrooms, walking trails, parking lot, and driveway. A Major Permit was also issued to the North Carolina Department of Cultural Resources authorizing significant repairs and improvements to the USS North Carolina Battleship facility in Wilmington. Also of note, DCM issued federal consistency determinations for two seismic surveying companies, Spectrum Geo, Inc. and GX Technology, who are proposing to conduct separate Marine Geophysical Surveys via 2D seismic surveying off the North Carolina coast. These survey activities will gather geological and geophysical data intended to provide information on offshore oil and gas resources. As a part of the review of these two projects, a public hearing was held by the Department in Morehead City on April 9th. Approximately 85 individuals attended the hearing, with 24 individuals either speaking or providing written comment. In addition to these two consistency determinations, the Division is also currently reviewing and receiving public comments on consistency submissions from two other seismic surveying companies, CGG Services Inc., and TGS.

On the policy and planning side of DCM, staff are proceeding with the rulemaking process and preparing fiscal analyses for several rules, including OSBM approval of the 7B Land Use Planning Guidelines and 7L Planning and Management Grant rules fiscal analysis, scheduling eight public hearings for the repeal of the High Hazard Flood AEC, and getting approval from the Rules Review Commission of changes to the 7K .0208 Single Family Exemption. The Science Panel's Sea Level Rise draft report is currently available on our website for public comment, and we have time on the agenda this afternoon to accept public input. Also, Prof. Margery Overton will be here this afternoon to present a summary of the report and science panel and CRAC members Spencer Rogers and Rudi Rudolph are also here today. Planning Staff have advertised the 2015 solicitation for Public Beach and Coastal Waterfront Access grants. Pre-applications are due to DCM June 19, 2015. We expect to award approximately $600,000 for access projects by December of this year.

The Coastal Reserve program completed a draft outline for the N.C. National Estuarine Research Reserve management plan update, and held four Local Advisory Committee meetings for the Zeke's Island, Masonboro Island, Currituck Banks, and Rachel Carson Reserves in late March and early April to gather input on the draft outline. A follow-up meeting for the Masonboro Island committee is scheduled for May 6 to continue discussions regarding public access, including recreation and traditional use. The next steps are to write the full draft management plan and solicit

input from DENR, Local Advisory Committees, and NOAA this summer. A 30-day public comment period and public meetings on the final draft will be held prior to final publication. The spring season kicks off K-12 and general public programming and a variety of activities are scheduled. K-12 student field trips, species lectures, paddling trips, free public field trips, and the Summer Science School programs are coming up. Details are available on the Reserve's website on the event calendar.

There are five commission appointments set to expire on June 30 of this year. We often do not have final appointments and reappointments by the date of expiration, and the law says that appointments remain in place until any new appointments are announced. We are planning for the next Commission meeting to be held in Beaufort on July 15-16.

Braxton then provided an update on the ongoing legislative session and several proposed bills related to coastal issues.

CRAC REPORT

Spencer Rogers stated the CRAC discussed a number of issues on the CRC agenda and do not have any strong recommendations or motions. Specifically, we discussed the state port inlet AECs and the language in the sandbag rules that seem to have a conflict between removal and whether bags can remain buried. There was a consensus to clean up the language in the port rule as well as in the sandbag recommendations. We discussed issues on sandbag removal versus maintenance, but there was not a consensus on this issue. We were asked to address the geographic distribution of CRAC members and the consensus was that we are more concerned about the talents we have versus the balance geographically. We tabled this discussion and asked the members of the CRAC to think about useful additions to the skills of the current CRAC members.

PRESENTATIONS

DCM Year in Review

Braxton Davis

Braxton Davis stated CAMA created the Coastal Resources Commission and Advisory Council with the idea that there is a balancing act we are facing all the time. This is not a rules commission that deals entirely with environmental issues, but also riparian property rights and navigation as well as many other issues. CAMA also talks about partnering with local governments through delegated permitting and the land use plan program. CAMA sets up the coastal reserve program and also focuses on the public access part of the program to enhance the public's access to the beaches and coastal waters. The mission statement of the Division is to protect, conserve and manage North Carolina's coastal resources through an integrated program of planning, permitting, education and research. North Carolina has a great coastal management program. The Division is set up in three sections. The regulatory program is the primary element of our program. We have four district offices and out of our 51 full time employees about two-thirds of them are related to permitting. There are over 100 local permitting officers through the delegated minor permitting program that work with us very closely throughout the coast. We have offices in Elizabeth City, Washington, Wilmington and our headquarters in Morehead City. Our policy and planning section work closely with the Commission on rulemaking and is headed up by Mike Lopazanski. This section handles all of the non-regulatory parts of our program. The Coastal Reserve program has ten staff that manage over 40,000 acres along the coast. In 2014, we implemented a significant reduction in force which removed five positions from the Division. We were facing a significant budget shortfall and the Division was reorganized. Eleven other staff left DCM or transitioned to other duties. We implemented a number of procedural changes as a result. Now the District Managers report directly

to the Director. We have focused on consistency among all of the offices. Rulemaking last year ranged from removing Mad Inlet from the inlet hazard area, further regulatory streamlining and removing regulatory burdens, and review of coastal wetlands and CAMA land use planning rules. During 2013-14, DCM was heavily involved in responding to S.L 2012-202 (HB819) which required a review of the Commission's sea level policy and also included two other studies of the Cape Fear River and Inlet Hazard Areas which the Commission rolled into a larger Inlet Management Study. Through the Inlet Management Study we had an expert panel discussion, four regional workshops, and a final report on inlet management as well as the inlet hazard study report to the Governor and General Assembly. The sea level rise update is on this meeting's agenda and it was a major effort for staff. Staff headed up seven Science Panel meetings which led us to a very good outcome. We also had to deal with proposed critical habitat designations. This was a major controversial issue for the Endangered Species Act in terms of what the regulatory implications of critical habitat designations do, especially to beach projects. We worked with the Department extensively in responding through public comments asking for the designations to be reviewed and reevaluated. The critical habitat designations were published in the summer of 2014. The Division has funded a study to develop a programmatic biological assessment that is underway. We hope that by the end of this year, or early next year, we will be able to move quickly into a programmatic biological assessment issued by the US Fish and Wildlife Service so that any routine beach sand placement project in North Carolina will not require an individual consultation with USFWS and will cover all endangered and threatened species as well as critical habitat. The USFWS is working very closely with us on this. We also had the regional workshops for improvements to the land use planning program that will reduce burdens on local governments, shift more emphasis to local government policy, institute shorter timelines, and get statutory changes to delegate certification authority so these will no longer come to the CRC. We also led the Department in establishing a living shorelines strategy. In addition, there were numerous emergency or expedited permits and variances. The coastal wetlands subcommittee met several times this year. There was significant ongoing litigation (Bonner Bridge) and an internal audit by DENR. DCM also reviewed the first terminal groin permit application, the Corps' DMMP for Beaufort Inlet, the very first offshore seismic survey last year, and led a number of national efforts regarding offshore energy as well as beach and inlet management policy in cooperation with Commissioner H. Simmons, president of ASBPA. The Division awarded close to a million dollars of beach and waterfront access grants for 16 projects.

Doug Huggett, Major Permits and Federal Consistency section coordinator, stated the first step to determining whether you need a permit is to determine if your activity is considered development as defined by CAMA. Then a determination needs to be made whether your development is within one of the CRC's permit jurisdiction areas (AECs). The common AECs are the Estuarine and Ocean system AECs, the Ocean Hazard Areas, Public Water Supplies, and Natural and Cultural Resource Areas. If it is determined that you are doing development in one of the areas under the CRC's jurisdiction, then you are required to obtain a permit for the development. There are three permit types. Minor permits are projects where development is taking place, but there is no other state or federal permit or authorization required for the development. A lot of times these projects are single family homes that do not need a stormwater permit or impact any wetlands. General permits are expedited forms of either Major Permits or Minor Permits that are for relatively repetitive types of projects that fall within some narrow environmental limits. The most common types of projects for which general permits are used are bulkheads and docking facilities for single family residences. We have 15 or 16 general permits for various things. These projects, over time, have shown that they are minor in nature if they can meet the environmental criteria required by the CRC rules. A general permit requires minimal work by the applicant. Field staff often issue a General Permit to

the applicant on site. This is the most common type of permit we issue. For things that do not fall within the limits of the minor or general permit, an applicant is required to get a Major Permit. This type of permit is used for more complicated projects such as terminal groins, beach nourishment, subdivisions, and major dredging. These projects require more environmental review. The review process for major permits is coordinated with up to 14 state and federal permit and review agencies that provide comments based on their subject matter expertise to help us make permit decisions. The number of minor permits issued reflects the economic downturn. These numbers are starting to go back up. The number of General Permits issued also reflects the economic downturn. In 2006, the Division issued 2,776 GPs and over time these numbers have gone down, other than post-hurricane applications for permits. These numbers are also beginning to pick back up. In the major permit process, an applicant coordinates the project with a field rep from one of the four DCM offices. The field staff do a great job walking the applicant through the process and guiding the applicant to avoid pitfalls by identifying them early. The applicant then submits an application to DCM. The field rep then drafts a field investigation report which is an executive summary of the proposed development. This report is sent out with a copy of the permit application to all the permit review agencies and they use it to look at the project and decide if they need to look at it in greater detail. We look at all the comments received and use them to decide whether to issue or deny the request for a permit. When a comment or concern comes in, our staff works with the applicant to find a balance to satisfy the concerns of a reviewer and give the applicant the majority of what they want. It is our goal to never deny a permit. A permit denial can be appealed. The major permit section generally takes between 150-200 permit actions per year. We issue between 95-98% of all major permits requested. The average processing times for major permit applications has dropped, based in large part on the regionalization of the major permit staff and other internal processing changes. We also have requested that comments come back more quickly from the resource agencies reviewing the applications. The CAMA major permit application works well and serves as an application for multiple other permits. The coordination we do with the Corps keeps most of these projects out of the Corps' Individual Permit process.

Roy Brownlow stated back in 2012, the Regulatory Reform Act mandated that DENR adopt a tiered enforcement policy. For DCM, Tier 1 enforcement consists of a cease and desist letter. If we catch someone doing development without a permit and a permit can be issued for the project then they come in and apply for the permit and there is no civil penalty involved. A Tier 2 violation is the most common type of violation that we encounter. In that case, the work is already completed. If a permit could have been obtained for the development, then we assess the minimum amount of civil penalty. A Tier 3 enforcement action is more severe and is used when there is a significant degree of adverse impacts to the environment and is often based on dredge and fill activities and willful and intentional acts. In 2014, we completed over 3,000 monitoring and compliance inspections. There was a 98% compliance rate for permitted facilities and projects. We initiated 54 enforcement cases and the average time it took to close an enforcement case was 34 days. A tiered enforcement policy gives staff the discretion to take an enforcement action and is effective in protecting the resources and the integrity of the CRC's rules.

Christy Goebel stated historically the CRC has had six types of quasi-judicial cases (permit appeals, third-party hearing requests, variances, declaratory rulings, petitions for rulemaking, and static line exceptions). Due to the change in the Administrative Procedures Act the Commission no longer hears permit appeals. Today I will focus on third party hearing requests and variances. In 2014, there were a total of 16 variance petitions filed. There were many more variance requests pre-recession, but that number has stabilized to on average about nine per year. The issues addressed during variances last year dealt with oceanfront setback rules, sandbags, 30-foot buffer, and docks

and piers. The Wilmington district had the most variance requests in 2014. There were eight third party hearing requests filed last year. When a permit decision is made and a third party (usually a neighbor) wants to challenge the issuance of the permit, they have 20 days to file a petition. The Division then works with its attorney to prepare a staff response to the concerns raised by the third party. The Chairman has 15 days to make a decision whether to grant or deny the request. In many cases third parties are raising issues that are not CAMA jurisdiction issues. The number of third party hearing requests filed seems to be stabilized at about 12 per year. The Wilmington district receives the most requests for third party appeals. Past Chairman Hackney granted nearly 50% of the hearing requests filed which led to a lot of contested cases. The Chairmen since Hackney have granted a much smaller percentage of the requests for third party hearings. This process does a good job of resolving cases which deal with property owner disputes or that address challenges to other authorities (such as local zoning ordinances).

Chairman Gorham stated that the 15-day turn-around to make a final decision is not enough time.

VARIANCES

Wineducks, LLC (CRC VR 15-01) Duck, 30' buffer
Ron Renaldi, Christine Goebel

Christy Goebel of the Attorney General's Office represented staff and stated Wyatt Booth is the attorney for Petitioner Wineducks, LLC and is present to make oral argument. Ron Renaldi, field representative, gave an overview of the property. Petitioner proposed additions to an existing elevated wooden deck and requested permission to reposition an existing stairway leading to the deck on its property in Duck. The Town of Duck LPO denied the Petitioner's minor permit application because the proposed development was inconsistent with 15A NCAC 7H .0209(d)(10). This rule requires that new development within the Coastal Shoreline AEC must be located a distance of 30-feet landward of the normal high water level or normal water level, unless the proposed development meets an exception listed in 15A NCAC 7H .0209(d)(10). Ms. Goebel reviewed the stipulated facts of this variance request. Ms. Goebel stated that staff and petitioner agree on three of the four factors that must be met in order to grant the variance request. Staff and Petitioner disagree that peculiarity of the property causes any hardships. Ms. Goebel stated that DCM's position is that having development located within the 30-foot buffer is typical of many properties along the coast.

Wyatt Booth of Vandeventer Black LLP represented petitioner and reviewed the stipulated facts that petitioners contend support the granting of the variances. Petitioner claims that in this case peculiarity of the property does cause a hardship. The peculiarity is created by the construction issues that predated the buffer rule and predated the petitioner's ownership of the property. There is a narrow choke point coming down the stairs coming down from an oddly constructed decking that would require someone to traverse a narrow opening.

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

Renee Cahoon made a motion to support petitioner's position that hardships result from conditions peculiar to the petitioner's property. Harry Simmons seconded the motion. The

motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

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

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

This variance request was granted.

Parker/US Life Saving Service, LLC (CRC VR 15-02) Wrightsville Beach, 30' buffer
Robb Mairs, Christine Goebel

Christine Goebel of the Attorney General's Office represented staff and stated Bill Raney is present and will represent petitioners. Robb Mairs, field representative, gave an overview of the property. Petitioners own property adjacent to Banks Channel in Wrightsville Beach in New Hanover County. In February 2014, petitioners applied for a CAMA minor permit with the Town of Wrightsville Beach LPO to construct a single family residence. On February 7, 2014, the LPO denied petitioners' permit application as part of the proposed development was located within the Commission's 30-foot setback. Petitioners seek a variance from the 30-foot buffer rule to allow the impervious surfaces within the buffer area as proposed in its site plan. Ms. Goebel reviewed the stipulated facts of this variance request and stated that staff and petitioners agree on all four statutory criteria which must be met in order to grant the variance.

Bill Raney of Wessell & Raney, LLP represented petitioners and stated petitioners agree with the staff that the four criteria for this request have been met.

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

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

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

Renee Cahoon made a motion to support staff's position that the variance requested will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and will preserve substantial justice. Approval of the variance request is conditioned on the inclusion of the standard stormwater management related buffer conditions. Janet Rose seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

This variance request was granted with conditions.

PRESENTATIONS

Overview of Public Trust Doctrine

Dr. Dave Owens

Dr. Dave Owens stated the Public Trust Doctrine is a piece of Roman law. The Roman Empire was the first institution to establish legal rights that were applicable throughout Western Europe. Under Roman law private parties could not own the ocean or the fish within the ocean as these were considered common resources that belonged to everyone and not subject to private ownership or appropriation. Associated with that was the shoreline. The shoreline was a key component as folks brought their boats up on the beach to dry their nets and used the shoreline as part of their use of the ocean and the common resources. That is important to us because England was a Roman colony and that concept was incorporated very early in English common law. It waned a little bit during the Middle Ages, but when the King started taking some of these public resources and appropriating them for the crown's personal interest and selling rights to use the public resources, the people rebelled. The public trust doctrine was included as part of the Magna Carta to memorialize the people's right to the free and common use of the navigable waters of the country. It belonged to the King as trustee for the benefit of all of the citizens. The ownership was conditioned on it being ownership as a trustee and the responsibilities to protect the public rights in the resource. That in turn is important to us because during the American Revolution the state of North Carolina assumed the position of the King of England and we took ownership of the navigable waters and the seashore in the same capacity as the King of England previously. This doctrine is critically important because it defines for us as a State what we own and how we own it. That has been a part of our state law from the time we have been a state. How is this applied today and what implications does it have as we use and manage these resources? The first question is; where does this apply? Clearly all of the navigable waters of the state, submerged lands and waters are owned by the State as trustee for the use and benefit of all of the citizens of North Carolina. We own the navigable waters, the beach, the sounds, and the rivers. One of the critical questions is what about on the oceanfront? Where do you draw the line between what the State owns and what private property owners own with the upland property? The general dividing line is the mean high water line. Everything below mean high water is owned by the State. Things above mean high water are owned by the adjacent private property owner. What about the dry sand beach between mean high water and the vegetation line? Is that part of the beach and subject to the public trust doctrine or is that part of the adjacent private property and owned by the upland owner? There is not an absolutely certain answer to that question. The tradition in North Carolina has been to treat the dry sand beach seaward of the vegetation line as subject to public trust rights. People have used it to walk along, to fish along, haul nets, recreation, and emergency vehicle use. The State's position has generally been that that is part of the public trust rights of the adjacent oceanfront. While that land is in private ownership, it is subject to a property right in the nature of an easement by the public for unobstructed use of the area between the vegetation line and the mean high water line. Who is responsible for protecting the public's rights in public trust areas? The answer is straight forward; it is the state of North Carolina. The

State owns the public trust waters and to the extent the public trust doctrine applies to the dry sand beach it is the state of North Carolina that is responsible for protecting the public rights that are protected. The state can delegate those responsibilities to the local government. Once you define the public trust area then the next question is what rights do the public have in that area? Traditionally it has been hunting, fishing, navigation, transport and recreation. These are the kinds of traditional activities that are protected. What rights does the adjacent private owner retain? These include the rights to access the water. On the oceanfront, if I own the adjacent property one of the property rights I have to the dry sand beach is a right of access to the water. That is a right that can be regulated, but I have some right because I have purchased the property adjacent to the public trust area to get to and use the resource. This would include the right to pier out if I am in an estuarine context or the right to walk over to the beach if I am in an oceanfront context. I also have some rights down to the mean high water line. The public would not have the right to pitch a tent and camp out for 20 days on the dry sand beach that I own the property under. I don't have exclusive rights to that property. How does a change in the shoreline affect public and private rights and their boundaries? The general rule is that this boundary is ambulatory. As nature changes the shoreline, the property line moves along with it. If the beach accretes in front of it then your property line is growing with it. If the shoreline is eroding then you are losing property with it. When you get to human changes and filling the property then you have an entirely different situation. The State statutes define very clearly what happens in those cases. If you have artificial fill then the State statutes clearly state that the property line is not going to move. If you fill land that is publically funded then the state is going to own that property and that is a condition of the Corps of Engineers participation in funding. For publicly funded fill the answer is clear that the property line is set and the fill belongs to the public. The raised land does not go to the adjacent, private upland owner. If it is a rapid change that is caused by natural forces then you potentially have a different answer. We have less than absolutely clear cases that deal with some odd ball situations like inlets which are not permanent geologic features. Most everything I have described to you over time has been gradually incorporated into our state statutes. A lot of this was originally common law provisions that are now part of the state statutory and constitutional provisions. Some recognition of the public trust doctrine is incorporated into the state's Constitution. Part of the state statute defining mean high water as the property line resulted from the CRC's initial actions to set oceanfront setback regulations. When the regulatory program for CAMA was passed in 1974 and the rules went into effect in 1978, the initial setback was a very general temporary provision of being behind the dune. In 1979, the CRC adopted the erosion rate based setback that we have used since. Some thinking about the public trust doctrine was built into the initial set of CAMA regulations. The notion that there should be no building seaward of the first line of stable, natural vegetation and that between this line and the setback line then some limited use, such as swimming pools, gazebos, and decks could be allowed. The first line of stable and natural vegetation was chosen by the CRC for two reasons. The first was the legal reason that was what the Commission felt was the boundary between where the public has some rights of access and use and the private owners' rights to exclude the public. There was also the practical matter that it was easy and stable as a reference line. The legislature came back and questioned whether the CRC was changing the property line. The statute was enacted to say that the property line is fixed at mean high water and not the vegetation line on the oceanfront. The CRC's response was they agreed that the property line was mean high water, but there are public trust rights in the area between mean high water and vegetation line, plus it is the appropriate line to use for regulatory purposed to define where the setbacks start. The legislature agreed.

Relevant Case Law in NC
Christine Goebel
Christy Goebel stated that her presentation will be focused on seven cases regarding the public trust doctrine, most from North Carolina. There is no certain answer from the North Carolina courts yet as to exactly where the public trust doctrine extends.

Ms. Goebel summarized the following cases: Giampa/Fabrikant decided in 2005 by the North Carolina Court of Appeals regarding the ownership of the dry sand beach in Currituck County, The Florida cases which culminated in a 2010 US Supreme Court decision regarding the ownership of the beach in Destin, Florida following a state nourishment project, Severence v. Patterson which is a 2012 5th Circuit case from Texas regarding rolling easements, the Town of Nags Head v. Cherry, Inc., which was decided by the NC Court of Appeals and held that the Town did not have the ability to enforce against nuisances in the public trust area, Town of Nags Head v. Tolozcko and Sansotta v. Nags Head which also involved houses on the beach in Nags Head and whether the Town can enforce against nuisances on the public trust area, and Nies v. Town of Emerald Isle which is pending before the NC Court of Appeals and whether the Town's ordinances constituted taking of their beachfront property on Emerald Isle.

ACTION ITEMS
Adopt 15A NCAC 7H .1500 GP for Excavation of Upland Basins
Tancred Miller
Tancred Miller stated this is an amendment to General Permit .1500 to do upland excavation for boat basins. This rule has been amended to allow applicants to do shoreline stabilization in addition to the excavation under a single General Permit instead of requiring two permits. There were no public comments received during the comment period. This rule will be effective July 1, 2015.

Harry Simmons made a motion to adopt the amendments to 15A NCAC 7H .1500. Renee Cahoon seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Approval of Fiscal Analysis for 15A NCAC 7B CAMA Land Use Planning Guidelines and 7L Local Planning and Management Grants (CRC 15-09)
Mike Lopazanski
Mike Lopazanski stated the CRC has approved the amendments to 7B and 7L. For the fiscal analysis we looked at the cost savings to local governments. These cost savings will be realized when a land use plan is initially developed as well as when it is updated and amended. A big factor that led to the cost savings was that we removed from the existing guidelines a request for a land suitability analysis, composite map, and other time consuming analysis that doesn't have as much value in terms of policy development in the land use plans. Staff's assessment is that this comprised about 40% of the costs associated with land use plans. We based this on hourly rates by a review of past land use plan contracts with local governments and consultants. We looked at 10-years of land use plan development contracts. We found that the average costs ranged from $60,000 for a county, $35,000 for a small municipality and up to $85,000 in cases where there were joint land use plans. We looked at how many land use planning actions are taken in a given year and found in the past five years there were 19 amendments and 18 updates. We expect this trend to continue now that most everyone that has a land use plan will be doing minor updates or amendments. There will be a cost savings to local governments ranging from $14,000-$34,000 per year with an average of four land use plan actions per year for a total savings of $56,000-$136,000 per year. We found that there are no direct impacts on property owners as the amendments are more process oriented and property

owners are more interested in the substance of the land use plan. We found that there was no effect on NCDOT. There are no direct impacts on the Division as we have not had funds available for land use plans in quite some time; however we do think there will be a benefit to the Division in terms of increased staff time that is available to work with local governments in the development of policies within the land use plans.

Neal Andrew made a motion to approve the fiscal analysis for 15 A NCAC Subchapters 7B and 7L. John Snipes seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Periodic Review of 15A NCAC 7B CAMA Land Use Planning – Public Comments and Final Report (CRC 15-06)
Mike Lopazanski
Mike Lopazanski stated the periodic review and expiration of existing rules was required by legislation. The CRC was required to review its existing rules and classify them as necessary with substantive public interest, necessary without substantive public interest, or unnecessary. The draft report with the initial classifications was presented to the Commission at the February meeting. This report was posted for public comment for 60 days. We did not receive any comments on the report during the comment period. This report is considered final and can be sent to the Rules Review Commission (RRC) for their review and approval. RRC will review this report at their June 2015 meeting. Once this report is reviewed by the Legislative Committee then we can send the amendments to 7B and 7L through the rulemaking process.

John Snipes made a motion to approve the Periodic Review of Subchapter 7B Final Report and classifications to the Rules Review Commission. Renee Cahoon seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Static Line Exception Reauthorization – Towns of Atlantic Beach, Pine Knoll Shores, Indian Beach and Emerald Isle (CRC 15-07)
Ken Richardson/Christine Goebel
Ken Richardson stated the static line exception reauthorizations for Bogue Banks includes the Towns of Emerald Isle, Indian Beach, Pine Knoll Shores, Atlantic Beach and Salter Path. The last time the Commission authorized a static line exception for Bogue Banks was March 2010. There are four criteria which must be met. These include a summary of fill projects, project design and performance, compatible sediment identification and financial resource demonstration. Bogue Banks is approximately 25 miles long with an east-west orientation. Emerald Isle's static vegetation line is approximately 5.9 miles long covering about 54% of the oceanfront of Emerald Isle. Pine Knoll Shores' static vegetation line covers their entire oceanfront. Atlantic Beach's static vegetation line covers almost their entire oceanfront minus a segment of about 2,000 feet at the border of Pine Knoll Shores and Atlantic Beach. When Atlantic Beach got their static vegetation line they were pumping sand onto Atlantic Beach, but they didn't have the equipment and the cost was prohibitive to pump sand beyond that point. The Bogue Banks Restoration Plan covers approximately 16.8 miles of the 25 mile long island. Since 2003, Emerald Isle has received three maintenance projects. Following Hurricanes Isabel, Ophelia and Irene, Emerald Isle applied for FEMA funds to restore the material lost. Because of monitoring the Town of Emerald Isle was able to substantiate the loss of approximately 120,000 cubic yards of material in two sections. The materials used came from the northern section of the Morehead City Harbor ODMDS outside of Beaufort Inlet. The Bogue Banks

and nearshore mapping program started in 2004 and monitors the entire island on an annual basis. Among the items analyzed is the amount of material on the beach in comparison to what was in place after the initial restoration project. The Town of Emerald Isle dictates when nourishment will be performed once one half of the initial fill volume is lost due to erosion. Indian Beach and Salter Path have been renourished on two occasions. The first renourishment occurred for Indian Beach, Salter Path and Pine Knoll Shores between February and March of 2004 as part of Phase I of the Section 933 projects. Phase I also included a relatively short segment of the west end of Pine Knoll Shores. Phase I placed approximately 630,000 cubic yards of material along the entire shoreline of Indian Beach, Salter Path and Pine Knoll Shores. The second renourishment for Pine Knoll Shores occurred between January and March of 2007 as part of Phase II of the Section 933 project associated with the maintenance of the Morehead City Harbor. The second project for Indian Beach and Salter Path occurred between January and March of 2007 and was carried out to replace material lost during Hurricane Ophelia. Through the efforts of the Section 933 and post-storm nourishment projects there is currently more sand in the Indian Beach and Salter Path area than was there after the initial project. Current beachfill maintenance triggers for Indian Beach and Salter Path has averaged out to 225 cubic yards per linear foot and the expected trigger is 224 cubic yards per linear foot. The eastern portion of the Phase I project in Pine Knoll Shores contains less material than was originally placed, but is well above the nourishment trigger of 50% remaining. The static vegetation line in Atlantic Beach was established as a result of two beach disposal operations in 1994 and 1996. Historically during the formulation of projects to deepen the Morehead City channel from 35 to 40 feet in the early 1970's using the least costly disposal, most of the material was put on Brandt Island and some was put on the ODMDS. The Atlantic Beach project differs from a traditional project on Bogue Banks in that all the fill is pumped out of Beaufort Inlet. A lot of detail was provided on the multiple sediment sources that are used on Atlantic Beach. The County Shore Protection Office is 100% funded by the county occupancy tax. The remaining funds go to their beach fund.

Christy Goebel stated the staff recommends the renewal of the Towns of Emerald Isle, Indian Beach, Pine Knoll Shores, Atlantic Beach and Salter Path's static line exceptions for a period of five years.

Greg Lewis made a motion to reauthorize the static line exception for the Town of Atlantic Beach. Harry Simmons seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Larry Baldwin made a motion to reauthorize the static line exception for the Town of Pine Knoll Shores. Greg Lewis seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

John Snipes made a motion to reauthorize the static line exceptions for Indian Beach and Salter Path. Larry Baldwin seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Greg Lewis made a motion to reauthorize the static line exception for the Town of Emerald Isle. Larry Baldwin seconded the motion. The motion passed unanimously (J. Simmons,

White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Sea-Level Rise Report 2015 Update
Draft Report, Process and Findings (CRC 15-04)
Margery Overton

Margery Overton, Chair of the CRC Science Panel, stated today's presentation will be on the report that you received on March 31. Dr. Overton acknowledged and thanked the dedicated group for their contribution to the final report. Since I was before you in December, the report came in and it went out to the external reviewers, we received their comments back in late January, the Science Panel had a meeting to discuss those comments in late January, in mid-February the Panel sent the response comments, then received a second set of comments from the reviewers on February 20. There was another Science Panel meeting on March 13 and those comments were sent out on March 18. A positive response was received from the external reviewer and the final document was sent out to the Commission. In the Executive Summary we made it known to the reader that we were trying to be transparent, that all the relevant values are in the report, and the mathematical calculations were described in the report in a fashion that someone could replicate the calculations. We used the recent IPCC report scenarios. We paid particular attention to spatial variation and the things we've learned from our State's tide gauges. We had expanded discussion on the reasons for some of the spatial variation, particularly the geologic factors and the ocean dynamics. We have comments about the impacts of sea level rise on frequency of minor flooding. We paid attention to some of the issues that have come up with respect to the Wilmington tide gauge because of the dredging activity that has happened there. We stuck to the 30-year time frame as requested by the CRC and we developed a range of projections as request. The tide gauge data is very important and is used throughout the report.

Suzanne Dorsey made a motion to send a Resolution from the CRC to each member of the Science Panel, Dr. Houston, and the wife of Dr. Dean thanking them for their work. Renee Cahoon seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Harry Simmons made a motion to send the Sea Level Rise-2015 Update process report to the N.C. Legislature. An economic analysis should not be included with the report since no policies or rules have been initiated as a result of the Report and there is nothing to analyze. Suzanne Dorsey seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

Public Comment on Sea-Level Rise Report 2015 Update

Heather Jarman, Regulatory Affairs Director with BASE, commented that BASE has provided feedback throughout the process and believes this report is a much better, thorough report that encompasses not only a scientific approach, but plain common sense that is applicable in today's development world. We will continue to be supportive of the process that this Board put forth.

Jim Early, retired engineer from Kitty Hawk, stated this is very well written report and I would like to add my appreciation for the excellent effort. I only take exception with one parameter used in the report and that is the current rate of sea level rise, not the future projections, just the current rate. The value used in the report was taken from the IPCC report and the value is higher than can be justified. The IPCC value is much higher than the measures by NOAA.

Dave Burton stated this report is much better than the 2010 report and pointed out the differences in the two. Mr. Burton was concerned that this report relied too heavily on sources from one end of the scientific opinion spectrum and questioned its credibility.

Mattie Lawson, retired engineer from Kill Devil Hills, requested that the CRC not come up with a one-size fits all regulation for the entire state of NC, but please allow the localities to manage this problem.

Wally Overman, Vice-Chairman Dare County Board of Commissioners, agreed that a 30-year plan or assessment of sea level rise was a better option than 100-years. Mr. Overman expressed his support for the position of Chairman Gorham that any decisions regarding regulations should be made at the local level.

Sandbags and Beach Fill Projects (CRC 15-11)
Frank Jennings

Frank Jennings stated Mike Lopazanski gave a presentation to the Commission at the last meeting about the history of sandbags in the State and how the program has been administered as far as the installation of sandbags, their viability and their removal. After that meeting there were some questions posed to the Division about sandbags. The first question was whether the removal of sandbag structures is always required during a renourishment project. The second question was if they are not required to be removed, can project sand purchased with private funding be used to cover the bags. The last question was whether the rule should be changed to allow sandbags to remain during and after renourishment. The rules that are applicable to these questions are in Section .0300 of the Ocean Hazard rules and specifically .0308(a)(2)(h) which says that once an erosion control structure is determined by the Division to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the US Army Corps of Engineers, a large scale beach nourishment project, an inlet relocation or stabilization project then it shall be removed by the property owner within 30 days of official notification from the Division regardless of the time limit placed on the temporary erosion control structure. The second rule that is applicable is the removal of temporary erosion control structures is not required if they are covered by dunes with stable and natural vegetation. (Relevant photos were shown to illustrate use and existing conditions of sandbags). The government of Nags Head solicited from every oceanfront property owner an easement to allow the contractor to go across the land. They were able to put sand forward of the dune on private property. When easements have not been signed and sandbags are scheduled for removal then the contractor cannot deposit sand around these properties. By rule, the removal of sandbag structures is always required during a renourishment project unless they are covered and vegetated. This is an enforcement issue. Sand from a public project cannot be used to cover sandbags even with private funding. The Division's position is that sandbag structures were intended to be temporary under CAMA and the CRC's rules.

Use of Geo-Textile Sandbags for Temporary Erosion Control Structures (CRC 15-10)
Tancred Miller

Tancred Miller stated these tubes are not really meant to be temporary. These are meant to be put in and left in for as long as they last. Typically there is excavation involved to install the bag. Then the bag is covered and vegetated. Unlike sandbags if there is damage to a tube then it can result in a catastrophic failure. The current CRC rules prohibit some of the things that would be involved with tubes. Anchoring is not allowed under the current rules, the tubes do not meet the individual bag size limits in the existing rules or the overall structure size limits. Also, it isn't clear if these can be

used at a lot scale, and the CRC would have to consider how to authorize these structures. Would a variance be required or would the CRC want to go through the rulemaking process to allow these tubes? The Division supports any alternatives that give applicants the option to have lower costs, simpler installation, and less potential for debris on the beach. Therefore, the staff is not opposed to the concept of a tube. These tubes are not prohibited under CAMA, but the CRC's current rules do not allow them. If the CRC wants to allow the tubes to be used through a permit process then the anchoring issue and size limits would have to be addressed. Staff recommends considering these on a case-by-case basis through the variance process.

Braxton Davis stated when the Division has looked at enforcement priorities in the past the highest priority structures are those that are over their time lime, out of alignment, and impacting the public's use and enjoyment of the beach. The idea of treating exposed bags differently than buried bags has been discussed. In terms of covering bags during renourishment, there is one issue you could run into in some instances of changing the mean high water position. The other part would be the use of public funds to cover sandbags, but the Division doesn't have any role in that. That would be a contractual agreement with the project sponsor. If a private individual wanted to pay to cover their own bags then it is a local issue. Chairman Gorham asked the CRAC to look at the policy issue of sandbags.

CRC RULE DEVELOPMENT

Development Line – Subcommittee Report (CRC 15-05)

Rudi Rudolph

Rudi Rudolph stated the subcommittee was charged with hammering out the development line rule language. The concept with the development line is that local governments will be able to develop a line to determine setbacks. If you don't have a nourishment project then you are subject to the graduated setbacks from the natural vegetation line. You can have an existing static line or get one in the future if you have a nourishment project. If you think it is worth the effort then you can go through the five year review process required to reauthorize a static line exception. A new option will be for a local government to establish a development line whether or not there was a nourishment project. The subcommittee also looked at the trigger for a large-scale nourishment project which is currently 300,000 cubic yards. There was a proposal to use a measure of 100 cubic yards per linear foot. After discussion, the subcommittee determined that it was best to stick with the 300,000 cubic yard. Once the development line is established and approved then it will not change unless the community wanted it changed. Any change would need to be reapproved by the CRC. Communities would continue to be subject to the more landward of either the development line or the existing graduated setback. The question was considered if there is a nourishment project and the community wants to do a development line, is it just the area that received the large-scale nourishment project or would the development line be for the entire community? After discussion, we determined that a development line would apply to the area that was nourished. At a minimum it must cover the nourishment area although a nourishment plan is not required in order to establish a development line. The subcommittee also talked about communities that have a line of oceanfront development and one or two houses out in front of the line. If a home is out in front of the development line, the line can be drawn landward of the home, but if the home were to be replaced, it would be required to be positioned behind the development line. Using adjacent properties to determine a development line would prevent seaward movement of homes. No development line can be created on a state beach. We also talked about using a development line survey. We plan to require what is currently used for the static line, on the ground observation or aerial imagery. Rule language was presented to the CRC setting forth procedures for establishing a development line.

Ken Richardson stated within this proposed language we also proposed changes to the DCM static line exception eliminating the 2,500 square foot maximum cap on structures and the five-year waiting period. Adjustments will be made to the development line procedures based on the Commission's comments.

Gwen Baker asked at this point in time have we heard Staff's concerns with this language and any points of divergence. Ken Richardson replied that at previous meetings we have discussed them. Commissioner Baker asked at this point is staff in concurrence with the language as it is currently written.

Director Davis stated we are always in a spot where we are directed to come up with language and folks will often say that it is DCM's proposal. When we are directed to write something it doesn't automatically mean that we support it. We have talked in past meetings about the Staff's position. Our concerns are that the vegetation line after renourishment can be artificial. The staff's position is the requirement that communities, like Bogue Banks, come before the Commission every five years to show that they have a good plan. We think Bogue Banks is a fantastic model and we hope other communities develop similar models looking at sand sources and financial resources into the future. As a result the Commission could grant the exception to the static line. Our proposal as an alternative was to fix the static line exception process by getting rid of the limitation on 2500 square feet, getting rid of the five-year waiting period, and by allowing the static line exception to be done for a number of communities on a regional basis. Those have been blended in here. The fundamental difference is the staff still believes in the static line exception process. We would like to see the commitment demonstrated to the Commission over time.

Frank Gorham stated we discussed this at the last meeting and we voted unanimously to go to the development line alternative. We spent a lot of time on this and staff has been very good about pointing out that we like the old version, but we will make changes based on the CRC's position. It is unfair to ask the staff if they support this. Renee Cahoon stated this is a way to offer flexibility and encourage communities to do more large-scale projects because they won't have to adopt the static line. The development line is under local control and the goal has been to allow the local expertise and tools at local disposal. Janet Rose stated all coastal communities are different and their needs are different. Neal Andrew stated some communities may not want to pursue this, but are they any communities or associations in the audience that would like to make any comments, either for or against the development line concept?

David Hewitt, Town Manager of Holden Beach, stated the Town is extremely interested in the application of the development line. Shane Johnson, Wilmington Regional Association of Wilmington; Robert Broom, NC Association of Realtors; John Brodman, Pine Knoll Shores Commissioner; and Heather Jarman, BASE, all spoke in support of the development line.

Gwen Baker stated I am interested in collecting public comment on this concept.

Neal Andrew made a motion to send the proposed amendments to 7H .0305, 7H .0306, 7J .1201 and proposed language for 7J .1301, 7J .1302, and 7J .1303 to public hearing. Renee Cahoon seconded the motion. The motion passed unanimously (J. Simmons, White, Baldwin, Andrew, Snipes, Lewis, H. Simmons, Cahoon, Gorham, Rose, Dorsey, Baker).

State Ports Inlet Management AEC – Beneficial Use, Sandbag Use & Boundary (CRC 15-08) Heather Coats

Heather Coats stated, in 2012 the General Assembly passed legislation that directed the CRC to study the feasibility of creating a new AEC for the lands adjacent to the mouth of the Cape Fear River. As part of this study, the Commission was required to collaborate with the Town of Caswell Beach and the Village of Bald Head Island to identify regulatory concerns and develop strategies for creating a more efficient regulatory framework. If the Commission deemed action was necessary, the General Assembly required it to eliminate overlapping areas and incorporate appropriate development standards into a single AEC. DCM met with the Village and the Town and the stakeholders in the area. A final recommendation of the Cape Fear study identified some issues, but noted that these issues may apply to other inlets as well. The CRC recommended rolling this study into a more inclusive study of all the inlets. This led to the inlet management study last year. DCM held four public meetings along the coast last April to gather input for the inlet management study and solicited public comments. The CRC then established short and long-term goals and priorities and recommended development of a new AEC for the State's two deep draft inlets, Beaufort and Cape Fear Inlets. The CRC took into account the priority placed on maintaining the federal channels for access to the State's ports, looking at erosion control measures, beneficial use of dredged materials, beach management and protection of coastal resources. Senate Bill 734 was passed into Session Law last year and removed these two inlets from the Inlet Hazard AEC. This led to the development of this AEC, the State Ports Inlet Management AEC. We met with the local governments last September and drafted proposed rules based on the CRC directive and local government comments. We sent the draft rules to the local governments, the Army Corps of Engineers, the State Ports, National Parks Service, and Fort Macon. We received comments back from the Army Corps of Engineers and State Ports. The CRC discussed these comments and related issues at its October and December meetings. Staff met with the Army Corps and State Ports in early February about their concerns. There has been a lot of discussion about beneficial use, but there is a lot more to creating this new AEC than dredging and sand placement. The CRC's goal in creating this new AEC is also to address erosion control measures and the protection of coastal resources. Setbacks would remain the same. There are changes to sandbag rules and a modification to the definition of imminently threatened. These rules would allow local governments to protect frontal and primary dunes, eliminate individual sandbag size restrictions and allow sandbags to remain in place for eight years regardless of whether the community is pursuing a large-scale beach renourishment or inlet relocation project. These rules will also allow for the use of geotextile tubes. These rules will require that sandbags be removed within 30 days if they are no longer warranted or their time has expired. The Village of Bald Head Island requested that this time frame be increased to 60 days. These changes for the sandbags rules would not fall under the conditions of a General Permit. A Major Permit would be required for any of these standards to apply. All other ocean hazard rules would apply. Boundaries also need to be discussed. One option is to use the Science Panel's proposed Inlet Hazard Area boundaries for these communities. During our meetings Carteret County envisioned the Science Panel's proposed Inlet Hazard Areas as the AEC boundary with a waterward extent out to the limit of state waters. Caswell Beach thought the boundaries should include all of Caswell Beach and Fort Caswell and Jaybird Shoals. The Village of Bald Head Island proposed the AEC to include all of South Beach. After discussion, the Commission supported the use of the proposed special sandbag provisions in these areas and directed the staff to come back with maps that depict the management area for these AECs.

There are a couple of alternatives for how to handle the beneficial use portion of the rules. The initial draft used language from the State's Dredge and Fill Law. The alternate proposal came from the Town of Caswell Beach and Carteret County which made a few changes and eliminated language relating to disposal in the shallow active nearshore area. There has been a lot of discussion about this and the Corps is opposed to both options. DCM has received a letter from the Secretary

of the Department on this issue. The Secretary's letter commended the Commission on its efforts to develop tailored management policies for these inlets and supported the goal of ensuring beneficial use of beach quality sand from the shipping channels. However, the Department stated that it has determined that there is adequate flexibility built into the current rule language for beneficial use in regards to these inlets and efforts should be directed at working with the Corps to update the DMMPs for these two ports in order to clarify language and procedures which could include cost sharing agreements. DCM also received a letter from the Department of Transportation which reiterated the State Ports' concerns and supported DENR in their opposition to the development of a rule that may reduce project flexibility and negatively impact future maintenance operations or emergency dredging operations that are critical to ensure safe navigation and commerce. DOT also supports development of cost sharing agreements between the Corps and stakeholders. The Corps concerns revolve around the removal of the nearshore disposal area and the requirement that all sand would be placed on the beach. The Corps has stated that this requirement will increase costs and fears that it would risk the funding for the port in Morehead City.

Director Davis acknowledged that the letter from DENR expresses concerns with the rule language which may put in jeopardy ongoing port dredging. The letter also discusses the 20-year Dredged Materials Management Plan which comes before the Division of Coastal Management for a federal consistency determination. Under the federal consistency rules, the Division can either agree that the plan is consistent with our coastal policies or find it inconsistent with our coastal program and object to it. If the Division objects, the issue would be addressed through a federal mediation process. I have been actively involved in the current draft DMMP for the Port of Morehead City and it should be completed this fall. The Division can condition a decision on our federal consistency concurrence on some key things. The letter from the Secretary also states that DENR and DOT will advocate to the Corps in its ongoing update to the DMMP for cost share arrangements that are more programmatic as well as that would include the possibility of placing sand in a larger beach template than has been considered before.

Chairman Gorham asked Commissioner Baker to hand deliver an invitation to the Corps to get a commitment for a meeting.

PUBLIC INPUT AND COMMENT

No public comments were received.

PUBLIC HEARING

15A NCAC 7H .0304 AECs Within Ocean Hazard Areas – Amendment
15A NCAC 7K .0213 – Repeal
Mike Lopazanski served as hearing officer. No comments were received.

With no further business, the CRC adjourned.

Respectfully submitted,

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary