

# NC COASTAL RESOURCES COMMISSION

October 22-23, 2014

Hilton Wilmington Riverside

Wilmington, NC

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

## Wednesday, October 22<sup>nd</sup>

### 10:00 COMMISSION CALL TO ORDER\* (Magnolia Room)

Frank Gorham, Chair

- Roll Call
- Chairman's Comments
- Introduction New Commissioners

Frank Gorham, Chair

Frank Gorham, Chair

### 10:15 VARIANCES

- Palm Cove LLC - (CRC-VR-14-09) Sunset Beach, Pier in IHA
- Town of Carolina Beach - (CRC-VR-14-10), Oceanfront setback
- Topsail Reef HOA - (CRC-VR-14-11) North Topsail Beach, Sandbags

Holley Snider, Christine Goebel

Robb Mairs, Jill Weese

Tara McPherson, Christine Goebel

### 12:00 LUNCH

### 1:15 VARIANCES

- Bugg - (CRC-VR-14-12) Salter Path, Oceanfront setback
- Toloczko - (CRC-VR-14-13) Nags Head, Oceanfront setback

Roy Brownlow, Jill Weese

Frank Jennings, Jill Weese

### 2:30 BREAK

### 2:45 PETITION FOR RULEMAKING

- Petition for Rulemaking Procedures (CRC-14-27)
- Petition for Rulemaking – Amend 15A NCAC 7H .0208(6) Piers and Docking Facilities – Second story use
- DCM Staff Recommendation (CRC-14-28)

Tancred Miller

Warren Eadus

Quible & Assoc.

Brian Rowe

David Moye

### 3:45 BREAK

### 4:00 Governor McCrory Comments to Coastal Resources Commission

#### Presentation of Coastal Issues to Governor McCrory

Frank Gorham

- Panel Presentations
  - Dr. Chris Dumas, UNC Wilmington – Economic Value of the Coast
  - Harry Simmons, Mayor, Town of Caswell Beach – Reduced Funding for Coastal Projects
  - Ken Wilson, Client Program Manager CB&I – Dredging Policies
  - Layton Bedsole, New Hanover Co. Shore Protection Coordinator – Dredging Policies
  - Willo Kelly – Flood & Wind Insurance
  - Todd Rosessler – Increasing Federal Regulations
  - Frank Gorham – Concerns with Offshore Drilling
- Commission Discussion

### 5:30 RECESS

### 5:45 CRC EXECUTIVE COMMITTEE MEETING (Magnolia Room)

## **Thursday, October 23<sup>rd</sup>**

### **9:00 COMMISSION CALL TO ORDER\* (Magnolia Room)**

- Approval of July 30-31, 2014 Meeting Minutes
- Executive Secretary's Report
- Chairman's Comments
- CRAC Report

Frank Gorham, Chair  
Frank Gorham, Chair  
Braxton Davis  
Frank Gorham, Chair  
Debbie Smith, CRAC Chair

### **9:30 ACTION ITEMS**

#### **CRC Rule Development**

- Fiscal Analysis 15A NCAC 7K .0208 Single Family Residences Exempted (*CRC-14-29*) Mike Lopazanski
- Fiscal Analysis High Hazard Flood AEC 15A NCAC 7H .0304(2) and Repeal of 15A NCAC 7K .0213 Single Family Residences Exempted from CAMA Permits Requirements within the High Hazard Flood AEC (*CRC-14-30*) Mike Lopazanski
- 15A NCAC 7H .0205 Coastal Wetlands – Occasional Flooding Criteria (*CRC-14-31*) David Moye

### **11:30 PUBLIC INPUT AND COMMENT**

### **11:45 LUNCH**

### **1:00 Land Use Planning**

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

Mike Lopazanski

### **2:00 Inlet Management**

- Inlet Management Study Priorities - Draft Final Report (*CRC-14-33*)
- Static Vegetation Line Alternatives (*CRC-14-34*)

Mike Lopazanski  
Ken Richardson

### **3:00 BREAK**

### **3:15 Inlet Management Cont.**

- State Ports Inlet Management Areas of Env. Concern – Draft Rule Language (*CRC-14-35*)
- Dredging Window Study Update
- Commission Discussion

Heather Coats

Suzanne Dorsey

### **4:15 NC Coastal Reserve Program**

- Program Overview
- Historical Perspectives

Neal Andrew  
Braxton Davis  
Dr. Jim Leutze

### **4:45 OLD/NEW BUSINESS**

Frank Gorham, Chair

### **5:00 ADJOURN**

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

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



N.C. Division of Coastal Management

[www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

Next Meeting: December 17-18, 2014; Beaufort



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

**MEMORANDUM**

**CRC-14-27**

**TO:** Coastal Resources Commission  
**FROM:** Tancred Miller  
**DATE:** October 8, 2014  
**SUBJECT:** Petition for Rulemaking Procedures

Under Article 2A of North Carolina's Administrative Procedures Act, G.S. 150B-20 (APA; attached), any person may petition a regulatory agency such as the CRC to create, amend or repeal a rule. DCM received a petition for rulemaking from Quible & Associates, P.C., on August 21<sup>st</sup>, 2014.

G.S. 150B-20 requires that regulatory agencies establish by rule the procedures that petitioners must follow in submitting petitions for rulemaking, and the agencies' procedures for granting or denying the petition. The CRC's rule describing how rulemaking petitions must be submitted and how they will be processed are at 15A NCAC 07J .0605 (attached). The petition for rulemaking roles and procedures are as follows.

**Petitioner**

Under 07J .0605, requests to adopt, amend or repeal a rule must be made in writing to the Division of Coastal Management, and must:

1. Specify it is being filed pursuant to G.S. 150B-20;
2. Include either a draft of the proposed rule or a summary of its contents;
3. Include a statement of reasons for adoption of the proposed rule(s);
4. Include a statement of the effect on existing rules or orders;
5. Contain any data in support of the proposed rule(s);
6. Include a statement of the effect of the proposed rule on existing practices; and
7. Include the name and address of the petitioner.

**Staff**

Under 07J .0605, DCM must place the petition on the CRC's agenda for the first meeting that occurs at least four weeks after the complete petition is received. DCM is responsible for verifying that the petition is complete and for preparing a recommended response to the petition for the Commission's consideration.

**CRC**

Under G.S. 150B-20 the CRC must grant or deny the rulemaking petition within 120 days after the date that it is submitted. If the CRC denies a rulemaking petition, it must send the petitioner a written explanation of the reasons for denial. If the CRC grants the petition, it must inform the petitioner of its decision and initiate rulemaking proceedings.

Denial of a rulemaking petition is a final agency decision and is subject to judicial review under the APA. If the CRC does not grant or deny a rulemaking petition within 120 days after receiving the petition that constitutes a denial of the petition.

Staff will review these procedures with the CRC prior to hearing the Quible & Associates, P.C. petition.

### **§ 150B-20. Petitioning an agency to adopt a rule.**

(a) Petition. -- A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. -- An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of text it publishes in the North Carolina Register may state that the agency is initiating rule-making as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) Review. -- Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(b).

### **15A NCAC 07J .0605 PETITIONS FOR RULEMAKING**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents;
- (2) a statement of reasons for adoption of the proposed rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) any data in support of the proposed rule(s);
- (5) a statement of the effect of the proposed rule on existing practices; and
- (6) the name and address of the petitioner.

(b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

*History Note: Authority G.S. 113A-124; 150B-20;  
Eff. January 1, 1989;  
Amended Eff. October 1, 1992.*

# Quible

Quible & Associates, P.C.

ENGINEERING • ENVIRONMENTAL SCIENCES • PLANNING • SURVEYING  
SINCE 1959

P.O. Drawer 870  
Kitty Hawk, NC 27949  
Phone: 252-261-3300  
Fax: 252-261-1260  
Web: quible.com

August 19, 2014

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

Re: Petition for Rule Making  
7H .0208 Piers and Docking Facilities

Mr. Braxton:

Please find attached a Petition for Rulemaking. This Petition concerns 7H .0208 and second story use of water dependent structures. After speaking with several representatives of the Division of Coastal Management (DCM) and a former member of the Coastal Resources Advisory Council (CRAC), I understand that the prohibition on second story use is not solely due to "view shed", but it's also an issue with regulating the enclosure of structures or the potential for enclosing structures.

While we appreciate the current position held by DCM, we do not feel that second story use deleteriously affects the environment or the view shed.

We are not proposing second story use for any other reason or purpose other than as an elevated platform, which would be allowed under the current rules.

Please review the attached materials and consider them as a formal request for a Petition for Rulemaking. Do not hesitate to contact me at 252.261.3300 if you have any questions or require any additional information to consider our Petition.

Sincerely,

Quible & Associates, P.C.



Warren D. Eadus, P.G.  
President

cc file  
Mr. Brian Rowe



## PETITION FOR RULEMAKING

Pursuant to G.S. 150B-20, Mr. Brian Rowe of 103 Poplar Branch respectfully presents the following Petition for Rulemaking:

### **Draft of Proposed Rule**

*7H .0208 (6) Piers and Docking Facilities (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;*

### **Statement of the Reasons**

Prohibition on second story use limits practical applications of second story water front uses (e.g. storage of kayaks and canoes underneath existing docks, use of upper decks for sunset or viewing platforms).

Gabled and pitched opaque roofs block the view shed as much if not more than a flat platform.

**It is not the intent of this rule change to allow for development of habitable structures over Public Trust Waters.**

### **Statement of the Effect on Existing Rules**

Second story use will be allowed in cases where this has not been allowed before. However, there are numerous examples of "Grandfathered" second story platforms along the North Carolina coast.

### **Data in Support of Rule Change**

The following information is provided in support of the proposed rule change.

1. **View Shed**

Please view the attached photographic exhibits showing roofed platforms and boat houses. There is no available evidence that a flat second story platform obstructs a view shed any more than an opaque pitched roof.

2. **Water Quality**

Open slotted wooden platforms do not concentrate or direct any additional stormwater runoff from the currently allowed uses. This use will not impact water quality differently than currently allowed uses.

### **Statement of the effect of the proposed rule on existing practices**

The proposed rule change will affect existing practices in that it will allow second story uses for water dependent structures. These uses should be limited to include only a second story platform. It is not the intent of this proposed rule change to include roofs over two stories or allow for any habitation or full enclosure of any water dependent structure.

### **Petitioners Name and Address**

Agent: Quible & Associates, P.C.  
Warren D. Eadus  
8 Juniper Trail  
Southern Shores, NC 27949

Petitioner: Brian T. Rowe  
103 Poplar Branch Road  
Poplar Branch, NC 27965

RECEIVED

AUG 21 2014

DCM-MHD CITY

*Petition for Rulemaking 7H.0208 Piers and Docking Facilities*  
*Photographic Exhibits*

RECEIVED  
AUG 21 2014  
DCM-MHD CITY

**103 Poplar Branch Road  
Subject Property**



**Roofed platform adjacent to  
Subject Property**



*Petition for Rulemaking 7H.0208 Piers and Docking Facilities  
Photographic Exhibits*

RECEIVED  
AUG 21 2014  
DCM-MHD CITY

**Roofed Pedestrian Access Platform  
Kitty Hawk Bay**



**Boat House  
Kitty Hawk Bay**

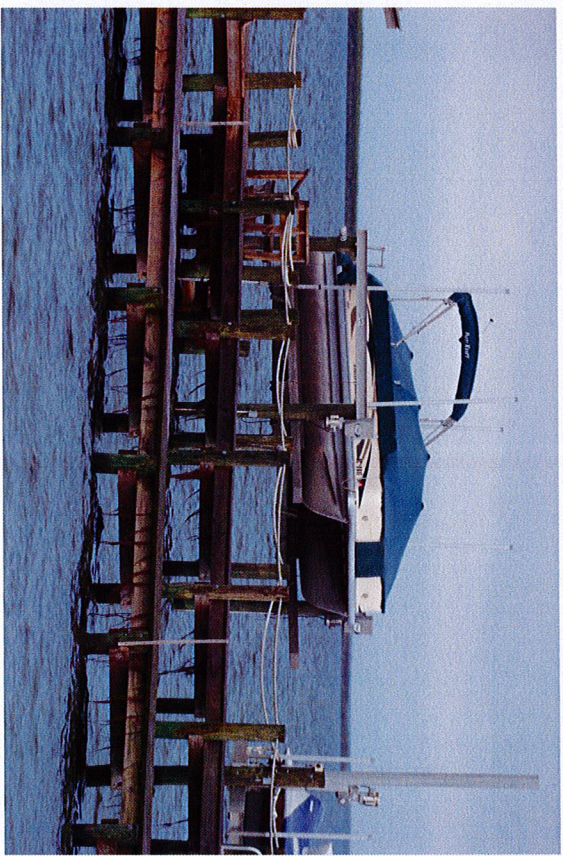




*Petition for Rulemaking 7H.0208 Piers and Docking Facilities*  
*Photographic Exhibits*

RECEIVED  
AUG 21 2014  
DCM-MHD CITY

**Boat Lift at end of pier  
Kitty Hawk Bay**



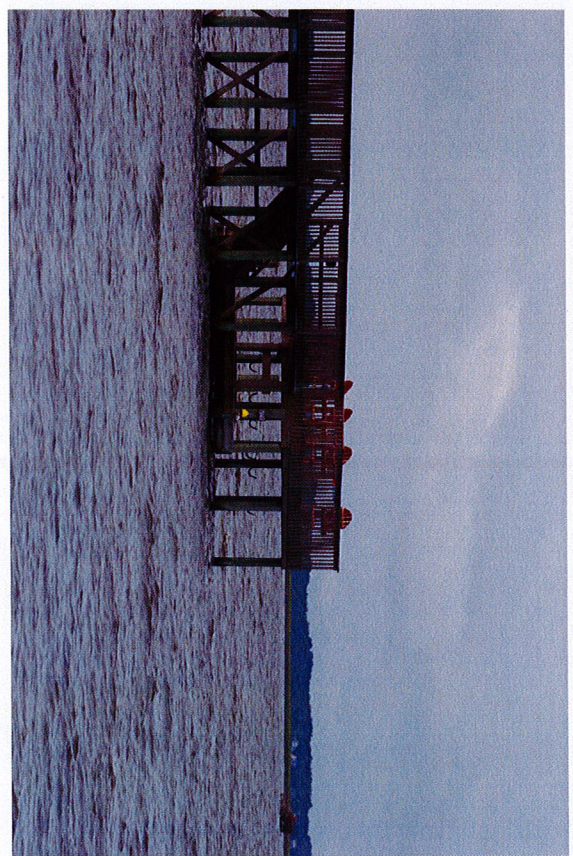
**Various styles of platform roofs/boatlifts  
Kitty Hawk Bay**



*Petition for Rulemaking 7H .0208 Piers and Docking Facilities*  
*Photographic Exhibits*

RECEIVED  
AUG 21 2014  
DCM-MHD CITY

**Second story use  
Kitty Hawk Bay**



**Various styles of platform roofs/boatlifts  
Kitty Hawk Bay**



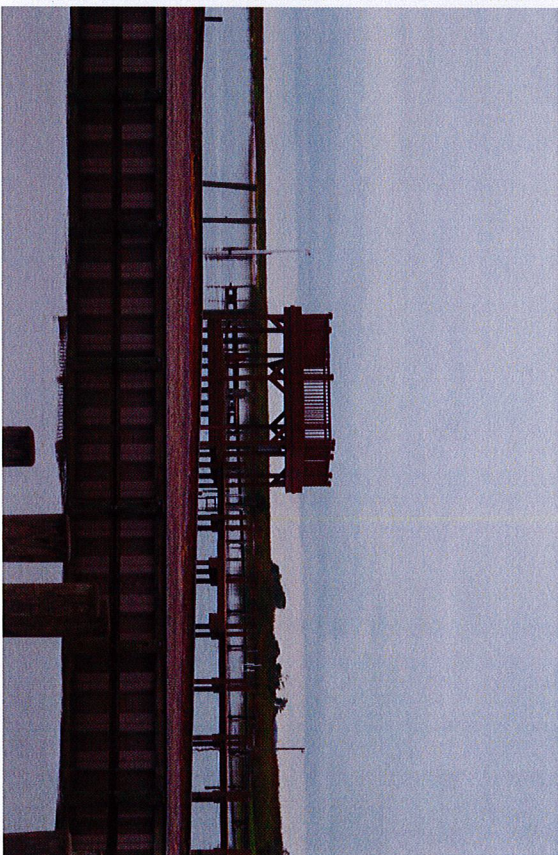
*Petition for Rulemaking 7H .0208 Piers and Docking Facilities  
Photographic Exhibits*

RECEIVED  
AUG 21 2014  
DCM-MHD CITY

**Second story use  
Kitty Hawk Bay**



**Subject Property  
Currituck Sound**





North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

CRC-14-28

MEMORANDUM

**TO:** Coastal Resources Commission  
**FROM:** David Moye, District Manager – Washington Regional Office  
**SUBJECT:** Petition for Rule Making to allow for Second Story Use  
**DATE:** October 8, 2014

On 19 April 2014, Warren Eadus of Quible and Associates, on behalf of Brian Rowe, submitted a petition for rulemaking to Braxton Davis, Director of the NC Division of Coastal Management. The petition referenced 15A NCAC 07H.0208 and the prohibition of second story use of water dependent structures. Mr. Eadus is requesting that the Coastal Resources Commission (CRC) remove the prohibition of second story use by eliminating 15A NCAC 07H.0208(b)(6)(F) which states "Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use". Although Mr. Eadus only requested the removal of the second story prohibition found in the .0208 use standards, the same language is in the Piers and Docking Facilities General Permit under 15A NCAC 07H.1205(n). The 7H.0208 use standard Mr. Eadus has referenced would only apply to projects authorized under a Major CAMA Permit which is subject to review by 13 various State and Federal Agencies.

Prior to 1998, second story use was not prohibited by CRC rule and various examples of second story use still exist in all four CAMA coastal districts covering all twenty of the CAMA counties (examples of second story use still existing will be presented during the CRC meeting). Beginning in 1995 the CRC undertook an exhaustive three-year review and discussion of the rules for piers, docks, boat houses, boat lifts, etc., in an effort to streamline the General Permit and to be reflective of what property owners were actually requesting when constructing these structures. Permitting data from 1995 covering all 20 Coastal Counties was analyzed to determine average pier length, width, platform size, number of slips, etc., and this data formed the basis for the proposed rule language that the Commission debated and modified.

During these discussions, staff presented proposed wording to the CRC that included language that decks, platforms and boat houses shall be single story and that they may be roofed but shall not be designed to allow second story use. The rationale given to the Commission was that restricting these structures to single story would reduce congestion as well as visual impacts to adjoining property owners. Additionally, the issue of converting second story uses into habitable structures which are non-water dependent was discussed, and at that time the CRC determined that the best way to prevent non-water dependent uses was to prohibit any second story uses.

It is important to note that the CRC's rules on Urban Waterfronts (15A NCAC 7H.0209(g)) do allow for second story uses and various permits have been issued in Urban Waterfronts within municipalities for second story uses. Since the rule modification in 1998 that prohibited second story use, no variance has been requested for second story use outside of an Urban Waterfront.

The Division recommends no change to the current rule prohibiting second story use as the findings of the Commission in 1998, visual impacts, waterway congestion and the possible conversion to non-water dependent uses still exist. However, if the Commission should decide to allow second story uses, staff recommends specific rule language be drafted to ensure that habitable structures and non-water dependent uses are not allowed. Staff looks forward to the discussion with the Commission.

**NC COASTAL RESOURCES COMMISSION (CRC)**

**July 30-31, 2014**

**NOAA/NCNERR Auditorium**

**Beaufort, NC**

**Present CRC Members**

Frank Gorham, Chair

Renee Cahoon, Vice-Chair

Neal Andrew

Larry Baldwin

Suzanne Dorsey

Greg Lewis

Jamin Simmons

Harry Simmons

John Snipes

**Present CRAC Members**

Jordan Hughes

Bill Morrison

Bobby Outten

Greg Rudolph

Debbie Smith

Ray Sturza

Dave Weaver

**Present Attorney General's Office Members**

Christine Goebel

Mary Lucasse

**CALL TO ORDER/ROLL CALL**

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

Angela Willis called the roll. Bob Emory and Marc Hairston were absent. The Chairman stated Bill Raney, attorney representing Petitioners in variance requests today, is a personal friend and also represents Figure Eight HOA but they have not discussed any of the items on the agenda. Neal Andrew stated he had a potential conflict with the CXA-10 Corporation variance request. Larry Baldwin stated he has a conflict with the CXA-10 Corporation variance request. Based upon this roll call Chairman Gorham declared a quorum.

**CHAIRMAN'S COMMENTS**

Chairman Gorham recognized the CRAC members present and thanked them for helping the CRC and the State of North Carolina.

## **VARIANCE REQUESTS**

### **CXA-10 Corporation (CRC-VR 14-05), New Hanover County, ¼ width rule Christine Goebel and Robb Mairs**

*\*\*Commissioners Baldwin and Andrew recused themselves from discussion and voting on this variance request.*

Christine Goebel of the Attorney General's Office represented Staff in the variance request filed by CXA-10 Corporation and stated that Bill Raney is present and will represent the Petitioners. Robb Mairs, DCM field representative, gave an overview of the property.

Ms. Goebel stated the CRC heard this variance request at the last meeting, and remanded it back to get a new survey. Ms. Goebel reviewed the stipulated facts of this variance request and stated additional stipulated facts have been agreed to since the new survey was completed. Petitioner seeks relief from 7H .0208 and would accept a condition terminating the pier extension at the negative five feet mean low water contour as it is shown on the 2014 survey. If the pier were only extended to the negative five foot contour then the pier would extend 49% across the back channel. Staff and Petitioner agree on one of the four statutory criteria which must be met in order to grant the variance request. Staff does not agree with Petitioner that strict application of the development rules cause the Petitioner an unnecessary hardship. The reduction from the six foot contour to the five foot contour does not significantly reduce the overall length and size and of the pier proposed. Staff contends that any hardship is a result of actions taken by the Petitioner. Staff's position also remains that this variance request does not meet the spirit, purpose and intent of the CRC's quarter-width and rate to deep water rules. While this proposal is some improvement over the six foot depth contour, Staff continues to have concerns that public safety and welfare will be impacted by the large amount of public trust area taken up by this large structure. Staff also does not believe that substantial justice will be preserved by the granting of a variance that goes 49% across the waterbody.

Bill Raney of Wessell & Raney stated the new water depth survey was completed and there isn't much difference between what was reported in 2010 and what is reported in the June 2014 survey. Petitioner believes the hardship is the inability to effectively utilize a large, valuable marina facility that was built in good faith. There was either a gross error in the earlier survey of water depth or there was an incredible amount of siltation in a period of about five years that created the current conditions. We do agree with the Staff's position that this property is peculiar. The hardships do not result from actions taken by the Petitioner. The Staff indicates that the Petitioner bought this property knowing the problems. The General Assembly in 2013, passed legislation that adopted the same four standards for variance for local governments and specifically included language that said the act of purchasing property with knowledge that circumstances exist that may justify granting the variance shall not be regarded as a self-created hardship. It is our contention that simply buying the property knowing that there may be a problem is not a self-created hardship. The hardship is a result of the shallow water depth. Petitioner contends that this variance request is consistent with the spirit, purpose and intent of the Statute. Staff would have you believe that the amount of area that is occupied by the structure is one of the purposes of this rule. Petitioner contends that the purpose is to preserve navigation, fishing and other public trust rights. We are asking the CRC to approve the variance request as originally proposed, but if that is not acceptable then we would accept the condition of the five foot contour limitation.

**Frank Gorham made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission does not cause the Petitioner an unnecessary hardship. Harry Simmons seconded the motion. The motion passed with five votes in favor (Dorsey, Cahoon, Lewis, J. Simmons, Snipes) and two opposed (Gorham, H. Simmons).**

**Frank Gorham made a motion to support Staff's position that hardships result from conditions peculiar to the petitioner's property. Suzanne Dorsey seconded the motion. The motion passed with five votes in favor (Dorsey, Cahoon, Lewis, J. Simmons, Snipes) and two opposed (Gorham, H. Simmons).**

**Frank Gorham made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Suzanne Dorsey seconded the motion. The motion passed with five votes in favor (Dorsey, Cahoon, Lewis, J. Simmons, Snipes) and two opposed (Gorham, H. Simmons).**

**Frank Gorham made a motion to support Staff's position that the variance request will not be consistent with the spirit, purpose or intent of the rules, standards or orders issued by the CRC, will not secure the public safety and welfare; and will not preserve substantial justice. The motion passed with four votes in favor (Dorsey, Lewis, J. Simmons, Snipes) and three opposed (H. Simmons, Gorham, Cahoon).**

This variance request was denied.

## **LAND USE PLANNING**

### **Regulatory Reform & Review/Expiration of Existing Rules (CRC 14-18)**

#### **Mike Lopazanski**

Mike Lopazanski stated the CRC, as well as all State agencies, has been legislatively mandated to review all current rules. All rules are governed by the Administrative Procedures Act (APA). In 2013, the General Assembly passed a new provision in the APA which requires the review and/or expiration of existing rules. Prior to 2013, rules did not expire. All rules must now be reviewed every ten years. Any rules that are unnecessary will expire. Any rules that are deemed necessary with substantive public interest must be readopted. Rules that are deemed necessary but without substantive public interest do not need to be readopted and will not expire. Most of the CRC's rules will need to be reviewed by the end of 2018. The 7B guidelines will be reviewed first. Once we have categorized our rules, the Office of Administrative Hearings (OAH) will post this report on their website for a 60-day public comment period. At the close of this comment period we have to respond to any objections received on any rule. The final report will include the comments received and our response to them. The Rules Review Commission (RRC) will review our report and comments. RRC can either agree or disagree with the CRC's determination. Following the RRC's assessment, the report goes to the Joint Legislative Administrative Procedures Oversight Committee. The final determination on the rules will become effective following this review. The 7B Guidelines have to go through the process by December 2015.

### **Overview of CAMA Land Use Planning Program (CRC 14-24)**

#### **Charlan Owens**

Charlan Owens stated this presentation will provide a general overview of North Carolina's Coastal Land Use Planning program. In 1974, the N.C. General Assembly passed the Coastal Area Management Act (CAMA). CAMA established a cooperative program of coastal area management



between local and state governments. Under CAMA each of the 20 coastal counties is required to develop and adopt a land use plan. Municipalities within the 20 coastal counties are not required to have a land use plan; however they may be delegated planning authority if they are currently enforcing a zoning ordinance, subdivision regulations and the State Building Code. Otherwise, they are considered to be part of the County's land use plan. The state's coastal program employs a two tiered approach to managing the coastal resources. Critical resource areas designated as areas of environmental concern comprise the first tier. DCM regulates activities in those areas through CAMA permits. CAMA permits are required to be consistent with an approved local CAMA land use plan. The second tier consists of the non-AEC areas. These areas are managed through a coordinated effort with other state laws, local land use plans and the requirement for state agency actions to be consistent with the local land use plan. CAMA local land use plans require approval of the CRC to become effective. Plans are reviewed for consistency with the CRC's planning guidelines and the requirements of CAMA. The CRC also has the authority to prepare and adopt a county land use plan if a county chooses not to exercise its planning initiative. The CAMA jurisdiction covers 14,000 square miles which are made up of 118 local governments. Prior to the adoption of CAMA, most rural counties and small towns had no comprehensive plans. Many local governments were opposed to planning as the regulation of private property was unpopular. Land use planning was seen as a key component of N.C.'s coastal program. In the development of land use planning rules, the CRC adopted standards and procedures, public participation requirements, analyses and minimum issues to be addressed. Local governments were responsible for developing the policies to address the minimum issues as well as those dealing with community character and traditional land use concerns. The initial planning rules came into effect in 1975 and were amended in the 1990s. The current planning rules came into effect in 2002. To date, there are approximately 60 locally adopted and state certified land use plans in the coastal area. These plans are periodically amended or updated as necessary by the local governments. Up until the early 2000s the planning program focused on providing grant funds for planning and management projects. After 2002, all grant monies were allocated to assist local governments in completing the land use plans. The grant monies for land use plans and management projects have not been available since that time. The CRC's land use planning rules are commonly referred to as the 7B and 7L rules. 7L rules address land use plan requirements for communities that received grant funds to prepare a land use plan. 7L rules also outline DCM technical assistance. DCM provides opportunities to educate the local officials about land use planning rules, provide maps and data to assist with the development of plans, review plans for technical accuracy and consistency with CRC requirements, and provide notice to the CRC and other state/federal agencies that the plans are available for review and comment. 7B rules provide the general direction for plan development. Elements of the plan include the identification of community concern and aspirations, an analysis of existing and emerging conditions, a plan for the future and identification of the tools that will be used to manage development locally. Land use plans are required to address land use plan management topics. 7B also addresses the public hearing requirements for local adoption and the process for amendments to the plan. The CRC's primary role in land use planning is the certification of land use plans and plan amendments as outlined in 7B. The CRC certifies plans and amendments that are consistent with the CRC rules, do not violate state or federal law, contain policies that address each land use plan management topic, and are found by the local government to be internally consistent. In addition to certification of a land use plan, the CRC can also take a non-certification or conditional certification action. Under non-certification the local government is notified within 30 days as to how the plan may be changed so that certification can be granted. Under the conditional certification, the Executive Secretary determines compliance within 30 days. The CRC also reviews minor amendments. The CRC may prepare and adopt a county land use plan if a county chooses not to prepare and adopt a plan that meets the plan requirements. Land use plans are required to address

land use plan management topics to ensure that they support the goals of CAMA, meet the CRC's expectations for the land use planning process, and give the CRC a substantive basis for review and certification of the plans. Incorporating the management topics into the local land use plans ensures that the state's coastal management goals are factored into the local decision making in both the critical resource areas and the non-AEC jurisdictional areas of the coast.

### **CAMA Land Use Planning Workshop Summary (CRC 14-25)**

#### **Mike Christenbury**

Mike Christenbury stated the Division held two regional workshops. The first was held in Wilmington in October 2013 and the second was in Plymouth for the northern coastal areas in May 2014. We had approximately 120 people participate from local governments and other stakeholder interest groups. DCM held these workshops in partnership with the Business Alliance for a Sound Economy (BASE), the Albemarle-Pamlico National Estuary Partnership (APNEP), and the North Carolina Coastal Federation (NCCF). The purpose of the workshops was to seek input from local elected officials as well as local staff regarding the 7B CAMA land use planning guidelines, to discuss opportunities for greater technical assistance as well as streamline plan reviews and to reduce local planning burdens, to improve local government coordination, and to discuss a new direction for the planning program. We gave an overview and history of the land use planning program and then discussed how plans are used at the state level. We also talked about technical outreach that the Division is considering. Attendees were then able to participate in a panel discussion including a question and answer session. Participants were then split into break out groups for more facilitated discussion and were able to present recommendations from their group. Feedback included the need for more technical assistance, a need for updated data and mapping, the need for more training opportunities and an updated DCM technical manual. We also heard a strong need to streamline the process. We heard that plans in our current rules are too analysis driven in some cases. There is also a desire from local governments that DCM funding for land use planning grants be restored. Overall the general theme was a desire that the planning program continue and the recognition of the value of keeping land use plans up to date.

### **Recommendations/Future Directions**

#### **Braxton Davis**

Braxton Davis stated I had directed staff to do some outreach, pull together a review of past permit decisions, and do an analysis of the types of plans that we had approved. Many states have a comprehensive planning act of some kind and North Carolina does not. CAMA was the first state-level comprehensive planning requirement. The local governments have evolved significantly. The initial requirements of the Statute have been achieved and there is no specific requirement for updates. The planning grants are no longer available so where do we go from here? Rather than being seen as an unfunded mandate, I am interested in what it would take for communities to want to line up at the door to work with DCM on coastal issues. What kind of technical assistance or targeted assistance can we provide so we are doing a meaningful exercise that communities want to be involved with? I have provided six recommendations for each Commissioner's consideration. The first is the review of the 7B rules. We need to have a lot more flexibility for plan contents. 7B is very prescriptive and there are things in there that are redundant. During the review of 7B we can loosen this up to where communities can target their planning activities around something they are interested in working on. The second is to clarify that updating land use plans is voluntary. The third proposal for consideration is the state's role in enforcement of local policies for their area. There was an interest in continuing the planning process. There may be a statutory change needed. This could be a more voluntary process and give communities the opportunity to "opt out" if they do not want us to review their plan as part of the permit review process. The fourth proposal would

be to streamline the plan approval, amendment and update process by the CRC delegating the review and approval of local plans to DCM staff. Staff could establish a reduced, fixed time frame for plan reviews and decisions similar to those established for CAMA permits. The fifth proposal would be to integrate land use planning with other local requirements. This would assist local governments with some of the overlapping requirements at the local level. The final proposal for consideration would be to improve the DCM technical manual. The existing manual was designed to assist communities in meeting the requirements of 7B and 7L. This manual should be shortened, streamlined and revised to be more user-friendly and to focus on coastal issues that communities face.

Chairman Gorham directed the CRAC to go back to their local communities and ask if the land use plans are a benefit.

### **Town of Leland Land Use Plan Certification (CRC 14-21)**

#### **Mike Christenbury**

Mike Christenbury stated the Town of Leland is requesting a certification of the Leland CAMA land use plan. The Town is located in northeastern Brunswick County to the west of downtown Wilmington. The land use plan covers only the areas included within Leland's municipal boundaries. The Town organized two major public participation processes including public meetings at the outset of the development of the LUP and a community workshop. The Town held a duly advertised public hearing and voted by Resolution to adopt the land use plan. DCM staff has reviewed the LUP and has determined that the Town has met the substantive requirements in the 7B land use plan guidelines and that there are no conflicts with either state or federal law or the Coastal Management program. Staff recommends certification.

**Larry Baldwin made a motion to certify the Town of Leland's Land Use Plan. Greg Lewis seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **Onslow County Land Use Plan Amendment (CRC 14-22)**

#### **Mike Christenbury**

Mike Christenbury stated Onslow County is seeking certification of an amendment to the Onslow County Comprehensive Land Use Plan. That Plan was previously certified on January 13, 2010. The County amended the LUP to improve clarity and internal consistency within the Plan and to reflect changes in Onslow County's zoning ordinance as well as to illustrate changes in the boundaries in the County's planning jurisdiction on the Future Land Use Map. Onslow County held a duly advertised public hearing and voted unanimously by Resolution to adopt the Land Use Plan amendments. DCM staff has reviewed the amendments and has determined that the County has met the substantive requirements in the 7B land use plan guidelines and that there are no conflicts with state or federal law or the Coastal Management program. Staff recommends certification of the amendments. Tim Richards, Planner with the Onslow County Planning and Development Department, is present on behalf of Onslow County.

Chairman Gorham asked Mr. Richards about the amendment process. Mr. Richards replied that the process is fairly painless. The amendments are mostly correcting some internal inconsistencies, updating it with regards to zoning ordinance changes. It was also a minimal cost to the County. The DCM staff review of the amendments is valuable. I don't know if the CRC taking its time to review the amendment adds value or not, but it is appreciated.

**Renee Cahoon made a motion to certify the Onslow County Land Use Plan amendment. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **MINUTES**

**Larry Baldwin made a motion to approve the minutes of the May 2014 Coastal Resources Commission meeting. Harry Simmons seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Dorsey, Lewis, J. Simmons, H. Simmons, Snipes).**

### **EXECUTIVE SECRETARY'S REPORT**

Braxton Davis, DCM Director, gave the following report:

You should have before you the DCM update report that covers the Division's recent permitting, enforcement, rule development, planning and Coastal Reserve activities that is provided at each meeting. Hopefully you will get a chance to scan through this to see some of our status and trends from the last fiscal year, which ended June 30, to get a feel for ongoing projects and activities across the Division. Overall, our permit numbers were down in comparison with the prior year. We believe this is partly due to the winter weather conditions we experienced this year and because we were still issuing Hurricane Sandy emergency permits in early 2013. Our average issuance time over the most recent period held steady for CAMA Major Permits, but we are still well below historical averages after a number of procedural changes we have implemented over the past few years.

DCM's policy and planning section has been busy in carrying out your inlet management study, including the development of a draft report for the Commission that outlines what we learned from the series of public meetings across the coast, the expert panel from February's meeting, the public comments we have received along the way and additional analysis by staff. We look forward to discussing your priorities for rule changes or other measures that can improve inlet management in North Carolina during this meeting. Our policy staff are also continuing work on a pilot study focused on the Bogue Banks Master Beach Nourishment Plan and working through ongoing rule changes. I am happy to announce that three of the four rule changes that were intended to reduce regulatory burdens that were identified last year will go into effect August 1. There is one more on this meeting's agenda and we will also ask you to consider a new proposal to eliminate the High Hazard Flood Area of Environmental Concern beachfront jurisdiction, which I believe is redundant with other federal, state, and local regulatory programs and is unnecessarily costing time, energy, and money for citizens as well as state and local staff that are implementing the AEC. Planning staff have been busy administering the Public Beach and Coastal Waterfront Access grant program and summarizing the results from the regional workshops to conduct the comprehensive review of the CAMA land use planning program. Tancred Miller will be heading up our five year strategic planning effort, which we commonly refer to as our 309 Assessment and Strategy. This makes us eligible for program enhancement grants from our federal partner, NOAA. Also this year, the Coastal Reserve program will begin its five year Management Plan update for the four sites that make up the North Carolina National Estuarine Research Reserve. We will keep you posted as that process develops.

A number of Commissioner's appointments expired on June 30. Commissioners serve a four year term and the initial terms were staggered. Commissioners with terms expiring this year include Commissioners Lewis, Andrew, Cahoon, Wynns, Emory, Snipes, and Hairston. Appointees are asked to serve until reappointed or a new appointment is made. The Governor's office is hoping to

have new appointments or reappointments announced soon. We are planning for the next Commission meeting to be held in Wilmington on October 22-23.

### **CHAIRMAN'S COMMENTS**

Chairman Gorham stated there are currently 11 Science Panel members and 4 vacancies. I have decided, with the support of the Executive Committee, not to make any Science Panel appointments until after the Sea Level Rise Study. We have a qualified Panel and have a technical peer review group that will look at the Report. I have been asked to reconsider this decision by various groups, but I am sticking with the decision.

### **LEGISLATIVE UPDATE**

Braxton Davis stated there was a compromise budget released last night. The votes needed to approve it will take place over the next few days. DCM does not have any targeted changes to the budget, but there will be a two percent across the board cut to state agency budgets. We have had a series of these cuts and this will be more of a hold that may depend on revenues. We have identified our ability to do this. The budget has some other provisions relevant to CAMA and the CRC. The first is the provision that originally allocated 15 million dollars to acquire federal land surrounding Oregon Inlet to manage existing and future transportation corridors on the Outer Banks and create a State Park at Oregon Inlet. The next was a Coastal Beach and Waterfront Access Fund in the budget to store funds that formerly came from PARTF based on real estate transfer fees. It is now a recurring appropriation. Also in the budget is a provision that would allow the Governor after the declaration of a state of emergency to waive state environmental review requirements for the repair or replacement of bridges and roads along Highway 12.

The Senate passed a Regulatory Reform Bill (S734) that included CAMA provisions. The House made significant changes and stripped out all of the environmental provisions in the Bill. The House created its own substitute Bill called Amend Environmental Laws (H761). This passed the Senate Rules Committee but has not been acted on by full Senate. This Bill has a provision to repeal existing inlet hazard areas in areas that are the former location of an inlet that has been closed for at least 15 years where the location no longer includes the current location of the inlet or the location includes an inlet providing access to a State Port via a channel maintained by the Corps of Engineers. There is another piece that changes the contested case rules. It removes the automatic stay on a permit that has already been issued during the review by the Chairman in third party appeals. DCM has recommended changing the timeframe for the Chair to make a decision to 20 days.

### **CRAC REPORT**

Debbie Smith, CRAC Chair, recognized CRAC members present. The CRAC reviewed and adopted the by-laws of the CRAC. The CRAC had received several comments on the inlet management study. Comments included support for changing the terminology from inlet hazard to inlet management to inherently acknowledge that although there may be issues associated with development near inlets; these issues can be managed and are not always necessarily a hazard. Comments also addressed reconsidering the standard for what constitutes an imminently threatened structure as the present 20 feet is sometimes a remedial measure and a modification to that might give greater success in protection of structures. Stockpiling dredge material for placement in the littoral drift makes more sense when disposal is the most economical fashion and may be beneficial to stockpile even fine dredge material for emergency use. There was support for the Chairman's proposed language for use in State Dredge and Fill Act requirements. There was support for using

separate management plans and techniques for each of the State's inlets since clearly one size does not fit all. There was a request for consideration to be given to being able to sandbag vacant lots when they were located between two imminently threatened structures to give a better protection line until a long-term solution could be found. The CRC asked us to look at considering the skills needed on the CRAC. The CRAC identified the need for a coastal business person and an economist.

Chairman Gorham stated that he would like the CRC to consider Jett Ferebee for appointment to the CRAC. I have talked about this with the Executive Committee. Jett is a coastal business person. Frank Jennings and Debbie Smith spoke in favor of Mr. Ferebee's nomination.

**Renee Cahoon made a motion to appoint Jett Ferebee to the Coastal Resources Advisory Council. Harry Simmons seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **SCIENCE PANEL**

#### **Initial Science Panel Meeting – IHAs & Sea Level Rise Study**

Dr. Margery Overton, Science Panel Chair, stated the Chairman charged the Science Panel with getting started on the Sea Level Rise Report with guidelines that the Commission is well aware of. We recently had our first meeting and will provide a report by the end of December so it is available for review. There is a legislative deadline of March 31, 2015. We will have a minimum of one meeting per month and intend to work during the meetings as a committee of the whole. Much of the fall will be devoted to the Sea Level Rise Report. During the first meeting we spent time discussing procedurally what the request was and the limitations and differences from the first report. Then we started looking at the data. There is an explicit mandate for us to spend considerable time with data that is North Carolina based. We brought up the NOAA tide gauges in North Carolina and I would recommend that the CRC keep up with the data and reports that we are looking at so you can see what we are looking at as we go. We are interested in the difference in the trend between the Duck gauge and the Wilmington gauge. The best that we can discern at this point is that it has to do with subsidence in the northeast. That is not as clearly documented because of the quality and the kind of data you need for that. We all need to be aware of the quality of the data. The Duck gauge is nearly continuous for 30 years. We have a couple of gauges in North Carolina where data was collected, then there was a gap and then data was collected again and trend over time is recorded. We are looking at both the spatial location of the gauges and the temporal data that is available as well as the analysis that goes into determining what the rate is. Our next meeting is scheduled for the end of August.

#### **Science Panel Nominations & Study Process (CRC 14-19)**

##### **Tancred Miller**

Tancred Miller stated that Greg "Rudi" Rudolph was the only new member appointed to the Science Panel and no other new members will be appointed until the Sea Level Rise Study is complete. The process will be accelerated by about three months from what H819 required. The initial draft from the Panel will be to the CRC by the end of 2014. That draft then goes to the technical peer review team of Drs. Houston and Dean. Their comments will be sent to the Science Panel and the Science Panel will comment. The final report will be before the CRC by the end of March 2015. All of these documents and reviews will be released to the public and will be available on DCM's website. There will be a public hearing at the first CRC meeting following the March deadline as well as an extended public review and comment period. The final report will include an economic analysis and is due to the Legislature by March 1, 2016. All parties have reviewed this process and have all

agreed to the timeline. The Science Panel met last week and the next meeting is August 28 in New Bern. Science Panel meetings are open to the public and comments are accepted at the meetings. We are grateful to Science Panel for what they do for the CRC, DCM and the State.

### **CRC RULE DEVELOPMENT**

#### **Adopt 15A NCAC 7H .2600 General Permit for Mitigation & In Lieu Fee Projects**

##### **Mike Lopazanski**

Mike Lopazanski stated this General Permit was created to facilitate projects completed by the EEP and the Wetland and Restoration Program. These projects generally require a lot of upfront agency coordination. Because of this level of involvement by CAMA staff we were comfortable enough to create a General Permit. Over the last few years the EPA has changed the guidance on compensatory mitigation banks and in lieu fee projects and now all projects need to go through this extensive agency coordination. Due to our staff involvement we are making amendments to allow all mitigation banking and in lieu fee projects eligible for the General Permit. We are extending the permit from six months to one year to address seasonal planting issues and we have deleted a list of eligible activities to open it up to foster new ideas and techniques. The public hearing for this amendment was held at the May CRC meeting and no comments have been received.

**Harry Simmons made a motion to adopt amendments to 15A NCAC 7H .2601, 7H.2602, 7H .2604 and 7H .2605. Larry Baldwin seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

#### **Repeal of the High Hazard Flood AEC 15A NCAC 7H .0304(2) (CRC 14-20)**

##### **Mike Lopazanski**

Mike Lopazanski stated this AEC is connected to the oceanfront. The High Hazard Flood Area AEC is the area subject to high velocity waves and is identified on the FEMA FIRM Map as V-Zones. The High Hazard Flood AEC was not one of the original AECs established by the Commission in 1979. When they looked at implementation of the AEC there was a need identified to provide some consistency in construction standards on the oceanfront. The Commission wanted the construction standards consistent with the National Flood Insurance Program. The High Hazard Flood AEC requires compliance with the North Carolina Building Code, the Coastal Floodplain Construction Standards, the Local Flood Damage Prevention Ordinances, and it requires that structures be supported on pilings. The intention of this was to provide stability to the structure during major storm events where there could be massive fluctuations in ground elevations and to prevent building collapse. After the hurricanes of the 1990s, FEMA redid the V-Zones and updated the FIRM maps. There was a fairly large expansion of the V-Zones. The expansion of the V-Zones resulted in an expansion of the CRC's permitting jurisdiction because the High Hazard Flood AEC is defined as the V-Zones on the FIRM maps. The NC Building Code has standards related to coastal high hazard flood areas and references the CRC's Ocean Hazard Areas regarding construction and setbacks within these areas and also references the Army Corps' Floodplain Areas. The Building Code also has standards for piling supported structures including piling composition, dimensions, and minimum penetration depths. All structures that are built in the V-Zone need to comply with the Building Code and the local Flood Prevention Ordinances. Recognizing the expansion of the V-Zones, the CRC created an exception for single family residences. The exemption states that no CAMA permit would be required if the proposed development is not located in the Ocean Erodible Area (the area where structures are subject to setbacks based on the vegetation line), the residence is constructed on pilings and complies with the NC Building Code as well as the local Flood Damage Prevention Ordinances, and the proposed development does not

require any other state or federal authorizations. The exemption letter costs \$50. These are generally handled by the Local Permit Officers. In considering repeal of this AEC, note the CRC rules already refer to the Building Code, the Flood Insurance Program and local ordinances. This is a case where the rest of the world has caught up to what the CRC has been requiring for the last 35-40 years. If the High Hazard Flood AEC is removed, approximately 15,000 properties will be removed from this jurisdiction. Because of the extensive nature of the V-Zones there will still be properties subject to CAMA jurisdiction because they are on the estuarine shoreline. Removing the High Hazard Flood AEC will not have an effect on the Ocean Erodible Area, the Inlet Hazard Area or setbacks. It will also not affect the CRS credits that communities currently get under the NFIP. Currently, during construction in the Ocean Hazard Area, CRC rules require the property owner to sign an AEC Hazard Notice. If the High Hazard Flood AEC is repealed, this requirement would be eliminated.

**Jamin Simmons made a motion to send 15A NCAC 7H .0304 to public hearing. John Snipes seconded the motion. The motion passed unanimously (Baldwin, Dorsey, Andrew, H. Simmons, Cahoon, Gorham, Lewis, J. Simmons, Snipes).**

### **2016-2020 Coastal Program Assessment and Strategy**

#### **Tancred Miller**

Tancred Miller stated the 309 Program is a very important part of the Coastal Program and is essential in the way that we are able to work and serve the Commission. The 309 Program is one of the sections of the Federal Coastal Zone Management Act (CZMA). The CZMA was passed by Congress in 1972 and is a federal umbrella legislation that authorizes all of the coastal states and Great Lakes states to have coastal programs. CZMA provides funding through various mechanisms to the states. Section 309 is the Coastal Zone Enhancement Grant Section. The 309 Section is voluntary and encourages states to look at ways to improve their coastal program. To be eligible, the state must have a NOAA approved five-year assessment and strategy and it must be aligned with one of nine enhancement objectives that are defined by NOAA. Every five years the state has to perform a self-assessment to identify opportunities to improve the program over the next five years. NOAA provides funding to the states to implement strategies. This is grant funding that is non-matched and awarded on an annual basis in consultation with NOAA. In addition to the 309 funding, there is funding available under the Project of Special Merit funding. NOAA has decided that coastal hazards will be a national priority for the next five years. Funds are awarded to the states under a formula that is relative to the size of the coastal population and the length of the shoreline. North Carolina, because of the length of our shoreline, is eligible for more money. Over the last ten years we have received between \$380,000-\$425,000 per year for the program. This money goes towards staff salaries, travel, supplies, equipment, and contracts. As a part of this assessment process, the CZMA encourages states to talk to stakeholders and find out how the state can work to improve the coastal program. Once the strategy is drafted, the public has an opportunity to review the strategy and offer comments to NOAA. We are now beginning the stakeholder process. By this fall we will draft the assessment and strategy and then in February of 2015 it will be released for public comment. In April we will review the comments and make final revisions to the assessment and strategy and send to NOAA by June 1. The immediate task is identifying the key stakeholders and engaging them to determine what we want to do for the next five years.

Chairman Gorham stated Larry Baldwin will be the CRC representative for the 309 Coastal Program Assessment and Strategy process. Debbie Smith will assist DCM staff in stakeholder outreach if needed.



## **PUBLIC INPUT AND COMMENT**

Bill Price made several observations during the public comment period regarding sea level rise and the Science Panel.

## **INLET MANAGEMENT**

### **Dredging Window Study Overview/Update**

**Ken Willson & Brad Rosov, CB&I**

Ken Willson stated for the last year and a half we have talked informally with an ad hoc group. In North Carolina there is an increase in local communities involved in beach nourishment, some of which stems from the reduction of federal funding. When a community is paying for 100% of a project and has full control of the project, it begins looking at possible cost savings. One way to decrease cost is have a longer window to dredge. We heard from the dredging industry that it is tough to work in North Carolina in the winter season. If dredging could take place in the summer when the sea conditions are more favorable, then the costs would go down. Nags Head is a great example. The bids for the Nags Head project were significantly less. Improvements in technology over the last few decades have shown that a limited or reduced threat to the protected resources is possible.

Environmental windows are those periods of the year when dredging and disposal activities may be carried out because regulators have determined that the adverse impacts associated with dredging and disposal can be reduced below critical thresholds during these periods. There is overarching documentation that defines dredge windows. A technical paper put out by the Corps of Engineers stated that certain environmental windows have been imposed despite the existence of technical information contradicting the stated technical basis for the restrictions. In 2001, the NRC stated that some decisions appear to be based on outdated data and information, others on the authority of the resource agency, and only a few on scientific observations. Economic and project considerations appear to have been given minimal consideration in the majority of the cases reviewed. In 2009, EPA made a statement that environmental windows which are inconsistent or over-restrictive are likely to continue to be recommended until sufficient technical data become available on which to make a rigorous technical evaluation of the actual need for a given window. EPA has stated that they know that the windows are ultra conservative, but they need technical data to back up any change to the windows. Our ad hoc group came together to develop a white paper that would include information comparing the economic impacts between dredging in the winter versus dredging in the summer, to determine the effectiveness of existing conservation measures currently employed for projects, and to assess the potential environmental impact to biological resources. We plan to make this information available to coastal communities. This would open a dialogue with state and federal resource agencies. This could also contribute to the statewide programmatic biological opinion as it relates to dredge windows. We could not find language that says dredging cannot be done in the summer months. NMFS and USFW services have used the available data to set up windows they will recommend when they are asked to comment on specific projects. In the case of the onshore effects of sea turtle nesting, NMFS recommends that these projects not be constructed during the established nesting and hatching season for sea turtles which is May 1 until the middle of November. These are not moratoria, these are recommendations that specific resource agencies make to the permitting agencies. We also have a section on economic analysis. We used existing projects and cost estimates that the Corps had already designed. We used some efficiency curves that the Corps came up with for the Dare County and Kure Beach projects. We use these curves to assess the reduction in costs if we had carte blanche approval for 12 months out of the

year to construct these projects. One of the effects that is evident in the 40% reduction in the initial construction costs for the southern Dare county project is this project is scoped out to be constructed in multiple year cycles. If you could work start to finish without additional mobilization costs then you see these reductions. For maintenance there is a 22% reduction in the periodic renourishment costs. For Kure Beach, there is a 14% reduction in renourishment costs. We looked at all the authorized beach nourishment projects in North Carolina. For all the projects that have a history of active beach nourishment, we looked at their average nourishment interval and came up with an interval of about 4.4 years. For every project you would only be placing sand on the beach every 4.4 years. In looking at the miles of shoreline and the frequencies of renourishment we calculated a percent of the North Carolina shoreline on any given year that might have nourishment going on. For currently managed projects we are only talking about 6% of the NC shoreline that is currently being nourished. Even if all of the projects were allowed to construct in the summer then the effects would only happen on 6% of the state's beaches up to a maximum of about 11.4%.

Brad Rosov stated we have looked at biological data to develop a database to explore what the relative impacts could be to each of the resources. We also tried to look at the conservation measures that could be used to minimize some of the impacts. We identified a list of natural resources that should be included in the analysis. This included the seven threatened and endangered species and also included SAV and an assessment of benthic resources. In looking at the sea turtle data the state has about 20-25 years of sea turtle nesting data collected. We were given access to about five years of this data from eight beaches. Of the five nesting seasons (2009-2013) throughout the eight beaches we came up with 2,023 nests that were laid during that period. Nesting started on May 11 and ramps up during July and August and the last nest was observed on October 7. Then there are hatchings beginning on July 11 and the last was observed on November 15. How do these environmental dredge windows work and are they effective? As interpreted, the environmental dredge window commences on November 16. April 30<sup>th</sup> is the end of the environmental dredge window. These dates correspond almost perfectly with turtle season. If the dredge window was expanded by a month on either side of the window then only 7% of the total nests would be affected. Beach nourishment has impacts.. We did an inventory of conservation measures that are available to protect the various resources. There are a number of measures that could be employed to help with the success of nesting. The ultimate question is whether dredging outside of the environmental windows can occur while maintaining the integrity of the natural resources. If we want to modify the dredge window can we maintain the existing level of integrity for the natural resources? We are hoping this white paper will be a launching pad for dialogue. We have stated to gather the relevant resource data; we have assessed the effectiveness of all available conservation measures, and assessed impacts from previous projects performed outside of the environmental window. This draft will be polished through the ad hoc group and we will do a gap analysis to see what pieces are missing. Once we have a good analysis, then we will figure out the next steps.

### **Inlet Management Study Draft Priorities and Implementation (CRC 14-23)**

#### **Mike Lopazanski**

Mike Lopazanski stated comments from the stakeholder input meetings were summarized at the last meeting and the document in your packet is a further summary of the comments. Staff has also prioritized the comments. Staff has taken the CRC's suggestions and picked out the actionable inlet management related issues. We also looked for opportunities to build on existing initiatives. The Science Panel's inlet hazard area study needs to be completed. We looked at the deep draft or navigation inlet hazard area development, examined beach bulldozing practices, the application and

definition of imminently threatened, alternatives to the static line, the dredging windows and moratoria and monitoring conditions, and beneficial use of dredged material policy. The Science Panel has been working on the inlet hazard area study that was mandated by the legislature. In considering the Cape Fear River AEC work, the CRC rolled the inlet management study into it as well. We have focused on calculating erosion rates in the inlet area since that was one of the directives from the Legislature. We have a tool that can be used to calculate erosion rates in inlet areas. We are likely to see a recommendation from the Science Panel that some sort of management area is needed. The Science Panel will also be able to provide information towards developing a deep draft port or navigation inlet management area. All of the inlets have their own unique attributes. There has been a lot of interest in developing individual management plans. We thought it would be good to initially separate deep draft from shallow draft inlets. The management objectives are different for these two types of inlets. The CRC can begin to develop management objectives for this new type of AEC as well as the development standards that would go along with it. Beach bulldozing was an issue that was recognized as a priority. Beach bulldozing above mean high water is allowed under a General Permit. If you want to bulldoze between mean high water and mean low water then it is possible, but it goes through the Major Permit review process. Beach bulldozing is allowed for protecting vacant lots outside the inlet hazard area. Rebuilding of existing dunes is allowed inside inlet hazard areas, however new dunes are not allowed to be created within the inlet hazard areas. The CRC could begin development of a General Permit to allow beach bulldozing in these areas. However an alternative reference line for measuring setbacks may be needed in these areas. The definition of imminently threatened currently states that the foundation, septic tank, septic system or the road right-of-way is within twenty feet of the erosion scarp, there is a flat beach profile, accelerated erosion in the area, or can be determined at the discretion of the DCM Director. The CRC could amend the definition for some greater distance as well as how it is applied. The CRC should consider the implications for sandbags and their use on the coast. Currently, a local government receives a static line which is the reference line from which setbacks are measured if they undertake a large scale beach fill project. The pre-project vegetation line becomes the static line as the reference point for measuring setbacks. The CRC has also developed a static line exception that allows limited development based on the existing vegetation line as long as the local government demonstrates a commitment to long term beach nourishment. The CRC authorizes the static line exception and reauthorizes it every five years to be sure the local government is maintaining the commitment to beach nourishment. There are two alternatives for CRC consideration. The CRC Chair has proposed the first to eliminate the static line and 300,000 cubic foot rule completely. There would be no new development seaward of the designated development line. The development lines would be established by the local government with DCM/CRC review and the vegetation line would be used for determining the setbacks in the absence of a development line. It would maintain the graduated setbacks and structure size as well as the erosion rate provisions that are currently in the setback rules. New or replaced structures would be sited based on the vegetation line or the development line whichever is farther landward. DCM staff has also developed an alternative where you would use the existing static line exception, repeal the 2,500 square foot limitation on structures and repeal the five year waiting period. The CRC could also amend the large scale beach fill definition to something greater than 300,000 cubic yards. We would retain the local government commitment to the long-term beach fill project, maintain the graduated setbacks, and structure size and erosion rate provisions that are in the oceanfront setback rules. We would also have a development line that is currently in place which restricts development any further seaward than the landward most adjacent neighbor. Dredging windows and moratoria are coordinated with several state and federal agencies. A study is currently taking place and we will have some direction in how to move forward once the Commission considers the work the consultants have completed. Monitoring conditions come under the

jurisdiction of several agencies, however there are projects such as terminal groins that CAMA identifies the monitoring requirements. There is an existing beneficial use of dredge material policy that has been approved by NOAA. This is important when it comes to federal consistency. DCM gets to comment on the activities or federal permits. NOAA approves our policies and rules for use in these cases. When it comes to navigation channels, the existing policy is directed at beach quality sand not being permanently removed from the active nearshore beach or inlet shoal systems. There is a caveat that says “unless no practical alternative exists”. This has been key to NOAA’s approval of these types of policies that there needs to be an “out” available to the federal agency that it will affect. There was an amendment to the Dredge and Fill Law that did not include the caveat and it was not approved by NOAA for federal consistency use. Chairman Gorham has put forward a proposal that would allow beach compatible sand to be placed on adjacent beaches in a manner to minimize shoaling and replicate natural littoral systems to the maximum extent practicable. However we run the risk that this proposal would not be approved by NOAA and the burden would fall primarily on local governments doing their own beach nourishment projects and they would be responsible for placing all the sand on adjacent beaches but not necessarily the projects being done by the Corps. We could take the current policy and define no practical alternative as an option.

In February we had our panel discussion. All of the regional meetings have been completed and a summary of stakeholder input was presented to the CRC at the last meeting. At this meeting we should have the draft findings and recommendations finalized. This would go out for public comment. The next CRC meeting is scheduled for October and we could finalize our study and have that completed for submission to the Governor and the Legislature not long after the December meeting.

After discussion, the Commission directed staff to begin work on static line alternatives, a deep draft inlet AEC, the policy on beneficial use of dredged material, and to provide an update on the dredging window study.

### **OLD/NEW BUSINESS**

Chairman Gorham expressed concerns about emails the Commission is receiving. Some emails are related to quasi-judicial decisions that will be made by the CRC. After discussion, it was determined that if a CRC member receives an email that they are concerned about responding to they should forward it to Angela Willis. The Executive Secretary will provide a summary of comments being received during the Executive Secretary Report.

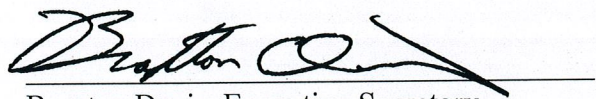
At the request of some Commissioners, Mary Lucasse stated she would forward final agency decisions on third party hearing requests to the entire CRC.

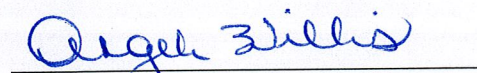
Braxton Davis stated the Coastal Habitat Protection Plan (CHPP) came out of the 1997 Fisheries Reform Act in North Carolina. This Act followed a lot of fish kills and water quality issues that were receiving widespread attention in the 1990s. The law talks about recognizing the significant fisheries resources in North Carolina and their economic, environmental, and cultural importance. It required DENR to coordinate and prepare the Coastal Habitat Protection Plans for critical fisheries habitat. The emphasis of the Act was to address coastal habitat, which is a major part of what will make fisheries successful in the long-term. It was also recognized that coastal habitats were impacted by rules across several commissions. The law requires collaboration across all of these commissions. The law laid out what the plan needed to address and the first plan was completed in 2004 and adopted by MFC, EMC, and the CRC. The most recent update was in 2010. There is a review process established with two representatives from each Commission forming a steering

committee. The steering committee has traditionally met quarterly to review progress and updates to the plan and to collaborate on shared coastal issues across the Commissions. The plan has to be updated every five years. The next update is due in 2015. DENR's goal is to continue with a focus on non-regulatory approaches to habitat protection enhancement and to assemble a DENR staff team. Mike Lopazanski is DCM's point of contact for the Department. DENR is asking for the appointment of two CRC members to the CHPP steering committee. Chairman Gorham appointed Larry Baldwin and John Snipes.

With no further business, the CRC adjourned.

Respectfully submitted,

  
\_\_\_\_\_  
Braxton Davis, Executive Secretary

  
\_\_\_\_\_  
Angela Willis, Recording Secretary



North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

CRC-14-29

October 3, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Fiscal Analysis for 15A NCAC 7K .0208 Single Family Residences Exempted – Adjacent Property Owner Notification

Summary of Rule Change

The amendments to 15A NCAC 7K .0208 will remove the requirement to obtain a signed statement of no objection from adjacent property owners in connection with the Exemption for single family residences constructed within the Estuarine Shoreline Area of Environmental Concern which are more than 40 feet landward of normal high water or normal water level. There is no fee associated with the Exemption. The inability to obtain such a statement causes property owners to seek a Minor Permit which has a \$100 fee but does not require a signed statement. In addition, other exemptions authorized under subchapter 07K do not require adjacent property owner notification. This amendment will provide consistency with these other exemptions. The timeframe associated with the Exemption is one year whereas Minor and Major Permits do not expire for three years. These amendments will also increase the Exemption timeframe to three years to be consistent with Minor and Major Permit expiration dates.

Summary of Fiscal Analysis

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for 15A NCAC 7K .0208 has been prepared by the Division and approved by DENR and the Office of State Budget & Management (OSBM).

The amendments to 15A NCAC 07K .0208 would apply when riparian property owners are seeking a CAMA permit exemption for the construction of single family residences and would no longer be required to obtain a written statement of no objection from adjacent property owners. In addition, they will be afforded additional flexibility in the construction of a house-to-water access by not being limited to an elevated, slatted wooden walkway. Riparian property owners will also have additional time to complete

their project without having to re-notify the local government or Division and ask for an extension. The Division of Coastal Management estimates that approximately 5% or six Exemption applicants per year are required to go through the Minor Permit process due to the inability to obtain a written statement of no objection from adjacent property owners. As there is no fee for the permit Exemption and a Minor Permit costs \$100, the potential cost savings to property owners is estimated at \$600 in permit fees per year, plus any time saved from not having to document that a notice has been provided to adjacent property owners. A time savings is also realized by not needing to notify the local government or Division that construction has not been completed within a year and having to ask for an extension.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who may experience a \$100 savings in permit fees. Total financial benefits will be approximately \$600 each year. Assuming an annual maximum savings of \$600, the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$4,000, using a 7% discount rate.

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 07K .0208 will not affect environmental permitting for the NC DOT. While NC DOT would be eligible for the exemption and its associated uses, it is unlikely that NC DOT will be involved in such a project.

While local governments would be eligible for the exemption and its associated uses, they are typically not involved in these types of projects. In the past five years, there have been no local government projects involving the single family residence exemption. However, the CAMA Minor Permit Program is administered by local governments that have CRC approved Implementation and Enforcement Programs. Local governments collect the \$100 Minor Permit fee and additionally receive from the Division \$115 per Minor Permit processed. Local governments are reimbursed by the Division \$25 per exemption processed. Therefore, the proposed change is anticipated to result in a decrease in permitting receipts to local governments participating in the Minor Permitting Program of \$600 per year from permit fee collections and \$690 from Division reimbursements and an increase in reimbursements from the Division for processed exemptions of \$150. Thus, the estimated net loss to local governments in permit fees would be \$1,140.

If the Commission approves, the fiscal analysis as well as proposed amendments may be sent to public hearing with a proposed effective date of April 1, 2015.

## Proposed Amendments 15A NCAC 7K. 0208 Single Family Residences Exempted

### 15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

(a) All single family residences constructed within the Coastal Estuarine Shoreline Area of Environmental Concern which are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted. This exemption does allow for the construction of ~~an a generally shore perpendicular~~ access to the water, ~~in accordance with Rule 07H .0209(d)(10). providing that the~~ access shall be no wider than six feet and may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

(b) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence which has a built upon area of 25 percent or less and:

- (1) has no stormwater collection system; and
- (2) is at least 40 feet from waters classified as ORW.

(c) Before beginning any work under this exemption, the Department of Environment and Natural Resources representative must be notified of the proposed activity to allow on-site review. Notification may be by telephone, in person or in writing. Notification must include:

- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community and water body;
- (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level;
- (3) ~~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.~~

(d) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.

(e) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year within one year of the issuance date of this exemption permit or the general authorization expires.

*History Note: Authority G.S. 113A-103(5) c;  
Eff. November 1, 1984;  
Amended Eff. December 1, 2006; December 1, 1991; May 1, 1990; October 1, 1989.  
Amended Eff. TBD, 2015.*



**Fiscal Analysis**

**Adjacent Property Owner Notification**  
Amendments to 15A NCAC 07K .0208  
Single Family Residences Exempted

Prepared by

Mike Lopazanski  
NC Division of Coastal Management  
(252) 808-2808 Ext. 223

August 25, 2014

## Basic Information

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Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	Single Family Residences Exempted
Citation	15A NCAC 07K .0208
Description of the Proposed Rule	07K .0208 exempts single family residences from CAMA permit requirements that are 40 feet landward of normal high water or normal water level. The proposed rule change deletes the requirement of obtaining a signed statement of no objection from adjacent property owners, extends the permit timeframe to three years and allows materials other than wood to be used for an accessway to the water.
Agency Contact	Mike Lopazanski Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext 223
Authority	113A-103(5)c
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules in order to remove the requirement to obtain a signed statement of no objection from adjacent property owners. The inability to obtain such as statement causes property owners to seek a Minor Permit, which has a \$100 fee but does not require a signed statement. The proposed rule changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Federal government: No Private entities: Yes

## Summary

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The Coastal Resources Commission (CRC) is proposing to amend its administrative rules in order to remove the requirement to obtain a signed statement of no objection from adjacent property owners in connection with the Exemption for single family residences constructed within the Estuarine Shoreline Area of Environmental Concern which are more than 40 feet landward of normal high water or normal water level. There is no fee associated with the Exemption. The inability to obtain such a statement causes property owners to seek a Minor Permit which has a \$100 fee but does not require a signed statement. In addition, other exemptions authorized under subchapter 07K do not require adjacent property owner notification. This amendment will provide consistency with these other exemptions. The timeframe associated with the Exemption is one year whereas Minor and Major Permits do not expire for three years. The CRC intends to increase the Exemption timeframe to three years to be consistent with Minor and Major Permit expiration dates.

The amendments to 15A NCAC 07K .0208 would apply when riparian property owners are seeking a Coastal Area Management Act (CAMA) permit exemption for the construction of single family residences and are no longer required to obtain a written statement of no objection from adjacent property owners. In addition, they will be afforded additional flexibility in the construction of a house-to-water access by not being limited to an elevated, slatted wooden walkway. Riparian property owners will also have additional time to complete their project without having to re-notify the local government or Division and ask for an extension. The Division of Coastal Management estimates that approximately 5% or 6 of the average 123 Exemption applicants per year are required to go through the Minor Permit process due to the inability to obtain a written statement of no objection from adjacent property owners. As there is no fee for the permit exemption while a Minor Permit cost \$100, the potential cost savings to property owners is estimated at \$600 in permit fees per year.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who may experience a \$100 savings in permit fees. Total financial benefits will be approximately \$600 each year. Assuming an annual maximum savings of \$600, the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$4,000, using a 7% discount rate. Also, property owners would save some time in the process of obtaining the documentation necessary prior to construction or to continue construction of a single family residence.

These amendments will have no impact on NC Department of Transportation (NC DOT) projects. There will be a \$540 per year savings to the Division of Coastal Management due to the difference between Minor Permit and Exemption issuance reimbursement rates to local governments. There will be a net loss of \$450 in permit receipts to local governments.

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

## Introduction, Purpose and Description of Rule Amendment

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The Coastal Resources Commission's (CRC) rule 15A NCAC 07K .0208 exempts from Coastal Area Management Act (CAMA) permit requirements the construction of single family residences and related land disturbances constructed within the Coastal Shoreline Area of Environmental Concern which are:

- sited more than 40 feet landward of normal high water or normal water level;

- involve no land disturbing activity within the 40 foot buffer area;
- consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted.

This exemption also requires notification and a signed statement of no objection from adjacent property owners. There is no fee associated with the exemption.

The requirement for a signed statement of no objection from adjacent property owners sometimes causes an unnecessary hardship and prevents property owners from qualifying for the Subchapter 07K Exemption. Property owners are sometimes unable to secure signed statements from adjacent riparian property owners because they do not live in the area, or because the adjacent owner declines to sign. In these situations, applicants must then go through the Minor Permit process, resulting in increased costs (\$100 permit fee) and lost time. To obtain a Minor Permit, an applicant is only required to notify the adjacent property owner and is not required to obtain a signed statement of no objection, so this (stricter) requirement for the 07K permit Exemption is unnecessary. In addition, other exemptions authorized under Subchapter 07K do not require adjacent property notification. This amendment will provide consistency with these other exemptions.

A second amendment being considered would allow a non-elevated house-to-water access constructed of materials other than wood. Under the 15A NCAC 07K .0208 permit exemption, the Commission's rules (07K .0208(a)) exempt from permitting requirements the construction of an accessway to the water "in accordance with Rule 07H .0209(d)(10)(D)," providing it is an elevated, slatted, wooden boardwalk that is exclusively for pedestrian use and is six feet in width or less. However, the rules in 15A NCAC 07H .0209(d)(10)(D) are intended to apply to shore-parallel boardwalks and not for traditional house-to-water access. The CRC intends to strike this rule reference, and allow walkways under this Exemption to be other than elevated, slatted, and wooden. Materials, such as gravel or concrete, would be permissible under this exemption to allow ease of house-to-water access without dramatically increasing impervious surface coverages. Any portion constructed over wetlands, however, would need to be elevated at least three feet above the substrate. This elevated provision is consistent with the Commission's existing requirements for docks and piers.

A third change would affect the expiration of the 15A NCAC 07K .0208 Exemption. The timeframe associated with the exemption is one year, whereas Minor and Major Permits do not expire for three years. The CRC intends to increase the exemption timeframe to three years in order to be consistent with Minor and Major Permit expiration dates.

## **Impacts**

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### Private Property Owners:

The proposed rule amendments would apply to riparian property owners seeking a CAMA permit exemption for the construction of a single family residence that is sited more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 foot buffer area and that is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time.

Over the past five years, an average of 123 exemptions per year have been issued under 15A NCAC 07K .0208. The Division of Coastal Management estimates that approximately 5% or six applicants per year were required to go through the Minor Permit process due to the inability to obtain a written statement of no objection from adjacent property owners. The average number of applications for the exemption over this timeframe is considered to be typical and it is assumed that there will continue to be 123 exemption applications of this type in the future.

There is no fee for the permit exemption while a Minor Permit costs \$100 for the construction of a similar structure. In order to estimate the potential cost savings to property owners, it is assumed that these six property owners could have taken advantage of the Exemption and not have had to pay the \$100 Minor Permit fee, resulting in an estimated savings of \$600 in permit fees per year.

Property owners will also likely benefit from reduced time spent completing the Minor Permit application, having to document that a notice has been provided to adjacent property owners, and notifying the local government or Division that the construction has not been completed within a year and having to ask for an extension.

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

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 07K .208 will not affect environmental permitting for the NC DOT. While NC DOT would be eligible for the exemption and its associated uses, it is unlikely that NC DOT will be involved in such a project.

#### Local Government:

While local governments would be eligible for the exemption and its associated uses, they are typically not involved in these types of projects. In the past five years, there have been no local government projects involving the single family residence exemption. However, the CAMA Minor Permit Program is administered by local governments that have CRC approved Implementation and Enforcement Programs. Local governments collect the \$100 Minor Permit fee and additionally receive from the Division \$115 per Minor Permit processed. Local governments are reimbursed by the Division \$25 per exemption processed. Therefore, the proposed change is anticipated to result in a decrease in permitting receipts to local governments participating in the Minor Permitting Program of \$600 per year from permit fee collections and \$690 from Division reimbursements and an increase in reimbursements from the Division for processed exemptions of \$150. Thus, the estimated net loss to local governments in permit fees would be \$1,140. Local governments would, however, save time on reviewing documentation since the time spent on an application for an exemption is shorter than that on a Minor Permit. Two separate reimbursement rates the Division provides to the local governments for reviewing exemptions (\$25) and for Minor Permits (\$115) reflects this time difference.

#### Division of Coastal Management (DCM):

DCM's permit review process will not be changed by these amendments as property owners will still need to obtain an exemption under 15A NCAC 07K .0208. The Division of Coastal Management reimburses local governments for administration of the Minor Permit Program at a rate of \$115 per permit and \$25 per exemption. The additional six properties owners per year eligible for the exemption will result in a net savings to the Division of \$540, which is the difference between the reimbursement rates for Minor Permits versus Exemptions. These amendments do not reflect significant changes in how various projects are reviewed or permitted

by the Division of Coastal Management, and the Division does anticipate significant changes in permitting receipts due to the proposed action.

### **Cost/Benefits Summary**

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#### Private Citizens:

The amendments to 15A NCAC 07K .0208 would apply when riparian property owners are seeking a CAMA permit exemption for the construction of single family residences and are no longer required to obtain a written statement of no objection from adjacent property owners. In addition, they will be afforded additional flexibility in the construction of a house-to-water access by not being limited to an elevated, slatted wooden walkway. Riparian property owners will also have additional time to complete their project without having to re-notify the local government or Division and ask for an extension. The Division of Coastal Management estimates that approximately 5% or six Exemption applicants per year are required to go through the Minor Permit process due to the inability to obtain a written statement of no objection from adjacent property owners. As there is no fee for the permit Exemption and a Minor Permit costs \$100, the potential cost savings to property owners is estimated at \$600 in permit fees per year, plus any time saved from not having to document that a notice has been provided to adjacent property owners and having to notifying the local government or Division that the construction has not been completed within a year and having to ask for an extension.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who may experience a \$100 savings in permit fees. Total financial benefits will be approximately \$600 each year. Assuming an annual maximum savings of \$600, the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$4,000, using a 7% discount rate.

## APPENDIX A

### 15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

- (a) All single family residences constructed within the Coastal Estuarine Shoreline Area of Environmental Concern which are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted. This exemption does allow for the construction of ~~an~~ a generally shore perpendicular access to the water, in accordance with Rule 07H .0209(d)(10), providing that the access shall be no wider than six feet and may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.
- (b) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence which has a built upon area of 25 percent or less and:
- (1) has no stormwater collection system; and
  - (2) is at least 40 feet from waters classified as ORW.
- (c) Before beginning any work under this exemption, the Department of Environment and Natural Resources representative must be notified of the proposed activity to allow on-site review. Notification may be by telephone, in person or in writing. Notification must include:
- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community and water body;
  - (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level;
  - ~~(3) 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.~~
- (d) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.
- (e) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year within one year of the issuance date of this exemption permit or the general authorization expires.

*History Note:* Authority G.S. 113A-103(5) c;  
Eff. November 1, 1984;  
Amended Eff. December 1, 2006; December 1, 1991; May 1, 1990; October 1, 1989.  
Amended Eff. TBD, 2014.



North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

CRC-14-30

October 3, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Fiscal Analysis for 15A NCAC 7H .0304(2) Repeal of High Hazard Flood AEC & 7K .0213 Single Family Residences Exempted From the CAMA Permit Requirements Within the High Hazard Flood AEC

**Summary of Rule Change**

The High Hazard Flood (HHF) AEC is identified as the V-Zones on Flood Insurance Rate Maps (FIRM). The Commission has required all residential and commercial structures within the Ocean Hazard AEC (which includes the HHF AEC) to comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards and local flood damage prevention ordinances required by the NFIP, and to be supported by pilings.

The NC Building Code sets standards for piling-supported buildings within Coastal High Hazard Flood Areas (NFIP V-Zones), Ocean Hazard Areas (CRC AEC) and Flood Plain Areas (US Army Corps of Engineers). Typical single family structures must comply with the NC Building Code and local flood damage prevention ordinances in these areas as required by the NFIP.

Single-family residences located in the HHF AEC are currently exempted from CAMA permit requirements (15A NCAC 7K .0213) provided that they are not within the Ocean Erodible or Inlet Hazard AECs, are constructed on pilings and comply with the NC Building Code and local flood damage prevention ordinances as required by the NFIP.

Since the CRC rules defer to the NC Building Code and require adherence to NFIP and local flood prevention standards, the rules associated with the HHF AEC are redundant and unnecessary. These amendments will repeal the High Hazard Flood AEC and remove approximately 10,000 properties from CRC permitting jurisdiction under the AEC.



## Summary of Fiscal Analysis

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for 15A NCAC 7H .0304(2) and 15A NCAC 7K .0213 has been prepared by the Division and approved by DENR and the Office of State Budget & Management (OSBM).

The amendments to 15A NCAC 7H .0304(2) and 15A NCAC 7K .0213 would apply to property owners within the CRC's Ocean Hazard AEC that are located solely within the V-Zones as designated on FEMA FIRMs. These properties would no longer be subject to CAMA permit requirements. Property owners would only need to comply with the NC Building Code standards for piling-supported buildings within Coastal High Hazard Flood Areas (NFIP V-Zones), Flood Plain Area standards set by the US Army Corps of Engineers and local flood damage prevention ordinances as required by the NFIP.

The Division of Coastal Management and local permitting programs issued 119 Exemptions for single family structures within the HHF AEC over the past five years or an average of 24 per year. The cost of the Exemption is \$50. The Division has also issued five (5) CAMA Major Permits over the past five years or an average of one (1) per year at a cost of \$400 per Major permit.

There will be a \$200 per year net savings to the Division of Coastal Management due to a reduction in the reimbursement rates paid to local governments for processing Exemptions. There will be a loss of \$1,800 in permit receipts and reimbursements to local governments.

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 07H .0304(2) will have no impact on NC Department of Transportation (NC DOT) projects as DCM Staff estimate the number of NC DOT permits solely in the HHF AEC to be negligible. While NC DOT would be eligible for the Exemption under 15A NCAC 7K .0213, it is unlikely that NC DOT would be involved in the construction of a single family residence.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who would no longer need to apply for a CAMA permit Exemption under 15A NCAC 7K .0213 or a CAMA Major Permit. Total financial benefits will be approximately \$1,600 per year. Assuming an annual maximum savings of \$1,600 the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$11,000 using a 7% discount rate.

Repeal of 15A NCAC 7K .0213 Single Family Residences from CAMA Permit Requirements with the High Hazard Flood AEC.

During the discussion of repealing the High Hazard Flood AEC at the July 2014 CRC meeting, I neglected to remind the Commission that a motion was needed to repeal the 15A NCAC 7K .0213 Exemption as well. If the Commission approves, the fiscal analysis as well as proposed amendments may be sent to public hearing with a proposed effective date of June 1, 2015.

## Proposed Amendments 15A NCAC 7H.0304(2) High Hazard Flood AEC

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The 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)~~(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 identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
  - (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
  - (b) the former location of Mad Inlet, which closed in 1997.In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.
- ~~(4)~~(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 as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

*History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;  
Eff. September 9, 1977;  
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;  
Temporary Amendment Eff. October 10, 1996;  
Amended Eff. April 1, 1997;  
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*

*Temporary Amendment Eff. October 22, 1997;*  
*Amended Eff. May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004;*  
*August 1, 1998.*

**Proposed Amendments 15A NCAC 7K.0213 Single Family Residences Exempted from the CAMA Permit Requirements within the High Hazard Flood AEC**

**15A NCAC 07K .0213 SINGLE FAMILY RESIDENCES EXEMPTED FROM THE CAMA PERMIT REQUIREMENTS WITHIN THE HIGH HAZARD FLOOD AREA OF ENVIRONMENTAL CONCERN**

~~(a) All single family residences, including associated infrastructure, accessory structures or structural additions to an existing single family structure, constructed within the High Hazard Flood Area of Environmental Concern are exempt from the CAMA permit requirements provided that the development is consistent with all other applicable CAMA permit standards and local land use plans and/or rules in effect at the time the exemption is granted including the following conditions and limitations:~~

- ~~(1) The development shall not be located within the Ocean Erodible or Inlet Hazard Areas of Environmental Concern.~~
- ~~(2) Any building shall be on pilings and comply with the North Carolina Building Code and the local flood damage prevention ordinance as required by the National Flood Insurance Program.~~
- ~~(3) The development does not require any permission, licensing, approval, certification or authorization, licensing or approval from any state or federal agency.~~

~~(b) Prior to commencing any work under this exemption, the Department of Environment and Natural Resources (DENR) representative or local CAMA permitting officer must be notified of the proposed activity to allow on site review. Notification shall be given in person or in writing. Notification must include:~~

- ~~(1) the name, address and telephone number of the landowner and the location of the work, including the county, nearest community and water body closest to the development;~~
- ~~(2) the dimensions of the proposed house, driveway, landscaping or other accessory developments proposed on the property; and~~
- ~~(3) a signed AEC hazard notice indicating the property owner is aware of the special risks and conditions associated with development in this area. The DENR representative or local CAMA permitting officer shall provide the applicable notice form to the landowner.~~

~~(c) The applicant for a permit exemption must submit with the request a check or money order payable to the Department of Environment and Natural Resources (DENR) or local permitting authority in the sum of fifty dollars (\$50.00).~~

*History Note: Authority G.S. 113A-103(5)(a); 113A-113(b)(6); 113A-118(d)(2); 113A-119.1; Eff. August 1, 2002.*

## **Fiscal Analysis**

### **Repeal of High Hazard Flood AEC**

Amendments to 15A NCAC 7H .0304(2) and 15A NCAC 7K .0213

Prepared by

Mike Lopazanski  
NC Division of Coastal Management  
(252) 808-2808 Ext. 223

September 17, 2014

## Basic Information

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Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	AECs Within Ocean Hazard Area – The High Hazard Flood Area; Single Family Residences Exempted From the CAMA Permit Requirements Within the High Hazard Flood Area of Environmental Concern
Citation	15A NCAC 7H .0304(2) and 15A NCAC 07K .0213
Description of the Proposed Rule	07K. 0304 outlines the subcategories of Areas of Environmental Concern (AEC) within the broader Ocean Hazard AEC. Rule 07K .0213 is an exemption for single family residences constructed in the High Hazard Flood AEC. The proposed rule changes repeals the High Hazard Flood AEC and the corresponding exemption from Coastal Area Management Act permitting requirements.
Agency Contact	Mike Lopazanski, Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext 223
Authority	113A-107; 113A-107.1; 113A-113; 113A-124
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Private entities: Yes
Necessity	The Coastal Resources Commission (CRC) is proposing to repeal the High Hazard Flood AEC, which is identified as the Velocity Zones on Flood Insurance Rate Maps administered by the National Flood Insurance Program (NFIP). Changes to the NFIP and to the NC Building Code parallel the CRC requirements for construction in these areas. Since the CRC has required all residential and commercial structures within the Ocean Hazard AEC to comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards and local flood damage prevention ordinances required by the NFIP, the CRC requirements are no longer necessary. Also, the agency is repealing the corresponding exemption for single family residences from Coastal Area Management Act permitting requirements. These changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.

## Summary

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The High Hazard Flood (HHF) AEC, identified as the V-Zones on Flood Insurance Rate Maps (FIRM), was established by the Commission Resources Commission (CRC) in 1979 with the intent of providing consistency in construction standards with those of the National Flood Insurance Program (NFIP). Since that time, the CRC has required all residential and commercial structures within the Ocean Hazard AEC (which includes the HHF AEC) to comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards and local flood damage prevention ordinances required by the NFIP, and to be supported by pilings.

The NC Building Code sets standards for piling-supported buildings within Coastal High Hazard Flood Areas (NFIP V-Zones), Ocean Hazard Areas (CRC AEC) and Flood Plain Areas (US Army Corps of Engineers). Typical single family structures must comply with the NC Building Code and local flood damage prevention ordinances in these areas as required by the NFIP.

Single-family residences located in the HHF AEC are currently exempted from CAMA permit requirements (15A NCAC 7K .0213) provided that they are not within the Ocean Erodible or Inlet Hazard AECs, are constructed on pilings and comply with the NC Building Code and local flood damage prevention ordinances as required by the NFIP. A \$50 fee for the issuance of an exemption letter is usually paid to the local permitting authority or to the Division of Coastal Management if there is not a local Coastal Area Management Act (CAMA) permitting program in the jurisdiction.

Since the CRC rules defer to the NC Building Code and require adherence to NFIP and local flood prevention standards, the Commission is proposing to repeal the High Hazard Flood AEC. This would remove approximately 10,000 properties from CRC permitting jurisdiction under the HHF AEC. It should be noted that since the V-Zones can extend to the soundside of some areas, not all properties would be completely removed from all CAMA permitting jurisdiction as the Coastal Shorelines AEC and its associated development standards would still apply in these areas. A repeal of the HHF AEC would also not affect the permitting jurisdiction of the remaining Ocean Hazard AECs (Ocean Erodible & Inlet Hazard) and would not affect the setback requirements associated with oceanfront development.

The amendments to 15A NCAC 7H .0304(2) and 15A NCAC 7K .0213 would apply to property owners within the CRC's Ocean Hazard AEC that are located solely within the V-Zones as designated on FEMA FIRMs. These properties would no longer be subject to CAMA permit requirements. Property owners would only need to comply with The NC Building Code standards for piling-supported buildings within Coastal High Hazard Flood Areas (NFIP V-Zones), Flood Plain Area standards set by the US Army Corps of Engineers and local flood damage prevention ordinances as required by the NFIP.

The Division of Coastal Management and local permitting programs issued 119 Exemptions for single family structures within the HHF AEC over the past five years or an average of 24 per



year. The cost of the Exemption is \$50. The Division has also issued five (5) CAMA Major Permits over the past five years or an average of one (1) per year at a cost of \$400 per Major permit.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who would no longer need to apply for a CAMA permit Exemption under 15A NCAC 7K .0213 or a CAMA Major Permit. Total financial benefits will be approximately \$1,600 per year. Assuming an annual maximum savings of \$1,600 the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$11,000 using a 7% discount rate.

These amendments will have no impact on NC Department of Transportation (NC DOT) projects as DCM Staff estimate the number of NC DOT permits solely in the HHF AEC to be negligible. While NC DOT would be eligible for the Exemption under 15A NCAC 7K .0213, it is unlikely that NC DOT would be involved in the construction of a single family residence. There will be a \$200 per year net savings to the Division of Coastal Management due to a reduction in the reimbursement rates paid to local governments for processing Exemptions. There will be a loss of \$1,800 in permit receipts and reimbursements to local governments.

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

## Introduction and Purpose

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

The CRC has established four broad categories of AECs:

- The Estuarine and Ocean System;
- The Ocean Hazard System;
- Public Water Supplies; and
- Natural and Cultural Resource Areas.

The Ocean Hazard System is comprised of oceanfront lands and the inlets that connect the ocean to the sounds. The CRC has designated three subcategories within the ocean hazard AEC:

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

2. **The High Hazard Flood AEC** (15A NCAC 7H .0304(2)) covers lands subject to flooding, high waves, and heavy water currents during a major storm. These are the lands identified as coastal flood with velocity hazard, or "V zones," on flood insurance rate maps prepared by FEMA. The high hazard flood AEC often overlaps with the ocean erodible and inlet hazard AECs.

3. **The Inlet Hazard AEC** (15A NCAC 7H .0304(3)) covers the lands next to ocean inlets. Each area is mapped based on a statistical analysis of inlet migration, previous inlet locations, narrow or low lands near the inlet, and the influence of man-made features, such as jetties and channel dredging projects.

The High Hazard Flood (HHF) AEC was not one of the original AECs adopted by the CRC in 1977. The HHF AEC was established by the Commission in 1979 after reviewing implementation of existing AECs, with the intent of providing consistency in construction standards with those of the National Flood Insurance Program (NFIP). Since that time, the CRC has required all residential and commercial structures within the Ocean Hazard AEC (which includes the HHF AEC) to comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards and local flood damage prevention ordinances required by the NFIP, and to be supported by pilings. The intent of the rule was to allow for foundation stability during major storm events when the ocean shoreline could move significantly inland for a period of time. During these periods, scour could cause concrete slab or block foundation supported buildings to collapse. In some areas, these requirements were more stringent than the NC Building Code.

After the hurricanes of the 1990's, FEMA updated the Flood Insurance Rate Maps (FIRM) for many coastal barrier island communities. This update resulted in expansion of the velocity zones, and in doing so, expanded the permitting jurisdiction of the CRC since the HHF AEC is identified as the V-Zones on the FIRM. The NC Building Code sets standards for piling-supported buildings within Coastal High Hazard Flood Areas (NFIP V-Zones), Ocean Hazard Areas (CRC AEC) and Flood Plain Areas (US Army Corps of Engineers). Typical single family structures must comply with the NC Building Code and local flood damage prevention ordinances in these areas as required by the NFIP.

Single-family residences located in the HHF AEC are currently exempted from CAMA permit requirements (15A NCAC 7K .0213) provided that they are not within the Ocean Erodible or Inlet Hazard AECs, are constructed on pilings and comply with the NC Building Code and local flood damage prevention ordinances as required by the NFIP. No other HHF AEC-specific development standards are required; however, the property owner must sign an AEC "hazard notice" acknowledging that special risks and conditions associated with development in this area. A \$50 fee for the issuance of an exemption letter is usually paid to the local permitting authority or to the Division of Coastal Management if there is not a local CAMA permitting program in the jurisdiction.

Since the Commission's rules defer to the NC Building Code and require adherence to NFIP and local flood prevention standards, the CRC is proposing to repeal the High Hazard Flood AEC. This would remove approximately 10,000 properties from CRC permitting jurisdiction under the

HHF AEC. It should be noted that since the V-Zones can extend to the soundside of some areas, not all properties would be completely removed from all CAMA permitting jurisdiction as the Coastal Shorelines AEC and its associated development standards would still apply in these areas. A repeal of the HHF AEC would also not affect the permitting jurisdiction of the remaining Ocean Hazard AECs (Ocean Erodible & Inlet Hazard) and would not affect the setback requirements associated with oceanfront development.

## **Description of Rule Amendment**

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Subchapter 15A NCAC 7H of the Coastal Resources Commission's rules outline the state guidelines for Areas of Environmental Concern (AEC), including the provision for AECs and their associated development standards. 15A NCAC 7H .0300 establishes the Ocean Hazard category of AEC with 15A NCAC 7H .0304(2) designating the High Hazard Flood AEC as 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." Repealing 15A NCAC 7H .0304(2) will remove approximately 10,433 properties from CRC permitting requirements. With the repeal of the High Hazard Flood AEC, the exemption for single family residence under 15A NCAC 7K .0213 is unnecessary.

## **Cost or Neutral Impacts**

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### Private Property Owners:

The proposed rule amendments would apply to property owners solely within V-Zones as designated by FEMA and the National Flood Insurance Program. Specifically, property owners seeking to build single family residences in these areas would no longer need a CAMA permit exemption.

Over the past five years, a total of 119 Exemptions have been issued under 15A NCAC 7K .0213 for an average of approximately 24 per year. The average number of applications for the Exemption over this timeframe is considered to be typical and it is assumed that there would continue to be 24 Exemptions issued in the future absent the rule change.

In order to estimate the potential cost savings to property owners, it is assumed that 24 property owners per year would not have to pay the \$50 exemption fee resulting in an estimated savings of \$1,200 in permit fees per year. Property owners will also likely see a benefit in the form of reduced time spent applying for an Exemption under 15A NCAC 7K .0213.

With regard to other CAMA Permits, the Division has issued five (5) Major Permits for development solely within the High Hazard Flood AEC over the past five (5) years for an average of one (1) Major Permit per year. The average number of applications for Major Permits over this timeframe is considered to be typical and it is assumed that there would continue to be one (1) Major Permit issued per year in the future.

In order to estimate the potential cost savings to property owners relative to Major CAMA Permit, it is assumed that one (1) property owner per year would not have to pay the typical \$400 fee resulting in an estimated savings of \$400 in permit fees per year. Property owners will also

likely see a benefit in the form of reduced time spent applying for a Major Permit which can take up to 75 days to be issued.

When the permit fee cost savings associated with the permit exemption for single family structures is added to the permit fee savings associated with CAMA Major Permits, there is an estimate annual savings of \$1,600, plus time savings, per year to property owners currently within the High Hazard Flood AEC.

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

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .034(2) will not affect environmental permitting for the NC DOT. While it is possible that NC DOT would apply for a permit solely within the HHF AEC, DCM Staff have determined that the number of NC DOT CAMA permits over the past ten years has been negligible. While NC DOT would be eligible for the 15A NCAC 7K .0213 Exemption and its associated uses, it is unlikely that NC DOT will be involved in such a project.

#### Local Government:

While local governments would be eligible for the exemption and its associated uses, they are typically not involved in these types of projects. In the past five years, there have been no local government projects involving the single family residence exemption. However, the CAMA Minor Permit Program is administered by local governments that have CRC approved Implementation and Enforcement Programs. Local governments collect the \$50 fee associated with the 7K .0213 Exemption. Local governments are also reimbursed by the Division \$25 per exemption processed. The elimination of the AEC and the corresponding Exemption is anticipated to result in a decrease in permitting receipts to local governments participating in the Minor Permitting Program of \$1,200 and decreased reimbursements from the Division of \$600 for a net loss in permit fees and reimbursements of \$1,800 per year.

#### Division of Coastal Management (DCM):

The Division of Coastal Management reimburses local governments for administration of the Minor Permit Program at a rate of \$25 per exemption. The repeal of the High Hazard Flood AEC and elimination of the corresponding Exemption under 7K .0213 will result in a savings to the Division of \$600 in reimbursement costs (\$25 per Exemption, 24 Exemptions per year) to local governments for issuing Exemptions. The Division will also see a reduction of \$400 per year in Major Permit fees (one Major Permit per year at \$400) resulting in a net savings to the Division of \$200 per year.

These amendments do not reflect significant changes in how various projects are reviewed or permitted by the Division of Coastal Management, and the Division does anticipate significant changes in permitting receipts due to the proposed action.

### **Cost/Benefits Summary**

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#### Property Owners:

The amendments to 15A NCAC 7H .0304(2) and 15A NCAC 7K .0213 would apply to property owners within the CRC's Ocean Hazard AEC that are located solely within the V-Zones (High Hazard Flood AEC) as designated on FEMA FIRMs. These properties would no longer be

subject to CAMA permit requirements. The Division of Coastal Management estimates that approximately 24 permit Exemptions and one CAMA Major Permit per year are issued within the High Hazard Flood AEC. When the permit fee cost savings associated with the permit exemption for single family structures (\$1,200 total) is added to the permit fee savings associated with CAMA Major Permits, there is an estimate annual savings of \$1,600 in permit fees per year to property owners currently within the High Hazard Flood AEC.

The economic impacts of this proposed rule change are potential financial benefits to property owners, who may experience a \$50 to \$400 savings in permit fees. Total financial benefits will be approximately \$1,600 each year. Assuming an annual maximum savings of \$1,600 the 10-year present value of the benefits of the proposed rule change to property owners is approximately \$11,000, using a 7% discount rate.

Table 1. Fiscal Impact Summary

<b>Affected Party</b>	<b>Cost/Year</b>	<b>Savings/Year</b>	<b>Total/Year</b>
Property Owners	\$0	\$1,600	\$1,600
NC DOT	\$0	\$0	\$0
Local Governments	\$1,800	\$0	-\$1,800
Division of Coastal Mgmt	\$400	\$600	\$200

## APPENDIX A

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The 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)~~(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 identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
  - (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
  - (b) the former location of Mad Inlet, which closed in 1997.In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.
- ~~(4)~~(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 as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

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

**15A NCAC 07K .0213 SINGLE FAMILY RESIDENCES EXEMPTED FROM THE CAMA  
PERMIT REQUIREMENTS WITHIN THE HIGH HAZARD FLOOD AREA OF  
ENVIRONMENTAL CONCERN**

~~(a) All single family residences, including associated infrastructure, accessory structures or structural additions to an existing single family structure, constructed within the High Hazard Flood Area of Environmental Concern are exempt from the CAMA permit requirements provided that the development is consistent with all other applicable CAMA permit standards and local land use plans and/or rules in effect at the time the exemption is granted including the following conditions and limitations:~~

- ~~(1) The development shall not be located within the Ocean Erodible or Inlet Hazard Areas of Environmental Concern.~~
- ~~(2) Any building shall be on pilings and comply with the North Carolina Building Code and the local flood damage prevention ordinance as required by the National Flood Insurance Program.~~
- ~~(3) The development does not require any permission, licensing, approval, certification or authorization, licensing or approval from any state or federal agency.~~

~~(b) Prior to commencing any work under this exemption, the Department of Environment and Natural Resources (DENR) representative or local CAMA permitting officer must be notified of the proposed activity to allow on site review. Notification shall be given in person or in writing. Notification must include:~~

- ~~(1) the name, address and telephone number of the landowner and the location of the work, including the county, nearest community and water body closest to the development;~~
- ~~(2) the dimensions of the proposed house, driveway, landscaping or other accessory developments proposed on the property; and~~
- ~~(3) a signed AEC hazard notice indicating the property owner is aware of the special risks and conditions associated with development in this area. The DENR representative or local CAMA permitting officer shall provide the applicable notice form to the landowner.~~

~~(c) The applicant for a permit exemption must submit with the request a check or money order payable to the Department of Environment and Natural Resources (DENR) or local permitting authority in the sum of fifty dollars (\$50.00).~~

*History Note: Authority G.S. 113A-103(5)(a); 113A-113(b)(6); 113A-118(d)(2); 113A-119.1;  
Eff. August 1, 2002.*





North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

CRC-14-31

MEMORANDUM

**TO:** Coastal Resources Commission  
**FROM:** David Moye, District Manager – Washington Regional Office  
**SUBJECT:** Amendments to 7H.0205 Coastal Wetlands – Occasional Flooding Criteria  
**DATE:** October 8, 2014

At the May 2014 CRC meeting, the Commission was updated on litigation involving the Division of Coastal Management that was specifically related to the definition of “coastal wetlands” in the State Dredge and Fill Law and Coastal Area Management Act (CAMA). At issue in the litigation was the adequacy of the definition of “occasional flooding” in determining the landward extent of coastal wetlands. Since that meeting, the Division has developed proposed rule language intended to clarify existing procedures, as well as a new Coastal Wetlands Determination field sheet so that when Field Staff make a Coastal Wetland determination on a site, property owners will have written confirmation with specific information provided on what indicators were used to make the determination and a process for appealing the determination that may help resolve any future disputes.

Staff is recommending that the CRC modify the definition of Coastal Wetlands found in 15A NCAC 07H.0205 to include the field indicators of regular or occasional flooding that staff has used since the inception of the state’s coastal program in delineating the landward limit of Coastal Wetlands. Staff has attached the proposed rule language for your review. The biological and physical indicators used to establish occasional flooding are well established, ecologically-based, and are used in varying forms by several states along the eastern seaboard in their regulatory programs. Staff looks forward to this discussion with the Commission.

Attachment

### 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), provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators including but not limited to the observation of tidal water (including wind tides) on the site, changes in elevation, presence of periwinkle (*Littoraria* spp.), presence of crab burrows, staining, and 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 pursuant to G.S. 113-230(a).5

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained. Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational businesses along the seacoast. The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands. Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing suspended 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.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124;  
Eff. September 9, 1977;*

*Amended Eff. November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978.*

*Amended Eff. TBD, 2015*



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

**CRC – 14 - 32**

**MEMORANDUM**

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

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Attached you will find proposed amendments to the 7B CAMA Land Use Planning Requirements and 7L Local Planning and Management Grants. The draft language is in response to comments and input gathered at two regional workshops held in Wilmington and Plymouth this past year, staff experience implementing the program, and a previous study by the Commission. Comments used in developing the draft represent input from local elected officials, local planning staff, consultants, and other interest stakeholders. In addition, the draft is reflective of the proposal outlined by DCM Director Braxton Davis at the July 2014 Commission meeting, which include increased flexibility for plan content and format, clarification that updates and amendments are voluntary, a new process option for CAMA Major Permit Review, streamlined plan approval, amendment, and update processes, integrated planning efforts, and an improved Technical Manual.

Specifically, the proposed amendments achieve the following major themes:

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

The following will briefly outline the proposed changes to both 7B and 7L and how the changes requested by local governments have been met. Further, Attachments 1 and 2 provide draft language, including notes summarizing the proposed amendments to each section.

**SUBCHAPTER 7B – STATE GUIDELINES FOR LAND USE PLANNING**

**Section .0600 INTRODUCTION**

This section provides authority for the State planning program. Workshop participants requested that communities have the ability to use existing comprehensive plans and other planning

documents to meet the CRC's planning guidelines. New language allows a shift from CAMA Land Use Plans to land use plans that include coastal management goals.

#### Section .0700 LAND USE PLANNING REQUIREMENTS

This section of the rules focuses on the CRC and CAMA goals and objectives and outlines what needs to be included in a plan to meet those goals and objectives. Comments from both the southern and northern workshops centered on the complex planning procedures as well as the amount of data, including mapping that is currently required. The proposed rule language removes or amends unnecessary, redundant, and prescriptive planning requirements. The changes encourage local planning initiatives focusing on issues that are most important and unique to the jurisdiction, while maintaining a focus on coastal resource management. Emphasis is shifted to policy and implementation of the plan, rather than on background data and technical assistance.

#### Section .0800 LAND USE PLAN AND AMENDMENT REVIEW AND CERTIFICATION

This section outlines the procedure for certification of a land use plan or amendment by the CRC. Workshop participants voiced frustration with the timeframe for both receiving comments and having a plan certified. The new language proposes a formal timeline for the comment period and certification process. Further, responsibility for certification has been shifted to the Director of the Division of Coastal Management. This change provides a quicker turn around for certifications and greater flexibility for local governments.

In addition to these changes, staff will be updating the Technical Manual to provide assistance with specific coastal issues. The Technical Manual will include data sources, model policies, and implementation strategies. This new manual will be a handbook to be used in conjunction with the planning guidelines.

#### SUBCHAPTER 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

It is important to note that there are no CRC responsibilities designated in Subchapter 7L. These rules were amended in conjunction with Subchapter 7B due to the fact that 7L outlined funding, hearing requirements, and other grant-related issues associated with CAMA land use plans. Some of these processes are no longer necessary or have been merged into the new proposed 7B rule language.

#### Section .0102 PUPOSE

This section establishes the Division's ability to administer coastal planning and management grants within the 20 coastal counties as defined in the CAMA. References to CAMA Land Use Plans have been removed and replaced with comprehensive plans.

#### Section .0500 GENERAL STANDARDS

This section outlines the type and priority of projects that are able to be funded through the grant program. Changes include updating language to match current NCDENR contract requirements and outline local matching requirements. Nine parts of this section were completely removed to streamline the rules and make the program more flexible. Where appropriate, portions of this section were merged with the proposed 7B rule language.

Section .0600 APPLICATION PROCESS and Section .0700 GRANT ADMINISTRATION were removed. The application process will be outlined in future request for proposals (RFPs) and grant administration will be in accordance with contracts prepared by NCDENR.

**Next Steps**

DCM has distributed the attached draft language to local government planning staff for review and comment. Upon receipt of comments, staff will prepare a report and present the findings to you at the December 17&18, 2014 CRC Meeting. If the Commission chooses, a panel discussion to discuss the proposed rules will be included as part of the land use planning presentation in December. After comments and any requested changes by the Commission, Staff will formally submit draft language to be sent for public hearing in 2015.

**Attachments**

Attachment 1 – Proposed Subsection 7B Land Use Planning Guidelines

Attachment 2 – Proposed Subsection 7L Local Planning and Management Grants

# ATTACHMENT 1

## PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

### SUBCHAPTER 7B – ~~CAMA STATE GUIDELINES FOR~~ LAND USE PLANNING

#### SECTION .0600 - INTRODUCTION

##### 15A NCAC 07B .0601 AUTHORITY

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

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

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

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

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

#### SECTION .0700 – ~~CAMA~~ LAND USE PLANNING REQUIREMENTS

##### 15A NCAC 07B .0701 PLANNING OPTIONS

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

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

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




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

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

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

Figure 1: TYPES OF CAMA PLANS PRESUMED FOR MUNICIPALITIES

POPULATION	GROWTH RATE*	AREAS OF ENVIRONMENTAL CONCERN (AECs)		DO NOT MEET STATUTORY THRESHOLD IN §113A-110 (e)***
		OCEAN HAZARD AREAS	NON-OCEAN HAZARD AREAS**	
≥ 5,000	N/A	Minimum Core Plan Presumed	Minimum Core Plan Presumed	
≥ 2,500	HIGH	Minimum Core Plan Presumed	Minimum Core Plan Presumed	
> 1,000 and < 2,500	HIGH	Minimum Core Plan Presumed	Minimum Core Plan Presumed	
< 1,000	HIGH	Minimum Core Plan Presumed	Core or Workbook plan	
≥ 2,500	MODERATE	Minimum Core Plan Presumed	Core or Workbook plan	
< 2,500	MODERATE	Minimum Core Plan Presumed	Core or Workbook plan	
≥ 2,500	LOW	Minimum Core Plan Presumed	Core or Workbook plan	
< 2,500	LOW	Minimum Core Plan Presumed	Core or Workbook plan	

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

\*-GROWTH RATE (Source: Office of State Planning)

High ≥ 18.4%  
 Moderate > 9.2% and < 18.4%  
 Low ≤ 9.2%

\*\* Estuarine Waters, Coastal Shorelines, Public Trust Areas, and Coastal Wetlands

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



PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

~~(c) Types of Plans~~

- ~~(1) Workbook plan: This is a simplified CAMA Land Use Plan that addresses the following elements:
  - ~~(A) statement of community concerns, aspirations and vision;~~
  - ~~(B) existing land use map;~~
  - ~~(C) land suitability analysis;~~
  - ~~(D) local growth and development policies addressing each Management Topic and applicable Areas of Environmental Concern; and~~
  - ~~(E) future land use map.~~The Division of Coastal Management (DCM) shall provide a workbook plan template to municipalities preparing this type of plan containing all required data and examples of policy alternatives.~~
- ~~(2) Core plan: This plan addresses all of the plan elements in Rule .0702 of this Section (Elements of CAMA Core and Advanced Core Land Use Plans) in a complete and thorough manner. This type of plan is the standard CAMA Land Use Plan required for all 20 coastal counties.~~
- ~~(3) Advanced core plan: The plan prepared by local governments that, due to consideration of specific local conditions, elect to exceed the core plan requirements in two or more areas. This plan also may be used to help meet the requirements of other planning programs, such as the Environmental Protection Agency's (EPA) Phase II Stormwater requirements or hazard mitigation plans, that address the CAMA goals, or to address issues of local concern, (i.e. location of a new industry or redevelopment after storm events.)~~

~~(d) Counties preparing a CAMA Land Use Plan shall prepare a core plan at a minimum.~~

~~(e) Municipalities that contain AECs may prepare a Workbook Plan, Core Plan, or Advanced Core Plan, depending on the presumptive type of plan shown in Figure 1. However, the type of plan to be prepared may change depending on needs that are identified in the scoping process described in 15A NCAC 07L. Municipalities with Ocean Hazard AECs that choose to plan shall prepare a minimum of a Core Plan. Municipalities with only Non Ocean Hazard AECs that choose to plan shall prepare a Core Plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only Non Ocean Hazard AECs that choose to plan and are at or below the population and growth rate thresholds shown in Figure 1 may prepare a Core Plan or a Workbook Plan.~~

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

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

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

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

(a) Organization of the Plan. ~~The elements in this Rule provide general direction for development of the CAMA Core and Advanced Core Land Use Plans. A detailed Table of Contents shall be included and if the local government does not follow the outline described in this Rule, Include A a matrix shall be included in the land use plan or comprehensive plan that shows the exact location of the following required elements.~~

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

- (1) Significant existing and emerging conditions: ~~The plan shall include a description~~ Describe of the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: ~~The plan shall include a description of~~ Describe the land use and development topics most important to the future of the planning area. At a minimum, this description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, and water quality, ~~and local areas of concern~~ as described in Subparagraph (d)(32) (Land Use Plan Management Topics) of this Rule.
- (3) A community vision: ~~This shall consist of a description of~~ Describe the general physical appearance and form that represents the local government's plan for the future. ~~The community vision shall include~~ Include statements of general objectives to be achieved by the plan. ~~These objectives shall serve as the foundation for more specific objectives and policies stated elsewhere in the CAMA Land Use Plan. The objectives shall include and identify changes that the local government feels are may be needed to achieve the planning vision.~~

(c) ~~Analysis of~~ Existing and Emerging Conditions ~~within the planning jurisdiction~~. The purpose of this element is to provide a sound factual and analytical base that is necessary to support the land use and development policies included in the plan. ~~The analysis shall be based upon the best available data or mapping information from state, federal and local sources. This element shall describe~~ Describe the following:

- (1) Population, Housing, and Economy. ~~The plan shall include~~ Include an analysis and discussion of the following data and trends:
  - (A) Population:
    - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
    - (ii) Current permanent and seasonal population estimates;
    - (iii) Key population characteristics; and
    - ~~(iv) Age; and~~
    - ~~(v) Income~~
    - ~~(vi) iv~~ Thirty year projections of permanent and seasonal population, in five year increments.
  - (B) Housing stock:
    - ~~(i)~~ Estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured); and

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- ~~(ii) Building permits issued for single family, multifamily, and manufactured homes since last plan update.~~
- (C) Local economy: Describe Employment employment by major sectors and description of community economic activity.
- ~~(D) Projections. Short term (five and ten year) and long term (20 year) projections of permanent and seasonal population.~~
- (2) Natural systems analysis. The purpose of Describe the natural systems analysis is to describe and analyze the natural features and discuss the environmental conditions of the planning jurisdiction, and to assess their capabilities and limitations for development. This analysis shall to include:
  - (A) Mapping and analysis of natural Natural features. The 14 digit hydrological units delineated by the Natural Resources Conservation Service shall be used as the basic unit of analysis of natural features. Maps of the following natural features shall be developed with data provided by DCM or other state agencies for analysis and plan development. These maps may be reproduced and included in the CAMA Land use plan at the option of the local government. If the maps are not included in the plan, they shall be made available to the public:
    - (i) Areas of Environmental Concern (AECs);
    - (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
    - (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations, and Division of Environmental Health (DEH) Marine Fisheries (DMF) shellfish growing areas and water quality conditions;
    - (iv) Flood and other natural hazard areas;
    - (v) Storm surge areas;
    - (vi) Non-coastal wetlands including forested wetlands, shrub-scrub wetlands and freshwater marshes;
    - (vii) Water supply watersheds or wellhead protection areas;
    - (viii) Primary nursery areas, where mapped;
    - (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
    - (x) Additional natural features or conditions identified by the local government.
  - ~~(B) Composite map of environmental conditions:
 
    - ~~(i) Composite map of environmental conditions: The plan shall include a map that shows the extent and overlap of natural features listed in Part (c)(2)(A) of this Rule and, based on the local government's determination of the capabilities and limitations of these features and conditions for development, shows the location of the following three categories of land:
 
      - ~~(1) Class I land containing only minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices;~~~~~~

REMOVED mapping requirement for natural features. Maps are optional.

ELIMINATED analysis requirements for natural features.

REMOVED requirements for a map classifying environmental constraints on the land.

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

- ~~(II) Class II land containing development hazards and limitations that may be addressed by methods such as restrictions on types of land uses; special site planning; or the provision of public services; and~~
- ~~(III) Class III land containing serious hazards for development or lands where the impact of development may cause serious damage to the functions of natural systems.~~
- ~~(ii) The CAMA Land Use Plan shall describe or list the features or conditions selected by the local government for inclusion in each class.~~
- (E B) Environmental conditions: The plan shall provide an assessment of the following environmental conditions and features, and discuss their limitations or opportunities for development:
  - (i) Water quality:
    - (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Quality Resources Basinwide Water Quality Plans Basin Planning Branch Reports, Clean Water Act 303(d) List, and other comparable data;
    - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Environmental Health Marine Fisheries;
    - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
    - (IV) Areas with water quality or public health problems related to non-point source pollution.
  - (ii) Natural hazards:
    - (I) Areas subject to storm hazards such as recurrent flooding, storm surges and high winds; and
    - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities; and
    - ~~(III) Where data is available, estimates of public and private damage resulting from floods and wind that has occurred since the last plan update.~~
  - (iii) Natural resources:
    - (I) Environmentally fragile areas (as defined in Part (c)(2)(A)(ix) of this Rule) or areas where resource functions may be are being impacted as a result of development; and
    - (II) Valuable natural resource areas that are being impacted or lost as a result of incompatible development. Areas containing potentially valuable natural resources. These may include, but are not limited to the following: beach quality sand deposits, coastal wetlands, protected open space, and agricultural land, that may be impacted or lost as a result of incompatible development.

PROPOSED CHANGES TO 7B – CAMA LAND USE PLANNING

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

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

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(d) ~~Plan for the Future~~ Future Land Use. This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and the goals of the CAMA through local government land use and development policies, including a future land use map. Policies affecting AECs shall also be used in making CAMA permit decisions. The plan for the future includes the local government's goals, land use and development policies, and future land use map:

(1) Land use and development goals Policies. The following shall be considered in the development of the plan's goals:

(A) Community concerns and aspirations Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government land use policies as required in .0702 (b) and (c). identified at the beginning of the planning process; and

(B) Needs and opportunities identified in the analysis of existing and emerging conditions.

(2) ~~Policies:~~

~~(A-B)~~ Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The CAMA Land use plan shall demonstrate how the land use and development goals, policies and future land use map, as required in Subparagraph (d)(4) of this Rule, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.

~~(B)~~ The plan shall contain a description of the type and extent of analysis completed to determine the impact of CAMA Land Use Plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.

~~(C)~~ The plan shall contain a statement that the governing body either accepts state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the CAMA Land use plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on Federal and State laws and regulations it shall reference these in the plan. Policies that exceed use standards and permitting requirements found in Subchapter 7H – State Guidelines for Areas of Environmental Concern shall be identified in the plan.

~~(32)~~ Land Use Plan Management Topics. The purposes of the CRC's management topics are to insure ensure that CAMA Land Use Plans land use plans support the goals of the CAMA, to define the CRC's expectations for the land use planning process policies, and to provide a give the CRC a substantive basis for land use plan review and certification of CAMA Land Use Plans. Each of the following management topics (Public Access, Land Use Compatibility, Infrastructure Carrying Capacity, Natural Hazard Areas, Water Quality, and Local Areas of Concern) includes three two components: a management goal; and a statement of the CRC's planning objectives, and requirements for the CAMA Land Use Plans:

(A) Public Access:

REMOVED policy analysis requirement.

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

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- (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
  - (ii) Planning Objectives: ~~Develop comprehensive policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction. Policies shall that address access needs and opportunities, with include strategies to develop public access, and identify feasible funding options.~~
  - ~~(iii) Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local criteria for frequency and type of access facilities. These policies shall contain and provisions for public access for all segments of the community, including persons with disabilities, and Oceanfront communities shall establish access criteria policies for beach areas targeted for nourishment.~~
- (B) Land Use Compatibility:
- (i) Management Goal: Ensure that development and use of resources or preservation of land ~~balance protection of natural resources and fragile areas with economic development~~ minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare, and ~~is are~~ consistent with the capability of the land ~~based on considerations of interactions of natural and manmade features.~~
  - (ii) Planning Objectives:
    - ~~(I) Adopt and apply local development policies that balance protection of natural resources and fragile areas with economic development.~~
    - ~~(II) Policies shall provide direction to assist local decision making and consistency for zoning, divisions of land, and public and private projects.~~
  - ~~(iii) Land Use Plan Requirements:
    - ~~(I) Policies that characterize future land use development patterns and Establish building intensity and density criteria, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.~~
    - ~~(II) Establish establish local mitigation criteria and concepts to minimize conflicts. These may include, but are not limited to the following: cluster subdivision design, enacting local buffers, impervious surface limits, and innovative stormwater management alternatives.~~~~
- (C) Infrastructure Carrying Capacity:
- (i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
  - (ii) Planning Objectives: ~~Policies that Establish establish level of service policies and criteria for infrastructure consistent with Part (c)(3)(D) (Projections of Future Land~~



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- ~~Needs) of this Rule and ensure improvements minimize impacts to AECs and other fragile areas.~~
- ~~(iii) Land Use Plan Requirements:~~
- ~~(I) Identify/establish service area boundaries for existing and future infrastructure.~~
- ~~(II) Correlate future land use map categories with existing and planned infrastructure such as wastewater, water infrastructure and transportation.~~
- (D) Natural Hazard Areas:
- (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.
- (ii) Planning Objectives: ~~Develop policies~~ Policies that establish hazard mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that minimize threats to life, property, and natural resources resulting from ~~development located in or adjacent to hazard areas, such as those subject to~~ erosion, high winds, storm surge, flooding, or ~~sea level rise~~ other natural hazards.
- ~~(iii) Land Use Plan Requirements:~~
- ~~(I) Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.~~
- ~~(II) Correlate existing and planned development with existing and planned evacuation infrastructure.~~
- (E) Water Quality:
- (i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.
- (ii) Planning Objectives: ~~Adopt policies~~ Policies that establish strategies and practices to prevent or control nonpoint source pollution and improve water quality for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired.
- ~~(iii) Land Use Plan Requirements:~~
- ~~(I) Devise policies that help prevent or control nonpoint source discharges (sewage and storm water) such as, but not limited to the following: impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.~~
- ~~(II) Establish policies and land use categories aimed at protecting open shellfishing waters and restoring closed or conditionally closed shellfishing waters.~~
- ~~(F) Local Areas of Concern:~~
- ~~(i) Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning.~~

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

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(ii) Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs.

(iii) Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options.

- (43) Future land use map. This map depicts ~~Depict~~ application of the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure policies. ~~The local government shall include~~ Include such categories and designations with descriptions of land uses and development, as are required to accurately illustrate the application of its policies. At a minimum, the map shall show the following:
- (A) 14 digit hydrological units encompassed by the planning area;
  - (B) areas and locations planned for conservation or open space and a description of compatible land uses and activities;
  - (C) areas and locations planned for future growth and development with descriptions of the following characteristics:
    - (i) predominant and supporting land uses that are encouraged in each area;
    - (ii) overall density and development intensity planned for each area; and
    - (iii) infrastructure required to support planned development in each area.
  - (D) areas in existing developed areas for infill, preservation, and redevelopment;
  - (E) existing and planned infrastructure, including major roads, water, and sewer.

The local government may use additional or more detailed categories if required to depict its land use policies. If the future land use map shows development patterns or land uses that are not consistent with the natural systems analysis, or the land suitability analysis, then the plan shall include a description of the steps that the local government shall take to mitigate the impacts. In addition, the plan shall include an estimate of the cost of any community facilities or services that shall be extended or developed. The amount of land allocated to various uses shall be calculated and compared to the projection of land needs. The amount of land area thus allocated to various uses may not exceed projected needs as delineated in Part (c)(3)(D) of this Rule (Projections of Future Land Needs).

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

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

————— REDUCED Future Land Use Map requirements.

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

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

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

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

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

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

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

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

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

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

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

*History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;  
Eff. August 1, 2002.  
Amended Eff. January 1, 2007; February 1, 2006*

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

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

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

- (1) The appropriate DCM Division District Planner shall submit a written report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan, Division Director on the locally adopted land use plan or amendment and either recommend certification, conditional certification, or non-certification or identify how the plan or amendment does not meet the procedures and conditions for certification.
- (2) The local government shall submit its draft Land Use Plan to the committee designated by the CRC.
- (3) The public shall have an opportunity to submit written objections, or comments, or statements of support on the locally adopted land use plan or amendment prior to action by the committee designated by the CRC Division Director. Written objections shall be received by DCM the Division no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting no more than 30 calendar days after local adoption of the land use plan or amendment, and shall be limited to the criteria for CRC certification as defined in Subparagraph (e)(3) of this Rule. Written objections and shall identify the specific plan elements that are opposed. A copy of any Written objections or comments shall be sent by the DCM Division to the local government submitting the CAMA Land Use Plan land use plan or amendment. Written objections shall be considered in the certification of the local land use plan or amendment.

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- (43) ~~The Division Director shall certify land use plans and amendments following the procedures and conditions specified in this Rule. The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review. The Division Director shall certify plans and amendments which:~~
- ~~(A) are consistent with the current federally approved North Carolina Coastal Management Program;~~
  - ~~(B) are consistent with the Rules of the CRC;~~
  - ~~(C) do not violate state or federal law; and~~
  - ~~(D) contain policies that address each Management Topic.~~
- (4) ~~If the land use plan or amendment does not meet certification requirements the Division Director shall within 45 calendar days inform the local government how the plan or amendment does not meet the procedures and conditions for certification.~~
- (b) ~~Copies of the Plan. Within 90 calendar days of certification of a land use plan or an amendment the local government shall provide one (1) printed and one (1) digital copy of the land use plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.~~
- (c) ~~Use of the plan. Once certified, the land use plan shall be utilized in the review of CAMA permits in accordance with G. S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:~~
- ~~(1) Local administration. The local government reviews CAMA permits for consistency with the land use plan.~~
  - ~~(2) Joint administration. The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for CAMA permit consistency reviews.~~
  - ~~(3) Division administration. The Division reviews CAMA permits for consistency with the land use plan policies, including the future land use map and implementation actions.~~
- (d) ~~Plan updates and amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.~~
- (e) ~~CRC Certification:~~
- ~~(1) The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.~~
  - ~~(2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.~~
  - ~~(3) The CRC shall certify plans which:~~
    - ~~(A) are consistent with the current federally approved North Carolina Coastal Management Program;~~
    - ~~(B) are consistent with the Rules of the CRC;~~
    - ~~(C) do not violate state or federal law;~~
    - ~~(D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A~~
- IMPORTANT – Land use plans and amendments are to be certified by the Division Director. No action by the CRC is required.
- ESTABLISHED timeframe for a certification decision on a locally adopted land use plan or amendment.
- INSERTED option for local governments to choose the procedure to review CAMA permits for consistency with the land use
- CLARIFIED that plan updates and amendments are voluntary.
- REMOVED requirement for certification action by the CRC.

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NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and

(E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.

(d) Non-Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.

(e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.

*History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;  
Eff. August 1, 2002.  
Amended Eff. April 1, 2008; September 1, 2006.*

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

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

The Implementation Status Report shall also identify:

- (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified land use plan;
- (2) Any actions that have been delayed and the reasons for the delays;
- (3) Any unforeseen land use issues that have arisen since certification of the land use plan; and
- (4) Consistency of existing land use and development ordinances with current land use plan policies.

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

RELOCATED from 7L and REVISED.

~~SECTION .0900 — CAMA LAND USE PLAN AMENDMENTS~~

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

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

~~(a) Normal Amendment Process:~~

- ~~(1) — The CAMA Land Use Plan may be amended and only the amended portions submitted for CRC certification. If the local government amends half or more of the policies of the CAMA Land Use Plan, a new locally adopted plan shall be submitted to the CRC. Local public hearing and notice requirements shall be in the same manner as provided in 15A NCAC 07B .0801(a). Except for Land Use Plans that were certified prior to August 1, 2002, amendments and changes to the Local Land Use Plan shall be consistent with other required elements for the local land use plan per the requirements of Rule .0702 of this Subchapter.~~
- ~~(2) — The local government proposing an amendment to its CAMA Land Use Plan shall provide to the Executive Secretary of the CRC or her/his designee written notice of the public hearing, a copy of the proposed amendment (including text and maps as applicable), and the reasons for the amendment no less than five business days prior to publication of the public hearing notice. After the public hearing, the local government shall provide the Executive Secretary or her/his designee with a copy of the locally adopted amendment no earlier than 45 days and no later than 30 days prior to the next CRC meeting for CRC certification. If the local government fails to submit the requested documents as specified above and the resolution provided in Subparagraph (5) of this Paragraph, to the Executive Secretary within the specified timeframe, the local government may resubmit the documents within the specified timeframe for consideration at the following CRC meeting.~~
- ~~(3) — For joint plans, originally adopted by each participating jurisdiction, each government retains its sole and independent authority to make amendments to the plan as it affects its jurisdiction.~~
- ~~(4) — CRC review and action on CAMA Land Use Plan amendments shall be in the same manner as provided in 15A NCAC 07B .0802 (b), (c), (d) and (e), except amendments to Land Use Plans which were certified prior to August 1, 2002 are exempt from part .0802(c)(3)(D).~~
- ~~(5) — The local resolution of adoption shall include findings which demonstrate that amendments to policy statements or to the Future Land Use Plan Map (FLUP) have been evaluated for their consistency with other existing policies.~~

~~(b) Delegation of CRC Certification of Amendments to the Executive Secretary:~~

- ~~(1) — A local government that desires to have the Executive Secretary instead of the CRC certify a CAMA Land Use Plan amendment shall first meet the requirements in Subparagraphs (a)(1) through (5) of this Rule and the following criteria defined in Parts (b)(1)(A) through (D) of this Rule. The local government may then request the Executive Secretary to certify the amendment. The Executive Secretary shall make a determination that all criteria have been met, and mail notification to the local government and CRC members, no later than two weeks after receipt of the request for certification. The CRC's delegation to the Executive Secretary of the authority to certify proposed amendments is limited to amendments that meet the following criteria:
  - ~~(A) — Minor changes in policy statements or objectives for the purpose of clarification of intent;~~~~

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~~(B) — Modification of any map that does not impose new land use categories in areas least suitable for development as shown on the Land Suitability Map;~~

~~(C) — New data compilations and associated statistical adjustments that do not suggest policy revisions; or~~

~~(D) — More detailed identification of existing land uses or additional maps of existing or natural conditions that do not affect any policies in the CAMA Land Use Plan.~~

~~(2) — If the Executive Secretary certifies the amendment, the amendment becomes final upon certification of the Executive Secretary, and is not subject to further CRC review described in 15A NCAC 07B .0802 (Presentation to CRC for Certification);~~

~~(3) — If the Executive Secretary denies certification of the amendment, the local government shall submit its amendment for review by the CRC in accordance with the regular plan certification process in 15A NCAC 07B .0802 (Presentation to CRC for Certification).~~

~~(c) Any amendments to the text or maps of the CAMA Land Use Plan shall be incorporated in context in all available copies of the plan and shall be dated to indicate the dates of local adoption and CRC certification. The amended CAMA Land Use Plan shall be maintained as required by G.S. 113A-110(g).~~

~~(d) Within 90 days after certification of a CAMA Land Use Plan amendment, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common border, and to the regional planning entity.~~

~~(e) A local government that receives Sustainable Community funding from the Department pursuant to 15A NCAC 07L shall formulate and submit to the CRC for certification a CAMA Land Use Plan Amendment during its first year as a Sustainable Community.~~

*History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;  
Eff. August 1, 2002.  
Amended Eff. November 1, 2009; February 1, 2006.*



**ATTACHMENT 2**

PROPOSED CHANGES TO 7L – LOCAL PLANNING AND MANAGEMENT GRANTS

**SUBCHAPTER 7L - LOCAL PLANNING AND MANAGEMENT GRANTS**

**SECTION .0100 – PURPOSE AND AUTHORITY**

**15A NCAC 07L .0101 AUTHORITY**

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

*History Note: Authority G.S. 113A-112; 113A-124;  
Eff. September 1, 1978;  
Amended Eff. August 1, 2002; October 1, 1991.*

**15A NCAC 07L .0102 PURPOSE**

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

*History Note: Authority G.S. 113A-112; 113A-124;  
Eff. September 1, 1978;  
Amended Eff. August 1, 2002; June 1, 1980.*

**SECTION .0200 – GENERAL STANDARDS**

**15A NCAC 07L .0201 ELIGIBLE APPLICANTS**

**15A NCAC 07L .0202 PRIORITIES FOR FUNDING**

**15A NCAC 07L .0203 ELIGIBLE PROJECTS**

**15A NCAC 07L .0204 PROJECT DURATION**

**15A NCAC 07L .0205 CONSISTENCY WITH PLANS AND GUIDELINES**

**15A NCAC 07L .0206 RELATION TO OTHER FUNDING**

*History Note: Authority G.S. 113A-112; 113A-124;  
Eff. September 1, 1978;*

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

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

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

**SECTION .0300 – APPLICATION PROCESS**

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

*History Note: Authority G.S. 113A-112; 113A-124;  
Eff. September 1, 1978;  
Amended Eff. October 1, 1991; May 1, 1990; November 1, 1984; June 1, 1982; March 13, 1981;  
June 1, 1980;  
Repealed August 1, 2002.*

**SECTION .0400 – GRANT ADMINISTRATION**

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

*History Note: Authority G.S. 113A-112; 113A-124;  
Eff. September 1, 1978;  
Amended Eff. March 13, 1981; June 1, 1980; September 1, 1978;  
Repealed August 1, 2002.*

**SECTION .0500 - GENERAL STANDARDS**

**15A NCAC 07L .0501 ELIGIBLE APPLICANTS**

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

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

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

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

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

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

REMOVED specified land use plan certification by the CRC; to be consistent with proposed changes to 7B for Division Director certification.

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

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

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

- (1) The highest priority includes projects directly mandated by statute, including initial and updated CAMA land use plans, local participation in projects initiated by DENR, and projects DENR indicates urgently need local attention in order to meet CRC management topics. In general, grants for projects in this priority category, except CAMA Workbook land use plans, shall be funded for no more than 85 percent of the total project cost, although lower funding percentages may be awarded. The type of CAMA land use plan to be funded and the corresponding percentage of funding shall be based on community characteristics as determined during the scoping process described in 15A NCAC 07L .0505 to be held prior to project application.
- (2) The second priority includes projects directly related to carrying out the explicit goals of CAMA, for which DENR indicates there is a high priority for local actions or projects which are coastally dependent (water-related) or projects to implement the CAMA a land use plan such as public facilities planning or land use regulations preparation. Grants for projects in this category shall be for no more than 65 percent of the total project cost, although lower funding percentages may be awarded.

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

- (3) The third priority includes projects related to improving local coastal management and land use management capabilities. ~~Grants for projects in this priority category shall be for no more than 50 percent of the total project cost, although lower funding percentages may be awarded.~~

(c) In addition, DENR shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories:

- (1) project's contribution towards meeting CRC management topics;
- (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards;
- (3) applicant's urgency of need;
- (4) past history of applicant's implementation of CAMA planning and management activities;
- (5) feasibility of successful completion of project by the applicant;
- (6) past experience with this program as well as present management and administrative capabilities;
- (7) potential applicability of the project to other coastal area municipalities and counties; and
- (8) geographic distribution of applicants.

~~(d) In priority categories two and three, the proportion of the grant award to total project costs shall be the same for all similar projects. For example, if one waterfront access plan is funded at a 60 percent level, all waterfront access plans shall be funded at a 60 percent level. The only exception to this involves multi-year projects which may receive a lower level of funding within a given priority category after the initial year.~~

~~(e) Generally, available funds shall first be allocated to projects in priority category one; then, if there are funds remaining, grants shall be made to projects in priority category two; and then, if there are funds remaining, grants may be made to projects in priority category three. However, the factors listed in Paragraph (c) of this Rule shall also be considered in funding decisions. Sustainable Communities projects shall be funded as described in 15A NCAC 07L .0512. The North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3) shall be used to determine the economic status of counties. Local government contributions for land use plan and implementation projects shall be at least 25 percent of the project costs except for Tier 1 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.~~

~~(f) (e) Any local government whose CAMA land use plan is not certified by the CRC due to failure to meet the criteria listed in 15A NCAC 07B .0803 or that has not submitted the most recent Required Periodic Implementation Status Report as described in 15A NCAC 07B, shall not receive further funding under this program until these inconsistencies are corrected.~~

~~(g) Any local government that is not implementing its certified CAMA land use plan shall not receive additional funding under this program. CAMA land use plan implementation shall be documented through periodic Implementation Status Reports provided to the Division of Coastal Management (DCM), as described in 15A NCAC 07L .0511 (Required Periodic Implementation Status Reports). A local government that is deemed by the DCM Planner to not have implemented its current CAMA land use plan may seek a review by the Director of the DCM to determine if the current CAMA land use plan implementation is acceptable to receive future funding.~~

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

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

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

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

**15A NCAC 07L .0504 ELIGIBLE PROJECTS**

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

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

- (1) Priority Category-Type 1
  - (A) Those activities specifically designated by DENR on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state rules for land use planning;
  - (B) Adopting, amending, or updating CAMA land use plans to reflect changed conditions (these may include, but are not limited to: necessary data collection, public participation, policy development).
- (2) Priority Category-Type 2
  - (A) Adopting or amending ordinances to further secure compliance with state rules in AECs;
  - (B) Beach access plans and studies (these may include, but are not limited to: inventory and identification of sites, design of access improvements, acquisition plans and studies, legal studies necessary to determine the extent of public use rights);
  - (C) Erosion control plans and studies (these may include, but are not limited to: mapping, erosion rate measurement, design of protection strategies for public lands, cost-benefit analysis, relocation plans and strategies);
  - (D) Studies and planning leading to the nomination of new AECs as described in 15A NCAC 07H .0503, or locally significant environmental areas;
  - (E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing water-front parks and public areas (these may include, but are not limited to: site design, use studies, cost analysis);
  - (F) Preparing, adopting, or amending ordinances necessary to carry out certified CAMA land use plans, state rules, and the state coastal zone management plan (including but not limited to regulations on or for zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, environmental impact statements);
  - ~~(G) Hazard mitigation plans.~~
- (3) Priority Category-Type 3

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

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

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

**15A NCAC 07L .0505 — SCOPING OF PLANNING NEEDS**

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

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

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

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

**15A NCAC 07L .0506 — PUBLIC PARTICIPATION**

(a) Local Governments receiving DENR funding for CAMA land use plan preparation shall be responsible for the development and implementation of a Citizen Participation Plan. Local governments shall employ a variety of educational efforts and participation techniques to assure that all socioeconomic segments of the community and non resident property owners have opportunities to participate during plan development.

(b) Extent of Required Effort. Prior to the start of CAMA land use plan development, the local governing board shall develop and adopt a Citizen Participation Plan. Interested citizens shall have an opportunity to participate in the development of the CAMA land use plan through oral and written comments as provided for in the Citizen Participation Plan. Copies of informational CAMA land use plan materials shall be provided at all meetings of the planning group. The Citizen Participation Plan shall be available to the public throughout the planning process. At a minimum, the Citizen Participation Plan shall include the following:

- (1) Designation of the principal local board, agency, department or appointed group that shall take the lead role in preparing or updating the CAMA land use plan, including a contact name, address, and telephone number.
- (2) A specific date and time for an initial public information meeting or series of meetings.
  - (A) During the meeting(s) a local government updating its plan shall discuss the statements of local policy in the current CAMA land use plan, the effect of those policies on the community, and the ways the plan has been used to guide development during the past planning period. The local government shall explain the process by which it will report to the public and solicit the views of a wide cross section of citizens in the development of updated policy statements.
  - (B) Written notice of the public information meeting(s) shall be published in a newspaper of general circulation in the planning jurisdiction twice prior to the public information meeting(s). The first notice shall appear not less than 30 days prior to the public information meeting(s). The second notice shall appear not less than 10 days prior to the

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

~~meeting. Notice of the meeting shall also be conveyed to local Coastal Resources Advisory Council (CRAC) member(s) and to the appropriate DCM District Planner.~~

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

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

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

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

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

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

~~**15A NCAC 07L .0507 – MINIMUM CAMA LAND USE PLANNING AND FUNDING REQUIREMENTS**~~

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

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

~~(c) To receive funding under this grant program for CAMA Core land use plan development, municipalities must have AECs within their jurisdiction and meet the population and growth rate thresholds as shown in Figure 1. To receive funding under this grant program, municipalities with Ocean Hazard AECs must, at a minimum, prepare a CAMA Core land use plan. Additionally, municipalities with non-Ocean Hazard AECs shall at a minimum prepare a CAMA Core land use plan if they meet the population and growth rate thresholds as shown in Figure 1. Municipalities with only non-Ocean Hazard AECs that are at or below the population and growth rate thresholds shown in Figure 1 may prepare a CAMA Core land use plan or a Workbook Plan as described in 15A NCAC 07B. In addition, community characteristics other than those listed in Figure 1, such as extent of growth and resource~~

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



protection issues (such as water quality concerns) being addressed by the municipality, shall be considered during the scoping process described in 15A NCAC 07L .0505 when determining the final planning option to be funded.

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

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

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

		AREAS OF ENVIRONMENTAL CONCERN (AECs)		
POPULATION	GROWTH RATE <sup>2</sup>	OCEAN HAZARD AREAS	NON-OCEAN HAZARD AREAS <sup>2a</sup>	AECs NOT PRESENT -OR- DO NOT MEET 113A-110(e) <sup>3,3a</sup>
≥ 5,000	N/A	■	■	■
≥ 2,500	HIGH	■	■	■
>1,000 and < 2,500	HIGH	■	■	■
<1,000	HIGH	■	▨	■
≥ 2,500	MODERATE	■	▨	■
< 2,500	MODERATE	■	▨	■
≥ 2,500	LOW	■	▨	■
< 2,500	LOW	■	▨	■

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

~~(f) CAMA Land Use Plans shall be funded as follows:~~

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

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

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

- ~~(a) Educating Local Officials: At the beginning of the planning process, DCM shall provide opportunities for educating local officials about the CAMA land use planning rules, through such means as workshops and training videos.~~
- ~~(b) Maps and Data: DCM shall provide maps and data to assist with developing the CAMA land use plan. This data may include population, natural resources, water quality, economic activity and transportation infrastructure for counties, and where available, for municipalities. Local governments may supplement this data with additional, or more recent, data from federal, state, local, and other sources.~~

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

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

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

**15A NCAC 07L .0509 — INTERGOVERNMENTAL COORDINATION**

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

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

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

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

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

~~(b) 30 Day Local Review Period. Copies of the proposed CAMA land use plan or update (final draft) shall be available for public review at the time the first notice is provided and in the place(s) listed in the notice. At least one copy of the draft plan shall be available for checkout for a 24 hour period by residents and property owners of the planning jurisdiction.~~

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

REMOVED.  
Public hearing and local adoption  
requirements are covered in the land  
use planning guidelines.

~~(c) Minor editorial changes after the public hearing are acceptable without re-advertising the notice. Substantive changes such as re-wordings that alter the basic intent of policy statements or changes in timelines for actions in the original notice shall require a new public hearing. This notice shall be advertised in the same manner as the original.~~

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

**15A NCAC 07L .0511 — REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS**

~~(a) To be eligible for future funding each local government engaged in CAMA land use planning shall complete a CAMA land use plan Implementation Status Report every two years as long as the current plan remains in effect. DCM shall provide a standard implementation report form to local governments. This report shall be based on the action plan and schedule provided in 15A NCAC 07B Tools for Managing Development.~~

~~(b) The Implementation Status Report shall identify:~~

- ~~(1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified CAMA land use plan;~~
- ~~(2) Any actions that have been delayed and the reasons for the delays;~~
- ~~(3) Any unforeseen land use issues that have arisen since certification of the CAMA land use plan;~~
- ~~(4) Consistency of existing land use and development ordinances with current CAMA land use plan policies; and~~
- ~~(5) Current policies that create desired land use patterns and protection of natural systems.~~

~~(c) Results shall be made available to the public and shall be forwarded to DCM.~~

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

**15A NCAC 07L .0512 — SUSTAINABLE COMMUNITIES COMPONENT OF THE PLANNING PROGRAM**

~~(a) Sustainable Communities Component: Under conditions outlined in this rule, DENR may provide additional financial support for plans that exceed the minimum requirements of 15A NCAC 07B. This Rule establishes a Sustainable Communities Component of the planning program, which provides funds to selected communities to support actions to implement the CRC-certified CAMA land use plans of selected local governments.~~

~~(b) The Sustainable Communities Component brings current techniques in coastal management and sustainability to the North Carolina coast. Local governments designated as Sustainable Communities shall execute multi-year, land/water projects that are consistent with CRC management topics and the CRC-certified CAMA local land use plan. Examples of sustainable projects include but are not limited to, oyster re-seeding projects, establishment of greenway systems, and eco-tourism projects.~~

REMOVED; RELOCATED to 7B and REVISED.  
Implementation status reports are relevant to the land use planning guidelines.

REMOVED. **07L .0504 ELIGIBLE PROJECTS** is sufficient to cover the types of planning and management projects to be funded.

- (c) The CRC may identify priority issue areas and goals on which Sustainable Communities projects shall focus. These focus areas shall be provided in the Notice of Availability of Funds and Request for Proposals.
- (d) The following factors shall be considered by DENR in the selection of Sustainable Communities: merit of proposal and its relevance to CRC management topics; proposed education and public participation throughout the life of the project; financial and administrative capacity of the local government to implement the project; and past history of CAMA land use plan implementation by that local government.
- (e) DENR shall accept applications for the Sustainable Communities Component once every three years from counties and municipalities whose CAMA land use plans have been certified within the past three years. During the first year the Sustainable Communities Component is offered, local governments with CAMA land use plans older than three years will be eligible to apply. DENR shall make final selections of no more than four communities per funding cycle, based on recommendations of the CRC and the CRAC. Every effort shall be made to select local governments on an equitable geographic distribution throughout the coastal area.
- (f) Selected communities shall document their methodology and progress throughout the length of the planning program and provide yearly progress reports to DENR.
- (g) Sustainable Communities shall receive the following assistance: planning grant funds for the initial phase of the project and a local CAMA land use plan addendum for up to 80 percent of the project costs, not to exceed forty thousand dollars (\$40,000); priority funding consideration for Planning and Management Grant Funds for related projects for two of the following three years, provided funds are available for priority two and priority three projects, for a maximum of twenty thousand dollars (\$20,000) for each grant, and DCM support for all grant applications to other agencies for project funding.
- (h) DCM will catalog, advertise and distribute summary reports on projects funded under this program to other local governments in the coastal area.

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

#### **15A NCAC 07L .0513 — PROJECT DURATION**

- (a) CAMA Core and Advanced Core land use plans may be funded over a two-year period. Funding during the first year will be to prepare background material, with second year funding primarily used for policy development.
- (b) Other planning and management projects may be approved for up to three years. However, individual grants will usually be for a period of one year. Where the project exceeds one year, the annual grant application shall set forth annual objectives, products and budgetary requirements. If a project requires more than one year to complete, and is funded for its first year, this action does not commit DENR to subsequent funding throughout the estimated duration of the project, except that multi-year CAMA land use plans will be given priority funding for Phase II.
- (c) In the event that any local planning and management funds remain or become available after the initial disbursement of funds, DENR may provide additional grants to local governments to supplement existing projects or to initiate new projects based on need and ability of the local government to initiate a new project. All previous

————— REMOVED. A timeframe for funding will be included in a Request for Proposals (RFP) and specified in a grant contract prepared by NCDENR.

~~unfunded applications will be considered for available supplemental funding. In addition, applications for supplemental funding may be submitted by local governments at specified times during the year.~~

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

**15A NCAC 07L .0514 — RELATION TO OTHER FUNDING**

~~Applicants may combine these funds with other local, state, and federal funds to finance appropriate projects. However, these funds may not be used as "local matching funds" for other state or federal grants, except that Sustainable Community funds may be used for match if allowed by other state or federal programs.~~

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

REMOVED matching limits with other grants to allow flexibility in the use of grant funds.

**SECTION .0600 — APPLICATION PROCESS**

**15A NCAC 07L .0601 — APPLICATION FORM**

- ~~(a) At least 30 days prior to each new land use planning and management grant period, DENR shall distribute to each eligible applicant a grant application form and notice of availability of funds.~~
- ~~(b) The grant application form shall request a project description, project objectives, project deliverables, project budget, consistency of the proposed project with the certified CAMA land use plan (if applicable), and other information as deemed necessary by DENR. A project narrative that more completely describes the proposed project may supplement the form. Incomplete, vague or inadequate applications may not be processed.~~
- ~~(c) The grant application form shall be signed by a person who has been authorized by the local government to enter into contracts relating to the implementation of CAMA.~~
- ~~(d) A separate application form shall be completed for each proposed project.~~

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

REMOVED this SECTION.  
A Request for Proposals (RFP) will specify an application process specific to the funding available.

**15A NCAC 07L .0602 — ASSISTANCE IN COMPLETING APPLICATIONS AND SUBMITTAL**

~~Local governments may contact the DCM offices for further assistance and information in completing grant applications. Completed applications shall be submitted to the appropriate office as described in the Notice of Availability of Funds and Request for Proposals.~~

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

*Eff. August 1, 2002.*

**15A NCAC 07L .0603 — PROCEDURE FOR APPROVAL OR DISAPPROVAL**

(a) DENR shall, within 90 days after the deadline for receiving applications, notify all applicants as to the status of the application. If deemed necessary, DENR may request the applicant to submit additional information or agree to a revised project proposal or project budget.

(b) No approval of a grant application shall be deemed to be final prior to execution of the contract agreement required by 15A NCAC 07L .0701.

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

**SECTION .0700 – GRANT ADMINISTRATION**

**15A NCAC 07L .0701 — CONTRACT AGREEMENT**

(a) Prior to the disbursement of funds, the local government and DENR will become parties to the contract.

(b) DENR shall prepare the contract and submit it to the local government, following tentative approval of the grant application. The contract shall specify the amount of the grant, the work to be performed under the grant, and all terms and conditions of the grant. The contract must be executed by a person who is authorized by the local government to enter into contracts, and then returned to DENR. The contract is effective, and approval of the grant application final, when signed by the Secretary of DENR or the Secretary's designee.

(c) Subcontracts shall be reviewed and approved by DENR prior to execution by the local government. Past work history with DENR of the proposed subcontractor will be considered in reviewing the subcontract. No subcontracts may be made without the written approval of DENR.

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

**15A NCAC 07L .0702 — PROGRESS REPORTS AND GRANT MONITORING**

(a) Specific requirements for progress reports will be set out in each contract with grantees.

(b) A progress report will be required of all grantees prior to the distribution of funds.

(c) DENR shall make such site visits and consultations as deemed necessary.

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

REMOVED this SECTION. Grants are administered according to contracts prepared by NCDENR.

**15A NCAC 07L .0703 — PAYMENT**

- (a) Payment by DENR will be made periodically as specified in the contract upon the submittal of a requisition for payment and DCM certification that reasonable and satisfactory progress is being made on the project. Payments will be proportional to the work demonstrated by the grantee to have been completed.
- (b) DENR may withhold payment at any time if the grantee is in violation of the terms of the contract or cannot demonstrate satisfactory progress towards completion of the project.

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

**15A NCAC 07L .0704 — PROJECT COMPLETION REPORT**

- (a) A project completion report shall be required for all projects. DENR shall transmit information concerning the content and format of this report to all grantees at least 60 days prior to the due date for the report.
- (b) A draft project completion report shall be submitted to DENR with or prior to submission of the final requisition for payment. This report shall include an assessment by the local government of the consistency of the project with the certified CAMA land use plan and the rules of the CRC. If the project is found to be inconsistent by DENR, the local government shall include a satisfactory plan for creating consistency, including timelines for implementation. Final payment will not be made to the local government until this information is provided.

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

**15A NCAC 07L .0705 — ACCOUNTABILITY**

Grantees will be subject to accounting techniques and procedures similar to those applicable to DENR as grantee of federal funds administered by the National Oceanic and Atmospheric Administration. The requirements of the General Statutes, OMB Circular A-102 and the National Oceanic and Atmospheric Administration's administrative grants standards shall be followed.

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





North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

CRC-14-33

October 7, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Mike Lopazanski  
**SUBJECT:** Inlet Management Study – Draft Final Report

You will recall that in response to the 2012 NC General Assembly directing the Coastal Resources Commission (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, the Commission elected to undertake a comprehensive review of inlet-related issues and management tools to assist local governments in these dynamic areas.

The attached draft report summarizes the Commission efforts in conducting a comprehensive inlet management study which examined dredging activities, beach fill, beneficial use of dredged material, and the regulatory framework of beach and inlet related projects.

If the Commission approves, this report including the identified priorities and proposed actions will fulfill the CRC's obligations under Session Law 2012-202 and will be forwarded on to the Department, Legislature and the Governor.

I look forward to discussing the draft report at the upcoming meeting in Wilmington.

## **N.C. Coastal Resources Commission Inlet Management Study Priorities and Recommendations**

### Introduction

The 2012 N.C. General Assembly directed the Coastal Resources Commission (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 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 Commission therefore decided to undertake a comprehensive review of inlet-related issues and with the expectation of developing additional management tools that will allow the CRC to more proactively address the issues confronted by local governments in these dynamic areas.

This comprehensive review of inlet management related issues included a number of related initiatives and legislative mandates currently underway such as determining the feasibility of eliminating the Inlet Hazard AEC and incorporating appropriate development standards adjacent to developed inlets (S.L.2012-202); an examination of permit mechanisms to streamline inlet dredging projects (S.L.2013-138); and efforts to promote regional sediment management through implementation of the Beach and Inlet Management Plan.

These efforts have been combined as part of a comprehensive inlet management study in an effort to develop a solutions-oriented approach that provides appropriate remedies with respect to proposed development, dredging activities, beach fill, beneficial use of dredged material, and the use of engineered structures through close collaboration with local governments.

Over the course of the study, the Commission reviewed existing shoreline management strategies, inlet dynamics, erosion rates and setback factors as well as CRC development standards adjacent to inlets. The study also considered how historical and ongoing beach and inlet management techniques, including dredging, beach fill, beneficial use of dredged material and engineered structures such as groins and jetties can be incorporated into a management strategy. Of particular focus was an examination of CAMA permit mechanisms to streamline routine inlet projects and collaboration with local governments and landowners in an effort to ensure a cost-effective and equitable approach to beach and inlet management and restoration.

### Stakeholder Input

The Commission sought input on inlet management from a wide array of stakeholders that included sand managers, 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 Commission with an overview of their concerns and ideas regarding inlet management, including in-water issues (dredging), erosion control alternatives, and development standards on adjacent lands.

In order to build on the Cape Fear River AEC Study and elicit a range of management options and regulatory reforms related to inlet management, a series of community-based discussion forums were held along the coast. These regional meetings were held in Hatteras, Beaufort, Wilmington and Ocean Isle Beach and included discussion of the existing regulatory framework with regard to dredging and beach nourishment as well as specific issues/actions related to the inlets encompassed by the region. Local governments and representatives of other organizations adjacent to inlets in the region were invited to present their specific concerns related to the inlet(s) within their jurisdiction (see Appendix B Summary of regional Inlet Management Meetings and Preliminary Findings). Written comments were also solicited on new tools and management options to address the following areas:

- Beneficial use of dredged materials
- Dredging depths and sediment criteria rules
- Channel realignment projects
- Development standards/erosion setback
- Volumetric triggers for “static lines”
- Emergency permitting: bulldozing & sandbags
- Dredging windows/moratoria
- Terminal groins and sand bypassing
- Erosion rate calculations for Inlet Hazard Areas
- Dune creation in the Inlet Hazard
- Monitoring conditions associated with

### Priorities and Recommendations

The Commission 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 NC Coastal Resources Commission, Inlet Management Study, Findings and Policy Options document (Appendix A). The Findings document contains a full discussion of specific public comments, implementation actions and relevant laws or rules associated with each inlet management topic.

#### **Short-Term Priorities**

- Dredging Depths and Sediment Criteria Rules
- Erosion Rate Calculations for Inlet Hazard Areas
- Emergency Permitting

- Static Vegetation Lines
- Stockpiling of Sand
- Extend Permit Expiration Period for Long-Term Beach and Inlet Projects

#### **Long-Term Priorities**

- Beneficial Use of Dredged Materials
- Inlet Management Plans
- Funding Sources and Partnerships
- Dredging Windows / Moratoria
- Monitoring Conditions

The Commission recommends beginning implementation of the following priorities to address inlet manage related issues. These initial efforts will focus on areas that are within the existing authority of the CRC, build in current initiatives and include a mix of short and long-term actions:

#### **Complete Science Panel technical study of Inlet Hazard Areas**

The purpose of the Inlet Hazard Areas is to define areas that are subject to coastal processes associated with inlet dynamics (tidal currents, influence of ebb shoals on erosion patterns, etc.). A 1978 report defined the original Inlet Hazard Area boundaries, and minor amendments were made in the early 1980's. Since the boundaries are outdated, there are many cases where the inlet has completely migrated out of the hazard area. Currently, the setbacks for the IHAs are based on the erosion rates calculated for the adjacent Ocean Erodeable Areas (OEAs) and not for the actual inlet area itself.

The CRC has tasked its Science Panel with completing its Inlet Hazard Areas study focusing on a developing a methodology for calculating erosion rates adjacent to inlets and responding to the requirements of House Bill 819 (S.L. 2012-202), to include a feasibility analysis of whether the Inlet Hazard Area of Environmental Concern can be eliminated.

#### **Establish Deep Draft, Port or Navigation Inlet Management Areas**

Since each inlet in the state has unique attributes, individual inlet management plans could be developed to guide future management actions at each inlet. Some aspects of inlet management plans already exist to a certain extent at a few of North Carolina's inlets. The two deep-draft inlets in the state, Beaufort Inlet and Cape Fear River Inlet, have 20-year Dredged Material Management Plans (DMMPs) which guide the frequency and distribution of dredged material disposal. Inlet management plans could also include sediment budgets, relevant research and studies, delineated areas of inlet influence, and appropriate development standards adjacent to inlets.

The Commission will begin development of separate distinct deep-draft Inlet Management AECs that would result in Beaufort Inlet and Cape Fear River Inlet having specific management objectives and associated development standards. The management objects will recognize the priority placed on providing shipping access to the State Ports through channels maintained by the United States Army Corps of Engineers. The use standards for development in these areas will recognize the influence of a federally mandated channel location on adjacent shorelines, additional

considerations to address erosion control, beach management, the beneficial use of dredged material and the protection of coastal resources.

**Expansion of dredging windows related to moratoria due to biological activity**

Dredging projects require coordination with other state and federal agencies, including the US Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to mitigate impacts to natural resources. DCM relies on federal and state resource agencies during the CAMA Major Permit process to provide guidance on the timing of projects to minimize adverse effects on biological activity.

Representatives from Coastal Planning and Engineering, Moffatt and Nichol, Dial Cordy and Associates, and other consultants in North Carolina are currently undertaking a study to evaluate the feasibility of expanding the current dredging windows. The objective of the study is to develop summer dredging protocols to mitigate possible impacts to biological resources. The study will be circulated to the various resource agencies and the Commission will evaluate the extension of dredging windows.

**Develop alternative approaches to static vegetation line and static line exception rules**

In areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the USACE), the building setback is measured from the Static Vegetation Line which is the vegetation line in existence within one year prior to the onset of the project. In some communities with a long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted since they could not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development in areas with a long-term commitment to beach nourishment to be measured from either the natural vegetation line or the static line, making more lots developable in these areas.

The Commission will consider developing an alternative to the existing static vegetation provisions, replacing it with a “development line” established by local governments and approved by the CRC seaward of which no new development will be allowed. New or replacement structures sited based on the graduated setback from the vegetation line, or the development line, whichever is further landward. The CRC will also consider amending the static line exception rules eliminating 2,500 square foot maximum building size limit and determine structure setbacks based on the graduated setbacks from first line of stable and natural vegetation where local governments have demonstrated a commitment to long-term beach nourishment.

### **Coordinate with Us Army Corps of Engineers on beach bulldozing practices**

The DCM General Permit for beach bulldozing (15A NCAC 07H.1800) allows bulldozing landward of the Mean High Water Line (MHWL) in the Ocean Erodible AEC (OEA), but it does not apply to Inlet Hazard AECs (IHA). Bulldozing of material from seaward of the Mean High Water Line (MHWL) is also allowed but requires a CAMA Major Permit and State Dredge and Fill Permit. Bulldozing and new dune buildings are both currently prohibited in IHAs, but the rebuilding of existing dunes is allowed. Bulldozing is allowed to protect vacant lots if the lots are not located in an IHA. The Commission and DCM will begin development of a more comprehensive General Permit for bulldozing below MHWL in consultation with the US Army Corps of Engineers, as well as address dune building and bulldozing practices in IHAs.

### **Amend the definition of “imminently threatened” and its application in CRC rules**

Sandbags are allowed as temporary protection for threatened structures such as houses, septic systems, and roads. They currently cannot be used to protect swimming pools, decks, gazebos, vacant lots, or natural features such as dunes. 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 at the DCM Director’s discretion when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

The Commission will consider amending the definition of “imminently threatened” including the distance at which point sandbags would be allowed. Also to be considered will be natural features such as dunes in addition to structures.

### **Beneficial Use of Dredged Materials**

The state currently has an enforceable beneficial use policy that has been approved by the National Oceanic and Atmospheric Administration (NOAA) for the purposes of federal consistency. Under this policy, clean, beach quality material dredged from navigation channels will be disposed of on the ocean beach or shallow active nearshore area where environmentally acceptable and compatible with other uses of the beach unless no practicable alternative exists. The state also adopted legislation (NC Dredge and Fill Act (NCGS §113-229)) that has not been approved by NOAA for purposes of federal consistency since it does not include a “maximum extent practicable” clause.

The Commission will amend or replace the existing policy to ensure that all beach-compatible sand resulting from the dredging of navigation channels within tidal inlets, harbors, and rivers, shall be placed directly on adjacent beaches. To address possible federal objection, the CRC will consider clarifying what “no practicable alternative” or maximum extent practicable means through the specification or definition of financial and logistical constraints.

### **Monitoring Conditions**

Monitoring conditions for CAMA Major Permits are coordinated with other state and federal agencies that are responsible for ensuring that impacts to natural resources are minimized. For some types of projects that have been performed frequently over the course of decades, such as inlet dredging with beach disposal of compatible sediment, comprehensive biological monitoring may not be necessary. Additionally, monitoring protocols do not often allow for cross-project comparisons, so the utility of the results are sometimes limited. The Division of Coastal Management will pursue additional resources for a study to review monitoring conditions placed on past permits and monitoring reports to look for ways to make the data received from monitoring more meaningful and applicable to other projects.

## APPENDIX A

### NC COASTAL RESOURCES COMMISSION

#### INLET MANAGEMENT STUDY

#### FINDINGS AND POLICY OPTIONS

#### *Short-Term Priorities*

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#### **Topic: Dredging Depths and Sediment Criteria Rules**

##### ***Summary of Public Comments:***

- Dredging projects should evaluate the optimal depth of a channel, not just the “authorized depth.” Authorized depths should be increased. **(F)**
- It’s difficult for the federal agencies to alter authorized channel dimensions, but obtaining permits at the local level may allow for more flexibility. **(F/S)**
- Increasing the depth of shallow-draft inlets would increase the tidal prism, change the flood shoal and ebb shoal geometry and orientations, and likely result in increased erosion on adjacent shorelines. **(F/S)**
- The sediment criteria rules should be reevaluated. If the sand came from the beach, it should be allowed to be placed back on the beach. **(S)**

##### ***Discussion:***

Congress authorizes federal navigation channels by specific depth and width, so any proposed changes in dimensions to a federal channel would require an act of Congress. For non-federal channels, if an applicant wanted to dredge to a depth deeper than the previously permitted depth, he could apply for permits from the N.C. Division of Coastal Management (DCM) and the U.S. Army Corps of Engineers (USACE) to do so. As noted above, obtaining permits at the local level may allow for more flexibility in dredging depths.

Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach, or inlet shoal system. Sediment dredged from these areas is considered beach compatible if the average percentage by weight of fine-grained sediment is less than 10%. Revisions to the sediment criteria rules in 2013 and 2014 have further reduced the burden on project applicants for sampling and analysis. Costs for applicants have been reduced while maintaining adequate sampling to ensure that only beach-compatible sediment is placed on the beach. In 2013, a rule change was implemented to allow two sets of sampling data, with one dredging event in between, from maintained navigation channels, sediment deposition basins within the active nearshore, beach, or inlet shoal system, or Offshore Dredged Material Disposal Sites (ODMDS) to be used to characterize material for subsequent nourishment events from those areas if the sampling results were found to be beach-compatible. Another rule change, which will



become effective on August 1, 2014, will require fewer vibracores to be collected in small offshore borrow areas and allow for slightly more granular (coarse sand) sediment to be placed on the beach. The 2014 rule change will also remove 15A NCAC 07H.0312(4)(a), which states that the “sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel.”

Dredging depths cannot exceed the maximum depth of recovered core samples if the dredged material is going to be placed on the beach (15A NCAC 07H.0312(4)(b)). For example, if sediment cores are recovered that reach 8 feet below the bottom of the inlet, the inlet cannot be dredged to 12 feet deep. The purpose of this rule is to ensure that non-beach-compatible sediment is not placed on the beach. If the core sample does not reach the proposed dredge depth, there is no assurance that the sediment will be beach-compatible. The sediment sample needs to be physically recovered to a depth meeting or exceeding the dredge depth so the sediment can be analyzed. Some have argued that it is not always easy to get deep enough cores in inlets due to tides, currents, waves, shoals, and well-sorted sands on the bottom. DCM maintains that without getting cores as deep as the proposed dredge depth, the dredged material below the cores cannot be placed on the beach because its characteristics are undefined.

### ***CRC Policy Options***

Proposed inlet dredging depths should continue to be evaluated and permitted on a project-by-project basis. For federal navigation channels, any changes in dimensions would require an act of Congress. For non-federal channels, applicants may dredge deeper than the previously permitted depth if they receive permits from DCM and USACE. Projects should consider how deeper dredging may affect erosion on adjacent shorelines.

There is inherent imprecision in dredging processes which vary with the physical conditions, the dredged material characteristics, the channel design, and the type of dredging equipment. Due to these variables, the USACE recognizes that dredging below the Congressionally-authorized project dimensions for federal navigation channels will occur and is necessary to assure the required depth and width and least cost. For federal projects, the USACE incorporates an allowable overdepth of the authorized channel depth +2 feet. For non-federal projects, DCM allows the dredging depth to reach only the depth that was permitted. The CRC could consider adding 2 feet of overdepth to CAMA permits for non-federal projects to be consistent with how the USACE implements federal projects. If an applicant wants to dredge deeper, or at least have the flexibility to do so, they should obtain sediment cores as deep as the proposed dredge depth to make sure the dredged material is beach-compatible.

### ***Relevant Laws or Rules:***

NCGS §113-229; 15A NCAC 07H.0312

## **Topic: Erosion Rate Calculations for Inlet Hazard Areas**

### ***Summary of Public Comments:***

- The CRC should task the Science Panel to complete the development of methods to define revised Inlet Hazard Areas and potential inlet and near-inlet setback lines for CRC review. (S)
- The Inlet Hazard Areas should be eliminated and incorporated into the Ocean Erodible Area (OEA) while applying the same development standards currently utilized in the OEA. (S)
- The current “adjacent erosion rate” rule for IHAs doesn’t make sense. Every inlet is different and erosion rates are dramatically different. Good erosion rate information is needed for setbacks to be valid. (S)
- The concept of a Deep-Draft IHA and Shallow-Water IHA should be explored, and the boundaries should extend in the water, where issues related to dredging can be codified and enforced in policy. (S)

### ***Discussion:***

The purpose of the Inlet Hazard Areas is to define areas that are subject to coastal processes associated with inlet dynamics (tidal currents, influence of ebb shoals on erosion patterns, etc.). A 1978 report defined the original Inlet Hazard Area boundaries, and minor amendments were made in the early 1980’s. Since the boundaries are outdated, there are many cases where the inlet has completely migrated out of the hazard area. Currently, the setbacks for the IHAs are based on the erosion rates calculated for the adjacent Ocean Erodible Areas (OEAs). Erosion rates should be calculated for the inlet shorelines instead of extending the adjacent OEA erosion rates into the IHAs.

### ***CRC Policy Options***

At its meeting on May 14, 2014 in Atlantic Beach, the CRC tasked the Science Panel with completing its Inlet Hazard Areas study. The Science Panel will focus on developing a methodology for calculating erosion rates adjacent to inlets. To respond to the requirements of House Bill 819 (S.L. 2012-202), DCM staff will also include a feasibility analysis of whether the Inlet Hazard Area of Environmental Concern can be eliminated. HB 819 requires the CRC to report its findings and proposed actions to the Secretary of the Department of Environment and Natural Resources (DENR), the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Environmental Review Commission by January 31, 2015. Upon the completion of the Science Panel’s study, DCM staff will present potential options to the CRC for consideration. As discussed later in this document, DCM staff will also explore the development of individual Inlet Management Plans for each inlet in the state.

Some believe that the term “Inlet Hazard Area” has a negative connotation, reduces property values within those areas, and discourages prospective buyers from purchasing real estate in those areas. An alternative term, such as “Inlet Management Area” could be codified in the rule language to indicate that inlet processes are influencing the shoreline and that additional management approaches may be necessary. However, by replacing the word “hazard” with “management,” prospective buyers may be less aware of the additional risks of purchasing property near an inlet.

***Relevant Laws or Rules:***

15A NCAC 07H.0304(3); 15A NCAC 07H.0308(b)(5); 15A NCAC 07H.0310

## **Topic: Emergency Permitting**

### ***Summary of Public Comments:***

- New dunes should be allowed to be created in Inlet Hazard Areas. **(S)**
- Sandbags in IHAs should have a different set of standards (permitted sooner and allowed to remain on beach longer). **(S)**
- More efficient and timely procedures for emergency permitting are needed. **(F/S)**

### ***Discussion:***

The DCM General Permit for beach bulldozing (15A NCAC 07H.1800) allows bulldozing landward of the Mean High Water Line (MHWL) in the OEA, but it does not apply to IHAs. Bulldozing of material from seaward of the Mean Low Water Line (MLWL) is also allowed but requires a CAMA Major Permit and State Dredge and Fill Permit, according to 15A NCAC 07H.0308(a)(4)(C). Bulldozing and new dune building are both currently prohibited in IHAs, but the rebuilding of existing dunes is allowed. Bulldozing is allowed to protect vacant lots if the lots are not located in an IHA. DCM staff believe dune construction was originally prohibited in IHAs to prevent an artificial vegetation line from being established for setbacks. DCM agrees that new dune construction should be allowed in IHAs, but such created dunes should not be used as the reference point for measuring oceanfront setbacks.

Sandbags are intended to be used as temporary protection for threatened structures. They previously were allowed one time only, regardless of ownership, for a period of two to five years. In 2009, the CRC changed the rule to allow sandbags in the IHA to remain in place for up to eight years for properties within a community pursuing an inlet relocation project. That rule change also allows those sandbags to remain an additional eight years if the structure becomes threatened again and if the community is still seeking an inlet relocation project. The CRC then updated the rule again in 2013 to remove the one time per property limit for communities also seeking a beach renourishment or stabilization project. Sandbags can only be used to protect houses, septic systems, and roads. They currently cannot be used to protect swimming pools, decks, gazebos, vacant lots, or natural features such as dunes.

At its meeting on May 14, 2014 in Atlantic Beach, the CRC expressed interest in allowing beach bulldozing seaward of the MLWL with a General Permit instead of a CAMA Major Permit and State Dredge and Fill Permit. The Commission is also interested in reviewing how “imminently threatened” is defined:

“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” (15A NCAC 07H.0308(a)(2)(B)).

### ***CRC Policy Options***

The Commission could consider developing draft rule language that would allow bulldozing and new dune construction in Inlet Hazard Areas without those dunes being used as the reference point for measuring oceanfront setbacks. Allowing bulldozing seaward of the MLWL would also require

authorization by the USACE, triggering additional federal agency reviews. DCM could approach the USACE about developing a new Regional General Permit that could apply in emergencies and allow DCM to authorize beach bulldozing seaward of the MLWL under certain conditions. The USACE has regulatory jurisdiction seaward of the MLWL, and it is uncertain if they would grant DCM this authority.

The Commission could consider amending the definition of “imminently threatened” including an increase from 20 feet to a larger distance, at which point sandbags would be allowed. The definition of “imminently threatened” could also be expanded to apply to natural features such as dunes in addition to structures. Since sandbag time limits were recently extended, and the one time per property limit was recently removed, property owners have additional flexibility to keep sandbags protecting their property in emergency situations.

***Relevant Laws or Rules:***

NCGS §113-229; 15A NCAC 07H.0308(a)(2); 15A NCAC 07H.0308(a)(4); 15A NCAC 07H.0308(b); 15A NCAC 07H.1700; 15A NCAC 07H.1800

## **Topic: Static Vegetation Lines**

### ***Summary of Public Comments:***

- The “300,000 cubic yard rule” for establishing a static vegetation line should be reevaluated. (S)
- Some communities have intentionally avoided having a static vegetation line established by keeping any nourishment projects under 300,000 cubic yards. In those cases, this results in more frequent dredging projects, which results in greater environmental impacts and greater costs.

### ***Discussion:***

A large-scale beach fill project is defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the USACE (15A NCAC 07H.0305(a)(7)). In areas that have received a large-scale beach fill project, the building setback is measured from the vegetation line in existence within one year prior to the onset of the project. This is the “Static Vegetation Line,” and once a static vegetation line is established, it is used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In some communities with a demonstrated, long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted because it could not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development to be measured from either the natural vegetation line or the static line, making more lots developable. Any local government or permit holder of a large-scale beach fill project that is subject to a static vegetation line may petition the CRC for an exception to the static line.

At its meeting on May 14, 2014 in Atlantic Beach, the CRC Chairman proposed the following changes to replace the existing static vegetation line rules:

- Eliminate static line and 300,000 cy rule.
- No new development allowed seaward of existing development line.
- Local communities determine development line, DCM reviews.
- Use vegetation line for measurement of setbacks in the absence of a development line.
- Use graduated setbacks based on structure size and local erosion rate.
- New or replacement buildings sited based on the graduated setback from the vegetation line, or the development line, whichever is further landward.
- Apply this concept statewide, not just in IHAs

### ***CRC Policy Options***

The proposed changes above would eliminate the static vegetation line in areas where a static line has been established, and a static line exception would no longer be required to use the vegetation line for measuring setbacks. Setbacks based on square footage would be measured from the first line of stable and natural vegetation, and any new buildings could only be built as far seaward as the existing development line. The Commission could develop rule language to replace 15A NCAC 07H.0305(a)(6) and the references to static lines and static line exceptions in 15A NCAC 07H.0306(a). Since static line exceptions would no longer be needed, the procedures for applying for and renewing the exception would be eliminated (15A NCAC 07J.1200).

Alternatively, the static vegetation line and static line exception rules could be retained, but the 2,500 square foot maximum building size limit could be repealed (15A NCAC 07H .0306(a)(8)(B)). Graduated setbacks would be measured from either the static line or first line of stable and natural vegetation (in areas with a static line exception). For beaches with a static line exception, structures that measure their setback from the first line of stable and natural vegetation are currently limited to a maximum size of 2,500 square feet. If this size restriction were removed, structures that measure their setback from the first line of stable and natural vegetation would need to meet the graduated setback based on structure size and be located no further oceanward than the landward-most adjacent structure, but they could be larger than 2,500 square feet.

The Commission could also amend the definition of “large-scale beach fill project”, increasing it from 300,000 cubic yards to a larger number. If the volume trigger were increased, communities could continue to avoid having a static vegetation line established but build larger and potentially less-frequent beach nourishment projects.

***Relevant Laws or Rules:***

15A NCAC 07H.0305(a)(6-7); 15A NCAC 07H.0306(a); 15A NCAC 07J.1200

## **Topic: Stockpiling of Sand**

### ***Summary of Public Comments:***

- Stockpiling of sand dredged from inlets and stored for future placement on beaches should be allowed. Stockpiled dredged sand should not be required to be sampled a second time if it was already found to be beach-compatible. (F/S)

### ***Discussion:***

The Coastal Area Management Act, State Dredge and Fill Law, and administrative rules do not prohibit the stockpiling of dredged sand for future placement on beaches, but all dredged material must be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands (15A NCAC 07H.0208(b)(1)(B)).

For ongoing projects that have been reviewed and permitted under the National Environmental Policy Act (NEPA), stockpiling may not have been considered under the original NEPA review. In these cases, disposal of the dredged materials via stockpiling would likely require additional review as a new alternative disposal option. Adding another disposal alternative could also alter existing USACE dredging contracts.

### ***CRC Policy Options***

If dredged material is sampled and determined to meet the state sediment criteria rules for beach compatibility before it is stockpiled on high ground, then the stockpiled sediment should not need to be sampled a second time before it is placed on the beach. If the dredged material is stockpiled in the water for future placement on the beach, it may be necessary to sample a second time to ensure that the material has not been covered by finer, non-beach-compatible material.

### ***Relevant Laws or Rules:***

15A NCAC 07H.0208(b); 15A NCAC 07H.0312



## ***Long-Term Priorities***

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### **Topic: Beneficial Use of Dredged Materials**

#### ***Summary of Public Comments:***

- Beach-compatible sand dredged from inlets should be placed back on adjacent beaches; it should never be disposed offshore. (F/S)
- The distribution of dredged sand that is pumped onto adjacent beaches should be guided by analytically derived sediment budgets. (F/S)

#### ***Discussion:***

The state has an enforceable beneficial use policy that has been approved by the National Oceanic and Atmospheric Administration (NOAA) for the purposes of federal consistency. Under the Federal Coastal Zone Management Act of 1972 (CZMA), federal consistency means that federal projects are reviewed by Coastal Program staff (like DCM) to ensure that they are consistent with the state's approved enforceable policies. NOAA reviews any enforceable policy language that a state proposes to be used for the purposes of federal consistency. The enforceable beneficial use policy language in North Carolina is as follows:

“Clean, beach quality material dredged from navigation channels within the active nearshore, beach, or inlet shoal systems must not be removed permanently from the active nearshore, beach, or inlet shoal system unless no practicable alternative exists. Preferably, this dredged material will be disposed of on the ocean beach or shallow active nearshore area where environmentally acceptable and compatible with other uses of the beach” (15A NCAC 07M.1102(a)).

The state also adopted legislation (NC Dredge and Fill Act (NCGS §113-229)) that was not accepted by NOAA for purposes of federal consistency but that does apply to state, local, and private sector projects:

“Except as provided in subsection (h2) of this section, all construction and maintenance dredgings of beach-quality sand may be placed on the affected downdrift ocean beaches or, if placed elsewhere, an equivalent quality and quantity of sand from another location shall be placed on the downdrift ocean beaches. Clean, beach quality material dredged from navigational channels within the active nearshore, beach, or inlet shoal systems 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” (NCGS §113-229(h1-h2)).

#### ***CRC Policy Options***

At the CRC meeting on May 14, 2014 in Atlantic Beach, the CRC Chairman proposed replacing the existing beneficial use policies in the administrative rules (15A NCAC 07M.1100) and the State Dredge and Fill Act (NCGS §113-229(h1-h2)) with the following language:

“With respect to all beach-compatible sand, as defined by the Coastal Resources Commission through its rules and policies as set forth in 15A NCAC 07H.0312, resulting from the dredging of navigation channels within tidal inlets, harbors, and rivers, such sand shall be placed directly on adjacent beaches in a manner that

minimizes shoaling and replicates the natural littoral system to the maximum extent practicable.”

Instead of replacing the existing language in its entirety, the CRC could clarify what “no practicable alternative” means in 15A NCAC 07M.1102(a). Specific financial and logistical constraints could be defined, which would dictate whether beach-compatible dredged material could be disposed of anywhere besides the adjacent beaches.

Any proposed changes to the current enforceable policy would require review and approval from NOAA through the CZMA Program Change process. If changes in the policy are not approved by NOAA, they would only apply to local (not federal) projects. In this case, the burden of placing all beach-compatible dredged material onto adjacent beaches would fall solely on local governments.

***Relevant Laws or Rules:***

U.S. Coastal Zone Management Act of 1972; NCGS §113-229(h1-h2); 15A NCAC 07H.0312;  
15A NCAC 07M.1100

**Topic: Monitoring Conditions**

***Summary of Public Comments:***

- Monitoring requirements should not be so onerous as to prohibit what has otherwise been authorized. The amount of monitoring on projects should be reasonable and consistent with CAMA objectives. (F/S)
- Monitoring conditions should focus more on physical monitoring and less on biological monitoring. (F/S)

***Discussion:***

Similar to the dredging windows and moratoria topic, monitoring conditions for CAMA Major Permits are coordinated with other state and federal agencies that are responsible for ensuring that impacts to natural resources are minimized. For larger inlet management projects such as channel realignment projects or terminal groins, some level of monitoring is justified. In the case of terminal groins, the N.C. Coastal Area Management Act (CAMA) specifies what is required to monitor the impacts of the structure (NCGS §113A-115.1).

Some local communities voluntarily monitor the physical aspects of their beaches (beach profiles, volumes, slopes, widths, etc.) because they want to stay informed about how beach nourishment projects are holding up and when another project may be necessary. However, many local communities view biological monitoring of invertebrates, shorebirds, and nearshore fish as less relevant and would prefer to not be required to monitor the impacts to these species. Local volunteer groups throughout the state monitor for nesting and hatching sea turtles.

***CRC Policy Options***

For some types of projects that have been performed frequently over the course of decades, such as inlet dredging with beach disposal of compatible sediment, comprehensive biological monitoring may not be necessary. Studies have shown that the impacts to invertebrates, shorebirds, and nearshore fish are temporary, and these species tend to recover within 2 or 3 years after the project. Additionally, monitoring protocols do not often allow for cross-project comparisons, so the utility of the results are sometimes limited. However, impacts to offshore borrow sites are still not well understood. More information on the long-term impacts to fisheries and the sedimentation rate and quality of sediment that fills in offshore borrow sites would be useful.

For inlet channel realignment projects or terminal groins, DCM Staff believe that additional monitoring is warranted, and they should continue to consult with other state and federal agencies in developing monitoring conditions.

With additional resources, DCM could lead a study to review monitoring conditions placed on past permits and monitoring reports to look for ways to make results more meaningful and applicable to other projects.

***Relevant Laws or Rules:***

NCGS §113A-115.1

## APPENDIX B

### NC COASTAL RESOURCES COMMISSION

#### INLET MANAGEMENT STUDY

#### SUMMARY OF REGIONAL INLET MANAGEMENT MEETINGS

#### AND PRELIMINARY FINDINGS

The N.C. Coastal Resources Commission (CRC) held a series of public meetings in March and April to hear from local government officials, citizens, and stakeholders about specific concerns related to the management of ocean inlets in North Carolina. The regional meetings are part of the CRC's comprehensive review of inlet management in the state. In addition to the four public meetings and the dredging expert panel at the February 2014 CRC meeting, written comments were accepted through April 15, 2014. The public comments received can be broken up into 20 categories as follows. (F) indicates Federal authority and (S) indicates State authority.

**1) Beneficial Use of Dredged Materials: 15 comments**

Common Themes:

- Beach-compatible sand dredged from inlets should be placed back on adjacent beaches; it should never be disposed offshore. (F/S)
- The distribution of dredged sand that is pumped onto adjacent beaches should be guided by analytically derived sediment budgets. (F/S)

**2) Dredging Depths and Sediment Criteria Rules: 15 comments**

Common Themes:

- Dredging projects should evaluate the optimal depth of a channel, not just the "authorized depth." Authorized depths should be increased. (F)
- It's difficult for the federal agencies to alter authorized channel dimensions, but obtaining permits at the local level may allow for more flexibility. (F/S)
- Increasing the depth of shallow-draft inlets would increase the tidal prism, change the flood shoal and ebb shoal geometry and orientations, and likely result in increased erosion on adjacent shorelines. (F/S)
- The sediment criteria rules should be reevaluated. If the sand came from the beach, it should be allowed to be placed back on the beach. (S)

**3) Erosion Rate Calculations for Inlet Hazard Areas: 15 comments**

Common Themes:

- The CRC should task the Science Panel to complete the development of methods to define revised Inlet Hazard Areas and potential inlet and near-inlet setback lines for CRC review. (S)

- The Inlet Hazard Areas should be eliminated and incorporated into the Ocean Erodible Area (OEA) while applying the same development standards currently utilized in the OEA. (S)
- The current “adjacent erosion rate” rule for IHAs doesn’t make sense. Every inlet is different and erosion rates are dramatically different. Good erosion rate information is needed for setbacks to be valid. (S)
- The concept of a Deep-Draft IHA and Shallow-Water IHA should be explored, and the boundaries should extend in the water, where issues related to dredging can be codified and enforced in policy. (S)

4) **Dredge Plants and Scheduling of Dredging Projects:** **14 comments**

Common Themes:

- Shallow-draft hopper dredges can place material closer to the shore and should be used more frequently as a first option instead of sidecast dredges. Sidecast dredges are only good for clearing a channel enough for a hopper dredge to follow behind it. One benefit of sidecast dredges is that they keep the sediment in the system. (F)
- The U.S. Army Corps of Engineers (USACE) dredge plants are stretched thin and scheduled well into the future, so immediate responses aren’t always possible. (F)
- Consistency is needed for dredging for ferries in Dare and Hyde counties. Dredging is needed not just for getting in and out of inlets, but also traveling between islands through the sounds. (F/S)

5) **Terminal Groins and Sand Bypassing:** **14 comments**

Common Themes:

- The legislative cap of four terminal groins should be removed. (S)
- Monitoring of downdrift impacts and financial aspects of mitigation need to be sufficient to safeguard adjacent properties and communities that could be negatively impacted by terminal groins. (S)
- Migrating inlets are not good candidates for terminal groins. (S)

6) **Approach to Inlet Management, In General:** **13 comments**

Common Themes:

- Inlets should be managed proactively instead of reactively. (F/S)
- Beach and inlet management is related- what happens to one impacts the other. The goal of inlet management should be to reconnect sediment pathways to minimize dredging impacts. (F/S)
- Each inlet is diverse and unique, so one management scheme cannot be applied to all inlets. (F/S)

7) **Funding Sources and Partnerships:** **13 comments**

Common Themes:

- With decreasing federal funds, inlet management is increasingly a shared partnership between local and state government. A stable source of funding for beach and inlet projects is needed at the state level. (S)

- The 50% state matching fund for inlet dredging is a good start, but if one locality wants to undertake a major project and applies for the state matching funds, it could wipe out the funds for the rest of the state. (S)
- Congressional funding is an issue for federal projects. A project may be authorized and permitted, but if it is never funded, it does no good. (F)

**8) Emergency Permitting: Bulldozing and Sandbags: 11 comments**

Common Themes:

- New dunes should be allowed to be created in Inlet Hazard Areas. (S)
- Sandbags in IHAs should have a different set of standards (permitted sooner and allowed to remain on beach longer). (S)
- More efficient and timely procedures for emergency permitting are needed. (F/S)

**9) Dredging Windows / Moratoria: 10 comments**

Common Themes:

- The dredge windows should be extended under stipulated conditions to increase competition, increase the number of bids on projects, reduce costs, and provide more flexibility for completing the work. (F/S)

**10) Economic Value of Inlets and Beaches: 10 comments**

Common Themes:

- The economic value of inlets should consider tourism, culture, recreation, jobs, and storm damage reduction; not just commercial tonnage. (F/S)
- Safe and navigable inlets are vitally important to the local and state economy. (S)

**11) Channel Realignment Projects: 9 comments**

Common Themes:

- The Bogue Inlet and Mason Inlet channel realignment projects were successful, so the CRC should make sure that the permitting process is quicker and easier and that monitoring requirements are reduced for future similar projects. (F/S)
- These types of projects should be designed to accommodate the same volume of water (tidal prism) that the pre-existing ebb channel possessed. (F/S)

**12) Permitting Process, In General: 8 comments**

Common Themes:

- Permitting needs to be proactive. There is a need to be able to react quickly, be adaptive, and look longer term versus authorizing single events. (F/S)
- DCM Major Permit lifecycles should be increased for inlet management or Coastal Storm Damage Reduction projects. (S)

**13) Development Standards / Erosion Setbacks: 8 comments**

Common Themes:

- Inlets are a primary ocean hazard in North Carolina. Development standards adjacent to inlets should be different from development standards along the oceanfront. (S)
- Existing rules for new development adjacent to inlets should not be relaxed. (S)
- There is no need for IHA specific development standards. (S)

**14) Monitoring Conditions Associated with Projects: 8 comments**

Common Themes:

- Monitoring requirements should not be so onerous as to prohibit what has otherwise been authorized. The amount of monitoring on projects should be reasonable and consistent with CAMA objectives. (S)
- Monitoring conditions should focus more on physical monitoring and less on biological monitoring. (S)

**15) Other Erosion Control Structures: 7 comments**

Common Themes:

- Rock groins, breakwaters, jetties, sandbags, beach bulldozing, and beach nourishment should all be allowed to mitigate channel-induced erosion. (S)

**16) Volumetric Triggers for Beachfront “Static Lines”: 6 comments**

Common Themes:

- The “300,000 cubic yard rule” for establishing a static vegetation line should be reevaluated. (S)
- The Ocean Reef Condominiums in Emerald Isle cannot meet the setback from the static vegetation line, and they are over 2,500 sq. ft. so they would not be able to rebuild from the first line of stable and natural vegetation (under the static line exception rule). Property owners request the CRC to consider allowing an exception for building back on the original footprint, even though the buildings are more than 2,500 sq ft. (S)

**17) Stockpiling of Sand: 6 comments**

Common Themes:

- Stockpiling of sand dredged from inlets and stored for future placement on beaches should be allowed. (F/S)

**18) Negative Impacts of Dredging: 5 comments**

Common Themes:

- The federal engineered channel locations at Beaufort Inlet and Cape Fear River Inlet result in episodic maintenance dredging, high erosion rates, and shifting shorelines adjacent to these inlets. (F)
- Dredging of Oregon Inlet has exacerbated erosion of Hatteras Island. (F)

**19) New Inlet Breaches: 5 comments**

Common Themes:

- A new type of Area of Environmental Concern (AEC) is needed for areas where an inlet used to exist, has closed, but could re-open again in the future. (S)
- If a new inlet is breached, it should be filled in instead of bridged. (F/S)

**20) Dredging of Inlet Shoals: 3 comments**

Common Themes:

- Since the orientation of ebb shoals is a primary driver of erosion on adjacent shorelines, any dredging of shoals should only proceed after modeling and studies indicate no adverse impacts will occur to the adjacent shorelines. **(F/S)**

A summary of the public comments and a full record of the public comments are attached. Commissioners were also asked to provide their priorities, and these are included as Attachment G.

The following information is attached to this memorandum:

Attachment A: Summary of Public Comments, by topic

Attachment B: Comments from Dredging Panel at February 2014 CRC Meeting

Attachment C: DCM Overview of Inlet Management Presentation

Attachment D: Buxton Meeting Notes and Public Comments

Attachment E: Beaufort Meeting Notes and Public Comments

Attachment F: Ocean Isle Beach Meeting Notes and Public Comments

Attachment G: Wilmington Meeting Notes and Public Comments

Attachment H: CRC Member Priorities







North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

CRC-14-34

October 2, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Mike Lopazanski, Ken Richardson  
**SUBJECT:** Static Vegetation Line Alternatives

Over the course of the Inlet Management Study, the Commission discussed developing an alternative to the present management strategy for siting oceanfront development adjacent to beach fill projects. The current rule 15A NCAC 07H.0305(a)(7) requires that oceanfront development in areas that have received a large-scale beach fill project (greater than 300,000 cubic yards of sediment or any storm protection project constructed by the US Army Corps of Engineers (USACE), be measured from the Static Vegetation Line, which is the vegetation line in existence within one year prior to the onset of the project. Exceptions to this rule are allowed, provided that the local government has received a Static Line Exception from the Commission.

**Background**

The first line of stable natural vegetation (FLSNV) has been used as an oceanfront setback delimiter since 1979. The focus was placed on “natural” vegetation due to dunes being artificially pushed seaward of their natural equilibrium and vegetated in an effort to reduce setback restrictions. The first application of the FLSNV on a nourished beach came about in 1981 with the completion of the Wrightsville Beach Hurricane Protection Project.

Over the course of several meetings, the CRC previously determined that the post-project vegetation was not “stable and natural” and should not be used for measuring oceanfront setbacks and directed staff to utilize the pre-project vegetation line for siting oceanfront development. This directive was supported by subsequent rule interpretations by the CRC. In connection with a 1995 contested case regarding a minor permit denial, an Administrative Law Judge urged the Commission to codify this method of measuring setbacks on nourished beaches. The CRC then developed rule language that was based on three primary rationales: 1) there is evidence that nourished beaches have a higher erosion rate than natural ones, 2) there is no assurance that funding for any nourishment project will be available for future maintenance work as the original project erodes away, and 3) structures would more likely be damaged by erosion since their siting was tied to an artificially forced system. The intent of the static line provisions were to recognize that beach nourishment is an erosion response necessary to protect

existing development, and should not be a stimulus for new development or the seaward encroachment of development on sites that are not otherwise suitable for building.

The original static line provisions were tied to large-scale beach nourishment projects, defined as one that: 1) places >200,000 yds<sup>3</sup> of sediment at an average ratio >50 yds<sup>3</sup>/linear ft.; or 2) is a hurricane protection project constructed by the USACE. By 2005, the Division and Commission were beginning to notice how the increasing number of beach fill projects was affecting oceanfront erosion rate calculations. The long-term average of shoreline change is analyzed over a period of approximately 50 years in what is commonly referred to as the “end point method”. This method measures the distance of an early shoreline (typically 1940s or 1950s) and compares it to the current location of the shoreline. The Division was noting that many of the shorelines were substantially farther seaward than they would have been without recent beach fill and the net effect was a lower erosion rate due to the most recent shoreline being biased by successive beach fill projects.

In 2006 the Commission began to review the static line triggers noting that in order to avoid a static vegetation line, municipalities had the ability to design projects with sediment volumes less than 200,000 yds<sup>3</sup> or, more commonly, sediment distributions greater than 200,000 yds<sup>3</sup> with an average distribution under 50 yds<sup>3</sup>/ft. The Commission discussed that while high-frequency beach fill projects can be designed to offset smaller volumes, the large-scale beach fill projects lasted longer and would have fewer environmental impacts. There was a concern that the triggers created a disincentive for large-scale projects for municipalities wanting to avoid the restrictions associated with static vegetation lines. In order to address this possibility, the Commission directed staff to examine the past history of beach projects in order to gauge how large-scale projects should be defined. The analysis showed that between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance projects disposed of less than 300,000 yds<sup>3</sup> of sediment. All but one of the larger projects was associated with Oregon Inlet. As a result of the study, the Commission re-defined large-scale beach fill projects to be greater than 300,000 cubic yards or a storm protection project constructed by the USACE with the intent that a beach disposal or typical inlet navigation project would not trigger a static line.

In addition, the Commission found that in some communities with a long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted since they did not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 07H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development (up to 2,500 square feet) in areas with a long-term commitment to beach nourishment to be measured from either the natural vegetation line or the static line, making more lots developable in these areas. Today, there are fourteen communities and one state park with Static Vegetation Lines; Ocean Isle, Oak Island, Caswell Beach, Bald Head Island, Kure Beach, Carolina Beach, Wrightsville Beach, Topsail Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, Atlantic Beach, Nags Head, and Fort Macon State Park.

Two alternatives to the present regulatory framework involving the use of static lines in siting oceanfront development have been discussed. The first alternative has been repeal of static lines and utilization of a “development line.” The second alternative proposed by DCM staff has been amendment of the existing static line exception provisions. Both alternatives are outlined below. In addition, proposed rule language has been attached showing possible amendments to the current static line exception rules. Staff will discuss both alternatives at the upcoming meeting in Wilmington.

### Static Line Alternatives

#### **Alternative 1 – Repeal Static Line Provisions**

The Commission could replace the existing static line provision with a “development line” established by local governments and approved by the CRC seaward of which no new development will be allowed. New or replacement structures would be sited based on the graduated setback from the existing vegetation line, or the development line, whichever is further landward.

#### Pros:

- Allows infill development.
- Some non-conforming structures could be replaced.
- Unbuildable lots could potentially become buildable.
- Could be implemented in areas that were developed during the same time period with similarly sized structures.
- Removes administrative requirement for communities to present long-term erosion control strategies to the CRC.

#### Cons:

- No assurance of beach fill project maintenance
- In some cases, existing development is not only non-conforming but also on the public trust beach.
- Could be difficult to implement in areas with complex lot geometry (flag lots, cul de sacs, etc.), where plat shape dictates structure placement.
- A “development line” can be difficult to determine where a mix of commercial, high-density, and residential development occurs.
- Areas constructed at different times with dissimilar plans, or constructed when the initial setback differed, could make a development line complicated.
- Potential for seaward encroachment of development in areas likely to experience erosion, storm surge, or in close proximity to inlets.

#### **Alternative 2 – Amend Static Line Exception Provisions**

The CRC could amend the existing static line exception rules and eliminate the 2,500 square foot maximum building size limit, as well as the five year waiting period, making areas retroactively eligible to petition for the exception. In addition, the Commission could increase the 300,000 yds<sup>3</sup> trigger for large-scale beach fill projects. Structure setbacks would be based on the graduated setbacks from first line of stable and natural vegetation and be no farther seaward than the landward-most adjacent structure. As is

currently the case, local governments would petition the Commission to be allowed the exception which would be approved based on demonstrating a commitment to long-term beach fill.

#### Pros:

- Allows infill development.
- Continued assurance that the community is committed to maintaining the beach fill projects subject to periodic Commission review.
- Most local governments with static lines have already been approved for static line exceptions by the Commission.
- Repealing the 2,500 square foot maximum structure size limitation would allow development similar to areas without large-scale beach fill projects.
- Repealing the five year waiting period would allow local governments to be eligible for the exception immediately upon completion of a beach fill project.
- Some unbuildable lots may become buildable.
- Some non-conforming structures could be replaced.
- By increasing the sediment volume trigger, communities without a Static Vegetation Line may pursue larger projects in hopes of added protection.

#### Cons

- Local governments that are not currently approved for a static line exception will need to petition the CRC for the exception.
- There will be a continued responsibility on the part of the Commission and local government to periodically review the status of erosion control / beach fill projects.
- Allowance for larger-scale development in areas likely to experience erosion, storm surge, or in close proximity to inlets.

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

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

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
  - (A) the growth of vegetation occurs, or
  - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).
- (4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.
- (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.
- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army

**Corps of Engineers.** The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

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

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

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

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

#### **15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

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

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
- (A) The total square footage of heated or air-conditioned living space;
- (B) The total square footage of parking elevated above ground level; and
- (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

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

- (2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
  - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
  - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
  - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
  - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
  - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
  - (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward; and
  - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
    - (i) the structure was originally constructed prior to August 11, 2009;
    - (ii) the structure as replaced does not exceed the original footprint or square footage;
    - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2) of this Rule;
    - (iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and
    - (v) the structure is rebuilt as far landward on the lot as feasible.
- (3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard setback, whichever is farthest from vegetation line, static vegetation line or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward



of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

- (4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.
- (5) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (7) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that ~~is less than 2,500 square feet and~~ cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and (2)(A) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
  - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
  - ~~(B) Total floor area of a building is no greater than 2,500 square feet;~~
  - ~~(C)~~(B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
  - ~~(D)~~(C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
  - ~~(E)~~(D) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and

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

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

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

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

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

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

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

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

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

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

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

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

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

## SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

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

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

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

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

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

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

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

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

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124  
Eff. March 23, 2009.*

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

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

- (1) A description of the area affected by the static line exception request;
  - (2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
  - (3) A summary of the evidence required for a static line exception; and
  - (4) A recommendation to grant or deny the static line exception.
- (b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124  
Eff: March 23, 2009.

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

- (a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:
- (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.
  - (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
  - (3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.
- (c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124  
Eff: March 23, 2009.

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

- (a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.
- (b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:
- (1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
  - (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and

- (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.
- (c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.
- (d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:
  - (1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.
  - (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
  - (3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124  
Eff. March 23, 2009.

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

- (a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.
- (b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).
- (c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.
- (d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note:* Authority G.S. 113A-107; 113A-113(b)(6); 113A-124  
Eff. March 23, 2009.

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

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

*History Note:* Authority G.S. 113A-107; 113A-113(b)(6), 113A-124  
Eff. March 23, 2009.



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

**CRC-14-35**

October 7, 2014

**TO:** Coastal Resources Commission

**FROM:** Heather Coats, Field Representative, Wilmington Office

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

The Commission has completed its Inlet Management study and has identified a number of priorities which include creating deep draft, port or navigation inlet AECs. At the July CRC meeting, the Commission directed DCM staff to develop management objectives and use standards for AECs associated with the two inlets in North Carolina with federally maintained shipping channels, Beaufort Inlet and the Cape Fear River Inlet.

In response, staff met with representatives from the adjacent local governments to elicit comments regarding the application of current rules and new management strategies they believe are needed to 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 in regard to the allowable location and size of sandbags and sandbag structures, as well as the ability to protect dunes in addition to primary structures and infrastructure. They also stated that new rules for the AEC should advocate for beneficial use of dredged material as part of CZMA (Coastal Zone Management Act) federal consistency concurrence.

The discussion with representatives from the Town of Caswell Beach and the NC Baptist Assembly at Ft. Caswell primarily focused on the federal designation of Ft. Caswell as a national historic site and the need for more flexibility on the property to address erosion and other issues including the potential AEC limits. A northern AEC boundary across from the entrance channel from Bald Head Island was proposed (in correlation to the former limit of BHI's Inlet Hazard AEC), or they alternatively suggested terminating the AEC to the north at the existing dock where conditions such as low wave energy and minimal erosion closely correlate to those estuarine shoreline conditions north of the channel on Bald Head Island.

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.

Building upon your recent recommendation from the Inlet Management Study and with the suggestions and goals of the adjacent local governments in mind, the attached definition and rule language for a new State Ports Inlet Management AEC is proposed for your consideration. The draft

rule language defines the State Ports Inlet Management AEC, strengthens the requirement for beneficial use of beach-compatible dredged material, allows the use of sandbags to protect frontal dunes as well as structure and infrastructure, redefines imminently threatened, and allows for the use of larger sized bags (e.g. “Geotubes”) for erosion control. In addition, the rules address recent actions by the legislature (SL2014-120) to remove the Inlet Hazard Area designation for areas meeting one of the following three criteria: the location of a former inlet which has been closed for at least 15 years; inlets that due to shoreline migration, no longer include the current location of the inlet; and for inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

Staff will discuss the details of the proposed AEC, including possible AEC boundaries, at the upcoming meeting in Wilmington.

**Draft Amendments to 15A NCAC 07H .0304 AECS Within Ocean Hazard Areas & 15A NCAC 7H .0309 Use Standards for Ocean Hazard Areas**  
**Proposed State Ports Inlet Management AEC Use Standards 15A NCAC 07H .0313**  
**October 7, 2014**

**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 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 channel location and the critical nature of maintaining adequate shipping access to North Carolina's state ports. As such, these areas may require specific management strategies not warranted at other inlets to address erosion, shoreline stabilization, and the beneficial use of sand within the littoral system. The State Ports Inlet Management Areas shall be designated on maps approved by the 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 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 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;
- (2) All development in the State Ports Inlet Management Areas shall be set back from the first line of stable natural vegetation or static vegetation line a distance equal to the setback required in the ocean hazard area, except for development exempted from the ocean setback rules in 15A NCAC 7H .0309.
- (3) Notwithstanding the use standards for temporary erosion control structures described in 15A NCAC 07H .0308(a)(2), a local government may seek protection of an imminently threatened frontal or primary dune 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; or
  - iii. the frontal 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 or frontal dune was greater than 20 feet over the preceding 30 days.

The Director of the Division of Coastal Management shall make the final determination as to whether a frontal dune or infrastructure is imminently threatened.

- (4) Sandbags used to construct temporary erosion control structures shall be tan in color with a base width not exceeding 20 feet, and a height not to exceed six feet.
- (5) Temporary sandbag erosion control structures constructed by a local government may remain in place for up to eight years from the date of approval. The local government shall be responsible for removal of the temporary erosion structure within 30 days of the end of the allowable time period. Removal of temporary erosion control structures is not required if they are covered by dunes with stable and natural vegetation.
- (6) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, an inlet relocation or stabilization project, it shall be removed by the local government within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

- (7) Established common-law and statutory public rights of access to the public trust lands and waters in state ports inlet management areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (8) Except where inconsistent with the above standards, all other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the State Ports Inlet Management Areas.