

NC COASTAL RESOURCES COMMISSION

July 23 - 25, 2008

Holiday Inn Brownstone

Raleigh, NC

The State Government Ethics Act (Chapter 138A of the General Statutes) and Executive Order No. 1 mandates that the Chair (1) remind members of their duty to avoid conflicts of interest or appearances of conflict, and (2) inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. If any member knows of a conflict of interest or appearance of conflict, please so state when requested by the Chairman.

Wednesday, July 23rd

3:00 COMMISSION CALL TO ORDER (Washington/Jefferson/Lincoln Room) Bob Emory, Chair

- Roll Call

VARIANCES

- Thompson - (VR 08-43) Frisco, Excavation in SAV Amanda Little
- Vodra - (VR 08-44) Carteret County, Pier in excess of 400' Amanda Little

CONTESTED CASES

- Kenneth and Mary Anne Sutton v. DENR, DCM 07 EHR 1316 Jill Weese

6:00 Executive Committee Meeting (Hotel Lobby) Bob Emory, Chair

Thursday, July 24th

8:00 COMMISSION CALL TO ORDER (Washington/Jefferson/Lincoln Room) Bob Emory, Chair

- Roll Call
- Approval of May 21-23, 2008 Meeting Minutes
- Executive Secretary's Report Jim Gregson
- Chairman's Comments Bob Emory
- Vice Chair Nominating Committee Report Wayland Sermons

8:30 PRESENTATIONS

- CRAC Report Dara Royal
- Overview of Emily & Richardson Preyer Buckridge Coastal Reserve (*CRC-08-26*) Woody Webster
- Draft Amendments to 15A NCAC 7H. 0304 & .0310 Inlet Hazard Areas (*CRC-08-27*) Jeff Warren
- Draft Amendments to 15A NCAC 7H .0308(a)(2) Temporary Erosion Control Structures (*CRC-08-28*) Mike Lopazanski

ACTION ITEMS

- Edenton/Chowan County Joint Land Use Plan Certification (*CRC-08-29*) Bob Emory
- Atlantic Beach Land Use Plan Certification (*CRC-08-32*)
- Oak Island LUP Amendment Certification (*CRC-08-33*)

12:15 LUNCH

1:30 PRESENTATIONS

- Overview of Bird Island Coastal Reserve (*CRC-08-30*) Hope Sutton
- Use of Geotextile Tube as Substitute for Multiple Sandbags Spencer Rogers
- Marine Fisheries Commission SAV Definition Update Anne Deaton
- Pier Rules Update David Moye

5:00 PUBLIC HEARINGS Bob Emory, Chair

- 15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas (Setbacks)
- 15A NCAC 7J .1200 Static Line Exception Procedures

Friday, July 25th

8:00 COMMISSION CALL TO ORDER (Washington/Jefferson/Lincoln Room) Bob Emory, Chair

PRESENTATIONS

- Innovative Beach Nourishment Funding Strategies (*CRC-08-34*) Peter Ravella
- Governors' South Atlantic Alliance Update (*CRC-08-36*) Chris Russo, DENR
- Sandbag Inventory and Prioritization Update (*CRC-08-35*) Ted Tyndall
Ken Richardson

11:00 PUBLIC INPUT AND COMMENT

ACTION ITEMS

Bob Emory

OLD/NEW BUSINESS

Bob Emory

- Future Agenda Items

12:00 ADJOURNMENT

NEXT MEETING:
September 24-26, 2008
Sea Trail Resort & Convention Center
Sunset Beach, NC



N.C. Division of Coastal Management
www.nccoastalmanagement.net



CRC-VR-08-43

State of North Carolina

Department of Justice

ROY COOPER
ATTORNEY GENERAL

P. O. Box 629
RALEIGH
27602-0629

TO: Coastal Resources Commission

FROM: Amanda P. Little *APL*
Assistant Attorney General

DATE: July 11, 2008 (for the July 23-25, 2008 CRC Meeting)

RE: **Variance Request by Joe Thompson**

Petitioner applied for a CAMA Major Permit to perform maintenance dredging and excavate a new channel within the Pamlico Sound, adjacent to Sunset Village, in the Town of Frisco, Dare County, NC. The proposed excavation is through beds of Submerged Aquatic Vegetation (SAV). Petitioner applied for this variance seeking relief from strict application of the Commission's Public Trust Areas and Estuarine Waters Areas of Environmental Concern (AEC) rule regarding the specific use standards at 15A NCAC 7H .0208(b)(1).

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules
Attachment B: Stipulated Facts
Attachment C: Petitioners' Position and Staff's Responses to Criteria
Attachment D: Petitioners' Variance Request Materials
Attachment E: Stipulated Exhibits

cc: David Dixon, Attorney for Petitioner
Jim Gregson, DCM Director
Ted Tyndall, DCM Assistant Director
Frank Jennings, District Manager, Elizabeth City DCM Office
John Cece, CAMA Field Representative
Jennie W. Hauser, CRC Counsel



RELEVANT STATUTES OR RULES

15A NCAC 7H .0208 Use Standards

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.

(A) Navigation channels and canals may be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.

(B) All spoil material from new construction shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or marsh.

(C) Spoil from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long term wetland impacts. Under no circumstances shall spoil be placed on regularly flooded wetlands.

(D) Widths of the canals and channels shall be the minimum required to meet the applicant's needs and provide adequate water circulation.

(E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.

(F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels.

(G) Canals for the purpose of multiple residential development shall have:

(i) no septic tanks unless they meet the standards set by the Division of Environmental Management and the Division of Environmental Health;

(ii) no untreated or treated point source discharge;

(iii) storm water routing and retention areas such as settling basins and grassed swales.

(H) Construction of finger canal systems shall not be allowed. Canals shall be either straight or meandering with no right angle corners.

(I) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, vegetative stabilization, or adequate setbacks based on soil characteristics.

(J) Maintenance excavation in canals, channels and boat basins within primary nursery areas and beds of submerged aquatic vegetation shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if

the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991

- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation; and
- (ii) There exists a previously permitted channel which was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be clear evidence that the channel was continuously used for a specific purpose; and
- (iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation; and
- (iv) The original depth and width of a human-made or natural channel will not be increased to allow a new or expanded use of the channel.

ATTACHMENT B

STIPULATED FACTS

1. The Sunset Village subdivision is located at the end of Lands End Way, approximately 1,400 feet northwest of the intersection of NC 12 and Sunset Strip Road (SR 1242) in Frisco, Dare County. The subdivision contains 17 lots, which are bisected by a canal that is 400 feet long, 35 feet wide, and oriented in an east-west direction.
2. Petitioner is the owner of real property within Sunset Village subdivision.
3. The existing channel, which was originally authorized by CAMA Major Permit No. 50-92, connects the Pamlico Sound to the subdivision's boat basin with 27 slips. The existing channel extends into the waters of Pamlico Sound for a distance of approximately 1,900 feet.
4. Extensive beds of Submerged Aquatic Vegetation (SAV) exist within and adjacent to the existing authorized channel alignment. Approximately, 51,000 square feet of these SAV beds lie within the boundaries of the existing channel.
5. Petitioner applied for a CAMA Major Development Permit to conduct maintenance dredging of 239 feet of the existing channel and hydraulically dredge a new channel in the Pamlico Sound 1,344 feet long and 30 feet wide and 4.5 feet deep. Petitioner also proposed in his application to transplant a 2,482 square foot area of SAVs from the proposed new channel to the area of the existing channel (approximately 1,750 feet) which would be abandoned after the proposed development. Petitioner's application (dated December 1, 2006) was received by the Division of Coastal Management (DCM) on January 4, 2007.
6. The property is located within the Estuarine Waters Area of Environmental Concern (AEC) and the Public Trust Areas AEC designated by the Coastal Resources Commission (CRC) in Rules 15A NCAC 7H .0206 and .0207.
7. The existing channel begins at the mouth of the canal and proceeds west across approximately 400 feet of the sandy shallows of the Pamlico Sound and then turns north and extends for 1,500 feet. The water depths in the existing channel are 2.5 - 4.3 feet. The proposed channel also starts at the mouth of the canal but extends west only 250 feet. The proposed alignment then turns north for 150 feet and then northeast for 1,150 feet. The existing water depths along the proposed channel are 1.9 - 3.5 feet.
8. The proposed dredging will negatively impact 2,482 square feet of SAVs, however conducting maintenance dredging of the existing channel would destroy 51,200 square feet

of SAV. To mitigate such negative impacts, Petitioner has proposed to transplant the 2,482 square feet of SAV from the proposed channel alignment into sections of the existing channel, which will then be abandoned.

9. During the permit review process, neither the N.C. Division of Marine Fisheries nor the N.C. Wildlife Resources Commission objected to the proposed project and mitigation proposal.
10. The CRC's mitigation policy states that mitigation shall be used to enhance coastal resources and offset any potential losses occurring from approved and unauthorized development. Proposals to mitigate losses of coastal resources shall be considered only for those projects shown to be in the public interest, as defined by the standards in 15A NCAC 7M .0703, and only after all other reasonable means of avoiding or minimizing such losses have been exhausted.
11. Due to CRC's rules not allowing for consideration of Petitioner's private mitigation proposal, DCM did not evaluate such proposal during the permit review process.
12. CRC Rule 15A NCAC 07H .0208(b)(1) provides that navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.
13. DCM's Director, James H. Gregson denied the permit application by letter dated May 2, 2008, because the proposed development was inconsistent with Rule 15A NCAC 07H .0208(b)(1).
14. The Department of Army, Corps of Engineers, Regulatory Division, denied Petitioner's application by letter dated May 13, 2008 because the Coastal Zone Management Act provides that no Federal Permit may be issued for an activity within the coastal zone where the State has denied a consistency certification.
15. Petitioners filed this variance request on May 29, 2008, seeking relief from strict application of the Estuarine Waters AEC and Public Trust Areas AEC specific use rule at 15A NCAC 7H .0208(b)(1).

ATTACHMENT C

PETITIONER AND STAFF POSITIONS

I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.

Petitioner's Position: Yes.

At this time, access to Pamlico Sound from the current channel is limited to certain watercraft, those with a draft or one and one-half feet or less. The current channel serves a subdivision of sixteen lots and a boat basin with twenty-seven boat slips, which are used by the residents of Sunset village and others in the Frisco area. The North Carolina Division of Marine Fisheries also uses the channel for research and fish sampling activities. The application of Rule 15A NCAC 0711.0208(b)(1) constitutes an unnecessary hardship because denial of the proposed project would prohibit the use of the marina as approved in CAMA permit #50-92.

Staff's Position: Yes.

Staff agrees with Petitioner that strict application of the rules would create an unnecessary hardship on the Petitioner. CAMA Permit #50-92 authorized a 27-slip marina that gains its access via a 1, 900 feet channel that has become extensively vegetated over time with SAVs. Prohibiting these boat owners from maintaining a useable access via dredging creates the unnecessary hardships. Strict application of the rule whereby navigational channels should be aligned so as to avoid beds of SAV does not allow for flexibility to the Petitioner to create a new channel that substantially lessens the impacts to the SAV beds.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioner's Position: Yes.

The North Carolina Division of Marine Fisheries has removed its objection to the proposed project, because as stated above, although not in compliance with Rule 15A NCAC 0711.0208(b)(1) because impact on SAV is unavoidable, the proposed project does comply with the management objective of 15A NCAC 07H .0206 because a 51,200 square foot area of SAV currently affected would be minimized and the SAV loss would be mitigated.

Staff's Position: Yes.

The existing channel authorized by Major Permit No. 50-92 has approximately 51,000 square feet of SAV beds lying within its boundaries. Whereas, the proposed channel for dredging has 2,482 square feet of SAV beds. It is not typical for SAVs to colonize and establish in such thick concentrations in an established and traversed navigational channel versus colonizing in much less concentrations in the adjacent undisturbed areas. Such circumstances can be considered peculiar conditions.

III. Do the hardships result from actions taken by the Petitioner? Explain.

Petitioner's Position: No.

The proposed project is a relocation of an existing channel. Permit #50-92 was granted for the existing channel and marina. Since 1992, changes in conditions, such as shoaling and the spread of SAV have resulted in the need to relocate the channel to minimize impact to SAV and to provide reliable access.

Staff's Position: No.

Staff believes that the hardship was not a result of actions taken by Petitioner. Since the original granting of Major Permit #50-92, the SAV beds have proliferated in this channel due to several possible environmental factors. Even though the proposed development will negatively impact 2,482 square feet of SAV beds, conducting maintenance dredging of the existing channel would destroy approximately 51,000 square feet of SAV beds. To mitigate such impacts, Petitioner has proposed to transplant the affected 2,482 square feet of SAV from the proposed channel alignment into sections of the existing channel, which will then be abandoned. Although in this case the mitigation proposal minimizes impact to the resources, DCM could not consider the proposal during the permit review process because the CRC's mitigation policy is applicable only for projects shown to be in the public interest, not private.

IV. Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Petitioner's Position: Yes.

A granting of the variance sought would be consistent with the spirit, purpose, and intent

of the CRC's rules, standards and orders because a vast area of SAV would cease to be impacted by egress and ingress through the existing channel, and SAV impact would be mitigated by relocating the SAV affected by the new channel to a portion of the abandoned channel were it would be allowed to continue to grow. The relocation of the channel would have a positive environmental impact and comply with the management objectives of the CRC.

Staff's Position: Yes.

In general, SAV beds provide important structural fish habitat and other important ecosystem functions in the estuarine systems of North Carolina. (See 2005 Coastal Habitat Protection Plan, p. 260) The proposed project is in compliance with the management objectives of Rule 15A NCAC .0206 and .0207. The CRC's management objective for Estuarine Waters is to conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values and to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system. Rule 15A NCAC 07H .0206(c). Furthermore, the CRC's management objective for Public Trust Areas is to protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. Rule 15A NCAC 07H .0207(c).

Staff believes that Petitioner's variance request is consistent with the spirit and intent of CRC's rules because the location of the proposed channel as well as Petitioner's mitigation proposal will minimize the destruction of SAVs that would occur during the proposed dredging operations. Furthermore, substantial justice and public welfare and safety will be advanced because a significant area of SAV beds would no longer be affected by the egress and ingress of boats to Pamlico Sound.

Allowing the existing channel to be relocated to an area with less concentrations of SAV beds with a mitigation plan that has been approved by the N.C. Division of Marine Fisheries and the N.C. Wildlife Resources Commission allows the boaters using a 27-slip marina reasonable access without damage to the resources or to their boat from scraping the bottom.

PETITIONER'S VARIANCE REQUEST MATERIALS

- A. CAMA Variance Request Form
- B. Application for CAMA Major Development Permit.
- C. Denial letter from DCM Director, James Gregson, dated May 2, 2008.

CAMA VARIANCE REQUEST

DCM FILE NO. 08-43
RECEIVED
MAY 29 2008
Morehead City DCM

Petitioner supplies the following information:

Your Name Joseph Thompson
Address PO Box 890 Avon, NC 27915
Telephone 252-996-0565
Fax and/or Email joe@spakuru.com

Name of Your Attorney (if applicable) David R. Dixon
Address Po Box 750 Avon, NC 27915
Telephone 252-995-6086
Fax and/or Email 252-995-4625

Have you received a decision from the Division of Coastal Management (DCM) or a Local Permit Officer denying your application for a CAMA permit?

no (You are not entitled to request a variance until your permit application has been denied.)

yes (You may proceed with a request for a variance.)

What did you seek a permit to do?

A permit was sought to perform maintenance and new excavation within the Pamlico Sound.

What Coastal Resources Commission rule(s) prohibit this type of development?
15A NCAC 0711.0208(b)(1) – “Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.”

Can you redesign your proposed development to comply with this rule? No If your answer is no, explain why you cannot redesign to comply with the rule.

The proposed development cannot be redesigned because the relocation of the channel does affect a 2,482 square foot area of submerged aquatic vegetation (SAV), which will be mitigated by moving the affected area of SAV to the abandoned channel. The proposed

Exhibit A

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MAY 29 2008

development was redesigned to an alignment to minimize impact to SAV; however, no channel alignment could be proposed that completely avoided SAV.

Morehead City DCM

Can you obtain a permit for a portion of what you wish to do? No If so, please state what the permit would allow.

State with specificity what you are NOT allowed to do as a result of the denial of your permit application. It will be assumed that you can make full use of your property, except for the uses that are prohibited as a result of the denial of your permit application.

The denial of the requested permit means that dredging and a shorter route to the Pamlico Sound that affects a much smaller area of SAV cannot be completed. Use of the current channel affects a 51,200 square foot area of SAV, which is disturbed by the constant egress from and ingress to the Pamlico Sound. Denial of the permit will further limit reliable access to the sound for residents and vacationers using watercraft with a draft of over one and half feet because use of the existing channel is damaging to both watercraft with a deeper draft and the SAV.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

- I. Identify the hardship(s) you will experience if you are not granted a variance and explain why you contend that the application of this rule to your property constitutes an unnecessary hardship. [The North Carolina Court of Appeals has ruled that this factor depends upon the unique nature of the property rather than the personal situation of the landowner. It has also ruled that financial impact alone is not sufficient to establish unnecessary hardship, although it is a factor to be considered. The most important consideration is whether you can make reasonable use of your property if the variance is not granted. [*Williams v. NCDENR, DCM, and CRC*, 144 N.C. App. 479, 548 S.E.2d 793 (2001).]

At this time, access to Pamlico Sound from the current channel is limited to certain watercraft, those with a draft or one and one-half feet or less. The current channel serves a subdivision of sixteen lots and a boat basin with twenty-seven boat slips, which are used by the residents of Sunset Village and others in the Frisco area. The North Carolina Division of Marine Fisheries also uses the channel for research and fish sampling activities. The application of Rule 15A NCAC 0711.0208(b)(1) constitutes an unnecessary hardship because denial of the proposed project would prohibit the use of the marina as approved in CAMA permit #50-92.

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MAY 29 2008

Morehead City DCM

- II. Describe the conditions that are peculiar to your property (such as location, size, and topography), and cause your hardship.

The North Carolina Division of Marine Fisheries has removed its objection to the proposed project, because as stated above, although not in compliance with Rule 15A NCAC 0711.0208(b)(1) because impact on SAV is unavoidable, the proposed project does comply with the management objective of 15A NCAC 07H .0206 because a 51,200 square foot area of SAV currently affected would be minimized and the SAV loss would be mitigated.

- III. Explain why your hardship does not result from actions that you have taken.

The proposed project is a relocation of an existing channel. Permit #50-92 was granted for the existing channel and marina. Since 1992, changes in conditions, such as shoaling and the spread of the SAV have resulted in the need to relocate the channel to minimize impact to SAV and to provide reliable access.

- IV. Explain why the granting of the variance you seek will be consistent with the spirit, purpose, and intent of the CRC's rules, standards, or orders; preserve substantial justice; and secure public safety.

A granting of the variance sought would be consistent with the spirit, purpose, and intent of the CRC's rules, standards, and orders because a vast area of SAV would cease to be impacted by egress and ingress through the existing channel, and SAV impact would be mitigated by relocating the SAV affected by the new channel to a portion of the abandoned channel where it would be allowed to continue to grow. The relocation of the channel would have a positive environmental impact and comply with the management objectives of the CRC.

Attached, please find copies of the following:

Denial documents

We are presently compiling the necessary documents and will supply this request upon receipt of said documents.

It is understood that the DCM attorney will also propose documents and discuss with us whether he or she agrees with the documents we propose. Together we will arrive at a set of documents

that both parties agree upon.

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MAY 29 2008

Morehead City DCM

Pursuant to N.C.G.S. 113A-120.1 and 15A NCAC 7J .0700, the undersigned hereby requests a variance.

Date: 5. 28. 2008

Signature:



This variance request must be filed with the Director, Division of Coastal Management, and the Attorney General's Office, Environmental Division, at the addresses shown on the attached Certificate of Service form.

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MAY 29 2008

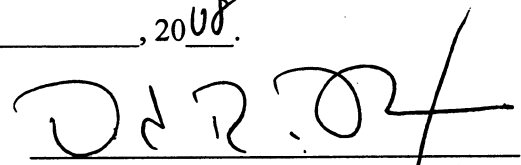
CERTIFICATE OF SERVICE

I hereby certify that this Variance Request has been served on the State of North Carolina
below by overnight delivery to the following: Morehead City DCM

Original served on: Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

copy: Attorney General's Office
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

This the 28 day of May, 2008.


Signature of Petitioner or Attorney

APPLICATION

(To be completed by all applicants)

1. APPLICANT

a. Landowners:

Name Joseph and Tami Thompson

Address PO Box 890

City Avon State NC

Zip 27915 Day Phone 252-995-3313

Fax 252-995-6031

b. Authorized Agent:

Name Environmental Professionals, Inc.

Address PO Box 3368

City Kill Devil Hills State NC

Zip 27948 Day Phone 252-441-0239

Fax 252-441-0721

c. Project name (if any) Sunset Village Channel
Extension

NOTE: Permit will be issued in name of landowner(s), and/or project name.

2. LOCATION OF PROPOSED PROJECT

a. County Dare

b. City, town, community or landmark
Frisco

c. Street address or secondary road number
Land End Way off of NCSR 1242, Sunset Strip

d. Is proposed work within city limits or planning jurisdiction? ___ Yes ___ No

e. Name of body of water nearest project (e.g. river, creek, sound, bay) Pamlico Sound, Man-made canal

3. DESCRIPTION AND PLANNED USE OF PROPOSED PROJECT

a. List all development activities you propose (e.g. building a home, motel, marina, bulkhead, pier, and excavation and/or filling activities).
Maintenance dredge 239.1 linear feet of existing access channel, dredge 1344 LF access channel, and create spoil disposal, dewatering area.

b. Is the proposed activity maintenance of an existing project, new work, or both? both

c. Will the project be for public, private or commercial use? private and community

d. Give a brief description of purpose, use, methods of construction and daily operations of proposed project. If more space is needed, please attach additional pages.

SEE ATTACHED NARRATIVE

4. LAND AND WATER CHARACTERISTICS

- a. Size of entire tract 9.25 acres
- b. Size of individual lot(s) Lot 15 1.42 acres
Tract 2-A 7.83 acres
- c. Approximate elevation of tract above MHW or NWL
0-6 feet
- d. Soil type(s) and texture(s) of tract
FrD-Fripp fine sand, CeA-Carteret fine sand,
OsA- Osier fine sand.
- e. Vegetation on tract Distchilis spicata, Quercus,
virginiana, Juncus roemerianus, Myrica cerifera,
Juniperus virginiana, Distchilis spicata
- f. Man-made features now on tract Canal, bulkhead,
boat slips, residential homes, a cemetery.
- g. What is the CAMA Land Use Plan land classification
of the site? (*Consult the local land use plan.*)

 Conservation Transitional
 Developed Community
 Rural Other
- h. How is the tract zoned by local government?
Residential zoning (S-1)
- i. Is the proposed project consistent with the applicable
zoning? Yes No
(*Attach zoning compliance certificate, if applicable*) N/A
- j. Has a professional archaeological assessment been
done for the tract? Yes No
If yes, by whom? N/A
Onsite cemeteries previously identified and protected
- k. Is the project located in a National Registered
Historic District or does it involve a National Register
listed or eligible property?
 Yes No
- l. Are there wetlands on the site? Yes No
Coastal (marsh) Other
If yes, has a delineation been conducted? Yes
**** (See Attached JD)**

- m. Describe existing wastewater treatment facilities.
Existing on-site septic systems
- n. Describe location and type of discharges to waters
the state. (For example, surface runoff, sanitary
wastewater, industrial/commercial effluent, "wash
down" and residential discharges.) surface runoff
dredge spoil effluent
- o. Describe existing drinking water supply source.
Dare County water system, reverse osmosis derived

5. ADDITIONAL INFORMATION

In addition to the completed application form, the following items must be submitted:

- **A copy of the deed** (with state application only) or other instrument under which the applicant claims title to the affected properties. If the applicant is not claiming to be the owner of said property, then forward a copy of the deed or other instrument under which the owner claims title, plus written permission from the owner to carry out the project.
- **An accurate, dated work plat** (including plan view and cross-sectional drawings) drawn to scale in black ink on an 8 1/2" by 11" white paper. (Refer to Coastal Resources Commission Rule 7J.0203 for a detailed description.)
Please note that original drawings are preferred and only high quality copies will be accepted. Blue-line prints or other larger plats are acceptable only if an adequate number of quality copies are provided by applicant. (Contact the U.S. Army Corps of Engineers regarding that agency's use of larger drawings.) A site or location map is a part of plat requirements and it must be sufficiently detailed to guide agency personnel unfamiliar with the area to the site. Include highway or secondary road (SR) numbers, landmarks, and the like.

- A Stormwater Certification, if one is necessary.
- A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management. Upon signing this form, the applicant further certifies that such notice has been provided.

Name SEE ATTACHED LIST
 Address _____
 Phone _____

Name _____
 Address _____
 Phone _____

Name _____
 Address _____
 Phone _____

- A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates.

NCDCM CAMA MAJOR #50-92

USACE Jurisdictional Determination Action ID #200510673;

Jurisdictional Determination Action ID #200610124 (11.17.05)

- A check for \$250 made payable to the Department of Environment, Health, and Natural Resources (DEHNR) to cover the costs of processing the application.
- A signed AEC hazard notice for projects in oceanfront and inlet areas.
- A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A - 1 to 10) If the project involves the expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act. Please see attached approval in a letter from WRC dated October 16, 2006.

6. CERTIFICATION AND PERMISSION TO ENTER ON LAND

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to conditions and restrictions contained in the permit.

I certify that to the best of my knowledge, the proposed activity complies with the State of North Carolina's approved Coastal Management Program and will be conducted in a manner consistent with such program.

I certify that I am authorized to grant, and do in fact, grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

This is the 1st day of Dec, 2006.

Print Name Louise I. Hanson

Signature Louise I. Hanson
 Landowner or Authorized Agent

Please indicate attachments pertaining to your proposed project.

- DCM MP-2 Excavation and Fill Information
- DCM MP-3 Upland Development
- DCM MP-4 Structures Information
- DCM MP-5 Bridges and Culverts
- DCM MP-6 Marina Development

NOTE: Please sign and date each attachment in the space provided at the bottom of each form.

EXCAVATION AND FILL

(Except bridges and culverts)

Attach this form to Joint Application for CAMA Major Permit, Form DCM-MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project.

Describe below the purpose of proposed excavation or fill activities. All values to be given in feet.

| | Length | Width | Average Existing Depth | Final Project Depth |
|---|-------------------|-------------------------------|------------------------|---------------------|
| Access Channel <i>Maintenance and new</i> | 1583.1 (Total) | 30' max (inc. side slopes) | -2.4 MLW | -4.5 MLW |
| Canal | N/A | ----- | ----- | ----- |
| Boat basin | N/A | ----- | ----- | ----- |
| Boat ramp | N/A | ----- | ----- | ----- |
| Rock groin | N/A | ----- | ----- | ----- |
| Rock (rip rap) breakwater | N/A | ----- | ----- | ----- |
| Other-spoil site Excavation for dike wall prior to spoil placement | 200 ave | 145 ave | +1.5 | +0.80 |
| Other-fill to be placed on spoil site | 200 ave | 145 ave | +1.00 | +4.25 |

1. EXCAVATION

a. Amount of material to be excavated from below MHW or NWL in cubic yards 3420.3 CY

b. Type of material to be excavated Sand/silt

c. Does the area to be excavated include coastal Wetlands, Submerged Aquatic Vegetation or other Wetlands? X Yes No

2482 SF SAV's unavoidable impacts as identified and addressed in the NC SEPA environmental assessment and plat. To be mitigated; please see correspondence attached

d. Highground excavation in cubic yards Approx. 753 CY

Minimal grading (0.7 ft) needed to enhance spoil containment area and construct earthen dike walls around the spoil site. Please see narrative for calculations.

2. DISPOSAL OF EXCAVATED MATERIAL

a. Location of disposal area Tract 2-A

b. Dimensions of disposal area 39,840 sf available for placement of approx. 753 CY of upland excavation material for dike wall construction. Allows for 5272 CY of capacity within the 29,050 sf diked spoil area to hold the 3420.3 CY of dredge spoil.

c. Do you claim title to disposal area? X Yes No

If no, attach a letter granting permission from the owner.

d. Will a disposal area be available for future maintenance? X Yes No
If yes, where? Same location

- e. Does the disposal area include any coastal wetlands(marsh), SAVs or other wetlands?
 Yes No
- f. Does the disposal include any area in the water?
 Yes No

3. SHORELINE STABILIZATION N/A

- a. Type of shoreline stabilization N/A
 Bulkhead Riprap
- b. Length N/A
- c. Average distance waterward of MHW or NWL
N/A
- d. Maximum distance waterward of MHW or NWL
N/A
- e. Shoreline erosion during preceding 12 months
N/A
(Source of information)
- f. Type of bulkhead or riprap material
N/A
- g. Amount of fill in cubic yards to be placed below water level
(1) Riprap N/A
(2) Bulkhead fill N/A
- h. Type of fill material N/A
- i. Source of fill material N/A

4. OTHER FILL ACTIVITIES (Excluding Shoreline Stabilization)

- a. Will fill material be brought to site?
 Yes No
If yes,
 - (1) Amount of material to be placed in the water N/A
 - (2) Dimensions of fill area 29,050 sf within the proposed earthen dike.
= 29,050 sf, area, at an estimated depth of dewatered spoil of 3.18 ft, the spoil area will be engineered to hold 5,272 CY of capacity. This results in **1851 CY OVER THE VOLUME NEEDED.** Allows approx. 1.7 ft freeboard.

Excavation for dike wall construction prior to spoil placement will require approximately 0.7 ft of excavation. This will produce enough material for construction of an approximately 4.9 foot high, 10 ft wide at base dike wall at spoil site perimeter.

- (3) Purpose of fill Dike wall construction.
Dredge spoil storage and dewatering area.

- b. Will fill material be placed in coastal wetlands (marsh), SAVs or other wetlands?
 Yes No

5. GENERAL

- a. How will excavated fill material be kept on site and erosion controlled?
earthen dike at containment area and Silt fences as needed
- b. What type of construction equipment will be used (for example, dragline, backhoe, or hydraulic dredge)?
Hydraulic dredge, front end loader
- c. Will wetlands be crossed in transporting equipment? Yes No
If yes, explain steps that will be taken to lessen Environmental impacts.

Sunset Village Channel Extension
Applicant or Project Name

Signature

Date

[Handwritten Signature]

12-1-06

UPLAND DEVELOPMENT

(Construction and/or land disturbing activities) Attach this form to Joint Application for CAMA Major Permit, Form DCM-MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project.

a. Type and number of buildings, facilities, units or structures proposed.

An earthen diked area located in an upland area of Tract 2-A to receive, store, settle, and dewater the dredge spoil from the proposed (partially realigned) access channel dredging.

b. Number of lots or parcels 2

c. Density (give the number of residential units and the units per acre) 1 unit existing on 7.82 acres. (0.13 units per acre)

d. Size of area to be graded filled or disturbed including roads ditches etc.

An area of 39840 sf will be disturbed, and converted to approximately 29,050 sf within earthen dikes. The area is located in uplands of Tract 2-A. Purpose is to receive, store, settle, and dewater the approximately 3420.3 CY of dredge spoil from the proposed access channel dredging. Please see Narrative for detail

e. If the proposed project will disturb more than one acre of land the Division of Land Resources must receive an erosion and sedimentation control plan at least 30 days before land disturbing activity begins. If applicable has a sedimentation and erosion control plan been submitted to the Division of Land Resources?

N/A - Less than one acre

If Yes, date submitted _____

f. List the materials (such as marl, paver stone, asphalt or concrete) to be used for paved surfaces.

N/A

h. Projects that require a CAMA Major Development Permit may also require a Stormwater Certification. Has a site development plan been submitted to the Division of Environmental Management for review? N/A

Yes No

If yes, date submitted _____

i. Describe proposed method of sewage disposal. N/A

j. Have the facilities described in Item i. above received state or local approval? N/A

(Attach appropriate documentation)

k. Describe location and type of proposed discharges to waters of the state (for example, surface runoff, sanitary wastewater, industrial/commercial effluent, "wash down" and residential discharges).

Settled dredge spoil effluent will be pumped to the canal near the existing boating facility, at the southwestern site boundary. Other discharge will be surface runoff only

l. Describe proposed drinking water supply source (e.g. well, community, public system, etc.)

Dare County water system

m. Will water be impounded? _____ Yes No

If yes, how many acres? _____

N/A

n. If the project is an oceanfront development, when was the lot(s) platted and recorded?

N/A

Sunset Village Channel Extension

Applicant or Project Name

Sause & Hanson (agent)

Signature

12-1-06

Date



RECEIVED

MAY 29 2008

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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

May 2, 2008

**CERTIFIED MAIL
 RETURN RECEIPT REQUESTED**

Joseph and Tami Thompson
 PO Box 890
 Avon, NC 27915

Dear Sirs:

This letter is in regard to your application request under the Coastal Area Management Act (CAMA) to perform maintenance and new excavation within the Pamlico Sound, adjacent to Sunset Village, in the Town of Frisco in Dare County. Processing of the application, which was received by the Division of Coastal Management's Elizabeth City office on February January 4, 2007, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The proposed project successfully completed a review under the North Carolina Environmental Policy Act on March 8, 2007.
- 2) An existing channel, which was originally authorized by CAMA Permit No. 50-92, connects the existing highground basin with Pamlico Sound. This existing channel extends into the waters of Pamlico Sound for a distance of approximately 1,900 feet.
- 3) Extensive beds of submerged aquatic vegetation (SAV) exist within and adjacent to the existing authorized channel alignment. Approximately 51,000 square feet of these SAV beds lie within the boundaries of the existing channel.
- 4) In an effort to minimize impacts to SAV beds within the project alignment, while at the same time allowing continued access into the existing highground basin, the applicant proposed a relocation of a portion of the channel. The relocated channel alignment would result in the excavation of approximately 2,400 square feet of SAV beds. The existing channel would then be abandoned to allow for SAV growth to continue. The +/- 2,400 square feet of excavated SAV's would also be relocated to a portion of the abandoned channel. The N.C. Division of Marine Fisheries approved a SAV mitigation and monitoring plan during the permit review process.

400 Commerce Avenue, Morehead City, NC
 Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet:

An Equal Opportunity \ Affirmative Action Employer - 50% Recyc

Exhibit C

5) During the course of the permit review, neither the N.C. Wildlife Resources Commission nor the N.C. Division of Marine Fisheries objected to the proposed project and mitigation proposal.

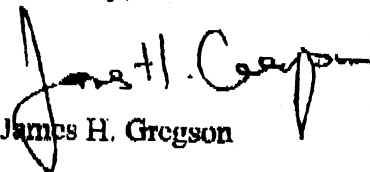
6) Based upon the findings outlined above, the proposed project has been determined to be inconsistent with the following Rules of the Coastal Resources Commission:

15A NCAC 0711.0208(b)(1), which states "*Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.*"

Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit be denied. This denial is made pursuant to N.C.G.S. 113A-120 (a)(8), which requires denial for projects inconsistent with the state guidelines for Areas of Environmental Concern or local land use plans.

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the General Statutes of North Carolina, and must be filed with the office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, (919) 733-2698, within twenty (20) days from the date of this letter. A copy of this petition should be filed with this office. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808.

Sincerely,


James H. Gregson

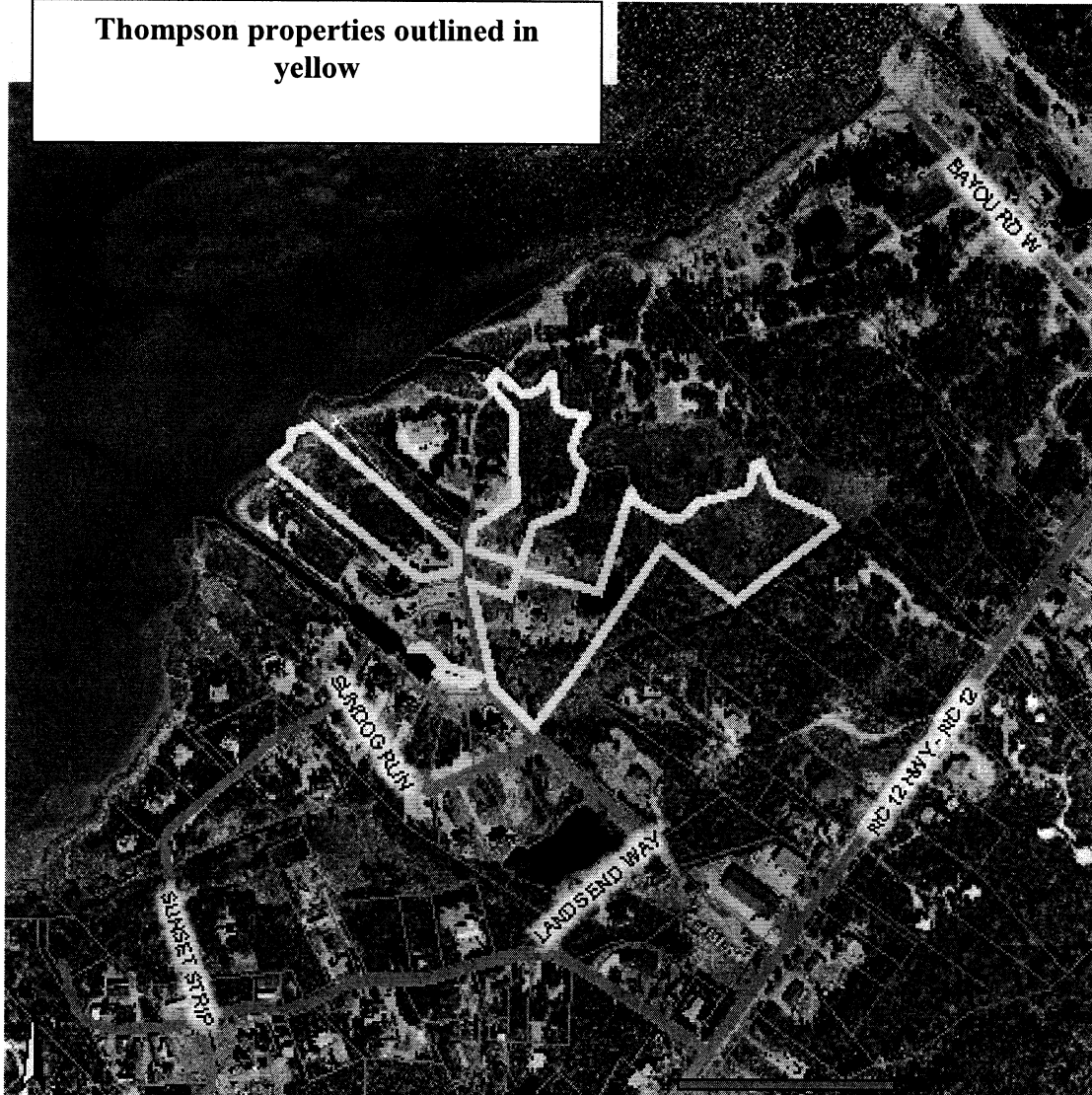
cc: Colonel John Pulliam - U.S. Army Corps of Engineers, Wilmington, NC
Mr. David Kennedy, Director - OCRM/NOAA, Silver Spring, MD

ATTACHMENT E

STIPULATED EXHIBITS

- A. Copies of Aerial Photos of Proposed Project Site (Google Earth)
- B. Site Plan of Proposed Project showing existing and proposed channels and SAV beds. (Plans have been reduced for copying but the oversized plan will be available at the meeting for review)
- C. Memorandums from Division of Marine Fisheries dated January 26, 2007 and August 8, 2007
- D. Memorandums from the N.C. Wildlife Resources Commission dated October 16, 2006 and February 14, 2007.
- E. Letter from the Department of Army, Corps of Engineers, Regulatory Division dated May 13, 2008.

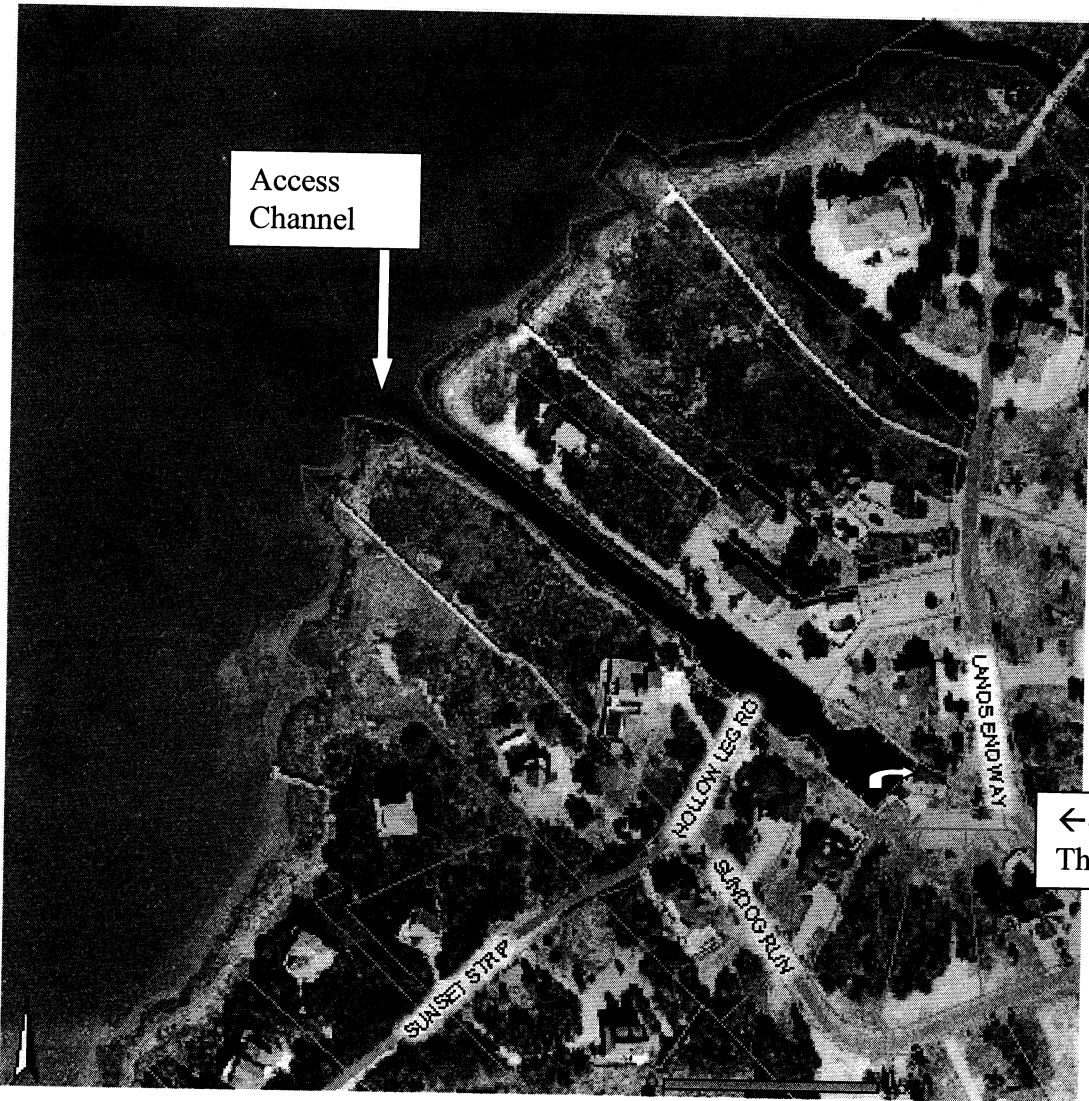
Thompson properties outlined in yellow



Parcels

| Rec | PIN | PARCEL | ADDRESS | OWNER1 | OWNER2 | SUBDIVISIO |
|-----|--------------|-----------|---------------------|--------------------|------------------|---------------------|
| 1 | 050507689775 | 015031010 | 53198 LANDS END WAY | THOMPSON, JOSEPH E | THOMPSON, TAMI J | SUNSET VILLAGE PH 3 |
| 2 | 050507780471 | 015031006 | 53186 LANDS END WAY | THOMPSON, JOSEPH E | THOMPSON, TAMI J | SUBDIVISION - NONE |
| 3 | 050507782541 | 015031000 | 53189 LANDS END WAY | THOMPSON, JOSEPH E | THOMPSON, TAMI J | SUBDIVISION - NONE |
| 4 | 050507783904 | 015031012 | 0 LANDS END WAY | THOMPSON, JOSEPH E | THOMPSON, TAMI J | SUBDIVISION - NONE |

Exhibit A

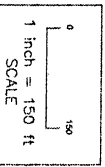


Parcels

| Rec | PIN | PARCEL | ADDRESS | OWNER1 | OWNER2 | SUBDIVISIO |
|-----|--------------|------------------|---------------------|--------------------|------------------|--------------------|
| 1 | 050507780471 | <u>015031006</u> | 53186 LANDS END WAY | THOMPSON, JOSEPH E | THOMPSON, TAMI J | SUBDIVISION - NONE |

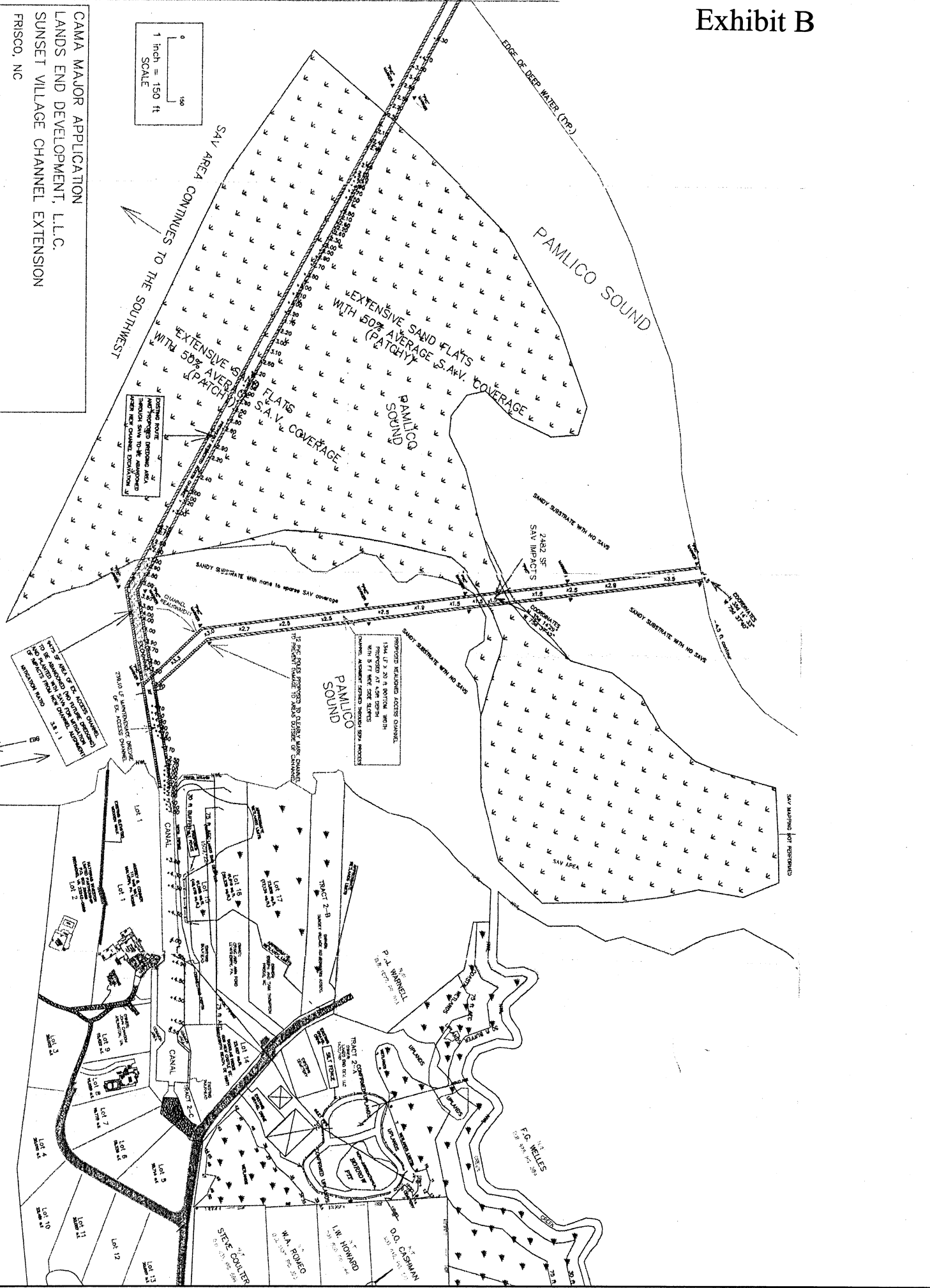
CAMA MAJOR APPLICATION
 LANDS END DEVELOPMENT, L.L.C.
 SUNSET VILLAGE CHANNEL EXTENSION
 FRISCO, NC

DATE 8/29/06 DRAWN: KT ENVIRONMENTAL PROFESSIONALS, INC.



SAV AREA CONTINUES TO THE SOUTHWEST
 EXTENSIVE SAND FLATS WITH 50% AVERAGE S.A.V. COVERAGE
 EXTENSIVE SAND FLATS WITH 50% AVERAGE S.A.V. COVERAGE (PATCHY)

PAMLICO SOUND
 EDGE OF DEEP WATER (TOP)





E
✓

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

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

January 11, 2007

MEMORANDUM:

TO: Preston P. Pate, Jr., Director
Division of Marine Fisheries

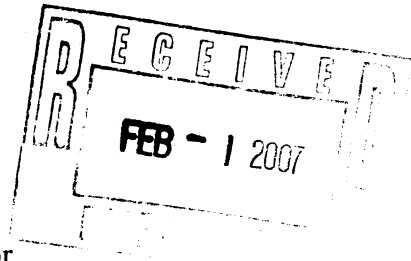
FROM: Doug Huggett
Major Permits Processing Coordinator

SUBJECT: CAMA/DREDGE & FILL Permit Application Review

Applicant: Joseph and Tami Thompson, Sunset Village Channel Ext.

Project Location: End of Lands End Way off Sunset Strip Road (SR 1242), Frisco, Dare Co.

Proposed Project: Maintenance dredge existing channel, hydraulically dredge new channel in the Pamlico Sound, transplant SAVs



Please indicate below your agency's position or viewpoint on the proposed project and return this form by **02/01/07**, to **400 Commerce Avenue, Morehead City, NC 28557**. If you have any questions regarding the proposed project, please contact John Cece at (252) 264-3901, ext. 234. When appropriate, in-depth comments with supporting data are requested.

REPLY: This agency has no objection to the project as proposed.

This agency has no comment on the proposed project.

This agency approves of the project only if the recommended changes are incorporated. See attached.

This agency objects to the project for reasons described in the attached comments.

SIGNED

DATE

1-26-07

Exhibit C



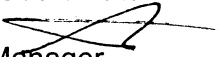
North Carolina Department of Environment and Natural Resources

Michael F. Easley, Governor
William G. Ross Jr., Secretary

Division of Marine Fisheries

Dr. Louis B. Daniel III, Director

MEMORANDUM

TO: Doug Huggett, DCM Major Permits Coordinator
THROUGH: Mike Street, Chief Habitat Section 
FROM: Sara E. Winslow, Northern District Manager
DATE: February 6, 2007
SUBJECT: Joseph & Tami Thompson, Sunset Village Channel Extension

The North Carolina Division of Marine Fisheries submits the following comments pursuant to General Statute 113-131.

The applicant proposes to maintenance dredge 239 ft of existing channel and dredge a new channel in Pamlico Sound 1,344 ft long, 30 ft wide (bottom cut 20 ft) and 4.5 ft deep. Upon completion of the new channel, approximately 1,750 ft of existing channel will be abandoned. Extensive SAVs occur throughout this existing alignment, and the SAVs should re-establish in this area. The new alignment will impact approximately 2,428 sq ft of SAVs. These SAVs will be transplanted into the existing channel.

The Division has worked with the applicant and consultant since 2004 to determine an alignment that would result in the least amount of environmental impacts. We are pleased with the strong efforts to minimize the project's effects on SAV in the proposed channel alignment.

But we are concerned with the lack of details on the mitigation process. This project will establish some precedents, and we must be as thorough as we can to provide guidance for future projects. Thus, we request that the applicant prepare and submit a specific mitigation plan that addresses at least the following topics:

- SAV harvest method(s)
- SAV planting method(s)
 - Timing
 - Spacing
 - Use of fertilizer(s) or other chemicals, if any
- Monitoring
 - Frequency and duration (at least 3 yr)
 - Specific sampling plan and design
 - Sampling and analytical method(s)
 - Success criteria
 - Reporting
- Contingency plan if success criteria are not met

This agency will approve this project once we accept the mitigation plan. We also request a dredging moratorium from February 15 through October 31 to ensure that the environmental integrity of the area is protected during critical times of usage by finfish and invertebrates.



North Carolina Department of Environment and Natural Resources

Michael F. Easley, Governor
William G. Ross Jr., Secretary

Division of Marine Fisheries

Dr. Louis B. Daniel III, Director

MEMORANDUM:

TO: Doug Huggett, DCM Major Permits Processing Coordinator

THROUGH: Mike Street, Chief Habitat Section

FROM: Sara E. Winslow, Northern District Manager *SEW*

SUBJECT: Sunset Village – Joe Thompson – SAV Mitigation Plan

DATE: August 8, 2007

The North Carolina Division of Marine Fisheries has reviewed the proposed SAV mitigation and monitoring plan for the Sunset Village project. This agency accepts the proposed mitigation plan and approves of the proposed project. As indicated in previous memos the Division does request a dredging moratorium from February 15 through October 31 for this project.



RECEIVED

OCT 19 2006

Morehead City DC

North Carolina Wildlife Resources Commission

Richard B. Hamilton, Executive Director

MEMORANDUM

TO: Doug Huggett, Major Permits Processing Coordinator
Division of Coastal Management
North Carolina Department of Environment and Natural Resources

FROM: Maria Tripp, Northeast Coastal Region Coordinator
Habitat Conservation Section *Maria Tripp*

DATE: October 16, 2006

SUBJECT: Comments on Sunset Village Channel Extension Proposed SAV Mitigation,
Dare County, North Carolina.

Biologists with the North Carolina Wildlife Resources Commission (Commission) reviewed the proposed mitigation plan with regard to impacts on fish and wildlife resources. The project is being reviewed under OLIA No. 13-19. Our comments are provided in accordance with provisions of the Coastal Area Management Act (G.S. 113A-100 through 113A-128), as amended, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The applicant proposes to mitigate for submerged aquatic vegetation (SAV) impacts that will occur if excavation of the Sunset Village Channel Extension is permitted. The applicant has cooperated with requests from state agencies and has reduced SAV impacts that were originally proposed. The current proposal includes excavation of a 2,482 ft² area of SAV.

The Commission has reviewed the proposed mitigation submittal and requests the following be added as conditions to the mitigation plan:

- SAV excavated by hand from the proposed channel area should be transplanted to the area indicated on the plat. Prior to planting in this area, a transect should be conducted to assess location and percentage of SAV coverage.
- A list of SAV species and the area they cover in the planted area should be mapped.
- Monitoring of the mitigation site should be conducted for three years. Included in this monitoring should be comparison of the mitigated site to a reference site in the vicinity. If the mitigation area does not successfully propagate SAV, the applicant may have to replant the area.

Mailing Address: Division of Inland Fisheries • 1721 Mail S
Telephone: (919) 707-0220 • **Fax**

Exhibit D

- A sign should be posted educating vessels of the mitigated site and directing them to the access channel rather than SAV areas.

The Commission is concerned with the applicant's statement that any additional needs for SAV in the area will be recruited locally. The intention of the mitigation is to enhance an area with SAV, not adversely impact another healthy habitat area of SAV by removing vegetation. We strongly urge the applicant to only use SAV from the area of channel excavation.

We appreciate the opportunity to comment on this mitigation plan. If you need further assistance or additional information, please contact me at (252) 948-3916.



RECEIVED
FEB 15 2007
Morehead City DCM

☒ North Carolina Wildlife Resources Commission ☒

Richard B. Hamilton, Executive Director

MEMORANDUM

TO: Doug Huggett, Major Permits Processing Coordinator
Division of Coastal Management
North Carolina Department of Environment and Natural Resources

FROM: Maria Tripp, Northeast Coastal Region Coordinator *Maria Tripp*
Habitat Conservation Section

DATE: February 14, 2007

SUBJECT: CAMA Dredge/Fill Permit Application for Joseph and Tami Thompson, Sunset Village Channel Ext., Dare County, North Carolina.

Biologists with the North Carolina Wildlife Resources Commission (Commission) reviewed the permit application with regard to impacts on fish and wildlife resources. The project site is located at the end of Lands End Way off Sunset Strip Road in Frisco, NC. Our comments are provided in accordance with provisions of the Coastal Area Management Act (G.S. 113A-100 through 113A-128), as amended, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The applicant proposes to maintenance dredge an existing channel, hydraulically dredge a new channel in the Pamlico Sound, and transplant submerged aquatic vegetation (SAV) from the area of the new channel to an undisturbed area. The Pamlico Sound is classified SA by the Environmental Management Commission and is open to shellfish harvesting.

The Commission has reviewed the permit application and does not object to permit issuance. We appreciate the cooperation the applicant has demonstrated with the avoidance, minimization, and mitigation of SAV impacts. We support the concerns and recommendations, including any moratoria, requested by the NC Division of Marine Fisheries and Shellfish Sanitation.

We appreciate the opportunity to review and comment on this permit application. If you need further assistance or additional information, please contact me at (252) 948-3916.



IN REPLY REFER TO

**DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS**

Washington Regulatory Field Office
P.O. Box 1000
Washington, North Carolina 27889-1000

RECEIVED
MAY 15 2008

May 13, 2008

Morehead City DEM

Regulatory Division

ORM ID No. SAW-2007-00202

Mr. Joseph Thompson
Post Office Box 890
Avon, North Carolina 27915

Recent denial

Dear Mr. Thompson:

By copy of the North Carolina Department of Environment and Natural Resources letter to you of May 2, 2008, we have learned that North Carolina Coastal Management Consistency Certification for your proposed plans to maintenance dredge approximately 239 linear feet of an existing channel, and construct 1,344 linear feet of new channel in the Pamlico Sound, on property located off State Road 1242, at the terminus of Lands End Way, in the Sunset Village Subdivision, Frisco, Dare County, North Carolina, has been denied. The Coastal Zone Management Act provides that no Federal permit may be issued for an activity within the coastal zone where the State has denied a consistency certification. Accordingly, your Department of the Army application is hereby denied, without prejudice, and your file has been retired.

Should you be successful in obtaining a consistency certification from the State for this activity, your file will be reopened. While appealing the State permit is the next step in pursuing State authorization, you should be aware that all issues raised by agency comments must be resolved prior to issuance of a Department of the Army permit.


Mr. Raleigh Bland of my Washington Regulatory Field Office staff is available to answer any questions you may have or to assist you in developing a revised plan. Mr. Bland may be reached at telephone (252) 975-1616, extension 23.

Sincerely,

David M. Lekson, P.W.S.
Chief, Washington Field Office

Exhibit E

TO: Coastal Resources Commission

FROM: Amanda P. Little 
Assistant Attorney General

DATE: July 11, 2008 (for the July 23-25, 2008 CRC Meeting)

RE: **Variance Request by Camp Albemarle, c/o Rev. Robert Vodra, Director**

Petitioner applied for a CAMA Major Development Permit to remove an existing pier and 12 slips and construct a new pier with platform, 1 jet ski lift and 9 lifts (sunfish racks) that extends 572 feet into the Bogue Sound, Carteret County. The proposed development is longer than 400 feet and does not give access to deeper water at a rate of at least 1 foot each additional 100 foot increment of pier length over 400 feet. Petitioner applied for this variance seeking relief from strict application of the Commission's guidelines for Estuarine Waters Area of Environmental Concern (AEC) and Public Trust Areas AEC at 15A NCAC 7H .0208(b)(6)(K).

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules
Attachment B: Stipulated Facts
Attachment C: Petitioner's Position and Staff's Responses to Criteria
Attachment D: Petitioner's Variance Request Materials
Attachment E: Stipulated Exhibits

cc: Jeff Gray, Attorney for Petitioner
Rev. Robert Vodra, Camp Director
Jim Gregson, DCM Director
Ted Tyndall, DCM Assistant Director
Tere Barrett, District Manager, Morehead City DCM Office
Heather Styron, CAMA Field Representative
Jennie W. Hauser, CRC Counsel

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0208 Use Standards

(b) Specific Use Standards

(6) Docks and Piers.

(A) Docks and piers shall not exceed six feet in width. Wider docks and piers shall be permitted only if the greater width is necessary for safe use, to improve public access; or to support a water dependent use that cannot otherwise occur.

(B) Any portion of a dock or pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.

(C) Any portion of a dock or pier (either fixed or floating) greater than six feet wide shall be considered a platform or deck.

(D) The combined area of all "T"s, finger piers, platforms, and decks must not exceed a combined total area of four square feet per linear foot of shoreline. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, or to support a water dependent use that cannot otherwise occur.

(E) "T"s, platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.

(F) Docks, piers, "T"s and associated structures built over wetlands must be elevated at least three feet over the wetland substrate measured from the bottom of the decking.

(G) Boathouses shall not exceed 400 square feet except to accommodate a demonstrated need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions shall not apply to marinas.

(H) The total area enclosed by boat lifts shall not exceed 400 square feet.

(I) Piers, docks, decks, platforms and boat houses shall be single story. They may be roofed but shall not be designed to allow second story use.

(J) Pier length shall be limited by:

(i) not extending beyond the established pier length along the same shoreline for similar use; (This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);

(ii) not extending into the channel portion of the water body; and

(iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland

vegetation which borders the water body. The one-fourth length limitation shall not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier cannot be longer than the pier head line established by the adjacent piers, nor longer than $\frac{1}{3}$ the width of the water body.

(K) Piers longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot each 100 foot increment of pier length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation which borders the water body.

(L) Piers shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property owner's 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 pier 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 of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 7H .1205 (q) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(M) Applicants for authorization to construct a dock or pier shall provide notice of the permit application or exemption request to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(Emphasis added)

ATTACHMENT B

STIPULATED FACTS

1. Petitioner, Camp Albemarle, a non-profit North Carolina corporation, owns 29.85 acres of property located at 156 Albemarle Road (“the property”) adjacent to Bogue Sound in Newport, Carteret County, NC.
2. Over the last 50 years, the property has been used as a summer camp for children, and as a retreat for churches, groups and individuals in the non-summer months. Currently, 7 cabins, a bathhouse, a dining hall, lodge, swimming pool, 2 single-family residences, a basketball court, an office and existing pier with 25 slips (12 sunfish racks and 13 mooring buoys) are located on the property.
3. The existing bulkhead on the property defines the Normal High Water contour.
4. Until the late 1990's, the existing pier located on the property was approximately as long as the proposed new pier. However, most of the pier surface of the existing pier was removed during the 1996 hurricanes.
5. Petitioner applied for a CAMA Major Development Permit to remove and relocate westward the existing pier and 12 of the existing slips; and to construct a new 6' x 500' pier, 24' x 24' platform, 8' x 48' finger pier, install 2 additional mooring buoys, 1 jet ski lift for emergency use and 9 lifts (sunfish racks reduced by 3) which would extend 572 feet into Bogue Sound. At this location, Bogue Sound is approximately 1 mile wide (5280 feet). The proposed development would include the same total number of slips (25) as existing on this property.
6. The property is located within the Estuarine Waters Area of Environmental Concern (AEC) and the Public Trust Areas AEC designated by the Coastal Resources Commission (CRC) in Rules 15A NCAC 7H .0206 and .0207.
7. CRC’s Rule 15A NCAC 7H .0208(b)(6)(K) provides that piers longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot each 100 foot increment of pier length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation.
8. The water depth gained by extending Petitioner’s proposed pier from 400 feet to 500 feet is 6 inches at this property.
9. Bogue Sound is shallow in nature, and even though the property has a shoreline of 1,120

feet, there is no location to construct the proposed new pier that would gain 1 foot of water for every 100 feet beyond 400 feet. The shoreline of Bogue Sound is also predominant with beds of Submerged Aquatic Vegetation (SAV). At this property, the SAV beds end at approximately 390' from the bulkhead.

10. Currently, the existing 25 slips (12 sunfish racks and 13 mooring buoys) are located 200' to 572' from the bulkhead. Petitioner's existing means to access these slips is by traversing through the water over SAV beds.
11. In order to obtain deeper water and to keep out of existing SAV beds, Petitioner is proposing to construct the 9 lifts (sunfish racks) starting at 405' from the existing bulkhead and the jet ski lift would be located 512' from the existing bulkhead.
12. The N.C. Division of Water Quality (DWQ) has approved and given the General 401 Water Quality Certification for the proposed project. (DWQ Project # 08 0173)
13. The Department of the Army, Corps of Engineers, Regulatory Division has authorized the proposed project to be conditioned under the CAMA Permit as provided in the letter dated March 27, 2008. (Action ID No. SAW-2008-0431-016)
14. During the permit review process, neither N.C. Division of Marine Fisheries nor N.C. Wildlife Resources Commission objected to the proposed project.
15. The N.C. Division of Coastal Management Director, James H. Gregson denied the permit application by letter dated May 20, 2008 because the proposed development was inconsistent with Rule 15A NCAC 7H .0208(b)(6)(K).
16. Petitioners filed this variance request on May 30, 2008, seeking relief from strict application of the Public Trust and Estuarine AEC rule set forth in 15A NCAC 7H .0208(b)(6)(K).

ATTACHMENT C

PETITIONER AND STAFF POSITIONS

I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.

Petitioner's Position: Yes.

One of our "boatslips" is a lift to keep a jet ski on for emergency use only. Currently we have to either leave the jet ski in the water, or tie a floating dock to the old pilings to store it on and keep it out of the water. The safety of our campers is very important, and being able to reach them quickly in an emergency situation could save a life. Leaving a jet ski to sit in the water will prevent it from running in just a few weeks, and storing it on the floating dock requires us to move it into deeper water at high tide, and then put it back onto the floating dock at the next high tide.

Currently the end of our pier sits on dry land most days at low tide. Sometimes the end of the pier is several hundred feet from the waters edge. Even a 400 foot pier, if that were approved, would leave the end of the pier on dry land at may low tides.

We are a water program based Christian camp, and Bogue Sound is an integral part of our summer program. We use the water for sailing; we use the views to teach about God, we look into the water to learn about wildlife and ecosystems. We try to be an economical choice for families to send their children to camp, and all of our income comes from our fees and donations. Staying in the price ranges of many families has also meant that we have not been able to build a pier until now. We feel that a pier is so important to the growth, or even survival, of this camp.

Staff's Position: Yes.

This property has operated as a camp for over 50 years and has had a pier as long as the proposed pier prior to the 1996 hurricanes. Due to the damage from the hurricanes, the existing pier is now approximately 100 feet long with 12 sunfish racks and 13 mooring buoys. At this location, SAV beds are prevalent up until about 390 feet from the bulkhead. Petitioners could have sought to construct a 400 foot pier without having to go through the CAMA Major Permit process. However, in an effort to protect the SAV beds as well as meet their operational and educational needs as camp, they have requested a 572 foot pier that would extend beyond this critical habitat and would eliminate people walking back and forth over SAV beds on a regular basis to access the sunfish racks. In this area, Bogue Sound is shallow and nowhere along the Petitioner's 1120 foot shoreline is there sufficient water depth to meet the CRC's rule of gaining access to deeper water at a rate of at least 1 foot for every 100 foot increment of pier length

greater than 400 feet. Staff believes strict application of the rules would cause an unnecessary hardship because Petitioner would be unable to use the pier to access water at low tide.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioner's Position: Yes.

Bogue Sound is very shallow normally, but we are in a kind of cove area at the camp. Although we have a long shoreline, there is no place, and no angle we could build a pier in order to gain the 1 foot of water for every 100 feet beyond 400 feet.

Staff's Position: Yes.

The Petitioner's property is located on a point of Bogue Sound just east of Gale's Creek with extensive shallow water depths. Even with 1,120 feet of shoreline, it is not possible to find adequate water depth for the proposed pier to comply with CRC rules and regulations. The topography of this property necessitates that the proposed pier be constructed further than 390 feet in order to avoid damage to the SAV beds while providing adequate water depths.

III. Do the hardships result from actions taken by the Petitioner? Explain.

Petitioner's Position: No.

We have not done anything to reduce the slope of the floor of the sound. It is just that our property can not meet that rule.

Staff's Position: No.

As riparian property owners, Petitioners should have an opportunity to access the water from their shoreline, in order to promote their sailing program and educate campers about preservation of the resource. Petitioner has taken proactive steps to avoid any further damage to SAV beds by removing and relocating the pier on the western side of the property and designing it to go beyond the SAV beds. Staff agrees with Petitioner that the hardships were not a result of their actions. If anything, Petitioner's lack of action after the hurricanes of 1996 in not requesting to repair and/or replace their pier to its original location and dimensions is the reason for the current hardship.

IV. Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Petitioner's Position: Yes.

We have the same goals; we both want to preserve our coastal waters. The pier will allow us to get out into the water without walking through the mud and vegetation. For those that are not able to walk on mud easily, this pier will allow access to be over the water.

We are not a multi-million dollar condominium development. We are a small non-profit church camp which is trying to have a good sailing program.

Access to the water is very important to us, and by adding this pier we can allow children, youth and adults from all over the state the opportunity to sit on a pier over the water, to watch the wildlife swim or fly by, learn that this gift we have is important to protect.

A pier on this property is not a new thing. Until the 1990's we had a pier, approximately as long as we want to build this one. We do want to move it slightly to get into harder sand, but the length is approximately the same as the one destroyed by the hurricanes.

As I mentioned above, we currently use our old pier pilings to store sailboats on in the summer. The rest of the year they just sit out there. Part of our permit will allow us to remove these eyesores from the property.

Staff's Position: Yes.

There is shallow water depth at this property which doesn't allow the proposed pier of 572 feet to be consistent with CRC's rules requiring that for every 100 feet of pier length beyond 400 feet there needs to be access to deeper water at a rate of 1 foot for each 100 foot increment of pier length. At this property, however, the proposed project will expand over the SAV resources and facilitate camp operations without creating any impediment to navigation.

In general, SAV beds provide important structural fish habitat and other important ecosystem functions in the estuarine systems of North Carolina. When SAV beds are subjected to human-induced impacts in addition to natural stressors, large-scale losses of SAV may occur. (See 2005 Coastal Habitat Protection Plan, p. 269) The CRC's management objective for Estuarine Waters is to conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values and to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to

maximize their benefits to man and the estuarine and ocean system. Rule 15A NCAC 07H .0206(c). Furthermore, the CRC's management objective for Public Trust Areas is to protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. Rule 15A NCAC 07H .0207(c).

Staff believes the proposed project will be consistent with the spirit, purpose, and intent of CRC's rules in that Petitioner is seeking to expand the pier length to protect SAV beds, which are critical fish habitat. Furthermore, this project will not cause any undue burden on navigation because the new proposed pier is no longer than what was previously at the site before the 1996 hurricanes damaged it. Granting this variance will preserve substantial justice in that it is striking a balance between protecting the resource and providing Petitioner a facility to access to the water as well as educate campers about conservation of our estuarine system.

ATTACHMENT D

PETITIONER'S VARIANCE REQUEST MATERIALS

- A. CAMA Variance Request form.
- B. Application for CAMA Major Development Permit.
- C. Denial letter from DCM Director, James Gregson, dated May 20, 2008.

DCM FORM 11
(revised 6/26/06)

CAMA VARIANCE REQUEST

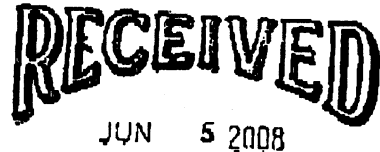
DCM FILE NO.

08-44

Petitioner supplies the following information:

Your Name Rev. Robert Vodra
Address 156 Albemarle Drive, Newport, NC 28570
Telephone 252-726-4848
Fax and/or Email 252-726-0621 (fax) robert@campalbemarle.org (e-mail)

Name of Your Attorney (if applicable)
Address
Telephone
Fax and/or Email



Morohead City DCM

Have you received a decision from the Division of Coastal Management (DCM) or a Local Permit Officer denying your application for a CAMA permit?

- no (You are not entitled to request a variance until your permit application has been denied.)
- yes (You may proceed with a request for a variance.)

What did you seek a permit to do?

Replace a pier which was destroyed during the hurricanes in the 1990's, moving it approximately 20 feet to the West of its former location to get into solid ground.

Build a 572 foot long pier, consisting of a 6' x 500' pier, 24' x 24' platform, 8' x 48' finger pier, install two mooring buoys, one jet ski lift and 9 boatlifts, that all extend 572 feet into Bogue Sound in Carteret County.

What Coastal Resources Commission rule(s) prohibit this type of development?
15 A NCAC 07H.0208(b)(6)(k)

Can you redesign your proposed development to comply with this rule? no If your answer is no, explain why you cannot redesign to comply with the rule.

We are located on Bogue sound, just East of Galcs Creek. This area of the sound is extremely shallow, so there is no way that we can gain 1 foot of water for every 100 feet of length beyond 400 feet.

Exhibit A

One of the purposes of this pier will be to provide a nighttime storage facility (Sunfish racks, listed as boat slips). The boats are lifted on and off of these racks every day during our summer camp program, from staff standing in the water. The submerged aquatic grasses extend approximately 400 feet from shore. By shortening the pier, we would have our Sunfish sailboat racks over the submerged aquatic vegetation, causing them to be stepped on over and over again over our summer camp season.

Can you obtain a permit for a portion of what you wish to do? maybe If so, please state what the permit would allow.

When I was talking with the CAMA representative, he said that we might be able to get a permit for a 400 foot pier. Even with a 400 foot pier, we are still not reaching the edge of the water at low tide.

State with specificity what you are NOT allowed to do as a result of the denial of your permit application. It will be assumed that you can make full use of your property, except for the uses that are prohibited as a result of the denial of your permit application.

Since our pier was destroyed in the 1990's we have been able to keep a 110 foot pier on our property, and posts from our old pier to keep sunfish racks for summer use. Financially we were never able to rebuild the whole pier, and our time to get the rebuilding permit has long expired.

Anyone wishing to fish usually can not throw a line from the end of our current pier, as our pier is usually on dry land at low tide. Any guests arriving by boat must anchor over 500 feet from shore, and wade into shore. Our boat storage (racks) are over dry land at low tide, which means we often have to take a boat down and walk it out to the edge of the water.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

- I. Identify the hardship(s) you will experience if you are not granted a variance and explain why you contend that the application of this rule to your property constitutes an unnecessary hardship. [The North Carolina Court of Appeals has ruled that this factor depends upon the unique nature of the property rather than the personal situation of the landowner. It has also ruled that financial impact alone is not sufficient to establish unnecessary hardship, although it is a factor to be considered. The most important consideration is whether you can make reasonable use of your property if the variance is not granted. [*Williams v. NCDENR, DCM, and CRC*, 144 N.C. App. 479, 548 S.E.2d 793 (2001).]

One of our "boatslips" is a lift to keep a jet ski on for emergency use only. Currently we have to either leave the jet ski in the water, or tie a floating dock to the old pilings to store it on and keep it out of the water. The safety of our campers is very important, and being able to reach them quickly in an emergency situation could save a life. Leaving a jet ski to sit in the water will prevent it from running in just a few weeks, and storing it on the floating dock requires us to

move it into deeper water at high tide, and then put it back onto the floating dock at the next high tide.

Currently the end of our pier sits on dry land most days at low tide. Sometimes the end of the pier is several hundred feet from the waters edge. Even a 400 foot pier, if that were approved, would leave the end of the pier on dry land at many low tides.

We are a water program based Christian camp, and Bogue Sound is an integral part of our summer program. We use the water for sailing; we use the views to teach about God, we look into the water to learn about wildlife and ecosystems. We try to be an economical choice for families to send their children to camp, and all of our income comes from our fees and donations. Staying in the price range of many families has also meant that we have not been able to build a pier until now. We feel that a pier is so important to the growth, or even survival, of this camp.

II. Describe the conditions that are peculiar to your property (such as location, size, and topography), and cause your hardship.

Bogue Sound is very shallow normally, but we are in a kind of cove area at the camp. Although we have a long shoreline, there is no place, and no angle we could build the pier at in order to gain the 1 foot of water for every 100 feet beyond 400 feet.

III. Explain why your hardship does not result from actions that you have taken.

We have not done anything to reduce the slope of the floor of the sound. It is just that our property can not meet that rule.

IV. Explain why the granting of the variance you seek will be consistent with the spirit, purpose, and intent of the CRC's rules, standards, or orders; preserve substantial justice; and secure public safety.

We have the same goals; we both want to preserve our coastal waters. The pier will allow us to get out into the water without walking through the mud and vegetation. For those that are not able to walk on mud easily, this pier will allow them access to be over the water.

We are not a multi-million dollar condominium development. We are a small non-profit church camp which is trying to have a good sailing program.

Access to the water is very important to us, and by adding this pier we can allow children, youth and adults from all over the state the opportunity to sit on a pier over the water, to watch the wildlife swim or fly by, learn that this gift we have is important to protect.

A pier on this property is not a new thing. Until the 1990's we had a pier, approximately as long

as we want to build this one. We do want to move it slightly to get into harder sand, but the length is approximately the same as the one destroyed by the hurricanes.

As I mentioned above, we currently use our old pier pilings to store sailboats on in the summer. The rest of the year they just sit out there. Part of our permit will allow us to remove these eyesores from the property.

Please attach copies of the following:

Permit Application and Denial documents

Site Drawing with Survey and Topographical Information

Any letters filed with DCM or the LPO commenting on or objecting to your project

Provide a numbered list of all true facts that you are relying upon in your explanation as to why you meet the four criteria for a variance. Please list the variance criterion, ex. unnecessary hardship, and then list the relevant facts under each criterion. [The DCM attorney will also propose facts and will attempt to verify your proposed facts. Together you will arrive at a set of facts that both parties agree upon. Those facts will be the only facts that the Commission will consider in determining whether to grant your variance request.]

Attach all documents you wish the Commission to consider in ruling upon your variance request. [The DCM attorney will also propose documents and discuss with you whether he or she agrees with the documents you propose. Together you will arrive at a set of documents that both parties agree upon. Those documents will be the only documents that the Commission will consider in determining whether to grant your variance request.]

Pursuant to N.C.G.S. 113A-120.1 and 15A NCAC 7J .0700, the undersigned hereby requests a variance.

Date: 6-05-08

Signature: 

This variance request must be filed with the Director, Division of Coastal Management, and the Attorney General's Office, Environmental Division, at the addresses shown on the attached Certificate of Service form.


CERTIFICATE OF SERVICE

I hereby certify that this Variance Request has been served on the State agencies named below by United States Mail or by personal delivery to the following:

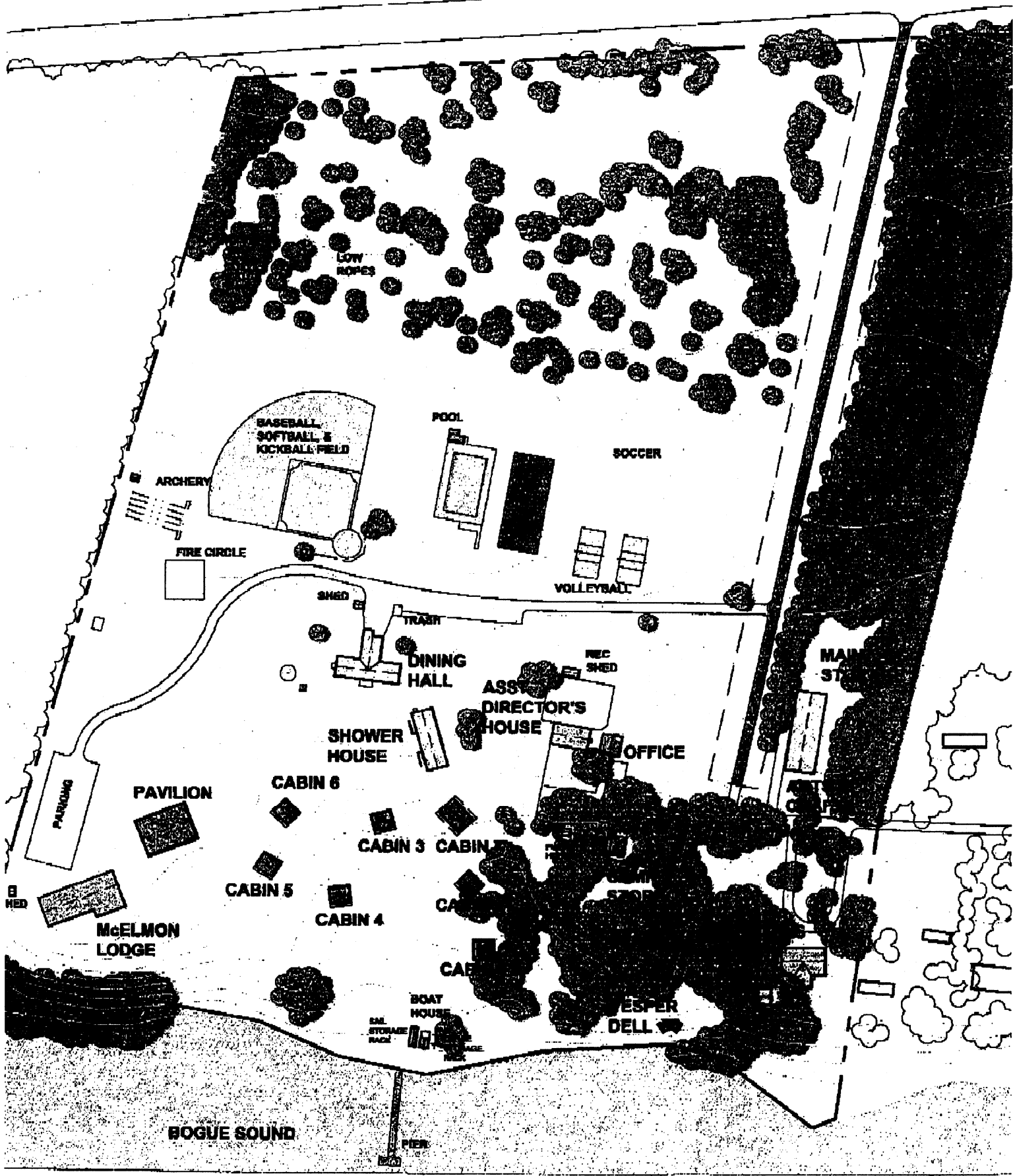
Original served on: Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

copy: Attorney General's Office
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

This the 5th day of JUNE, 2008.



Signature of Petitioner or Attorney



Existing Conditions
Camp Albemarle

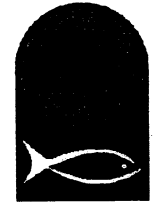
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DEC 28 2007

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APPLICATION for Major Development Permit

Morehead City DCM



(last revised 12/27/06)

North Carolina DIVISION OF COASTAL MANAGEMENT

| | | | | | |
|--|----------------|------------------------------------|---|-----------------------------|-------------|
| 1. Primary Applicant/ Landowner Information | | | | | |
| Business Name Camp Albemarle | | | Project Name (if applicable) Camp Albemarle Pier | | |
| Applicant 1: First Name Robert | | MI W. | Last Name Vodra | | |
| Applicant 2: First Name William | | MI | Last Name Farrior | | |
| If additional applicants, please attach an additional page(s) with names listed. | | | | | |
| Mailing Address 156 Albemarle Drive | | | PO Box | City Newport | State NC |
| ZIP 28570 | Country USA | Phone No. 252 - 726 - 4848 ext. | | FAX No. 252 - 726 - 0621 | |
| Street Address (if different from above) | | | City | State | ZIP |
| Email robert@campalbemarle.org | | | | | |

| | | | | | |
|--|--------------------------------------|--------------|--------------------------------------|--------------|-------------|
| 2. Agent/Contractor Information | | | | | |
| Business Name Boyd R. Sprouse Marine Construction | | | | | |
| Agent/ Contractor 1: First Name Boyd | | MI R. | Last Name Sprouse | | |
| Agent/ Contractor 2: First Name | | MI | Last Name | | |
| Mailing Address Boyd Richard Sprouse | | | PO Box 93 | City Bath | State NC |
| ZIP 27808 | Phone No. 1 252 - 293 - 0045 ext. | | Phone No. 2 252 - 945 - 1978 ext. | | |
| FAX No. 252 923 0045 | | Contractor # | | | |
| Street Address (if different from above) | | | City | State | ZIP |
| Email | | | | | |

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Exhibit B

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| | | | |
|--|---|--------------------------|---------------------|
| 3. Project Location | | | |
| County (can be multiple) Carteret | Street Address 156 Albemarle Drive | Morehead City DCM | |
| Subdivision Name N/A | | City Newport | State Rd. # 1143 |
| Phone No. 252 - 726 - 4848 ext. | | State NC | Zip 28570 - |
| Lot No.(s) (if many, attach additional page with list) N/A, | | | |
| a. In which NC river basin is the project located? White Oak | b. Name of body of water nearest to proposed project Bogue Sound | | |
| c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Manmade <input type="checkbox"/> Unknown | d. Name the closest major water body to the proposed project site. Atlantic Ocean | | |
| e. Is proposed work within city limits or planning jurisdiction? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Carteret County Planning and Zoning | | |

| | |
|---|---|
| 4. Site Description | |
| a. Total length of shoreline on the tract (ft.) 1120 | b. Size of entire tract (sq.ft.) 1,300,266 (29.85 acres) |
| c. Size of individual lot(s) N/A, (If many lot sizes, please attach additional page with a list) | d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) 6.06 (at 75 feet from shore) <input checked="" type="checkbox"/> NHW or <input type="checkbox"/> NWL |
| e. Vegetation on tract grass, oak and pine trees | |
| f. Man-made features and uses now on tract 7 cabins, bathhouse, dining hall, lodge, shelter, pool, 2 houses, office, basketball court, existing pier, used as a camp and retreat locataion. | |
| g. Identify and describe the existing land uses adjacent to the proposed project site. Residential houses | |
| h. How does local government zone the tract? CC | i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA If yes, by whom? | |
| l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA | |

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Morehead City DCM

| | |
|---|---|
| m. (i) Are there wetlands on the site? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| (ii) Are there coastal wetlands on the site? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| (iii) If yes to either (i) or (ii) above, has a delineation been conducted? (Attach documentation, if available) | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| n. Describe existing wastewater treatment facilities. Septic systems | |
| o. Describe existing drinking water supply source. West Carteret Water Corp | |
| p. Describe existing storm water management or treatment systems. none | |

| | |
|---|--|
| 5. Activities and Impacts | |
| a. Will the project be for commercial, public, or private use? | <input type="checkbox"/> Commercial <input type="checkbox"/> Public/Government <input checked="" type="checkbox"/> Private/Community |
| b. Give a brief description of purpose, use, and daily operations of the project when complete. The pier will be used by campers during summer programs and retreat groups in the non-summer months. The boat lifts will be used to store boats during our 10 week summer camp. The pier will allow campers to get to boating area without walking through SAV's (to protect them), and during the non-summer will be used mainly for sitting or small worship services by retreat groups. | |
| c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored. Machine Driving on Barge and working from shore, equipment will be stored on shore or on barge (which will be brought to deeper water when not in use). | |
| d. List all development activities you propose. Pier 6' x 500', 24' x 24' platform, Step down (finger) 8' x 48', Sunfish storage racks (9) off side of pier, jet ski lift, two new moorings/ bouys for Flying Scots (19 foot sailboat), new steps from shore into water | |
| e. Are the proposed activities maintenance of an existing project, new work, or both? | Existing mooring bouys will remain, current pier and boat lifts (12) will be removed. Pier, 2 moorings, 10 boat lifts and steps are all new construction |
| f. What is the approximate total disturbed land area resulting from the proposed project? | 0 <input checked="" type="checkbox"/> Sq.Ft or <input type="checkbox"/> Acres |
| g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA |
| h. Describe location and type of existing and proposed discharges to waters of the state. No discharge of water to occur, most of property is permeable grass covered. No change planned. | |
| i. Will wastewater or stormwater be discharged into a wetland? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA |
| If yes, will this discharged water be of the same salinity as the receiving water? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA |
| j. Is there any mitigation proposed? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA |
| If yes, attach a mitigation proposal. | |

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APPLICATION for
Major Development Permit

DEC 28 2007

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6. Additional Information

Morehead City DCM

In addition to this completed application form, (MP-1) the following items below, if applicable, must be submitted in order for the application package to be complete. Items (a) - (f) are always applicable to any major development application. Please consult the application instruction booklet on how to properly prepare the required items below.

- a. A project narrative.
- b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed.
- c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site.
- d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties.
- e. The appropriate application fee. Check or money order made payable to DENR.
- f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management.

| | |
|---|------------------------|
| Name Don Waddell | Phone No. 703-493-1022 |
| Address 9708 Spanish Oak Court, Fairfax, VA 22039 | |
| Name note: all adjacent property owned by Don Waddell | Phone No. |
| Address | |
| Name | Phone No. |
| Address | |
- g. A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates.

| |
|---|
| Bulk head Permit SAWCO78-N-025-0080 (4-1-88) |
| Former Pier CESA-W-C080-N-000-0291 (2-24-95) CAMA 21-95 |
- h. Signed consultant or agent authorization form, if applicable.
- i. Wetland delineation, if necessary.
- j. A signed AEC hazard notice for projects in oceanfront and inlet areas. (Must be signed by property owner)
- k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act.

7. Certification and Permission to Enter on Land

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit.

I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

Date 12/18/07 December 18, 2007 _____ Print Name Boyd R. Sprouse _____

Signature Boyd R. Sprouse

- Please indicate application attachments pertaining to your proposed project.
- DCM MP-2 Excavation and Fill Information
 - DCM MP-3 Upland Development
 - DCM MP-4 Structures Information
 - DCM MP-5 Bridges and Culverts

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DEC 28 2007

STRUCTURES

(Construction within Public Trust Areas)

Morehead City DCM

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

1. DOCKING FACILITY/MARINA CHARACTERISTICS

This section not applicable

a. (i) Is the docking facility/marina:
 Commercial Public/Government Private/Community

b. (i) Will the facility be open to the general public?
 Yes No

c. (i) Dock(s) and/or pier(s)

(ii) Number 1

(iii) Length 500'

(iv) Width 6'

(v) Floating Yes No

d. (i) Are Finger Piers included? Yes No

If yes:

(ii) Number 1

(iii) Length 48'

(iv) Width 8'

(v) Floating Yes No

e. (i) Are Platforms included? Yes No

If yes:

(ii) Number 1

(iii) Length 24'

(iv) Width 24'

(v) Floating Yes No

Note: Roofed areas are calculated from dripline dimensions.

f. (i) Are Boatlifts included? Yes No

If yes:

(ii) Number 10

(iii) Length 6' - 9'

(iv) Width 4' - 5.5'

(1) 6'x4' Jet ski lift, (9) 9' x 5.5' Sunfish lifts

g. (i) Number of slips proposed

25 at end of project

(ii) Number of slips existing

25 (12 existing will be removed and relocated in our construction)

h. Check all the types of services to be provided.

Full service, including travel lift and/or rail, repair or maintenance service

Dockage, fuel, and marine supplies

Dockage ("wet slips") only, number of slips: 25

Dry storage; number of boats: _____

Boat ramp(s); number of boat ramps: _____

Other, please describe:

i. Check the proposed type of siting:

Land cut and access channel

Open water; dredging for basin and/or channel

Open water; no dredging required

Other; please describe:

j. Describe the typical boats to be served (e.g., open runabout, charter boats, sail boats, mixed types).

Sunfish sailboats, 1 jet ski, 19' Flying Scot Sailboats

k. Typical boat length: 14' - 19'

l. (i) Will the facility be open to the general public?

Yes No

m. (i) Will the facility have tie pilings?

Yes No

(ii) If yes number of tie pilings?



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2. DOCKING FACILITY/MARINA OPERATIONS

Morehead City DCM Section not applicable

- a. Check each of the following sanitary facilities that will be included in the proposed project.
 - Office Toilets
 - Toilets for patrons; Number: _____; Location: Toilets and showers existing on site, not part of proposed project
 - Showers
 - Boatholding tank pumpout; Give type and location: _____
- b. Describe treatment type and disposal location for all sanitary wastewater. existing septic systems on site

- c. Describe the disposal of solid waste, fish offal and trash.
Trash cans and dumpster on site

- d. How will overboard discharge of sewage from boats be controlled?
no boats will have heads only sunfish and flying scot sailboats, N/A

- e. (i) Give the location and number of "No Sewage Discharge" signs proposed.
N/A

 - (ii) Give the location and number of "Pumpout Available" signs proposed.
N/A

- f. Describe the special design, if applicable, for containing industrial type pollutants, such as paint, sandblasting waste and petroleum products.
N/A, no boat maintenance done

- g. Where will residue from vessel maintenance be disposed of?
N/A, no boat maintenance done

- h. Give the number of channel markers and "No Wake" signs proposed. 0
- i. Give the location of fuel-handling facilities, and describe the safety measures planned to protect area water quality.
N/A no fuel handling facilities

- j. What will be the marina policy on overnight and live-aboard dockage?
No overnight sleeping on boats allowed

- k. Describe design measures that promote boat basin flushing?
Open water flushing

- l. If this project is an expansion of an existing marina, what types of services are currently provided?
Currently have 12 lifts for sunfish and 13 existing mooring buoys for holding boats when setting up, or during breaks.

- m. Is the marina/docking facility proposed within a primary or secondary nursery area?
 Yes No

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REC-50
DEC 28 2007

n. Is the marina/docking facility proposed within or adjacent to any shellfish harvesting area?

Yes No

Morehead City DCM

o. Is the marina/docking facility proposed within or adjacent to coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.

CW SAV ADJ SB
 WL None

p. Is the proposed marina/docking facility located within or within close proximity to any shellfish leases? Yes No

If yes, give the name and address of the leaseholder(s), and give the proximity to the lease.

checked with Division of Marine Fisheries on Dec. 18, 2007. Closest lease is located over 2 Nautical Miles from proposed project (between Broad Creek and Sander's creek, on Bogue Banks side of sound)

3. BOATHOUSE (including covered lifts)

This section not applicable

a. (i) Is the boathouse structure(s):

Commercial Public/Government Private/Community

(ii) Number _____

(iii) Length _____

(iv) Width _____

Note: Roofed areas are calculated from dripline dimensions.

4. GROIN (e.g., wood, sheetpile, etc. If a rock groin, use MP-2, Excavation and Fill.)

This section not applicable

a. (i) Number _____

(ii) Length _____

(iii) Width _____

5. BREAKWATER (e.g., wood, sheetpile, etc.)

This section not applicable

a. Length _____

b. Average distance from NHW, NWL, or wetlands _____

c. Maximum distance beyond NHW, NWL or wetlands _____

6. MOORING PILINGS and BUOYS

This section not applicable

a. Is the structure(s):

Commercial Public/Government Private/Community

c. Distance to be placed beyond shoreline 550' for our 2 new proposed moorings, existing 420' - 570' from shore in a grid pattern

Note: This should be measured from marsh edge, if present.

b. Number 13 currently, 15 at end of project

d. Description of buoy (color, inscription, size, anchor, etc.)

13 existing white and blue buoys held by stainless steel anchor bolts. These are existing and only used for temporary mooring in preparing boats for sailing mornings, and between groups

We want to add two additional buoys to anchor our two Flying Scots for our 10 week summer season

e. Arc of the swing 50' for new buoys

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7. GENERAL

Morehead City DCM

a. Proximity of structure(s) to adjacent riparian property lines
563'

b. Proximity of structure(s) to adjacent docking facilities.
632'

Note: For buoy or mooring piling, use arc of swing including length of vessel.

c. Width of water body
2.37 N.M. (625 yards from land to channel)

d. Water depth at waterward end of structure at NLW or NWL
2.5' NLW

e. (i) Will navigational aids be required as a result of the project?
 Yes No NA
(ii) If yes, explain what type and how they will be implemented.

8. OTHER

This section not applicable

a. Give complete description:

December 18, 2007

Date

Pier at Camp Albemarle

Project Name

Boyd R. Sprouse

Applicant Name

Boyd R. Sprouse 12/18/2007

Applicant Signature

Boyd R. Sprouse 12/18/2007

APPROVED



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

May 20, 2008

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Camp Albemarle
c/o Mr. Robert Vodra
156 Albemarle Drive
Newport, NC 28570

Dear Mr. Vodra:

This letter is in response to your application for a Major Permit under the Coastal Area Management Act (CAMA), in which authorization was requested to remove 12 of the existing slips and the existing pier and to construct a new 6' X 500' pier, 24' X 24' platform, 8' X 48' finger pier, install two mooring buoys, one jet ski lift and 9 boatlifts that all extend 572 feet into Bogue Sound, in Carteret County. Processing of the application, which was received as complete by the Division of Coastal Management's Morehead City Office on December 28, 2007, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The proposed docking facility would extend approximately 572 feet into the waters of Bogue Sound.
- 2) The water depth at the end of the proposed pier is approximately 2.5 feet at normal low water. The water depth 400 feet from the shoreline along the proposed pier alignment is approximately 1.5 feet at normal low water.
- 3) The design of the proposed pier was based on an attempt to access adequate water depths to support boating operations for Camp Albemarle, and to avoid impacts to submerged aquatic vegetation. Areas of submerged aquatic vegetation extend out to approximately 400 feet from the shoreline.

Exhibit C

400 Commerce Avenue, Morehead City, North Carolina 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

An Equal Opportunity \ Affirmative Action Employer - 50% Recycled \ 10% Post Consumer Paper

- 4) The Division of Coastal Management has determined that the proposed project is inconsistent with the following rule of the Coastal Resources Commission:
 - a) 15A NCAC 07H.0208(b)(6)(k), which states that "Piers longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot each 100 foot increment of pier length longer than 400 feet, or, if the additional length is necessary to span some obstruction of to navigation, measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation which borders the water body)".

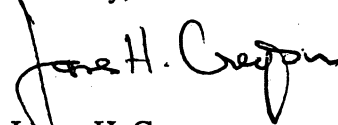
Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit under the Coastal Area Management Act be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the State guidelines for Areas of Environmental Concern or local land use plans.

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the General Statutes of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this letter. A copy of this petition should be filed with this office.

Also, you are advised that as long as this state permit denial stands, your project must be deemed inconsistent with the N.C. Coastal Management Program, thereby precluding the issuance of federal permits for this project. The Federal Coastal Zone Management Act (CZMA) gives you the right to appeal this finding to the U.S. Secretary of Commerce within thirty days of receipt of this letter. Your appeal must be on the grounds that the proposed activity is (1) consistent with the objectives or purposes of the CZMA, or (2) is necessary in the interest of national security, and thus, may be federally approved.

Members of my staff are available to assist you should you desire to modify your proposal in the future. If you have any questions concerning this matter, please contact either Mr. Doug Huggett or Mr. Daniel Govoni at (252) 808-2808.

Sincerely,



James H. Gregson

cc: Colonel John Pulliam – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD
Dave Timpy, ACOE

STIPULATED EXHIBITS

- A. Site Plans (plans have been reduced for copying but the oversized plans will be available at the meeting for review).
 - i. Site Plan of Existing Condition of Petitioner's Pier dated 11-2-07.
 - ii. Site Plan of Proposed New Pier dated 11-2-07.
 - iii. Site Plan with SAV locations dated 10-15-07.

- B. Water Depth Chart at Low Tide dated May 29, 2007.

- C. Division of Water Quality (DWQ) letter dated February 21, 2008, which approved and gave the General 401 Water Quality Certification for the proposed project. (DWQ Project # 08 0173)

- D. The Department of the Army, Corps of Engineers, Regulatory Division letter dated March 27, 2008, which authorized the proposed project to be conditioned under the CAMA Permit as provided in said letter. (Action ID No. SAW-2008-0431-016)

- E. Division of Marine Fisheries memo dated January 28, 2008.

CAMP ALBEMARLE PIER
 156 ALBEMARLE DRIVE
 NEWPORT, NORTH CAROLINA 28570

RECEIVED
 NOV 5 2011
 Morehead City

1,875' CH

LINE OF 80' SETBACK FROM CHANNEL

(1,795' FROM BU
 80' SETBACK FROM

RIPARIAN LINE

EXISTING MARSH GRASS

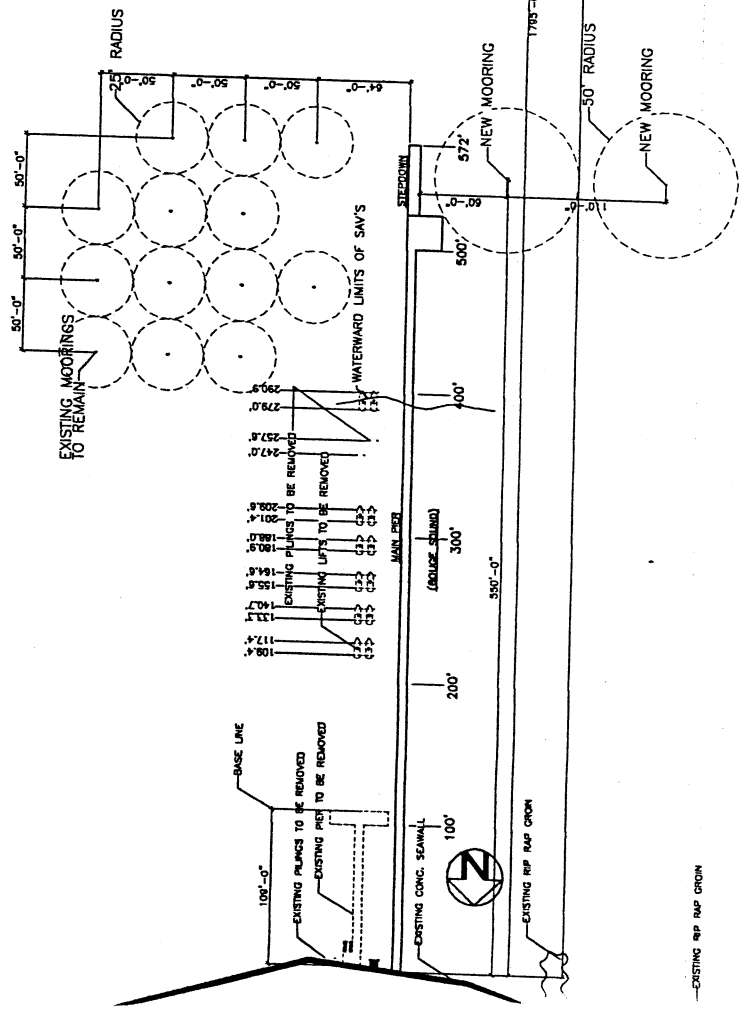


Exhibit A. i.

OVERALL PLAN VIEW
 SCALE: 1"=100'

APPROVED

SIGNED BY: BOYD SPROUSE

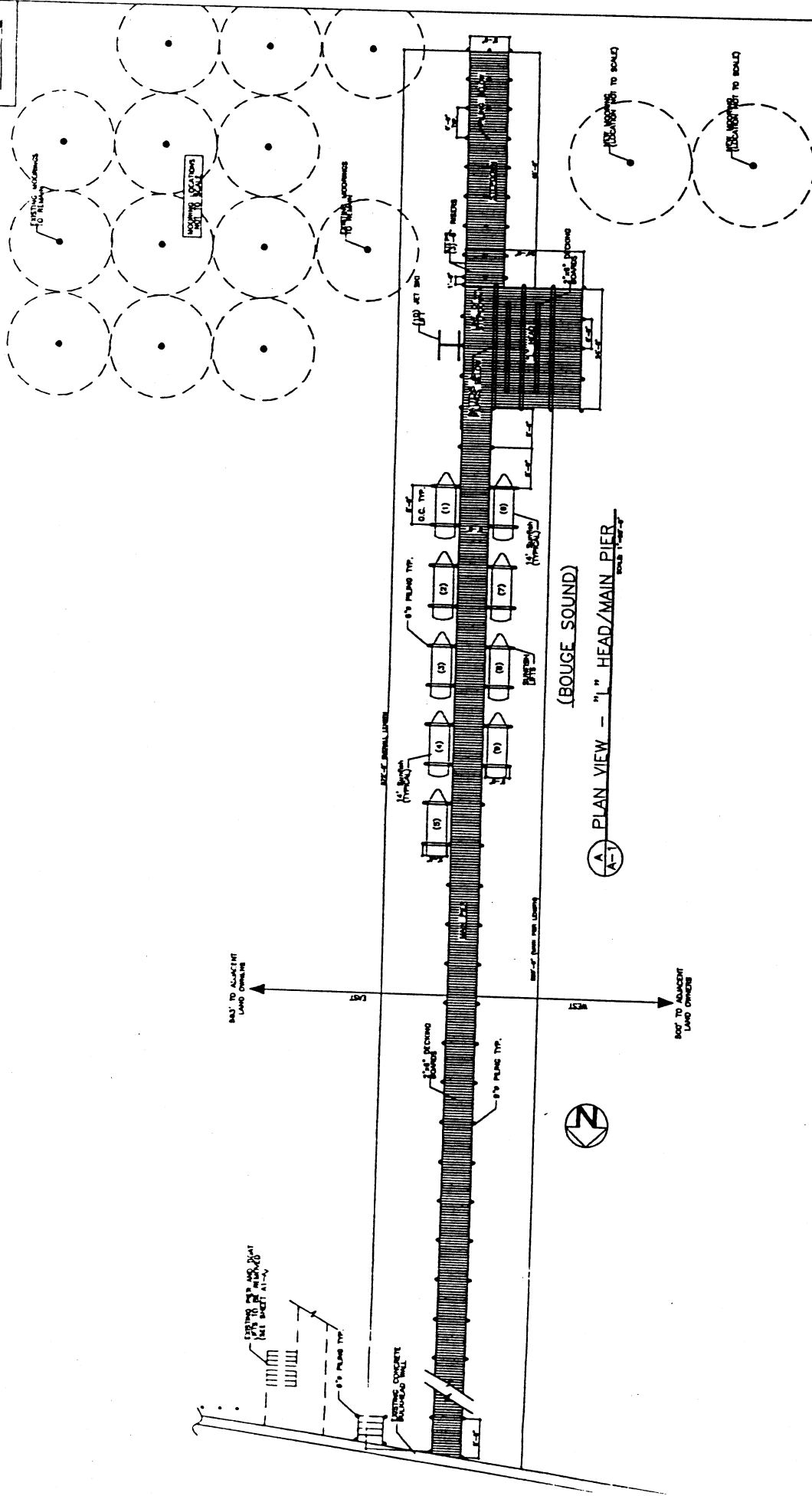
DRAWN BY: *Jean A. McPherson*

DATE: 11/02/07

RIPARIAN LINE

ALBEVABLE PIER

156 ALBERMARLE DRIVE
 CUMFORT, NORTH CAROLINA 28570



(BOULGE SOUND)
 PLAN VIEW - "1" HEAD/MAIN PIER
 BOULGE SOUND

Exhibit A. ii.

BY: BOYD SPROUSE
 BY: J. McLAUGHLIN - SEE SHEET A1A
 11/02/07

CAMP ALBEMARLE PIER
 156 ALBEMARLE DRIVE
 NEWPORT, NORTH CAROLINA 28570

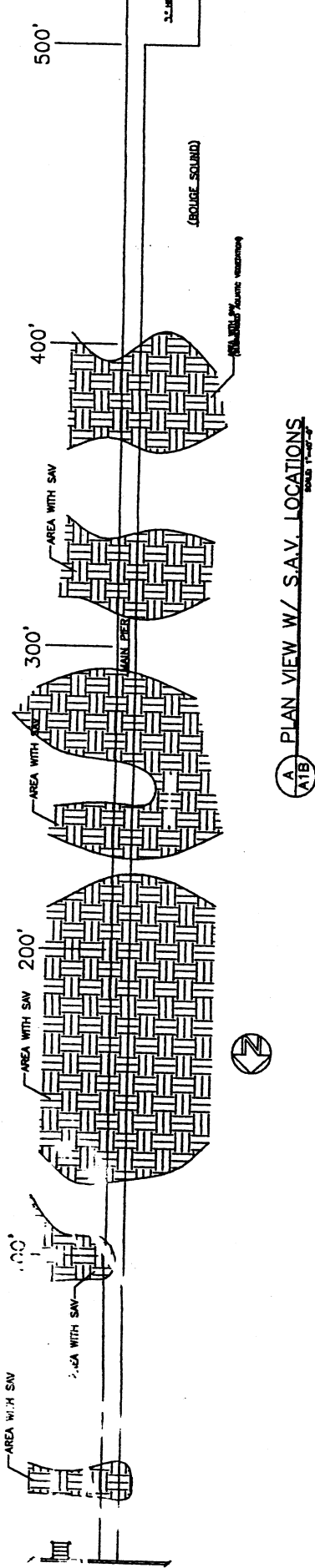


Exhibit A. iii.

FARRIOR & SONS, INC.
 CONSTRUCTION
 COMMERCIAL-INDUSTRIAL-AERIAL BUILDINGS

DATE: 10/15/07
 SCALE: AS NOTED
 DRAWN BY: J. McLAMHORN
 CHECK BY:

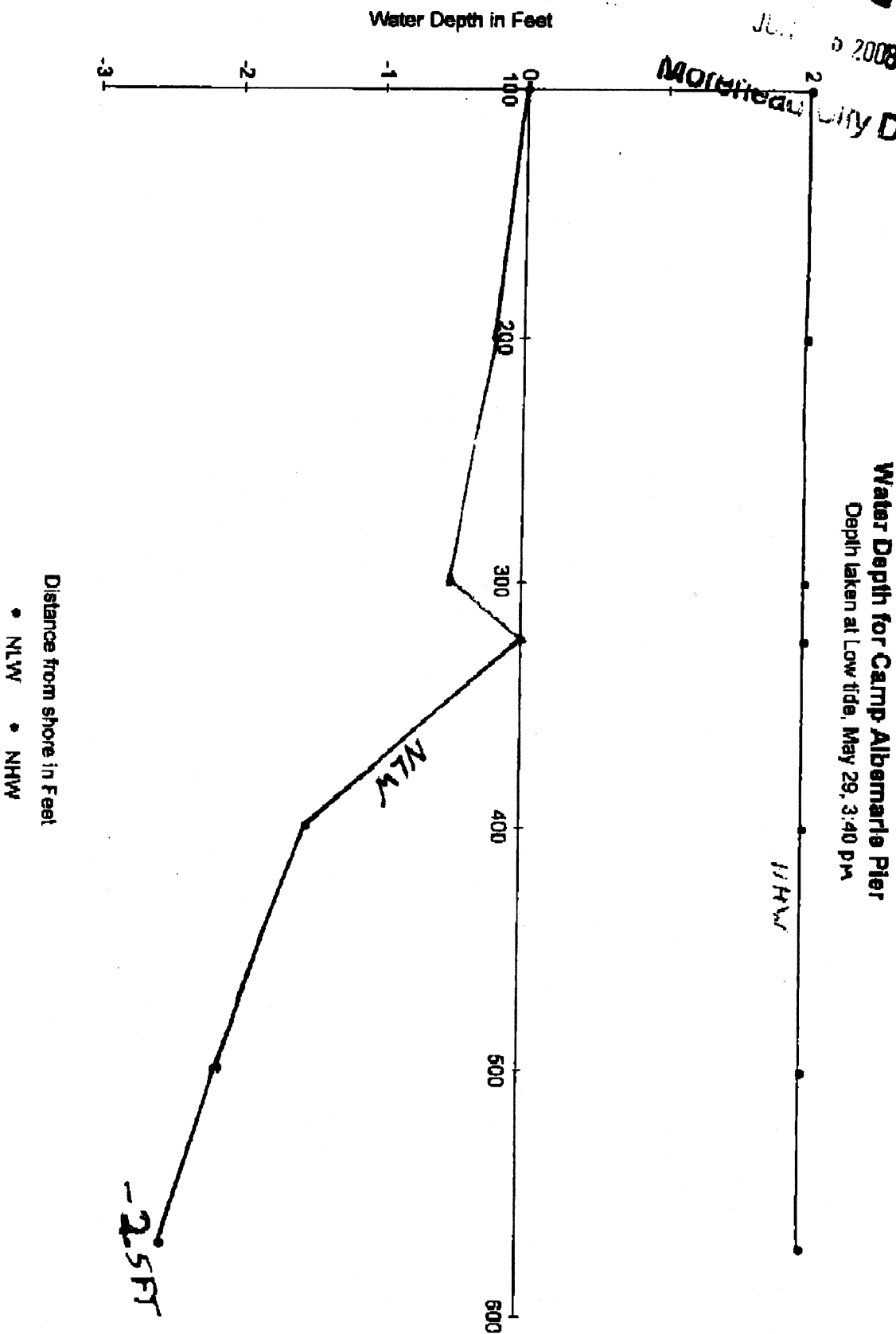
www.farrior.com
 Phone: 252-713-2005
 Fax: 252-713-2887

P.O. Box 177
 4971 Hwy 24, NE, Wood
 Farmville, NC 27889

SIGNED: *Jean M. McCall*

RECEIVED
JUN 6 2008

MORRISTOWN CITY DCM



Water Depth for Camp Albemarle Pier
Depth taken at Low tide, May 29, 3:40 PM

CAMP ALBERMARLE
156 ALBERMARLE DR.
NEWPORT, NC 28570

Exhibit B



Michael F. Easley, Governor
 William G. Ross Jr., Secretary
 North Carolina Department of Environment and Natural Resources
 Coleen H. Sullins, Director
 Division of Water Quality

DG

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 FEB 25 2008

Carteret County
 DWQ Project #: 08 0173

Camp Albemarle
 Attn: Robert Vodra & William Farris
 156 Albemarle Drive
 Newport, NC 28570
Morehead City DCM

**THIS IS NOT
 A CAMA PERMIT**

Subject Property: Camp Albemarle
 156 Albemarle Drive
NO WRITTEN CONCURRENCE NEEDED

Dear Messers. Vodra and Farris:

You have our approval, in accordance with the attached conditions, to construct a new pier, platform, finger pier, mooring buoys, assort lifts and to relocate slips as described in your CAMA Major application dated January 16, 2008 (see attached). After reviewing your application, we have decided these impacts are below the threshold for written authorization as long as all conditions of General Water Quality Certification Number 3687 (GC3687) is met. This certification may also be viewed on our website at <http://h2o.enr.state.nc.us/nwetlands>. This Certification allows you to use the Regional General # 198700056 Permit when issued by the US Army Corps of Engineers.

This approval is only valid for the purpose and design that is described in your application. If you change your project, you must notify us and you may be required to send us a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter and is thereby responsible for complying with all conditions. If total wetland fills for this project (now or in the future) exceed one acre, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). This approval shall expire when the corresponding Nationwide Permit expires or as otherwise provided in the General Certification. For this approval to be valid, you must follow the conditions listed in the attached certification and any additional conditions listed below.

Conditions of Certification:

- 1) Upon completion of the project, the applicant shall complete and return the enclosed "Certification of Completion Form" to notify DWQ that all the work included in the 401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the Division of Water Quality.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties.

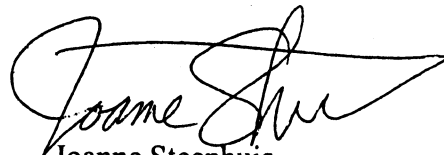


Page Two
Camp Albemarle
Attn: Robert Vodra & William Farrior
DWQ Project #: 08 0173
February 21, 2008

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition, which conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. This certification and its conditions are final and binding unless you ask for a hearing.

This letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please telephone Ian McMillan at 919.733.1786 or Joanne Steenhuis at our Wilmington Regional Office at 910.796.7215.

Sincerely,



Joanne Steenhuis
Senior Environmental Specialist

Attachment
Enclosures

GC 3687
Certification of Completion

cc: Boyd Sprouse - Boyd R. Sprouse Marine Construction
Ian McMillan - DWQ 401 Oversight Unit
David Timpy - Corps of Engineers Wilmington
Doug Huggett - DCM Morehead City
Heather Styron - DCM Morehead
Central Files
WiRO



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS

P. O. BOX 1890
WILMINGTON, NORTH CAROLINA 28402-1890

IN REPLY REFER TO

March 27, 2008

Regulatory Division

Action ID No. SAW-2008-0431-016

RECEIVED
MAR 31 2008

Morehead City DCM

Mr. Doug Huggett
Division of Coastal Management
North Carolina Department of Environment
and Natural Resources
400 Commerce Avenue
Morehead City, North Carolina 28557-3421

Dear Mr. Huggett:

Reference the application of Camp Albemarle for a Department of the Army permit to remove 12 existing slips and an existing pier, which would be relocated west of the existing pier area. The proposal also includes construction of a new 6 ft by 500 ft pier, 24 ft by 24 ft platform, 8 ft by 48 ft finger per, two mooring buoys, one Jet Ski lift and 9 sunfish lifts which would total the original 25 slips as described in the CAMA application dated 12-18-07. The project is located at 156 Albemarle Drive, adjacent to Bogue Sound, Morehead City in Carteret County, North Carolina.

The Federal agencies have completed review of the proposal as presented by the application and your field investigation report.

We recommend that the following conditions be included in the State authorization:

1. All work authorized by this permit must be performed in strict compliance with the attached plans, which are a part of this permit. Any modification to these plans must be approved by the US Army Corps of Engineers (USACE) prior to implementation.
2. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal, relocation, or alteration. The permittee shall notify NOAA/NATIONAL OCEAN SERVICE

Exhibit D

Chief Source Data Unit N CS261, 1315 E West HWY- RM 7316, Silver Spring, MD 20910-3282 at least two weeks prior to beginning work and upon completion of work.

3. Except as specified in the plans attached to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, in such a manner as to impair normal flows and circulation patterns within waters or wetlands or to reduce the reach of waters or wetlands.

4. The docks and piers extending over wetlands will be elevated sufficiently (a minimum of 3 feet) above the wetland substrate to prevent total shading of vegetation, substrate, or other elements of the aquatic environment.

5. Except as authorized by this permit or any USACE approved modification to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, within waters or wetlands. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.

6. Unless otherwise authorized by this permit, all fill material placed in waters or wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.

7. All mechanized equipment will be regularly inspected and maintained to prevent contamination of waters and wetlands from fuels, lubricants, hydraulic fluids, or other toxic materials. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the N.C. Division of Water Quality at (919) 733-5083, Ext. 526 or (800) 662-7956 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act will be followed.

8. The authorized structure and associated activity must not interfere with the public's right to free navigation on all navigable waters of the United States. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for reason other than safety.

9. The permittee must install and maintain, at his expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities. For further information, the permittee should contact the U.S. Coast Guard Marine Safety Office at (910) 772-2191.

10. In order to protect juvenile finfish resources, no excavation or filling activities will be permitted between the dates of April 1 and September 30 of any year without the prior

approval of the North Carolina Division of Coastal Management and the U.S. Army Corps of Engineers.

11. Prior to initiating construction activities, the permittee and his contractor will meet onsite with a representative of the U.S. Army Corps of Engineers to discuss permit requirements.

12. If the permittee discovers any previously unknown historic or archeological remains while accomplishing the authorized work, he will immediately notify the Wilmington District Engineer who will initiate the required coordination procedures.

13. Approval of the structure was based on determinations that there would be no obstruction to navigation. Under conditions existing in the Atlantic Intracoastal Waterway (AIWW), a possibility exists that the structure may be damaged by wave wash from passing vessels. Unreasonable slowing down of vessel traffic cannot be required because it would tend to nullify the navigational benefits on which the AIWW was justified. Issuance of this permit should not be construed, as relieving the permittee of taking proper steps to insure the structure and moored boats will not be damaged by wave wash normally to be expected in the AIWW.

14. The permittee shall advise the Corps in writing at least two weeks prior to beginning the work authorized by this permit and again upon completion of the work authorized by this permit.

15. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit. A copy of this permit, including all conditions, shall be available at the project site during construction and maintenance of this project.

16. The permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

17. The activity will be conducted in such a manner as to prevent a significant increase in turbidity outside the area of construction or construction-related discharge. Increases such that the turbidity in the waterbody is 50 NTU's or less in all rivers not designated as trout waters by the North Carolina Division of Environmental Management (NCDEM), 25 NTU's or less in all saltwater classes and in all lakes and reservoirs, and 10 NTU's or less in trout waters, are not considered significant.

18. The permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the work will, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the water or wetland to its pre-project condition.

19. Violations of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act must be reported in writing to the Wilmington District U.S. Army Corps of Engineers within 24 hours of the permittee's discovery of the violation.

20. The West Indian manatee (*Trichechus manatus*), which is listed as a federally endangered species, has been reported in the waters in New Hanover County. In order to protect the West Indian manatee all work should be done during the period from November 1 to May 31. If work must be done during the period from June through October the enclosed guidelines, entitled "Precautions for General Construction in Areas Which May Be Used by the West Indian Manatee in North Carolina" must be followed.

Questions or comments may be addressed to Mr. Dave Timpy, Wilmington Field Office, Regulatory Division, telephone (910) 251-4634.

Sincerely,



David L. Timpy, Project Manager
Wilmington Regulatory Field Office

Copies furnished:

Ms. Cyndi Karoly
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1650 Mail Service Center
Raleigh, North Carolina 27699-1650

Mr. Pete Benjamin
U.S. Fish and Wildlife Service
Fish and Wildlife Enhancement
Post Office Box 33726
Raleigh, North Carolina 27636-3726

Mr. Ron Sechler
National Marine Fisheries Service
Habitat Conservation Service
Pivers Island
Beaufort, North Carolina 28516

Mr. David Rackley
NMFS, Habitat Conservation Division
219 Fort Johnson Road
Charleston, South Carolina 29412-9110

Mr. Ronald J. Mikulak, Chief
Wetlands Regulatory Section
Water Management Division
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, Georgia 30303

CWO Steve Lyons
Staff Symbol: Aton
2301 East Ft Macon Rd.
Atlantic Beach, NC 28512

Ms. Tere Barrett, District Manager
Morehead City Regional Office
North Carolina Division of Coastal Management
400 Commerce Avenue
Morehead City, North Carolina 28557-3421

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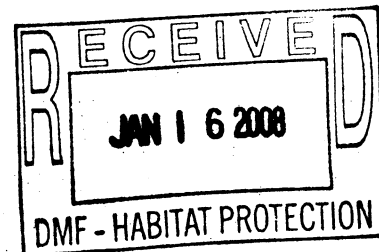
North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

January 16, 2008



MEMORANDUM:

TO: Mike Marshall
For Dr. Louis B. Daniel III, Director
Division of Marine Fisheries

FROM: Doug Huggett
Major Permits Processing Coordinator

SUBJECT: CAMA/DREDGE & FILL Permit Application Review

Applicant: Camp Albemarle

Project Location: 156 Albemarle Drive adjacent to Bogue Sound, Morehead City, Carteret County

Proposed Project: The applicant is proposing to remove 12 existing slips and pier, then relocate west of existing pier, keep existing mooring buoys in original location, construct new 6'x500' pier, 24'x24' platform, 8'x48' finger pier, two mooring buoys, one jet ski lift and 9 sunfish lift which would total the original 25 slips.

Please indicate below your agency's position or viewpoint on the proposed project and return this form by 2/6/2008. If you have any questions regarding the proposed project, please contact Heather Styron at (252) 808-2808. When appropriate, in-depth comments with supporting data are requested.

REPLY: _____ This agency has no objection to the project as proposed.

This agency has no comment on the proposed project.

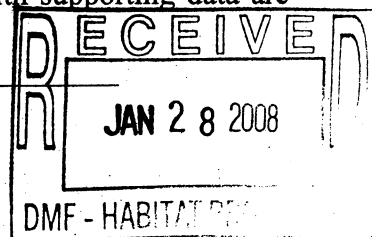
_____ This agency approves of the project only if the recommended changes are incorporated. See attached.

_____ This agency objects to the project for reasons described in the attached comments.

Michael D. Marshall
400 Commerce Avenue, Morehead City, North Carolina 28557

1/28/08

SIGNED Phone: 252-808-2808 \ FAX: 252-247-3330 \ ~~DATE~~ www.nccoastalmanagement.net





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JUN 10 2008

State of North Carolina

Morehead City DCM

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

Reply to: Elizabeth J. Weese
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
Tel: 919-716-6600
Fax: 919-716-6767

ROY COOPER
ATTORNEY GENERAL

June 9, 2008

By First Class Mail

Jim Gregson, Director
Division of Coastal Management
400 Commerce Way
Morehead City, NC 28557

Re: *Kenneth & Mary Anne Sutton v. DENR, DCM, 07 EHR 1316*

Dear Mr. Gregson:

Please find enclosed the Respondent's Memorandum in Support of the Administrative Law Judge's (ALJ) Decision. This Memorandum is submitted in accordance with Jennie Wilhelm Hauser's May 30, 2008 letter advising the parties of their right to file either exceptions to the ALJ's Decision or arguments in support of it. I am not filing any exceptions on behalf of the Respondent; however, I reserve the right to present oral argument to rebut any exceptions that Petitioner may file or to respond to any arguments that Petitioner may make before the Coastal Resources Commission.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Elizabeth J. Weese".

Elizabeth J. Weese
Assistant Attorney General

cc: Jennie Wilhelm Hauser, Special Deputy Attorney General
Kenneth and Mary Anne Sutton

Enclosure

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JUN 10 2008

Morehead City DON

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
07 EHR 1316

COUNTY OF DARE

KENNETH & MARY ANNE SUTTON,)
Petitioners,)

v.)

NOTICE OF RESPONDENT'S
CONCURRENCE WITH
DECISION OF
ADMINISTRATIVE LAW JUDGE

NORTH CAROLINA DEPARTMENT)
OF ENVIRONMENT AND)
NATURAL RESOURCES, DIVISION)
OF COASTAL MANAGEMENT,)
Respondent)

RESPONDENT, the Division of Coastal Management of the N.C. Department of Environment and Natural Resources ("Respondent"), through counsel, files the following in accordance with the Coastal Resources Commission's (CRC or Commission) counsel's letter to the parties dated May 30, 2008.

Respondent concurs with the Administrative Law Judge's (ALJ) Decision filed in the above-captioned matter and requests that the Commission issue a Final Agency Decision adopting the Decision. The ALJ's Decision AFFIRMED Respondent's decision to grant CAMA Minor Permit No. 07-133. The Administrative Law Judge properly concluded that based on a preponderance of the evidence in this case, Respondent's decision to issue the CAMA Minor Permit was in all respects proper pursuant to N.C.G.S. § 150B-23(a). The ALJ also specifically concluded that the permit was not issued in violation of rules as contended by Petitioners, and that the series of driveways do not constitute a "road." (ALJ Decision, p. 9; conclusion of law number 10)

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JUN 16 2008

Morehead City DCM

Counsel for the Respondent requests an opportunity for oral argument at the Commission's meeting on July 24-26, 2008 only if Petitioners requests such opportunity, appear at the meeting, and present oral argument.

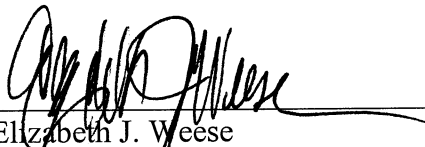
WHEREFORE, the Respondent respectfully requests that the Coastal Resources Commission enter a Final Decision:

1. Adopting the Administrative Law Judge's Decision upholding the Respondent's decision to grant CAMA Minor Permit No. 07-133 and,
2. Any other relief deemed just and proper by the Commission.

Respectfully submitted this the 9th day of June, 2008.

ROY COOPER
Attorney General

By:



Elizabeth J. Weese
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, N.C. 27602-0629
(919) 716-6600

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **RESPONDENT'S CONCURRENCE WITH DECISION** was served on the Petitioners/Attorney for Petitioners, by depositing a copy in the United States Mail, first class, postage prepaid, addressed as follows:

Kenneth and Mary Anne Sutton
8 Trottwood Drive
Poquoson, VA 23662
Petitioners


and served on the Coastal Resources Commission, by first class mail to:

Jim Gregson, Director
Division of Coastal Management
400 Commerce Way
Morehead City, NC 28557

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JUN 10 2008

Morehead City DCM

This the 9th day of June, 2008.


Elizabeth J. Weese
Assistant Attorney General

NC COASTAL RESOURCES COMMISSION (CRC)

May 21-23, 2008

Washington Civic Center

Washington, NC

Present CRC Members

Bob Emory, Chairman
Doug Langford, Vice Chair

| | |
|-------------------------------|-----------------------------|
| Chuck Bissette | Wayland Sermons |
| Renee Cahoon (absent 5/21/08) | Melvin Shepard |
| Charles Elam | Joan Weld |
| James Leutze | Bob Wilson (absent 5/23/08) |
| Jerry Old (absent 5/21/08) | Lee Wynns |
| Bill Peele | |

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair
Penny Tysinger, Co-Chair

| | |
|-------------------|-----------------------------------|
| Paul Spruill | Morgan Jethro (for Bert Banks) |
| Bob Shupe | Judy Hills |
| William Wescott | Eddy Davis |
| Tim Tabak | Spencer Rogers |
| Ray Sturza | Joy Wayman |
| Randy Cahoon | Charles Halsall (for Lee Padrick) |
| Dave Weaver | Renee Gledhill-Earley |
| Christine Mele | Anne Deaton |
| W.H Weatherly | Phil Harris |
| Bill Morrison | Travis Marshall |
| Lester Simpson | Wayne Mobley |
| Joe Beck | |
| Rhett White | |
| Frank Rush | |
| Carlton Davenport | |
| Webb Fuller | |
| Harry Simmons | |

Present Attorney General's Office Members

Jennie Wilhelm Hauser
Allen Jernigan
Amanda Little
Tom Moffitt

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. Chuck Bissette stated he was concerned about the appearance of a conflict on one issue, but would discuss it further with CRC Counsel.

Angela Willis called the roll. Joseph Gore was absent. Based upon this roll call, Chairman Emory declared a Quorum.

VARIANCE REQUEST

Stern (CRC-VR 08-12 and CRC-VR 08-13) New Hanover County Piers

Tom Moffitt of the Attorney General's Office, representing staff, stated that there are two variance requests filed by Petitioner Susan Stern which will be combined into one request. Petitioner is represented by Attorney Bill Raney of Wessell & Raney, L.L.P. These are two lots which are side-by-side and both are owned by the Petitioner. These two lots are undeveloped, waterfront lots located at 934 and 938 Santa Maria Avenue in Wilmington, NC. These lots are located on the north side of Pages Creek. Petitioner applied for a general permit to construct a private pier, platform, floating dock, and boatlift for each lot. These applications were denied because the length of the proposed piers were unable to meet the one-fourth width of the water body requirement. Petitioner seeks a variance from 15A NCAC 07H .1205(n), 07H .0208(b)(6)(J)(iii) and 07H .0601.

Mr. Moffitt reviewed the stipulated facts for this variance request and stated that Staff is not opposed to the granting of this variance request. Staff and Petitioners agree on all four statutory criteria required to be satisfied in order to grant the variance.

Bill Raney, representing Petitioner, reviewed the stipulated facts which he contends supports the granting of this variance. Mr. Raney stated that the materials in both variance request packages are the same with the exception of the sketches of the piers. Mr. Raney further stated that Petitioners concur with the Staff that all four criteria are met and findings can be made based upon the materials presented.

Doug Langford made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the Petitioner unnecessary hardships. Charles Elam seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bissette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

Wayland Sermons made a motion to support Staff's position that hardships result from conditions which are peculiar to the property. Bob Wilson seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bissette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

Bob Wilson made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Joan Weld seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bisette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

Charles Elam made a motion to support Staff's position that the proposed development is consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission; secure the public safety and welfare; and preserve substantial justice. Doug Langford seconded the motion. The motion passed unanimously (Elam, Weld, Wilson, Bisette, Langford, Peele, Sermons, Wynns, Shepard) (Leutze absent for vote).

These motions included both lots A and B.

This variance was granted.

Town of Atlantic Beach (CRC-VR 08-10) Atlantic Beach, Oceanfront Setback

***Chuck Bisette and Charles Elam recused themselves from this variance request.*

Bob Wilson stated the Town of Atlantic Beach is a former client of his company. Dredging service was provided for the Town this past year. Commissioner Wilson further stated his company is not currently working for the Town, is not bidding on any work for the Town and neither himself nor his company have any personal relationships in the Town and therefore there is not a conflict.

Amanda Little of the Attorney General's Office, representing Staff, stated the Petitioner is the Town of Atlantic Beach. The Petitioner is represented by Derek Taylor the Town's attorney. The Town of Atlantic Beach applied for a Minor Permit to construct a beach access site with parking and a bathhouse with septic system at the Tom Doe Beach Access Site. This site is located on Ocean Boulevard in Atlantic Beach, Carteret County. Part of the proposed development, including the bathhouse and septic system, is seaward of the applicable ocean erosion setback which at this location is sixty feet from the first line of stable natural vegetation. Petitioner seeks relief from 15A NCAC 07H .0306(a) and 7H .0309.

Ms. Little reviewed the stipulated facts of this variance request. Staff and Petitioner do not agree on any of the four criteria which must be satisfied in order to grant the variance. Staff's position in this request is that a variance is not warranted.

Derek Taylor, Atlantic Beach Town Attorney representing Petitioners, reviewed the stipulated facts which he contends support the granting of this variance. Mr. Taylor discussed the four statutory criteria emphasizing a public hardship due to the absence of public restrooms and handicap facilities.

Doug Langford made a motion to support Petitioner's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. Bob Wilson seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

Wayland Sermons made a motion to support Petitioner's position that hardships result from conditions peculiar to the Petitioner's property. Doug Langford seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

Doug Langford made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Bill Peele seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

Wayland Sermons made a motion to support Petitioner's position that the variance will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; secure the public safety and welfare; and preserve substantial justice. Doug Langford seconded the motion. The motion passed with six votes (Wilson, Langford, Peele, Sermons, Wynns, Shepard) and one opposed (Weld) (Leutze abstained).

The variance was granted.

MINUTES

Doug Langford made a motion to approve the minutes of the March 27-28, 2008 Coastal Resources Commission meeting. Wayland Sermons seconded the motion. The motion passed unanimously (Langford, Leutze, Elam, Old, Peele, Sermons, Shepard, Weld, Wilson, Wynns) (Bissette, Cahoon absent for vote).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, gave the following report.

Sandbag Update

DCM staff is completing an inventory of sandbag structures to determine which are subject to the May 2008 deadline, and of those structures, which are uncovered and must be removed. We will prioritize removal based on the condition of the bags, length of time, etc., and will notify homeowners by mail if sandbags must be removed.

Oceanfront Setback Public Hearings

We are planning to hold a series of public hearings in July for changes to 7H .0306 General Use Standards for Ocean Hazard Areas, which govern oceanfront setbacks. All of the public hearings will begin with a presentation at 5 p.m., followed by a public comment period at 6 p.m. The tentative dates are:

- July 7 at the Surf City Community Center
- July 8 at Carolina Beach Town Hall
- July 14 at the Brunswick County Association of Realtors Meeting Facility in Supply NC
- July 15 at the NOAA/NC Coastal Reserve Auditorium, on Pivers Island in Beaufort, NC

- July 16 at the Kill Devil Hills Town Hall
- and July 24, at the next regularly scheduled CRC meeting in Raleigh.

These dates are not set in stone until approved by the Department. Any changes will be announced via press release and on our web site.

LPO Workshops

DCM staff conducted two training workshops last month for Local Permit Officers in the 20 coastal counties. The agenda for the two-day workshops included updates on recent changes to CRC rules and training in the permit process, as well as monitoring and enforcement. DCM staff also conducted interactive field training in staking Normal High Water and Normal Water Levels and identifying coastal wetlands.

Clean Vessel Act Grant

DCM will receive \$251,440 to install 15 new pumpout facilities throughout the state's coastal waters this year. These funds are part of more than \$13.6 million in grants funding from U.S. Fish and Wildlife Service that will be awarded to 27 states under the Clean Vessel Act grant program in 2008. The grants can be used to fund the construction and installation of sewage pumpout facilities and floating restrooms, to purchase pumpout boats and for educational programs for recreational boaters.

Reserve Site News

- The Reserve Education staff hosted the Environmental Educators Community Outreach meeting on May 5. Eighteen environmental educators from across the state attended the meeting to learn more about the N.C. Coastal Reserve Program, to network with other educators, and to see the Reserve's new facility on Pivers Island. Following the business portion of the meeting, participants took a boat ride over to the Rachel Carson Reserve's new boardwalk on the east end of Carrot Island.
- The Wilmington Reserve office will be moving into its new quarters next week at the new building on the UNCW CMS campus- includes 4 offices, lab, storage, and meeting space.
- The Coastal Estuarine Reserve Foundation will host its annual 8K run on June 14 in Kitty Hawk Woods.
- Local Advisory Committee memberships for the Reserve sites have been approved by the DENR Secretary and invitations to new members were distributed. The Kitty Hawk Woods LAC will meet June 11, and the Buxton Woods LAC will meet June 12. Other Reserve LACs will meet in Fall 2008.
- Earlier this week, the Coastal Training Program hosted a session on the Habitat Priority Planner in conjunction with SC and GA Reserves and the NOAA Coastal Services Center. The planner is a NOAA tool that can be used for managing natural resources.
- The Rachel Carson Reserve is partnering with researchers from the Center for Coastal Fisheries and Habitat Research as a part of a project funded by NOAA's Marine Debris Program. Research on the Rachel Carson Reserve is addressing sources, types, and amount of debris found in marsh habitats. The grant-based program supports local habitat restoration projects in marine, estuarine, and riparian areas, funding projects that

offer educational and social benefits for communities, and provide long-term ecological benefits for fishery resources.

WAMI Projects

The N.C. Division of Marine Fisheries has announced 13 sites selected for funding from the Waterfront Access and Marine Industry Fund. The sites were selected to provide waterfront access to a variety of user groups, including commercial and recreational fishermen, pier fishermen, recreational boaters and marine industry. In addition, several sites are in strategic locations for important state research and habitat enhancement efforts. The available funding was \$20 million. A total of 24 projects were submitted to DMF for the WAMI funds, requesting \$85 million.

Staff News

Byron Toothman has joined the Wilmington Reserve staff as a research associate. Byron comes to us from the UNCW-Center for Marine Science. He takes over the vacancy left by Paula Murray. Byron has a Bachelors and Masters Degree from UNCW. He started with the Coastal Reserve on 4-21-08.

Andrea Hale, a junior at UNC Chapel Hill, will be working this summer at the Rachel Carson National Estuarine Research Reserve in Beaufort as a Marine Science Education Intern. Andrea will assist the Reserve Education staff with summer marine science camps, field trips and classroom activities. This position is funded through the State Government Internship Program. The internship begins on May 27, 2008 and ends on August 1, 2008. Interns work full-time (40 hours per week) during this 10-week period.

Two of our staff members were married last weekend. Woody Webster, site manager for the Buckridge coastal reserve, was married to Katie on May 17. Robb Mairs, field representative in Wilmington, married Jessica, also on May 17.

Josh Shepard and wife Wendy welcomed a baby girl, Addison, on May 21.

CHAIRMAN'S COMMENTS

Chairman Emory recognized Mayor Judy Jennette who was present at the meeting. Mayor Jennette greeted the Commission and welcomed the CRC to Washington. She requested that the CRC encourage small communities and coastal counties to embrace planned growth, but also through practical and equitable regulations remain mindful of everyone who impacts our river basins.

Chairman Emory stated we are still involved with sandbags. There will be time on the agenda later to discuss the beach subcommittee report. Representing the Attorney General's office as counsel to the Commission is Jennie Hauser. Dr. Joseph Gore is gravely ill and before the adjournment of the meeting a card will be available for the Commission to sign.

CRAC REPORT

CRAC meeting minutes attached.

The CRC took the following action:

**Jim Leutze recused himself from this vote.

Doug Langford made a motion to accept the recommendation of the CRAC and certify the Bald Head Island Land Use Plan. Wayland Sermons seconded the motion. The motion passed unanimously (Old, Shepard, Wynns, Sermons, Peele, Langford, Wilson, Weld, Cahoon, Elam) (Bissette absent for vote).

PRESENTATIONS

Coastal Reserve Education Program and Division Education Plan (CRC 08-25)

Jill Fegley and Whitney Jenkins

Jill Fegley, education coordinator, gave an overview of the North Carolina Coastal Reserve Education Program. The NC Coastal Reserve has an active education program comprised of four major focus areas: K-12 student education, teacher professional development, community outreach and the Coastal Training Program. The goal of the NC Coastal Reserve Education Program is to promote environment literacy by increasing our understanding of natural systems, our connections to them, and the benefits derived from them. Ms. Fegley also gave an overview of the draft DCM Education Plan.

Whitney Jenkins, coastal training program coordinator, gave an overview of the Coastal Training Program. This program is also administered at 24 other Reserves across the country. The programs goal is promote informed coastal decisions through science-based training for professionals.

Inlet Hazard Areas Update (CRC 08-18)

Jeff Warren

Jeff Warren stated that he and Dr. Margery Overton presented the results of the efforts of the science panel to revise the inlet hazard boundaries last September. There are 19 active inlets. The current inlet hazard boundaries are 20 years out of date. There was a motion by the CRC in September 2007 to adopt the new proposed boundaries and Staff cautioned on moving too fast. There are two rules (1) which actually defines the AEC of the inlet hazard area 07H .0304 and (2) 07H .0308 which defines the use standards within the hazard areas. Staff believes it is appropriate to take these rules in tandem. There are a couple of major goals. One is to limit size and density. The second is to limit oceanward encroachment. The inlets have a different shoreline trajectory than the oceanfront. We need to make sure that homes and businesses do not follow the vegetation line when we know that in 20-30 years it is going to come back landward.

Staff is still working with stakeholders and trying to get through some of the complications. We are working on developing a policy recommendation and actually codify a policy recommendation. Staff will come before the CRC with draft rule language which will be a starting point. This will be a slow, thorough, methodical process.

**Draft Amendments to 07H .0309 Pier House Rules and Single Family Exception (CRC 08-19)
Tancred Miller**

Tancred Miller stated that rule 7H .0309 has two sets of changes. This rule is ready for final discussion and then onto public hearing. The first change is with the pier house provisions. The second looks at consistency with setback requirements in 7H .0306.

7H .0309 is the exceptions rule for ocean hazard areas. This rule provides for limited development oceanward of the applicable setbacks or for water dependent uses such as piers and pier houses. The waterfront access study committee recommended the State own and operate three public fishing piers and pierhouses. The NC Aquarium is in the process of converting piers for public use. One is Jeanette's Pier which Commissioner Cahoon asked about in January and requested rule changes. Currently Jeanette's Pier needs to be rebuilt. The CRC rules do not allow the rebuilding the Aquarium would like to do. They would like to add a second story for research. The current CRC rules also do not allow new pier houses to be located oceanward of the applicable setback. Changes to 7H .0306 have been sent to public hearing. Related changes to 7H .0309 are needed for consistency. These changes were reviewed in the mailout document CRC 08-19.

Spencer Rogers requested that the footprint be limited to 1,000 square feet but a two-story limit be added to the rule instead of the 2,000 square-foot total floor area in the single-family exception.

Doug Langford made a motion to amend 7H .0309 to include in (B) the footprint of the structure shall be no more than 1,000 square feet, the structure shall be no greater than two-stories, and the total floor area shall not exceed 2,000 square feet. Bill Peele seconded the motion. The motion was withdrawn.

Doug Langford made a motion to send the changes to the single-family exception in 7H .0309 to public hearing as proposed by Staff. Jerry Old seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bissette, Wilson, Weld, Cahoon, Elam).

Mr. Miller stated that David Griffin, Director of the NC Aquarium, is present to answer questions about the proposed Jeanette's Pier project. The changes to the pierhouse portion of the rule are meant to allow the rules to give the flexibility for pierhouses to expand (either rebuilt existing or new pierhouses) to provide public access. The changes proposed begin with section (d)(1). The changes were discussed as outlined in CRC 08-19.

Jim Gregson added that another change to the language has been made in (e)(4). A provision has been added which allows replacement of pierhouses to the original footprint. Staff believes we should not restrict pierhouses that were being replaced to 5,000 square feet if they were larger. Staff proposes a limit of 5,000 square feet for new pierhouses. Replacement of existing pierhouses would be limited to the existing footprint.

Spencer Rogers stated he agrees that fishing piers should be preserved. However, he cautioned the CRC to be careful what they allow. An example was shown of the Oceanic Fishing Pier in Wrightsville Beach. The beachfill project in the 1930's established State ownership in alignment with the building to the right. It was expanded from a restaurant with a one-story fishing pier to later be enlarged to three stories. The pier is in disrepair as it has been damaged by several hurricanes. It has been closed off to most of its length. The only part left is restaurant space. Mr. Rogers further stated that he has one major concern with the proposed language. Post-storm building around the country indicates that fishing piers are always of one the first things to go down in big hurricanes. There have been a scattered number of successes in pier survival, which have all relied on break away floor panels. However, with pier buildings you cannot have break away floors. The safest way to deal with these buildings is to get them as far back on the property as possible.

Charles Elam made a motion to accept the changes to pierhouse language in 7H .0309 as proposed by Staff and send this rule to public hearing. Renee Cahoon seconded the motion. Action was postponed on the motion.

Tancred Miller brought back changes, as requested by the Commission. The changes to language indicate that replacement or construction of a new pier house would not be required to meet the setback. A new pier house would have to be located landward of mean high water. An existing pier house could be replaced in its existing footprint or landward. Size would be limited for new pier houses to 5,000 square feet. A replacement pier house could be built to 5,000 square feet, or its existing footprint whichever is greater. Pier houses would be limited to two-stories.

Wayland Sermons made a motion to accept these changes to the pierhouse language in 7H .0309 and send it to public hearing. Melvin Shepard seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Wilson, Weld, Cahoon, Elam).

Dara Royal requested that language be inserted to require public fishing to be a requirement with public retail services to serve the fishing public. Wording was changed to accommodate the fishing requirement, but not detail what had to be sold in the retail sections.

Charles Elam made a motion to adopt this change and send it to public hearing. Wayland Sermons seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Wilson, Weld, Cahoon, Elam).

PETITION FOR RULEMAKING

Kennedy Covington – 15A NCAC 07H .0308(a)(2) Temporary Erosion Control Structures (CRC 08-24)

Mack Paul of Kennedy Covington Lodbell & Hickman, L.L.P. representing property owners from Figure Eight Island, Nags Head and Ocean Isle Beach. Mr. Paul stated, we are facing removing sandbags at potentially 150 properties. Only about 370 permits have been issued since the inception of the sandbag rules. The time limits have been a subject of discussion through much of the history of the sandbag rules. In 1999, the Science Panel recommended there be no time limits for sandbags, but to instead apply a size limit. In 2000 there were changes made to

address the time limit, but it largely postponed the issue to a fixed date which is where we are now with the May 2008 deadline. The conditions at the coast have changed dramatically since the hardened structure rule was changed in the mid 1980's. The availability of lots has become very scarce and property values have skyrocketed at the coast. Ownership of property along the coast has become a significant investment for many owners which has made relocation of imminently threatened structures not practicable. The removal of sandbags will not necessarily enhance public access at the beach. Conditions can change quickly at the coast and it is a good time to engage in full discussion about sandbags. Before removing a property owner's protection, it makes sense to make sure that our policies are correct.

Mr. Paul pointed out the main points of the petition. There is a disconnect that exists between the time frames in the rule and the times required for communities to obtain permits to do projects. The second disconnect is the property owner's perceptions about the reason they are getting sandbags to protect their property and the real purpose behind the sandbag rules. When the sandbag rules were amended back in 2000 it was believed there would be sufficient time until 2008. We would like to clarify one point that was mentioned in the Staff report about the petition regarding the indefiniteness. We would still want sandbags to come out once a project had been implemented and completed. Some of the Commissioners have pointed out the inequity that exists when one property's sandbag permit expires, yet the property next door can receive a sandbag permit. If both properties are in a community that is implementing a long-term management, they should both be afforded the same opportunity for protection. If they are not in this type of community, they should understand that sandbags only provide enough time to move their structure because there is no long-term solution. The petition seeks to bring greater alignment between owner expectations and the underlying purpose behind the sandbag rule. The underlying premise behind the sandbag rules are sound, the modifications that have been proposed in the petition seek to provide property owners and the public clearer expectations about the purpose and the time frames for sandbags. We are not asking that the CRC approve the petition today, we would like to have an opportunity to work more closely with Staff to build on the consensus that we are starting to achieve.

Mike Lopazanski, representing Staff, gave an overview of the temporary erosion control structures rule 07H .0308(a)(2). The petitioner wants to amend the 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. This petition would also create 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. DCM is opposed to the petition as the static line exception criteria is more restrictive than the current beach nourishment criteria and the reliance on the implementation of a long-term erosion response plan as described in the petition could result in the maintenance of sandbags along the oceanfront for thirty years. Managing oceanfront development for the protection of life and property has been central to the Commission's policy that development adapt to changes in shoreline configuration. The expectations regarding sandbag use as a temporary measure has been clear since 1995 when the Commission amended the rule to include the two and five year time limits. Sandbag permits include a removal date that is also acknowledged in the sandbag removal notice signed by the applicant. Since 1993 the Commission has required that permits for oceanfront development include the condition for relocating or dismantling the structure

within two years of the imminently threatened designation. This policy, in addition to the 30-year erosion rate, clearly indicates the Commission recognized and anticipated that oceanfront structures might need to be moved or demolished. Throughout the history of the sandbag rule, there has never been an indication that the sandbags would be a long-term solution to chronic erosion problems.

DCM is supportive of the petitioner's request to create a new strategy inside inlet hazard areas. While beach nourishment has limited effectiveness, channel maintenance and channel relocation have added some stability in these highly dynamic areas. A provision providing an extended time period for sandbags in connection with a community pursuing an inlet relocation project would be consistent with the Commission's extended time period associated with beach nourishment on the oceanfront. Such a strategy is also consistent with recent Commission action in terms of the willingness to allow exceptions to sandbag time periods for the completion of inlet relocation projects. While the details of such a strategy would need to be worked out at a future meeting, the Division would support an eight year time period. There must also be a stipulation that as soon as the structure is no longer threatened, as defined in .0308(a)(2)(b), the sandbags would need to be removed regardless of the initial time frame unless they are covered with sand and stable, natural vegetation. This is necessary to comply with the long-standing, temporary nature of sandbag use on the oceanfront. The Division cannot support the provision of the petition relating to the optimal position of the inlet dictating the continued presence of the sandbags. The Division is also opposed to removing the limitation that a structure in an inlet hazard area may only be protected once.

Melvin Shepard made a motion to deny the Petition for Rulemaking filed by Kennedy Covington. Doug Langford seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bisette, Wilson, Weld, Cahoon, Elam).

Doug Langford made a motion directing Staff to work with Kennedy Covington to incorporate the comments they feel would be an improvement to current rule language and bring these changes back to the Commission for input at the July meeting. Bill Peele seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bisette, Wilson, Weld, Cahoon, Elam).

PRESENTATIONS

** Chairman Emory recognized Colleen Sullins, Director of Division of Water Quality, and Louis Daniel, Director of Division of Marine Fisheries, in attendance for the meeting.

Interagency Coordination

Robin Smith, Assistant Secretary for Environment

Robin Smith stated that she has been following the issues the CRC has been wrestling with for the past couple of years and she sees there is some concern and frustration about how the relationships work between the Coastal Resources Commission, the Marine Fisheries

Commission and the Environmental Management Commission. Some of the tension is not entirely by accident. The General Assembly has created the three Commissions which have overlapping interests in the coastal area. All three Commissions have different authority. The submerged aquatic vegetation habitat discussion that will take place at this meeting is one example of all the Commissions having an interest, but not the authority to address the subject. The MFC has an interest in fisheries and fisheries habitat and regulating impacts to fisheries habitat by fishing gear, but have no ability to regulate development impacts on fishing habitat. The MFC must advocate for decisions on permits or rulemaking before the CRC to take the steps necessary to address development impacts on habitats. The CRC then has to decide what the correct resolution of the problem should be. The same kind of issues are present on the water quality side. The CRC and MFC have significant concerns about coastal water quality and maintaining water quality, but the EMC has the primary authority to directly regulate stormwater and wastewater discharges. Therefore, the CRC and MFC must advocate for, or against, certain policies the EMC may be considering. The General Assembly recognizes there are overlapping interests. CAMA is the perfect example of this. The provisions of CAMA provide several places in the Act that tell the CRC and its Staff to provide an opportunity for comment on both rules and on permit applications from other interested State agencies. The law requires the CRC to provide notice to the other agencies of proposed rules and pending permit applications for major development. The comments received from the other agencies are received during the permitting process. The comments are fed into the permitting process which is defined by the parameters of the CRC's rules and the standards set out in CAMA. Ultimately, the decision of whether a comment requires denial of a permit or the conditioning of a permit is up to the Division of Coastal Management. DCM Staff make the decision of whether the comment is supported by sufficient fact in science and then must link the comment back to either a development standard in the rules or a standard in the Statute for denial of the permit. CAMA gives the CRC, in rulemaking and in permit decision-making, a mandate that it can consider impacts to fish and wildlife in estuarine systems. Some of the tension comes from how to manage all of the interacting and coordinating that is comfortable for everyone. Regulatory Staff see things differently than natural resource agencies that do not have regulatory responsibilities. We may not be there yet, but it can work under the umbrella of the CHPP. The roles of each Commission are well defined. The CHPP Steering Committee has provided a forum for the three Commissions to send representatives along with their Staffs to take a shot at resolving common concerns and conflict. At the Department level, we are trying to make sure that the fundamental decisions (like the SAV habitat definition) achieve common ground.

Ms. Smith also gave a legislative update. The legislature has convened and are on a fast track with the budget. They plan to adjourn in July. The big proposal on the Department's side and on behalf of the Governor's office is the drought legislation. Also, the coastal stormwater rules are up for legislative review. There was a bill introduced to disapprove the coastal stormwater rules. This bill has led to a legislatively managed stakeholder process. The expectation is that legislation that will approve a set of coastal stormwater standards that address some of the concerns that are being voiced by a number of people across the coastal area, but will also maintain the goal of the rules which is to provide better protection for shellfish waters. Senate Bill 599 is eligible for consideration this year and is pending in the House.

Proposed MFC SAV Definition & Application to CAMA Permits

Anne Deaton and Ted Tyndall

Anne Deaton gave an update on the SAV definition. The update given at the March 2008 CRC was not the final version of the language. Since that meeting, the draft language has been discussed with the Department. Additional changes have been made to the definition following a conference call with the Department, DMF Director and Asst. Director, DCM Director and Asst. Director as well as most of the DENR workgroup that has worked on this definition.

Ms. Deaton stated the Marine Fisheries Commission is charged to protect the marine and estuarine resources. As part of the CHPP implementation, we saw the existing definition of SAV had some flaws. In many states and agencies, SAV is considered one of the most valuable of the estuarine habitats. Photos of high salinity species were shown. Habitat is more than just plants. These plants are underwater plants that flower and have a true root system. They are a perennial species in North Carolina and come back in relatively the same place. The runners can make it spread, but it does not migrate like a fish. Examples of low salinity species were also given. To determine if the area is SAV habitat there are several conditions to make it grow. For SAV to grow, certain species need a certain salinity, a certain temperature, certain water depth, sediment type, not too windy with too many waves, there needs to be a certain clarity in the water to get the required amount of light in shallow water. The major causes of loss of SAV habitat are dredging, nitrification, sea level rise, vessel groundings, boat and dock shading. In 1990, the Division realized SAV is an important habitat and needs more protection and tried to develop rule language to define the habitat. In 1992, the CRC adopted a definition for SAV before the MFC did. In 1994, the MFC adopted a very similar definition. The MFC adopted a policy for SAV habitat protection in 2004. In 2005, the CHPP was approved and it calls for improved protection of such habitats.

DMF drafted a revised definition of the current rule language and took it to the MFC. The MFC approved the draft to go to public hearing. Then DCM and DWQ raised their concerns with how this would work. Then the DENR workgroup began working on it and modifications were made to the definition. We believe this definition is the best biologically based definition that the group could develop.

Ted Tyndall gave an update on how this definition would affect the CRC's development rules. This document was put together as a technical guidance document for the protection of SAV habitat and how it ties into the CAMA permitting process. It offers specific guidelines that should be followed during the permit process. It also lists the rules of the CRC, EMC, and MFC that are impacted or affected by the change in this definition.

The General Permit (GP) is an expedited permit. These permits are designed for projects that are carried out on a frequent basis. It requires minimal on-site overview and little public review and comment. These will have a minimal impact in the AEC. GP's are typically issued within a few days of the request by the applicant, most of these permits are written on-site. General Permits contain specific criteria about the proposed structures (size, alignment, length, location). If the proposed development exceeds these narrowly defined criteria then it needs to be elevated to a major permit. The most common GP that effects SAV habitat is the GP 1200 for docks and piers

in estuarine waters and public trust areas. The CRC has asked that this GP rule amendment be placed on hold pending the SAV definition.

Several examples were given using the application of the revised SAV definition. For a fixed pier without docking facilities, if SAV is absent Staff has been directed to issue the General Permit. If SAV is present, criteria (such as water depth) are looked at. If the water depth is greater than 2 ½ feet at the end of the pier, the GP could be issued. If the water depth were less than 2 ½ feet, the next criteria would be to see if there is more than 50% coverage. If it is less than 50% coverage of SAV, the GP could be issued. There are also criteria for floating structures, fixed docking facilities, and floating docking facilities. When proposed development cannot meet the criteria for a General Permit, it is elevated to the Major Permit review process.

**Draft Amendments to 15A NCAC 7H .0308(a)(2)
Temporary Erosion Control Structures (CRC 08-21)
Mike Lopazanski**

An alternative management strategy for sandbags in inlet areas needs to be considered. Beach nourishment in the inlet areas has had a limited effectiveness; however some of the inlet relocation projects have had the potential to provide more stability. It would be consistent with the policies already in place, if the CRC wants to extend the sandbag time period sandbags could remain for inlet relocation projects just like beach nourishment. Staff would request that a finite time period (8 years) and bags would need to come out when they are no longer needed. Changes will also be made to the rule following the CRC's March interpretive ruling. Draft rule language will be brought back before the CRC for consideration.

**Shellfish Waters
Melvin Shepard**

Melvin Shepard proposed the CRC take a look at our rules and determine if we need to improve our protection of shellfish waters. In the past the CRC has approved permits in closed shellfish waters that we would not have approved if the permit had been in open shellfish waters. A permit for an activity that would negatively affect shellfish waters would clearly make restoration of these shellfish waters more difficult. Closed shellfish waters are as valuable as open shellfish waters. Shellfish Sanitation has closed these waters to the harvesting of shellfish for the purpose of human consumption. These closed waters are highly productive shellfish areas. These areas can be restored unless we continue to knowingly add more obstacles to recovery. There are recovery success stories all over the State. The closed shellfish waters are a valuable source of shellfish stock that once they are moved to clean water will need only two to four weeks to clean themselves of bacteria. The CRC should review our practices to see how we might have a positive affect on shellfish waters.

***At this time, Bob Emory announced that Doug Langford, CRC Vice-Chairman, would not be seeking reappointment to the Coastal Resources Commission when his term expires on June 30. Doug Langford thanked the members of the Commission, the CRAC, and DCM Staff for the past 10 years. Chairman Emory presented a plaque to Doug on behalf of the Commission in appreciation of the leadership and dedication to the N.C. Coastal Resources Commission.*

Comprehensive Beach Management Task Force Subcommittee Report (CRC 08-20)

Bob Emory

Bob Emory reviewed the meeting of the subcommittee that met on May 9 in Beaufort. This subcommittee focused the conversation on the CRC's authority and did not discuss groins. Following an update from Steve Underwood on the Beach and Inlet Management Plan (BIMP), the subcommittee recommends a resolution to the General Assembly supporting additional funding to accelerate development of the Beach and Inlet Management Plan, to request additional sources and personnel and act as a liaison with local governments to serve on the project delivery team. The subcommittee also recommends a statement or letter to the General Assembly supporting a stable and dedicated source of funding for beach nourishment. The third recommendation was to form a committee to develop a beach education plan to target coastal and inlet communities. Coastal hazard disclosure efforts were also discussed. A few ideas to accomplish this were (1) utilize the DCM beach access signs, (2) additional data on the DCM website, (3) utilize the coastal reserve education program to hold realtor workshops, (4) update SEAGRANT publication "Answers on Purchasing Coastal Real Estate in North Carolina" and (5) engage coastal realtors in a discussion of the benefits of disclosing these hazards, (6) condition certain CAMA permits to preclude the use of sandbags under the single-family exceptions, (7) consideration of alternative sandbag structure design, (8) a letter to Governor endorsing North Carolina involvement in the Southeast Alliance, (9) a presentation to the CRC on innovative funding strategies for beach nourishment projects, and (10) consideration of beach management and oceanfront development strategies consistent with the CRC's current authority.

Jim Leutze made a motion to accept and endorse the recommendations of the Beach Management Subcommittee. Bill Peele seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Peele, Langford, Bisette, Weld, Cahoon, Elam).

Chairman Emory stated the next step would be to obtain a copy of the outcome of the previous Legislative Study Commission and a copy of the legislation. We also need to schedule Peter Revella of Texas to talk about the innovative funding strategies for beach nourishment.

Bulkhead Rules Update and Draft Amendments to 15A NCAC 07H .1100 Bulkhead GP (CRC 08-23)

Bonnie Bendell

Bonnie Bendell gave an update on the bulkhead rules. These rules have been to the CHPP Steering Committee and let them give some direction on where to go with these rules. For almost three years we have been working on shoreline stabilization and bulkhead rules to get them updated. An ad hoc committee was formed. This committee will evaluate what to do for the long-term.

In the meantime, changes need to be made to the General Permit .1100. These rules were last seen at the September 2007 CRC meeting. Ms. Bendell covered the changes to be made to these rules as outlined in CRC 08-23. These rules will protect public trust rights and shallow water habitat and encourage riprap revetments as an alternative to the vertical structure.

Wayland Sermons had concerns about the increase of the permit fee for bulkheads above normal high water. He stated permit fee increases should be subtly used. Jim Gregson stated there is currently a \$400.00 fee for a bulkhead permit if it is located in the water and \$200.00 to place the bulkhead above mean high water. He stated that in addition to the loss of revenue, the amount of staff time it takes to permit a bulkhead for either above or below mean high water is the same. Therefore, the fee should be the same for all bulkhead permits. Spencer Rogers stated the reason for the difference in the fees is because the location of structure is more important than the type of structure. The difference in fees was an incentive to get structures out of the water. Chuck Bissette stated he did not like the disincentive nature of the permit fee increase. Mr. Bissette stated that after working with the ad hoc group, he might be more willing to go along with the increase. Bonnie Bendell stated that Staff is proposing to send these rules to public hearing (with or without the change to the permit fees).

Jim Leutze made a motion to take 7H .1100 rules to public hearing. Melvin Shepard seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Langford, Bissette, Weld, Cahoon, Elam) (Peele absent for vote).

Review of CRC Priority Issues Bob Emory

A list of top priority issues was read from the January strategic planning session. After discussion, it was determined the CRAC would begin to work on the issue of public access.

ACTION ITEMS

***At this time Jennie Hauser, CRC Counsel, advised the Commission that the Sutton v. DCM (07 HER 1316) record has been received in the Attorney General's office from OAH. There is not sufficient time to hear the case and receive exceptions from counsel, as the next scheduled CRC meeting is July 23.*

Doug Langford made a motion that the CRC find there is good cause to extend the time for making its final agency decision in Sutton v. DCM 07 HER 1316 for an additional sixty day period as allowed by G.S. 150B-44. Jim Leutze seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Langford, Bissette, Weld, Cahoon) (Sermons, Peele, Elam absent for vote).

Bob Emory discussed the letter sent to the Commission regarding Ethics training. Chairman Emory stated that each member should have had Ethics training and this has not happened. Some Commissioners have been able to attend since receiving the letter. Other opportunities will be held and it is required. Commissioners Shepard, Wynns, Elam, Sermons, and Bissette

acknowledged they had completed the training. Commissioner Langford stated that the Ethics Commission had advised him that he is still required to attend the training even though he does not seek reappointment.

Bob Emory stated that Wayland Sermons has agreed to serve as the second representative on the CHPP Steering Committee.

Bob Emory put together a nominating committee for the Vice-Chairman position on the CRC. The Committee will consist of Wayland Sermons, Renee Cahoon, and Melvin Shepard. Election will take place at the July CRC meeting.

PUBLIC COMMENT AND INPUT

Christine Mele, Pamlico County CRAC representative, stated she is speaking on behalf of Rhett White the Town Manager of Columbia. Ms. Mele stated there are unanswered questions regarding the potential impacts of the coastal stormwater rules on small coastal riverfront towns. Redevelopment of shoreline and near shore lots in the downtown business districts may be severely limited and therefore economically prohibited. This is even more complex and problematic when "historic" district requirements of full lot-size coverage requirements and old lot lines conflict with lot coverage restrictions of coastal stormwater rules. This may effect only two or three properties but for economically strapped small towns in tier I counties even one or two properties that are rendered impractical for building severely impact the tax base, negatively impacts downtown redevelopment efforts and thwarts long range planning efforts. Secondly, small towns have existing stormwater systems that are designed to move stormwater from downtown business districts that are up to 100% covered by impervious surfaces. Functioning rain gardens may not be possible or practical in small districts and if required would provide no real water quality value. Third, redevelopment of shoreline and near shore lots in residential districts may be equally limited and financially prohibitive particularly when historic district overlay requirements are in place. This critically impacts the small town tax base. The coastal stormwater rules are not as objectionable in new subdivisions, however the lack of clear answers to questions, the misinformation and incomplete information and general public alarm that exists strongly suggests that implementation be delayed until these and other issues are adequately addressed.

Douglas Mercer, Mayor pro-tem of Washington and Chairman of the Beaufort County Planning Board, stated he has a double interest in the proposed stormwater rules. Mr. Mercer stated that he was here for the start of the CRC meeting on Wednesday and the Mayor was here to greet the Commission. He stated he hopes the Commission has enjoyed their stay in Washington and that they have done everything they can to make the CRC's stay pleasant and hopes the CRC will not wait so long to come back. The CRC is going to be discussing the proposed resolution endorsing the EMC's stormwater regulations today. I would strongly recommend that the CRC table this matter at the present time. The 20 coastal counties will be effected by this rule. There is not a single citizen in those counties that is opposed to improved water quality, but we firmly believe that all rules that apply to the coastal counties should be equitable to what is applied to the other counties that impact the water qualities in our rivers. Mr. Mercer gave an example of two lots, one on the Pitt county side and one on the Beaufort county side. The Pitt county side can be

built upon. The Beaufort county lot will be able to build but will require a number of control devices which is a considerable economic burden to an individual. All this water runs into the Pamlico/Tar River but there is an unequal rule being applied to these two entities.

Charles Baldwin, Village of Bald Head Island Attorney, stated he wanted to thank the CRC, the comprehensive beach management subcommittee, the BIMP committee and Staff for the excellent work that has been done in thoroughly identifying the issues and steps to take in regional sand planning. However, the Corps of Engineers involvement is going to be critical in that process. Mr. Baldwin mentioned that the Corps is presently on the way to developing a dredged material management plan in the Brunswick County area. That plan is presently contemplating taking up to 3.3 million cubic yards of beach quality sand and putting it in the old shipping channel alignment. That is a lot of sand to be going off shore. They are also contemplating alternative or near shore sand disposal of less than 100,000 cubic yards. If it is done incrementally, a lot of sand could be going off shore. Our environmental engineer, Eric Olson, tells us that is not the proper way to handle sand. The dredged material management plan is a 20-year plan. The Corps operates under strict criteria and guidelines that are set by Congress and by Headquarters and they cannot just revisit these issues anytime they want to. It would literally take an act of Congress unless we collectively get ahead of the curve on the dredged material management plan. It will probably conflict with regional sand planning issues that we are currently coming up with. I wish to offer six recommendations and observations. (1) DCM Staff member should attend the DMMP meetings (2) May 15 meeting at district headquarters, the Corps recommended that we seek to put language in the dredged material management plan that near shore or alternative disposal are only done in emergency circumstances such as a storm event or to keep the channel open (3) the Corps emphasized that a plan for local long-term funding would go a long way towards the Corps meeting its economic criteria. The Corps is required to do least cost disposal. (4) We need to emphasize and educate to government, the public and agencies about the importance of sand as a valuable and limited resource. (5) Try to get a Corp representative involved in the BIMP process. (6) The Village of Bald Head recently hired Peter Revella and would be delighted to have him meet with the CRC and DCM staff while he is here.

David Peoples, County Manager for Washington County, stated he came today to tell the CRC about Washington County. We are a socio-economically challenged county that has high poverty rates; high unemployment rates and continues to struggle. There are many inland counties in the 20 CAMA counties that mirror us. There are a lot of wetlands in our county, there are a lot of areas that cannot be developed and the proposed stormwater rules have a very tremendous impact on our county. We appreciate the water; we wish to have clean and safe water. We market our county as a recreation and retirement haven, so water and the importance of it is extremely important to our future. For several years we have worked very judiciously in ensuring that our zoning and our ordinances support clean water and the improvement of water quality in our county. We believe the urban Phase II stormwater rules are sufficient. We do not wish to be held to a higher standard or set of rules. You are familiar that there has been a legislative stakeholders group that has been meeting and has been looking at the stormwater rules and their implementation. I see Robin Smith, the Asst. Secretary of DENR is in attendance today and I want to personally thank her and her staff for working with this stakeholders group. They are working with us to see if there are ways that we can ensure that these rules are

appropriate or that they can be improved upon. I would suggest to the Commission that you wait before you pass this resolution. Allow this legislative stakeholders group committee to finish their work and ensure that whatever is to be implemented is appropriate and it addresses the quality improvement in the future and that it doesn't have extreme economic impacts on a 20 county area of the state when a majority of this area is already struggling economically. I recall in 2001-2002 there was an agency in State government that passed mental health reform. We saw that in that process of passage there were many unanswered questions. We have seen excessive costs come from that effort, there were people who were drastically underserved and we have now seen over 400 million dollars in questionable expenditures. I would suggest that you wait and see what the final product of the legislative stakeholders committee is before you pass a resolution to ensure you are passing a good quality resolution.

OLD/NEW BUSINESS

Mike Lopazanski presented a resolution from the CRC based on a recommendation from the waterfront access study committee to help increase opportunities for public access as well as preserving working waterfronts in the coastal area. The study committee delivered a range of recommendations to the joint legislative subcommittee on seafood and aquaculture. These recommendations ranged from extending the work of the access study committee to forming a working waterfront trust fund. In response to this, the legislature appropriated 20 million dollars for the waterfront access and marine industry fund that was created to acquire waterfront properties or develop facilities to provide, improve, or develop public and commercial waterfront access. The DMF administered this fund over the past year and they received a total of 24 project applications requesting 85 million dollars. These projects were reviewed by several DENR agencies. They selected 13 sites for funding with the intention of providing waterfront access to a variety of user groups. The sites were distributed evenly along the coast.

Jim Leutze made a motion to accept the Resolution. Doug Langford seconded the motion. Dara Royal requested an amendment to include the CRAC on the Resolution. Jim Leutze accepted the amendment to the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Langford, Bisette, Weld, Cahoon, Elam) (Peele absent for vote).

Bob Emory stated that the Coastal Stormwater Rules have become very contentious. The CRC's partnership with local governments is a key element of the CAMA program, however, I think we want to support efforts to improve stormwater management. We are on record from 2006 when the CRC adopted a Resolution. In response to a request from Pete Peterson, Chairman of the CHPP Steering Committee, he asked the Commissions to weigh in on stormwater rules. Chairman Emory suggested the CRC reaffirm the Resolution adopted in 2006.

Jerry Old made a motion to reaffirm the 2006 Resolution regarding EMC stormwater rules. Joan Weld seconded the motion. The motion passed unanimously (Old, Shepard, Leutze, Wynns, Sermons, Langford, Bisette, Weld, Cahoon, Elam) (Peele absent for vote).

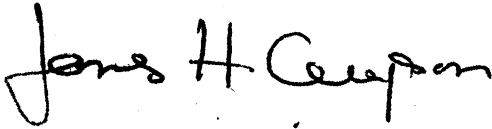
Public hearings are set for the oceanfront setback rules. The dates and locations were provided. Hearing officers were assigned for each public hearing date.

Charles Elam asked about the number of sandbag variances which have been received and how they would be handled. Jim Gregson stated we have 29 variances that will have to be heard at the July meeting. If all of these stay on the agenda, we will be faced with two or possibly three days of variance hearings. We also have a contested case that will be heard and the public hearings for the oceanfront setback rules.

A replacement has been named for the marine ecology seat held formerly by Courtney Hackney. This new Commission member will be Dr. David Webster. Dr. Webster is faculty at UNCW.

With no further business, the CRC adjourned.

Respectfully submitted,



James H. Gregson, Executive Secretary



Angela Willis, Recording Secretary



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

July 8, 2008

CRC-08-26

MEMORANDUM

To: Coastal Resources Commission Members
From: Woody Webster, Buckridge Site Manager
Re: Emily and Richardson Preyer Buckridge Coastal Reserve

Background:

The North Carolina Coastal Reserve was established in 1989 to preserve and manage selected representative coastal areas for the purposes of research, education and compatible traditional uses. The Coastal Reserve encompasses a total of over 41,000 acres over 10 sites, four of which are components of the North Carolina National Estuarine Research Reserve. Through funding partnerships with the U.S. Fish and Wildlife Service, the N.C. Natural Heritage Trust Fund, and the N.C. Clean Water Management Trust Fund, the Division of Coastal Management purchased the Buckridge Coastal Reserve in June 1999 for the important values and functions it provides to the nationally significant Albemarle-Pamlico Sounds region – the second largest estuary in the continental United States. On July 31, 2000, the site was formally dedicated as a State Nature Preserve and was re-named the Emily and Richardson Preyer Buckridge Coastal Reserve. In 2002 Roper Island (8,210 acres) in Hyde County was added to the Coastal Reserve through permanent conservation easement, bringing Buckridge to 26,862 acres of protected land.

Buckridge Coastal Reserve Site Description:

The Buckridge Coastal Reserve is located approximately 15 miles southeast of Columbia, NC, near the community of Gum Neck. The Reserve straddles the Tyrrell-Hyde county border along the lower Alligator River. It is the largest of ten components within the Coastal Reserve and provides vital connection between the Alligator River and Pocosin Lakes National Wildlife Refuges. The Reserve is considered a regionally significant natural area by the N. C. Natural Heritage Program and is home to significant areas of pristine wetlands and forests, including nonriverine swamp forest, pond pine woodland, and tidal cypress-gum swamp as well as several small, mature stands of globally and regionally rare peatland Atlantic White Cedar (AWC) swamp and North Carolina's largest contiguous tract of regenerating peatland AWC. Saturated soil conditions, high precipitation, and low drainage gradients have led to extensive peat formation, with peat depths at Buckridge ranging from 2-12 feet and as deep as 21 feet in relic

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stream channels, which supports these habitats. Extensive hydrologic modifications were conducted at Buckridge over the past century as part of historic logging operations to provide access to timber, including the construction of over 49 miles of ditches and canals. These modifications have interrupted natural ground and surface water flows, degrading surrounding water quality, and damaging Reserve ecosystems by altering water levels and facilitating saltwater intrusion into freshwater and forested wetlands from wind driven tides and storm events.

This site hosts several rare, threatened or endangered species. They include the red wolf, bald eagle, red-cockaded woodpecker, Atlantic and shortnose sturgeons and American alligator. The area also supports rare bird species, such as the American bittern, northern harrier and cerulean warbler. Other species of interest include black bear, timber rattlesnakes and pigmy rattlesnakes.

Buckridge Coastal Reserve Management:

The goals for the Buckridge Reserve are to preserve and restore its rare habitats and wildlife and to provide an undisturbed link between adjacent conservation areas. Management objectives are to provide a setting for research in peatland habitats, to allow traditional uses such as hunting and fishing, to promote ecotourism to this and other preserved areas throughout Tyrrell County, and to provide opportunities for public education.

Due to extensive hydrologic alteration, restoration has been a high priority for Buckridge since its acquisition. As an ecologically significant property with the potential to impact the high quality water resources of the region, Buckridge and its management and restoration are of interest to a wide community of resource organizations. To advise and inform Reserve restoration and management, a Restoration Advisory Council was formed. Participants include representatives from state and federal agencies, non-profit organizations, and researchers from North Carolina universities. With their input and onsite research, Buckridge is now ready to move forward with the installation of water control structures which will prevent drainage and restrict saltwater intrusion, returning the site to a more natural hydrologic regime. To that end, DCM applied to the Clean Water Management Trust Fund for restoration funding in February 2008.

Other management concerns for Buckridge include the control of invasive species, infrastructure development, ongoing hunting concerns, and of particular interest recently, fire management. Management goals are achieved in part through a partnership with the N.C. Wildlife Resources Commission under the registered gamelands program, which provides monitoring and enforcement, as well as some boundary posting and road maintenance. Other partners in addressing these issues include the U.S. Fish and Wildlife Service, the N.C. Division of Water Resources and the N.C. Division of Marine Fisheries.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

July 10, 2008

MEMORANDUM

CRC 08-27

TO: Coastal Resources Commission

FROM: Jeffrey Warren, PhD
Coastal Hazards Specialist

SUBJECT: Inlet Hazard Areas draft rule language

At the May 2008 CRC meeting, I updated the Commission on staff's review of development policy pertaining to the State's 12 developed inlets. Numerous management challenges were outlined associated with the current use standards and how these standards may or may not change within both the existing and proposed inlet hazard area (IHA) boundaries.

Commissioner Leutze noted that, while he appreciated the resources required for a thorough review, numerous stakeholders had expressed concern to him regarding the lag time between the CRC Science Panel's proposed IHA boundary changes (presented in September 2007) and the pending policy recommendations from staff not yet released. Foremost of these concerns was the potential for property values to be adversely affected within the increased IHA boundary recommendations since limited to no indication of what the use standards within these boundaries would be (or if the proposed boundaries would even be the final ones adopted by the CRC).

At the July meeting, I am prepared to present two sets of draft rules to the CRC. The first will be for the amendments to the IHA boundaries themselves (15A NCAC 07H.0304), which I will re-introduce graphically to the CRC. The Science Panel noted that their recommendation for the Bald Head Island (BHI) was too restrictive, and DCM staff have developed an alternative boundary for the CRC's consideration. Although the specific draft rule language is not included with this memo, all 12 of the proposed boundaries, including the BHI revisions, can be viewed online at the following address:

http://dcm2.enr.state.nc.us/hazards/inlets/proposed_IHA.htm

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The second set of draft rules will represent a revision of the development standards currently in place. Although these rules are not attached to this memo, they will be presented at the CRC meeting and shall address the following major issues:

SIZE of all buildings and structures, regardless of use, shall be limited to no more than 5,000 square feet total floor area. This restriction will not apply to linear infrastructure such as roads, electrical lines, boardwalks and sewers.

DENSITY limitations, currently limited to no more than one unit per 15,000 square feet, will be removed. Staff feels that limitations on total floor area will achieve the goal of density limitations. Further, a grandfathering provision can be avoided for all development outside of the existing IHA boundary but inside the proposed IHA boundary that would be made non-conforming with this policy.

OCEANFRONT ENCROACHMENT shall be achieved by disallowing oceanfront development to be any further oceanward than adjacent buildings or structures.

EROSION RATES will be applied as referenced in 15A NCAC 07H.0304 for the oceanfront shoreline (rather than using the adjacent ocean erodible area rate for the entire IHA). Where rates have not been calculated in the 1998 erosion rate update, a minimum setback of 60 feet shall be applied. Furthermore, the rate in place at the time of permit decision will be applied for setback determinations. Therefore, areas without rate calculations can be addressed in the next shoreline erosion rate update.

POOLS will not be allowed oceanward of the setback within IHAs.

EXCEPTION for development on property platted prior to June 1, 1979 shall be provided if development cannot meet the setback based on the erosion rate in place at time of permit decision. A grandfathering provision can be avoided for all development outside of the existing IHA boundary but inside the proposed IHA boundary that would be made non-conforming with this policy. Development using an inlet-specific exception shall be no larger than 2,000 square feet total floor area with a footprint no larger than 1,000 square feet, as far landward on the lot as possible, AND no farther oceanward than adjacent buildings or structures. This provision is more stringent than the current single-family exception (15A NCAC 07H.0309(b)), which currently is not allowed within the current IHAs. The single-family exception and the static line exception shall not be allowed within the IHA.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-28

July 10, 2008

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Draft Amendments to 15A NCAC 7H 0.308(a)(2)
Temporary Erosion Control Structures

A March 2008 Interpretive Ruling by the Commission regarding the siting of sandbag structures in cases of accelerated erosion as well as the May 2008 Petition For Rulemaking has necessitated amendments to 15A NCAC 7H 0.308(a)(2) Temporary Erosion Control Structures.

Interpretive Ruling

Division of Coastal Management (DCM) staff requested clarification of the rule and whether it allowed sandbags to be placed more than 20 feet seaward from the structure being threatened by accelerated oceanfront erosion. The CRC found that temporary erosion control structures permitted by 15A NCAC 7H .0308(a)(2) may be placed farther seaward than 20 feet from a structure when: 1) the DCM staff finds that the structure is imminently threatened due to site conditions that increase the risk of imminent damage to the structure to be protected, and 2) the site conditions warrant placement of the temporary erosion control structures farther seaward of the structure than 20 feet.

7H 0.308(a)(2)(E) has been amended to clarify that the sandbags may be permitted more than 20 feet from the structure in such cases. The rule has been further amended to elevate the designation of being at increased risk of imminent damage to the DCM Director or designee. The arrival of the May 2008 deadline under the Commission's 2000 extension on sandbag structures, has also made it necessary to remove references to specific dates associated with the eight year extension for communities seeking beach nourishment projects. Reference to the requirement that sandbag structures be in compliance with size limitations in order to be eligible for the extension has also been deleted.

Petition For Rulemaking

While the Petition for Rulemaking was denied by the Commission at the May meeting, staff and the CRC found merit in several of the requested changes. Specifically, staff recommended the creation of an extended timeframe for sand bag structures located in communities seeking inlet relocation projects that is comparable to the extended timeframe afforded in communities actively seeking beach nourishment projects. The draft amendments allow sand bags to remain in place for eight years provided that they are located in an Inlet Hazard Area and the community is actively seeking an inlet relocation projects.

In recognition of the tendency of inlets to migrate, or “wag” back and forth, staff is recommending that the limitation of one sand bag permit per property not be applied in these areas. That is, should a structure again become imminently threatened due to the movement of the inlet, sand bags would be allowed multiple times provided that the community also commit to another inlet relocation project. Staff recognizes that this is a significant departure from current policy however, inlet relocation as a practice is relatively new in NC and recent examples show promise of more than short-term relief when compared to beach nourishment in these highly dynamic areas.

The Interpretive Ruling Petition for Rulemaking have offered the opportunity to make additional changes and clarifications to the sandbag rule. DCM has clarified the conditions under which sandbags are considered to no longer be necessary and are to be removed, including relocation or removal of the structure, construction of a storm protection project by the USACE, or a large-scale beach nourishment project. The amendment specifies that, under the above conditions, the sandbags be removed regardless of the time limits originally imposed upon the temporary erosion control structure.

Staff believes these amendments (attached) address some of the specific aspects of managing sandbag structures and clarify expectations of property owners utilizing this method of temporary erosion control. I look forward to our discussion of these amendments at the upcoming meeting in Raleigh.

15A NCAC 7H .308(a)(2) Temporary Erosion Control Structures

(2) Temporary Erosion Control Structures:

- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of above mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure shall be considered to be 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 such appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed seaward 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 of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward 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 designee.
- (F) A temporary Temporary erosion control structure structures may remain in place for up to two years after the date of approval if it is they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, with a total floor area of 5000 sq. ft. or less, or, for up to five years for a if the building has with a total floor area of more than 5000 sq. ft. and its associated septic system. A temporary Temporary erosion control structure structures may remain in place for up to five years if it is they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (G) A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding of 6 feet. Temporary sandbag erosion control structures may remain in place for up to five years from the date of approval if they are located in a community that or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a large-scale beach nourishment project, and for up to eight years from the date of approval if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation project. project as of October 1, 2004. For purposes of this Rule, a community is considered to be actively pursuing a large-scale beach nourishment or inlet relocation project if it has:
- (i) been issued a CAMA permit, where necessary, approving such project; or
 - (ii) been deemed worthy of further consideration 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
 - (iii) received a favorable economic evaluation report on a federal project. project or, approved prior to 1986. 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 set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and

be eligible for this time extension; otherwise they shall be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.

- (iv) been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project.

If beach nourishment or inlet relocation 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.

- ~~(G)~~(H) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure structure, a storm protection project constructed by the U.S. Army Corps of Engineers, or a large-scale beach nourishment, nourishment project involving any volume of sediment greater than 300,000 cubic yards or an inlet relocation project, it shall be removed by the property owner within 30 days of official notification from the ~~Division~~ Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- ~~(H)~~(I) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- ~~(I)~~(J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(J)~~(K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- ~~(K)~~(L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- ~~(L)~~(M) An imminently threatened structure may be protected only once, regardless of ~~ownership.~~ ownership unless the threatened structure is located in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation project in accordance with (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazards 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 Subparagraph and the community in which it is located is actively pursuing an inlet relocation 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.
- ~~(M)~~(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.
- ~~(N)~~(O) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

MEMORANDUM

CRC-08-29

To: The Coastal Resources Commission and Coastal Resources Advisory Council
From: Charlan Owens, AICP, DCM Elizabeth City District Planner
Date: July 9, 2008
Subject: Chowan County and Town of Edenton Core Land Use Plan (July CRC Meeting)

Chowan County and the Town of Edenton are requesting certification of their joint 2008 Core Land Use Plan (LUP).

Overview

Chowan County is bounded by Gates County to the north, Perquimans County and the Yeopim River to the east, the Albemarle Sound and Edenton Bay to the south, and the Chowan River to the west. The Town of Edenton is located on Edenton Bay. Chowan County has a year round or permanent population of 14,664 persons, with approximately 35% of the county population (5,082 persons) living in Edenton. Estimated seasonal population is approximately 1,834 persons, approximately 50 % (916 persons) of which are located in Edenton. By 2025, the county is projected to add between 1,078 and 3,611 permanent residents and an estimated 416 seasonal residents.

Within the County, growth is generally anticipated to continue on the fringe of Edenton and along the waterfront, primarily in areas designated as “Medium/High Density Residential”, “Commercial”, and “Industrial” on the County’s Future Land Use Map. The Sandy Point “New Urban Waterfront” pilot project located on NC 32 along the Albemarle Sound is included within the “Medium/High Density Residential” designation and includes a mixture of residential, commercial, and recreational uses in a traditional neighborhood community setting. Much of the County’s future residential development is expected to be retirement-aged developments, locating primarily in waterfront areas.

All areas of Edenton, except for those designated as “Conservation Open Space” on the Town’s Future Land Use Map, are anticipated for growth. The Town will continue to experience pressure for development along the primary US 17 and NC 32 corridors at the Town periphery. Redevelopment and infill of development within the Town core is also expected. The Town has a sizeable retirement-aged population and growth is expected to increase in this sector of the population.

The Chowan County Board of Commissioners and Edenton Town Council adopted the land use plan in a joint meeting on June 23, 2008. There are no policy statements that exceed State standards in the adopted LUP.

The public had the opportunity to provide written comments on the LUP up to fifteen (15) business days prior to the CRC meeting. No comments were received.

DCM Staff recommendation: DCM staff has determined that Chowan County and the Town of Edenton have met the substantive requirements outlined in the 2002 Land Use Plan Guidelines and that there are no conflicts evident within either state or federal law or the State's Coastal Management Program.

DCM staff recommends that the CRAC forward the joint Chowan County/Town of Edenton Land Use Plan to the CRC for certification approval.

As a reminder, please bring the pre-circulation memo and review guide (you received during the first week of July) to the CRAC/CRC meeting. If you have any questions please do not hesitate to contact me (Charlan Owens) at 252-264-3901.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-32

MEMORANDUM

To: The Coastal Resources Commission and Coastal Resources Advisory Council
From: Maureen Meehan Will, DCM Morehead City District Planner
Date: July 9, 2008
Subject: Town of Atlantic Beach Core Land Use Plan (July CRC Meeting)

The Town of Atlantic Beach is requesting certification of their joint 2008 Core Land Use Plan (LUP).

Overview

The Town of Atlantic Beach is located on the eastern most end of Bogue Banks across Bogue Sound from the Town of Morehead City. Atlantic Beach has always been a popular tourist destination and today is facing the challenges of balancing redevelopment pressures and the traditional character of the beach town. The LUP provides a solid foundation for development and especially redevelopment patterns, which will be implemented through local ordinances.

The main issues that are included in the vision statement and further outlined in the policy statements include: protection of environmental assets, preserving a small town atmosphere, prudent economic development, partnerships, balancing the needs of tourists and full time residents alike, encouraging mixed use development, providing open access to the beach and sound areas, encourage non-automobile transit improvements, sustainable development through encouragement of creative private investment, and create/maintain a vibrant and diverse community.

The following policy statements exceed State development regulations:

- P. 16 The Town of Atlantic Beach opposes the construction of any privately-owned signs (including commercial signs) in areas of environmental concern as defined by 15A NCAC 7H. **This policy exceeds state requirements.***
- P. 27 The Town of Atlantic Beach opposes the location of floating homes within its jurisdiction. **This policy exceeds state requirements.***
- P. 28 Except for Money Island, the Town of Atlantic Beach opposes the development of sound and estuarine islands. **This policy exceeds state requirements.***

The Atlantic Beach Town Council adopted the land use plan in a meeting on April 21, 2008.

The public had the opportunity to provide written comments on the LUP up to fifteen (15) business days prior to the CRC meeting. No comments were received.

DCM Staff recommendation: DCM staff has determined that the Town of Atlantic Beach has met the substantive requirements outlined in the 2002 Land Use Plan Guidelines and that there are no conflicts evident within either state or federal law or the State's Coastal Management Program.

DCM staff recommends that the CRAC forward the Atlantic Beach Land Use Plan to the CRC for certification.

As a reminder, please bring the pre-circulation memo and review guide (you received during the first week of July) to the CRAC/CRC meeting. If you have any questions please do not hesitate to contact me (Maureen Meehan Will) at 252-808-2808.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

MEMORANDUM

CRC-08-33

To: The Coastal Resources Commission and Coastal Resources Advisory Council (CRAC)
From: Michael Christenbury, Wilmington District Planner
Date: July 8, 2008
Subject: Town of Oak Island Consolidated Land Use Plan Amendment (July 2008 CRC Meeting)

The Town of Oak Island is requesting CRC Certification of an amendment to the Town of Oak Island Consolidated Land Use Plan.

Overview

The Town of Oak Island is located in southeastern Brunswick County, near the mouth of the Cape Fear River and adjacent to the Town of Caswell Beach. The purpose of the amendment is to change policy statements concerning marinas and dry stack storage in the Town's jurisdiction. This amendment provides a uniform policy within the Town's jurisdiction replacing two conflicting policies within the former Towns of Long Beach and Yaupon Beach areas. The communities had individual plans prior to their consolidation in July 1999 as the Town of Oak Island, and prior to the adoption of the Consolidated Plan. The need for this amendment has been highlighted by the Town's consideration of recent development requests. The amendment was prepared following opportunities for public input, and has been considered at multiple public hearings, the most recent held on June 10, 2008.

Specifically, the town has amended the consolidated land use plan to include the following policy statement:

8. Public and private marinas offering access to area waters will be allowed when developed in accordance with the CAMA specific use standards for marinas (i.e., docks for more than 10 vessels). Marinas shall not be approved, however, that are incompatible with nearby land uses or whose designs fail to meet the environmental quality and development standards of the Town's zoning and subdivision ordinance. The Town will allow dry stack storage in conjunction with an operating marina. Marinas shall provide public access to public trust waters where practical.
 - Marina operators within the Town's jurisdiction will be encouraged to participate in *Best Practices Operating Programs* such as the "Clean Marina" program sponsored by the NC Division of Coastal Management and the NC Marine Trade Services organization and will be required to provide pump-out facilities.

- The Town encourages the development of new upland marinas, and supports the rebuilding of existing marinas if damaged by storms.
- The Town encourages marina operators to apply for grants that may be available to help pay for pump-out facilities or other environmental improvements.
- The Town will not permit floating homes, boats, or other watercraft used as a permanent or temporary residence for more than 30 days.

The Town of Oak Island held a duly advertised public hearing on June 10, 2008 and voted by resolution to adopt the consolidated land use plan amendment.

The public had the opportunity to provide written comments up to fifteen (15) business days (excluding holidays) prior to the CRAC meeting. No comments have been received as of the date of this memorandum.

DCM Staff Recommendation: DCM Staff has determined that the Town of Oak Island Consolidated Land Use Plan amendment has met the substantive requirements outlined within the 2002 Land Use Plan Guidelines and that there are no conflicts evident with either state or federal law or the State's Coastal Management Program.

DCM Staff recommends that the CRAC forward the land use plan amendment to the CRC for certification.

CRC-08-33



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

July 8, 2008

CRC-08-30

MEMORANDUM

To: Coastal Resources Commission Members
From: Hope Sutton, Stewardship Coordinator
Re: Bird Island Coastal Reserve

Background:

The North Carolina Coastal Reserve was established in 1982 to preserve and manage selected representative coastal areas for the purposes of research, education and compatible traditional uses. The Coastal Reserve encompasses a total of over 41,000 acres over 10 sites, four of which are components of the North Carolina National Estuarine Research Reserve. The Bird Island component of the Coastal Reserve was added in 2001 after a decade-long campaign lead by the Bird Island Preservation Society and with the assistance of the North Carolina Coastal Land Trust, the North Carolina Coastal Federation and State representatives. Acquisition of Bird Island was made possible through a bargain sale arrangement with the property owners and funds from a combination of sources, including the Natural Heritage Trust Fund, the Clean Water Management Trust Fund, and the Department of Transportation.

Bird Island Coastal Reserve Site Description:

The Bird Island Coastal Reserve is located in southwestern Brunswick County, between Sunset Beach and the South Carolina state line. Its broad, gently-sloping natural beach makes it appealing to visitors and marking it as an important part of the local economy. Since the closure of Mad Inlet in 1999 following Hurricane Bonnie, public access to the Reserve is primarily via the ocean beach from Sunset Beach. The sound and marsh areas of the Reserve may be accessed by boat, depending on vessel draft and tide levels.

Bird Island Coastal Reserve is within the Outer Coastal Plain and is the terminus of the series of barrier islands known as "the Brunswick County beaches." The Reserve is bounded by the Atlantic Intracoastal Waterway to the north, the Atlantic Ocean to the south, the Town of Sunset Beach to the east, and the South Carolina state line and US Army Corps of Engineers property to the west. Like other barrier islands in the region, its origin is likely a combination of drowned beach ridges, changes in sea level and site-specific dynamics of sediment transport. The soils of

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Bird Island are typical, ranging from excessively drained fine sands throughout the beach and dune areas to silty clay loams in the wetland areas. Hydrology is similarly typical, with fresh water recharge by precipitation and a combination of surficial and subsurface aquifers within layers of clay and limestone.

Natural communities of the Bird Island Coastal Reserve include the upper beach, dune grass, maritime grasslands, maritime shrub, maritime shrub swamp, brackish marsh, salt shrub, salt flats, salt marsh and subtidal flats. Animal species present are characteristic of barrier islands in the region; mammals present include red foxes, raccoons, opossums, marsh rabbits, cotton mice and white-tailed deer. Bird species range from oceanfront users such as brown pelicans and various gulls, to intertidal beach frequenters including sandpipers, terns, black skimmers, oystercatchers, willets, and plovers, to marsh users such as ibises, herons and egrets. Species of special significance include the following endangered or rare species: Seabeach Amaranth (*Amaranthus pumilus*), Piping Plover (*Charadrius melodus*), Wilson's Plover (*Charadrius wilsonia*), American Oystercatcher (*Haematopus palliatus*), Willet (*Catoptrophorus semipalmatus*), Giant Swallowtail (*Papilio cresphontes*), Eastern Painted Bunting (*Passerina ciris ciris*), Wood Stork (*Mycteria simus*), Least Tern (*Sterna antillarum*), Black Skimmer (*Rynchops niger*), and Loggerhead Seaturtle (*Caretta caretta*).

Bird Island Coastal Reserve Management:

Management of the Bird Island Coastal Reserve continues to be supported by several organizations and entities, including the Bird Island Preservation Society, the North Carolina Coastal Federation, the North Carolina Coastal Land Trust, the Cape Fear Chapter of the Audubon Society and the Town of Sunset Beach. Currently, the Reserve is working with these organizations to update the signage on the Reserve to include educational messages about the Reserve's inhabitants, as well as visitor use guidance to support appropriate use of the Reserve.

No current activities pose an imminent threat to the resources of the Reserve, although visitor use has increased in recent years, requiring monitoring to ensure that sensitive areas are not negatively impacted. In addition, monitoring must occur on a regular basis to protect the Reserve from potential invasive species and to keep accurate records of the presence or absence of species of special interest.

1 15A NCAC 03I .0101 is proposed for amendment as follows:

2
3 **15A NCAC 03I .0101 DEFINITIONS**

4 (a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

5 (b) The following additional terms are hereby defined:

6
7 (20) Fish habitat areas. The fragile estuarine and marine areas that support juvenile and adult
8 populations of fish species, as well as forage species utilized in the food chain. Fish habitats as
9 used in this definition, are vital for portions of the entire life cycle, including the early growth and
10 development of fish species. Fish habitats in all coastal fishing water, as determined through
11 marine and estuarine survey sampling, include:

12 (A) Submerged aquatic vegetation habitat. Beds of submerged Submerged aquatic vegetation
13 (SAV) habitat are those habitats in public trust and estuarine waters is submerged lands
14 that:

15 (i) are vegetated with one or more species of submerged aquatic vegetation such as
16 including eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and
17 widgeongrass (*Ruppia maritima*), bushy pondweed or southern naiad (*Najas*
18 *guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*),
19 horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass
20 (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly
21 *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed
22 (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort
23 (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia*
24 *maritima*) and wild celery (*Vallisneria americana*). These areas may be
25 identified by the presence of above-ground leaves, below-ground rhizomes, or
26 reproductive structures associated with one or more SAV species and include
27 the sediment within these areas;

28 (ii) have been vegetated by one or more of the species identified in Subparagraph (i)
29 within the past 10 annual growing seasons and that meet the average physical
30 requirements of water depth (six feet or less), average light availability (secchi
31 depth of one foot or more), and limited wave exposure that characterize the
32 environment suitable for growth of SAV. The past presence of SAV may be
33 demonstrated by aerial photography, SAV survey, map, or other documentation.
34 An extension of the past 10 annual growing seasons criteria may be considered
35 when average environmental conditions are altered by drought, rainfall, or storm
36 force winds.

1 ~~These vegetation beds occur~~ This habitat occurs in both subtidal and intertidal zones and
2 may occur in isolated patches or cover extensive areas. ~~In either case, the bed is defined~~
3 ~~by the presence of above ground leaves or the below ground rhizomes and propagules~~
4 ~~together with the sediment on which the plants grow.~~ In defining beds of submerged
5 ~~aquatic vegetation,~~ SAV habitat, the Marine Fisheries Commission recognizes the
6 Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the
7 submerged aquatic vegetation definition, or rules 15A NCAC 03K .0304, .0404 and 03I
8 .0101, to apply to or conflict with the non-development control activities authorized by
9 that Act.

10
11 *Authority G.S. 113-134; 113-174; 143B-289.52.*



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

July 9, 2008

MEMORANDUM

(CRC-08-34)

To: Coastal Resources Commission
From: Steve Underwood, Assistant Director for Policy and Planning
Date: July 9, 2008
Subject: Innovative Beach Nourishment Funding Strategies – Making the Money Work

In October of last year, I attended the American Shore and Beach Preservation Association (ASBPA) conference in Galveston Texas. One presentation in particular that intrigued me was related to some creative strategies associated with funding beach nourishment projects. While beach nourishment is the State's preferred response to oceanfront erosion, the funding of these projects has been an issue in many coastal communities. The primary funding issue is how do you finance the beach nourishment effort in a way that equitably distributes the financial burden among all interested parties.

Peter Ravella, a former state coastal program director and now President of a coastal management consulting firm, presented some innovative strategies for funding beach nourishment projects at the ASBPA meeting. While the Division does not endorse any particular firm or strategies regarding financial planning for beach fill projects, this presentation may prove useful to local governments and the CRC as they strategize on how to find the resources needed for such projects. He gave a similar presentation to the Coastal Resources Advisory Council in November 2007 and accepted an invitation to address the 2008 Coastal Local Governments meeting in Pine Knolls Shores on April 3, 2008.

Below is a short abstract and background for Peter Ravella.

"Local Funding for Beach Projects-Making the Money Work"

Many communities in our nation are exploring measures to address beach erosion, particularly through the construction of beach restoration projects. Implementation of beach restoration projects is quite complex. While most communities have expert consultants to proactively address engineering and regulatory issues, project-financing issues are commonly addressed in a reactionary manner. Without a sound funding plan, the success of any beach restoration project is in jeopardy. Ideally, beach restoration projects are funded using a blend of several revenue sources or streams. Available funding streams may include federal, state and local government

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funds, coupled with local assessments, fees or taxes on properties in the project area or within a political subdivision or special district boundary. If properly planned, this "blended funds" approach can spread the project costs, reduce local assessments and fees, and create a stable financial foundation for the long-term obligations that usually arise in a beach restoration program.

Since the beaches are a valuable resource to the general public and have broad economic benefits, federal and state governments are often willing -- and usually critical -- funding partners in beach restoration efforts, but they rarely cover the entire cost of a project. Furthermore, federal and state funding programs are subject to special conditions or legal stipulations that can limit the funds available to a local community. Therefore, a prudent funding plan will include and identify local funding sources, in addition to federal and state funds, necessary to construct and support a beach restoration project or program. Peter A. Ravella Consulting, LLC (PARC) has partnered with several local governmental entities in the study of project financing options and developed a feasible, adaptable plan for funding beach restoration programs.

PARC's presentation is intended to help the Commission (and beach communities) better understand state-of-the-art beach project funding strategies and how the state of North Carolina can play a more supportive and effective role in promoting sound beach management practices and projects. Specific recommendations and strategies for success will be presented.

Biographical sketch of Peter Ravella:

After eight years as Coastal Management Director of Coastal Technology Corporation, Peter started Peter A. Ravella Consulting, LLC (PARC) in January 2008 to provide more focused attention to communities in need of project financing and government regulatory/compliance services. He is currently under contract with the Village of Bald Head Island and has met with and provided general financial planning guidance to the Town of North Topsail. While at Coastal Tech, Peter served as project manager responsible for regulatory compliance, project financial planning, and government/community relations for beach projects throughout Florida and Texas. Peter also has an extensive background in public beach access planning, private sector coastal development projects, and wetlands regulation.

For the State of Texas, Peter served as Co-Director of the Texas Coastal Management Program for more than six years. He has a B.S. in Marine Biology from Texas A&M University (1983) and is an honors graduate of the Northwestern School of Law, Lewis and Clark College, Portland, Oregon (1986) where he specialized in environmental law and policy.

Peter is married and has two sons, ages 13 and 16.

The Governors' South Atlantic Alliance: A Call To Action Framework

A Call to Action

Florida, Georgia, South Carolina and North Carolina share an extraordinarily rich array of ocean and coastal resources that provide enormous economic, environmental and social benefits for each state. However, those resources face significant and growing stress. Pollution, declining fishery resources, degraded coastal habitats, vulnerability to natural hazards and rapid population growth and development are primary examples of serious challenges to the sustainability of coastal resources in the region. Furthermore, the similarity of issues and habitats plus the connectivity of ocean resources such as coastal watersheds, fisheries and ocean currents across state jurisdictions calls for collective action. For instance, many coastal watersheds involve multiple states, while fish populations migrate seasonally throughout the four-state region.

Recently, two national ocean commissions and the President's United States Ocean Action Plan called for meaningful collaboration at all levels of ocean and coastal research and actions to restore and maintain our ocean resources. Several major regional alliances (e.g., West Coast, Gulf of Mexico, and Northeast) have been established and have successfully leveraged resources to meet common goals. This regional alliance framework is in response to that collective call for action.

Regional Context

Changes in economics, culture, environmental quality, resource use and growth have occurred in the Southeast at an accelerated pace. The resulting pressures placed on the Southeast's natural, environmental, economic, and cultural resources, as well as national defense are increasing exponentially on a regional scale. The complexity of multiple and interdependent resource issues undergoing rapid change creates new challenges and an urgent need for new responses. Our growing understanding of the relationship of humans with the marine environment is leading us to explore new ecosystem-based approaches to coastal management that engages multiple state jurisdictions. The urgency of the situation calls for developing coordinated regional actions by the states in conjunction with supporting partners and leveraging multiple resources to help address critical issues in sustaining our coastal and ocean ecosystems.

Improved coordination among state governments and effective engagement of federal and local governments, academia and coastal and ocean stakeholders is critical to this effort. An integrated regional action is needed to guide research, planning, and management activities that address critical ocean and coastal issues facing all four states. In the following sections, we outline the framework and basis for a regional alliance among the four states, including a structure and process for stakeholders' involvement. Through this alliance, we seek to advance the member states' mutual interests in initial priority South Atlantic coastal and marine issue areas needing attention and action while jointly engaging federal agencies and regional constituencies on significant regional coastal and ocean issues that warrant their support.

Governors' South Atlantic Alliance Framework Continued

The South Atlantic Alliance



The South Atlantic Alliance (Alliance) will complement existing regional arrangements. Most importantly, the Alliance will serve as a conduit for collectively finding, acting on, and regionally implementing science-based actions to sustain the coastal and ocean ecosystems. The Alliance will provide a method for more efficiently and effectively balancing and sustaining ecological capacity, economic vitality, quality of life, public safety and national security mission requirements. The Alliance will provide a partnership of state leaders, supported by federal and local governments, with private and public assistance.

South Atlantic Regional Priority Issues

The following initial priority issues have been identified as being timely and of mutual importance to the sustainability of the South Atlantic region's resources. None of these issues are limited by state boundaries.

Healthy Ecosystems

The South Atlantic supports a diverse array of coastal, estuarine, nearshore and offshore ecosystems, including seagrass beds, wetlands and marshes, mangroves, barrier islands, sand dunes, coral reefs and other "live bottom" formations, maritime forests, streams and rivers. These ecosystems provide ecological and economic benefits including improved water quality, nurseries for fish, wildlife habitat, hurricane and flood buffers, erosion prevention, stabilized shorelines, tourism, jobs, recreation, and support for national defense and homeland security activities. The ecosystems include a range of recreationally and commercially important species, and federally and state protected species. Further, many species and habitats are facing a variety of threats including invasive non-native species, habitat alterations, fishing pressures, population growth in coastal areas, climate change and degraded water quality. Most importantly, all of these pressures are linked.

There are opportunities to enhance and support ecosystem-based management efforts within the region. The objective of these efforts is to improve ecosystem structure and function; improve economic, social and cultural benefits from resources; and improve biological, economic, and cultural diversity in the South Atlantic region. Achieving these goals requires a more thorough understanding of the scope, scale and distribution of resources within the region. Less than five percent of the coastal ocean region of the southeastern United States has been mapped. A significant need exists for standardized, integrated, and accessible spatial and temporal data for the management of coastal marine resources in our region. The Alliance will enhance collaboration necessary to address region-wide ecosystem issues.

Governors' South Atlantic Alliance Framework Continued

Working Waterfronts

Working waterfronts require direct access to coastal public trust waters and submerged lands. The term, working waterfronts, includes water-dependent facilities and related shore-side infrastructure that offer access or support facilities for recreation, commerce, research, and other public uses including military operations (Coast Guard, Navy, etc.). Examples of these facilities include: seafood harvesters and processors; public wet and dry marinas; boat construction and repair facilities; recreational fishing facilities, including fishing piers and for-hire vessel operations; aquaculture facilities; marine transportation (e.g., ferries and cruise ships) and ports for seaborne commerce. It is important to address these issues in a timely manner because there are limited remaining areas suitable as working waterfronts.

Working waterfronts face a number of challenges and high among them is the future of our ports and other water access points. Growth, environmental degradation and displacement are some of the issues facing traditional working waterfront communities. Homeland security requires better control of our coastal facilities both for protection as well as for military operations. Finally, climate change and associated environmental factors such as storm intensity and sea-level changes are emerging issues.

While the southeastern United States is one of the least developed in the nation, according to the Census Bureau, our four southeastern states contain one-third of the nation's 100 fastest-growing counties. The projected percent change in population from 2000 to 2030 in North Carolina, South Carolina, Georgia and Florida is an increase of 51.9 percent, 28.3 percent, 46.8 percent, and 79.5 percent, respectively. Much of the growth is concentrated in coastal counties, and is outpacing our ability to understand, react, and plan for changes in environmental, social, and economic conditions. Sustaining robust waterfront cultural traditions, commerce, adequate access and use of public trust waters, and infrastructure in the face of this growth is crucial.

Major port complexes in the South Atlantic are of vital economic importance to the nation's vast international trade and the region's link to global commerce. Ships are increasing in size, requiring deeper and wider channels. Competition for vital water frontage will increase as the number of larger and faster vessels calling on regional ports increases.

Other water dependent businesses (e.g., recreational and commercial fishing, diving, eco-tours, and water sports) as well as national defense readiness needs are threatened by the conversion of working waterfronts to private residences, condominiums, and marinas. The increase in these waterfront usages results in additional impervious surfaces, and the resulting stormwater runoff causes further degradation of water quality. Coastal and land use planning tools, effective incentives to preserve and enhance the region's coastal waterfront heritage and protect access to the public trust resources of the South Atlantic are examples of such tools. The Alliance will strive to more effectively manage these changes, by striking a balance among new development, historic uses, port expansion, and sustaining resources for the future.

Governors' South Atlantic Alliance Framework Continued

Clean Coastal and Ocean Waters

Significant impacts to estuarine water quality, and coastal ecosystem health are predicted as a result of increasing coastal urbanization. Growth and development are already placing enormous pressures on coastal resources and the adjacent coastal ocean. At the same time, climate change is influencing salinity levels, saltwater intrusion and rise in ocean levels. Both point and non-point discharges from land-based and atmospheric sources are affecting our ground water, rivers, estuaries and the oceans' water column.

Impacts are also evidenced by the increased number of advisories and closures caused by high bacteria levels and harmful algal blooms implicated in fish kills and human health dangers. Variable loads of sediment, nutrients, and pollutants interact with the coastal ocean to influence processes. The Alliance will view the impacts in a state and regional context to enhance managers' ability to effectively target prevention, enforcement, response, mitigation activities, and integrate coastal and ocean observing systems in the South Atlantic.

Disaster-Resilient Communities

Both short-term and long-term changes in weather and climate are major concerns in the southeastern United States. These changes threaten our coastal communities, a multi-billion dollar tourism industry, coastal and watershed development and infrastructure, and local fishing industries. There is a solid history of cooperation among state and private responders in times of emergency. Building upon that, we can share best practices as we prepare for the next emergency to minimize losses and accelerate recovery. Coastal storms account for 71 percent of recent U.S. disaster losses annually. Each event costs roughly \$500 million. Hurricanes Hugo, Andrew, Rita, Isabel and Wilma have reinforced the need for the region to better prepare our communities through risk reduction and damage prevention, mitigation, response, and recovery strategies.

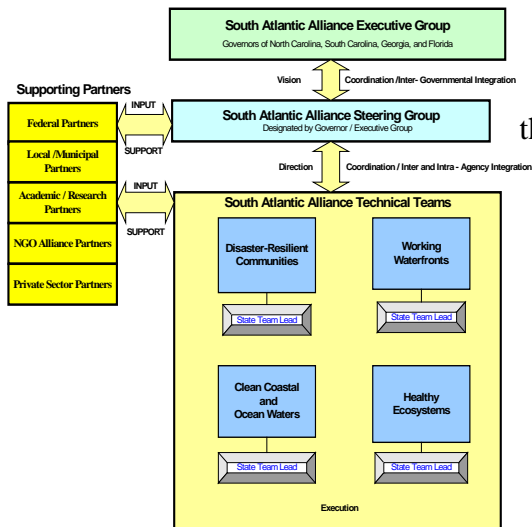


Understanding our vulnerability to, and the impacts of, storms and climate change will enable coastal and natural resource managers and community decision-makers to adapt their management strategies, improve planning and preparedness, and develop mitigation strategies to address impacts to public safety, shoreline change, coastal infrastructure, habitat loss, and species migration and natural resources. Emergency responders and community planners must also develop and implement new strategies to minimize risk to property and industries located in our coastal counties. Long-term climate change and accelerated sea level rise have also emerged as important issues for our region. The Alliance will work to greatly enhance our understanding of ocean and weather dynamics and improve prediction, observation and forecasting capabilities.

Governors' South Atlantic Alliance Framework Continued

Alliance Framework and Outcomes

The Alliance organization will function based on rules that optimize the ability to develop and sustain an effective working relationship among the partners to identify and seize opportunities for mutual gain.



The Alliance structure and framework will provide the foundation for key outcomes supporting the vitality of the region in a balanced manner. Furthermore, it is our intent that the Alliance will provide:

- An organizational structure and forum for collaboration, coordination and a clearing house for information supporting cooperative activities and coastal and ocean decision making;
- Regional sustainability of resources that supports individual state requirements;
- Better regional alignment of decisions resulting in mutual mission accomplishment.
- Cooperative planning and leveraging of resources to produce multiple state and regional benefits;
- Integrated research, observation and mapping of the

South Atlantic region leading to common and coordinated data and information to enhance science-based decision making;

- Integrated solutions that benefit all systems' requirements (i.e., ecosystems, economic systems, and national defense systems) at state, federal and local levels; and
- Increase the level of awareness of policymakers and the public to the challenges facing the South Atlantic region.

Southeast Atlantic Alliance Executive Planning Team Members

Chris Russo, Organizational Effectiveness Director, N.C. Department of Environment and Natural Resources

Carolyn Boltin, Commissioner, South Carolina Ocean and Coastal Resource Management

Robert Boyles, Director, South Carolina Marine Resources

Stephanie Bailenson, Director, Florida Coastal and Aquatic Management

Louis Daniel, Director, Division of North Carolina Marine Fisheries

Jim Gregson, Director, Division of North Carolina Coastal Management

Susan Shipman, Director, Georgia Coastal Resources Division

Ken Haddad, Executive Director, Florida Fish and Wildlife Conservation Commission

Gil McRae, director, Florida Marine Research Institute (FMRI)

Rick DeVoe, Executive Director, South Carolina Sea Grant Consortium (SCSGC)

Harvey Seim, Southeast Coastal Ocean Observing Regional Association (SECOORA)

Roger Pugliese, Senior Fishery Biologist, South Atlantic Fishery Management Council

Camille Destafney, Regional Environmental Director, Navy Region Southeast

Paul Friday, Community Planning and Liaison Coordinator, USMC Installations East

Ginny Fay, senior policy analyst, National Oceanic and Atmospheric Administration

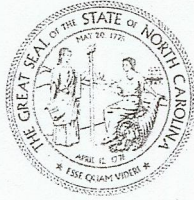
James Leutze, Chancellor Emeritus, University of North Carolina-Wilmington

Bob Barnes, National Military Support Coordinator, The Nature Conservancy

Governors' South Atlantic Alliance Framework Continued

Mary Conley, Southeast Coordinator, The Nature Conservancy, Southeast Region

Ron Baird, research professor, University of North Carolina-Wilmington Center of Marine Science



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
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MICHAEL F. EASLEY
GOVERNOR

June 24, 2008

The Honorable Mark Sanford
Office of the Governor
PO Box 12267
Columbia, SC 29211

The Honorable Sonny Perdue
The Office of the Governor
State of Georgia
203 State Capitol
Atlanta, GA 30334

The Honorable Charlie Crist
State of Florida
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399-0001

Dear Fellow Governors:

As governors of the states along the South Atlantic seaboard, we understand how important it is for our states to work together to address the many pressing issues that face our coastal and ocean resources. Those resources are vital to our states in our economies, in our quality of life, in our culture, in our security, in our public and environmental health, and in our well being. To help us better understand and manage our vital coastal and ocean resources, I support, and I invite you to support, the creation of a regional alliance among our four states to focus specifically on ocean and coastal science and management.

The Governors' South Atlantic Alliance would be a state-led and federally-supported partnership. It will focus on ocean and coastal science and management priorities that we collectively select and that are important to all of our states, such as healthy coastal ecosystems and communities, clean coastal waters, working waterfronts, and disaster resilient communities. At the same time, each state will retain its flexibility to implement programs in a manner that recognizes unique ecological, geographical and political circumstances.

The alliance will leverage resources from a range of federal agencies, academic institutions, and non-governmental organizations in support of what we, through our respective state agencies, want to accomplish. I understand that these resources have been quite significant for states that have participated in other similar alliances in other coastal regions of the nation, including the Chesapeake Bay, Great Lakes, Puget Sound, and Gulf of Mexico. (Governor Crist may be able to tell us more since Florida is a member of the Gulf of Mexico Alliance.) Among the resources from which we could expect to benefit if we form the alliance are program funds, grants, research, and technical assistance. These benefits could well be lost if we do not seize the moment. I believe that the alliance is a practical, effective way to add value to the good work in ocean and coastal science and management that is already taking place in and among our states.

The recommendation to set up a Governors' South Atlantic Alliance comes to us with the unanimous endorsement of the Southeast Regional Partnership for Planning and Sustainability (SERPPAS). The SERPPAS partnership was formed in 2005 and includes state natural resource and environmental agency heads from our four states and Alabama and from the Department of Defense agencies representing military installations across the Southeast. In addition, the creation of a state-led, federally-supported regional council is consistent with comments that each of our states made in 2004 on the Preliminary Report of the U.S. Commission on Ocean Policy.

I hope that each of you will join me in supporting the establishment of a Governors' South Atlantic Alliance. As a next step and way to determine whether and how we might proceed, I am asking Bill Ross, my secretary of Environment and Natural Resources, to follow up by being in touch with your office and with his counterparts and their staffs in your states to answer any questions you may have and to develop a plan for moving ahead in a way with which we are all comfortable.

Thank you very much. With kindest regards, I remain

Very truly yours,



Michael F. Easley

c: The Honorable Bill Ross
Franklin Freeman, Senior Assistant for Governmental Affairs

MFE:wgr



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-35

July 10, 2008

MEMORANDUM

TO: Coastal Resources Commission

FROM: M. Ted Tyndall

SUBJECT: Sandbag Inventory and Prioritization Update

Over the last two months, DCM staff conducted a detailed inventory of sandbag structures protecting oceanfront property in North Carolina. Staff concentrated on those sandbag permits that were located in communities that were actively seeking beach nourishment as of October 1, 2001. To refresh your memory, 15A NCAC 07H.0308(a)(2)(F) was passed in May of 2000 and allowed those property owners to keep their sandbags for five years from the date of installation or until May 1, 2008, whichever was later. This deadline affects approximately 150 of the 370 total sandbag structures that exist along our coast. The May 1, 2008 deadline has now passed and Staff believes that if notices for removal are sent to all the property owners with sandbags not meeting the literal interpretation of full compliance with the CRC's rules, that a high number of variance requests would be filed all at one time; a number that Staff anticipates would be too large for the Commission to hear within its mandated timeframes in which to hear variances.

Therefore, Staff with the Commission's guidance began a phased approach to enforcing the deadline, beginning with a detailed inventory of all sandbag structures. It must be emphasized that sandbags that are covered with sand and stable, natural vegetation are allowed to remain in place until such time as they are uncovered by a storm or other event.

Inventory efforts began after May 1 and included documenting existing site conditions, taking multiple photographs from different views, and locating each structure with GPS. Site-specific notes were recorded and included documentation of the degree of encroachment the sandbags have into public access to the dry sand beach, the nature of the development (public versus private), the integrity of the sandbags (functional versus derelict), how much of the sandbags are covered with sand and how much of that sand coverage includes stable and natural vegetation. Length of time that each sandbag structure has been in place was noted. These primary variables were entered into a spreadsheet along with secondary variables that include whether or not the sandbags are affiliated with a shoreline that has received beach fill, is slated to receive beach fill, is in an existing Inlet Hazard Area, or is in a proposed Inlet Hazard Area.

A sandbag removal index (SRI) was developed to rank the non-compliance of sandbag structures on a relative scale. The quantitative model relies on those variables described above, appropriately weighted based on primary or secondary nature, as input. This model provides a method with the ability to quantify subjectivity making it flexible and tolerant of imprecise data.

At the time of this memo, Staff is continuing to work on the model and is developing a Google basemap that shows all sandbag locations with "Popup" abilities that can show individual photographs, recorded site conditions, and the site specific SRI. The basemap will be capable of showing the location of sandbags in relation to other data layers such as Inlet Hazard Areas and static vegetation lines.

Once the database and model is proofed, run and verified, the SRI will aid staff in determining which sandbags are not subject to removal (i.e. covered with sand and stable natural vegetation) and which bags rank as a high priority for removal. Once that process is completed, those property owners whose sandbags rank the highest will be among the first to be notified by mail that they have 30 days from the date of notification to remove their sandbags. If compliance is not forthcoming, the Division will then proceed with issuance of a formal Notice of Violation requesting their removal. If the bags are not removed after that correspondence, injunctive relief will be sought through the courts to have the sandbags removed.

For this presentation, Ken Richardson will demonstrate to the Commission the capabilities of the Google basemap that he created. This tool along with the database and model creating the rankings will aid Staff in the final decisions for which bags will need to be removed first. It must be pointed out that all bags subject to the May 1, 2008 deadline must be removed if they are not covered with sand and stable natural vegetation.

Staff's goal is that by the end of August to have all the data proofed, the model verified and run, the rankings assigned, the Google map accessible on the Division's website for use and perusal, and the first letters requiring removal mailed out.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

July 10, 2008

MEMORANDUM

TO: CRC & Interested Parties
FROM: Tancred Miller
SUBJECT: Rulemaking Update

Along with this memo is a spreadsheet that contains all of the Commission's rules that are currently in the rulemaking process—from those being proposed for initial action to those reviewed by the Rules Review Commission since the last CRC meeting. Listed below is a description and recent history of the CRC's action on each rule. Complete drafts of rules scheduled for public hearing at this meeting will be available on the DCM website.

RULE DESCRIPTIONS1. 15A NCAC 7H.0205 Coastal Wetlands (Marsh Alteration)

Status: CRC approved draft rule language in March. Public hearing in September.

The purpose of the proposed amendments to this rule is to begin regulating certain types of marsh alteration, primarily mowing and burning. The CRC has received two Attorney General Opinions asserting the Commission's authority to regulate marsh alteration as development. Staff does not feel that alteration is a ubiquitous problem, and has scientific evidence that most mowing and burning seen in NC is not detrimental to the marsh.

2. 15A NCAC 7H.0208 Estuarine System Use Standards (Docks & Piers)

Status: Conditionally approved for public hearing.

The CRC approved this rule for public hearing in July 2007, conditional on review and approval of the MFC's new definition of SAV habitat and satisfactory permitting coordination with DCM. DMF and DCM reported on the SAV habitat definition in May and on the interagency coordination agreement that has been developed. Staff will provide an update at this meeting on the interagency coordination protocols and review draft rule changes.

3. 15A NCAC 7H.0306 General Use Standards for Ocean Hazard Areas (Setbacks)

Status: Going through a series of public hearings. Final hearing on July 24th.

The amendments to 7H.0306 tie beachfront building setbacks to the size of the structure, not the use. The revisions include graduated setback factors for buildings greater than 5,000 square feet, and do not allow for cantilevering oceanward of the setback line. Proposed changes to this rule are running together with 7J.1200.

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4. 15A NCAC 7H.0309 Use Standards for Ocean Hazard Areas: Exceptions
Status: Staff is proposing an additional change at the July meeting.
CRC approved draft changes in March to make the development limitations in this rule conform with pending changes to 7H.0306, and approved additional changes to the pier house section in May to allow construction and expansion of pier houses oceanward of the setback. Staff is seeking additional discussion in July to ensure that this rule works together with changes the Commission may make to the inlet hazard area use standards in 7H.0310.
5. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas
Status: Scheduled for discussion in July 2008.
The CRC has seen the new inlet hazard area delineations prepared by its Science Panel on Coastal Hazards. Staff updated the Commission on progress towards amending use standards in IHAs, and will present policy considerations and possible rule language to the CRC at this meeting.
6. 15A NCAC 7H.1100 GP for Construction of Bulkheads & Placement of Riprap
Status: Going to public hearing.
The Commission approved this rule in May for public hearing. Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.
7. 15A NCAC 7H.1200 GP for Construction of Piers, Docks & Boat Houses
Status: Conditionally approved for public hearing.
The CRC approved this rule for public hearing in July 2007, conditional on review and approval of the MFC's new definition of SAV habitat and satisfactory permitting coordination with DCM. DMF and DCM reported on the SAV habitat definition in May and on the interagency coordination agreement that has been developed. Staff will provide an update at this meeting on the interagency coordination protocols and review draft rule changes.
8. 15A NCAC 7H.1400 GP for Construction of Groins in Estuarine & Public Trust Waters
Status: Going to public hearing.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes include allowing materials other than wood, prescribing a maximum spacing and frequency, and clarifying how structures are measured. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.
9. 15A NCAC 7H.2100 GP for Marsh Enhancement Breakwaters
Status: Going to public hearing.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes are primarily definitional and to ensure consistency with other shoreline stabilization rules. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.
10. 15A NCAC 7H.2400 GP for Placement of Riprap for Wetland Protection
Status: Going to public hearing.
Proposed changes to this rule result from the CHPP recommendation that the CRC

encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes include a definitional clarification and changes to the dimensions and geometry of structures. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.

11. 15A NCAC 7J.0701 Variance Petitions

Status: Going to public hearing.

CRC adopted amendments to 7J.0701 that require claimants to initially file either a variance request or a contested case, and not pursue both options at the same time. Proposed rule changes have been through public hearing but were returned to the CRC because of an objection by the RRC. CRC's Variance Subcommittee proposed changes to address RRC's objection and recommended sending the rule back to public hearing.

12. 15A NCAC 7J.0702 Staff Review of Variance Petitions

Status: Completed legislative review, effective 07/03/2008.

CRC adopted amendments to 7J.0702 that outline procedures for staff review, including the timing and preparation of stipulated facts and staff recommendations. More than 10 individuals objected to the proposed rule after it had been approved by the RRC. Under the APA, the rule was subject to legislative review. The rule was not disapproved by the Legislature, and is now effective.

13. 15A NCAC 7J.0703 Procedures for Deciding Variance Petitions

Status: Going to public hearing.

CRC adopted amendments to 7J.0703 that outline procedures for situations in which the Commission cannot reach a final decision due to incomplete stipulated facts. Proposed rule changes have been through public hearing but were returned to the CRC because of an objection by the RRC. This rule was also objected to by more than 10 individuals, but is not subject to legislative review because it was not approved by the RRC. CRC's Variance Subcommittee proposed changes to address the RRC's objection and recommended sending the rule back to public hearing.

14. 15A NCAC 7J.1200 Static Line Exception Procedures

Status: Going through a series of public hearings. Final hearing on July 24th.

Staff developed 7J.1200 to define the administrative requirements of applying for, receiving, and maintaining a static line exception. The rule also describes the criteria for qualifying for an exception, CRC procedures for granting an exception, and circumstances that would cause an exception to expire or be repealed. The CRC reviewed this proposed rule in September 2007 and approved it for public hearing. Staff is coordinating the timing between this rule and 7H.0306.

15. 15A NCAC 7M.0300 Shorefront Access Policies

Status: Going to public hearing.

Amendments to 7M. 0300 would establish a reporting requirement for user fees collected at state-funded access sites; give DCM the ability to take the lead in acquiring land and constructing access facilities without a city or county applicant; and includes provisions to utilize funds outside the usual funding cycle in order to take advantage of unique opportunities.

COASTAL RESOURCES COMMISSION RULEMAKING STATUS - JULY 2008

| Item # | Rule Citation | Rule Title | July '08 Status | CRC Action 3/1/2008 | CRC Action 5/1/2008 | CRC Action 7/1/2008 | CRC Action 9/1/2008 | CRC Action 11/1/2008 |
|---------------|----------------------|--|---|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---------------------------------|
| 1 | 15A NCAC 7H.0205 | Coastal Wetlands | Going to Public Hearing | Approved for Hearing | | | Public Hearing | |
| 2 | 15A NCAC 7H.0208 | Estuarine System Use Standards | Scheduled for discussion | Discussion of SAV definition | Discussion of SAV definition | Discussion of draft language | | |
| 3 | 15A NCAC 7H.0306 | General Use Standards for Ocean Hazard Areas | In public hearings | Approved for Hearings | | Public Hearings | | |
| 4 | 15A NCAC 7H.0309 | Use Standards for Ocean Hazard Areas: Exceptions | Discussion of staff changes | Discussed changes | Approved for Hearing | Discussion of staff changes | | |
| 5 | 15A NCAC 7H.0310 | Use Standards for Inlet Hazard Areas | Scheduled for discussion | | Discussion of progress | Discussion of draft language | | |
| 6 | 15A NCAC 7H.1100 | GP, Constr. of Bulkheads & Placement of Riprap | Going to Public Hearing | | Approved for Hearing | | Public Hearing | |
| 7 | 15A NCAC 7H.1200 | GP for Construction of Piers, Docks & Boat Houses | Scheduled for discussion | Discussion of SAV Definition | Discussion of SAV Definition | Discussion of draft language | | |
| 8 | 15A NCAC 7H.1400 | GP for Construction of Groins in Estuarine & PT Waters | Going to Public Hearing | | Approved for Hearing | | Public Hearing | |
| 9 | 15A NCAC 7H.2100 | GP for Marsh Enhancement Breakwaters | Going to Public Hearing | | Approved for Hearing | | Public Hearing | |
| 10 | 15A NCAC 7H.2400 | GP for Placement of Riprap for Wetland Protection | Going to Public Hearing | | Approved for Hearing | | Public Hearing | |
| 11 | 15A NCAC 7J.0701 | Variance Petitions | Going to Public Hearing | | Approved for Hearing | | Public Hearing | |
| 12 | 15A NCAC 7J.0702 | Staff Review of Variance Petitions | No legislative action, effective July 3rd. No further action necessary. | | | | | |
| 13 | 15A NCAC 7J.0703 | Procedures for Deciding Variance Petitions | Going to Public Hearing | | Approved for Hearing | | Public Hearing | |
| 14 | 15A NCAC 7J.1200 | Static Line Exception Procedures | In public hearings | Approved for Hearings | | Public Hearings | | |
| 15 | 15A NCAC 7M.0300 | Shorefront Access Policies | Going to Public Hearing | | | | Public Hearing | |

Subject: proposed oceanfront setback rules
Date: Tue, 8 Jul 2008 11:53:40 -0400
From: Tommy Tucker <tommytucker@charter.net>
Reply-To: Tommy Tucker <tommytucker@charter.net>
Organization: Tucker Bros. Realty Co.
To: <jim.gregson@ncmail.net>

TO: Mr. Jim Gregson

Dear Mr. Gregson:

This email is in support of eliminating state imposed oceanfront setback lines, standing or proposed, in the towns of Carolina Beach and Kure Beach. Both towns have full beach renourishment programs, with federal, state and local funding.

Carolina Beach renourishment has been in place since 1964, Kure Beach since 1997. Both have proven to be most successful in fulfilling their missions.

I see no need or good reason for state imposed oceanfront setbacks for property built behind our berms.

By the way, I was 13 when the initial Car. Bch. berm was built, skim-boarding in the runoff, so I do speak from actual knowledge, having lived in Carolina Beach my entire life, serving 4 years as a lifeguard while earning a degree in political science from North Carolina University, aka UNC-Chapel Hill.

I have been a real estate broker in Carolina Beach over 35 years, and my father, Glenn M. Tucker, likewise from 1937 until his death in 1993. He also served on the original NC Water and Air Resources Board for 13 years, under Governors Dan K. Moore and Terry Sanford.

Hopefully, the above will help to lend some credibility to this email.

Sincerely,

Thomas O. Tucker, REALTOR® GRI®

NC BROKER NO. 25674 SINCE 1973

Tucker Bros. Realty Co.
Thomas O. Tucker and James Hiram Tucker

REALTORS® since 1973
201 Harper Avenue
P. O. Box 410
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Town of Oak Island comments submitted for CRC/DCM Public Hearing July 14, 2008

These comments, which are submitted on behalf of the Town of Oak Island, respond to the proposed amendments to 15A N.C.A.C. 7H.0306 approved for public hearing by the Coastal Resources Commission on March 27, 2008.

We commend the Coastal Resources Commission's recognition of the benefits of large-scale beach nourishment projects that have a commitment to maintenance in providing storm and erosion protection for oceanfront development. And we appreciate your willingness to work with local government stakeholders during the rulemaking process. We would like for the adoption process to proceed expeditiously and believe these comments will not compromise that goal.

Generally speaking, **the Town strongly supports the "static line exception" established in the proposed amendments.** However, several key points related to the landward most adjacent structure limitation in .0306 (a)(8)(F) warrant the special attention of the CRC and should be considered prior to adopting the proposed rules to ensure fairness and avoid unintended consequences.

The landward most adjacent structure limitation is arbitrary and as such will result in considerable inequities in terms of the size and location of a structure on a lot. The Town recognizes and acknowledges that a building line should be established in order to set back allowable development the maximum feasible distance landward on a lot.

However, the landward most adjacent structure limitation will have at least two negative impacts:

- It will permit the placement of the allowable total floor area of infill development oceanward farther than would otherwise be necessary.
- It will discourage redevelopment to current building codes by reducing the allowable total floor area more than would otherwise be permitted.

As an alternative, a local government requesting a static line exception could work with the Division of Coastal Management to formulate a building line that represents the maximum feasible distance landward that allowable development could be set back on a lot taking into consideration local development ordinances and lot configurations. That building line could be approved by the Coastal Resources Commission as part of the static line exception request.

We respectfully request that you incorporate the procedure outlined above for establishing a building line for a static line exception to eliminate the inconsistencies inherent in the use of the landward most adjacent structure limitation.

Thank you for your consideration.

Subject: beach development rules
Date: Mon, 14 Jul 2008 07:34:54 -0700
From: Chuck Harmon <chuck@york.org>
To: <jim.gregson@ncmail.net>

Dear Mr. Gregson,

I am a property owner on Oak Island in Brunswick County, NC. Despite the possible economic advantages to me and my neighbors on the island, I am writing to ask that you and the Division of Coastal Management, please do NOT change the setback requirements and allow building closer to the water's edge on Oak Island.

The beach renourishment projects and the desire of property owners along the waterfront to develop their lots have created a false optimism that is both environmentally and economically dangerous. As I am sure you are aware, there are several compelling reasons to have even more stringent restrictions (not more relaxed) regarding such development.

1. Beach renourishment is expensive and often not successful in the long term; nature will move the sand regardless of human effort, and we are not mightier than the ocean.
2. The oceanfront ecosystem is fragile and construction threatens the very beauty that makes Oak Island economically vital, beauty which you and your agency are charged to protect.
3. Regardless of the political and scientific arguments about climate change, there is little debate that ocean levels are rising, and it seems foolish and short sighted to dramatically increase the human footprint in the most vulnerable waterfront areas.
4. We have an obligation to protect our coast and the motivation of those who wish to build is based on short-term profit, not long term conservation. Other coastal states (Oregon, California, Georgia) have already established programs to limit coastal development and protect this vital public asset.

I urge you to reject the arguments of developers and politicians who would benefit economically at the expense of all of the people of North Carolina. Please protect the coastline for our children and grandchildren to enjoy.

//Chuck Harmon//

//2908 E. Beach Drive/////

//Oak Island////, NC//

Subject: Comment On Proposed Oceanfront Setback Rules Changes
Date: Wed, 16 Jul 2008 11:19:46 -0400
From: Richard L Bunce <rbunce@ec.rr.com>
To: <jim.gregson@ncmail.net>

Mr. Gregson;

This email includes my comments for the N.C. Department of Environment and Natural Resources? Division of Coastal Management and Coastal Resources Commission recent public hearings on the proposed Oceanfront Setback Rules changes. I have previously submitted comments to Mr. Tancred Miller in November of 2007.

As a resident of Oak Island, NC I would like to comment on a part of the proposed static line rule changes that would require Towns to commit to future beach nourishment projects. I believe there are many uncertainties with beach nourishment projects that would make a long term commitment by a Town such as ours unwise. One issue is with Federal and State funding uncertainty. Beach nourishment projects in past years are largely funded by governments other than local Towns. Recently that same level of funding appears to be in doubt. A small Town such as ours committed to pay significant cost for nourishment would be in serious financial trouble.

Another issue is the effect of climate change and sea level rise. Should predictions of significant sea level rise in the next 50 years such as those developed by the Intergovernmental Panel on Climate Change (IPCC), prove to be correct, then the value of beach nourishment is brought into serious doubt. Several government agencies have issued reports over the last several decades casting doubts on the effectiveness of beach nourishment in an environment of sea level rise. The U. S. Fish and Wildlife Service has specifically commented on the proposed Brunswick County Beaches Nourishment Project that concluded that beach nourishment was not effective in the face of rising sea level. I hope the DCM and CRC will consider these uncertainties over beach nourishment and provide an official statement documenting their position on Climate Change and projected sea level rise and effectiveness of beach nourishment in this environment.

Richard L Bunce
125 NE 26th St.
Oak Island, NC 28465
910-201-4679
rbunce@ec.rr.com

Subject: Town of Kill Devil Hills-Resolution in Opposition
Date: Wed, 16 Jul 2008 10:00:50 -0400
From: Riddick, Pam <pam@kdhnc.com>
To: <Jim.Gregson@ncmail.net>, <Steve.Underwood@ncmail.net>,
<Jeff.Warrent@ncmail.net>, <Frank.Jennings@ncmail.net>

Attached please find a copy of the Resolution in Opposition to the proposed CAMA Oceanfront Setback Regulations 15A NCAC 07H.0306 General Use Standards for Ocean Hazard Areas that was unanimously adopted by the Kill Devil Hills Board of Commissioners at their July 14, 2008 meeting.

>> <<CAMA.Resolution.pdf>>

Pam Riddick
Administrative Specialist
Town of Kill Devil Hills
102 Town Hall Drive, P. O. Box 1719
Kill Devil Hills, NC 27948
252-449-5300-Phone
252-441-7946-Fax
www.kdhnc.com <<http://www.kdhnc.com>>



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

Resolution in Opposition to the
Proposed CAMA Oceanfront Setback Regulations
15A NCAC 07H. 0306 General Use Standards for Ocean Hazard Areas

Kill Devil Hills, North Carolina
July 14, 2008

WHEREAS, the Town of Kill Devil Hills is a coastal community in Dare County, one of the twenty coastal counties in the State of North Carolina; and

WHEREAS, the Coastal Resources Commission (CRC) was created by the North Carolina General Assembly in 1974 when the Coastal Area Management Act (CAMA) was adopted; and

WHEREAS, the purposes of the CRC include establishing policies for the North Carolina Coastal Management Program, adopting and implementing rules for CAMA which balance economic growth and development in areas of environmental concern and adopting rules and polices for coastal development within those areas; and

WHEREAS, the CRC is presently considering rule changes to CAMA Oceanfront Setback Regulations 15A NCAC 07H. 0306 General Use Standards for Ocean Hazard Areas; and

WHEREAS, as proposed these rule changes will have the effect of increasing oceanfront setbacks on a sliding scale based on building size and annual erosion rates that will require increased setback requirements for larger single-family dwellings and multi-family projects currently under construction in Kill Devil Hills and thus render such projects unbuildable; and

WHEREAS, application of the proposed rule requirements would have a tremendously negative impact on the Town's ad valorem property tax base by causing such structures to be non-compliant with CAMA rules and regulations; and

WHEREAS, the proposed new rules limit options for redevelopment and may reduce the size and value of new structures; and

WHEREAS, construction methods and standards in place today are more stringent and result in stronger, more resistant structures that are better able to endure and withstand oceanfront conditions; and

WHEREAS, there is a lack of scientific evidence to show effectiveness of increased setbacks based on a structure's floor area, as proposed in these rule changes; and

WHEREAS, wind and snow load requirements are based on 30-50 year events while flood plain management requirements are based on 100 year events and therefore the proposed setbacks constitute regulating to a higher standard than other codes;

NOW, THEREFORE, BE IT RESOLVED that the Kill Devil Hills Board of Commissioners hereby opposes the proposed CAMA Oceanfront Setback Regulations 15A NCAC 07H. 0306 General Use Standards for Ocean Hazard Areas and requests the CRC not approve the rule changes as proposed; and

BE IT FURTHER RESOLVED that the Kill Devil Hills Board of Commissioners requests the CRC discontinue further consideration of the subject rule revisions.

This the 14th day of July, 2008.



Raymond P. Sturza, II
Mayor
Town of Kill Devil Hills

ATTEST:

Mary E. Quidley, Town Clerk

Subject: Proposed Setback Rules for Salt Sounds & River Fronts vs Oceanfront
Date: Tue, 15 Jul 2008 23:32:59 -0400
From: Allyn Norton <anortonjr@ec.rr.com>
To: <jim.gregson@ncmail.net>

Jim,

As part of public comment, I have the following inputs & questions:

1. My reading of the proposed rules do not help me separate beachfront from waterfront in salt sounds and rivers. Material has been silent.
2. If salt waterfronts on sounds and rivers are included, then rock revetment and other seawalls suggest a zero erosion rate and therefore no square footage rules for setback.
3. Where the rules may not apply as in item # 2, the setback has been 50 feet for residential construction without CAMA limits on square footage. DWQ may have proposed different rules for stormwater rule reasons but status on these is also unclear.

Simple response is requested on following:

- A. Can you clarify where the proposed rules apply. Oceanfront only or also sounds and salt rivers.
 - A1. When does soundfront become oceanfront as relates to the rules ?
Example: Harkers Island sand beach waterfront in the Maritime Museum Area. OR any exposed waterfront behind the barrier islands (not oceanfront)
- B. Can you differentiate DCM vs DWQ rules / porposed rules on setback and why they are being separately treated (as they appear to be but not sure)
- C. Can you calrify the proposed rules where waterfront is hardened as with rock revetment and other seawalls (not oceanfront. Fort Fisher would be a special case ocean front revetment exception and not what I mean.)
- D. Can you clarify when DCM CAMA rules will apply to setback and square footage verses when NCDENR DWQ rules apply.
In simplistic terms, what will each setback rule be for non ocean front construction.

Note: I am asking because I am reading as much of the literature

as I can see published on Internet and I am unable to determine intent as related to the above differentiations.

You are welcome to share with others or the general audience as to the above differentiations.

Thanks, Would help me. Hopely would be a clarification for many others.

Allyn (Al) Norton, PENC
Norton Engineering & Planning
2235 South Live Oak Pkwy
Wilmington, NC, 28403-6112
910-762-3757
Cell 252-943-5360 (Belhaven)

Subject: Oak Island ocean setback rules
Date: Thu, 10 Jul 2008 13:39:41 -0400
From: Bill Ferriss <billferriss@ctc.net>
To: <jim.gregson@ncmail.net>

Jim,

I appreciate all the hard work your staff has done on the CAMA rules to protect the NC Coast. However I do have a few comments about the setback rules that apply to Oak Island.

The 1998 vegetation Line on Oak Island was established after the NC coast had three hurricanes that contributed to the beach front erosion but more importantly, CAMA allowed the beaches to be Bulldozed to renourished the front dune. The number of cubic yards of sand bulldozed up was never reported and therefore never considered as one of the causes for our beach front to erode. Bull dozing made the ocean tide come in closer to the frontal dune and eliminated any chance of new vegetation. The new sand and shells also had salt that deferred any growth.

The 1998 vegetation line was also determined by the growth of sea oats. This was not correct according to your legal staff on my last hearing. All native vegetation should have been considered to establish the vegetation line.

The last renourishment program on Oak Island simply replaced the sand that was bull dozed up in the 1990's. Therefore the vegetation line should be determined based on the present vegetation line or July 2008 when vegetation has had a chance to grow. Sea Oats are not mature until the month of July. I have proof that a qualified CAMA worker marked the same corner of a lots vegetation line over five feet closer to the ocean in June that they did in April. It was not the fault of the worker, it is the fact that the vegetation line will change due to summer growth.

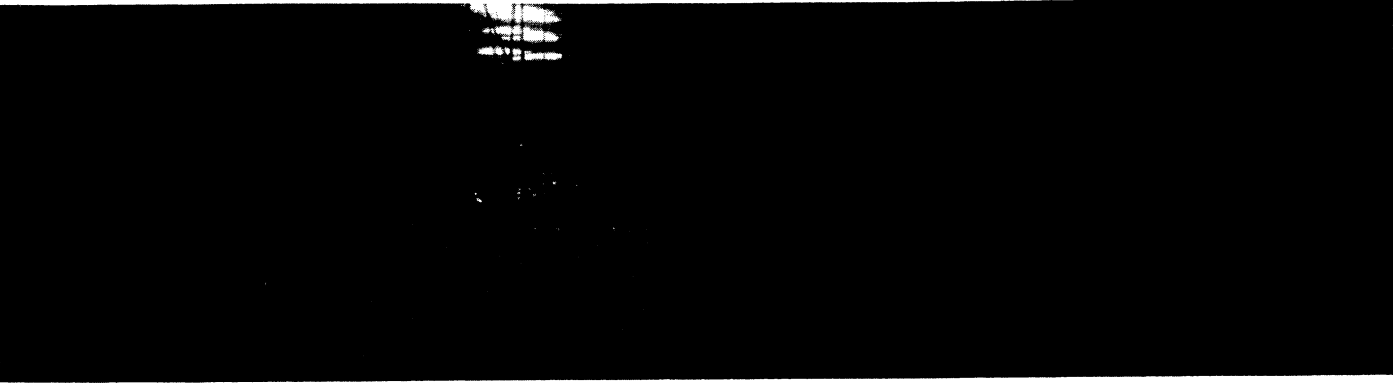
The size limit on all buildings was established because tall buildings created a shadow on the beach sand that cooled the sand and affected the sea turtle eggs. Well, Oak Island is a north & South beach and therefore the shadows would not be on the beach. This restriction should be determine by local government.

The definition of frontal dune should be changed because the definition indicates any dune that has a 1% chance to be covered with water can not be classified as a frontal dune. Oak Island does not have a frontal dune because Hurricane Hazel in 1954 caused all of Oak Island to be under water for less than eight hours. The 1% rule or one time in 100 years was an eight

hour disaster that reclassified all frontal dunes on Oak Island forever. I do not think it is fair for a hurricane to be the cause of rule. It should be caused by the tide change and erosion by the change of tides.

Respectfully submitted

William P. Ferriss, SRA
1417 12th Fairway Drive
Concord, NC 28027
704-782-5253



From the North Carolina Coastal Resources Law, Planning and Policy Center • Spring/Summer 2008

Offshore Wind Energy Development in North Carolina: Discussion of the Legal Framework

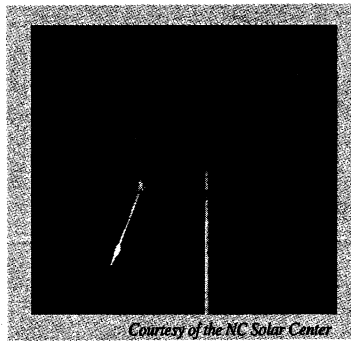
BY LISA C. SCHIAVINATO, J.D., LAW, POLICY AND COMMUNITY DEVELOPMENT SPECIALIST, NORTH CAROLINA SEA GRANT,
CO-DIRECTOR, NORTH CAROLINA COASTAL RESOURCES LAW, PLANNING AND POLICY CENTER

Wind energy production in ocean and coastal waters is a fledgling industry in the United States. It is the subject of rigorous debate, primarily due to the controversy surrounding the Cape Wind project — a 130-turbine offshore wind facility proposed for Nantucket Sound near Cape Cod, Massachusetts. Cape Wind was the first proposed offshore wind project in the nation, and it began applying for permits in 2001. The project became hotly contested as the federal, state, and local governments began their review, and the project has yet to move beyond the permitting stage. Project review remains ongoing, and Cape Wind anticipates the permitting phase will conclude in 2008, with the facility constructed and operational in 2010.¹

The national debate on renewable energy and climate change has prompted other states to contemplate offshore wind energy production. Since Cape Wind was proposed, other offshore wind projects have been proposed for waters off the coast of New York,² Texas, and Delaware. As more information is gathered regarding offshore wind resources in the United States, and as the technology advances, more coastal states may take a closer look at their own potential to harvest wind resources for everyday energy use.

North Carolina, particularly along its coast, does have strong wind resources in certain areas.³ Given that offshore wind energy development is an emerging industry in this country, North Carolina may see a proposal for such a project in the future. Although North Carolina currently has

no offshore wind development, a recent proposal submitted to the N.C. Utilities Commission for a three-turbine wind facility in coastal Carteret County is causing a stir.⁴ Called the Golden Wind Farm, its turbines would generate 4.5



Courtesy of the NC Solar Center

megawatts of electricity that would be sufficient to power approximately 900 homes.⁵ The applicant would sell the power to Progress Energy.⁶ In response to this proposal, the Carteret County Board of Commissioners adopted a nine-month moratorium on issuing permits to build wind turbines.⁷ The applicant for the Golden Wind Farm project acknowledges that the interim moratorium may delay the permitting process, but remains

hopeful that the project will not be deterred.⁸ The purpose of the moratorium through Dec. 2008 is to allow the county the opportunity to study wind energy technology and its use and regulation in coastal areas throughout the nation.⁹

This article will provide a glimpse into the federal and state legal framework regarding wind energy development in ocean and coastal waters. It also will explore the potential for an offshore wind project to be permitted in the state given the current state of the law, and whether changes in or additions to state law are needed for the state to pursue offshore wind energy development. The article will not discuss the viability of offshore wind as a cost-effective source of energy for coastal North Carolina.

Wind Energy Resources in North Carolina

Studies have shown that North Carolina has wind resources significant enough to make wind energy a viable option for the state, particularly along the Outer Banks.¹⁰ Offshore wind facilities potentially could be constructed in either sounds, state coastal-ocean waters, or in federal ocean waters. Because offshore wind projects include placing permanent structures in public trust waters, federal permits, state permits, or both will be required for construction, operation, and maintenance of the facility. Offshore wind facilities not only include wind turbines and platforms, but also transmission cables to route energy to land, as well as substations and other associated infra-

Center Developments

2008 "Shape of the Coast" Conference scheduled for Oct. 24 in New Bern, N.C.

To learn more, visit:
www.nccoastallaw.org
and click on "News and Events."

structure. Dredging and construction activity also would be required.¹¹ Therefore, even if a wind facility were sited in federal waters, state permits would be required under most circumstances. What follows is an overview of the federal and state laws that likely would apply, should a wind energy development project be proposed off the coast of North Carolina.

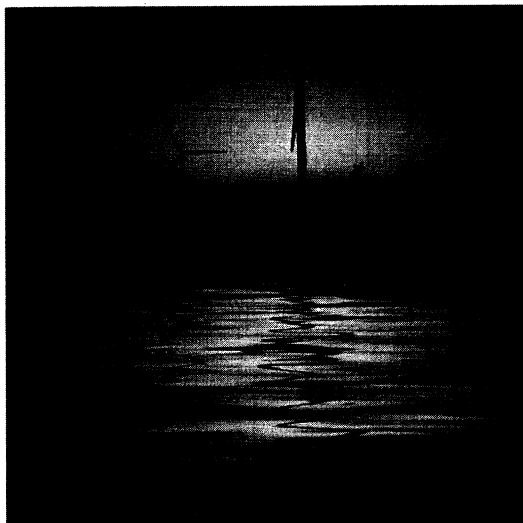
Federal Law

At the time the Cape Wind project was proposed, the United States had no policy or regulatory framework regarding wind energy development in federal waters. This was one of the chief criticisms of Cape Wind in the beginning. Commentators remarked on the potential detriments of ad hoc permitting of offshore wind projects, unless the nation addressed the issue. The Energy Policy Act of 2005 (EPA) addressed offshore wind energy peripherally by vesting authority within the Minerals Management Service (MMS) of the Department of the Interior over renewable energy and alternate uses of the nation's offshore public lands along the Outer Continental Shelf (OCS).¹² Authority was vested within the MMS because of its environmental, engineering, and regulatory expertise managing energy and mineral resources in federal waters.

Should another offshore wind project be proposed in federal waters, other federal agencies — such as the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and NOAA Fisheries — also would be involved in the review process to relay their expertise. Federal laws that may apply include, but are not limited to, the National Environmental Policy Act (NEPA), Clean Water Act (CWA), Clean Air Act (CAA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Migratory Bird Treaty Act (MBTA), Rivers and Harbors Act (RHA), Outer Continental Shelf Lands Act (OCSLA), and Coastal Zone Management Act (CZMA). Below is a brief overview of a few of the federal laws that likely would apply to a wind project sited in federal waters.

The NEPA was passed in 1969 and requires the federal government to take into account environmental impacts when issuing permits to allow federal actions. When a federal action is proposed, the lead federal agency conducts an Environmental Assessment to determine whether the project's impacts are significant enough to warrant a full Environmental Impact Statement (EIS), which requires more rigorous review. This

more rigorous review includes an analysis of alternatives to the project that would have fewer impacts than the original proposal. Such a review also would discuss why these alternatives were eliminated from consideration during the NEPA process. If the lead agency determines instead that a proposed project will not have a significant impact on human health or the environment, then a Finding Of No Significant Impact, or FONSI, is issued. However, it is likely the impacts of a



Courtesy of the NC Solar Center

proposed offshore wind project would be deemed significant enough to warrant a full EIS, given the nature and scope of this type of project. The requirement of preparation of an EIS triggers analysis under other federal laws as well, such as the ESA, CWA, and RHA. The additional laws that may apply to a proposal for an offshore wind energy project are discussed below.

The CZMA was passed in 1972 “to preserve, protect, develop, and where possible, to restore or enhance” the nation's coastal resources.¹³ The CZMA encourages participation of coastal states and provides financial and technical assistance as incentives. For a state that wishes to participate, it must first develop a coastal management plan that defines permissible land and water uses within that state's coastal zone. This plan is then submitted to the National Oceanic and Atmospheric Administration for approval. Once an approved state plan is in place, federal activities or project proposals that require a federal permit can be subject to the Consistency provision of the CZMA. The Consistency provision requires an activity to be “consistent” with the enforceable policies of the affected state's coastal management plan.¹⁴ If the affected state determines the activity is “inconsistent” with its coastal manage-

ment plan, then the state may negotiate conditions in order for the activity to be deemed consistent. However, if negotiations cannot be reached and the inconsistency determination remains, then the applicant may appeal the state's decision to the Secretary of the Department of Commerce, who has the authority to override the state.¹⁵ However, unless the Secretary of Commerce overrides the state's objection, federal agencies are unable to issue to the applicant any necessary federal licenses or permits.¹⁶

A wind energy development project sited in federal waters likely would involve the leasing of submerged lands from the federal government.¹⁷ Coastal states only have jurisdiction over submerged lands up to three geographical miles.¹⁸ If a party wishes to lease submerged lands beyond this limit (e.g., to construct and operate a wind energy development facility), then a submerged-lands lease from the Department of the Interior is needed.¹⁹ The U.S. Army Corps of Engineers has jurisdiction over navigable waters of the United States, and Section 10 of the RHA requires a permit for structures or work in or affecting those waters.²⁰ An offshore wind project by its very nature would require structures to be built over navigable waters, and thus, a Section 10 permit would be needed. An offshore wind project likely would involve impacts to protected species. If so, review under the ESA, MBTA, and MMPA also would be needed. Additional review would be required if a project would affect fisheries or essential fish habitat.²¹

North Carolina Law

There is no North Carolina statutory or regulatory framework currently in place that governs offshore wind energy. However, there are current statutes that may apply and permits that may need to be obtained. This section presents an overview of potentially relevant states laws, including the Coastal Area Management Act (CAMA), North Carolina Environmental Policy Act (NCEPA), North Carolina Dredge and Fill Act, North Carolina Public Utilities Act, and North Carolina Archives and History Act. However, it is not clearcut which law would control the permitting process.

A major question is whether an offshore wind project would fall under the jurisdiction of CAMA or the state Public Utilities Act. This question seems to depend on the definition of “development” set forth in CAMA, which would require a permit from the Coastal Resources

Commission (CRC) if a proposed project will be located in an Area of Environmental Concern.²²

"Development" is defined as:

*Any activity in a duly designated area of environmental concern... involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).*²³

The statute then lists exceptions to the definition of "development." One important exception is "work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission..."²⁴ It is possible that an offshore wind project may not be considered "development" under CAMA, if it is regulated by the State Utilities Commission. However, the likelihood of this is arguable. The italicized part of the "development" exception contains a qualification that the exception applies when pertinent activities are regulated by other law or by present or future rules of the State Utilities Commission. Given that the Utilities Commission does not currently have rules in place to govern alternative energy facilities in ocean or coastal waters, it is possible the CRC still may have authority to require that a proposal to place such facilities in Areas of Environmental Concern comply with existing CRC rules.²⁵

If an offshore wind project proposal were to fall under CAMA, the applicant would need to obtain a CAMA permit from the CRC. It would be considered a major development requiring a CAMA "major development permit."²⁶ In order to obtain the permit, an applicant would be required to file an application and submit the appropriate fee to the Department of Environment and Natural Resources (DENR) and designated local official if seeking a permit from a county or municipality.²⁷ Because any such facility would be located in estuarine or ocean waters, which are navigable waters of the United States, it also would need federal permits.

A CAMA permit is generally sufficient if the following permits are necessary: to dredge and fill, for easements to fill, or for water quality

certification. Moreover, an offshore wind facility potentially could impact underwater historical artifacts, such as shipwrecks. The N.C. Department of Cultural Resources has the authority to adopt rules to preserve or protect shipwrecks, vessels, cargoes, tackle, and underwater archaeological artifacts to which the state has title.²⁸ While the legislation does authorize permits to explore or salvage such underwater artifacts,²⁹ there is no indication of any permit that may be obtained for their destruction.

NCEPA authorizes municipalities to require environmental impact statements by ordinance.³⁰ Such ordinance requirements, however, will not be needed for those who have completed a comparable document at the state level.³¹ Furthermore, an offshore wind facility would be subject to an easement or a lease of state-owned submerged lands.³²

The Need for a North Carolina Policy on Wind Energy Development

North Carolina could consider developing a management strategy to address offshore wind energy development. The General Assembly attempted to address renewable energy during the 2007 legislative session when House Bill 1821 was introduced. House Bill 1821, if passed into law, would vest authority over the siting of wind energy facilities within DENR.³³ However, as of June 2008 this bill has not been referred out of committee. The proposed legislation is limited in scope because it does not cover all forms of alternative energy facilities placed in coastal and ocean waters, and more comprehensive legislation would be beneficial to the state.

Despite the temporary moratorium on wind turbines in Carteret County, the proposal for the Golden Wind Farm may lead to the proposal of more projects. The Golden Wind Farm proposal already has sparked discussion and criticism. Residents that live near the proposed site have expressed aesthetic concerns, particularly because the project would be located near a scenic highway.³⁴ Carteret County commissioners have placed a nine-month moratorium on issuing permits for wind turbines until a study on wind energy technology is completed.³⁵

The proposal for the Golden Wind Farm, although not an offshore project, highlights the need for North Carolina to consider a comprehensive policy regarding wind energy development. Today, land-based wind energy facilities have been proposed. Tomorrow may bring proposals for offshore wind energy facilities in North Carolina's sounds or ocean waters. It is important for North Carolina to formulate policy on offshore wind be-

fore such a project is proposed, so the state will have a better road map on how to address the issues and potential impacts on North Carolina's ocean and coastal resources and its communities. Moreover, having regulations in place at the earliest possible stage would provide meaningful policy guidance to the CRC and provide a regulatory framework that could encourage (or discourage) investment in specific projects. Furthermore, if a project is proposed for siting in federal waters, any North Carolina wind energy facility regulations or restrictions also would be applicable to it. The state also would benefit from incorporating these regulations into its coastal management plan. The benefit is that North Carolina would then be in a position to review projects proposed for federal waters, based on the Consistency authority granted to coastal states by the CZMA. This would ensure that North Carolina's interests are fully protected, even in a federal leasing or permit process for a wind energy project that would impact the state's coastal communities and resources.

Footnotes

1. Cape Wind, "Cape Wind Timeline," at <http://www.capewind.org/article26.htm> (accessed February 1, 2008).

2. However, the project for Long Island Sound, proposed by the Long Island Power Authority, was terminated in August 2007 due to cost. Harrington, Mark, LIPA Chief Kills Wind Farm Project, *Newsday*, August 23, 2007, at <http://www.newsday.com/business/ny-bzwind0824.0,7647935.story> (accessed February 8, 2008).

3. See NC Solar Center, "Coastal Wind Initiative," at http://www.ncsc.ncsu.edu/programs/the_coastal_wind_initiative.cfm (accessed February 1, 2008).

4. Wade Rawlins, Coastal Wind Farm Proposed, *The News & Observer*, February 6, 2008, at <http://www.newsobserver.com/news/story/926691.html> (accessed February 6, 2008).

5-6. *Id.*

7. Book, Sue, Carteret Commissioners Adopt Moratorium On Windmills, *The Sun Journal*, March 3, 2008, at http://www.newbernsj.com/news/wind_38676__article.html/county_moratorium.html (accessed April 1, 2008).

8-10. *Id.*

11. To learn more about how a wind turbine works, visit the U.S. Department of Energy, "How Wind Turbines Work," at http://www1.eere.energy.gov/windandhydro/wind_how.html (accessed February 1, 2008). To learn more about how an offshore wind facility works, visit British Wind Energy Association, "How An Offshore Wind Farm Works," at <http://www.bwea.com/offshore/how.html> (accessed February 1, 2008).

12. 43 U.S.C. § 1337.

13. 16 U.S.C. § 1452.

14. 16 U.S.C. § 1456.

15-16. *Id.*

17. For transmission cables and other support that pass over state submerged lands, state permits would be needed.

18. See Submerged Lands Act, 43 U.S.C. §§ 1311-1314. The exceptions to this rule are Texas and

the west coast of Florida. Their jurisdiction extends out nine geographical miles because these states had established their jurisdictions over a larger area before statehood. 43 U.S.C. §1312.

19. The EPAct gave the Department of the Interior the authority to develop and implement an alternative energy and alternate use program. See Pub. L. No. 109-58, 119 Stat. 868 (codified in 26 U.S.C. and 42 U.S.C.). See also OCS Alternative Energy and Alternate Use Programmatic Final EIS at <http://ocsenenergy.anl.gov/index.cfm>.

20. 33 U.S.C. § 403.
21. See generally Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 et seq. See also essential fish habitat regulatory guidelines, 50 C.F.R. § 600.

22. See N.C. Gen. Stat. § 113A-118.

23. N.C. Gen. Stat. § 113A-118(5)(a).

24. N.C. Gen. Stat. § 113A-118(5)(b)(3) (emphasis added).

25. Id.

26. A "major development" means "any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environment and Natural Resources, the Department of Administration, the North Carolina Mining Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which

occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet." N.C. Gen. Stat. § 113A-118(d). See also N.C. Gen. Stat. § 113A-118(a).

27. N.C. Gen. Stat. § 113A-119.

28. N.C. Gen. Stat. § 121-123 (2007); According to N.C. Gen. Stat. § 121-122 (2007), the state has title to "all bottoms of navigable waters within one marine league seaward from the Atlantic seashore measured from the extreme low watermark; and the title to all shipwrecks, vessels, cargoes, tackle, and underwater archaeological artifacts which have remained unclaimed for more than 10 years lying on the said bottoms, or on the bottoms of any other navigable waters of the State, is hereby declared to be in the State of North Carolina, and such bottoms, shipwrecks, vessels, cargoes, tackle, and underwater archaeological artifacts shall be subject to the exclusive dominion and control of the State."

29. N.C. Gen. Stat. § 121-125.

30. N.C. Gen. Stat. § 113A-8(a).

31. N.C. Gen. Stat. § 113A-8(b).

32. N.C. Gen. Stat. §§ 146-11 and 146-12.

33. H.B. 1821, Gen. Assem., 2007 Sess. (N.C. 2007) is entitled "An Act to Establish a System of Permits to be Issued by the Department of Environment and Natural Resources for the Siting of Medium and Large Energy Systems and to Require Operators of these Wind Energy Systems to Obtain a Permit to Site their Wind Energy Systems."

34. Book, supra note 7.

35. Id.

In the Next Edition

In the next issue of Legal Tides, Center co-director Joseph Kalo will explore property damage after natural disasters in "After the Storm: Houses on the Beach."

If you would like to receive *Legal Tides*, comment on articles, or suggest topics, contact Lisa Schiavinato at lisa_schiavinato@ncsu.edu or at 919/515-1895. You may also write to: *Legal Tides*, North Carolina Sea Grant, NC State University, Box 8605, Raleigh, NC 27695-8605. Please let us know if you would prefer receiving *Legal Tides* in an electronic format, or an e-mail alert that a new issue is available online.

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DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
TRAVEL EXPENSE REIMBURSEMENT/RECONCILIATION FORM

PLEASE USE YOUR TAB KEY TO ACCESS AVAILABLE FIELDS

Employee
 Boards, Councils, Commission, and Committees
 Non-DENR Employee

INSTRUCTIONS TO CLAIMANT: Submit one original to your division Travel Contact. Attach all necessary original receipts and other supporting documents to this form, including any prior written approval of excess registration, lodging and out-of-state travel. Retain one (1) copy for your records. Please complete amount, company, account, and center fields. File no later than 30 days after month in which travel ends. Prepare in ink or type. Make all corrections by drawing line through erroneous data and entering correct data. Do not use white-out. Initial all corrections or revisions.

| | | |
|---|---|--|
| Beacon ID No./Social Security No. B <input type="text"/> | Division/Section/Board, etc.: CRC/CRAC | New Claimant: <input type="checkbox"/> |
| Claimant's Name (First, Middle Initial, Last) | Title: <input type="text"/> | New Address: <input type="text"/> |
| Claimant's Address (Street) | Headquarters (City): <input type="text"/> | |
| (City, State, Zip) | Duty Station (If different from Headquarters): <input type="text"/> | |
| | Period Covered by this Request: From: <input type="text"/> Through: <input type="text"/> | |
| Remit Code/Message: | <input type="text"/> | |

Under penalties of perjury I certify this is a true and accurate statement of the city of lodging, expenses and allowances incurred in the service of the State, and this request complies with all Department and State travel policies and regulations. **Original Signature and date required.**

I have examined this reimbursement request and certify that funds are available in the proper accounting codes to pay this claim, and this request complies with all Department and State travel policies and regulations. **Original Signature and date required.**

(Claimant) _____ (Date) _____ (Supervisor) _____ (Date) _____

P-Card Reconciliation - A copy of the approved Travel Authorization, if required, must also be attached to process this reconciliation. (Do not forget receipts.)

| P-Card Number: <input type="text"/> | | | | | | | |
|-------------------------------------|--------------------|-----------------------|---------------|--------------------|--------------|---|--|
| | AMOUNT | COMPANY | ACCOUNT | CENTER | Accrual Code | | |
| 1 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | 1 | |
| 2 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | 0 | |
| 3 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | 9 | |
| 4 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | | |
| 5 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | | |
| 6 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | | |
| 7 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | | |
| 8 | XXXXXXXXXXXXXXXXXX | 16 XXXXXXXX | 53 XXXXXXXXXX | XXXXXXXXXXXXXXXXXX | | | |
| 9 | \$0.00 | Total P-Card Expenses | | | | | |

| | AMOUNT | COMPANY | ACCOUNT | CENTER | Accrual Code | |
|---|--------|-------------------------|---------|----------------|--------------|---|
| 1 | | 16 01 | 53 2731 | 1625-6251 | | 1 |
| 2 | | 16 01 | 53 2732 | 1625-6251 | | 0 |
| 3 | | 16 01 | 53 1651 | 1625-6251 | | 9 |
| 4 | | 16 | 53 | | | |
| 5 | | 16 | 53 | | | |
| 6 | | 16 | 53 | | | |
| 7 | | 16 | 53 | | | |
| 8 | | 16 | 53 | | | |
| 9 | | Total Employee Expenses | | Pay Entity: 16 | | |

(A/P Initials)

(DATE)

(Control Number)

(Control Date)

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
 TRAVEL EXPENSE REIMBURSEMENT FORM
 PLEASE USE YOUR TAB KEY TO ACCESS AVAILABLE FIELDS

Claimant Name: _____ Social Security Number: _____

Date: _____ Page: 2 of _____

| Day | Travel | | Transportation | | | Subsistence | | | Other Travel Expenses | | |
|--|--------|----|----------------|----------|--------------|--------------|----------|--------------|-----------------------|-------------|--------|
| | From | To | 0:00 | In-State | Out-of-State | 0:00 | In-State | Out-of-State | 0:00 | Explanation | Amount |
| | | | R | | | B | | | | | |
| | | | A | | | L | | | | | |
| Depart | am | pm | | | | D | | | | | |
| Return | am | pm | | | | Meal Total | | | | | |
| Daily Private Car Mileage @ 0.25 rate/mile | | | P | | | H | | | | | |
| Purpose of Trip: | | | Day Total | | | Day Total | | | Day Total | | |
| | | | R | | | B | | | | | |
| | | | A | | | L | | | | | |
| Depart | am | pm | | | | D | | | | | |
| Return | am | pm | | | | Meal Total | | | | | |
| Daily Private Car Mileage @ 0.25 rate/mile | | | P | | | H | | | | | |
| Purpose of Trip: | | | Day Total | | | Day Total | | | Day Total | | |
| | | | R | | | B | | | | | |
| | | | A | | | L | | | | | |
| Depart | am | pm | | | | D | | | | | |
| Return | am | pm | | | | Meal Total | | | | | |
| Daily Private Car Mileage @ 0.25 rate/mile | | | P | | | H | | | | | |
| Purpose of Trip: | | | Day Total | | | Day Total | | | Day Total | | |
| | | | R | | | B | | | | | |
| | | | A | | | L | | | | | |
| Depart | am | pm | | | | D | | | | | |
| Return | am | pm | | | | Meal Total | | | | | |
| Daily Private Car Mileage @ 0.25 rate/mile | | | P | | | H | | | | | |
| Purpose of Trip: | | | Day Total | | | Day Total | | | Day Total | | |
| | | | R | | | B | | | | | |
| | | | A | | | L | | | | | |
| Depart | am | pm | | | | D | | | | | |
| Return | am | pm | | | | Meal Total | | | | | |
| Daily Private Car Mileage @ 0.25 rate/mile | | | P | | | H | | | | | |
| Purpose of Trip: | | | Day Total | | | Day Total | | | Day Total | | |
| | | | R | | | Meal Totals | | | Total Other | | |
| | | | A | | | Hotel Totals | | | | | |
| | | | P | | | | | | | | |

NOTE: Total Transportation

Daily total for subsistence not to exceed authorized amount for in-state or out-of-state travel.
 Maximum Subsistence:
 In-State \$97.75
 Out-of-State \$111.75

- LEGEND:
- (1) Mode of Travel
 R - Rental Car
 A - Airfare
 P - Private Car
 - (2) Type of Subsistence:
 B - Breakfast L - Lunch
 D - Dinner H - Hotel
 - (3) Other Travel Expenses:
 ONLY Taxi, parking, baggage, telephone, or registration