

NC COASTAL RESOURCES COMMISSION
September 27-28, 2017
New Hanover County Government Center
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, September 27th

- | | | |
|--------------|---|--|
| 10:00 | COASTAL RESOURCES ADVISORY COUNCIL MEETING (TBD) | Greg “rudi” Rudolph, Chair |
| 1:00 | COMMISSION CALL TO ORDER* (TBD) <ul style="list-style-type: none">• Roll Call• Chair’s Comments | Renee Cahoon, Chair |
| 1:15 | COMMISSIONER ORIENTATION <ul style="list-style-type: none">• State Government Ethics Act & Executive Order 34• CRC Operating Procedures• Variance Procedures | Mary Lucasse |
| 1:45 | COMMISSIONER ORIENTATION <ul style="list-style-type: none">• Division of Coastal Management & NC Coastal Program Overview• Regulatory Program• Public Trust Area of Environmental Concern | Braxton Davis
Doug Huggett
Christy Goebel |
| 3:00 | BREAK | |
| 3:15 | BEACH AND INLET MANAGEMENT <ul style="list-style-type: none">• Carolina Beach Inlet Maintenance – Inshore Storage | Layton Bedsole, New Hanover Co.
Shore Protection Coordinator |
| 3:45 | PUBLIC ACCESS <ul style="list-style-type: none">• Evaluation and Economic Impact of the NC Public Beach and Coastal Waterfront Access Program | Dr. Jim Herstine, UNC-W
Dr. Chris Dumas, UNC-W
Dr. Alexia Franzidis, UNC-W |
| 4:15 | ACTION ITEMS <ul style="list-style-type: none">• Adoption of 15A NCAC 7H .2200 Free Standing Moorings - Osprey Poles• Review of Legislative Changes Regarding Delegation of LUP Certifications• Town of Swansboro LUP Amendment (<i>CRC-17-24</i>) | Jonathan Howell
Mike Lopazanski
Mike Lopazanski |
| 4:30 | CRC RULE DEVELOPMENT <ul style="list-style-type: none">• Review and Amendments to 7H .0308(a)(2) Temporary Erosion Control Structures (<i>CRC-17-23</i>)• Amendments to 7H.0209(f)(1) – Stormwater Correction for ORW Shorelines (<i>CRC-17-27</i>)• Amendments to 7K .0208 Single Family Residences Exempted (<i>CRC-17-28</i>) | Mike Lopazanski
Tancred Miller
Debbie Wilson |
| 5:15 | LEGAL UPDATE <ul style="list-style-type: none">• Update on Litigation of Interest to the Commission | Mary Lucasse |
| 5:30 | RECESS | |

Thursday, September 28th

9:00 COMMISSION CALL TO ORDER* (TBD)

- Roll Call
- Chair's Comments
- Approval of July 11-12, 2017 Meeting Minutes
- Executive Secretary's Report
- CRAC Report

Renee Cahoon, Chair

Braxton Davis
Greg "rudi" Rudolph, Chair

9:30 SHELLFISH AQUACULTURE

- Division of Marine Fisheries – Shellfish Leasing Program
- Federal Perspective on Coastal Aquaculture
- DCM Role in Shellfish Leasing Program
- Commission Discussion

Steve Murphey, Section Chief
DMF Habitat Enhancement
Dr. James Morris, NOAA
Centers for Coastal Ocean Science
Jonathan Howell

11:00 BREAK

11:15 BEACH AND INLET MANAGEMENT

- Town of Kure Beach Development Line Approval (*CRC-17-25*)

John Batson, Bldg. Inspector

11:45 PUBLIC INPUT AND COMMENT

Renee Cahoon, Chair

12:00 CRC RULE DEVELOPMENT

- Amendments to 7H .0306; 7J .1301 Development Line (*CRC-17-26*)
- CRC Discussion

Ken Richardson

12:30 OLD/NEW BUSINESS

Renee Cahoon, Chair

12:45 ADJOURN

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

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



N.C. Division of Coastal Management

www.nccoastalmanagement.net

Next Meeting: November 7-8, 2017; Atlantic Beach



ROY COOPER
Governor

MICHAEL REGAN
Secretary

BRAXTON DAVIS
Director

MEMORANDUM

CRC- 17-24

To: Coastal Resources Commission
From: Michael Christenbury, Wilmington District Planner
Date: September 12, 2017
Subject: Certification of the 2009 Swansboro CAMA Land Use Plan

Recommendation:

Certification of an Amendment to the 2009 Town of Swansboro CAMA Land Use Plan with the determination that the Town has met the substantive requirements outlined in the 15 NCAC 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State’s Coastal Management Program.

Overview

The Town of Swansboro is seeking Certification of an amendment to the 2009 Swansboro CAMA Land Use Plan. The Town amended the plan to modify the Future Land Use Map designation of approximately 3.5 acres of land located at 130 Phillips Loop Road from High Density Residential to Commercial, as well as modify the Future Land Use Map acreage table. The property is currently zoned B-1 Highway Business.

The Town of Swansboro held a duly advertised public hearing on August 8, 2017 and voted unanimously by resolution to adopt the Land Use Plan Amendment. DCM Staff has reviewed the amendment and has determined that the Town has met the substantive requirements outlined in the CRC’s 15A NCAC 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State’s Coastal Management Program. Staff recommends Certification of the amendment to the 2009 Town of Swansboro CAMA Land Use Plan.

Attachments: Town Staff Report
Town Planning and Zoning Board Statement of Consistency
Resolution of Adoption



Board of Commissioners Meeting Agenda Item Submittal

Item To Be Considered: **CAMA Future Land Use Plan Map Amendment**

Board Meeting Date: **August 8, 2017**

Prepared By: **Andrea Correll, AICP, Planner**

Overview:

An amendment has been proposed to the 2009 CAMA Land Use Plan for an area of approximately 3.526 acres at 130 Phillips Loop Road. (tax parcel 1319-35) currently zoned B-1. The proposed amendment would affect the Future Land Use Map (Map 16), and the Town of Swansboro Future Land Use Acreages (Table 45).

The proposed amendment consists of converting a portion of the property from a High Density Residential land use designation to a Commercial land use designation and adjusting the acreages shown in Table 45 to reflect the change. The property was zoned B-1 commercial prior to the adoption of the CAMA Land Use Plan.

The Planning Board on June 5, 2017 recommended approval of the amendment.

Background Attachment(s):

1. Future Land Use Acreages
Existing FLU Map (FLUM)
Proposed FLU Map (FLUM)
2. Planning Board Consistency Statement
3. Resolution 2017 – R14

Recommended Action:

- 1) Hold the Public Hearing; and
- 2) Motion to adopt Resolution 2017-R14 amending the future land use map changing tax parcel 1319-35 (130 Phillips Loop Road) from the high density residential land use designation to the commercial land use designation. Include statement that: The future land use change is consistent with the commercial land use of the property and development patterns in the area. This action is consistent with the B-1 zoning designation existing on the property.

Town Manager <u>7.25.17</u>	Reviewed By:	Finance Director _____
Town Clerk <u>7.28.17</u>		Town Attorney _____
Date Action Approved by Board: <u>8.8.2017</u>		Action if different from Recommended:

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3. Future Land Use Acreages

The Town believes that the future land use map and associated goals and implementing actions are consistent with the land suitability analysis. Table 45 provides a summary of the estimated future land use acreages (as delineated on Map 16, Future Land Use Map).

Table 45. Town of Swansboro Future Land Use Acreages (revised previously 2013)

Land Use	Corporate Limits	ETJ	Planning Area	Total
Commercial	216.21	119.026 115.5	0.00	334.636 342.90
Commercial Central Business	17.57	0.00	0.00	17.57
Conservation	86.93	202.96	0.00	289.89
High Density Residential	42.98	22.154 25.68	0.00	56.864 60.39
Medium Density Residential	365.36	358.43	0.00	723.79
Low Density Residential	125.89	1,010.21	0.00	1087.95
Office & Institutional	38.37	146.91	0.00	185.28
Light Industrial	0.00	34.69	0.00	34.69
Undesignated Planning Area	0.00	0.00	2,881.37	2,881.37
Total	890.47	1,894.38	2,881.37	5,666.22

Source: Holland Consulting Planners, Inc.

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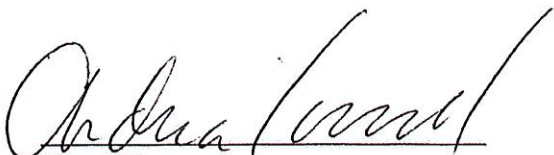
**TOWN OF SWANSBORO PLANNING AND ZONING BOARD
STATEMENT OF CONSISTENCY**

On June 5, 2017, the Town of Swansboro Planning and Zoning board reviewed a proposed amendment to the CAMA Land Use Plan. The Town of Swansboro is proposing an amendment to our 2009 CAMA land Use Plan for an area of approximately 3.526 acres located at 130 Phillips Loop Road. The proposed amendment would affect the Future Land Use Map (Map 16), and the Town of Swansboro Future Land Use Acreages (Table 45).

The proposed amendment consists of converting the property from High Density Residential land use designation to a Commercial land use designation and adjusting the acreages shown in Table 45 to reflect the change. The property is zoned B-1- Highway Business.

The Town's Planning Board finds that the proposed amendment is consistent with the current Comprehensive Plan and other applicable plans and policies, including, but not limited to, the Gateway Vision Plan, and considers the action taken to be reasonable and in the public interest because it provides the structure for Town staff to proactively address issues related to impacts caused by new development in order to protect the health, safety, and welfare of the Town's residents.


Planning Board Chair


Town Planner

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RESOLUTION 2017-R14

RESOLUTION OF THE TOWN OF SWANSBORO NORTH CAROLINA
AUTHORIZING AN AMENDMENT TO THE CAMA CORE LAND USE PLAN

WHEREAS, the Town desires to amend its 2009 CAMA Core Land Use Plan, specifically the Future Land Use Map (Map 16), and the Town of Swansboro Future Land Use Acreages (Table 45) to show an area of approximately 3.526 acres at 130 Phillips Loop Road (tax parcel 1319-35) as Commercial; and

WHEREAS, the Town conducted a duly advertised public hearing on the draft amendment to the CAMA Core Land Use Plan at the Regular Meeting of the Board of Commissioners on August 8, 2017; and

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

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

WHEREAS, the amendment is consistent with the six (6) management topics outlined in the Town's Land Use Plan; and

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

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Town of Swansboro, North Carolina, has unanimously adopted the draft CAMA Core Land Use Plan amendment; and

BE IT FURTHER RESOLVED that the Town Manager of Swansboro is hereby authorized to submit the adopted CAMA Core Land Use Plan amendment to the State for certification as described above.

Adopted this 8th day of August 2017.



Scott Chadwick, Mayor



Attest: Paula Webb, Town Clerk



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ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-17-23

September 12, 2017

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Amendments to CRC Temporary Erosion Control Structures Rules

At the July 2017 meeting of the CRC, Staff briefly reviewed previously proposed amendments to your rules governing the use of sandbags as temporary erosion control structures. Those proposed amendments included changes that were initiated by the Commission and Advisory Council, as well as directives from the Legislature in 2015. Staff also advised the Commission of the General Assembly's most recent action, S.L. 2017-10 (Senate Bill 131), which contained further directives for the Commission regarding temporary erosion control structures.

SECTION 3.14.(a) of S.L. 2017-10 **repeals** Sections 14.6(p) and 14.6(q) of S.L. 2015-241 which directed the CRC to adopt rules that:

- (1) Allow the placement of temporary erosion control structures on a property that is experiencing coastal erosion even if there are no imminently threatened structures on the property if the property is adjacent to a property where temporary erosion control structures have been placed.
- (2) Allow the placement of contiguous temporary erosion control structures from one shoreline boundary of a property to the other shoreline boundary, regardless of proximity to an imminently threatened structure.
- (3) The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date for any of the permits.
- (4) Allow the replacement, repair, or modification of damaged temporary erosion control structures that are either legally placed with a current permit or legally placed with an expired permit, but the status of the permit is being litigated by the property owner.

S.L. 2017-10 Section 3.14.(b) further states *“Notwithstanding G.S. 150B-21.1A(a), the Coastal Resources Commission may adopt an emergency rule for the use of temporary erosion control structures consistent with the amendments to the temporary erosion control structure rules adopted by the Commission as agenda item CRC-16-23 on May 11, 2016, with any further modifications in the Commission's discretion. The Commission shall also adopt temporary and permanent rules to implement this section.”*

You will recall that there was much concern among Commissioners and the Division that the 2015 legislative directives could lead to a proliferation of sandbags and that their use would be allowed in cases where there were no threatened structures present. Given that the new legislation repeals the directives of S.L. 2015-241 while also allowing the CRC to consider any further modifications in the

Commission's discretion, Staff recommends that the 2015 legislative provisions noted above be reconsidered.

The Commission and Advisory Council spent a significant amount of time considering amendments to address the management of sandbags and address the time limits for permitted sandbag structures, provisions for removal when no longer necessary, the allowance for structures to remain beyond permitted time limits when "covered and vegetated."

As a reminder, the CRC/CRAC amendments:

- Remove the distinction between structures greater or less than 5,000 square feet, setting the time limit at eight years for all structures;
- Remove the "vegetated" requirement for sandbag structures to remain beyond their permitted time when covered by sand;
- Require that only sandbags exposed above grade be removed at the expiration of the permit;
- Modify the "no longer necessary" provisions to require the removal of sandbags that are exposed above grade upon completion of a beach nourishment or inlet relocation/stabilization project.
- Clarifies that structures determined by the Division of Coastal Management to be imminently threatened upon the expiration date of permitted temporary erosion control structures may be permitted to remain in place for an additional eight years if they are located in a community pursuing beach nourishment, inlet relocation or stabilization.

Staff is also recommending language to address gaps in adjoining sandbag structures on a site-specific basis.

In summary, the revised language would manage sandbags in the following manner:

Sandbags Permitted

- On properties with an imminently threatened structure or accelerated erosion.
- Can be extended beyond the protected structure to address gaps in adjoining sandbag walls.

Time Limits

- Sandbag permits will be valid for eight years for all structures regardless of structure size.
- Sandbag structures placed incrementally will have time limits corresponding to the installation of the first bags.

Removal

- If the structure is demolished or relocated, all sandbags must be removed.
- Upon completion of beach fill/inlet relocation or stabilization project, sandbags exposed above grade must be removed.
- Upon expiration of the eight-year permit, sandbags exposed above grade must be removed.
- Sandbags covered by sand do not need to be removed.

Attached are two versions of the rule. Version **A** includes the legislative directives of 2015. Version **B** only includes the CRC/CRAC proposed amendments. It was noted at the meeting that there are several new Commissioners who may not be familiar with the use of sandbags as temporary erosion control structures so I have included a history as an attachment.

Version A

Proposed Amendments to 15 NCAC 7H .0308; 7H .1704; 7H .1705 Temporary Erosion Control Structures
**2015 Legislatively Directed Amendments Highlighted in Yellow*
***Proposed Amendments in Bold*
June 28, 2017

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

(a) Ocean Shoreline Erosion Control Activities:

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

- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, **unless specifically authorized under the Coastal Area Management Act**, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- ~~(D)~~ **All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.**
- ~~(E)~~**(D)** Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule ~~.0306(i)~~ **.0306(h)** of this Section.
- ~~(F)~~**(E)** Project construction shall be timed to minimize adverse effects on biological activity.
- ~~(G)~~**(F)** Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- ~~(H)~~**(G)** **Erosion Permanent erosion** control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in ~~provision Part~~ **(a)(2)(B)** of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- ~~(I)~~**(H)** Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) ~~any A~~ permit for a structure under this Part ~~(I)~~ may be issued only to a sponsoring public agency for projects where the public benefits outweigh the ~~short or long range~~ **significant** adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of ~~any unavoidable~~ **significant** adverse impacts on adjoining properties and on public access to and use of the beach.
- ~~(J)~~**(I)** Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not ~~adversely impact~~ **have significant adverse impacts on** fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the ~~short or long range~~ **significant** adverse impacts. Additionally, the permit shall include conditions

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providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

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

- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
- (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

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

(2) Temporary Erosion Control Structures:

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

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

(C) **Temporary Notwithstanding Part (B) of this Subparagraph, temporary** erosion control structures shall be used to protect only the principal structure-and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed **under 15A NCAC 07H .0309** as an exception to the erosion setback requirement.

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

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

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

of the temporary erosion control structure exposed above grade the temporary structure
within 30 days of the end of the allowable time period.

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

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

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the most recent section was installed, in accordance with Part (F) of this Subparagraph.

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

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

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

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

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

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

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

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- ~~(J)~~**(J)** Removal of temporary erosion control structures is not required if they are covered by ~~dunes sand, with stable and natural vegetation.~~ **Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.**
- ~~(K)~~**(K)** The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(L)~~**(L)** Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the **temporary erosion control** structure shall not exceed 20 feet, and the **total** height shall not exceed six **feet, as measured from the bottom of the lowest bag.**
- ~~(M)~~**(M)** Soldier pilings and other types of devices to anchor sandbags shall not be allowed. **An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Part (G)(H) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment, inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:**
- (i) a building and septic system shall be considered as separate structures.**
- (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.**
- (N)** Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph. **Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.**

15A NCAC 07H .1704 GENERAL CONDITIONS

- (a) Work permitted by means of an emergency general permit shall be subject to the following limitations:
- (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.
 - (2) No work shall be permitted other than that which is necessary to **reasonably** protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
 - (3) Any permitted **temporary** erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case of ~~roads.~~ **roads, except as provided under 15A NCAC 07H .0308.** If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee.
 - (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (5) Structural work shall meet sound engineering practices.

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- (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.
- (b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~ **Environmental Quality** to make inspections ~~at any time deemed necessary~~ to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions in these Rules.
- (c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
- (e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.
- (f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

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

15A NCAC 07H .1705 SPECIFIC CONDITIONS

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

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph ~~shall~~ **may** be used to protect ~~only~~ imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, ~~or, or~~ right-of-way in the case of ~~roads, roads~~ is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and shall be no farther waterward than the most landward adjacent temporary erosion control structure.**
- (3) **Temporary** Notwithstanding Part (a)(2) of this Subparagraph, **temporary** erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed **under 15A NCAC 07H .0309** as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed **seaward waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) ~~Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected.~~ The landward side of such temporary erosion control structures shall not be located more than 20 feet **seaward waterward** of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (1) of this Paragraph.
- (6) Temporary erosion control structures may remain in place for up to **two years after the date of approval if they are protecting a building with a total floor area of 5,000 square feet or less and its associated septic system, or for up to five** ~~eight~~ years for a building ~~with a total floor area of more than 5,000 square feet~~ and its associated septic ~~system. system, Temporary erosion control~~

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structures may remain in place for up to five eight years if they are protecting a bridge or a road. **The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.** The property owner shall be responsible for removal of **any portion of the temporary erosion control structure exposed above grade the temporary structure** within 30 days of the end of the allowable time period.

- (7) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach **nourishment, nourishment or an inlet relocation or stabilization project** if it **has**:
- (A) **has** an active CAMA permit, where necessary, approving such project; or
 - (B) **has** been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
 - (C) **has** received a favorable economic evaluation report on a federal project; or
 - (D) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project **and or** the identification of the financial resources or funding bases necessary to fund the beach **nourishment, nourishment or** inlet relocation or stabilization project.
- If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph. **The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.**
- (8) Once ~~the a~~ temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner to maximum extent practicable within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, **or** an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade it** shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management, regardless of the time limit placed on the temporary erosion control structure.
- (9) Removal of temporary erosion control structures is not required if they are covered by **dunes sand with stable and natural vegetation. Any portion of a temporary erosion control structure that becomes exposed after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.**
- (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the **total** height shall not exceed **6 feet, feet, as measured from the bottom of the lowest bag.**
- (12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (14) An imminently threatened structure may be protected only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, ~~or in an Inlet Hazard Area and in a community that is actively pursuing~~ an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures may be **permitted eligible** for an additional eight-year **permit extension** provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this ~~Subparagraph~~ **Subparagraph**, and the community in which it is located is

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actively pursuing a beach ~~nourishment~~, **nourishment or an inlet relocation or stabilization project** in accordance with Subparagraph (7) of this Paragraph.- In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the ~~initial~~ **most recent** erosion control structure is installed. For the purpose of this Rule:

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

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

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

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

- (1) No work shall be permitted other than that which is necessary **to reasonably** protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
- (2) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure.**
- (3) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

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

- (1) Work permitted by this general permit shall be subject to the following limitations:
- (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
- (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (a)(1) of this Rule. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure;**
- (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC ~~7H .0208;~~ **7H .0208;** and

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- (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
- (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

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

Version B

CRC/CRAC Proposed Amendments to 15 NCAC 7H .0308; 7H .1704; 7H .1705 Temporary Erosion Control Structures
September 12, 2017

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

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, **unless specifically authorized under the Coastal Area Management Act**, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - ~~(D)~~ **All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.**
 - ~~(E)~~**(D)** Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule ~~.0306(i)~~ **.0306(h)** of this Section.
 - ~~(F)~~**(E)** Project construction shall be timed to minimize adverse effects on biological activity.
 - ~~(G)~~**(F)** Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - ~~(H)~~**(G)** **Erosion Permanent erosion** control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in ~~provision Part~~ (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - ~~(I)~~**(H)** Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) ~~any A~~ permit for a structure under this Part ~~(I)~~ may be issued only to a sponsoring public agency for projects where the public benefits outweigh the ~~short or long range significant~~ adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of ~~any unavoidable significant~~ adverse impacts on adjoining properties and on public access to and use of the beach.
 - ~~(J)~~**(I)** Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not ~~adversely impact~~ **have significant adverse impacts on** fisheries or other public trust resources; and
 - (vi) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the ~~short or long range significant~~ adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

- ~~(K)~~(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- ~~(L)~~(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part ~~(2)~~(A) of this Subparagraph **shall may** be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure-and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under 15A NCAC 07H .0309 as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed **seaward waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be ~~protected~~. **protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure being protected.** The landward side of such temporary erosion control structures shall not be located more than 20 feet **seaward waterward** of the structure to be ~~protected~~ **protected**, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or ~~their~~ **the Director's** designee in accordance with Part ~~(2)~~(A) of this Subparagraph.
 - (F) Temporary erosion control structures may remain in place for up ~~to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five~~ **eight** years for a building with a total floor area of more than 5000 sq. ft. and its associated septic ~~system, system~~. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of **any portion of the temporary erosion control structure exposed above grade** ~~the temporary structure~~ within 30 days of the end of the allowable time period.
 - (G) **An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the**

community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

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

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

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

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

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

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

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

If beach nourishment or inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

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

~~(I)~~(J) Removal of temporary erosion control structures is not required if they are covered by ~~dunes sand, with stable and natural vegetation.~~ Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

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

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

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

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

- ~~(i) a building and septic system shall be considered as separate structures.~~
- ~~(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.~~

- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

15A NCAC 07H .1704 GENERAL CONDITIONS

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

- (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.
- (2) No work shall be permitted other than that which is necessary to ~~reasonably~~ protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
- (3) Any permitted temporary erosion control projects shall be located no more than 20 feet seaward of the imminently threatened structure or the right-of way in the case of ~~roads~~, roads, except as provided under 15A NCAC 07H .0308. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee.
- (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (5) Structural work shall meet sound engineering practices.
- (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

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

(c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

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

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

(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

Eff. November 1, 1985;
Amended Eff. December 1, 1991; May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. May 1, 2010; August 1, 1998; July 1, 1994;

15A NCAC 07H .1705 SPECIFIC CONDITIONS

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

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph ~~shall~~ **may** be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, ~~or, or~~ right-of-way in the case of ~~roads, roads~~ is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (3) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under 15A NCAC 07H .0309 as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed ~~seaward~~ **waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be ~~protected. protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure being protected.~~ The landward side of such temporary erosion control structures shall not be located more than 20 feet ~~seaward~~ **waterward** of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Subparagraph (1) of this Paragraph.
- (6) Temporary erosion control structures may remain in place for up to ~~two years after the date of approval if they are protecting a building with a total floor area of 5,000 square feet or less and its associated septic system, or for up to five~~ **eight** years for a building ~~with a total floor area of more than 5,000 square feet~~ and its associated septic ~~system. system.~~ **Temporary erosion control structures may remain in place for up to five** ~~eight~~ **years if they are protecting** a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade ~~the temporary structure~~ within 30 days of the end of the allowable time period.
- (7) ~~Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach~~ **nourishment, nourishment or an** inlet relocation or stabilization project if it **has**:
 - (A) **has** an active CAMA permit, where necessary, approving such project; or
 - (B) **has** been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
 - (C) **has** received a favorable economic evaluation report on a federal project; or
 - (D) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project

~~and or~~ the identification of the financial resources or funding bases necessary to fund the beach ~~nourishment, nourishment or~~ inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.

- (8) Once ~~the a~~ temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner to maximum extent practicable within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, ~~or~~ an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade it** shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management, regardless of the time limit placed on the temporary erosion control structure.
 - (9) Removal of temporary erosion control structures is not required if they are covered by ~~dunes sand with stable and natural vegetation.~~ **Any portion of a temporary erosion control structure that becomes exposed after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.**
 - (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
 - (11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the **total** height shall not exceed ~~6 feet.~~ **feet, as measured from the bottom of the lowest bag.**
 - (12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (14) An imminently threatened structure may be protected only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, ~~or in an Inlet Hazard Area and in a community that is actively pursuing~~ an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures may be ~~permitted eligible for an additional eight-year permit extension~~ provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this ~~Subparagraph~~ **Subparagraph**, and the community in which it is located is actively pursuing a beach ~~nourishment, nourishment or an inlet relocation or stabilization project~~ in accordance with Subparagraph (7) of this Paragraph.- In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (A) a building and **its associated** septic system shall be considered as separate structures.
 - (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each **contiguous** section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Rule.
 - (15) Existing ~~sandbag temporary erosion control~~ structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this ~~Rule.~~ **Paragraph.**
- (b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:
- (1) No work shall be permitted other than that which is necessary ~~to reasonably~~ protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (2) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control

- structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee.
- (3) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.
- (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.
- (1) Work permitted by this general permit shall be subject to the following limitations:
- (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
- (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (a)(1) of this Rule;
- (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC ~~7H .0208~~; **7H .0208**; and
- (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
- (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1;
Eff. November 1, 1985;
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. May 1, 2013; May 1, 2010; August 1, 2002. Temporary Amendment Eff. July 3, 2000; May 22, 20

Attachment

Summary of Current Sandbag Rules

Use of Sandbags

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

Siting and Size of Sandbags

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

Sand Bag Time Limits

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

Removal of Sand Bags

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

- Time has expired.
- The community is no longer considered to be pursuing a beach nourishment or inlet relocation/stabilization project (standard time limits applied).
- The sand bags are no longer necessary due to relocation or removal of the threatened structure.
- Completion of a beach nourishment or inlet relocation/stabilization project.

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

Evolution of Sandbag Rules

1984-1985

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

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

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

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

1987

In March of 1987, the CRC requested information on the effects of sandbag structure design and placement were having on the beach.

1990-1995

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

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

In 1995, the CRC amended the rules to address the size and physical location of sandbags, the types of structures that were eligible for protection, as well as the time they could remain in place if they were not covered by dunes with stable, natural vegetation. The rule was amended to allow a sandbag

structure to remain in place up to two years if it was protecting a small structure (less than 5,000 square feet floor area) and up to five years for larger structures. The rule also allowed the sandbags to remain for five years if they were located in a community actively pursuing a beach nourishment project. Existing sandbags installed prior to May 1, 1995 were grandfathered and allowed the full time period prior to removal.

1996-1999

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

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

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

2000

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

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

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

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

2005

The majority of sandbag structures were located in areas included in beach nourishment projects or studies, however, some structures needed to be removed by their owners prior to the May of 2008

deadline. In North Topsail Beach, an area within the Coastal Barriers Resource Act (CoBRA) Zone containing a significant number of sandbag structures was dropped by the US Army Corps of Engineers from further study. North Topsail Beach applied for permits to conduct a privately funded nourishment project to cover this area as was the case on the east end of Ocean Isle Beach and in the vicinity of The Point in Emerald Isle.

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

2006

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

2007

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

In addition to the current time limits and removal deadlines, the Commission discussed the possible utilization of degradable materials rather than polypropylene as a means of ensuring the eventual removal of sandbags from the oceanfront. DCM research revealed issues associated with the use of biodegradable textiles for sandbags, primarily concern over the length of time biodegradable bags can withstand the combination of elements present in the coastal environment. The complex nature of coastal beaches makes it difficult to predict how long a biodegradable sandbag would last, as a variety of assailants including; microorganisms, temperature, moisture, humidity, seawater composition and wave energy act upon beaches. In addition, pathogenic viruses, bacteria, and fungi are present in stormwater runoff. The combination of these reactants leads to the increased degradability of natural fibers used in sandbag installations.

The CRC ultimately decided that the current rule would be enforced and all uncovered sandbags would have to be removed in May 2008. Sandbag permits could still be applied for throughout this process and there was interest modifying the sandbag rules.

November 2007

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

March - 2008

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

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

May 2008

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

Variance Requests:

By the May 2008 CRC meeting, the Division had received 29 sandbag variances requests.

Comprehensive Beach Management Task Force Subcommittee Report:

Recommendations from the subcommittee include conditioning certain CAMA permits to preclude the use of sandbags under the single-family exception and consideration of alternative sandbag structure design.

July 2008

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

September 2008

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

October 2008

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

January 2009

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

August 2009

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

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

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

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

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

2011 – Sandbag Stakeholder Committee

Division engage stakeholders which included representatives of the Commission, Advisory Council, local government, and property owner representatives in an effort to discuss how sandbag structures

were being managed, nuances of the temporary erosion control structure rules and to facilitate possible changes in the implementation of the Commission's sandbag policy. The Committee focused on specific issues including the requirement for removal of sandbags prior to nourishment projects, the covered and vegetated requirements and the possible use of other criteria in the permitting and removal of sandbags such as beach elevation and shoreline recession.

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

While many of the issues were more thoroughly considered during the stakeholder meetings, no specific recommendations were offered. See attached Sandbag Stakeholder Committee Summary Report (CRC-11-09).

August 2011

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

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



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

CRC-17-27

September 11, 2017

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Stormwater correction for Estuarine Shoreline AEC Adjacent to Outstanding Resource Waters (ORW)

Within the Commission's Coastal Shorelines rule, 15A NCAC 07H .0209, specific use standards apply to development along coastal shorelines that are "immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission...". One of these specific use standards, 07H .0209(f)(1)(A), prohibits the use of a stormwater collection system within an ORW Coastal Shoreline. This prohibition is in direct conflict with the Environmental Management Commission's (EMC) Coastal Stormwater rule 15A NCAC 02H .1019 that allows stormwater collection systems within ORW Coastal Shorelines.

The EMC has the legislative authority to adopt rules and standards for stormwater management, including within the 20 CAMA counties, and the CRC has historically incorporated the EMC's standards into your rules. Staff believes that is appropriate, therefore, to amend CRC rule 07H .0209 to match the EMC's standard. A proposed amendment is attached, and staff is asking for the CRC's approval to move forward with rulemaking.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to ~~avoid, mitigate or reduce~~ **avoid or minimize** adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.

- (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" means a project that is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
- (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
- (B) Pile-supported signs (in accordance with local regulations);
- (C) Post- or pile-supported fences;
- (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
- (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
- (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
- (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
- (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
- (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
- (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth

of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and

- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.

(f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.

- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - ~~(A)~~ have no stormwater collection system;
 - ~~(B)~~(A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
 - ~~(C)~~(B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
- (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:
 - (A) the development has a CAMA permit application in process, or
 - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.
- (3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

- (4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.
- (g) Urban Waterfronts.
- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
- (A) The area lies wholly within the corporate limits of a municipality; and
- (B) the area has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.
- (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
- (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) Use Standards:
- (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within Urban Waterfronts that meets the following standards:
- (i) The development must be consistent with the locally adopted land use plan;
- (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
- (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;
- (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within Urban Waterfronts as set out below.
- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
- (ii) For the purposes of this Rule, existing enclosed structures may be replaced ~~and or~~ **and/or** expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the ~~structure structure~~, and is consistent with local requirements or limitations.
- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
- (I) The proposed development shall provide for enhanced public access to the shoreline;

- (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
- (III) Structures shall be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
- (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
- (V) Structures shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
- (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
- (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
- (VIII) Structures shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts include the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142); Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494); Amended Eff. March 1, 2010; April 1, 2008; August 1, 2002.



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON DAVIS
Director

CRC-17-28

September 27, 2017

MEMORANDUM

To: Coastal Resources Commission

FROM: Debbie Wilson, District Manager – Wilmington Regional Office

SUBJECT: Amendments to 15A NCAC 7K .0208 Single Family Residences Exempted

15A NCAC 07K .0208 is the Exemption which allows for the construction of single family residences within the Coastal Shoreline Area of Environmental Concern as long as the proposed development and all land disturbing activity (with the exception of a six foot wide generally perpendicular water access) is located more than 40 feet landward of normal high water or normal water level.

Currently 15A NCAC 07K .0208(d) requires that before beginning any work under this Exemption, a representative of the Division of Coastal Management shall be notified for prior authorization. Staff is recommending the attached rule language for your review to allow Local Permit Officer's (LPO's) the ability to grant the authorization. This proposed rule change will make it consistent with other exemptions authorized by Local Permit Officers.

Attachment

15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

(a) All single family residences constructed within the Coastal Shoreline Area of Environmental Concern that 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.

(b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that the access shall be no wider than six feet. The access 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. (c)

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 that 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.

(d) Before beginning any work under this exemption, **CAMA local permit officer** or the Department of **Environment and Natural Resources Environmental Quality** representative shall be notified of the proposed activity to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall 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; and
- (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level.

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

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

NC COASTAL RESOURCES COMMISSION (CRC)

July 11-12, 2017

Holiday Inn

Greenville, NC

Present CRC Members

Renee Cahoon, Chair

Neal Andrew, Vice-chair (present 7/12/17 only)

Greg Lewis, Second Vice-chair

Larry Baldwin

Rick Catlin

Denise Gibbs

Phil Norris

Russell Rhodes

Bill White

Present CRAC Members

Rudi Rudolph, Chair

Spencer Rogers, Co-Vice-chair

Bobby Outten, Co-Vice-chair

John Brodman

Jett Ferebee

Johnny Martin

Michael Moore

David Moye

Kris Noble

Todd Roessler

Dave Weaver

Lee Wynns

Present from the Office of the Attorney General

Shawn Maier

Present from the Department of Environmental Quality, Office of the General Counsel

Christine A. Goebel

CALL TO ORDER/ROLL CALL

Renee Cahoon called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Marc Hairston and Jamin Simmons were absent. No conflicts were reported. Based upon this roll call Chair Cahoon declared a quorum.

CHAIR COMMENTS

Chair Cahoon stated the President's budget eliminates funding for many NOAA programs including Coastal Management and the National Estuarine Research Reserves. If this budget is passed, between DCM and NERR, the programs stand to lose about \$3.15 million annually. This would be approximately half of DCM's budget. This will impact permitting, federal consistency reviews, policy development, staff support for the CRC, coastal programs and basic administration and operations. This would limit the State's ability to protect coastal and marine resources, public access, navigation, riparian property rights, monitoring and managing natural hazards such as beach erosion and inlet shoaling. The chair inquired whether the CRC would like to support NOAA programs through a letter to North Carolina's Congressional Delegation?

Greg Lewis made a motion to send a letter of support for NOAA coastal programs to the North Carolina Congressional Delegation. Denise Gibbs seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Cahoon, Norris, Rhodes, White, Gibbs).

Robert High of New Hanover County has been appointed to fill the unexpired term of John Snipes filling the sport fishing seat. Doug Medlin, Mayor of Surf City, has been appointed to fill the coastal property owner/land development seat. These were the only remaining vacancies on the Commission. The two newest members should be qualified to participate at the September meeting. Due to the number of new Commission members, it would be appropriate to have a full orientation for the entire Commission.

Later in this meeting's agenda there is a public hearing scheduled for amendments to 15A NCAC 7H .2200, the General Permit for Construction of Freestanding Moorings and Bird Nesting Poles. The Commission designated Jonathan Howell as hearing officer for this public hearing.

COASTAL ISSUES

Flood Insurance Rate Map Development

John Dorman, Asst. State Emergency Management Director for Risk Management

John Dorman stated the floodplain mapping program started in 2000 after Hurricane Floyd. The program's goal is to develop, maintain and disseminate data, models, and maps. Flood studies are reviewed for necessary updates every 3.5 years. Once engineering studies are completed and we calculate the financial loss at the structure level. This was a significant benefit available during Hurricane Matthew. Even before the end of the storm we could tell FEMA what the financial costs were going to be for North Carolina. Dorman reviewed all information that is necessary to make the mandatory determinations for flood insurance. FEMA is the responsible custodian of the technical data which is transferred to the state of North Carolina. As we update the maps, FEMA utilizes the information to determine what buildings require flood insurance. Typically, any federally backed mortgage requires flood insurance if it is within the 100-year flood zone. All this information is also incorporated into our real-time flood warning system. Since we started the program, DEM has acquired LiDAR-derived topography, building footprints, and first floor elevations. We are completely digital and much of the data that we have can be shared with others. We have studied about 32,000 stream/coastal miles and calculated impact and financial loss to properties from different flood elevations. In 2006, we started looking at the coastal models and studies and incorporate all of FEMA's coastal requirements and standards in these studies. We also utilize private sector engineers and surveyors. to develop engineering models for our review. FEMA also performs quality control on the models as well as an independent firm. Dorman stated the DEM also utilizes the most up to date hydrodynamic process methodology based on FEMA's latest models. None of the current modeling has anything to do with climate change or sea level rise. That

has not been built in since FEMA is prohibited from incorporating any climate change or sea level rise into the maps. The surge model is one of the many components that build the flood map as are field transect surveys and reconnaissance. Dorman stated that the primary frontal dune was a significant component in making the changes to the maps this time around. FEMA makes determinations on how you classify the primary frontal dune including incorporating storm-induced erosion, wave modeling and coastal flood hazard mapping. FEMA provided funding for us to update the entire coastline. The last study was based on 1981 surge modeling and significant changes have occurred since then. The model used in 1981 did not include wave setup, the resolution of the points of elevation were on a 1-mile basis and the models did not extend into the streams. The wind and pressure field data was also at a low resolution in the former models. Based on the new modeling, we have seen a reduction in the width and the seaward push of the VE Zone. The primary reason for this shift is the topography and FEMA's new definition of the primary frontal dune. The result of all this is the regulatory requirement and base flood elevations on the coast have gone down. Out of about 94,000 buildings, we saw 58,154 (or 62% of all the buildings) had a reduction in base flood elevation, and 23,000 went up by about 1.5 feet. This resulted in a net reduction in the number of buildings and NFIP policies in the regulatory coastal AE and VE flood zones. Currently there are a couple of counties and municipalities that have some issues with the results and we understand and agree with them. We have met with Jacksonville and Morehead City and we are updating the regression equations from the US Geological Survey to better reflect what is happening in Jacksonville. The sensitivity analysis that we are going to do on the storm surge in Morehead City and Jacksonville will require a refined model and that should occur within the next couple of weeks. The website to view all this information can be found at fris.nc.gov/fris.

Randy Mundt, Outreach Coordinator for floodplain mapping program, stated our team has been responsible for coordinating with the local communities in finding out where they have needs for updates as well as walking them through the post-preliminary process that FEMA mandates which allows for review of the data. This update is the first since the early 1980's and there are several factors that resulted in the changes to the base flood elevations. There is substantially more detailed terrain and bathymetric data as well as higher-resolution storm surge model grid/mesh and increased inland extents. There have been several strong storms that were accounted for in the new model. The wind fields are more detailed as there has been significant advancements in wind field science. A refinement has also been made to the primary frontal dune definition and enhanced wave run-up modeling and new guidelines. All survey data used has been sealed by NC licensed professional land surveyors and meets all FEMA vertical and horizontal accuracy requirements.

Tom Langan, Chief Engineer for the floodplain mapping program, stated we have received a lot of questions as to why we used ADCIRC as our model for our storm surge. When we began our study in 2006, there were only three models that were approved by FEMA for use for coastal storm surge studies. ADCIRC was the best model that was available to us at the time. An advantage of using ADCIRC was that a model was already setup at UNC by Dr. Rick Leutlich for the entire Atlantic Basin. To model a storm surge, you need to be able to simulate hurricanes as they track for the entire basin. ADCIRC also has the benefit to allow for a flexible mesh. ADCIRC could integrate with 2-D offshore and nearshore wave and wind field models. The methodology and application of ADCIRC are well-established in the coastal engineering community and in the published literature. It has also been used in all coastal FEMA NFIP studies conducted in the last decade from Texas to New York and the Great Lakes. There are seven NOAA tidal gauges in North Carolina however, there is not a sufficient period of record and gauge coverage to analyze flood frequency based on gauges alone. The model could be improved by more coastal gauges and we also need newer and better bathymetric data, particularly in the Albemarle and Pamlico Sounds where a lot of the

bathymetric data is old. New LiDAR data would provide a slightly better resolution on the edge of the flood boundaries. We also need to continue to collect building footprints to facilitate the building level risk analysis and keep it up to date. In 2014, we added seven additional tidal gauges and have identified thirteen additional locations where we feel additional gauges are needed to better understand water levels in the state and improve our coastal model.

Resilience Evaluation and Needs Assessment Project

Monica Gregory, NOAA Coastal Management Fellow

Monica Gregory stated the Coastal Management Fellowship is sponsored through NOAA which places Fellows for two years in different state agencies across the country. My current project with DCM is called the Resilience Evaluation and Needs Assessment. Former President Obama defined resilience as the ability to anticipate, prepare for and adapt to changing conditions and withstand, respond to and recover rapidly from disruptions. Resilience is about proactive planning. After extreme weather events, we want our communities to recover and the economy to move. This project is part of a five-year plan with the goal to build a coastal community resilience framework guide that is specific to North Carolina. The guide will include case studies that other communities experiencing the same issues can use and to develop specific adaptation and mitigation strategies. Currently we are conducting a pilot program in several communities that involves mapping with the local government, public workshops, and project identification. NOAA and DCM co-sponsored this project and we have worked closely with The Nature Conservancy in the northern region. NC Sea Grant has also provided information on contacts for different resources as well as the NC Coastal Federation and the Town of Nags Head. We are working with the Town of Pine Knoll Shores which has a lot of issues with stormwater management and drainage. Edenton is our largest and densest community and has drainage and stormwater management issues.

Hatteras Village has a lot of concerns related to sea level rise, but may be further along in adapting to some of the hazards they are experiencing.

Duck is a newer community with a different set of priorities and is focused on shoreline stabilization. Oriental experiences a lot of flooding due to its physical location and orientation. A needs assessment was conducted to find out what kind of resilience work had already been done as well as the needs of the local governments. The most common challenges were flooding, stormwater management and drainage issues, and damage from hurricanes and heavy winds. The communities also mentioned the need for addressing these challenges and how to find grants, expand community buy-in, and secure resources to begin resilience planning. DCM's GIS Specialist has physically mapped out each of the five communities and we have identified the physical and social vulnerabilities. From these maps, we can overlay different data sets such as sea level rise modeling or precipitation modeling. Public workshops will gather feedback and input from the communities with the last step of the process being project identification. In areas that are repetitively flooded, communities might be interested in a project that would include an engineering study on how to alleviate some of the flooding. This will be a local level effort centered on identifying the projects that will help the communities now by addressing current needs.

ACTION ITEMS

Periodic Review of Existing Rules – Public Comments, Approval of Final Report (CRC 17-15)

Mike Lopazanski

Mike Lopazanski stated prior to 2013 the rules in the Administrative Code did not expire. The Legislature passed a provision in the Administrative Procedures Act that requires a ten-year review of existing rules. The CRC's rules were classified as necessary with substantive public interest, necessary without substantive public interest, or unnecessary. Unnecessary rules will expire. Rules classified as necessary with public interest will need to be readopted and rules classified as

necessary without substantive public interest will remain in the Administrative Code. The CRC approved the draft report in February which was posted on DEQ's, DCM's and OAH's websites for a period of 60 days. The comment period ended in April and the CRC can now approve the final report. Based on the comments received, no changes have been made to the initial classifications. Staff recommends the CRC approves the final report which will then be sent to the Rules Review Commission for review. Once the RRC has approved the report it will be sent to the Joint Legislative Procedures Oversight Committee for final determination. If they do not meet within 60 days of submission, then the report is considered final and CRC can begin the readoption process.

Greg Lewis made a motion to approve the final report and submit to the Rules Review Commission. Larry Baldwin seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Cahoon, Norris, Rhodes, White, Gibbs).

Town of Boiling Spring Lakes LUP Certification (CRC 17-16)

Rachel Love-Adrick

Rachel Love-Adrick stated the Town held a duly advertised public hearing on April 4, 2017, and on May 2, 2017 and voted unanimously by Resolution to adopt the 2017 Comprehensive Land Use Plan. DCM staff reviewed the plan and has determined that the Town has met the substantive requirements outlined in the CRC's 7B land use plan guidelines and there are no conflicts with either state or federal law or the state's coastal management program. No comments were received. Staff recommends certification of the 2017 Boiling Spring Lakes comprehensive land use plan.

Phil Norris made a motion to certify the Town of Boiling Spring Lakes Land Use Plan. Russell Rhodes seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Cahoon, Norris, Rhodes, White, Gibbs).

Town of Beaufort LUP Amendment (CRC 17-16)

Rachel Love-Adrick

Rachel Love-Adrick stated the Town made text amendments to its land use plan updating the zoning districts in the plan to coincide with their updated land development ordinance. The Commissioners held a duly advertised public hearing on the amendment at their March 13, 2017 regular meeting. The Board voted unanimously by Resolution to adopt the land use plan amendment. The public was provided the opportunity to submit comments on the plan amendment and no comments were received. Staff recommends certification of an amendment to the 2007 Town of Beaufort CAMA Land Use Plan based on the determination that the Town has met the substantive requirements outlined in the 7B guidelines and that there are no conflicts with either state or federal law or the state's coastal management program.

Larry Baldwin made a motion to approve the Town of Beaufort's Land Use Plan amendment. Bill White seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Cahoon, Norris, Rhodes, White, Gibbs).

CRC RULE DEVELOPMENT

CRC Dune Protection, Restoration & Repair (CRC 17-18)

Frank Jennings

Frank Jennings reminded Commissioners that a presentation was given at the last meeting about the Outer Banks dune system, the CRC's current rules on dune protection in the Ocean Erodible AEC and some of the issues that we face as regulators in trying to implement the rules of the Commission. The Commission was asked to consider allowing fill to be placed on a frontal dune

similar to the current rule for fill placement on a primary dune. The Commission was also asked to consider defining, by rule, disturbance by volume of disturbance and limit disturbance by a percentage of volume so long as the protective nature of the dune is not diminished. Additionally, the Commission was asked to consider allowing, by rule, excess sand on lots that is displaced by storm overwash or wind erosion to be returned to the beach as repair and maintenance. Finally, the Commission was asked to consider allowing, by rule, beach mats and other techniques to provide access. The Commission directed staff to come back to the Commission with possible rule amendments that would provide solutions to these issues. Proposed amendments to 15A NCAC 7H .0308 and 7K .0103 were reviewed. The Commission requested adding language for structural accessways in 7H .0308 to require that any sand added shall be of the same general characteristics as the sand in the area in which it is to be placed.

Phil Norris made a motion to approve the proposed amendments to 15A NCAC 7H .0308, with the additional language regarding sand compatibility, and 7K .0103 for public hearing and begin the fiscal analysis. Larry Baldwin seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Cahoon, Norris, Rhodes, White, Gibbs).

LEGAL UPDATE

Update on Litigation of Interest to the Commission

Shawn Maier

Shawn Maier stated in the Nies v. Town of Emerald Isle case, the Nies appealed to the United States Supreme Court and the Court has asked the Town of Emerald Isle to respond to the Nies petition on whether the case should be heard. A decision is expected this Fall. In another case, Brooks/HEB Properties filed a petition in Guilford County Superior Court for judicial review stemming out of a denial of the third-party hearing request related to a CAMA permit issued for a docking facility in Wrightsville Beach. The petition was filed June 15 and we are waiting on the schedule for this case. Sunset Beach Taxpayer's Association/Coastal Federation/Sunset LLC v. DCM are two contested cases at OAH that were consolidated. The cases involved a Major Permit for a 21-lot residential development at the western end of Sunset Beach. The consolidated case has been stayed pending the outcome of a Superior Court hearing to determine whether the permittee has title to the property at issue. The Riggings variance from 2015 required the Riggings to submit an annual update on progress on finding and implementing alternative solutions to sandbags. The next annual update will be due December 11, 2017.

MINUTES

Neal Andrew made a motion to approve the minutes of the April Coastal Resources Commission. Denise Gibbs seconded the motion. The motion passed unanimously (Andrew, Baldwin, Catlin, Cahoon, Gibbs, Lewis, Norris, Rhodes, White).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

Legislative Update

DCM has been tracking several bills introduced during the current legislative session. S.L. 2017-10 (S131) – An Act to Provide Further Regulatory Relief to the Citizens of NC Section 3.8 Eliminate Outdated Provision of CAMA (113A -109) – This action eliminates the provision for the CRC to develop the initial Land Use Plan for a County if they have not already done so. All CAMA counties currently have LUPs. Section 3.14, CRC Rules on Temporary Erosion Control Structures, allows the Commission to adopt an emergency rule for the use of

sandbags consistent with the amendments in a CRC memo (CRC-16-23). The Commission is also directed to adopt temporary and permanent rules to implement this section. A review of your currently proposed amendments to temporary erosion control structures is on your agenda for this meeting. Section 3.15, CRC to Amend Sediment Criteria Rule, Exempt Cape Shoal Systems, directs the CRC to exempt from the permitting requirements of the Sediment Criteria rule (15A NCAC 7H .0312) any sediment in the cape shoal systems used as a borrow site and any portion of an oceanfront beach that receives sediment from the cape shoal system. This provision would be effective immediately upon passage of the bill until the Commission completes permanent rule making. The Commission began the process at the last meeting that included revisions of the sampling protocol associated with the sediment criteria rules. Staff has been soliciting input from stakeholders on draft amendments and will have rule language for you to consider at the September meeting. Section 3.16, DCM to Study Long-term Erosion Rates Adjacent to Terminal Groins, directs DCM to study the change in erosion rates directly adjacent to existing and newly constructed terminal groins to determine if current erosion rates should be adjusted to reflect any mitigation of shoreline erosion resulting from the installation of the terminal groin. Section 4.19, Reporting Frequency on Terminal Groin pilot Projects by the CRC, reduces the frequency of reports from once a year to once every five years.

There are several bills that are still active and in conference between the House and Senate. All environmental omnibus bills were held back due to a disagreement between the House and Senate on the Energy bill (HB 589). While there was, an agreement reached to the original Energy bill that passed the House with a wind moratorium of 18 months that still allows DEQ to process permits time but not issue them, the omnibus bills that were in conference that affected DEQ (HB 56, SB 16, HB 770, SB 469, HB 374) all were left unresolved. The General Assembly adjourned until August 3rd, with an additional session scheduled for September 6th, and then another session to resolve new district maps before November 15th. During the session that starts August 3rd, conference reports can be taken up which will likely include the environmental bills.

H56, An Act to Amend Various Environmental Laws, contains our requested modifications to CAMA to delegate the power to approve land-use plans to the Department and exempt Minor Permit applications from the requirement that a public notice be posted at the location of the proposed development to expedite permitting for minor development activities.

The budget bill included a targeted, recurring reduction of \$27,000 for DCM. Total reductions in appropriations since 2010: \$1.93M to \$1.35M today, which is a 30% reduction over that time period. Since 2010, we have reduced staff positions by 14, and shifted existing positions to federal grants to support operations. Additionally, the bill included a reduction of approximately \$800,000 in the first year and up to a one million reduction in the second year for the Department. This will likely have additional implications for each of the Divisions. The bill requires the Department to develop a Reduction Through Reorganization (RTR) plan; which we are working on. The Department of Justice's budget has also been impacted. Christy Goebel stated there is a ten million dollar cut to the DOJ budget, but excludes SBI and Criminal Training Standards so it must come out of the Attorney General's Office. This will result in a 40% reduction including 123 full-time positions.

Regulatory

On the regulatory side, we are continuing to see higher permit activity in the first six months of 2017 as compared to the same period in 2016. Major Permit actions remain steady, with 87 permit decisions made during the first half of 2017, which is on par with the number of major permits

issued during the same period in 2016. Additionally, the Division issued 1,104 general permits during the first six months of 2017, which represents an increase of over 250 actions relative to the same period in 2016. The most notable permit action since your last meeting involves the issuance of a permit to the Town of Southern Shores, authorizing a beach nourishment project for a portion of the Town's oceanfront. This permit allowed the Town to add their project to previously approved nourishment projects for the Towns of Duck, Kill Devil Hills and Kitty Hawk. Nourishment activities for these four communities began in early June, and is ongoing. Additionally, the Village of Buxton just recently began their own beach nourishment project. On May 16, the Division held a local permit officer training session in Wilmington for those local governments in the southern portion of the State that participate in the LPO program. The session was well attended and we got some good feedback from the attendees. A similar session for the northern LPO programs is scheduled for the fall.

Coastal Reserves

Coastal Reserve summer programming is underway including free public field trips and the Summer Science School programs - details are available on the Reserve's website on the event calendar. Fifteen seasonal temporary staff and interns are helping the Reserve with a variety of projects this summer including general public and summer camp education programs, various site management activities, sea turtle and shorebird monitoring, pre-storm marsh sill assessment monitoring, and aerial photo documentation of marsh seaward of bulkheads. Funding for the paid positions comes from the Division and Reserve, Youth Advocacy Involvement Office, and the National Fish and Wildlife Foundation. Several the unpaid interns (5) are receiving college credit for their work. The Reserve hosted a 2-day Teachers on the Estuary, or TOTE, workshop in June for eleven teachers. TOTE is a program implemented at all reserves within the National Estuarine Research Reserve System and is tailored to meet the needs of teachers in N.C. The program included a field trip to the Rachel Carson Reserve, hands-on utilization of both national and N.C. Reserve curricular activities and presentations with activities by Reserve and NOAA staff on stormwater management, marine debris, marsh elevation, and protected species. This teacher workshop complements the Reserve's 1-day Coastal Explorations workshop which is held twice per year. The Rules Review Commission (RRC) approved the rules review report for the Coastal Reserve rules 15A NCAC 070 at its June meeting. The Joint Legislative Administrative Procedures Oversight Committee received the report with the public comment and response on June 19, 2017. The report will become final if the Oversight Committee meets or by the 61st day that it was submitted to them. Once the report is final, staff will work with the Department and RRC to establish a timeline for the rules that need to be readopted.

Policy & Planning

DCM has awarded grants to seven coastal municipalities for local planning and management projects that will help them prepare for hurricanes, storms and growth through the CAMA Planning and Management Grant Program for the upcoming 2017-18 fiscal year. The Division has utilized \$100,000 of its federal funding from NOAA to support local land-use planning and management projects in the state's 20 coastal counties for the past two years. You will recall that grants up to \$20,000 were made available for Natural Hazards and Storm Recovery projects as prioritized by the Commission. Projects funded include flooding mitigation planning, flooding vulnerability, storm water drainage and updates to land use plan natural hazard policies. Of particular note, is a grant to Hyde County to assist in the development a watershed restoration plan to addresses drainage issues and improve water quality in Lake Mattamuskeet. Projects are to be completed by June 30, 2018.

Offshore Oil and Gas Activities

Geological & Geophysical Surveys (Seismic Testing)

In 2015 the Division issued federal consistency determinations to four companies to conduct geological and geophysical activities offshore of North Carolina. G&G 2d surveys are seismic surveys that use air guns to send sound waves through the ocean floor to map the subsurface related to oil and gas resource development. The applicants included: Ion Ventures; CGG; TGS; and Spectrum. Generally, federal consistency requires that federal actions, within and outside the coastal zone (even in federal waters), which have reasonably foreseeable effects on any coastal use or natural resource be consistent with the enforceable policies of a state's federally approved Coastal Management Program. Federal actions include federal activities, federal license or permit activities, or federal financial assistance. In this case since the Bureau of Ocean Energy Management would be issuing permits to these companies to conduct seismic surveys, a federal consistency determination was required. DCM found all four applicants consistent with your rules and policies, however, the division did condition the determinations that all companies conduct pre-survey meetings with representatives from DCM and DMF in advance to avoid, minimize, and mitigate any possible impacts or conflicts with commercial and recreational fishing offshore of our coast. Several of these companies are also in the process of pursuing Incidental Harassment Authorizations under the Marine Mammals Protection Act. On June 6, 2017, NOAA Fisheries published notice of a 30-day public review for take of marine mammals incidental for G&G surveys. The public comment period has been extended to July 21, 2017.

5-Year Lease Program

The Trump administration recently announced that the public comment period will open for a new five-year energy leasing program for the outer continental shelf, including opening East Coast waters to oil and gas exploration. The Five-Year Lease Program sets a schedule for proposed oil and gas lease sales of the federal OCS area. The initial step in developing the 2019-24 Plan includes a public comment period and BOEM will be accepting comments until Aug. 17, 2017. We are working closely with the Department on these issues and DEQ is currently reviewing and considering comments on both the IHA permits and the new five-year energy leasing program.

Administrative

Due to recent changes in the interpretation of IRS regulations, the Office of State Controller is requiring that all boards and commission members who receive a per diem payment have taxes withheld from the payments. This change went into effect January 2017. Board and commission members will be treated like employees for tax purposes only. To that end, we need to collect certain information from the members in order to get them into the Integrated HR/Payroll System. A letter will be coming to you shortly explaining the two options: (1) continue to receive the per diem of \$15/per day of service, but have it taxed. This does not include your hotel reimbursement, mileage or meal reimbursements; or (2) waive the per diem and pay back any that they have received in 2017.

Staffing News

We are very happy to announce that we have finally been able to fill our new beach and inlet management project coordinator. Last year's State budget allocated shallow draft inlet funds to DCM for the purpose of hiring a position that will work on permits, projects, and policy-related issues involving the management of North Carolina's inlets, nourishment of our beaches, as well as other related topics and issues. This has been a much-needed position for many years, and we are very happy to announce that Matt Slagel started work with the Division on June 19th. Some of you may remember Matt from when he previously worked for the Division from 2012 to 2014, at which

time he returned to the South Carolina Coastal Program. Matt is in our Morehead City office. We are also pleased to announce Ella Godfrey recently joined our Elizabeth City office as their new administration assistant. Ella has nearly 26 years of experience as an administrator for the Elizabeth City Pasquotank Public School System and the City of Elizabeth City, and most recently at Elizabeth City State University for their IT department. Please join me in welcoming both Ella and Matt to the Division.

CRAC REPORT

Rudi Rudolph

Rudi Rudolph stated the CRAC consists of 20 at-large members and currently has four vacancies. The CRAC needs more representation from the inner banks so those issues are addressed as well. A letter was sent to all coastal communities asking them for nominations to the CRAC and for their top coastal issues. The CRAC discussed the nominations and recommend Seth Laughlin, Candy Bohmert, David Kellam, and Nancy White for appointment. The CRAC set up a subcommittee to prioritize the top coastal issues submitted.

Greg Lewis made a motion to approve the recommendations and appoint Seth Laughlin, Candy Bohmert, David Kellam and Nancy White to the Advisory Council. Rick Catlin seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Andrew, Cahoon, Norris, Rhodes, White, Gibbs).

BEACH AND INLET MANAGEMENT

Development Line Approval Process

Shawn Maier

Shawn Maier gave a brief outline of the Commission's process for approving a development line and the rules related to the development line process. The question of what is meant by the "average line of structures" or "average line of construction" or "an adjacent neighbor sight-line approach" is not defined by the rules. This requires the Commission to exercise its discretion in determining whether the proposed development line meets the standards. The goal of CAMA is to protect the public from ocean hazards which may result from placing development in a location too close to ocean hazards and to protect coastal resources while allowing appropriate development.

Town of Kure Beach Development Line Approval (CRC 17-19)

Ken Richardson

Ken Richardson stated the Town of Kure Beach is requesting a development line and has submitted the required information and documentation. The Town has an Army Corps of Engineers easement line which is a permanent line. In an attempt to reduce the number of management boundaries on the oceanfront, the Town would like to present the easement line as the proposed development line.

John Batson, Building Inspector for the Town of Kure Beach, stated the Town does have a large-scale beach renourishment project which expires in 2047. The development line request is the Town's easement line that runs across every property in our jurisdiction. Mr. Batson reviewed the maps illustrating the proposed development line and the current static line.

The Commission noted that there were two areas where the line extends oceanward of the neighboring structures. There are not structures present and the proposed development line could potentially allow more oceanward development. Mr. Batson identified the two locations at issue as 217 S. Fort Fisher Boulevard and 1009 S. Fort Fisher Boulevard. The Commission noted that the southernmost end of the proposed development line, extends beyond the coastal storm damage

reduction project limits and was oceanward of the neighboring structures. Commissioner also remarked that the proposed development line did not appear to comply with the requirements of 15A NCAC 07J .1301.

Greg Lewis made a motion to deny the development line as proposed by the Town of Kure Beach and suggest that the Town address the three areas of concern identified by the CRC. Neal Andrew seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Andrew, Cahoon, Norris, Rhodes, White, Gibbs).

ACTION ITEMS

Adoption of 15A NCAC 7H .0306 and 7J .1301 – Development Line Procedures Amendments Ken Richardson

Ken Richardson stated in December 2016, the CRC was supportive of making some clarifying amendments to the development line rules. Towns were required to draw their development lines and be behind easement lines and mean high water, but were not required to put them on the maps for the CRC to review. Staff requests adoption of these amendments.

Neal Andrew made a motion to adopt the amendments to 15A NCAC 7H .0306 and 7J .1301. Phil Norris seconded the motion. The motion passed unanimously (Lewis, Baldwin, Andrew, Cahoon, Norris, Rhodes, White, Gibbs)(Catlin absent for vote).

CRC RULE DEVELOPMENT

Amendments to 15A NCAC 7H .0306 and 7J .1301 Development Line (CRC 17-20)

Ken Richardson

Ken Richardson stated the development line procedures became effective April 1, 2016 and Carolina Beach was the first town to submit a request for a development line. Oak Island, Figure Eight Island and Kure Beach have followed since. Through experience gained by the initial requests, Staff and Commissioners have identified several areas in need of improvements to these rules. Currently, the development line rules are based more on procedures and less on criteria and standards. The interpretation of the development line by the average line of construction or utilizing and adjacent neighbor's sight line approach is subjective. Also, how to delineate the development line is vague. Staff does not have a role in the review process and is limited to reviewing what is submitted and ensuring that petitioners have met the criteria for a complete package. Staff has been trying to provide guidance to communities to assist in drawing the development line and to help the CRC when reviewing the proposals. One option would be to utilize a house-to-house line and follow the existing structures. Another concept to smooth the line out is to buffer a certain distance in front of the landward neighbors. The landward most adjacent neighbor approach could also be used. Both methods have their complications. The original intent of the Commission was to try to get the average line of sight for structures, but trying to translate the rule language on to a map is challenging. The Town of Oak Island chose a distance from the landward side of the structure to measure from so the line would be consistent. This cut through some existing structures, and if they were damaged more than fifty percent, they then would be non-conforming with the development line.

Braxton Davis added there are some technical challenges with some of these options. Using the landward-most adjacent neighbor is the standard that is applied in the static line exception on a lot-by-lot basis as it is based on an individual property. It is difficult to smooth a line out based on that. Chair Cahoon stated it was not the intent of the Commission to have something as presented in method #2, the "house-to-house" approach. There should be some smoothing effect without having

wide swaths of structures being enabled to move seaward. The Commission identified method #4, the “line of sight” approach, as the closest to the intent of the CRC’s prior discussions.

Neal Andrew made a motion to request that staff provide proposed rule language to clarify the “line of sight” approach and DCM staff’s role in the review of development line requests for review by the Commission at the next meeting. Larry Baldwin seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Andrew, Cahoon, Norris, Rhodes, White, Gibbs).

Amendments to 15A NCAC 7J .0409 Civil Penalties (CRC 17-21)

Roy Brownlow

Roy Brownlow stated persons undertaking development without a valid CAMA permit or failing to comply with the terms and conditions of permit are in violation of CAMA. The objective of the compliance program is focused on resource recovery, and protection of riparian property rights, including the right of access. If work is done and the work couldn’t have been permitted, then the Division has the authority to issue a restoration order. Brownlow advised that minor amendments are needed to 7J .0409, Civil Penalties. The current rule states that Notices of Violation shall be delivered personally or by registered mail, return receipt requested. Staff recommends changing this language to eliminate personal delivery and include certified mail in addition to registered mail. The second amendment is related to the requirement that the Director shall issue a Notice of Assessment within 30 days after the Division determines that restoration of adversely impacted resources is complete. This language conflicts with a General Statute that went into effect in July 2011. The Statute states that the Division must wait until 10 days after the Notice of Violation before it can issue a Notice of Assessment. This creates a narrow window for the division to comply with both the statute and the Commission’s rules. To be consistent with the statute, staff recommends changing the language in the rule to read, “may” issue a Notice of Assessment within 90 days of violation. This will allow a reasonable amount of time, but still be firm enough to meet the intent of the statute. Staff also recommends that all references to the High Hazard Flood area also be removed as the AEC was removed in 2015.

Neal Andrew made a motion to approve the amendments to 15A NCAC 7J .0409 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Lewis, Catlin, Baldwin, Andrew, Cahoon, Norris, Rhodes, White, Gibbs).

Amendments to 7H .0308(a)(2) Temporary Erosion Control Structures (CRC 17-22)

Mike Lopazanski

Mike Lopazanski stated beginning in 2016 the Commission and Advisory Council have been discussing amending the rules to address certain implementation issues with temporary erosion control policies. We have discussed time limits associated with the permitted structures, criteria for removal, requirements for covered and vegetated sandbags, as well as how to address sandbags and beach nourishment projects. Also last year, we were addressing provisions directed from the legislature to allow sandbags to be placed on a property even if there was no imminently threatened structure, to allow continuous sandbag structures from one property shoreline boundary to the other, to change the termination dates of sandbag permits to the latest sandbag structure placement, and allow the replacement, repair or modification of damaged sandbags that were placed if the structure was being litigated by the property owner. This year the legislature adopted S.L. 2017-10 that repealed the 2015 provisions and directed the CRC to adopt emergency or temporary rules that are consistent with CRC Memo 16-23. S.L. 2017-10 allows the CRC to make any further modifications of these rules. Lopazanski advised that the current proposed amendments remove the distinction

between structures that are greater or less than 5,000 square feet and set the time limit at eight years for all structures. Upon the expiration of the eight-year permit, sandbags exposed above grade must be removed and if the structure is demolished or relocated, all sandbags must be removed. The vegetated requirement for sandbags was removed and the bags can remain in place if they are covered by sand. Sandbag structures placed incrementally will have time limits corresponding to the latest installation. Sandbag structures will be allowed to remain in place if they are being litigated in court.

The Commission noted that restarting the eight-year clock each time another sandbag structure is placed will result in giving a property owner a permanent sandbag structure. The reason for sandbags is to protect a property until a beach nourishment or solution can be completed. The time limit should begin when the first sandbag permit is issued. Chair Cahoon stated sandbags should be allowed to remain if they are under litigation. Draft language will be reviewed by the CRC at the next meeting.

PUBLIC INPUT AND COMMENT

Rudi Rudolph, Carteret County Shore Protection Office, spoke about oil and gas leases in the mid-Atlantic states. Mr. Rudolph spoke in favor of revenue sharing if oil and gas leasing is going to take place in North Carolina.

Greg Lewis, coastal citizen, spoke in favor of a new revenue sharing model for the coastal communities to be able to address potential hazards of offshore oil and gas leases if they are going to be off the coast of North Carolina.

PUBLIC HEARING

15A NCAC 7H .2200 Free Standing Moorings – Osprey Poles

Jonathan Howell reviewed the amendments and fiscal analysis for 7H .2200. No comments were received.

OLD/NEW BUSINESS

Chair Cahoon stated the next scheduled meeting of the CRC will be at the New Hanover County Government Center in Wilmington on September 27-28, 2017. February would be a good time for the CRC to meet at Sea Trail in Sunset Beach, Brunswick County. Ms. Cahoon further stated that a Resolution should be put on the next agenda for consideration asking for revenue sharing for North Carolina.

With no further business, the CRC adjourned.
Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON DAVIS
Director

September 13, 2017

MEMORANDUM

CRC-17-25

TO: Coastal Resources Commission
FROM: Ken Richardson, *Shoreline Management Specialist*
SUBJECT: Town of Kure Beach Development Line Approval Request

On April 1, 2016, the Commission's rules to allow oceanfront communities with large-scale beach nourishment to establish a "Development Line" became effective. The development line is established by a local government to represent the seaward-most allowable location of oceanfront development, provided the development can meet the setback measured from the first line of stable and natural vegetation. Under your Development Line Rule, buildings and accessory structures could move seaward up to the approved development line provided minimum setbacks are met. Local governments are required to request approval for a development line from the Commission according to the procedures outlined in 15A NCAC 7J. 1300.

On March 21, 2017, the Town of Kure Beach adopted the town's Development Line into their ordinances, and requested the Commission's approval at your July 12-13, 2017 meeting in Greenville. Upon review, the Commission was satisfied that all required documentation had been submitted; however, the Commission did observe three locations where you felt the Town's proposed Development Line did not conform to the "adjacent neighbor sight-line approach," referenced in the rules (15A NCAC 07J .1300). The Commission asked the Town of Kure Beach to amend their proposal at the following locations:

1. 217 South Fort Fisher Blvd. and adjacent lots
2. 1009 South Fort Fisher Blvd and adjacent lots
3. From the end of the perpetual easement to the southern-most portion of the Town's jurisdiction.

The Town of Kure Beach amended their initial proposal to address the three locations as requested by the CRC, and the Kure Beach Town Council approved the amendments at their August 17, 2017 meeting. NC DCM Staff has reviewed all information submitted by the petitioner and has determined that amendments at the specified locations conform to the CRC's request, and that all required supporting information and documentation have been submitted and attached for the Commission's consideration at the upcoming meeting in Wilmington.

Attachment A: Initial Town of Kure Beach Letter Requesting the CRC's Approval of the Town's Development Line.

Attachment B: Initial Town of Kure Beach Resolution to Adopt Development Line Map.

Attachment C: Initial Town of Kure Beach Adoption of Development Line Ordinance.

Attachment D: Initial Kure Beach Town Council Meeting Minutes.

Attachment E: Initial Town of Kure Beach Development Line Map.

Appendix F: Coastal Resources Commission (CRC17-19) Final Agency Decision – July 26, 2017.

Appendix G: Kure Beach Town Council Minutes – Amended Proposed Development Line.

Appendix H: Kure Beach Town Council Resolution R17-18.

Appendix I: Ammended Town of Kure Beach Development Line Map.

Attachment A: Town of Kure Beach Letter Requesting the CRC's Approval of the Town's Development Line.

Emilie Swearingen
Mayor
David Heglar
Commissioner
Jim Dugan
Commissioner



Craig Bloszinsky
Mayor Pro Tem
Joseph Whitley
Commissioner
Nancy Avery
Town Clerk

Town of Kure Beach

117 Settlers Lane • Kure Beach, NC 28449
(910) 458-8216 • (910) 458-7421 Fax
www.townofkurebeach.org

To: Braxton Davis, Director NCDCM

From: John Batson

Re: Development Line Request

Date: March 22, 2017

Director Davis,

Last night, at the Kure Beach Town Council regularly scheduled meeting, I was directed to move forward with seeking approval for establishing and using a Development Line in Kure Beach.

Since 1997, the Town has had a Coastal Storm Damage Reduction Project. This project required the Town to procure perpetual easements along the entire coastline. In this request, the Town wishes to utilize the perpetual easements already restricting seaward development as its Development Line.

Please consider this letter to be a formal request for placement on the April CRC meeting agenda, and for the Town of Kure Beach to be granted permission to use a Development Line.

Thank you for your time and consideration!

Sincerely, John Batson, LPO/Bldg. Inspector

Cc: Ken Richardson
Debbie Wilson

Attachment B: Town of Kure Beach Resolution to Adopt Development Line Map.



**KURE BEACH TOWN COUNCIL
TOWN OF KURE BEACH, NC**

RESOLUTION R17-13

**A RESOLUTION PETITIONING THE NORTH CAROLINA
COASTAL RESOURCE COMMISSION FOR ADOPTION OF A
DEVELOPMENT LINE FOR THE TOWN OF KURE BEACH**

WHEREAS, the Town of Kure Beach utilizes what is known as the Static Vegetation Line, originally drawn by the Coastal Resource Commission (CRC); and

WHEREAS, this Static Vegetation Line is the point from which setbacks are measured to delineate where a property owner may build; and

WHEREAS, on April 1, 2016, the CRC's Development Line Procedures rules became effective, giving oceanfront communities an alternative to the Static Vegetation Line Exception; and

WHEREAS, the Development Line allows a community with a static vegetation line to measure construction setbacks from the first line of stable and natural vegetation, and site development no further ocean ward than the development line; and

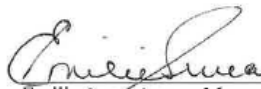
WHEREAS, Kure Beach Town Council believes adoption and use of a Development Line will be a benefit to property owners, particularly for development in the commercial district; and

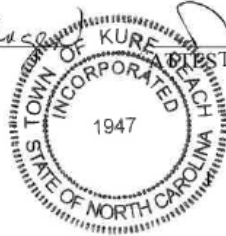
WHEREAS, Kure Beach Town Council took the following actions during legally-advertised meetings:

- On March 21, 2017 the Code of Ordinances, Chapter 5 (Buildings and Building Regulations), Article II (Administration) Division 4 (Permits), Section 5-61 (Prerequisite to construction, demolition, remodeling, and impervious surfaces, etc.) was amended to define both development and development line (certified copy of amendments and minutes attached).
- On June 20, 2017, the May 16, 2017 proposed Kure Beach Development Line Map was approved. This document maps out and details the location of the Development Line from the town's northern limits at Alabama Avenue to the town's southern limits at the end of The Riggings complex. Authorization was also given to the Town's Building Inspector to present the map to the CRC at its July meeting in Greenville, NC. (certified copy of minutes attached).

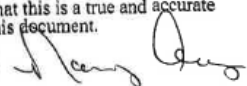
NOW, THEREFORE BE IT BE RESOLVED THAT Kure Beach Town Council hereby submits this official petition to the North Carolina Coastal Resource Commission to adopt a Development Line for oceanfront construction for the town, as presented and documented.

Adopted by the Kure Beach Town Council this 26th day of June, 2017.


Emilie Swearingen, Mayor




Nancy Avery, Town Clerk

I certify that this is a true and accurate copy of this document.	
6/26/17	
Date	Town Clerk

Attachment C: Town of Kure Beach Adoption of Development Line Ordinance.



NEW ORDINANCE

That the following Section of Chapter 5 *Buildings and Building Regulations*, Article II *Administration*, Division 4 *Permits* is hereby amended as follows:

Sec. 5-61. Prerequisite to construction, repair, replacement, demolition, remodeling, and development.

(1) Definitions.

Development: Any activity within a duly designated area of environmental concern, as defined in 15A NCAC 7H, involving, requiring, or consisting of: the construction, repair, or replacement of structures, decks, swimming pools, and walkways; the excavation, dredging, filling, dumping, or removal of clay, silt, sand, gravel, or minerals; the bulkheading, driving of pilings, and clearing or installing land as an adjunct of any such construction, repair, or replacement; and the alteration or removal of sand dunes, the shore, bank, or the bottom of the Atlantic Ocean or any bay, sound, river, creek, stream, lake, or canal.

Development Line: The line established by the Town in accordance with 15A NCAC 07J.1300 representing the seaward-most allowable location of oceanfront development whereby the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line subject to the provisions of 15A NCAC 07H.0306(a)(2); "vegetation line," "measurement line," and "static vegetation line" being defined under 15A NCAC 07H.0305

(2) Except as provided in Section 5-62, no building construction, repairs, replacement, or remodeling; installation of driveways, parking lots, or other ground covering impervious surfaces, other construction, development, or demolition shall begin in the Town until a permit has been obtained from the Building Inspector. This section shall be applicable to all development on or abutting ocean beaches within the Town.

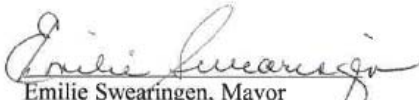
(3) No permit shall be issued if the total square footage of the buildings and impervious ground covering surface will exceed sixty-five (65) per cent of the lot; excepting therefrom, those structures located in the B-1 District or deemed commercial and within the established fire district of the Town.

(4) Any commercial construction requiring review by the New Hanover County Building Safety Department pertaining to mechanical, electrical, plumbing, or fire permits shall be obtained in conjunction with a building permit being issued by the Town's Building Inspector.

(5) Any type of impervious surface across any Town right-of-way shall be limited to twenty-four (24) feet total.

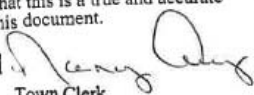
(6) No development shall occur seaward of the Town's Development Line except as allowed under 15A NCAC 07H.0309.

Ordinance adopted by Kure Beach Town Council on March 21, 2017.


Emilie Swearingen, Mayor

ATTEST: 
Nancy Hewitt, CMC, NCCMC
Deputy Clerk



I certify that this is a true and accurate copy of this document.
6/26/17 
Date Town Clerk

Attachment D: Kure Beach Town Council Meeting Minutes.



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

The Kure Beach Town Council held their regular meeting on Tuesday, March 21, 2017 at 6:30 p.m. The Town Attorney was present and there was a quorum of council members.

COUNCIL MEMBERS PRESENT

Mayor Emilie Swearingen
Mayor Pro Tem (MPT) Craig Bloszinsky
Commissioner David Heglar
Commissioner Joseph Whitley
Commissioner Jim Dugan

STAFF PRESENT

Building Inspector – John Batson
Finance Officer – Arlen Copenhaver
Fire Chief – Harold Heglar
Town Clerk – Nancy Avery
Deputy Clerk – Nancy Hewitt

CALL TO ORDER

Mayor Swearingen called the meeting to order at 6:30 p.m., and Pastor Dan Keck from Kure Memorial Lutheran Church delivered the opening invocation and led everyone in the Pledge of Allegiance.

AWARDS AND RECOGNITION

Mayor Swearingen awarded Certificates of Appreciation to Johnathan Lanier, a part-time employee with the Kure Beach Fire Department, and Taylor Jones, a volunteer with the department, for their participation in a rescue that occurred on March 6, 2017. The certificates acknowledged that they both acted in a manner that reflected the finest tradition of the firefighting profession and the Kure Beach Fire Department by rendering outstanding service to their fellow man as they attempted the rescue of one person and successfully rescued another; all the while, swimming in frigid Atlantic waters.

APPROVAL OF CONSENT AGENDA ITEMS

1. Approve contract with Engineering Services in the amount of \$116,000 for surveying and engineering services for the replacement of pump station No.1
2. Approve travel to NCBIWA annual meeting in Nags Head, NC, from 4/2-4/4/17 for Mayor Swearingen and MPT Bloszinsky, at a cost of approximately \$1,450 from the Council Travel and Training Budget
3. Renew three-year term for Harry Humphries on Board of Adjustment
4. Accept Dennis Moore's resignation from the Cape Fear Disability Commission
5. Appoint Pat Triplett to the SLABPP committee as per committee's recommendation



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

6. Building Inspections Report – February 2017
7. Fire Department Report – February 2017
8. YTD Finance Report Meeting
9. Minutes:
 - February 21, 2017 regular meeting
 - March 10, 2017 public hearing
10. Appoint Sarah Barham as an alternate member on the Community Center Committee

MOTION – MPT Bloszinsky moved to approve adding the appointment of Sarah Barham as an alternate member on the Community Center Committee as Item 10 under Consent Agenda Items.

SECOND – Commissioner Heglar

VOTE – Unanimous

MOTION – Commissioner Heglar moved to approve the Consent Agenda Items, as amended.

SECOND – Commissioner Whitley

VOTE – Unanimous

ADOPTION OF THE AGENDA

Mayor Swearingen asked to move Item 4 under Old Business to Item 1.

MOTION – Commissioner Heglar moved to approve the meeting agenda, as amended by Mayor Swearingen.

SECOND – MPT Bloszinsky

VOTE – Unanimous

DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

1. Community Center Committee

David Sack, co-Chair, said the committee is having a plaque made in memory of Ron Griffin who conducted the weekly line dance classes for years at the center; he passed away last year. He said, with people working full time and trying to balance work and family life, it's hard to find volunteers. He said, in trying to boost volunteerism, the committee is suggesting that council occasionally recognize its current volunteers by putting articles about the committees in the Island Gazette. He said the articles could include committee mission statements and a list of the volunteers. He also suggested that some committees may want to think about moving their meeting times to accommodate people who want to volunteer but have daytime jobs.

Mayor Swearingen said the Island Gazette charges \$250 for advertisements. She said she likes the idea of the first ad being half a page listing all the committees, their mission statements and their volunteers; then, putting subsequent ads in the paper for one committee at a time.



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

MPT Bloszinsky said council should look at this idea because the town's volunteers are important and should be recognized.

Mr. Sack updated council that the weeds around the town's welcome sign on Fort Fisher Boulevard have been cleaned up by them to make the area look nicer.

Mayor Swearingen stated that public works should now be able to paint the welcome sign to make the entrance even nicer looking.

Commissioner Heglar said that the request to have council put ads in the newspaper should be considered during the budget process.

2. Parks & Recreation Advisory Board

Mayor Swearingen said there are only three people on the board, currently, and two of them have work that occasionally keeps them from attending meetings, so they haven't been able to get a quorum to meet which has kept them from accomplishing their mission statement. She said there was no quorum at the last meeting, but the two members that came discussed disbanding the board and agreed it would be okay and seemed relieved. She said Nikki Keely, Recreation Manager, has taken over the board's responsibilities, a separate committee is planning the 70th Anniversary, and the board's chairman is also head of the Disc Golf Association and can update council every quarter, if they'd like.

MOTION – Commissioner Heglar moved to disband the Parks and Recreation Advisory Board.

SECOND – Commissioner Whitley

VOTE – Unanimous

3. Shoreline Access, Beach Protection and Parking Committee

Chairman Panicali said Spencer Rogers, with NC Sea Grant, inspected the sand dunes and said the town is in good shape, and he didn't see a need to plant sea oats this year. He said there are suggestions about putting up rope fences to protect the dunes from people skirting around the crossover stairs and access points. He said there was a question about the Hatteras ramp at Davis Road; they may recommend building the ramp up so it's not a low point through the dunes.

Inspector Batson said Mr. Rogers has mentioned in the past that the elevation of some of the crossovers is withholding the dune from growing larger at Davis Road and at the lifeguard shack. He suggested building the dune up and then building the ramp over the dune to enable the surrounding dunes to continue to grow.

Mayor Swearingen asked Mr. Panicali to have his committee look into having the work done.



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

Commissioner Whitley asked Mr. Panicali if it was still the committee's desire to not do parking, to which Mr. Panicali acknowledged this desire.

MOTION – Commissioner Whitley moved to remove parking responsibilities and the word “parking” from the committee's name, to be named the Shoreline Access and Beach Protection Committee, since they will no longer be in charge of parking.

SECOND – MPT Bloszinsky

VOTE – Unanimous

Commissioner Heglar said 471 surveys were completed, but about 80 of them may be duplicates; so they are still collating the surveys to make sure there aren't repeats. He asked that the subject be added to the April council meeting agenda, at which time the survey results will be ready for review.

4. Non-town Committee Reports

a. Cape Fear Disability Commission January 2017 Meeting Minutes

Mayor Swearingen confirmed that the town's representative was still active on the commission and said she may have someone interested in taking the alternate spot, asking that the clerk remind her about this.

DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

1. Finance Department

Finance Officer Copenhaver asked council to approve a budget amendment related to storm water that goes along with what was discussed at the council retreat to not finance part of the big project that is going on right now. He said this will take additional funds out of the town's fund balance and reallocate funds that had been designated to be transferred to the capital outlay improvements account.

MOTION – Commissioner Heglar moved to approve Budget Amendment 17-05 to appropriate additional fund balance for the storm water pipe lining project, as well as reallocate amounts originally designated as a transfer to the capital outlay-improvements account; total amount being amended is \$650,000.

SECOND – Commissioner Dugan

VOTE – Unanimous

Said budget amendment is herein incorporated as part of these minutes.

2. Building Department

Inspector Batson said the county sent out an RFQ for permitting and building software services, and they found a company that has great reviews; Energov. He said the county invited him to hear more about it to see if he was interested in participating, which he is. He said he was assured there is no



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

cost to the town and the plan is to implement the software in July 2018. He said Energov would network with the town's IT group to figure everything out. He explained that one of the main goals of the software is to create an online portal for the public to use in order to streamline the process and deliver better customer service.

3. Public Works Department

Commissioner Heglar said he sent a memo to council to make them aware that Public Works is down by two people and Director Beeker is going to hire one person now. He said it won't impact the budget this year since there are two people out on disability. He said they will talk about hiring a second person during the budget planning process.

DISCUSSION AND CONSIDERATION OF OLD BUSINESS

1. Consideration of project manager for town facility expansion and new fire station project

CLOSED SESSION

MOTION – Commissioner Heglar moved to go into Closed Session for the purpose of consulting with an attorney, per N.C.G.S. 143-318.11(a)(3) at 7:05 p.m.

SECOND – Commissioner Dugan

VOTE – Unanimous

RETURN TO OPEN SESSION

MOTION –MPT Bloszinsky moved to return to open session at 8:03 p.m.

SECOND – Commissioner Whitley

VOTE – Unanimous

2. Request approval for amendments to Code of Ordinance Chapter 5 Buildings and Building Regulations, Article II Administration, Division 4 Permits, Section 5-61 Prerequisite to construction, demolition, remodeling and impervious surfaces, etc.; for Development Line
Inspector Batson said, if council wants him to go to the Coastal Resources Commission (CRC) to ask for enactment of a Development Line (DL) for the town, he needs council to approve the proposed ordinance language. He reviewed the map of the coastline showing the existing easement, the existing Static Line, and the proposed DL. He said, if this goes through, he doesn't think there will be a lot of extra development except maybe from people who want to put a pool in. He said 95 percent of the people who buy oceanfront property want to rent it out weekly, and they can rent it out for more money if they have a pool. He said that an important piece of changing to a DL is the business (B-1) district will benefit. He said that the corner lot adjacent to the pier that is currently not buildable would become buildable if the DL is approved. He added that the B-1's oceanfront hotels, south of K Avenue, could have a larger footprint to build within, or they could build vertically and use the extra footprint for providing the required parking for their patrons. He said council can make the DL part of the ordinance and, if they don't like it, they can revert it back to how it is now. He said, if any pools get washed away in the DL, property owners would have to ask





TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

council for special permission to rebuild them; they can't rebuild the pools automatically. Going back to the map, he said he needs to physically draw in the DL near the end of Ocean Dunes and The Riggings because the town's easements don't go down that far; that is the end of the town's project jurisdiction. He said he will have Mr. Richardson, a specialist with the CRC, propose a DL for that area, and he will decide whether or not he likes it.

Commissioner Heglar said, it is good that there is land to build across from The Riggings since, if 50 percent or more of a building at The Riggings gets damaged by the surf, CAMA won't let them rebuild on the same spot.

MPT Bloszinsky said the proposed DL helps everyone except the people who can't be helped to begin with, and he doesn't see anyone getting harmed by the DL.

Commissioner Dugan said that the town's ongoing problem is where to get the money to support the town, year after year. He said the only thing that is left is the possibility of our commercial district improving, and this allows for that.

Commissioner Heglar said he thinks this is a good change and will make it easier for councils to deny property owners the ability to build beyond the DL.

MOTION – Commissioner Heglar moved to have the Building Inspector go to the Coastal Resources Commission (CRC) to ask for the approval of his recommendation to switch to a Development Line model for the town.

SECOND – MPT Bloszinsky

VOTE – Unanimous

When asked if a public hearing was necessary to amend an ordinance that isn't a zoning ordinance, Attorney Canoutas said that a public hearing isn't required, but it would benefit town residents to give them a chance to give council their input.

Discussion ensued on the best way to handle public notice of this amendment.

Town Clerk Avery suggested adopting the amendment and then holding a public meeting to explain it; then, if there's too much controversy, council can pull it before it goes to the CRC.

Commissioner Heglar reviewed the proposed amendments to the ordinance and said, if a public hearing isn't required, he agrees with the town clerk's suggestion.

MOTION – Commissioner Heglar moved to adopt the amendments to Code of Ordinance Chapter 5 Buildings and Building Regulations, Article II Administration, Division 4 Permits, Section 5-61 "Prerequisite to construction, demolition, remodeling and impervious surfaces, etc.," as presented.



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

Town staff is to advertise about the change so that concerned citizens can give their input at the April council meeting, as the first item of business.

SECOND – MPT Bloszinsky

VOTE – Unanimous

Said adopted ordinance is herein incorporated as part of these minutes.

3. Approve CAMA contract No. 7136 in the amount of \$53,827 for paving of the parking area and installation of solar lighting on the beach crossover at the E Avenue access with work to occur in the fall of 2017, and authorize the finance officer to include a cash match of \$11,257 in the proposed FY17-18 budget. (voted upon together with Item 4)
4. Approve CAMA contract No. 7135 in the amount of \$65,283 for paving of the parking area and installation of solar lighting on the beach crossover at the I Avenue access with work to occur in the fall of 2017, and authorize the finance officer to include a cash match of \$14,121 in the proposed FY17-18 budget.

Town Clerk Avery said CAMA awarded the grants with its contracts to become effective April 1st. She said the mayor wanted to have the solar lights put in before summer, but public works would prefer to do all the work in the fall, which keeps the work within the same budget year.

MOTION – Commissioner Heglar moved to approve CAMA contract numbers 7135 and 7136, as presented, with the work occurring in the fall of 2017, and to authorize the finance officer to include the cash matches in the proposed FY17-18 budget.

SECOND – Commissioner Whitley

VOTE – Unanimous

Said approved CAMA contracts are herein incorporated as part of these minutes.

NEW BUSINESS

None

MAYOR UPDATES

Mayor Swearingen said the Special Olympics Committee would like to hold their annual Polar Plunge in Kure Beach from now on. She said they are a non-profit and the police and public works departments are fine with it, and only some parking issues need to be worked out.

COMMISSIONER ITEMS

MPT Bloszinsky said the last storm damage construction project went quite a few days beyond the original schedule, with significant costs associated with that, but the Corps of Engineers was able to negotiate with the contractor to recover \$1.1 million of it. He said half of the money will go to the



TOWN COUNCIL MINUTES

REGULAR MEETING

March 21, 2017

state and half will go back to ROT. He also asked council to start thinking if they want to contract for use of the downtown parking area again so he can notify the property owner.

Mayor Swearingen asked that Downtown Parking Lot Rental be added to the April council meeting agenda for further discussion and consideration.

Finance Officer Copenhaver said it needs to be included in the first budget workshop numbers.

Mayor Swearingen suggested having a teenager monitor the parking lot and collect money from people who use it instead of using tax payer money, to which MPT Bloszinsky said the main contributors of the parking lot expense are the business owners.

The finance officer said the town lost some of its business participation last year, to which MPT Bloszinsky said this is true, but the property owner took less money for the lease last year.

Commissioner Dugan commended the Police Department for their actions during the water rescue incident on March 6th. He said that, besides handling the investigation, they also handled all of the family matters.

The mayor said she met with the family of the man who died, and they were very complimentary about the town's police officers.

Commissioner Dugan commended the mayor and staff on doing a great job on the Beach Towns breakfast.

Mayor Swearingen said Mayor Saffo with the City of Wilmington said he would like the city to sponsor one of the next breakfasts.

ADJOURNMENT

MOTION – Commissioner Heglar moved to adjourn,

SECOND – MPT Bloszinsky

VOTE – Unanimous

I certify that this is a true and accurate copy of this document.	
6/26/17	<i>Nancy Hewitt</i>
Date	Town Clerk

The meeting adjourned at 8:43 p.m.

Emilie Swearingen
Emilie Swearingen, Mayor

Nancy Hewitt
Nancy Hewitt, CMC, NCCMC
Deputy Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting.





TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

The Kure Beach Town Council held their regular meeting on Tuesday, June 20, 2017 at 6:30 p.m. The town attorney was present and there was a quorum of council members.

COUNCIL MEMBERS PRESENT

Mayor Emilie Swearingen
Mayor Pro Tem (MPT) Craig Bloszinsky
Commissioner David Heglar
Commissioner Joseph Whitley
Commissioner Jim Dugan

STAFF PRESENT

Building Inspector – John Batson
Finance Officer – Arlen Copenhaver
Police Chief – Mike Bowden
Public Works Director – Sonny Beeker
Town Clerk – Nancy Avcry
Deputy Clerk – Nancy Hewitt

CALL TO ORDER

Mayor Swearingen called the meeting to order at 6:30 p.m., and MPT Bloszinsky delivered the opening invocation and led everyone in the Pledge of Allegiance.

RECOGNITION & AWARDS

Mayor Swearingen called Kure Beach Adopt-A-Beach Volunteers to the front of the room and presented them with certificates from the town in grateful appreciation of their dedication and support to keep our beaches clean and safe through their participation in the Adopt-A-Beach program.

APPROVAL OF CONSENT AGENDA ITEMS

1. Adopt Resolution 17-09, to authorize the KB Police Chief to temporarily provide assistance to other law enforcement agencies pursuant to N.C.G.S. 160A-288 and 160A-288.2
2. Adopt Resolution 17-10, to authorize the KB Fire Chief to provide temporary assistance to other fire protection and ocean rescue agencies pursuant to N.C.G.S. 160A-293
3. Approve Budget Amendment 17-11 to increase the Public Works budget in the General Fund by \$28,000 and the Water/Sewer Fund by \$52,500 for additional expenses incurred relating to Hurricane Matthew
4. Approve Budget Amendment 17-12 to increase the Administration budget by \$2,000 for additional expenses incurred due to a lightning strike at Town Hall
5. Approve Application for TDA Funding totaling \$4,341.56 for the 2016 Christmas Show
6. Approve Application for TDA Funding totaling \$22,575 for 2016 Ocean Front Park activities and entertainment



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

7. Appoint Bill Moore as a regular member of the Shoreline Access & Beach Protection (SLABP) Committee
8. Appoint Edward White as an alternate member of the SLABP Committee
9. Building Inspections Report – May 2017
10. Fire Department Report – May 2017
11. YTD Finance Report Meeting
12. Minutes:
 - May 16, 2017 regular meeting
 - May 30, 2017 special meeting
 - June 6, 2017 public hearing, budget

MOTION – Commissioner Dugan moved to approve the Consent Agenda Items, as presented.

SECOND – Commissioner Heglar

VOTE – Unanimous

Said resolutions, budget amendments and funding applications are herein incorporated as part of these minutes.

ADOPTION OF THE AGENDA

Commissioner Heglar said Director Becker would address Kure Beach's water supply during his department report as Item B.

MOTION – Commissioner Heglar moved to adopt the meeting agenda, as amended.

SECOND – Commissioner Dugan

VOTE – Unanimous

DISCUSSION AND CONSIDERATION OF PERSONS TO ADDRESS COUNCIL

1. Gilbert Alphin, 309 N. Fort Fisher Blvd

Mr. Alphin said he heard that council had approved a new building project for Town Hall and a new fire station, capping it at \$5 million. He said he didn't know anything about it, and he also talked with four business owners and six citizens who didn't know anything about it.

When asked by a council member if he had signed up to receive emails from the town's Notify Me system, he said he is a business owner, so he has tight SPAM controls on his email. He said he isn't blaming council for him not receiving email communications about the project, but he just wanted to ask council if they would put up a sign in the corral that announces the project for the public to see.

Mayor Swearingen said a construction company hasn't been hired for the project yet, but she likes his idea of having a sign erected to announce the project and will ask for one before construction begins.



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

1. Community Center Committee
MPT Bloszinsky said the committee is looking for volunteers to help with the Annual Community Center Barbecue.
2. Planning & Zoning Commission
Chairman Ellen said the commission voted to cancel their July meeting.
3. Non-town Committee Reports
 - a. Cape Fear Disability Commission
As Deborah McKenna did not attend the meeting to give a report on the commission, as requested by Mayor Swearingen, the clerk was asked to try again to ask her to attend a council meeting.

DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

1. Public Works Department
 - a. Pump Station Project update and request to approve Budget Amendment 17-10 to transfer \$106,000 from the Water/Sewer Fund for additional expenses for the Pump Station #1 project.

Director Beeker said the 12-inch main running into the lift station has some cracks and the whole length of the pipe will have to be lined, which will cost an extra \$57,217 for the lining and another \$34,662.25 for additional pump work. He said the equipment is already out there and work will start tomorrow.

Mayor Swearingen asked if there were any other pipes in that part of town that had similar problems, to which Director Beeker responded they will be looking into that, and will be doing other work that has already been budgeted.

MOTION – Commissioner Heglar moved to approve Budget Amendment 17-10 to transfer \$106,000 from the Water/Sewer Fund to the Kure Beach Pump Station #1 Capital Project budget to cover additional expenses.

SECOND – Commissioner Whitley

VOTE – Unanimous

Said budget amendment is herein incorporated as part of these minutes.

- b. Kure Beach Drinking Water

Director Beeker explained that Gen-X is a Teflon-based toxin that has been detected in the drinking water, which is being pulled from the Cape Fear River by the Cape Fear Public Utility Authority. He said, in all reports he has read, there has been no Gen-X detected in the deep well system that Kure Beach uses. He said he will have Kure Beach's water tested for toxins and will



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

update council on the results. He gave council the 2016 Kure Beach water quality report and said the town follows all state and federal regulations.

Discussion ensued about doing a press release about Kure Beach's drinking water.

Director Becker said the public could be told the water is going to be tested, but he'd rather wait until he receives the results of the water analysis before sharing any more than that.

Commissioner Heglar said, if we want to do a press release, the best thing to say is council and water specialists feel it's highly unlikely that there is Gen-X in the drinking water from the deep wells/aquifers used by Kure Beach, but we will be testing the water anyway.

MPT Bloszinsky said he understands that Gen-X is a surface pollutant that goes through the water quickly, and the only reason it remains in the water is because they keep dumping it there.

A member of the public spoke up to say that it was just reported the Chemours has announced they will no longer dump the toxin into the river.

Commissioner Whitley said he spoke to two people who didn't know that the town didn't use the water from the river and, it would be good to say that in a press release to calm their fears.

Commissioner Heglar said he and Director Becker will work on a press release, to go to the Island Gazette and town website/email, informing citizens that Kure Beach will request a water test but stating that the town doesn't get its water from the Cape Fear River.

Mayor Swearingen said she spoke with someone from the Department of Natural Resources and she was told that the state is not planning to run any test on the aquifer. She asked them how someone could request a test, and they having gotten back to her with an answer.

2. Administration and Recreation

a. Personnel Policy amendments for approval as discussed at January council retreat
Town Clerk Avery said council consensus during this year's council retreat was to amend the personnel policies presented to them. She said she would like an official vote from council on the amendments, as she reviewed each of the policies to make sure council didn't have any other changes. The motions and votes were, as follows:

MOTION – Commissioner Heglar moved to eliminate all of the benefits currently listed in the town's personnel policy for part time employees, except those that are required by federal or state law, and to authorize the Town Clerk and attorney to make required changes to policy.

SECOND – MPT Bloszinsky



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

VOTE – PASSED four to one, as follows: Mayor Swearingen, MPT Bloszinsky and Commissioners Heglar and Whitley FOR, and Commissioner Dugan AGAINST.

MOTION – Commissioner Heglar moved to allow all accumulated vacation, over 30 days, to be converted to sick time that may be used as extra service credit towards an employee's retirement, and to authorize the Town's Clerk and attorney to make required changes to policy.

SECOND – MPT Bloszinsky

VOTE – Unanimous

MOTION – Commissioner Dugan moved to allow an employee to use sick leave to care for healthy children, and to authorize the Town Clerk and attorney to make required changes to policy.

SECOND – Commissioner Whitley

VOTE – Unanimous

MOTION – Commissioner Heglar moved to authorize the Town Clerk and attorney to make required changes to the personnel policy to clarify that the town pays 100 percent of continued health (medical, dental and vision) insurance coverage for retirees that meet certain retirement conditions, if the insurance vendor allows it. If the vendor requires a portion of the premium to be paid by the participant, then the retiree is responsible for this cost. The policy will also clarify that the town does not pay any costs associated with Medicare eligibility, such as Part B.

SECOND – Commissioner Dugan

VOTE – Unanimous

MOTION – Commissioner Heglar moved to allow the transfer of sick time for new hires from other NC governmental agencies, to be used for reporting to the NC State Retirement System upon retirement, for use towards additional service credits, and to authorize the Town Clerk and attorney to make required changes to policy.

SECOND – Commissioner Dugan

VOTE – Unanimous

3. Building Department

a. Development Line update

Inspector Batson showed council the map of the proposed Development Line that they saw at their May 16th council meeting. He said council approved it, except for a small section along The Riggings complex, which council gave him direction to draw with the help of Division of Coastal Management staff. He said the line was drawn and he was put on the agenda to present the map during the April Coastal Resources Commission (CRC) meeting; but, at the last minute, they discovered that part of the line was removed in the last PDF created by the surveyor. He said he's bringing the map back to council one more time so they can review it, in its entirety, and direct him to take it back to the CRC for approval at their July or September meeting. He



TOWN COUNCIL MINUTES

REGULAR MEETING

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said he will present the map to them and, if the CRC wants to change anything, he will bring it back to council for further review.

MOTION – Mayor Swearingen moved to approve the May 16, 2017 map, as seen by Kure Beach Town Council, mapped out and detailed from Alabama Avenue to the end of The Riggings complex, which is the end of Kure Beach’s jurisdictional line; and to direct the Building Inspector to present the map to the Coastal Resources Commission at their July meeting.

SECOND – Commissioner Heglar

VOTE – Unanimous

b. Vacant Lots

Inspector Batson said his assistant, Kathleen Zielinski, researched and found that there are 277 lots available in Kure Beach, and 175 of those lots are duplex buildable or located in zoning areas that allow duplexes. He said that could either mean there could be 277 new houses built in Kure Beach, or there could be 102 new single-family houses and 350 duplex townhouse units built. He said the town could be built out in about ten years, if it keeps growing at its current rate.

4. Police Department (PD)

a. Parking fine and penalty-type revision

Commissioner Whitley said the town charges \$50 for a parking ticket, which is higher than what other nearby municipalities charge. He said the PD would like to lower the fine to \$25 and have it become an administrative civil penalty so the revenue can go back to the town. He explained the reasoning behind lowering the fine.

Mayor Swearingen said she always thought that fines had to go towards education, to which Attorney Canoutas said, if council makes it as a civil penalty violation, the town can keep the revenue.

Commissioner Heglar asked Chief Bowden what the civil penalties are for golf carts, other than parking-related penalties.

Chief Bowden said golf carts violations are a state citation and a golf cart has to be insured, street-legal and have tags, and the driver has to be licensed.

MOTION – Commissioner Whitley moved to revise the parking fine from \$50 to \$25 and make it an administrative civil penalty.

SECOND – MPT Bloszinsky

VOTE – Unanimous

DISCUSSION AND CONSIDERATION OF OLD BUSINESS

1. Adoption of the FY17-18 Proposed Budget Ordinance and Fee Schedule



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

Finance Officer Copenhaver said that the fee schedule will need to be revised with the reduced parking penalty, but no other changes have been made to the proposed budget since the May council meeting.

MOTION – Commissioner Heglar moved to adopt the FY17-18 Budget Ordinance and Fee Schedule, as presented.

SECOND – Commissioner Whitley

VOTE – Unanimous

Said budget ordinance and fee schedule are herein incorporated as part of these minutes.

2. Resolution 17-12 to adopt a pilot paid parking program and authorization for enforcement to a third party vendor

Town Clerk Avery said the leases have been signed with the lot owners, and the contract with the third party vendor has been signed. She said the vendor asked for a resolution from council to give them the authority to enforce parking violations. She reviewed the details of the program.

MPT Bloszinsky said there are 120 parking spaces provided in the three, private-owned lots. He said that the town will split the proceeds with the lot owners, after all expenses are paid.

MOTION – Commissioner Heglar moved to approve Resolution 17-12 to adopt a pilot paid parking program and to authorize enforcement by a third party vendor.

SECOND – MPT Bloszinsky

VOTE – PASSED four to one, as follows: Mayor Swearingen, MPT Bloszinsky and Commissioners Heglar and Dugan FOR, and Commissioner Whitley AGAINST.

Said resolution is herein incorporated as part of these minutes.

DISCUSSION AND CONSIDERATION OF NEW BUSINESS

1. Amend the code by revising the language in Sections 1-15 Administrative Civil Penalties, 10-237 Penalty (Motor Vehicles), 10-308 Penalty (Bicycles) and 10-234 (Time Limit Parking).

Town Clerk Avery asked council to adopt the ordinances pertaining to the parking regulations that were discussed earlier. She said one thing that wasn't mentioned in the earlier discussion was there is a reference to the Shoreline Access and Parking Committee in the ordinance that needs to be removed.

MOTION – Commissioner Heglar moved to amend the town code by revising the language in Sections 1-15 Administrative Civil Penalties, 10-237 Penalty (Motor Vehicles), 10-308 Penalty (Bicycles) and 10-234 (Time Limit Parking) to lower parking fines from \$50 to \$25, allow the



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

revenue to stay with the town and remove a reference to the Shoreline Access and Parking Committee, as presented.

SECOND – Commissioner Whitley

VOTE – Unanimous

Said code amendments are herein incorporated as part of these minutes.

2. Request to reschedule August Council meeting

Mayor Swearingen said she will be away on the date of the August council meeting and asked council if they wanted to reschedule the meeting or have it without her.

MOTION – Commissioner Heglar moved to reschedule the regular August council meeting from Tuesday, August 15, 2017 to Thursday, August 17, 2017.

SECOND – Commissioner Dugan

VOTE – Unanimous

3. Consideration of use of Port-A-Lets at seven beach accesses from July 1 through Labor Day

Town Clerk Avery said she decided to suggest installing port-a-lets at the beach accesses because she received complains about people urinating in public. She asked council if they wanted to consider putting in port-a-lets at seven public beach accesses that she listed. She presented the rental cost of the port-a-lets and the cleaning fees, adding that they would be handicapped accessible and would be cleaned twice a week.

Mayor Swearingen said this has been considered by council in past years and one of the big concerns for people whose homes are near the accesses is the foul odor coming from the port-a-lets, especially when they are being cleaned.

Commissioner Heglar said Public Works would be contacted about the port-a-lets every time someone has a complaint, even though they won't be responsible for them. He recommended only putting them at accesses where complaints were made.

Discussion ensued about reporting public urination to the PD, and about the high cost of the seven port-a-lets.

Consensus – Council agreed to take no action on this item.

COMMISSIONER ITEMS

a. MPT Bloszinsky

He asked council how they felt about having orange cones put up to reserve parking for events at the Community Center or at the Ocean Front Park. He said he will talk to the Chief Bowden and Director Beeker for their thoughts on this.



TOWN COUNCIL MINUTES

REGULAR MEETING

June 20, 2017

Mayor Swearingen suggested the Community Center Committee come up with a proposal and present it at a council meeting.

Town Clerk Avery said they've tried doing this in the past and no one pays attention to the cones. She said it would require staff to monitor the parking.

b. Commissioner Heglar

He thanked council and staff for helping him out while he has been on travel for work.

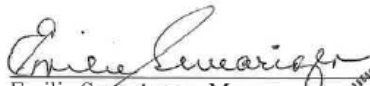
ADJOURNMENT

MOTION – Commissioner Whitley moved to adjourn the meeting.

SECOND – Commissioner Heglar

VOTE – Unanimous

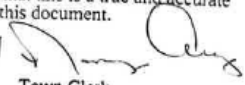
The meeting adjourned at 8:02 p.m.


Emilie Swearingen, Mayor




TEST: Nancy Hewitt, CMC, NCCMC
Deputy Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting.

I certify that this is a true and accurate copy of this document.
6/20/17 
Date Town Clerk

Attachment E: Town of Kure Beach Development Line Map.

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

COASTAL RESOURCES COMMISSION
CRC 17-19

IN THE MATTER OF THE)	
TOWN OF KURE BEACH'S)	FINAL AGENCY DECISION
REQUEST FOR APPROVAL)	
OF A DEVELOPMENT LINE)	

FACTS

1. The Town of Kure Beach (“Town”) is located in New Hanover County, North Carolina and includes a south facing beach strand fronting the Atlantic Ocean.
2. As part of a 1997 Coastal Storm Damage Reduction Project, the Town procured perpetual easements along its entire oceanfront jurisdiction to restrict seaward development.
3. On April 1, 2016 the Coastal Resources Commission’s (Commission) rules were amended to allow oceanfront communities with large-scale beach nourishment or inlet relocation projects to establish a development line as an alternative to a static vegetation line.
4. On March 21, 2017 there was a regularly scheduled Town Council meeting. As part of the meeting agenda, the Town Council considered changes to the Town ordinances to authorize the use of a development line for siting oceanfront development. Upon a duly made motion, the Town Council approved the revised ordinance, Ordinance Chapter 5 Article II Division 4, Section 5-61.
5. On March 22, 2017, the Town forwarded a letter to the Director of the Division of Coastal Management (“DCM”) requesting that the Commission approve the use of a development line as contemplated by the revised ordinance adopted by the Town on March 21, 2017. In support of its request, the Town forwarded the following information:

- a. Minutes from the March 21, 2017 Kure Beach Town Council Meeting reflecting adoption of development line;
- b. Town of Kure Beach Resolution R17-13 Petitioning the North Carolina Coastal Resources Commission for Adoption of a Development Line
- c. Town of Kure Beach Development Line Ordinance Chapter 5 Article II Division 4, Section 5-61 adopted March 21, 2017;
- d. Town of Kure Beach Development Line Map that overlaid the proposed development line, based upon the 1997 perpetual easement line, on top of aerial imagery of the Town's oceanfront development.

6. On May 16, 2017, the Town Council reviewed and approved the location of the proposed development line shown in the Development Line Map. The Town's proposed development line followed the Town's perpetual easements acquired as part of its 1997 Coastal Storm Damage Reduction Project. The easement line ends near the Ocean Dunes property, short of the southernmost point of the Town's oceanfront jurisdiction.

7. After the May 16, 2017 Town Council Meeting, the Development Line Map was revised to extend the development line from the end of the 1997 perpetual easement line to the southernmost portion of the Town's oceanfront jurisdiction. On June 20, 2017, the Town Council approved the revised Development Line Map and directed the Town's Building Inspector to present the revised map to the Commission for approval.

8. The Commission scheduled and duly noticed the Town's request for approval of the Town's development line at the Commission's July 12, 2017 regularly scheduled meeting at the Holiday Inn in Greenville, North Carolina.

9. During the July 12, 2017 meeting, Ken Richardson, Shoreline Management Specialist for DCM and John Batson, the Town's Building Inspector, presented the Town's development line approval request.

10. Following discussion of the information presented and upon duly made motion at the July 12, 2017 meeting, the Commission unanimously denied the requested development line for the Town of Kure Beach for failure to meet the standards set forth in the Commission's rules at 15A NCAC 07J .1302(e).

11. The Commission found that the proposed development line failed to approximate the average line of structures based on an adjacent neighbor sight-line approach in at least three areas: 1) 217 S. Fort Fisher Boulevard and adjacent lots, (2) 1009 S. Fort Fisher Boulevard and adjacent lots, and (3) from the end of the 1997 perpetual easement line to the southernmost portion of the Town's oceanfront jurisdiction.

CONCLUSIONS OF LAW

1. Any local government, group of local governments involved in a regional beach fill project, or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305 may petition the Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of 15A NCAC 7J .1301.

2. The Town is required to request approval for its development line from the Commission according to the procedures in 15A NCAC 7J .1300 *et seq.* and in compliance with the requirements set forth at 15A NCAC 07H .0306(2), (3), (6), (7), (8), and (11).

3. In order to receive approval for a development line, the Petitioner is required to use on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary to establish the development line. The Petitioner overlaid the proposed development line, based on existing easements, on top of aerial imagery.

4. The proposed development line must encompass the entire large-scale beach nourishment project area and may extend beyond the boundaries of the large-scale project to include the entire oceanfront area over which Petitioner has jurisdiction or which is within Petitioner's legal boundaries. The Petitioner requested a development line for its entire oceanfront jurisdiction.

5. The Commission's rule provides that in no case shall a development line be created or established "below the mean high water line" (15A NCAC 07H .0306(a)(3)) or "seaward of the most seaward structure within the petitioner's oceanfront jurisdiction" (15A NCAC 07J .1301(c)). The proposed development line is above the mean high water line and landward of the most seaward structure within the Town's oceanfront jurisdiction.

6. The elected body of the Town of Kure Beach made a final decision to authorize a development line during its March 21, 2017 meeting. The Town determined that the adoption of the amendment to its ordinances and establishment of a development line was consistent with the goals and objectives of the Town's adopted Land Use Plan and other long range plans.

7. The Town requested the Commission approve its development line.

8. Upon duly made motion, at the July 13, 2017 meeting, the Commission unanimously denied the requested development line for the Town of Kure Beach based on its determination that the request was not consistent with the Commission's rules.

9. Specifically, the proposed development line failed to conform to the adjacent neighbor sight-line approach and failed to result in an average line of structures in three places: (1) 217 S. Fort Fisher Boulevard and adjacent lots, (2) 1009 S. Fort Fisher Boulevard and adjacent

lots, and (3) from the end of the perpetual easement to the southernmost portion of the Town's oceanfront jurisdiction.

DECISION

For the reasons stated herein, the Town of Kure Beach's request for approval of a development line is DENIED.

This is the 26th day of July 2017.



M. Renee Cahoon Chair
N.C. Coastal Resources Commission

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the attached **Final Agency Decision** by the means specified below:

Method of Service

Emilie Swearingen, Mayor
Town of Kure Beach
117 Settlers Lane
Kure Beach, NC 28449

CERTIFIED MAIL RETURN RECEIPT
REQUESTED

Nancy Avery, Town Clerk
Town of Kure Beach
117 Settlers Lane
Kure Beach, NC 28449

CERTIFIED MAIL RETURN RECEIPT
REQUESTED

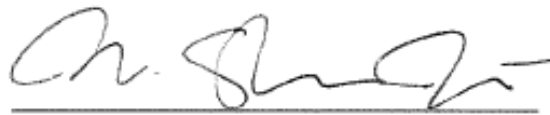
John Batson, Building Inspector
Town of Kure Beach
117 Settlers Lane
Kure Beach, NC 28449

electronically: j.batson@tokb.org

Braxton Davis, Director
Mike Lopazanski, Assist. Director
Ken Richardson, Specialist
Angela Willis, Assist. to Director,
Division of Coastal Management
400 Commerce Ave.
Morehead City, NC 28557-3421

electronically: Braxton.Davis@ncdenr.gov
electronically: Mike.Lopazanski@ncdenr.gov
electronically: Ken.Richardson@ncdenr.gov
electronically: Angela.Willis@ncdenr.gov

This is the 26th day of July 2017.



M. Shawn Maier
Assistant Attorney General
Post Office Box 629
Raleigh, NC 27603-0629
Acting Counsel to the Commission



TOWN COUNCIL MINUTES

REGULAR MEETING

August 17, 2017

The Kure Beach Town Council held their regular meeting on Thursday, August 17, 2017 at 6:30 p.m. The town attorney was present and there was a quorum of council members.

COUNCIL MEMBERS PRESENT

- Mayor Emilie Swearingen
- Mayor Pro Tem (MPT) Craig Bloszinsky
- Commissioner Joseph Whitley
- Commissioner Jim Dugan

COUNCIL MEMBERS ABSENT

- Commissioner David Heglar

STAFF PRESENT

- Building Inspector – John Batson
- Finance Officer – Arlen Copenhaver
- Public Works Crew Leader – Jimmy Mesimer
- Town Clerk – Nancy Avery
- Administrative Assistant – Kathleen Zielinski

I certify that this is a true and accurate copy of this document.

8/25/17 *Nancy Avery*
 Date Town Clerk

CALL TO ORDER

Mayor Swearingen called the meeting to order at 6:30 p.m. Pastor Cathy Chester of Carolina Coast Vineyard Church delivered the opening invocation and led everyone in the Pledge of Allegiance.

Mayor Swearingen requested a motion to excuse Commissioner Heglar.

MOTION: MPT Bloszinsky moved to excuse Commissioner Heglar from tonight’s meeting.

SECOND: Commissioner Dugan

VOTE: Unanimous

APPROVAL OF CONSENT AGENDA ITEMS

1. Adopt Resolution R17-17, approving financing terms with First Bank for 2018 Dodge Durango police vehicle, not to exceed \$36,100 at an annual rate of 1.95 percent for a four-year term; tax exempt.
2. Accept Deborah McKenna’s resignation from the Cape Fear Disabilities Commission, as the town’s liaison.
3. Building Inspections Report – July 2017
4. Fire Department Report – July 2017
5. YTD Finance Report Meeting
6. Minutes:
 - March 17, 2017 Beachtowns Breakfast



TOWN COUNCIL MINUTES

REGULAR MEETING

August 17, 2017

- July 18 & July 25, 2017 regular meeting
- July 21, 2017 special meeting
- July 25, 2017 closed session (sealed)

MOTION – Commissioner Whitley moved to approve the Consent Agenda Items, as presented.
SECOND – Commissioner Dugan
VOTE – Unanimous

ADOPTION OF THE AGENDA

MOTION – MPT Bloszinsky moved to adopt the meeting agenda, as published.
SECOND – Commissioner Dugan
VOTE – Unanimous

DISCUSSION AND CONSIDERATION OF PERSONS TO ADDRESS COUNCIL

1. John Ellen, 181 Seawatch Way, informed council that he is a member of Congressman David Rouser's advisory council and, as such, inquired if there would be a conflict of interest should he be elected to the Council seat for which he is currently a candidate. He was advised by the Town Attorney that there would be no conflict.

2. Janet Carroll, 301 Fourth Ave S., inquired if signs can be erected in the restaurant area of K Ave. stating the spaces are for patron parking only. She reported seeing visitors using restaurant parking when going to the beach for the day, unloading their gear in front of restaurants. She has noticed that paid parking is empty while all the free spaces are full.

Ms. Carroll also reported a problem with people driving in the wrong direction when coming off Fourth Ave. S. and turning onto I Ave. Is it possible to install a one-way sign or a directional arrow to prevent this? She went on to say that she sees a problem with speeding in her area as well. Commissioner Dugan offered to talk to the police chief the following morning about her concerns.

3. Bill Moore, 2003 Ocean Dunes, thinks that the billing practice for recycling is not fair to the residents of Ocean Dunes and the Riggings because the monthly charge is much higher than what should be charged for the number of cans used. According to Mr. Moore, Ocean Dunes has 125 cans, but they are being charged for 197, which is the number of residential units there. It was explained to him that the charges are "per residence" as opposed to "per can" to give all residents the opportunity to recycle, whether they choose to or not. There are 125 cans because that is the quantity requested by the HOA. MPT Bloszinsky said the issue should be looked into and he would take that up with the Town Clerk.

4. Chris Hald, 209 Fourth Ave. S., made several comments:



TOWN COUNCIL MINUTES

REGULAR MEETING

August 17, 2017

3. Building Department

Inspector Batson reported that he attended the recent Coastal Resource Commission (CRC) meeting to propose the town's newly created Development Line. The CRC identified three areas where changes are needed which he illustrated using three aerial photos. The locations are at 217 Ft. Fisher Blvd. S, 1009 Ft. Fisher Blvd. S and at The Riggings. Inspector Batson pointed out the Development Line that was previously approved by council and the new line suggested by the CRC. The first change involves creating a straight line where the current line juts out oceanward. The next section cantilevers out and needs the two lines connected to bring it more in line with the rest of the beach. The final change is at The Riggings where the CRC wants to see the current straight line more closely follow the line of the buildings as they are now. Inspector Batson requested a motion to adopt the new Development Line as presented.

MOTION – Commissioner Whitley moved to adopt Resolution R17-18 petitioning the North Carolina Coastal Resource Commission for adoption of a Development Line for the town approval of the map dated August 17, 2017 outlining the location of the Development Line and authorizing the Building Inspector to represent the request at the September meeting of the Coastal Resource Commission.

SECOND – MPT Bloszinsky

VOTE – Unanimous

Said resolution is herein incorporated as part of these minutes.

4. Public Works Department

Utility Systems Crew Leader Jimmy Mesimer updated council on recent water testing. When the first test results indicated a small amount of Gen-X it was decided to resample with the same testing lab along with another for comparison. For the first test, samples were taken at the wellhead closest to the river. This time the crew took different samples at different locations. They used all the precautions requested by the lab and expect results in 8 to 10 days.

Mayor Swearingen commented that she is looking forward to having accurate information to present to our residents and property owners so they will know they are safe.

Mr. Mesimer also reported that the lift station project is progressing very well with an estimated completion date of October 1.

DISCUSSION AND CONSIDERATION OF OLD BUSINESS

1. Ad Hoc Parking Committee

Mayor Swearingen expressed her appreciation for so many of the volunteer committees serving the town, both past and present, calling them the backbone of the town. She would like council's opinion about the creation of another committee to take on the many parking issues the town faces. The mayor distributed a list of issues that she feels are worthy of consideration and noted



TOWN COUNCIL MINUTES

REGULAR MEETING

August 17, 2017

SECOND – Commissioner Dugan
VOTE – Unanimous

MAYOR UPDATES
None

COMMISSIONER ITEMS

MPT Bloszinsky reported on the Port Waterway and Beach Commission. New Hanover County has responded to the Army Corp of Engineers FY17 request for work line deliverables supporting an FY19 maintenance event for our beaches, so the process has begun. He considers this good news as they are looking at a year 2019 event and, hopefully, the money will be there.

ADJOURNMENT

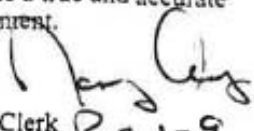
MOTION – Commissioner Whitley moved to adjourn the meeting.
SECOND – Commissioner Dugan
VOTE – Unanimous

The meeting adjourned at 8:18 p.m.


 Emilie Swearingen, Mayor
 

 Nancy Avery, Town Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting.

I certify that this is a true and accurate copy of this document.	
8/25/17	
Date	Town Clerk
	Pgs 1-9



KURE BEACH TOWN COUNCIL
TOWN OF KURE BEACH, NC

RESOLUTION R17-18

A RESOLUTION PETITIONING THE NORTH CAROLINA
COASTAL RESOURCE COMMISSION FOR ADOPTION OF A
DEVELOPMENT LINE FOR THE TOWN OF KURE BEACH

WHEREAS, the Town of Kure Beach utilizes what is known as the Static Vegetation Line, originally drawn by the Coastal Resource Commission (CRC); and

WHEREAS, this Static Vegetation Line is the point from which setbacks are measured to delineate where a property owner may build; and

WHEREAS, on April 1, 2016, the CRC's Development Line Procedures rules became effective, giving oceanfront communities an alternative to the Static Vegetation Line Exception; and

WHEREAS, the Development Line allows a community with a static vegetation line to measure construction setbacks from the first line of stable and natural vegetation, and site development no further ocean ward than the development line; and

WHEREAS, Kure Beach Town Council believes adoption and use of a Development Line will be a benefit to property owners, particularly for development in the commercial district; and

WHEREAS, Kure Beach Town Council took the following actions during legally-advertised meetings:

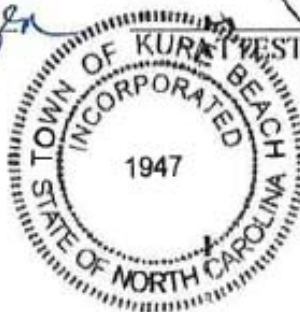
- On March 21, 2017 the Code of Ordinances, Chapter 5 (Buildings and Building Regulations), Article II (Administration) Division 4 (Permits), Section 5-61 (Prerequisite to construction, demolition, remodeling, and impervious surfaces, etc.) was amended to define both development and development line (certified copy of amendments and minutes attached).
- On August 17, 2017, the August 17, 2017 proposed Kure Beach Development Line Map was approved. This document maps out and details the location of the Development Line from the town's northern limits at Alabama Avenue to the town's southern limits at the end of The Riggings complex. Authorization was also given to the Town's Building Inspector to present the map to the CRC at its September meeting.

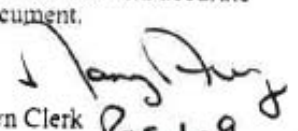
NOW, THEREFORE BE IT BE RESOLVED THAT Kure Beach Town Council hereby submits this official petition to the North Carolina Coastal Resource Commission to adopt a Development Line for oceanfront construction for the town, as presented and documented.

Adopted by the Kure Beach Town Council this 17th day of August, 2017.

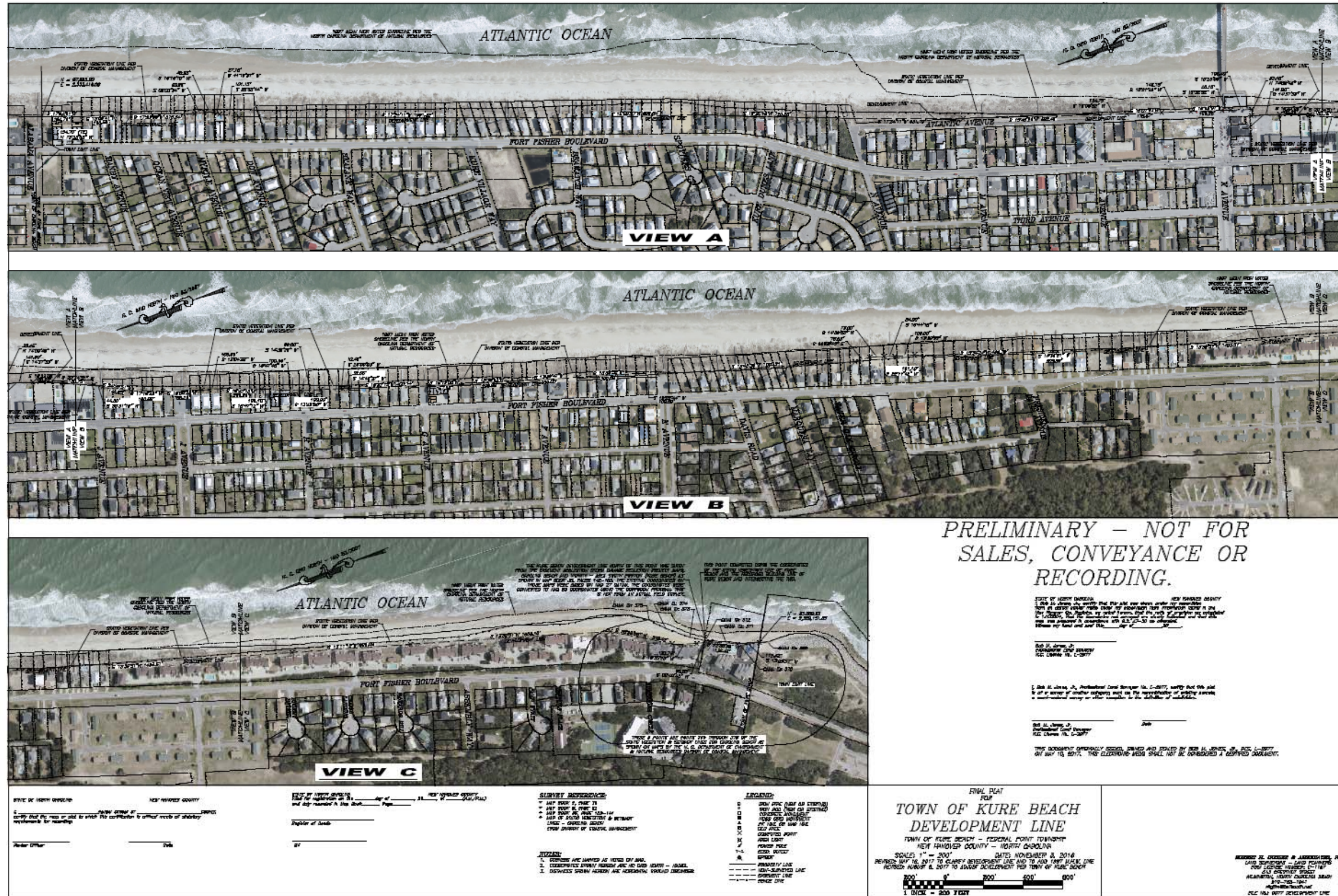

Emilie Swearingen, Mayor


Nancy Avery, Town Clerk



I certify that this is a true and accurate copy of this document.	
8/25/17	
Date	Town Clerk Pgs 1-9

Appendix I: Ammended Town of Kure Beach Development Line Map.



FINAL PLAT
**TOWN OF KURE BEACH
 DEVELOPMENT LINE**
 TOWN OF KURE BEACH - FEDERAL POINT TOWNSHIP
 NEW HAMPSHIRE COUNTY - NORTH CAROLINA
 SCALE: 1" = 300'
 DATES: NOVEMBER 8, 2016
 REVISED MAY 16, 2017 TO CLARIFY DEVELOPMENT LINE AND TO ADD TOWN BOUNDARY LINE
 REVISED MARCH 8, 2017 TO SHOW DEVELOPMENT PER TOWN OF KURE BEACH

REVISIONS:
 1. CORRECTED TOWN BOUNDARY AND TO ADD TOWN BOUNDARY LINE
 2. CORRECTED TOWN BOUNDARY AND TO ADD TOWN BOUNDARY LINE
 3. CORRECTED TOWN BOUNDARY AND TO ADD TOWN BOUNDARY LINE

DATE: 03/08/2017
 TIME: 10:30 AM
 PROJECT: TOWN OF KURE BEACH DEVELOPMENT LINE
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SURVEYED BY: [Name]



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

September 13, 2017

MEMORANDUM

CRC-17-26

TO: Coastal Resources Commission
FROM: Ken Richardson, *Shoreline Management Specialist*
SUBJECT: Rule Development, 7J .1300 Development Line Procedures

On April 1, 2016, the CRC's Development Line Procedures rules became effective, giving oceanfront communities an alternative to the Static Vegetation Line Exception. Once approved by the CRC, a development line allows a community with a static vegetation line to then measure construction setbacks from the first line of stable and natural vegetation, and site development no further oceanward than the development line. Currently, there are three communities with CRC approved Development Lines (Carolina Beach, Oak Island, Figure Eight); and one community (Kure Beach) presenting their proposal to the CRC at the September meeting in Wilmington.

Based on our experience in implementing this rule over the past year, staff has taken note of a reoccurring concern about the potential for seaward encroachment of oceanfront structures following successful beach nourishment projects. Staff has analyzed the potential for seaward movement of structures in a scenario where communities with existing Development Lines continue to maintain their large-scale beach nourishment project, promoting vegetation growth seaward. A detailed spatial analysis prepared by DCM staff, including the number of structures that can potentially move oceanward under different scenarios, will be presented at the September CRC meeting.

Challenges Faced with Drawing the Development Line

The rule (15A NCAC 07J. 1300(c)) directs communities to "utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis." As we have seen with the communities that have requested Development Lines so far, the seaward edge of existing development is not usually linear, and may vary by tens of feet between adjacent structures. This variation has resulted in approved Development Lines that will allow large numbers of structures to be moved oceanward, sometimes significantly. Staff's understanding is that the Commission did not intend to facilitate large-scale oceanward redevelopment under the Development Line rules. For comparison, rebuilding under the Static Line Exception rule is limited to being no farther oceanward than the landward-most adjacent neighbor.

Staff Proposal

After considering several alternatives for increased Staff involvement in the process, and for limiting the amount of potential seaward encroachment, Staff believes that our best role may be in quantifying any potential for seaward encroachment that a proposed Development Line might allow; thus, giving the Commission additional information in support of the decision-making process. My presentation in September will show the types of data we can provide on the potential impact of proposed Development Lines, and we look forward to the Commission's feedback on whether this type of information will be useful in future request



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

CRC Information Item

September 11, 2017

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Division of Mitigation Services Notice of Rulemaking - 15A NCAC 02R

The N.C. Division of Mitigation Services (DMS) asked DCM to provide the following notice of rulemaking to the Coastal Resources Commission. The proposed DMS rule amendments relate primarily to an increase in the compensatory mitigation fee that DMS charges for wetland restoration services under their in-lieu fee program.

The public comment period runs from August 15 – October 16, 2017.

##

Proposed Amendments to 15A NCAC 02R- Division of Mitigation Services

The DEQ Division of Mitigation Services (DMS) was established in 1996 to provide statewide mitigation services for the protection and improvement of aquatic resources. DMS offers four in-lieu fee (ILF) programs to serve the development community in 17 major river basins and over 50 hydrologic units across North Carolina. Developers in need of compensatory mitigation voluntarily access the programs when private bank credits and permittee-responsible mitigation are unavailable. These services have been used by over 4,000 customers since 1997. Pursuant to G.S.150B-21.3A(d)(2), the 15A NCAC 02R rules must be readopted by September 30, 2018. Staff have proposed amendments to the Environmental Management Commission (EMC) and the rules are scheduled to go out for public notice on August 16, 2017. Minor amendments to 15A NCAC 02R .0102, .0202, .0203, .0301, .0302, and .0403 serve to update rule language to reflect current practices with regards to basinwide restoration plans and other technical updates. Updates to the nutrient rate calculation method (rule .0602) are also proposed. Substantive changes are proposed for rules .0601 and .0401.

In rule .0601, staff propose to expand a sustainable rate calculation method, “the Actual Cost Method (ACM)” currently used for the nutrient offset rates, to the riparian buffer rates. This will allow the rate to reflect the actual costs of projects in various service areas pursuant to G.S. 143-214.20(c) and 143-214.21. Financial analyses currently indicate there are some service areas in the upper Cape Fear basin where costs of buffer restoration projects are significantly higher than the current rate schedule. Likewise, data indicate there are other service areas where costs are below the current rate schedule. Implementation of the ACM will result in rates that reflect these cost disparities and allow DMS to maintain services and offer customers rates that reflect actual costs.

In rule .0401 amendments pursuant to 02R .0401(c) wherein staff are required to notify the EMC when the rate schedule does not reflect actual costs of restoration project implementation are proposed. Recent financial analyses and comparison of payment rates to project costs indicate the program is unsustainable at the current rate schedule in many areas of the state where project costs exceed payment rates. This is particularly true of the stream rates which are well below project costs. For the ILF programs to continue to be available for the development community's compensatory mitigation needs, DMS rates must keep pace with project costs. Staff have thus proposed the use of an ACM for the stream and wetland rates to provide a means of automatic rate adjustment when increases and decreases in project costs occur. Other amendments include the elimination of the quarter-acre rounding invoicing procedure and the combination of the rates for riparian and non-riparian wetland mitigation credits.

Initially, for the coastal wetland mitigation category, the application of a flat fee is proposed until sufficient data are available to apply the ACM to this credit type. While the proposed coastal wetland rate of \$825,000 per acre represents a significant increase from the current rate, it is commensurate with fees for similar wetlands of this type in other states along the east coast. Projects on North Carolina's coast must be developed in six distinct service areas depending on permittee requests. Real estate costs, very low demand and regulatory requirements are the primary drivers of the high costs for this mitigation type. DMS has received only nine payments for coastal wetland credits in five service areas over the history of the program. The average payment is for less than a quarter of an acre of credit and required mitigation ranges from 0.03 to 0.48 acres in size. Elimination of the quarter-acre rounding requirement will decrease the fee for many customers and help ensure customers only pay for the credits they need to meet permit requirements. Failure to adjust the rates to reflect actual costs will result in the cessation of this service for coastal developers.

The EMC invites comments on these proposed rule amendments. Two public hearings are scheduled:

[Wednesday, September 27, 2017 at 2:30 PM, at the Northeast Regional Library located at 1241 Military Cutoff Rd., Wilmington, NC 28405 in the Oleander Room](#)

[Wednesday October 4, 2017 at 2:30 PM, at the NCDEQ Green Square Training Room 1210 located at 217 W. Jones Street, Raleigh, NC 27603](#)

Public comments will be accepted at both meetings as well as via mail or email. Written comments on the proposed rule amendments will be accepted beginning August 15, 2017 until close of business (5:00 p.m.) on October 16, 2017. More information including the text of the proposed amendments and the fiscal analysis are available online at:

<https://deq.nc.gov/about/divisions/mitigation-services>.

MEMORANDUM

CRC – Information Item

TO: Coastal Resources Commission

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

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

DATE: September 13, 2017

Background

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

15A NCAC 07B .0804 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report to the Division of Coastal Management every two years from the date of initial certification by the CRC. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan pursuant to Rule 07B .0702(e)(3) of this Subchapter. 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.

The Camden County implementation status report is available on DCM's Land Use Planning web page at:

<https://deq.nc.gov/about/divisions/coastal-management/coastal-management-land-use-planning/certified-lups/camden-county>

It is not provided in the CRC packet.

Discussion

The implementation status report does not require approval by the CRC. The report is based on the LUP Action Plan and identifies activities that the local government has undertaken in support of the LUP's policies and implementation actions. Staff has reviewed the submitted report and finds that the community has met the minimum requirements.

MEMORANDUM

CRC – Information Item

TO: Coastal Resources Commission

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

SUBJECT: Town of Kitty Hawk Land Use Plan (LUP) - Implementation Status Report

DATE: September 13, 2017

Background

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

15A NCAC 07B .0804 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report to the Division of Coastal Management every two years from the date of initial certification by the CRC. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan pursuant to Rule 07B .0702(e)(3) of this Subchapter. 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.

The Town of Kitty Hawk implementation status report is available on DCM's Land Use Planning web page at:

<https://deq.nc.gov/about/divisions/coastal-management/coastal-management-land-use-planning/certified-lups/dare-county>

It is not provided in the CRC packet.

Discussion

The implementation status report does not require approval by the CRC. The report is based on the LUP Action Plan and identifies activities that the local government has undertaken in support of the LUP's policies and implementation actions. Staff has reviewed the submitted report and finds that the community has met the minimum requirements.