

# NC COASTAL RESOURCES COMMISSION

November 19-20, 2008

Crystal Coast Civic Center

Morehead City, 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, November 19<sup>th</sup>

### 3:00 COMMISSION CALL TO ORDER (TBD)

Bob Emory, Chair

- Roll Call

#### VARIANCES

- Town of Ocean Isle Beach – (CRC-VR-08-51), Sandbag structure dimensions
- Eglund (CRC-VR-08-48) N. Topsail Beach, Oceanfront setback
- Bogue Watch, LLC - (CRC-VR-08-52) Carteret County, New dredging in PNA

Christine Goebel  
Amanda Little  
Christine Goebel

### 6:00 Executive Committee Meeting (TBD)

Bob Emory, Chair

## Thursday, November 20<sup>th</sup>

### 8:30 COMMISSION CALL TO ORDER (TBD)

Bob Emory, Chair

- Roll Call
- Approval of September 24-26, 2008 Meeting Minutes
- Approval of October 8, 2008 Conference Call Meeting Minutes
- Executive Secretary's Report
- Chairman's Comments
- CRAC Report

Jim Gregson  
Bob Emory  
Dara Royal

#### ACTION ITEMS

Bob Emory

- Town of Carolina Beach Land Use Plan Amendment (CRC-08-44)
- Town of Pine Knoll Shores Land Use Plan Certification (CRC-08-45)
- Adopt 15A NCAC 7H .1401, .1402, .1404, .1405 GP for Construction of Groins in Estuarine & Public Trust Waters
- Adopt 15A NCAC 7H .2101, .2102, .2104, .2105 GP for Marsh Enhancement Breakwaters
- Adopt 15A NCAC 7H .2401, .2402, .2404, .2405 GP for Placement of Riprap for Wetland Protection
- Adopt 15A NCAC 7J .0701, .0703 Variance Petitions
- Adopt 15A NCAC 7M .0301, .0302, .0303, .0306, .0307 Shorefront Access Policies

### 9:30 PRESENTATIONS

- CRC/CRAC Meetings – Financial Constraints For 2009
- Overview of the Rachel Carson National Estuarine Research Reserve
- CRAC Nominating Committee Report & Appointments
- Ocean Policy Study Draft Recommendations (CRC-08-50)
- BIMP Update
- Review of Comprehensive Beach Management Subcommittee Recommendations (CRC-08-54)

Arthur Stadiem  
Jim Gregson  
Rebecca Ellin  
Joan Weld  
Scott Geis  
Steve Underwood  
Steve Underwood

### 12:00 PUBLIC INPUT AND COMMENT

### 12:15 LUNCH

**1:30 PRESENTATIONS**

- OCS Update (*CRC-08-46*) Mike Lopazanski
- Agency Comments on Marsh Mowing Rules 7H .0205 Coastal Wetlands (*CRC-08-49*) Tancred Miller
- Science Panel Update on Inlet Hazard Areas Discussions Dr. Margery Overton  
Spencer Rogers
- Inlet Hazard Areas Policy Progress Report & Bald Head Island Boundary Recommendation (*CRC-08-48*) Jeff Warren
- Amendments to 15A NCAC 7B .0901 CAMA Land Use Plan Amendments and 7B .0801 Public Hearing and Local Adoption Requirements (*CRC-08-47*) John Thayer
- Approval of Town of Holly Ridge Implementation and Enforcement Plan (*CRC-08-52*) Ed Brooks
- Amendment of Town of Cape Carteret Implementation and Enforcement Plan (*CRC-08-53*) Ed Brooks
- CHPP Annual Report Approval (*CRC-08-51*) Scott Geis

**OLD/NEW BUSINESS**

- Future Agenda Items Bob Emory

**5:00 ADJOURNMENT**

**NEXT MEETING:**  
February 11-13, 2008  
Crystal Coast Civic Center  
Morehead City, NC



N.C. Division of Coastal Management  
[www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)



CRC-VR-08-51

## State of North Carolina

Department of Justice  
PO Box 629  
Raleigh, North Carolina  
27602

ROY COOPER  
ATTORNEY GENERAL

TO: Coastal Resources Commission

FROM: Christine Anne Goebel *CAG*  
Assistant Attorney General

DATE: November 7, 2008 (for the November 19-20, 2008 CRC Meeting)

RE: **Variance Request #08-51 by the Town of Ocean Isle Beach,  
by Debbie Smith, Mayor**

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Petitioner, Town of Ocean Isle Beach, owns the right-of-way of Second Street and Shalotte Boulevard at their point of intersection, on the east end of the Town of Ocean Isle Beach. They currently have a sandbag structure on their property protecting these imminently threatened roads (or the remains of those roads) at this intersection. The Town seeks a variance from the 6 foot height limit of 15A NCAC 07H.1705(a)(10). They wish to increase the height of the existing sandbag structure "not to exceed two (2) feet above the adjacent street (Shalotte Blvd.) elevation."

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules  
Attachment B: Stipulated Facts  
Attachment C: Petitioner's and Staff's Responses to Criteria  
Attachment D: Petitioner's Variance Request Materials & other referenced items

cc: Town of Ocean Isle Beach-attn: Mayor Debbie Smith, Petitioner  
Elva Jess, Town of Ocean Isle Beach's attorney  
Jim Gregson, DCM Director  
Ted Tyndall, DCM Asst. Director  
Steve Everhart, DCM District Manager Wilmington  
Angela Willis, DCM Dir. Asst.  
Justin Whiteside, OIB CAMA LPO  
Jennie Wilhelm Hauser, Special Deputy Attorney General & CRC Counsel

ATTACHMENT A

RELEVANT STATUTES OR RULES

**15A NCAC 7H .1700            General Permit for Emergency Work Requiring a CAMA  
and/or Dredge and Fill Permit**

**.1701 Purpose**

This permit allows work necessary to protect property and/or prevent further damage to property caused by a sudden or unexpected natural event or structural failure which imminently endangers life or structure. For the purposes of this general permit, major storms such as hurricanes, northeasters or southwesters may be considered a sudden unexpected natural event although such storms may be predicted or publicized in advance.

**.1705 Specific Conditions**

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

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

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- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph may be used only to protect imminently threatened roads and associated right of ways, buildings and associated septic systems. A structure will 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 not obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

\*\*\*

- (7) A temporary erosion control structure . . . may remain in place for up to five years or until May 2008, whichever is later, regardless of the size of the structure it is protecting if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001.

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- (10) 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.**

**15A NCAC 7H .0300 Ocean Hazard Areas**

**.0308 Specific Use Standards for Ocean Hazard Areas**

(a) Ocean Shoreline Erosion Control Activities:

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

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- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.

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(2) Temporary Erosion Control Structures:

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- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure will be considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.

**15A NCAC 7M .0200 Shoreline Erosion Policies**

**.0202 Policy Statements**

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- (e) Temporary measures to counteract erosion, such as the use of sandbags . . . should be allowed, but only to the extent necessary to protect property for a short period of time until the threatened structures can be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.
- (f) Efforts to permanently stabilize the location of ocean shoreline with seawalls, groins, shoreline hardening, sand trapping or similar protection devices shall not be allowed except when the project meets one of the specific exceptions set out in 15A NCAC 7H .0308.

**STIPULATED FACTS**

**ATTACHMENT B**

1. Petitioner, Town of Ocean Isle Beach is a municipality organized and existing under the laws of the State of North Carolina.
2. Pursuant to N.C.G.S. 160A-296, the Town has the duty to keep the public streets in proper repair and the duty to keep the public streets open for travel and free from unnecessary obstructions.
3. N.C.G.S. 136-66.1 provides that the Town shall be responsible for the maintenance, construction and reconstruction of all streets within municipalities that are within its street system.
4. The Town of Ocean Isle Beach owns and maintains Shallotte Boulevard and part of Second Street: said streets are within the street system of the Town and lie within the municipal boundaries. Shallotte Boulevard runs perpendicular to the shoreline (north-south) and Second Street runs parallel to the shoreline (east-west). At the project site, Second Street is the east-west street closest to the shoreline.
5. Part of Second Street to the west of this site is a state-maintained road. The Department of Transportation has installed sandbags to the west of this project to protect portions of East Second Street.
6. Shallotte Boulevard and Second Street provide one means of egress and access to the eastern end of Ocean Isle Beach. This egress and access includes emergency service providers. The roadways that are in operation constitute a main thoroughfare in the Town and represent a portion of the hurricane evacuation route. At this time, Second Street is the only access to the east end of Ocean Isle Beach with a sixty foot (60') state approved right of way.
7. Temporary erosion control structures (sandbags) are the only method allowed by State law that will provide protection for this infrastructure.
8. The site at issue for this variance request is at the intersection of Shallotte Boulevard and East Second Street. This intersection is currently imminently threatened and there is an existing sandbag structure in place. The current erosion control structure was installed and permitted pursuant to CAMA rules and regulations.
9. The normal high water level currently exceeds fifty percent of the current bag height. There is overwash, inundation and increased erosion of the structure that was initially built to provide limited protection for the infrastructure.

10. The town has a nourishment project in effect that serves to reduce the impact of erosion within this area.
11. The Town's right-of-way is within the Ocean Hazard Area, Ocean Erodible Area, and High Hazard Flood Areas of Environmental Concern (AEC), and is not located in the Inlet Hazard AEC for Shalotte Inlet, to the east.
12. The long-term annual erosion rate for this stretch of shoreline is 4.5 feet per year.
13. The profile of the beach constantly changes within this area. Also, the beach elevation at this site is lower here than at the NC DOT sandbags adjacent and to the west, and so the Town's bags effectively sit in a hole or depression, and are overwashed during many high tides.
14. The site is a transition area at the Town's Federal nourishment project and is being maintained by public funds. The Corps of Engineers, by approving the project, confirmed the benefits to the general public to preserve and protect the beach strand from the effect of storms.
15. The park project within this area was funded by a grant from the Division of Coastal Management and the variance will provide stability and access for this project which is located at the northern end of Shallotte Boulevard at the Atlantic Intracoastal Waterway.
16. The Town has been very diligent in removing derelict sandbags and debris in this area.
17. The Town requested a CAMA general permit to increase the height of the sandbag structure currently in place through a letter dated August 20, 2008. The Town is not asking for an extension of the permit time. By this variance, the Town seeks to protect the infrastructure so long as a sandbag wall can be maintained.
18. The permit request was denied by the Division of Coastal Management, by and through its field representative, Debra Wilson, through a letter dated August 21, 2008. The denial letter is included in the Town's variance request materials and is incorporated.
19. The Town recently had a survey completed showing the spot elevations of the bags at certain points, as well as the elevations of the beach in front and behind the bags. This survey is attached, and incorporated by reference. A larger copy will be available at the meeting. The attached survey shows elevations taken on site before Hurricane Hanna.
20. Hurricane Hanna affected this site on September 5-6, 2008 where the large waves and surge overtopped the existing bags, and eroded parts of East Second Street and Shallotte Boulevard.

21. The Coastal Resources Commission has jurisdiction over the parties and the subject matter.
22. The parties have been correctly designated and there is no question of misjoinder or nonjoinder of the parties. All interested parties have participated in the petition process.

Updated facts after Hanna and September 25<sup>th</sup> no-name coastal low

23. Site photographs taken pre-Hanna, post-Hanna, and after the September 25<sup>th</sup> no-name coastal low storm are included in a power point presentation to the CRC, and are incorporated. Some of the slides will include field measurements of distances that were recently performed by DCM staff and the Town's LPO, and the dates will be noted in the slides.
24. During the September 25<sup>th</sup> no-name coastal low storm, portions of Shalotte Boulevard and East 2<sup>nd</sup> Street in the area of the proposed sandbag additions were destroyed or damaged.
25. As of November 5, 2008, DOT has not made a final determination if, where, or how it will replace the damaged/destroyed portion of East 2<sup>nd</sup> Street.
26. On September 30, 2008, Governor Easley requested federal funds to help with cleanup and repairs for Brunswick County after Tropical Storm Hanna. On October 8, 2008, FEMA declared Brunswick County part of the major disaster area from Tropical Storm Hanna. While federal funding is available, no awards have been made as of November 5, 2008.



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.**

Shallotte Boulevard and Second Street provide the main means of egress and access to the eastern end of Ocean Isle Beach. If the proposed project is not constructed, property owners have no means to access their homes and services (i.e. fire and rescue) would not be able to respond in the event of emergencies. Properties accessed by Second Street and Shallotte Boulevard have been improved with residential structures for a number of years preceding the current erosion control structure.

In accordance with current rules, as the project is presently configured, the normal high water level exceeds fifty percent of the current bag height, thereby causing overwash, inundation and increased erosion of the bags.

If the variance is not granted, erosion will increase, the roadway will be over washed and the surface of said roadways will be rendered impassible.

**Staff's Position: Yes.**

Staff agrees that strict application of the development rules regarding the size of the sandbag structure causes Petitioner unnecessary hardship. The erosion on the east end of Ocean Isle Beach is severe and is well-documented. Although the 6' by 20' sandbag dimensions are generally appropriate for their intended purpose of temporary protection of structures, at this location the sandbags have not prevented waves from overtopping the bags and eroding the area behind the bags on certain occasions. This is due, in large part, to the lower elevations, or "hole" on the beach in front of the structure, compared to the elevations to either side of the structure, including at the DOT sandbags. Thus, the hardship is that the sandbags at their usual permitted size are not sufficient to protect the imminently threatened road enough to keep it usable as a main route (but not the only route) to the east end of Ocean Isle Beach.

**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.**

Second Street and Shallotte Boulevard constitute a main thoroughfare in Ocean Isle Beach and represent a portion of our hurricane evacuation route. Shallotte Boulevard is the original means of access to Ocean Isle Beach and was the location for the initial ferry site. Properties with and along said streets have been improved with residences and preservation of the infrastructure shall maintain access to the homes of respective property owners. This variance is not being sought to allow for any additional improvements or structural changes to properties contiguous to the sandbag structure. The properties all either lie with and along the Atlantic Ocean or are within one hundred feet of the mean high tide.

**Staff's Position: Yes.**

Staff agrees that unnecessary hardship result from conditions which are peculiar to the Petitioner's property, being the lower elevations of the "hole" located in front of the sandbag structure compared to the elevations on either side, including those by the DOT sandbags protecting Second Street. This result in bags of insufficient relative elevation to protect the road from erosion since overtopping of the bags happens often.

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

**Petitioner's Position: No.**

The Division of Coastal Management enforces CAMA regulations. When the initial erosion control structure was installed, it was done pursuant to CAMA rules and regulations to protect the infrastructure that is again being compromised. The Town has done nothing that would accelerate the erosion that is impacting this area and has, in fact, participated in a fifty year Federal nourishment project seeking to protect the beach strand. In an effort to maintain the beach, the Town plants and fertilizes the length of the beach strand annually. We are stewards of the public beach.

**Staff's Position: No.**

Staff agrees that the hardships of erosion do not result from actions taken by the Petitioner.

**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.**

The area in question is a transition area of the Town's Federal nourishment project and is being maintained by public funds. The Corps of Engineers by approving the nourishment project in this area, confirmed the benefits to the general public to preserve and protect the beach strand and this specific intersection.

The Division of Coastal Management provided a grant to the Town of Ocean Isle Beach to construct a part within a portion of Shallotte Boulevard in the amount of \$278,891.00; the total amount to construct the recreation area is \$371,855.00. Construction is currently underway. This development could be compromised by access issues if the intersection of Shallotte Boulevard and East Second Street continue to erode.

Because the profile of the beach is constantly changing within this area, one should be permitted to install a temporary erosion control structure that will protect to the height of the infrastructure. On any given day there may be a height differential on the beach while the infrastructure elevation remains constant.

The design of the proposed sandbag project will protect Town infrastructure and there are no alternative designs or variations from the CAMA rules that will accomplish the same task. CAMA rules allow for the protection of infrastructure by permitting temporary erosion control structures. Permitting a design to address the topographic condition of the roads adjacent to this project preserves substantial justice for property owners and secures the public safety with regard to access by property owners and emergency personnel.

The Town of Ocean Isle Beach has strived to be cooperative with CAMA and has worked to maintain compliance with its rules and regulations regarding temporary erosion control structures.

**Staff's Position: Yes.**

Staff contends that allowing Petitioners to enlarge their sandbag structures is consistent with the spirit, purpose, and intent of the CRC's rules. Adding sandbags in this area of lower elevation to bring them even with the adjacent bags and to provide more protection for the imminently threatened road is consistent with the Commission's rules. The increase in height brings this area into continuity with the DOT's sandbags protecting Second Street to the west. It is pertinent to note that Petitioners are not requesting an extended time period for their sandbag structures, only an increase in size for the time the existing bags are currently permitted. Therefore, the duration of the bags does not work to render the structures more "permanent."

Staff does not disagree that the variance will secure public safety and welfare. The public enjoys the right to use the ocean beach in front of these properties. Because of the erosion, there is only a limited beach available for public use. Thus, increasing the size of the sandbags is not going to have additional significant impacts on the public beach. Additionally, the enlarged sandbag structures are likely to improve the Petitioner's safety and welfare by helping to prevent the roads (as they were and as they may be replaced) from being compromised. The variance will preserve substantial justice because it would be fair to allow sandbags to a more effective and uniform elevation compared to the road they are intended to protect.

Finally, staff note that the park referenced by Petitioner is located at the other end of Shalotte Boulevard, adjacent to the AIWW, and it is not located next to these sandbags. While this intersection is a main route to the east end of the island, it is not the only route.

**One suggested condition from DCM staff if this variance is granted:**

Since the portion of Shalotte Boulevard landward of the existing sandbags was recently undercut and damaged, and finding the elevation of that area of road which is now gone is currently impossible, Staff suggests that Petitioner's August 19, 2008 elevation survey be used. Staff suggests that the average of the spot elevations taken on Shalotte Boulevard be used to calculate the "2-feet higher than the road elevation" for permitting purposes.

## Attachment D

# Petitioner's Variance Request Materials & Other Attachments

DCM FORM 11  
(revised 6/26/06)

**CAMA VARIANCE REQUEST**

DCM FILE NO. **08-51**

RECEIVED

AUG 11 2008

N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES

Petitioner supplies the following information:

Your Name                      Debbie S. Smith, Mayor  
Town of Ocean Isle Beach  
Address                            3 West Third Street  
Ocean Isle Beach, NC 28469  
Telephone                        (910) 579-2166  
Fax and/or Email                (910) 579-7070  
   [justin@oibgov.com](mailto:justin@oibgov.com)

Name of Your Attorney (if applicable)    Elva L. Jess  
Address    P.O. Box 11028  
Southport, NC 28461  
Telephone                                        (910) 457-9506  
Fax and/or Email                                (910) 457-6810  
   [fjit@fjitlaw.net](mailto:fjit@fjitlaw.net)

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?

Increase the height of a temporary erosion control structure to a height greater than six feet in an area already improved by a permitted sandbag structure.

What Coastal Resources Commission rule(s) prohibit this type of development?

15A NCAC 07H 0308 (a)(2)

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.)

A temporary erosion control structure (i.e. a sandbag wall) that is limited to a height of six feet will not provide adequate protection for infrastructure that is located to the north and exceeds the height of the erosion control structure by four feet.

Can you obtain a permit for a portion of what you wish to do? **No.**

If so, please state what the permit would allow.

We can obtain a permit for a temporary erosion control structure to the height of six feet; a structure of this size will not provide the necessary erosion control and may exacerbate the situation.

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.

We are not allowed to increase the height of the current erosion control structure based upon current CAMA regulations. The current height does not provide sufficient protection of the infrastructure at its current elevation. The elevation of the beach strand fluctuates daily. The elevation of the infrastructure in question is constant.

#### 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).]

Shallotte Boulevard and Second Street provide the main means of egress and access to the eastern end of Ocean Isle Beach. If the proposed project is not constructed, property owners have no means to access their homes and services (i.e. fire and rescue) would not be able to respond in the event of emergencies. Properties accessed by Second Street and Shallotte Boulevard have been improved with residential structures for a number of years preceding the current erosion control structure.

In accordance with current rules, as the project is presently configured, the normal high water level exceeds fifty percent of the current bag height, thereby causing overwash, inundation and increased erosion of the bags.

If the variance is not granted, erosion will increase, the roadway will be over washed and the surface of said roadways will be rendered impassible.

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

Second Street and Shallotte Boulevard constitute a main thoroughfare in Ocean Isle Beach and represent a portion of our hurricane evacuation route. Shallotte Boulevard is the original means of access to Ocean Isle Beach and was the location for the initial ferry site. Properties with and along said streets have been improved with residences and preservation of the infrastructure shall maintain access to the homes of respective property owners. This variance is not being sought to allow for any additional improvements or structural changes to properties contiguous to the sandbag structure. The properties all either lie with and along the Atlantic Ocean or are within one hundred feet of the mean high tide.

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

The Division of Coastal Management enforces CAMA regulations. When the initial erosion control structure was installed, it was done pursuant to CAMA rules and regulations to protect the infrastructure that is again being compromised. The Town has done nothing that would accelerate the erosion that is impacting this area and has, in fact, participated in a fifty year Federal nourishment project seeking to protect the beach strand. In an effort to maintain the beach, the Town plants and fertilizes the length of the beach strand annually. We are stewards of the public beach.

- 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.

The area in question is a transition area of the Town's Federal nourishment project and is being maintained by public funds. The Corps of Engineers by approving the nourishment project in this area, confirmed the benefits to the general public to preserve and protect the beach strand and this specific intersection.

The Division of Coastal Management provided a grant to the Town of Ocean Isle Beach to construct a park within a portion of Shallotte Boulevard in the amount of \$278,891.00; the total amount to construct the recreation area is \$371,855.00. Construction is currently underway. This development could be compromised by access issues if the intersection of Shallotte Boulevard and East Second Street continue to erode.

Because the profile of the beach is constantly changing within this area, one should be permitted to install a temporary erosion control structure that will protect to the height of the infrastructure. On any given day there may be a height differential on the beach while the infrastructure elevation remains constant.



The design of the proposed sandbag project will protect Town infrastructure and there are no alternative designs or variations from the CAMA rules that will accomplish the same task. CAMA rules allow for the protection of infrastructure by permitting temporary erosion control structures. Permitting a design to address the topographic condition of the roads adjacent to this project preserves substantial justice for property owners and secures the public safety with regard to access by property owners and emergency personnel.

The Town of Ocean Isle Beach has strived to be cooperative with CAMA and has worked to maintain compliance with its rules and regulations regarding temporary erosion control structures.

Please attach copies of the following:

- Permit Application - Exhibit 1
- Permit Denial - Exhibit 2
- Site Drawing with Survey and Topographical Information (Exhibit 3)
- Site Drawing with proposed additional sandbags (Exhibit 4)

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.]

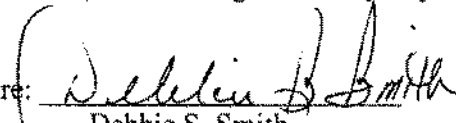
Attach all documents you wish the Commission to consider in ruling upon your variance request. [The DCM attorney will also propose documents and discuss with you whether he or she agrees with the documents you propose. Together you will arrive at a set of documents that both parties agree upon. Those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

August 21, 2008

Signature:

  
Debbie S. Smith  
Mayor

*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 21st day of August, 2008.

  
\_\_\_\_\_  
Signature of Attorney



# OCEAN ISLE BEACH

August 20, 2008

Debra Wilson, Field Representative  
Division of Coastal Management  
127 Cardinal Drive Ext.  
Wilmington, NC 28405

RE: CAMA Sandbag Application

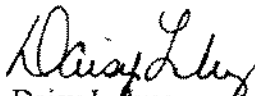
Dear Ms. Wilson:

The Town of Ocean Isle Beach would like to apply for a CAMA Sandbag Permit to add sandbags to our existing sandbag structure to a height not to exceed two (2) feet above the adjacent street (Shallotte Blvd.) elevation. The intersection of East Second Street and Shallotte Boulevard is a vital intersection providing access to the eastern portion of Ocean Isle Beach. The current height is not sufficient to provide protection to the adjacent street (Shallotte Blvd.). We also understand that a portion of our sandbag structure exceeds the maximum twenty (20) foot base width and we plan to remove the lower sandbags to bring our structure back into compliance.

I have attached a survey showing our current sandbag elevations, the street elevation and the area in which we would like to add additional sandbags.

Please contact me with any questions or comments at 910-579-3469.

Thank you,



Daisy L. Ivey  
Town Administrator

cc: Larry D. Sellers, Asst. Town Administrator  
Justin W. Whiteside, Planning Director

Enc.



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

August 21, 2008

Hand Delivered

Daisy L. Ivey, Town Administrator  
Town of Ocean Isle Beach  
3 West Third Street  
Ocean Isle Beach, N.C. 28469

Dear Ms. Ivey:

The Division of Coastal Management has reviewed your proposal for the installation of additional sandbags at the intersection of East Second Street and Shallotte Blvd., in the Town of Ocean Isle Beach, N.C. Unfortunately, the Division of Coastal Management is not able to process your request for the installation of the additional sandbags under a CAMA General Permit due to specific site conditions (i.e. unable to meet the 6 foot height limitation requirement) as described in **15A NCAC 07H .0308 (a)(2)(F)** and **15A NCAC 07H .1705 (a)(7)(C)**.

Based upon these findings, the Division of Coastal Management is denying your request for a CAMA General Permit. However, you may petition for a variance from the Coastal Resource Commission (CRC) by means of the procedures described in **15A NCAC 07J .0700**. I have enclosed a copy of the subject ruling as well as the CAMA Variance Request Form (DCM Form 11).

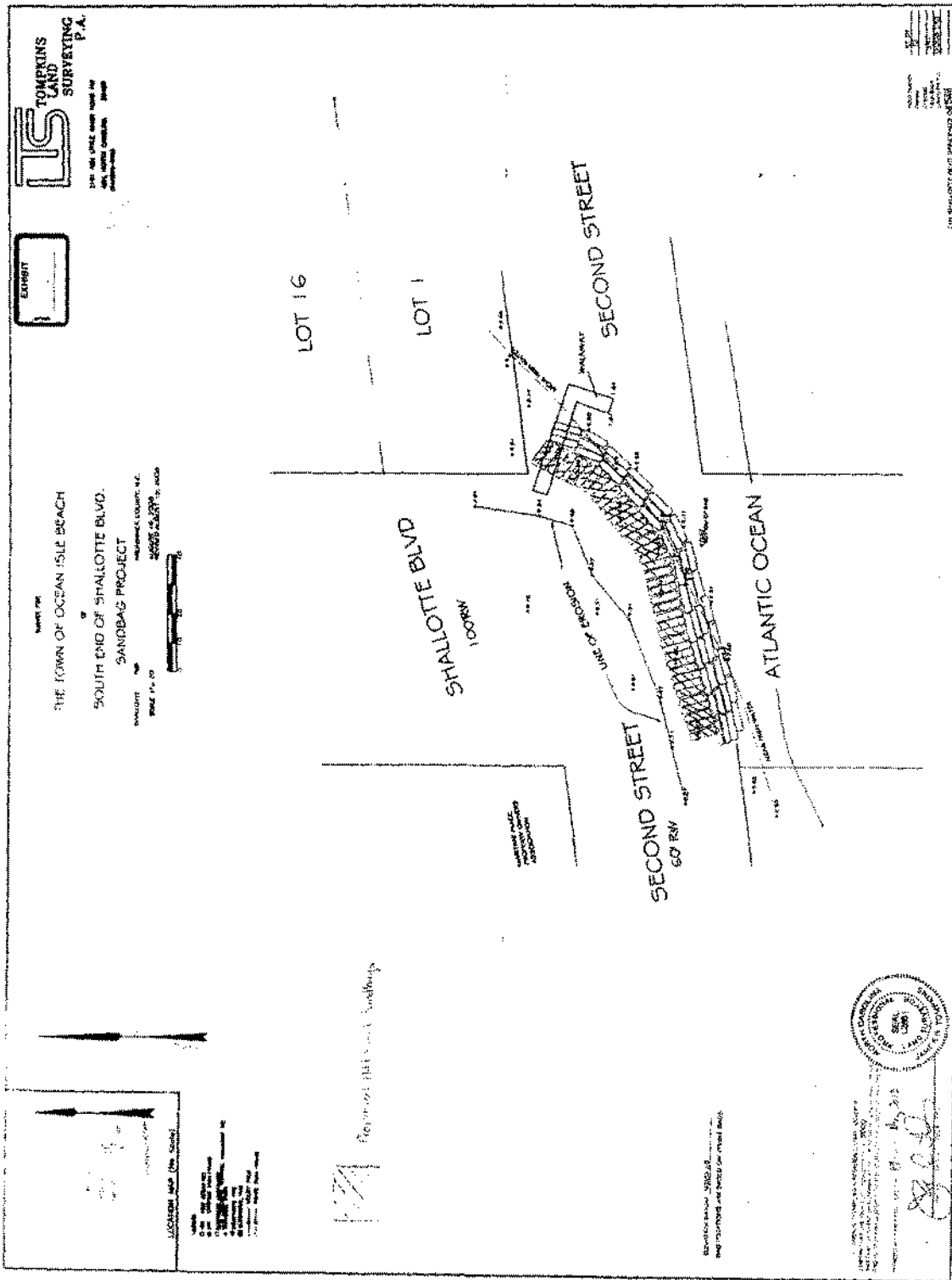
If you have any questions regarding this decision, please feel free to call me at (910) 796-7215.

Sincerely,

Debra Wilson  
Field Representative

Cc: Ted Tyndall, DCM  
Steven Everhart, DCM  
Justin Whiteside, LPO

127 Cardinal Drive Extension, Wilmington, North Carolina 28405-3845  
Phone: 910-796-7215\Fax: 910-395-3964 \ Internet: <http://www.nccoastalmanagement.net>



A Full Size Copy will be available at the CRC Meeting.



CRC-VR-08-48

## State of North Carolina

Department of Justice

P. O. Box 629

RALEIGH

27602-0629

ROY COOPER  
ATTORNEY GENERAL

TO: Coastal Resources Commission

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

DATE: November 5, 2008 (for the November 19-21, 2008 CRC Meeting)

RE: **Variance Request by Leland D. Eglund**

---

Petitioner applied for a CAMA minor permit to construct a single family dwelling with a foot print of 1,656 square feet at 1090 New River Inlet Road, North Topsail Beach, Onslow County, NC. Most of the proposed development is seaward of the applicable building setback, which at this location is 90 feet from the first line of stable natural vegetation. Petitioner applied for this variance seeking relief from strict application of the Commission's ocean hazard rules at 15A NCAC 7H .0306(a) and .0309(b).

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules  
Attachment B: Stipulated Facts  
Attachment C: Petitioner's and Staff's Positions to Criteria  
Attachment D: Petitioners' Variance Request Materials  
Attachment E: Stipulated Exhibit

cc: Leland D. Eglund, Petitioner  
Jim Gregson, DCM Director  
Ted Tyndall, DCM Assistant Director  
Steve Everhart, District Manager, Wilmington DCM Office  
Jon Giles, DCM Field Representative  
Deborah J. Hill, Town of N. Topsail Beach LPO  
Jennie W. Hauser, CRC Counsel



**RELEVANT STATUTES OR RULES**

**15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas**

- (a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in these Rules shall be located according to whichever of the following rules is applicable.
  - (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.
  - (2) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located seaward of the primary dune. In such cases, the development shall be located landward of the long-term erosion setback line and shall not be located on or in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
  - (3) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable.

**15A NCAC 7H .0309 Use Standards for Ocean Hazard Areas: Exceptions**

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

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

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

(b) Where strict application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, single family residential structures may be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
  - (A) All pilings have a tip penetration that extends to at least four feet below mean sea level;
  - (B) The footprint of the structure be no more than 1,000 square feet or 10 percent of the lot size, whichever is greater.
- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system must be submitted as part of the CAMA permit application.



ATTACHMENT B

**STIPULATED FACTS**

1. Petitioner, Leland D. Egland, owns Lot 1 Charles Padgett Subdivision (the “property”) located at 1090 New River Inlet Road in the Town of North Topsail Beach (“Town”), Onslow County, NC. Petitioner purchased the property in 2003.
2. The property is a .61 acre tract of land that runs from the Atlantic Ocean on the south to New River Inlet Road (S.R.1568) on the north.
3. The property is located within the Ocean Erodible Area of Environmental Concern (AEC) and the High Hazard Flood AEC, subcategories of the Ocean Hazard AEC designated by the Coastal Resources Commission (CRC) in 15A NCAC 7H .0304. A frontal dune does exist on this property.
4. Petitioner submitted an application dated April 14, 2005, for a CAMA Minor Development Permit to construct a single family dwelling on the property. On June 16, 2005, the CAMA Local Permit Officer for the Town of North Topsail Beach (LPO) issued Petitioner a CAMA Minor Development Permit No. 05/38 subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth in the permit. Petitioner signed Permit No. 05/38 which is required if conditions apply to the permit.
5. Condition #2 of the CAMA Permit No. 05/38 states that “the structure must set back 90 feet from the first line of stable natural vegetation”. The general rule is that development must be set back at a distance of 30 times the long-term annual erosion rate from the applicable vegetation line. Rule 15A NCAC 7H .0306(a)(1). The annual long-term erosion rate at this property is 3 feet per year, making the ocean erosion setback for the property 90 feet from the applicable vegetation line.
6. Due to the variable nature of the first line of stable natural vegetation from major storm or erosion events, Condition #12 of the CAMA Permit No. 05/38 provides “the permittee is required to contact the Local Permit Officer 910-328-1349, shortly before he plans to begin construction to arrange a setback measurement that will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be redone.”
7. The survey dated November 11, 2003 was submitted and approved (where consistent with the permit) with the original CAMA application 05/38.
8. On November 7, 2007, Petitioner applied to get a building permit from the Town’s Inspections Department. Petitioner submitted the survey dated November 23, 2004

(revised 8-1-07 & 8-3-07) with his building permit application. On December 21, 2007, the building permit was issued to Petitioner by the Town's Building Code Administrator.

9. On January 9, 2008, Petitioner had a temporary power pole installed and had some pilings delivered to the property.
10. On January 10, 2008, a stop work order was issued by the Town's Building Code Administrator, at the request of the LPO, because the project was not in compliance with CAMA Permit No. 05/38 issued on June 16, 2005, by not meeting the required 90' CAMA setback.
11. On March 17, 2008, the Town received another application (#08-11) from Petitioner for a CAMA Minor Development Permit and a survey dated January 7, 2008. Petitioner proposes to construct a 3 story, 4 bedroom house with 4,667 square feet. The structure would be within the erosion setback for this property. The CAMA LPO denied Petitioner's application by letter dated May 8, 2008, because the proposed development was inconsistent with 15A NCAC 7H .0306 (a), in that the proposed house does not meet the applicable 90' setback.
12. Petitioner's 2005 tax bill provides the assessed value for this property was \$172,000.00. During the 2006 County Wide Revaluation, the property's assessed value increased to \$774,000.00. In 2006, at Petitioner's request, the lot's assessed value was reduced by the County tax office to \$5,000.00 based on Petitioner's contention that the lot was unbuildable, as evidenced by the 2006 & 2007 tax records. (See Attachment D, Attachment #7).
13. When the 90' setback is applied on the Petitioner's property, based on the location of the first line of stable natural vegetation on July 27, 2007, the remaining area of Petitioner's property outside the setback when measured from the platted right of way is approximately 8 feet deep by 61 feet wide as shown on the survey dated January 7, 2008, submitted with Petitioner's application.
14. Petitioner filed this variance request on July 30, 2008, seeking relief from strict application of the Ocean Hazard AEC erosion setback rules and the exceptions to those rules in 15A NCAC 7H .0306(a)(1) and .0309(b).

ATTACHMENT C

**PETITIONER AND STAFF POSITIONS TO CRITERIA**

**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.**

Without the variance there is no reasonable use of this property. There is no use for this property reasonable or unreasonable. No variance equals no use and no value.

**Staff's Position: No.**

Staff disagrees that Petitioner has an unnecessary hardship in this case. In its adoption of oceanfront setback standards set forth in 15A NCAC 07H .0306, the CRC acknowledged that many properties along the North Carolina coast would be unable to meet the applicable setback requirements. Petitioner argues that he will have no use of his property. While the CRC rules do prevent the development of the proposed residential structure, they are currently able to develop the lot with the excepted structures allowed within the oceanfront setback under 15A NCAC 07H .0309(a)(1-9), which include parking, decking, a swimming pool, or a gazebo. Staff notes that the first line of stable natural vegetation is subject to change, especially if the Petitioner undertakes more aggressive vegetative planting.

**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.**

Lot location is 1090 New River Inlet Rd., Lot 1 of Charles Padgett Subdivision, Plat Book or Slide 1162, Page 367. Lot is irregular shape but it is basically 86 feet by 200 feet. Cause of hardship is 90 feet CAMA setback.

**Staff's Position: No.**

Staff disagrees that any alleged hardship is a result from conditions peculiar to the Petitioner's property, such as size, location or topography. There are many properties along the State's coast that are prevented from constructing a residential structure because of the CRC's

oceanfront setback rules. Staff notes that the oceanfront setbacks are designed so that new development will hopefully survive chronic beach erosion for 30 years, based on long-term average annual erosion rates. These rates are an average based on the review of the historical shoreline change. The actual erosion rate on a specific property in any given year is unpredictable and can change drastically in response to storms and hurricanes.

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

**Petitioner's Position: No.**

I have done everything I know to do to preserve and maintain this beach area. I put up sand fences, planted local plants of dunes, installed a fresh water sprinkler system.

**Staff's Position: Yes.**

Staff believes the hardship in this case is caused by Petitioners' use and design of his proposed development as well as the timing of his building permit application. The first line of stable natural vegetation dated November 6, 2003 (as shown on November 11, 2003 plat) was in fact valid and if the Petitioner had obtained building permits and started construction in 2005, then the Petitioner would have been able to construct the proposed residence on the property within the applicable building setback. Petitioner, however, chose to postpone construction of the permitted residence and the first line of stable natural vegetation was substantially changed by Hurricane Ophelia and subsequent storm events. Petitioner's choice to risk the timing of his construction in 2005 resulted in their inability to construct the same residence in 2007. Staff also notes that Petitioner can continue aggressive planting of vegetation in order to reestablish the setback line.

**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.**

CAMA has changed the setbacks in areas before. Recently in this area from 90 feet to 60 feet, with this variance the back of my house is farther from the ocean than the house on the lot adjacent to me. Yes, this variance would definitely be consistent with the spirit, purpose and intent of CAMA.

**Staff's Position: No.**

This variance would not be consistent with the spirit, purpose and intent of the Commission's ocean hazard rules. The Management Objective of the Ocean Hazard Area states the following:

- (a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.
- (b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

The above cited rule makes it clear that the allowance of the proposed structure within the applicable oceanfront setback would contribute to, rather than minimize the potential loss of life and property. Such "inappropriately sited development" would not secure the public safety and welfare, but would increase the chances of encroachment of permanent structures onto the public beach, increase the chances disruption of the natural ecological conditions, as well as, facilitating the need for public expenditures to address the costs of ill-sighted development. Further, this variance would not preserve substantial justice since it would be unfair to all of the many other owners of oceanfront property that cannot meet the setback requirements of the Commission's rules.

**CRC-VR-08-48**

**ATTACHMENT D**

Attached are the materials submitted by Petitioner for his variance request.

NOTE: Attachments #9 and #10 of the Petitioner's variance request are oversized maps and drawings of the proposed development. These maps were not included in these materials due to their size, but will be available at the meeting.

08-48

Petitioner supplies the following information:

Your Name **LELAND D. EGLAND**  
Address **43 SOUTH BOUNTY LANE KEY LARGO, FL 33037**  
Telephone **305-852-3029** **cell 305-766-3501**  
Fax and/or Email **FAX 305-852-3029** **EMAIL LELAND@EGLAND.COM**

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

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? **BUILD A SINGLE FAMILY HOME**

What Coastal Resources Commission rule(s) prohibit this type of development? **CAMA SETBACK OF 90'**

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.

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

RECEIVED

JUL 30 2008

N.C. ATTORNEY GENERAL  
Environmental Division

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. THIS DENIAL MAKES THIS LOT TOTALLY UNBUILDABLE AND AS SUCH OF NO VALUE. THIS DENIAL MAKES THIS LOT USELESS AND IT HAS NO USEFUL PURPOSE.

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).] WITHOUT THE VARIANCE THERE IS NO REASONABLE USE OF THIS PROPERTY. THERE IS NO USE FOR THIS PROPERTY REASONABLE OR UNREASONABLE. NO VARIANCE EQUALS NO USE AND NO VALUE
- II. Describe the conditions that are peculiar to your property (such as location, size, and topography), and cause your hardship. LOT LOCATION IS 1090 NEW RIVER INLET RD, LOT 1 OF CHARLES PADGETT SUBDIVISION PLAT BOOK OR SLIDE 1162 PAGE 367. LOT IS IRREGULAR SHAPE BUT IT IS BASICALLY 86 FEET BY 200 FEET. CAUSE OF HARDSHIP IS 90 FEET CAMA SETBACK
- III. Explain why your hardship does not result from actions that you have taken. I HAVE DONE EVERYTHING I KNOW TO DO TO PRESERVE AND MAINTAIN THIS BEACH AREA. I PUT UP SAND FENCES, PLANTED LOCAL PLANTS ON DOONS, INSTALLED A FRESH WATER SPRINKLER SYSTEM
- 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. CAMA HAS CHANGED THE SETBACKS IN AREAS BEFORE. RECENTLY IN THIS AREA FROM 90 FEET TO 60 FEET, WITH THIS VARIANCE THE BACK OF MY HOUSE IS FARTHER FROM THE OCEAN THAN THE HOUSE ON THE LOT ADJACENT TO ME. YES THIS VARIANCE WOULD DEFINATELY BE CONSISTENT WITH THE SPERIT PURPOSE AND INTENT OF CAMA.

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



002 00 0000 1000  
10: 910058823029 P. 3-4

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: 7-22-08

Signature:  
*Seland D. Eglard*

*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 26 day of JULY, 2008

Seland D. Eglund  
Signature of Petitioner or Attorney

## List of Attachments

1. Original CAMA permit
2. New CAMA permit
  - A. Notice to extend time
  - B. Denial
3. Location and plat of property
4. Permits
  - A. Temporary power
  - B. Driveway
  - C. Application for driveway and a letter of support
  - D. Water and sewer service
  - E. Onsite waste water system approval
5. Building permit for house; also elevation and v zone certificate plus copies of cancelled checks
6. Papers important to building on Topsail
7. 2005 and 2006 Onslow County taxes and a note from Leland Eglund
8. Note from Leland Eglund, stop work order and survey
9. Drawings for proposed house
10. Piling and cross bracing detail
11. Second letter from Leland Eglund and a copy of CAMA minor development permit

ATT # 1

U  
keylargoresorts.net

# Union of North Topsail Beach



June 16, 2005

Mr. Leland Egland  
43 South Bounty Lane  
Key Largo, FL 33037

RE: CAMA MINOR DEVELOPMENT PERMITS #05/38

Dear Mr. Egland;

I have enclosed your CAMA Minor Development Permit for your property in North Topsail Beach. Please read your permit carefully before conducting any development. If you have any questions, please call me.

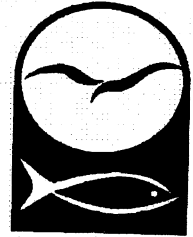
Please sign your permit **retain the original for your records and return a signed copy** to me for my files.

Thank you,

A handwritten signature in black ink, appearing to read "Sue McLaughlin". The signature is fluid and cursive.

Sue McLaughlin  
CAMA LPO

# CAMA MINOR DEVELOPMENT PERMIT



as authorized by the State of North Carolina, Department of Environment, and Natural Resources and the Coastal Resources Commission for development in an area of environment concern pursuant to Section 113A-118 of the General Statutes, "Coastal Area Management"

Issued to Mr. Leland Eglund, authorizing development in Ocean Hazard AEC at 1090 New River Inlet Road, North Topsail Beach, NC 28460, as requested in the permittee's application, dated April 14, 2005. This permit, issued on June 16, 2005 is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

### OCEAN HAZARD AEC 15 NCAC 7H.0300

#### RESIDENTIAL DEVELOPMENT IN AN OCEAN HAZARD AEC

*This permit authorizes the construction a single family dwelling with landscaping, crosswalk and driveway.*

1. The structure shall comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume 1 or Section 39, Volume 1-B, and the Local Flood Damage Prevention Ordinance as required by the National Flood Insurance Program. If any provisions of the building code or a flood damage prevention ordinance are inconsistent with any of the following AEC standards, the more restrictive provision shall control. All proposed development and associated construction must be done in accordance with the drawings as submitted on April 14, 2005.
2. The structure must set back 90 feet from the first line of stable natural vegetation.
3. The structure must be located entirely off of the frontal dune, and if a primary dune is present, behind the crest of the primary dune. **The uncovered deck located in the CAMA setback maybe cosmetically attached but not structurally attached.**

Conditions continued on second page

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. From the date of an appeal, any work conducted under this permit must cease until the appeal is resolved.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance.

Any maintenance work or project modification not covered under this permit, require further written permit approval.

All work must cease when this permit expires on **December 31, 2008**.

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances.

This permit may not be transferred to another party without the written approval of the Division of Coastal Management.

Local Permit Officer

Sue McLaurin

CAMA Local Permit

Permittee (signature required if conditions above apply to permit)

UATT#2  
.keylargoresorts.net

*Town of North Topsail Beach*

Kathleen Lennon Clough  
Interim Town Manager



April 11, 2008

**CERTIFIED MAIL – 7007 0710 0001 5258 3569**  
**RETURN RECEIPT REQUESTED**

Leland Eglund  
43 South Bounty Lane  
Key Largo FL 33037

**RE: NOTICE TO EXTEND TIME TO GRANT OR DENY CAMA MINOR PERMIT  
APPLICATION NUMBER – 08-11**

**PROJECT ADDRESS/LOCATION – 1090 New River Inlet Road**

Dear Mr. Eglund:

Pursuant to NCGS 113A-121(b), the undersigned hereby gives notice to the applicant that for good cause, and in order to properly consider all information necessary to making a decision on this permit application, the time period within which a final decision shall be made has been extended an additional twenty-five (25) days.

If you have any questions concerning this action, please contact me at (910) 328-1349.

Respectfully yours,

Handwritten signature of Deborah J. Hill in cursive.

Deborah J. Hill, MPA  
Planning/Zoning/CAMA LPO/Floodplain Admin

cc: JON GILES, DCM FIELD REPRESENTATIVE

*Town of North Topsail Beach*



Donald Martin, Mayor  
Larry Hardison, Mayor Pro Tem  
Aldermen:  
Richard Farley  
Richard Peters  
Robert Swantek  
Daniel Tuman

Henry Luxem  
Town Manager  
Kathleen Lennon Clough  
Town Clerk

May 6, 2008

**CERTIFIED MAIL - 7007 0710 0001 5258 3613**  
**RETURN RECEIPT REQUESTED**

Leland Eglund  
43 South Bounty Lane  
Key Largo FL 33037

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT**  
**APPLICATION NUMBER- # 08-11**  
**PROJECT ADDRESS- 1090 New River Inlet Drive**

Dear Mr. Eglund:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed.

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to construct a single family dwelling which is inconsistent with 15 NCAC 7H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS, which states that:

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

- (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable

Your application is also inconsistent with our Local Land Use Plan. On page IV-5 of the Land Use Plan, you will find that North Topsail Beach will support only uses within the ocean hazard areas which are allowed by 15A NCAC 7H and are consistent with the town's zoning and dune and vegetation protection ordinances.

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Deborah J. Hill, MPA  
Planning & Zoning/CAMA LPO

cc: JON GILES, DCM FIELD REPRESENTATIVE

ATT #3

TRANSMISSION VERIFICATION REPORT

TIME : 11/03/2003 15:04  
NAME : MBE4181  
FAX : 3054534878  
TEL : 3054534877  
SER.# : BROK1J729679

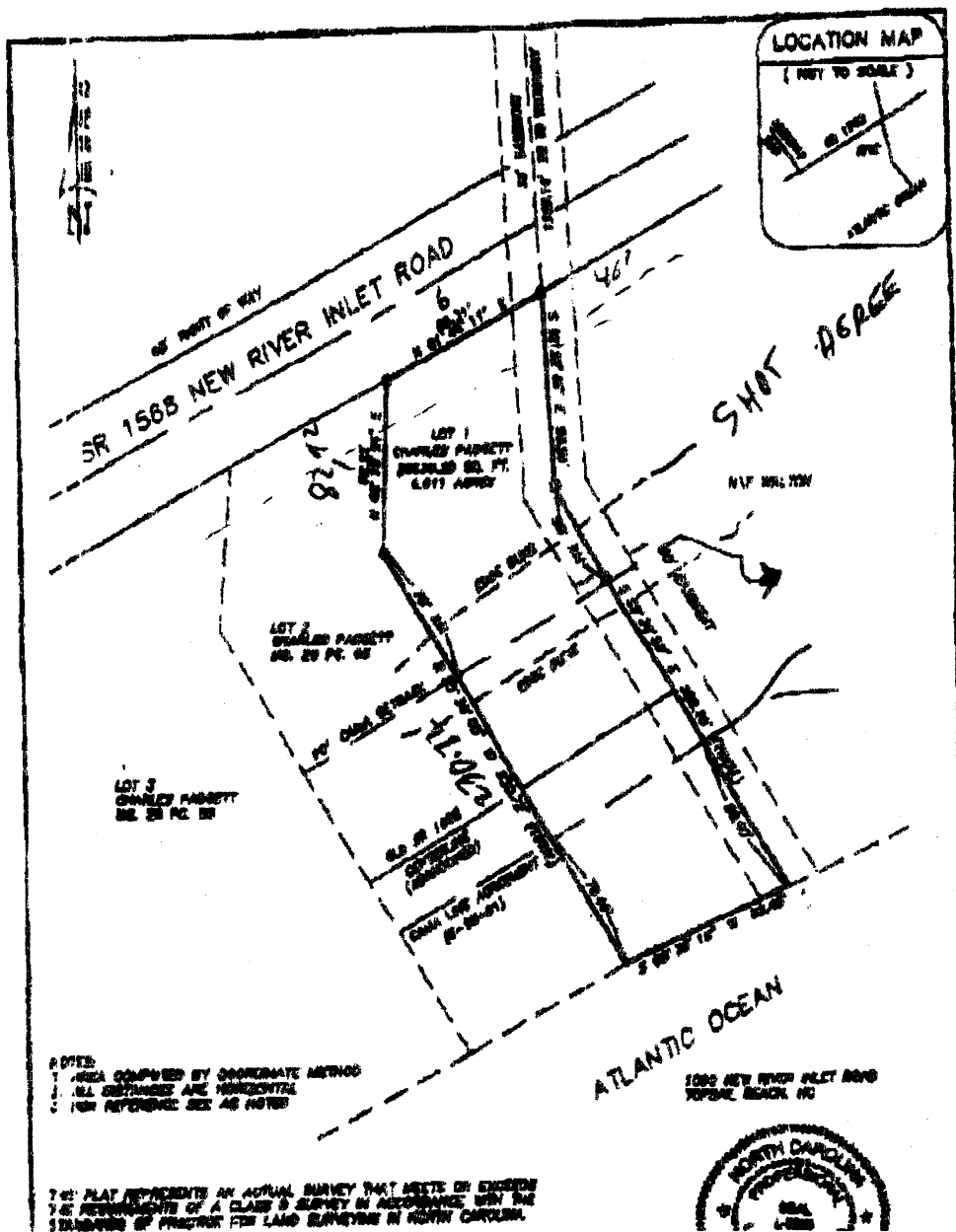
DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

11/03 15:03  
12522470337  
00:01:27  
03  
OK  
STANDARD

0011 01 2003 11:07 AM  
001 37 0a 04102p

0000 010010101  
000000 000000  
000000 000000

910-948-8941



NOTES  
1. AREA COMPILED BY COORDINATE METHOD  
2. ALL DISTANCES ARE HORIZONTAL  
3. FOR REVISIONS SEE AS NOTED

THIS PLAN REPRESENTS AN ACTUAL SURVEY THAT MEETS OR EXCEEDS THE REQUIREMENTS OF A CLASS B SURVEY IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA.







ATT # 4

NORTH TOPSAIL BEACH INSPECTIONS DEPARTMENT  
2008 LOGGERHEAD COURT  
NORTH TOPSAIL BEACH, NC 28460  
(910) 328-1349

TEMPORARY POWER AUTHORIZATION

PROJECT ADDRESS: 1090 New River Inlet  
NORTH TOPSAIL BEACH, NC 28460

I, Laurel D. Egbert do hereby apply for temporary power for the above referenced address in order to repair/complete this structure to meet all state codes and local ordinances. Additionally, I realize that temporary power is only granted for a **30 day period** of time and that I must request an inspection of this property within that 30 day period or the **utilities will be disconnected.**

In asking permission from the Town of North Topsail Beach for temporary power, I hereby release and absolve the Town of North Topsail Beach from all responsibility or liability, and I will further hold the Town of North Topsail Beach and/or its agents forever harmless as a result of the connection of utilities to the above referenced location.

Laurel D. Egbert  
Authorized Agent and/or Property Owner

9-10-07  
Date

# Town of North Topsail Beach



## NORTH TOPSAIL BEACH DRIVEWAY PERMIT

2008 Loggerhead Court  
North Topsail Beach, NC 28460  
910-328-1349

This permit is in accordance with the North Topsail Beach Zoning Ordinance

OWNERS NAME: Edmund D. Eglund

Project Address: 1090 NEW RIVER TALENT RD

Mailing Address: 97 SCOTCHBURNET WAY HAMPSHIRE NC 28443

Telephone: NTB: 910 2648587 Other: \_\_\_\_\_

Signature: [Handwritten Signature]

Contractor: MLK CONST Inc Telephone: 910 2648587  
NC License # 48682 NTB Privilege Lic # \_\_\_\_\_

Estimated Cost of Project: \$1,000.00

Square Footage of Drive: 3008

Foot Print of Structure: 65 X 45

AEC: \_\_\_\_\_ CAMA Permit#: 05/38

\_\_\_\_\_  
Approved; \_\_\_\_\_ Date  
NTB Zoning Administrator

Attach Engineered Storm Water and Survey



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

DIVISION OF HIGHWAYS

W. LYNDO TIPPETT  
SECRETARY

November 06, 2007

Division 3  
District 1  
Onslow County

Leland Eglund  
1090 New River Inlet Rd.  
North Topsail Beach, NC 28460

Subject: Driveway Permit application for access to SR 1568 -- at 5 miles southeast from the intersection of SR 1568 and NC 210 toward E.O.S.

Attached is the approved copy of the subject Driveway Permit. Please contact Mr. Josh Foley, TT II, at Onslow County Maintenance, 910-455-3777, prior to beginning work.

This is also to acknowledge receipt of bond in the amount of \$1,000.00 which will be returned upon satisfactory completion of subject driveway access.

Please refer to Driveway Permit # O-1668 in all future correspondence with this office concerning this drive. Should you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink that reads "Robert A. Vause".

R.A. Vause, P.E.  
District Engineer

RAV:pr  
Attachment

To: Anyone and Everyone Who is Concerned or Affected by My Building Permit or  
CAMA Minor Permit for 1090 New River Inlet Road, North Topsail Beach

From: Leland D. Eglund, Owner of 1090 New River Inlet Road

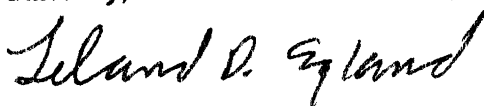
Re: CAMA Minor Permit

Many of you are aware that I have applied for and received a building permit for 1090 New River Inlet Road. When I completed this permit application, I was mistakenly under the impression the CAMA setback was sixty (60) feet. With a sixty (60) foot CAMA setback the ocean (east) side of my house would be ten plus feet further away from the water than the house on the adjacent lot.

I have invested a lot of time and money to build this house. I have my sewer tap in and the water has already been turned on. I have a temporary electric permit. I have built sand fences and installed a sprinkling system to permit vegetation growth. I even have a driveway permit. I have everything except the exception from ninety (90) feet to sixty (60) feet on my CAMA permit. I have read all the conditions required for both the house and the lot to be granted an exception on the CAMA permit. This lot and this house meet all of these requirements. Please give me you kindest consideration for without this relief this lot is not buildable.

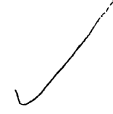
Thanks in advance.

Sincerely,



Leland D. Eglund  
43 South Bounty Lane  
Key Largo, Florida 33037  
305-852-3029  
305-766-3501 cell phone

UTILITIES  
**NORTH TOPSAIL WATER & SEWER, INC.**  
1798 New River Inlet Road  
Sneads Ferry, North Carolina 28460



**"SEWER SERVICE PERMIT"**

**Nº 573**

Owner ----- STEVEN C. CHRISTENSEN-PROFIT SHARING PLAN/SOLD TO LELAND D. EGLAND -----  
Address ----- 155 PLEASANT ST. CONCORD, N.H. 03301-2944 -----  
Phone No. ----- Business Phone No. ----- Home  
Location ----- STUMP SOUND TWP., NORTH TOPSAIL BEACH, N.C. 1090 NEW RIVER INLET RD. -----  
Lot No. ----- 1 ----- Block No. ----- N. TOPSAIL BEACH, N.C. 28460

House  Mobile Home  Business   
Duplex  Town House  Condo.

No. Units ----- ONE (1) ----- Covered by This Permit  
No. Bedrooms ----- ~~THREE (3)~~ SIX (6) ----- Covered by This Permit

Tap Fee Paid—Amount ----- \$3,000.00 + \$2,000.00 6/16/06 ----- Date ----- 9-6-94 -----

Permit Issued by ----- NORTH TOPSAIL WATER & SEWER, INC. -----  
Date ----- 9-6-94 -----

This Permit certifies that the Applicant has satisfied North Topsail Water & Sewer's requirements for sewer service.

Applicant is now eligible to apply for Building Permit for ----- ONSLOW ----- County.

Chairman  
Marvin Trott, Mayor of Richlands  
Vice Chairman  
Delma Collins, Chmn.-Onslow Co. Commissioner  
Sec/Treasurer  
Arnold Maloney, Mayor Pro-Tem-Holly Ridge

# ONWASA

Onslow Water & Sewer Authority

---

**Board of Directors**  
[www.onwasa.com](http://www.onwasa.com)

Jim Allen, Commissioner-Swainsboro  
Jery Bittner, Mayor Pro-Tem-Jacksonville  
Paul Buchanan, Commissioner-Onslow County  
Jan Slagle, Mayor of Jacksonville  
Daniel Tuman, Alderman, North Topsail Beach

July 26, 2007

RE: Account Number – 24009726.00 98 – Leland Eglund

RE: WATER AND SEWER SERVICE FOR PROPERTY LOCATED AT:  
**1090 New River Inlet Rd**  
North Topsail Beach, NC

To Whom It May Concern:

The Onslow Water and Sewer Authority supplies water service to the above stated location. Customer paid for a water tap July 27, 2005. The meter was installed August 8, 2007.

If we can be of further service to you, please feel free to contact this office.

Sincerely,



Bonnie L. Block  
Accounting Technician II

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
 DIVISION OF ENVIRONMENTAL HEALTH ON-SITE WASTEWATER SECTION

TAX PARCEL I.D. NUMBER: 774-27.3

WHAT DATE WAS THE PROPERTY ORIGINALLY DEEDED AND RECORDED?

OWNER: Steven C. Christensen

OWNER'S ADDRESS: 155 Pleasant Street, Concord, NH 03301

OWNER'S DAYTIME PHONE NUMBER:

OWNER'S LEGAL REPRESENTATIVE: John L. Pierce & Associates P.A.

REPRESENTATIVE'S ADDRESS: P.O. Box 1685 Jacksonville, NC 28540

REPRESENTATIVE'S DAYTIME PHONE NUMBER: (910) 346-9800

DIRECTIONS TO PROPERTY: Lot 1 Charles Padgett Subdivision located at 1090 New River Inlet Road

TYPE OF ESTABLISHMENT		
RESIDENCE: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	OTHER: _____	
SQ. FOOTAGE OF RESIDENCE OR BUILDING: 4000 s.f.		
BASEMENT: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	PLUMBING FIXTURE IN BASEMENT: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
NUMBER OF OCCUPANTS: 4 (Four)	NUMBER OF BEDROOMS INCLUDING ANY ROOM OR ADDITION THAT CAN REASONABLY BE EXPECTED TO FUNCTION AS A BEDROOM: Four (4)	
WATER SUPPLY: PUBLIC <input checked="" type="checkbox"/> WELL <input type="checkbox"/> OTHER: _____		
IF ANY OF THE FOLLOWING ARE LOCATED ON THE PROPERTY, PLEASE SHOW THEM ON THE PLAT		
DESCRIPTION	YES	NO
Existing wastewater systems		XX
Easements or rights-of-way	XX	
Wells, springs, or existing water lines	XX	
Designated wetlands	XX	

SUBDIVISION NAME: Charles Padgett      LOT: 1      BLOCK:      SECTION:      PHASE:

I AM APPLYING FOR A SITE EVAL & IMPROVEMENT PERMIT:      Signature (Owner or Legal Representative) \_\_\_\_\_ Date \_\_\_\_\_

I AM APPLYING FOR AN AUTHORIZATION TO CONSTRUCT:      Signature (Owner or Legal Representative) \_\_\_\_\_ Date \_\_\_\_\_

I AM APPLYING FOR AN IP REVISION  P/CA REVISION:      Signature (Owner or Legal Representative) \_\_\_\_\_ Date \_\_\_\_\_

PLEASE CONTACT PRIOR TO EVALUATION      OWNER'S LEGAL REPRESENTATIVE      EVALUATION & IP:      AUTH TO CONSTR:      REVISION:      Receipt No.      Amt.      Date Rec.      Date Ready

**YOU MUST SUBM A PLAT OF YOUR PROPERTY WITH THIS APPLICATION**  
 Please show the local of the residence or building, including dec porches, and any other improvements such as pools, driveways, and on structures to include wa supply on the plat.  
 Improvement Permit issued pursuant to this application shall not be affected by change in ownership provided the and facility the wastewa system serves are unchanged. The owner agent shall provide with documentation of representation.  
 The undersigned perso hereby agrees that he/sh has read this application It is understood that any permit issued hereafter a subject to suspension or revocation if the site plan or the intended use chan or if information submit in this application is falsified or changed.



ATT # 5

# Town of North Topsail Beach

2008 Loggerhead Court  
North Topsail Beach, NC 28460

Inspections  
Fax Number

910-328-1349  
910-328-4508



## BUILDING PERMIT

Issued Date : 12202007  
Issued By : TERR  
Flood Zone : VE  
Map / Parcel : 774-27.3 /  
Lot # : Unit # : 00000000

Permit # : **70446**  
Property Address : 1090 NEW RIVER INLET RD  
Subdivision: CHARLES PADGETT L1

Owner:  
EGLAND LELAND D  
43 S BOUNTY LN  
KEY LARGO FL 33037  
Phone:

Contractor: License #:  
MLK CONSTRUCTION, INC  
43 SOUTH BOUNTY LANE  
KEY LARGO FL 33037  
Phone: 9194438587

Type of Structure : RESIDENTIAL,NEW,SINGLE FAMILY  
Class of Construction: NEW  
Land Disturbance Activity Permit Req. : # Bedrooms:  
----- Attached Trade Permits ----- # Bathrooms:  
Electrical Plumbing Mechanical Fuel Gas  
70446 70446 70446

Res/Com/Ind : R  
Est. Cost : 400,000.00  
Heated Sq/Ft : 4,667.00  
Unheated Sq/Ft: + 688.00  
Total Sq/ft: = 5,355.00

BUILD SFD WITH DECKS AND DRIVEWAY

### Additional Comments

Recovery Fund : 10.00  
Solid Waste : 115.00  
Technology : 24.09  
Issue Fee : 481.95

Description	Per Unit	Qty	Fee
ZONING FEE	50.00	1	50.00
ELEVATOR/DUMBWAITER	100.00	1	100.00

Cash: Check: 4018 Receipt: 24035 Permit Fee : \$ **781.04**

I hereby certify that all information above is true and correct. That all work under this permit shall comply and conform to all Town ordinances, State and Federal laws pertaining thereto, whether specified or not, and in accordance with any plans submitted or required to be submitted regulating building codes and building construction in the Town of North Topsail Beach, NC. I further agree to remove all construction debris from the site when completed. And that I am the owner or authorized by the owner to do the work described in this permit.

Permit shall be void if construction authorized by permit shall not have been commenced within six (6) months after the date of issuance thereof, or if after commencement of construction, the work shall be discontinued for a period of twelve (12) months, work shall not be resumed until permit has been renewed.

All final inspections are mandatory before occupancy. All work shall be performed by a licensed contractor in this state. It is unlawful and illegal to occupy any building before final inspection and a certification of occupancy has been issued. All fees are non-refundable after 60 days.

Applicant's Signature: \_\_\_\_\_

Date: 12/21, 2007

Issued By: Jemie S Wood

Date: 12/21, 20 07

# Town of North Topsail Beach



2008 Loggerhead Court  
North Topsail Beach, NC 28460

Inspections  
Fax Number

910-328-1349  
910-328-4508

## INSULATION PERMIT

Permit # : **070446** Issued by: **TERR** Issued Date: **12202007**

Job Address : **NEW RIVER INLET RD 1090**

Sub-Div/Tax Loc: **CHARLES PADGETT L1**

Lot

Map / Parcel : **774-27.3 /**

New: **Y** Addition: Alteration :

(R)esidential (C)ommercial (I)ndustrial : **R**

Inspector : **RANDALL**

Owner:

**EGLAND LELAND D**

**43 S BOUNTY LN**

**KEY LARGO FL**

**33037**

Owner Telephone :

Contractor: **692** License # :

**MLK CONSTRUCTION, INC**

**43 SOUTH BOUNTY LANE**

**KEY LARGO**

**FL 33037**

Contractor Office Tel: **9194438587**

Comment :

Exterior Walls Type : Thickness : R Factor :

Ceiling Type : Thickness : R Factor :

Floor Type : Thickness : R Factor :

Cost of Construction : **.00**

\*\*\*\*\*

This is to certify that all work proposed under this permit will comply with the Insulation and Energy Utilization of the Sate Building Code and will comply with all applicable State and Local regulations.

Cash: Check: 4018 Receipt: 24035 **Total Permit Fee : \$ 245.01**

Applicant's Signature: \_\_\_\_\_

Date: **12/21** , 2007

Issued By: \_\_\_\_\_

Date: \_\_\_\_\_, 20

# Town of North Topsail Beach



2008 Loggerhead Court  
North Topsail Beach, NC 28460

Inspections 910-328-1349  
Fax Number 910-328-4508

## ELECTRICAL PERMIT

Permit # : 70446  
Job Address: 1090 NEW RIVER INLET RD  
Map / Parcel : 774-27.3 /  
Inspector : RANDALL  
Owner:  
EGLAND LELAND D  
43 S BOUNTY LN  
KEY LARGO FL 33037 -  
Work Desc : NEW

Issued Date: 12202007  
Issued by: TERR  
Owner Telephone :  
Contractor Office Tel: 9102316159  
Contractor Cell Tel :  
License # :  
Contractor: 693  
J.L. CASH ELECTRIC INC  
311 JUDGES ROAD UNIT 13 B  
WILMINGTON NC 28405  
Power Company : \*NONE

New: **Y** Addition : Alteration : Est. Value of Work : .00  
(R)esidential (C)ommercial (I)ndustrial : R Fuel Gas Permit # Attached :  
Service Amps :

Description	Per Unit	Qty	Fee	Issue Fee :	267.75
TEMPORARY POWER POLE	50.00	1	50.00		
Cash: Check: 4018 Receipt: 24035				Permit Fee : \$	<b>331.13</b>

I hereby certify that all information above is true and correct. That all work under this permit shall comply and conform to all Town ordinances, State and Federal laws pertaining thereto, whether specified or not, and in accordance with any plans submitted or required to be submitted regulating building codes and building construction in the Town of North Topsail Beach, NC. I further agree to remove all construction debris from the site when completed. And that I am the owner or authorized by the owner to do the work described in this permit.

Permit shall be void if construction authorized by permit shall not have been commenced within six (6) months after the date of issuance thereof, or if after commencement of construction, the work shall be discontinued for a period of twelve (12) months, work shall not be resumed until permit has been renewed.

All final inspections are mandatory before occupancy. All work shall be performed by a licensed contractor in this state. It is unlawful and illegal to occupy any building before final inspection and a certification of occupancy has been issued. All fees are non-refundable after 60 days.

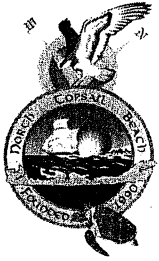
Applicant's Signature: \_\_\_\_\_

Date: 12/21 , 2007

Issued By: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

# Town of North Topsail Beach



2008 Loggerhead Court  
North Topsail Beach, NC 28460

Inspections 910-328-1349  
Fax Number 910-328-4508

## MECHANICAL PERMIT

Permit # : 70446  
Job Addr: 1090 NEW RIVER INLET RD  
Map / Parcel : 774-27.3 /  
Inspector : RANDALL

Issued Date: 12202007  
Issued by: TERR  
Owner Telephone :  
Contractor Office Tel: 9106753629  
Contractor Cell Tel :  
License # :

Owner:  
EGLAND LELAND D  
43 S BOUNTY LN  
KEY LARGO FL 33037  
Work Desc: NEW

Contractor: 694  
AIRFLOW MECHANICAL  
4704 N. COLLEGE RD  
CASTLE HAYNE NC

New : Y Addition : Alteration :  
(R)esidential (C)ommercial (I)ndustrial : R  
Gas Co. :

Est. Value of Work:  
Fuel Gas Permit # Attached :

Description	Per Unit	Qty	Fee	Issue Fee :	233.35
-----					
Cash:	Check: 4018	Receipt:	24035	Permit Fee : \$	<b>245.01</b>

\*\*\*\*\*

I hereby certify that all information above is true and correct. That all work under this permit shall comply and conform to all Town ordinances, State and Federal laws pertaining thereto, whether specified or not, and in accordance with any plans submitted or required to be submitted regulating building codes and building construction in the Town of North Topsail Beach, NC. I further agree to remove all construction debris from the site when completed. And that I am the owner or authorized by the owner to do the work described in this permit.

Permit shall be void if construction authorized by permit shall not have been commenced within six (6) months after the date of issuance thereof, or if after commencement of construction, the work shall be discontinued for a period of twelve (12) months, work shall not be resumed until permit has been renewed.

All final inspections are mandatory before occupancy. All work shall be performed by a licensed contractor in this state. It is unlawful and illegal to occupy any building before final inspection and a certification of occupancy has been issued. All fees are non-refundable after 60 days.

Applicant's Signature: \_\_\_\_\_

Date: 12/21 , 2007

Issued By: \_\_\_\_\_

Date: \_\_\_\_\_,20\_\_\_\_

12/21/2007 8:38:28 AM

# Town of North Topsail Beach

2008 Loggerhead Court  
North Topsail Beach, NC 28460

Inspections  
Fax Number

910-328-1349  
910-328-4508



## PLUMBING PERMIT

Issued Date: 12202007  
Issued by: TERR

Permit # : 70446  
Job Addr : 1090 NEW RIVER INLET RD  
Map / Parcel : 774-27.3 /  
Inspector : RANDALL

Owner Telephone :  
Contractor Office Tel: 9107935394  
Contractor Cell Tel :  
License # :

Owner:  
EGLAND LELAND D  
43 S BOUNTY LN  
KEY LARGO FL 33037 -  
Work Desc: NEW

Contractor: 695  
PHILLIP JOSEPH JACQUES  
309 LANSDOWNE RD  
WILMINGTON NC 28409

New : Y	Addition :	Alteration :	Est. Value of Work:
(R)esidential (C)ommercial (I)ndustrial :	R	Fuel Gas Permit # Attached :	
Description	Per Unit	Qty	Fee
			Issue Fee : 267.75
-----			
Cash:	Check: 4018	Receipt: 24035	Permit Fee : \$ 281.13

I hereby certify that all information above is true and correct. That all work under this permit shall comply and conform to all Town ordinances, State and Federal laws pertaining thereto, whether specified or not, and in accordance with any plans submitted or required to be submitted regulating building codes and building construction in the Town of North Topsail Beach, NC. I further agree to remove all construction debris from the site when completed. And that I am the owner or authorized by the owner to do the work described in this permit.

Permit shall be void if construction authorized by permit shall not have been commenced within six (6) months after the date of issuance thereof, or if after commencement of construction, the work shall be discontinued for a period of twelve (12) months, work shall not be resumed until permit has been renewed.

All final inspections are mandatory before occupancy. All work shall be performed by a licensed contractor in this state. It is unlawful and illegal to occupy any building before final inspection and a certification of occupancy has been issued. All fees are non-refundable after 60 days.

Applicant's Signature: \_\_\_\_\_

Date: 12/21 , 2007

Issued By: \_\_\_\_\_

Date: \_\_\_\_\_,20\_\_\_\_

*Town of North Topsail Beach*  
**Planning Department**



November 26, 2007

Brooke T. Carpenter, P.E.  
204 W. Main St  
Gibsonville NC 27249

John L. Pierce & Associates, P.A.  
409 Johnson Blvd  
Jacksonville NC 28540

**RE: ELEVATION CERTIFICATE AND V ZONE CERTIFICATE**  
**ADDRESS: 1090 NEW RIVER INLET ROAD**  
**TAX PARCEL: 774-27.3**  
**PROPERTY DESCRIPTION: CHARLES PADGETT L1**

Under the terms of the North Topsail Beach Flood Damage Prevention Ordinance, Article 1, Section A, Statutory Authorization, North Topsail Beach is granted the authorization from the General Assembly to adopt, interpret, and enforce ordinances regulating and enforcing floodplain management consistent with the National Flood Insurance Program.

We originally accepted the application package under the impression that it was complete. On subsequent review, I have proofread the Elevation Certificate certified by John L. Pierce & Associates, P.A. and the V Zone Certificate certified by Brooke T. Carpenter, P.E. for any errors or omissions. Accordingly, the forms are being returned to Brooke T. Carpenter, P.E. and John L. Pierce & Associates, P.A. with the following instructions on what needs to be changed or corrected.

**Elevation Certificate:**

**Item A5. PROVIDE** latitude and longitude coordinates for the center of the front of the building. Provide the type of datum used to obtain the latitude and longitude. FEMA prefers the use of NAD 1983.

**Items B4.-B5. CORRECT** Map/Panel Number and Suffix. Enter the 10-character "Community Panel Number" shown on the FIRM.

**Item B12. INDICATE** whether the building is located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA).



National Flood Insurance Program V-Zone Certificate  
For Registered Engineers and Architects

Name Leland Eglard Policy Number (Insurance Co. Use) \_\_\_\_\_  
Building, Address or Other Description Lot #1 Padgett Subdivision, 1090 New River Rd, North Topsail Beach, NC  
City North Topsail Beach State North Carolina Zip Code 28460

SECTION I: Flood Insurance Rate Map (FIRM) Information

Community Number 370466 Panel Number 4288 Suffix J Date of FIRM Index 11/3/05 FIRM Zone Cobra  
VE

SECTION II: Elevation Information

1. Elevation of the Bottom of Lowest Horizontal Structural Member ..... 22.0 feet (NGVD)
2. Base Flood Elevation (BFE) ..... 16.0 feet (NGVD)
3. Elevation of Lowest Adjacent Grade ..... 13.0 feet (NGVD)
4. Approximate Depth of Anticipated Scour/Erosion used for Foundation Design ..... 3.0 feet (NGVD)
5. Embedment Depth of Pilings or Foundation Below Lowest Adjacent Grade ..... 16.0 feet (NGVD)

SECTION III: V-Zone Certification Statement

NOTE. This section must be certified by a registered engineer or architect

I certify that I have developed or reviewed the structural design, plans, and specifications for construction and that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the following provisions:

- The bottom of the lowest horizontal structural member of the lowest floor (excluding piles and columns) is elevated to or above the BFE; and
- The pile and column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of the wind and water loads acting simultaneously on all building components. Water loading values used are those associated with the base flood. Wind loading values used are those required by the applicable State or local building code. The potential for scour and erosion at the foundation has been anticipated for conditions associated with the base flood, including wave action.

SECTION IV: Breakaway Wall Certification Statement

NOTE. This section must be certified by a registered engineer or architect when breakaway walls exceed a design safe loading resistance of 20 pounds per square foot

I certify that I have developed or reviewed the structural design, plans, and specifications for construction and that the design and methods of construction to be used for the breakaway walls are in accordance with accepted standards of practice for meeting the following provisions:

- Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (wind and water loading values to be used are defined in Section 111).

SECTION IV: Certification

Signature below certifies:  Section III;  Section IV

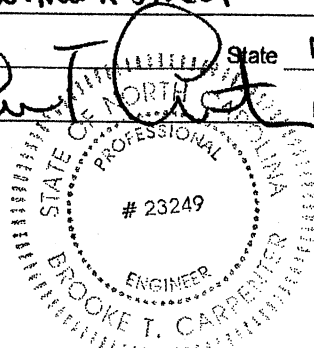
Certifier's Name Brooke T. Carpenter, P.E.

Title Structural Engineer License Number NC # 23249

Street Address 204 W. Main Street

City Gibsonville State North Carolina Zip Code 27249

Signature [Signature] Date 9/10/07 Telephone Number 336-449-0505



Residential Engineering Services, P.A.  
204 W. Main Street  
Gibsonville, NC 27249  
# (336) 449-0505



# ELEVATION CERTIFICATE

Important: Read the instructions on pages 1-8.

## SECTION A - PROPERTY INFORMATION

A1. Building Owner's Name <u>Lee Egland</u>	For Insurance Company Use:
	Policy Number
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. <u>1090 New River Inlet Road</u>	Company NAIC Number
City <u>Stump Sound</u> State <u>NC</u> ZIP Code	

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)  
Lot 1 Charles Padgett

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) residential

A5. Latitude/Longitude: Lat. n/a Long. n/a Horizontal Datum:  NAD 1927  NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 5

A8. For a building with a crawl space or enclosure(s), provide

a) Square footage of crawl space or enclosure(s) <u>n/a</u> sq ft	A9. For a building with an attached garage, provide:
b) No. of permanent flood openings in the crawl space or enclosure(s) walls within 1.0 foot above adjacent grade _____	a) Square footage of attached garage <u>n/a</u> sq ft
c) Total net area of flood openings in A8.b _____ sq in	b) No. of permanent flood openings in the attached garage walls within 1.0 foot above adjacent grade _____
	c) Total net area of flood openings in A9.b _____ sq in

## SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number <u>North Topsail Beach-370466</u>		B2. County Name <u>Onslow</u>		B3. State <u>NC</u>	
B4. Map/Panel Number <u>370466-4288</u>	B5. Suffix <u>J</u>	B6. FIRM Index Date <u>2/16/07</u>	B7. FIRM Panel Effective/Revised Date <u>11/03/05</u>	B8. Flood Zone(s) <u>VE</u>	B9. Base Flood Elevation(s) (Zone AO, use base flood depth) <u>16.05</u>

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.  
 FIS Profile  FIRM  Community Determined  Other (Describe) \_\_\_\_\_

B11. Indicate elevation datum used for BFE in Item B9:  NGVD 1929  NAVD 1988  Other (Describe) \_\_\_\_\_

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)?  Yes  No  
Designation Date 10/01/88  CBRS  OPA

## SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on:  Construction Drawings\*  Building Under Construction\*  Finished Construction  
\*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations – Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-g below according to the building diagram specified in Item A7.  
Benchmark Utilized existing benchmark on sit Vertical Datum NGVD 1929  
Conversion/Comments NAVD 1988 = NGVD 1929 + (-1.05)

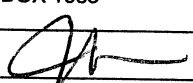
Check the measurement used.

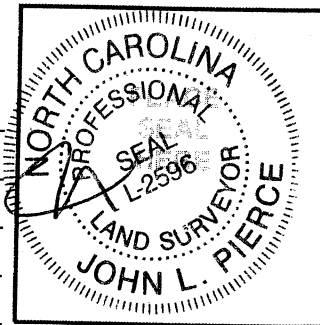
a) Top of bottom floor (including basement, crawl space, or enclosure floor)	<u>24.00</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
b) Top of the next higher floor	<u>34.00</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
c) Bottom of the lowest horizontal structural member (V Zones only)	<u>20.00</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
d) Attached garage (top of slab)	<u>n/a</u>	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment in Comments)	<u>18.10</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
f) Lowest adjacent (finished) grade (LAG)	<u>12.00</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
g) Highest adjacent (finished) grade (HAG)	<u>14.10</u>	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)

## SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

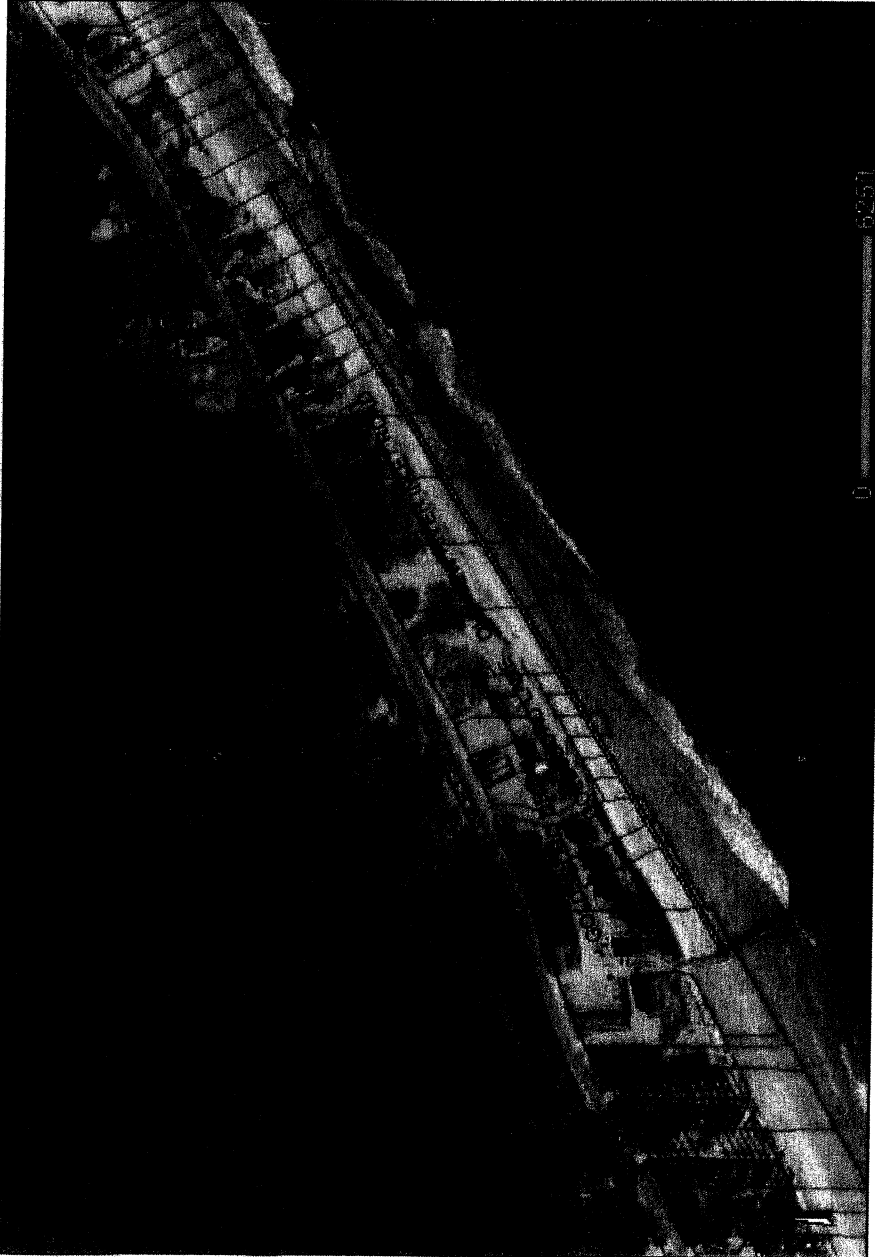
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

Check here if comments are provided on back of form.

Certifier's Name <u>JOHN L. PIERCE</u>	License Number <u>L-2596</u>
Title <u>PROFESSIONAL LAND SURVEYOR</u>	Company Name <u>JOHN L. PIERCE &amp; ASSOCIATES P.A.</u>
Address <u>P.O. BOX 1685</u>	City <u>JACKSONVILLE</u> State <u>NC</u> ZIP Code <u>28540</u>
Signature 	Date <u>9/11/07</u> Telephone <u>910-346-9800</u>



Onslow County Online Parcel Print Page



Map & Data	1
Tax Parcel ID	774-27.3
NC PIN Number	42870590057
Tax Record Number	11719
Owner's Name	EGLAND LELAND D
Plat Book and Page	28-085
Deed Book and Page	2152383
Date Deed Recorded	11/20/2003
Deed Stamp Amount	192500
Tax Acreage Charged	0.61
Abstract Tax Value	5000
Current Tax Value	5000
Land Value	5000
Structure Value	0
Other Building Value	0
Improvement Code	V
Heated Living Area Sq Ft	0
Property Address	1090 NEW RIVER INLET RD
Township Code	114
City Code	26
Neighborhood Code	300
Property Description	CHARLES PADGETT L1

\*\*\*\*\*WARNING: THIS IS NOT A SURVEY!\*\*\*\*\*

This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The County and mapping company assume no legal responsibility for the information contained on this map. Date: 11/26/2007

Notice to Purchaser - In the event this check is lost, misplaced or stolen, a sworn statement and 90-day waiting period will be required prior to replacement. This check should be negotiated within 90 days.

Date SEPTEMBER 17 2007

30-1/1140  
NTX

Banking Center

MIF CONSTRUCTION INC.  
Remitter (Purchased By)

\$ \*\*1000.00\*\*

33-14-3774B 09-2005

Pay **ONE THOUSAND DOLLARS AND 00 CENTS\*\***

To The Order Of **NORTH CAROLINA DEPT OF TRANSPORTATION\*\***  
**\*\*ONE MONEY POS 1090 NEW FINEE 10101\*\***

09-17-2007 12:55  
001641000678  
**Non-Negotiable**

Authorized Signature  
**Customer Copy** 001641000678  
**Retain For Your Records**

Bank of America, N.A.  
San Antonio, Texas

VOID AFTER 90 DAYS

BY: *Sue Whang*  
Thank you!

PLEASE KEEP YOUR RECEIPT

CASH  CHECK # 1840

For:  SOLID WASTE FEE  ACCOMMODATION TAX  OTHER: *Calla Fruit # 05/38*

Received of: *LELAND ELAND* \$ *100.00*

Date: *April 14, 2005*

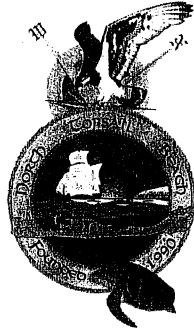
No. 18000

TOWN OF NORTH TOPSAIL BEACH  
2008 Loggerhead Court  
North Topsail Beach, NC 28460  
(910) 328-1349



PT # 6

# Town of North Topsail Beach



## FLOOD RESISTANT MATERIALS

I HAVE READ AND WILL COMPLY WITH THE FLOOD- RESISTANT MATERIALS REQUIREMENTS FOR BUILDINGS LOCATED IN SPECIAL FLOOD HAZARD AREAS. (TECHNICAL BULLENTIN 2-93 ALSO IN NTB FLOOD DAMAGE PREVENTION ORDINANCE ARTICLE 5 SECTION A 2 & ARTICLE 5 SECTION B 4)

I HAVE READ AND WILL COMPLY WITH THE FEMA LIST OF ITEMS THAT MAY OR MAY NOT BE PERMITTED BELOW THE BASE FLOOD LEVEL. (PER FEMA, ATLANTA REGIONAL OFFICE & NTB FLOOD DAMAGE PREVENTION ORDINANCE ARTICLE 5 SECTION A 4)

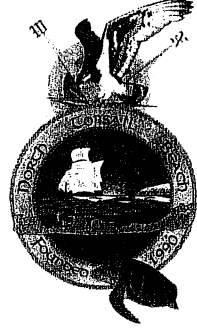
I HAVE READ AND WILL COMPLY WITH (ARTICLE 5.) PROVISIONS FOR FLOOD HAZARD REDUCTION. (GENERAL STANDARDS)

I HAVE READ AND WILL COMPLY WITH THE ENCLOUSURES AND BREAKAWAY WALLS. (HOME BUILDERS GUIDE TO COASTAL CONSTRUCTION- FEMA 499, TECHNICAL FACT SHEET NO.27 & NTB FLOOD DAMAGE PREVENTION ORDINANCE ARTICLE 5 SECTION B 4)

MICHAEL R. HARRIS  
NAME

9-29-07  
DATE

# Town of North Topsail Beach



## FLOOD RESISTANT MATERIALS

I HAVE READ AND WILL COMPLY WITH THE FLOOD- RESISTANT MATERIALS REQUIREMENTS FOR BUILDINGS LOCATED IN SPECIAL FLOOD HAZARD AREAS. (TECHNICAL BULLENTIN 2-93 ALSO IN NTB FLOOD DAMAGE PREVENTION ORDINANCE ARTICLE 5 SECTION A 2 & ARTICLE 5 SECTION B 4)

I HAVE READ AND WILL COMPLY WITH THE FEMA LIST OF ITEMS THAT MAY OR MAY NOT BE PERMITTED BELOW THE BASE FLOOD LEVEL. (PER FEMA, ATLANTA REGIONAL OFFICE & NTB FLOOD DAMAGE PREVENTION ORDINANCE ARTICLE 5 SECTION A 4)

I HAVE READ AND WILL COMPLY WITH (ARTICLE 5.) PROVISIONS FOR FLOOD HAZARD REDUCTION. (GENERAL STANDARDS)

I HAVE READ AND WILL COMPLY WITH THE ENCLOUSURES AND BREAKAWAY WALLS. (HOME BUILDERS GUIDE TO COASTAL CONSTRUCTION- FEMA 499, TECHNICAL FACT SHEET NO.27 & NTB FLOOD DAMAGE PREVENTION ORDINANCE ARTICLE 5 SECTION B 4)

Michael K. H. H. H.  
NAME

9-29-07  
DATE

National Flood Insurance Program V-Zone Certificate  
For Registered Engineers and Architects

Name Leland Egland Policy Number (Insurance Co. Use) \_\_\_\_\_  
Building, Address or Other Description Lot #1 Padgett Subdivision, 1090 New River Rd, North Topsail Beach, NC  
City North Topsail Beach State North Carolina Zip Code 28460

SECTION I: Flood Insurance Rate Map (FIRM) Information

Community Number 370466 Panel Number 4288 Suffix J Date of FIRM Index 11/3/05 FIRM Zone Cobra

SECTION II: Elevation Information

- 1. Elevation of the Bottom of Lowest Horizontal Structural Member ..... 22.0 feet (NGVD)
- 2. Base Flood Elevation (BFE)..... 16.0 feet (NGVD)
- 3. Elevation of Lowest Adjacent Grade ..... 13.0 feet (NGVD)
- 4. Approximate Depth of Anticipated Scour/Erosion used for Foundation Design..... 3.0 feet (NGVD)
- 5. Embedment Depth of Pilings or Foundation Below Lowest Adjacent Grade..... 16.0 feet (NGVD)

SECTION III: V-Zone Certification Statement

NOTE. This section must be certified by a registered engineer or architect

I certify that I have developed or reviewed the structural design, plans, and specifications for construction and that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the following provisions:

- The bottom of the lowest horizontal structural member of the lowest floor (excluding piles and columns) is elevated to or above the BFE; and
- The pile and column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of the wind and water loads acting simultaneously on all building components. Water loading values used are those associated with the base flood. Wind loading values used are those required by the applicable State or local building code. The potential for scour and erosion at the foundation has been anticipated for conditions associated with the base flood, including wave action.

SECTION IV: Breakaway Wall Certification Statement

NOTE. This section must be certified by a registered engineer or architect when breakaway walls exceed a design safe loading resistance of 20 pounds per square foot

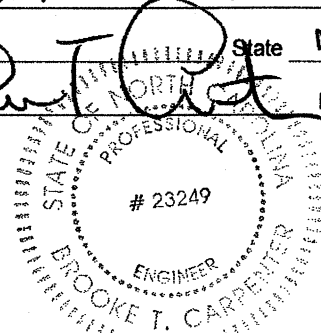
I certify that I have developed or reviewed the structural design, plans, and specifications for construction and that the design and methods of construction to be used for the breakaway walls are in accordance with accepted standards of practice for meeting the following provisions:

- Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (wind and water loading values to be used are defined in Section 111).

SECTION IV: Certification

Signature below certifies:  Section III;  Section IV

Certifier's Name Brooke T. Carpenter, P.E.  
Title Structural Engineer License Number NC# 23249  
Street Address 204 W. Main Street  
City Gibsonville State North Carolina Zip Code 27249  
Signature [Signature] Date 9/10/07 Telephone Number 336-449-0505



Residential Engineering Services, P.A.  
204 W. Main Street  
Gibsonville, NC 27249  
# (336) 449-0505

To: Anyone and Everyone Who is Concerned or Affected by My Building Permit or  
CAMA Minor Permit for 1090 New River Inlet Road, North Topsail Beach

From: Leland D. Eglund, Owner of 1090 New River Inlet Road

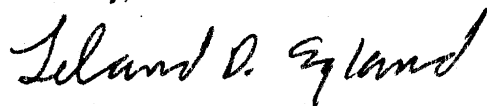
Re: CAMA Minor Permit

Many of you are aware that I have applied for and received a building permit for 1090 New River Inlet Road. When I completed this permit application, I was mistakenly under the impression the CAMA setback was sixty (60) feet. With a sixty (60) foot CAMA setback the ocean (east) side of my house would be ten plus feet further away from the water than the house on the adjacent lot.

I have invested a lot of time and money to build this house. I have my sewer tap in and the water has already been turned on. I have a temporary electric permit. I have built sand fences and installed a sprinkling system to permit vegetation growth. I even have a driveway permit. I have everything except the exception from ninety (90) feet to sixty (60) feet on my CAMA permit. I have read all the conditions required for both the house and the lot to be granted an exception on the CAMA permit. This lot and this house meet all of these requirements. Please give me you kindest consideration for without this relief this lot is not buildable.

Thanks in advance.

Sincerely,



Leland D. Eglund  
43 South Bounty Lane  
Key Largo, Florida 33037  
305-852-3029  
305-766-3501 cell phone

# Privilege License Application

Town of North Topsail Beach  
2008 Loggerhead Court  
North Topsail Beach, NC 28460  
Phone (910)328-3186  
Fax (910)328-4508

Business Name MLK CONST  
Owner Name Coland Eglan  
Mailing Address 97 SCOTCHBORO WY  
City/Town HAMPSTEAD State N.C Zip Code 28443  
Phone Number 910 2648587 Cell/Pager \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Type Of Business GENERAL CONTRACTOR  
State License # 48682 Expiration Date JAN 1 08

I/We am submitting an application for a Business License in the Town of North Topsail Beach In compliance with Article II- Privilege License Tax and the Town's Ordinances, I understand that such license could be revoked or cancelled at the discretion of the Board of Aldermen at any time. However, I/We have ten (10) days notice to appeal to the Board of Aldermen on my/our behalf.

[Signature]  
Signature of Applicant

9-10-07  
Date of Application

Issued By \_\_\_\_\_

License # \_\_\_\_\_

Expiration Date \_\_\_\_\_

Receipt # \_\_\_\_\_



NOT TRANSFERABLE



# Town of North Topsail Beach, NC

## PRIVILEGE LICENSE CERTIFICATE

PRIVILEGE LICENSE ACCOUNT #

695

EFFECTIVE DATE

12 - 21 - 2007

CERTIFICATE NUMBER

**070311**

Issued to: PHILLIP JOSEPH JACQUES

Owner :

Location : 309 LANSDOWNE RD  
WILMINGTON

28409

Mailing Address : 309 LANSDOWNE RD  
WILMINGTON

NC 28409

A License is granted in the Town of North Topsail Beach for the period ending June 30, 2008 subject to compliance with the provision of the Privilege License Resolution of the Board of Aldermen, North Topsail Beach, NC for carrying on the business of:

2383 PLUMBER

Witness my hand and seal of North Topsail Beach the day and year written above

Deputy Town Clerk

DISPLAY IN A CONSPICUOUS PLACE



# Town of North Topsail Beach, NC

## PRIVILEGE LICENSE CERTIFICATE

PRIVILEGE LICENSE ACCOUNT #

694

EFFECTIVE DATE

12 - 21 - 2007

CERTIFICATE NUMBER

**070312**

Issued to: AIRFLOW MECHANICAL

Owner : KALNEN, MARTINI PATRICK

Location : 4704 N. COLLEGE RD

CASTLE HAYNE

28429

Mailing Address : 4704 N. COLLEGE RD

CASTLE HAYNE

NC 28429

A License is granted in the Town of North Topsail Beach for the period ending June 30, 2008 subject to compliance with the provision of the Privilege License Resolution of the Board of Aldermen, North Topsail Beach, NC for carrying on the business of:

2384 MECHANICAL

Witness my hand and seal of North Topsail Beach the day and year written above

Deputy Town Clerk

DISPLAY IN A CONSPICUOUS PLACE

NOT TRANSFERABLE



# Town of North Topsail Beach, NC

## PRIVILEGE LICENSE CERTIFICATE

PRIVILEGE LICENSE ACCOUNT #

692

EFFECTIVE DATE

12 - 21 - 2007

CERTIFICATE NUMBER

**070313**

Issued to: MLK CONSTRUCTION, INC

Owner :

Location : 43 SOUTH BOUNTY LANE

KEY LARGO

33037

Mailing Address : 43 SOUTH BOUNTY LANE

KEY LARGO

FL 33037

A License is granted in the Town of North Topsail Beach for the period ending June 30, 2008 subject to compliance with the provision of the Privilege License Resolution of the Board of Aldermen, North Topsail Beach, NC for carrying on the business of:

2380 LICENSED GENERAL CONTRACTOR

Witness my hand and seal of North Topsail Beach the day and year written above

Deputy Town Clerk

DISPLAY IN A CONSPICUOUS PLACE

NOT TRANSFERABLE



# Town of North Topsail Beach, NC

## PRIVILEGE LICENSE CERTIFICATE

PRIVILEGE LICENSE ACCOUNT #

693

EFFECTIVE DATE

12 - 21 - 2007

CERTIFICATE NUMBER

**070314**

Issued to: J.L. CASH ELECTRIC INC

Owner : J.L. CASH

Location : 311 JUDGES ROAD UNIT 13 B  
WILMINGTON

28405

Mailing Address : 311 JUDGES ROAD UNIT 13 B  
WILMINGTON

NC 28405

A License is granted in the Town of North Topsail Beach for the period ending June 30, 2008 subject to compliance with the provision of the Privilege License Resolution of the Board of Aldermen, North Topsail Beach, NC for carrying on the business of:

2382 ELECTRICIAN

Witness my hand and seal of North Topsail Beach the day and year written above

Deputy Town Clerk

DISPLAY IN A CONSPICUOUS PLACE

Town of North Topsail Beach  
2008 Loggerhead Court  
North Topsail Beach, NC 28460  
910-328-3186

**AGREEMENT OF BUILDING APPLICATION TERMS**

Please read and **initial** each of the following.

I understand the Town of North Topsail Beach has established a 2' freeboard for structures (see definitions), which establishes the lowest horizontal member and/or piece of service equipment at least 2' above Base Flood Elevation.

I understand that concrete driveways may be allowed in the Town of North Topsail Beach with a concrete driveway permit issued by the Planning Department. I understand that I must have a permit prior to pouring any concrete.

I understand all construction shall meet V-Zone specifications and standards, in accordance with CFR-44, Section 60.3 (Code of Federal Regulations). I understand this requirement applies throughout the Town limits, regardless of A-Zone or V-Zone designation.

I understand an Elevation Certificate must be submitted to the Building Inspections Department within 7 days of the establishment of the lowest floor. I understand the Registered Land Surveyor is required to place a permanent reference mark, such as a PK NAIL on any pile on the North side of the house. **I understand the 7-day Elevation Certificate must be submitted prior to ANY structural Inspections.**

I understand the North Topsail Beach Inspections Department require a minimum of 24 hours notice for any and all inspections. I understand it is the duty of the contractor to pre-schedule and ensure the completion of all inspections. I understand failure to adequately request inspections will likely result in Stop Work Orders and/or potential fines.

I understand that under section 305, Volume 1-A, of the NC State Building Code, it is the contractor's responsibility to conform to the technical codes for installation or repairs of building system(s), as well as comply with all applicable State and Local rules and regulations.

I acknowledge that the Town of North Topsail Beach does not provide municipal wastewater or municipal water systems. I understand that the Town of North Topsail Beach has the authority to issue Building Permits and will process new residential construction permit application upon receipt of the adopted fee, will provide inspections during the construction process and will issue a Certificate of Occupancy upon final connection of the above utilities, compliance with a final inspection and compliance with all Local, State and Federal rules and regulations.

**I have read and initialed each of these statements and understand that should I have any questions I may speak to the Building Inspections Department.**

Michael Klotner  
Print Name

Michael Klotner 9-24-07  
Signature/Date

1090 N. Ridge Lake T Rd  
Project Address

DEPCTI A378609 BPZ86077 Dep Acct Current Transaction Inq BACTD001 12/22/04  
12:01

Org: 001 Serv: DDA Acct: 1010108556432 C/W: Date:

Short Name: KLETTNER MICHAEL Daily Bal: 41,046.51

Date	Serial	T/C	Amount	T/S	Cap	Rec	Sequence	Date/Desc	
12/22/04		670	3,000.00-	063	001	001	1200084	A-FT FORCE	
		DOTSBR - TELEPHONE TRANSFER							
		ID A378609	001	50005	BATCH	#	3570007667		
					DAILY BAL:			38,046.51	

Command:

F1=Help F3=Exit F7=Bkwd F8=Fwd

ATT # 7



**ONSLow COUNTY TAX NOTICE  
IMPORTANT -- PLEASE READ**

FAX: (910) 455-4519

- \* **APPEALS:** Owners of personal property may appeal the value, situs, or taxability within 30 days after the date of this notice. NCGS 105-317.1(c).
- \* **ESCROW/MORTGAGE ACCOUNTS:** The property owner is responsible for ensuring full payment of this obligation. If funds are held in escrow to pay this notice, forward on to the appropriate mortgage holder.
- \* **PAYMENTS BY MAIL** are deemed to be received as of the date of the U.S. Postal Service postmark. Please mail payments at least 5 business days before deadline.
- \* **INSTALLMENTS:** For your convenience, partial payments will be accepted. Account must be paid in full by Jan. 5, 2006.
- \* **RETURN CHECK POLICY:** There shall be a \$25.00 minimum fee or 10% of the amount of the check, whichever is greater, charged on all returned checks. Tax receipts are null and void if payment is made with a check that is returned unpaid by the bank.
- \* **FAILURE TO PAY:** Delinquent taxes are subject to garnishment of wages, attachment of bank accounts, attach state refunds and foreclosure proceedings after Jan. 5, 2006.
- \* **INTEREST** accrues at the rate of 2% for January & 3/4 of 1% each following month until paid in full.
- \* **ADVERTISEMENT OF UNPAID TAXES** is in the name of the listing taxpayer as of January 1st and owner of record as of 12/31/2005.
- \* **PAYMENTS BY CREDIT CARD:** With a convenience fee, to pay by credit card, call 1-800-272-9829 Jurisdiction Code: 4333 or online at [www.co.onslow.nc.us](http://www.co.onslow.nc.us). Electronic check payment also accepted, online payments only.

0161910



\*\*\*AUTO\*\*MIXED AADC 280 52085 T172:251  
 EGLAND LELAND D  
 43 S BOUNTY LN  
 KEY LARGO FL 33037-2325

**ONSLow COUNTY, NORTH CAROLINA 2005 TAX NOTICE TAXES ARE DUE SEPT. 1, 2005**

ACCOUNT NO	LOTS/ACRES	PARCEL I.D. NUMBER	RECORD #	TOWNSHIP			
98259 301	1.00L	774 27,3	11719	114 STUMP SOUND TWP			
<b>ONSLow COUNTY</b>		<b>TAX VALUES AND EXEMPTIONS</b>		<b>TAX LEVIED</b>		<b>TAX AMOUNT</b>	
GENERAL FUND		REAL VALUE	172000	1	ONSLow COUNTY	6700	1152.40
FY 2005-06 Budget by Function		OTHER PERSONAL PROPERTY	0	26	NORTH TOPSAIL BEACH	4500	774.00
<u>Function</u>	<u>Percent of Total Budget</u>	MANUFACTURED HOMES	0				
Human Services	36.77%	MACHINERY/FIX SUPPLIES	0				
Education	28.22%	FARM	0				
Public Safety	14.72%	MOTOR VEHICLES	0				
General Government	11.52%	TOTAL TAX VALUE	172000				
Cultural & Recreational	2.72%	AGE/DISABILITY EXEMPTION	0				
Non Dept Debt Service (principle & interest)	1.73%	OTHER EXEMPTION					
Physical & Economic Development	1.65%	NET TAXABLE VALUE	172000	<b>TOTAL TAX</b>		<b>1926.40</b>	
Special Appropriations	1.37%						
Transportation	0.90%						
Environmental Protection	0.40%						
Total	100.00%						

DESCRIPTION: CHARLES PADGETT L1

Tax statements are mailed as a convenience to the taxpayer. Failure to receive a tax statement does not relieve the taxpayer of the obligation to pay the taxes when due.

**BILL INFORMATION:**

TAX YEAR	BILLING DATE	INTEREST BEGINS	<b>PAY THIS AMOUNT</b>	<b>\$</b>	<b>1926.40</b>
2005	08-01-2005	JANUARY 6th			

DETACH AND RETAIN THIS PORTION FOR YOUR RECORDS.

**NOTICE OF REAL ESTATE ASSESSED VALUE  
 ONSLOW COUNTY, NORTH CAROLINA**

THIS IS NOT A BILL

PARCEL IDENTIFICATION NO.	PROPERTY DESCRIPTION	ASSESSED VALUE
774 27,3	CHARLES PADGETT L1	774,000
DATE 01-30-2006 REC# 11719 NBHD# 300	TOWNSHIP STUMP SOUND TWP	# LOTS/ACREAGE 1.00 L MARKET VALUE 774,000

\*\*\*\*\*AUTO\*\*MIXED AADC 270  
 1142649 041554 41554 4013-RAV 1N-X 000 0000

EGLAND LELAND D  
 43 S BOUNTY LN  
 KEY LARGO FL 33037-2325

YOU ARE HEREBY NOTIFIED THAT DUE TO:

**2006 COUNTY WIDE REVALUATION**  
 YOUR ASSESSED VALUE HAS BEEN CHANGED

IF YOU HAVE QUESTIONS CONCERNING THIS NOTICE OR  
 IF YOU WISH TO APPEAL THIS VALUE PLEASE CALL FOR  
 AN APPOINTMENT. 910 989-2239 910 455-7431



IF YOU WISH TO APPEAL THIS VALUE PLEASE COMPLETE THE  
 COUNTY INFORMAL REVIEW FORM AND BRING TO YOUR APPOINTMENT.

PLEASE DETACH HERE AND KEEP THIS PORTION FOR YOUR RECORDS

**ONSLOW COUNTY INFORMAL REVIEW**

PARCEL IDENTIFICATION NO.	PROPERTY DESCRIPTION	ASSESSED VALUE
774 27,3	CHARLES PADGETT L1	774,000
DATE 01-30-2006 REC# 11719 NBHD# 300		MARKET VALUE 774,000

PLEASE COMPLETE THIS INFORMAL REVIEW FORM AND BRING TO YOUR APPOINTMENT

**PROPERTY OWNERS OPINION OF VALUE**

North Carolina General Statute 105-283 requires that we appraise all property at 100% of its true market value in money as of January 1, 2006

Do you feel the ASSESSED VALUE printed above is equal to market value? YES \_\_\_\_\_ NO \_\_\_\_\_

If YES, no appeal is necessary - do not return this form.

If NO, in your opinion, what is the market value of this parcel? \$ \_\_\_\_\_  
 Explain why: \_\_\_\_\_

(attach additional sheets as necessary)

How did you arrive at your opinion? (Check as appropriate)

- \_\_\_\_\_ Personal judgment
- \_\_\_\_\_ Recent appraisal (attach complete copy)
- \_\_\_\_\_ Recent construction cost (attach cost information)
- \_\_\_\_\_ Recent purchase (attach copy of closing statement)
- \_\_\_\_\_ Recent asking price (attach copy of listing form)
- \_\_\_\_\_ Recent comparable sales (attach detailed information)

**STRUCTURAL INFORMATION:**

# of Bedrooms \_\_\_\_\_  
 # of Full Baths \_\_\_\_\_  
 (3 or more fixtures)  
 # of Half Baths \_\_\_\_\_  
 (2 fixtures)

Heating Fuel \_\_\_\_\_  
 Heating Type \_\_\_\_\_  
 Central Air Yes \_\_\_\_\_ No \_\_\_\_\_  
 Year Built \_\_\_\_\_

Basement Finished \_\_\_\_\_ (square footage)  
 Unfinished \_\_\_\_\_ (square footage)  
 None \_\_\_\_\_  
 Upper Story: Finished \_\_\_\_\_ (square footage)  
 Unfinished \_\_\_\_\_ (square footage)  
 None \_\_\_\_\_

ADDITIONAL INFORMATION: \_\_\_\_\_

USE REVERSE SIDE FOR ADDITIONAL INFORMATION

**ALL REQUESTS FOR REVIEW MUST BE MADE BY FEBRUARY 28, 2006**

OWNER'S SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

DAYTIME PHONE \_\_\_\_\_



I CALLED THE ONSLOW COUNTY  
TAX OFFICE. I EXPLAINED THE  
POSSIBLE BUILDING PROBLEMS BECAUSE  
OF THE 90' CANA SETBACK. I  
EXPLAINED I WAS TRYING TO GET  
RELIEF FROM 90 TO 60 FEET.  
HE AGREES WITH ME THAT  
WITHOUT THIS VARIANCE THIS  
LAND WOULD BE WORTHLESS AND  
HE WOULD MAKE THE LOT VALUE  
\$5,000 (FIVE THOUSAND DOLLARS) AND  
THERE WOULD BE NO PROPERTY  
TAX PAYABLE IF I AM DENIED.  
THIS WAS THE RESULT OF MY SENDING  
HIM A SURVEY SHOWING THIS LOT'S BUILDABLE  
ENVELOPE WITH A 90' CANA SETBACK.

ACCOUNT NUMBER DESCRIPTION LOT/ACRES PARCEL I.D. NUMBER TAX YEAR TOWNSHIP  
 98259 106 CHARLES PADGETT L1 1.00L 774 27,3 STUMP SOUND TWP

ASSESSED VALUES		TAX VALUES AND EXEMPTIONS		TAXES LEVIED		TAX AMOUNT
REAL VALUE		TOTAL TAX VALUE		COUNTY		
5000		5000				25.15
BOATS/ OTHER PERSONAL	0		0			
MOBILE HOME/ INVENTORY	0	AGE/DISABILITY EXEMPTION	0	26 NORTH TOPSAIL BEACH		6.50
MACHINERY/FIX. SUPPLIES	0		0			
	0					
MOTOR VEHICLES	0	NET TAXABLE VALUE	5000	<b>TOTAL TAX</b>		31.65

DATE OF BILL: 07212006

EGLAND LELAND D  
 43 S BOUNTY LN  
 KEY LARGO FL 33037

DATE	PRINCIPAL	INT/DISCNT	LIEN	COST	AMOUNT	RECORD	RECEIPT	CLRK
09072006	31.65	0.00		0.00	31.65	2694691	25893F	LBX
11052008	0.00	0.00		0.00	0.00	---BALANCE DUE		

DUPLICATE RECEIPT/CURRENT STATEMENT PREPARED BY ARC ON 11052008

Payments & Interest Information

COLLECTION DEPT. 39 TALLMAN STREET JACKSONVILLE NC 28540 4846 7040 000 0000

11/05/2008 10:44

9104554579

UNSLAW COUNTY, IMA

2007

2007

UNSLAW COUNTY NORTH CAROLINA

COUNTY NUMBER	DESCRIPTION	LOTS/ACRES	PARCEL I.D. NUMBER	TAX YEAR	TOWNSHIP
98259	107 CHARLES PADGETT L1	1.00L	774 27,3		STUMP SOUND TWP

ASSESSED VALUES		TAX VALUE AND EXEMPTIONS		TAXES LEVIED	RATE	TAX AMOUNT
REAL VALUE	5000	TOTAL TAX VALUE	5000	COUNTY		25.15
BOATS OTHER PERSONAL	0		0			
MOBILE HOME/ INVENTORY	0	AGE/DISABILITY EXEMPTION	0	26 NORTH TOPSAIL BEACH		8.00
MACHINERY/FIX. SUPPLIES	0		0			
	0					
MOTOR VEHICLES	0	NET TAXABLE VALUE	5000	<b>TOTAL TAX</b>		33.15

DATE OF BILL: 07012007

EGLAND LELAND D

43 S BOUNTY LN  
KEY LARGO FL

33037

DATE	PRINCIPAL	INT/DISCNT	LIEN	COST	AMOUNT	RECORD	RECEIPT	CLRK
08102007	33.15	0.00		0.00	33.15	2878591	19862F	LBX
11052008	0.00	0.00		0.00	0.00	---BALANCE DUE		

DUPLICATE RECEIPT/CURRENT STATEMENT PREPARED BY ARC ON 11052008

Payments & Interest Information

COLLECTION DEPT. 22 TALL MAN STREET JACKSONVILLE, NC 27834

OWNERSHIP 07212007 98259 301	PROPERTY DESCRIPTION	TAX SUBDIVISIONS	MAP NUMBER	CARD NO
EGLAND LELAND D	CHARLES PADGETT L1	STUMP SOUND TWP	774 27,3	1
43 S BOUNTY LN	S/F 774 27 PENINSULA DEV	NORTH TOPSAIL BEACH	RECORD NUMBER: 11719	
KEY LARGO FL		TEMP-428706144	ROUTE 30450017	
DEED:2152 383V11202003 33037 192500-2211090 NEW RIVER INLET RD			LISTER:JJ021006 - 1	
			REVIEW:JJ110805	

TOPO	STREET	UTILITY	ZONING	0.61 ACRES	FRFT:2- ALTNRD
ROLLING	PAVED MEDIUM	ALL PUB	R20		0300
NOTES: LOT UNBUILDABLE PER NTB					

LAND CLASS	SIZE	BASERATE*PRNT*DPH*	ADJ-ADJRATE*UNITS=LND-VALUE
I-30TWFOCEN	86P 307D		5000

LAND VALUE: 5000

OTHER FEAT	SIZE	BASERATE*COND	ADJRATE*UNITS=OFB-VALUE
------------	------	---------------	-------------------------

OTHER VALUE: 0

FNDATION	XTRFNISH	ROOFTYPE	ROOFMTRL	SIZE/QTY
----------	----------	----------	----------	----------

				1.00STHT
--	--	--	--	----------

WALLFNISH	FLOORS	HEAT&AIR	HEATFUEL
-----------	--------	----------	----------

VACANT 0

STRUCTURE	SKTCH-SP*STHT-	AREA	RATE*GRDF+HEAT+EXWL*WLHT=ADJRAT*	AREA=	RPCN=	DEPF*CNDF=STR-VALUE
-----------	----------------	------	----------------------------------	-------	-------	---------------------

STRUCTURE VALUE: 0

VALUATION	VALUE	PREV-VAL	P-N%	SALE	S-N%	TOTAL VALUE	5000
LAND	5000	172000	2%	VACLDSAL		8249LV/AC	
OTHERFEAT	0			11202003			
STRUCTURE	0			12152-383			
TOTAL	5000	172000	2%	192500	2%		

APPRAISED-VALUE: 5000

Show with Larger Font

ATT # 8

WE HAD ALL OF THE EQUIPMENT IN PLACE  
AND WERE READY TO START PUTTING IN  
PILLINGS. THE ELECTRIC COMPANY WAS  
THEIR WITH ALL OF THEIR EQUIPMENT  
READY TO INSTALL A TEMPORARY  
POWER POLE. THIS WAS HALTED WITH  
A PHONE CALL AND LATER THIS MEMO.



January 10, 2008

# Memo

**To:** Randall Moudy, Code Enforcement Officer  
**From:** Deborah J. Hill, CAMA Local Permit Officer  
**CC:** Thomas S. Taylor, Interim Town Manager  
Jon W. Giles, Field Representative, NCDRCM Wilmington Regional Office  
**Date:** January 10, 2008  
**Re:** 1090 New River Inlet Road

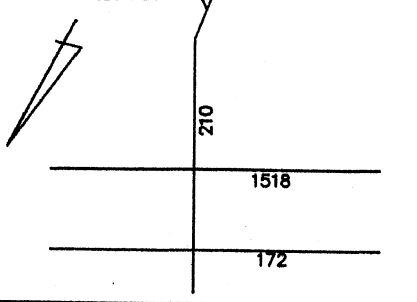
---

## **Project not in compliance with CAMA Permit 05-38**

In accordance with COASTAL AND FLOOD PLAIN CONSTRUCTION STANDARDS Ch. 45 Sec. 4502 and 4503, I request that you issue a Stop Work Order **immediately** on 1090 New River Inlet Road, owned by Leland D. Egland as the project is not in compliance with the CAMA Permit #05-38 issued on June 16, 2005, as the CAMA setback is 90 feet from the 1<sup>st</sup> line of natural stable vegetation established on July 27, 2007.

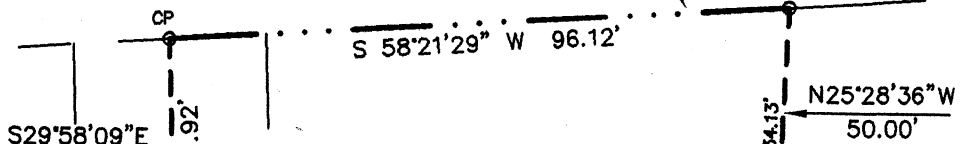
As a reminder, the permittee is required to contact the CAMA Local Permit Officer, shortly before he plans to begin construction to arrange a setback measurement that will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be redone.

1568 - NEW RIVER INLET RD.



VICINITY MAP - NOT TO SCALE

APPROX. MEAN HIGH WATER LINE



\*\*\*\*NOTE:  
TOPOGRAPHIC INFORMATION IS TAKEN  
FROM A PREVIOUS SURVEY

NOW OR FORMERLY  
RICHARD F. WALTON  
D.B. 785, P. 457  
LOT 3  
M.B. 5, P. 48

LOT 1

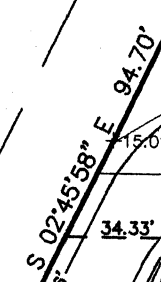
17,156.48 sq.ft.  
0.39 acres

LOT 2

EXISTING DWELLING

PROPOSED  
4 BDRM  
DWELLING

4' OPEN PORCH



40' ACCESS EASEMENT (TO BE USED  
FOR FUTURE JOINT DRIVEWAYS)  
(APPARENTLY ABANDONED)

10' EASEMENT

60' CAMA SETBACK

N.C.S.R. 1568 - NEW RIVER INLET ROAD

60' R/W

BRIDGE

1639' TO EPK IN CENTER-LINE  
INTERSECTION WITH  
GOLDSBORO LANE

- LEGEND:
- EIS = EXISTING IRON STAKE
  - SIS = SET IRON STAKE
  - R/W = RIGHT OF WAY
  - SPK = SET PK NAIL
  - +13.01 = SPOT ELEVATION
  - GR-- = GUARDRAIL
  - CP = COMPUTED POINT

SITE DATA:

ZONE: R-20 (FOR SINGLE FAMILY)

SETBACKS: FRONT-30'; SIDE-10'

REAR-60' CAMA SETBACK

(NOTE: UP TO 500 SQUARE FEET OF  
OPEN DECK MAY BE CANTILEVERED IN  
THE CAMA SETBACK.)

NOTE:

THIS LOT IS LOCATED IN A 100-YEAR  
FLOOD ZONE PER FEMA MAP 370466-  
4288J, DATED NOV. 3, 2005. IT IS  
IN A COBRA ZONE FOR WHICH FEDERAL  
FLOOD INSURANCE IS NOT AVAILABLE.

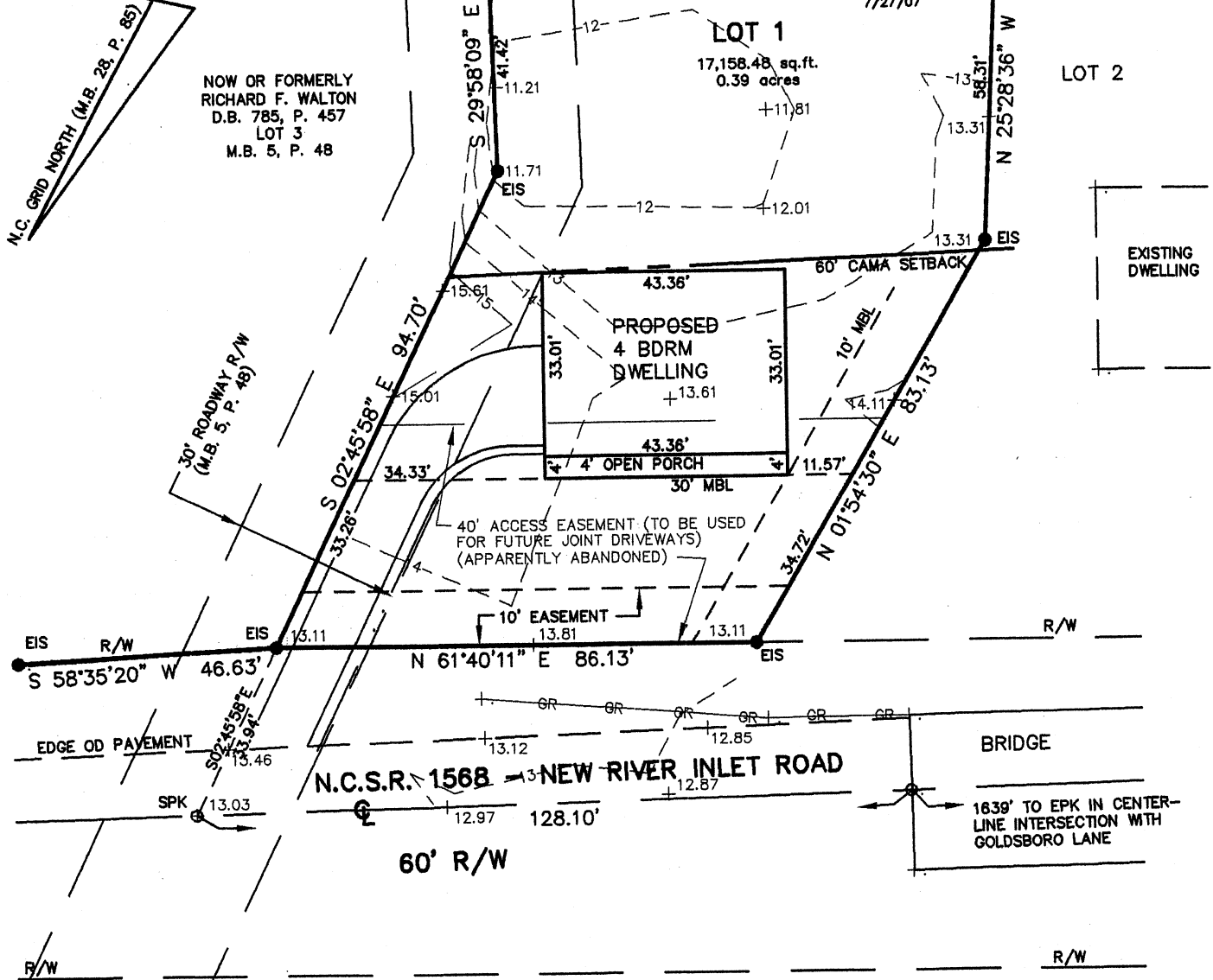
**BOUNDARY AND TOPOGRAPHIC SURVEY &  
PRELIMINARY PLOT PLAN**

REF: M.B. 28, P. 85, SL. F-193

1090 NEW RIVER INLET ROAD

THIS IS TO CERTIFY THAT THIS MAP IS A TRUE REPRESENTATION OF THE PROPERTY HERFOR AS

LOT NO. 1 BLOCK \_\_\_\_\_  
SUBDIVISION CHARLES PADGETT



LEGEND:  
 EIS = EXISTING IRON STAKE  
 SIS = SET IRON STAKE  
 R/W = RIGHT OF WAY  
 SPK = SET PK NAIL  
 +13.01 = SPOT ELEVATION  
 --GR-- = GUARDRAIL  
 CP = COMPUTED POINT

SITE DATA:  
 ZONE: R-20 (FOR SINGLE FAMILY)  
 SETBACKS: FRONT-30'; SIDE-10'  
 REAR-60' CAMA SETBACK  
 (NOTE: UP TO 500 SQUARE FEET OF OPEN DECK MAY BE CANTILEVERED IN THE CAMA SETBACK.)

NOTE:  
 THIS LOT IS LOCATED IN A 100-YEAR FLOOD ZONE PER FEMA MAP 370466-4288J, DATED NOV. 3, 2005. IT IS IN A COBRA ZONE FOR WHICH FEDERAL FLOOD INSURANCE IS NOT AVAILABLE.

**BOUNDARY AND TOPOGRAPHIC SURVEY &**

**PRELIMINARY PLOT PLAN**

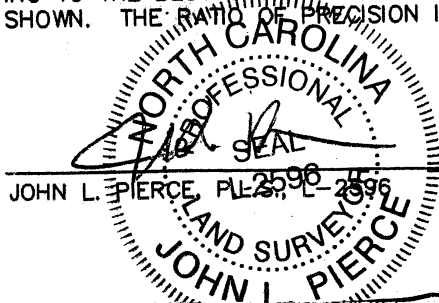
1090 NEW RIVER INLET ROAD

REF: M.B. 28, P. 85, SL. F-193

THIS IS TO CERTIFY THAT THIS MAP IS A TRUE REPRESENTATION OF THE PROPERTY HEREON AS COMPILED BY ACTUAL SURVEY OF THE PREMISES AND THAT THERE ARE NO ENCROACHMENTS ACCORDING TO THE BEST OF MY KNOWLEDGE, EXCEPT AS SHOWN. THE RATIO OF PRECISION IS 1:10,000+.

LOT NO. 1 BLOCK \_\_\_\_\_  
 SUBDIVISION CHARLES PADGETT  
 STUMP SOUND TOWNSHIP ONSLow COUNTY, N.C.  
 PREPARED FOR: LEE EGLAND

JOHN L. PIERCE, P.L.S., L-2596



**JOHN L. PIERCE & ASSOCIATES, P.A.**  
 409 JOHNSON BLVD., JACKSONVILLE, NC 28540  
 PHONE: (910)346-9800 FAX: (910)346-1210  
 DATE: NOV. 23, 2004 SCALE: 1" = 30'  
 F.B. 471 P. 23-25 JOB # 231124



ATT NO 11

To: Director, Division of Coastal Management

From: Leland D. Eglund

Re: CAMA Variance Request

I want to take this opportunity to plead my case to have this variance approved. First of all without this variance this lot has no value or use. The CAMA minor development permit lists 18 conditions the house, lot and a combination of the house and lot must or will meet. The proposed house and lot meet all of these except number 2 which is supposed to have a 90 foot setback. If this variance is granted to a 60 foot setback all requirements are met. I am requesting this variance for Lot 1 in Charles Padgett subdivision. There is already a completed house on Lot 2 of Charles Padgett subdivision (the lot adjacent to mine). If I use a 60 foot CAMA setback my house will be further away from the ocean than his house or my CAMA setback will be greater than his.

This whole permitting process started when Brad Smith was town manager for the town of North Topsail. I went to his office to find out what my options were to be able to build on this lot. One of the options I asked about was the possibility of getting a variance on the CAMA setback. I thought this was a reasonable path to take because about two years before many of the CAMA setbacks in this area were changed from 90 feet to 60 feet. My lot was not changed and I do not know why. Mr. Smith said the CAMA setback on my lot was 60 feet and it would not be reduced. I, along with my builder, Michael Klettner, asked him if he was sure and he said yes. I said thank you very much and with that being the case we did not need a variance. We, Mike Klettner and myself, went to the building inspector's office and started the permitting process. I did everything that was asked of me. I took care of the water, the sewer, and the driveway permit. I had the house specifically designed for this lot (with a 60 foot setback). All was fine, the permit was issued and the morning of the day the pilings and temporary electric were to be installed work was stopped.

I have a lot of time, work and money invested in this project. If I am granted this variance, my setback will still be greater than the house on the adjacent lot. I have also devoted considerable time, work, and money to keep my part of the beach as free from erosion as possible. In fact, while the dunes are being depleted in some areas mine are actually getting larger. This is because of the sand fences, planting local native plants, and installing a fresh water sprinkler system to nourish the plants and to leach the salt away from their roots.

I sincerely hope you agree with me and grant me this variance. Thank you for your time and consideration in this matter.

Sincerely,

Leland D. Eglund; 43 South Bounty Lane, Key Largo, Fl 33077; 305-852-3029

ATT NO 11

# CAMA MINOR DEVELOPMENT PERMIT



as authorized by the State of North Carolina, Department of Environment, and Natural Resources and the Coastal Resources Commission for development in an area of environment concern pursuant to Section 113A-118 of the General Statutes, "Coastal Area Management"

Issued to Mr. Leland England, authorizing development in Ocean Hazard AEC at, 1090 New River Inlet Road, North Topsall Beach, NC 28460, as requested in the permittee's application, dated April 14, 2005. This permit, issued on June 16, 2005 is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, Imprisonment or civil action, or may cause the permit to be null and void.

**OCEAN HAZARD AEC 15 NCAC 7E.0300  
RESIDENTIAL DEVELOPMENT IN AN OCEAN HAZARD AEC**

*This permit authorizes the construction a single family dwelling with landscaping, crosswalk and driveway.*

YES

NO

YES

1. The structure shall comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume 1 or Section 39, Volume 1-B, and the Local Flood Damage Prevention Ordinance as required by the National Flood Insurance Program. If any provisions of the building code or a flood damage prevention ordinance are inconsistent with any of the following AEC standards, the more restrictive provision shall control. All proposed development and associated construction must be done in accordance with the drawings as submitted on April 14, 2005.
2. The structure must set back 90 feet from the first line of stable natural vegetation. 60'
3. The structure must be located entirely off of the frontal dune, and if a primary dune is present, behind the crest of the primary dune. The uncovered deck located in the CAMA setback maybe cosmetically attached but not structurally attached.

Conditions continued on second page

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. From the date of an appeal, any work conducted under this permit must cease until the appeal is resolved.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance.

Any maintenance work or project modification not covered under this permit, require further written permit approval.

All work must cease when this permit expires on December 31, 2008.

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances.

This permit may not be transferred to another party without the written approval of the Division of Coastal Management.

Sue McClain  
Local Permit Office

Sue McClain  
Chief of Local Permits

Leland D. England  
Permittee (signature required if conditions above apply to permit)

re: EGLAND

Minor Permit #05/38

Date: 06/16/05

- YES
- YES
- YES  
YES
- YES  
YES
- YES
- YES  
YES
- YES  
YES
- YES  
YES
- YES  
YES
- YES
- YES
4. The structure must be elevated on pilings with a diameter of at least 8 inches and the first floor level of the sills and joists must meet the 100-year flood level elevation.
  5. All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet (5') below mean sea level.
  6. No impermeable surfaces shall be allowed over any functional part of the septic tank system.
  7. Dune disturbances will be allowed only to the extent necessary for development and if the dune's protective value is not weakened or reduced. Disturbed areas will be immediately stabilized.
  8. This permit may be renewed for one (1) year if requested before the expiration date
  9. The amount of built-upon area shall be limited to no more than 30% of the AEC area of the land to be developed, in this case 2,157 square feet.
  10. Pursuant to 15 NCAC, Subchapter 71.0406 (b), this permit may not be assigned, transferred, sold or otherwise disposed of to a third party.
  11. This permit other than those shown on original plot design permits no additional covered structures.
  12. The permitted is required to contact the Local Permit Officer shortly before he plans to begin construction to arrange a setback measurement which will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be redone.
  13. Sand used to strengthen dunes must be brought in from an outside source and must be of the same nature as the sand in the area which it is to be placed. No sand is to be removed from the lot.
  14. Sand held in storage in any dune, other than frontal or primary dunes, may be moved laterally in order to strengthen existing primary or frontal dunes if the work would enhance the protection to the proposed development activity and the sand is immediately stabilized.
  15. All development must be consistent with all-applicable Federal, State and Local Standards.
  16. Any structure authorized by this permit shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration. The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under CRC rules.
  17. Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
  18. A copy of this permit must be posted on the property during construction. Please call (910-328-1349) for final inspection.

**ATTACHMENT E**

**STIPULATED EXHIBITS:**

1. Petitioner's CAMA Minor Development Permit application # 08-11 and survey dated January 7, 2008, received by the Town of N. Topsail Beach on March 17, 2008.
2. Town of N. Topsail Beach's denial letter dated May 6, 2008.
3. Petitioner's CAMA Minor Development Permit application # 05/38 with survey dated November 11, 2003.
4. Survey dated November 23, 2004 (rev. 8/1/07 & 8/3/07) submitted with building permit application.

Locality NTB Permit Number \_\_\_\_\_  
 Ocean Hazard  Estuarine Shoreline \_\_\_\_\_ DRW Shoreline \_\_\_\_\_ Public Trust Shoreline \_\_\_\_\_ Other \_\_\_\_\_  
 (For official use only) Town of North Topsail Beach  
 Planning / Zoning Department

**GENERAL INFORMATION**

MAR 17 2008

**LAND OWNER**

RECEIVED

Name LELAND D. EGLAND By: [Signature]  
 Address 43 SOUTH BOUNTY LANE  
 City KEY LARGO State FL Zip 33037 Phone 305-852-3029  
CELL 305-766-3501

**AUTHORIZED AGENT**

Name MICHAEL HLETTNER  
 Address 97 SCOTCH BONNET WAY  
 City HAMPSTEAD State N.C. Zip 28443 Phone 910-264-8587

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 1090 NEW RIVER INLET ROAD  
NORTH TOPSAIL

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) BUILD A  
THREE STORY 4,667 SQ. FT. HOUSE

SIZE OF LOT/PARCEL: 17180 square feet 39 acres

PROPOSED USE: Residential  (Single-family  Multi-family \_\_\_\_\_ ) Commercial/Industrial \_\_\_\_\_  
 Other \_\_\_\_\_

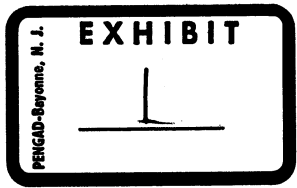
TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): 4,667 square feet (includes all floors and roof covered decks)

SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT-UPON SURFACES IN THE COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN (AEC): 1480 square feet  
 (Calculations includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc., that are within the applicable AEC. Attach your calculations with the project drawing.)

- Choose the AEC area that applies to your property:
- (1) within 75 feet of Normal High Water for the Estuarine Shoreline AEC
  - (2) within 575 feet of Normal High Water for the Estuarine Shoreline AEC, adjacent to Outstanding Resource Waters
  - (3) within 30 feet of the Public Trust Shoreline AEC
- (Contact your Local Permit Officer if you are not sure which AEC applies to your property.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?  
 Yes: \_\_\_\_\_ NO:

If yes, list the total built upon area/impervious surface allowed for your lot or parcel: \_\_\_\_\_ square feet.



**OTHER PERMITS MAY BE REQUIRED:** The activity you are planning may require permits other than the CAMA minor development permit. As a service we have compiled a listing of the kinds of permits that might be required. We suggest you check over the list with your LPO to determine if any of these apply to your project. Zoning, Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others.

**STATEMENT OF OWNERSHIP:**

I, the undersigned, an applicant for a CAMA minor development permit, being either the owner of property in an AEC or a person authorized to act as an agent for purposes of applying for a CAMA minor development permit, certify that the person listed as landowner on this application has a significant interest in the real property described therein. This interest can be described as: (check one)

an owner or record title. Title is vested in LELAND D. EGLAND, see Deed Book 2152 page 383 in the ONSLOW County Registry of Deeds.

an owner by virtue of inheritance. Applicant is an heir to the estate of \_\_\_\_\_; probate was in \_\_\_\_\_ County.

if other interest, such as written contract or lease, explain below or use a separate sheet & attach to this application.

**NOTIFICATION OF ADJACENT PROPERTY OWNERS:**

I furthermore certify that the following persons are owners of properties adjoining this property. I affirm that I have given ACTUAL NOTICE to each of them concerning my intent to develop this property and to apply for a CAMA permit.

- | (Name)                          | (Address)  |
|---------------------------------|--|
| (1) <u>SUTTON</u>               | <u>PROPERTIES LLC P.O. Box 80010 Billings MT 59108</u>     |
| (2) <u>ANDY + JUDIE HEFFMAN</u> | <u>1078 N. River Street Rd N. Topsail Beach N.C. 28540</u> |
| (3) _____                       | _____  |
| (4) _____                       | _____  |

**FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:**

I acknowledge that the land owner is aware that the proposed development is planned for an area which may be susceptible to erosion and/or flooding. I acknowledge that the local permit officer has explained to me the particular hazard problems associated with this lot. This explanation was accompanied by recommendations concerning stabilization and floodproofing techniques.

**PERMISSION TO ENTER ON LAND:**

I furthermore certify that I am authorized to grant and do in fact grant permission to the local permit officer and his agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the AEC hazard notice where necessary, a check for \$100.00 made payable to the locality, and any information as may be provided orally by the applicant. The details of the application as described by these sources are incorporated without reference in any permit which may be issued. Deviation from these details will constitute a violation of any permit. Any person developing in an AEC without permit is subject to civil, criminal and administrative action.

This the 19 day of FEB, 20 08

Leland D. Eglund

Landowner or person authorized to act as his agent for purpose of filing a CAMA permit application.

### AEC HAZARD NOTICE

Project is in An:  Ocean Erodeble Area  High Hazard Flood Area  Inlet Hazard Area

Property Owner: Leland Eglund

Property Address: 1090 NEW RIVER INLET

Date Lot Was Platted: ~~1992~~ FEB 20 1992 1990 1993 (Jan 7, 2008 incl)

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and those alterations are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development. Permits issued in the Ocean Hazard Area of Environmental Concern include the condition that structures be relocated or dismantled if they become imminently threatened by changes in shoreline configuration. The structure(s) must be relocated or dismantled within two (2) years of becoming imminently threatened, and in any case upon its collapse or subsidence.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual long-term average ocean erosion rate for the area where your property is located is 3 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 200 feet landward in a major storm.

14

The flood waters in a major storm are predicted to be about 2.5 feet deep in this area. 400' NE

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary sand bags may be authorized under certain conditions.

The applicant must acknowledge this information and requirements by signing this notice in the space below. Without the proper signature, the application will not be complete.

Leland Eglund 2-19-08  
Applicant Signature Date

**SPECIAL NOTE:** This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer must be contacted to determine the vegetation line and setback distance at your site. If the property has seen little change since the time of permit issuance, and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. Substantial progress on the project must be made within 60 days of this setback determination, or the setback must be remeasured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate remeasurement of the setback. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal can be authorized. It is unlawful to continue work after permit expiration.

For more information, contact:

Local Permit Officer

Jed Hill

Address TOWN OF NORTH TOPSAIL BEACH

2008 Loggerhead Court

Locality North Topsail Beach, NC 28460

Phone Number (910) 328-1349

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 SUTTON PROPERTIES LLC  
 P.O. Box 80010  
 Billings Montana 59108

2. Article Number  
 (Transfer from service label) 7006 0810 0001 0892 9328

S Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 *[Signature]*  Agent  Addressee

B. Received by (Printed Name)  
 MISSA MAULISAK

C. Date of Delivery  
 2/28

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com

**OFFICIAL USE**

HAMPSHIRE, NC 28443  
 Postmark Here  
 USPS

Postage	\$	07.40
Certified Fee	\$	2.15
Return Receipt Fee (Encasement Required)	\$	0.00
Restricted Delivery Fee (Encasement Required)	\$	0.00
Total Postage & Fees	\$	9.55

Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

9266 2690 1000 0790 9002

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 BARRY + JUNE HOFFMAN  
 078 New River Island Rd  
 N. Topsail Beach NC 28460

2. Article Number  
 (Transfer from service label) 7006 0810 0001 0892 9335

S Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 *[Signature]*  Agent  Addressee

B. Received by (Printed Name)  
 JUNE HOFF

C. Date of Delivery  
 2/28

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com

**OFFICIAL USE**

HAMPSHIRE, NC 28443  
 Postmark Here  
 USPS

Postage	\$	10.40
Certified Fee	\$	2.15
Return Receipt Fee (Encasement Required)	\$	0.00
Restricted Delivery Fee (Encasement Required)	\$	0.00
Total Postage & Fees	\$	12.55

Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

5666 2690 1000 0790 9002

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 HAROLD SUTTON  
 Sutton Properties  
 P.O. Box 80010  
 Billings, MT 59108

2. Article Number  
 (Transfer from service label) 7006 0810 0001 0892 9328

S Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 *[Signature]*  Agent  Addressee

B. Received by (Printed Name)  
 A. H. SAYER (FATHER-IN-LAW)

C. Date of Delivery  
 2/28

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No  
 HAROLD SUTTON, JR.  
 3815 Tommy Armour Cir  
 Billings, MT 59106

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com

**OFFICIAL USE**

HAMPSHIRE, NC 28443  
 Postmark Here  
 USPS

Postage	\$	07.40
Certified Fee	\$	2.15
Return Receipt Fee (Encasement Required)	\$	0.00
Restricted Delivery Fee (Encasement Required)	\$	0.00
Total Postage & Fees	\$	9.55

Street, Apt. No., or PO Box No.  
 City, State, ZIP+4

9266 2690 1000 0790 9002



To: Anyone and Everyone Who is Concerned or Affected by My Building Permit or  
CAMA Minor Permit for 1090 New River Inlet Road, North Topsail Beach

From: Leland D. Egland, Owner of 1090 New River Inlet Road

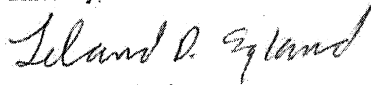
Re: CAMA Minor Permit

Many of you are aware that I have applied for and received a building permit for 1090 New River Inlet Road. When I completed this permit application, I was mistakenly under the impression the CAMA setback was sixty (60) feet. With a sixty (60) foot CAMA setback the ocean (east) side of my house would be ten plus feet further away from the water than the house on the adjacent lot.

I have invested a lot of time and money to build this house. I have my sewer tap in and the water has already been turned on. I have a temporary electric permit. I have built sand fences and installed a sprinkling system to permit vegetation growth. I even have a driveway permit. I have everything except the exception from ninety (90) feet to sixty (60) feet on my CAMA permit. I have read all the conditions required for both the house and the lot to be granted an exception on the CAMA permit. This lot and this house meet all of these requirements. Please give me you kindest consideration for without this relief this lot is not buildable.

Thanks in advance.

Sincerely,



Leland D. Egland  
43 South Bounty Lane  
Key Largo, Florida 33037  
305-852-3029  
305-766-3501 cell phone

Receipts for  
Certified Mail  
(Staple Here)

Date \_\_\_\_\_

Adjacent Property Owner \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Dear Adjacent Property:

This letter is to inform you that I, \_\_\_\_\_, have applied for a CAMA Minor  
Property Owner

Permit on my property at \_\_\_\_\_, in Onslow  
Property Address

County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at \_\_\_\_\_ or by mail at the address listed below. If you wish to  
Applicant's Telephone

file written comments or objections with the NORTH TOPSAIL BEACH CAMA Minor Permit Program, you may submit

them to:

DEBORAH J. HILL, MPA  
Local Permit Officer for NORTH TOPSAIL BEACH  
2008 LOGGERHEAD CT  
NORTH TOPSAIL BEACH, NC 28460

Sincerely,

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

# ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to \_\_\_\_\_'s

(Name of Property Owner)

property located at \_\_\_\_\_

Address, Lot, Block, Road, etc.)

on \_\_\_\_\_ in \_\_\_\_\_ N.C.

(Waterbody)

(Town and/or County)

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

## BEFORE YOU BUILD

### Setting Back for Safety: A Guide to Wise Development Along the Oceanfront

When you build along the oceanfront, you take a calculated risk. Natural forces of water and wind collide with tons of force, even on calm days.

Man-made structures cannot be guaranteed to survive the force of a hurricane. Long-term erosion (or barrier island migration) may take from two to ten feet of the beach each year, and, sooner or later, will threaten oceanfront structures. These are the facts of life for oceanfront property owners.

The Coastal Resources Commission (CRC) has adopted rules for building along the oceanfront. The rules are intended to avoid an unreasonable risk to life and property, and to limit public and private losses from storms and long-term erosion. These rules lessen but do not eliminate the element of risk in oceanfront development.

As you consider building along the oceanfront, the CRC wants you to understand the rules and the risks. With this knowledge, you can make a more informed decision about where and how to build in the coastal area.

#### The Rules

When you build along the oceanfront, coastal management rules require that the structure be sited to fit safely into the beach environment.

Structures along the oceanfront must be behind the frontal dune, landward of the crest of the primary dune, and set back from the first line of stable natural vegetation a distance equal to 30 times the annual erosion rate (a minimum of 60 feet). Large structures (multi-family residential structures greater than 3,000 square feet and nonresidential structures greater than 3,000 square feet) must be set back from the first line of natural stable vegetation a distance equal to 60 times the annual erosion rate of 120 feet, whichever

is greater. If the erosion rate is greater than 3.5 feet/year, the setback is 30 times the erosion rate plus 105 feet.

#### The Reasons

The beachfront is an ever-changing landform. The beach and the dunes are natural "shock absorbers," taking the beating of the wind and waves and protecting the inland areas. By setting back 30 or 60 times the annual long-term erosion rate, you have a good chance of enjoying the full life of the structure. At first, it seems very inviting to build your dream house as close to the beach as possible, but in five years you could find the dream has become a nightmare as high tides and storm tides threaten your investment.

#### The Exception

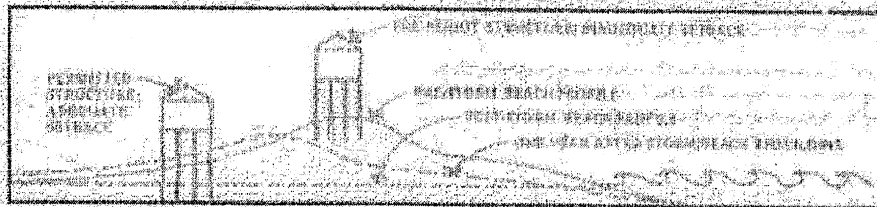
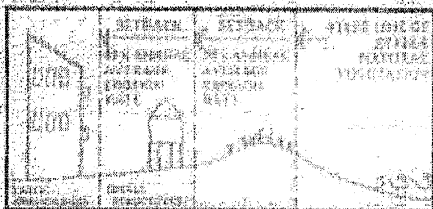
The Coastal Resources Commission recognized that these rules, initially passed in June 1979, might prove a hardship for some property owners. Therefore, they established an exception for lots that cannot meet the setback requirement. The exception allows buildings in front of the setback line if the following conditions apply:

- (1) the lot must have been platted as of June 1, 1979, and is not capable of being enlarged by combining with adjoining land under the same ownership; (2) development must be as far back on the property as possible and in no case less than 60 feet landward of the vegetation line; (3) no development can take place on the frontal dune; (4) special construction standards on piling depth and square footage must be met; and (5) all other CAMA, state and local regulations must be met.

The exception is not available in the Inlet Hazard Area.

To determine eligibility for the exception, the Local Permit Officer will make these measurements and observations:

- \_\_\_\_\_ required setback from vegetation line
- \_\_\_\_\_ exception setback (maximum feasible)
- \_\_\_\_\_ rear property line setback
- \_\_\_\_\_ max. allowable square footage on lowest floor
- \_\_\_\_\_ lot area as calculated from vegetation line
- \_\_\_\_\_ piling length needed to extend 4 feet below MSL



After the storm, the house on the dune will be gone. The other house has a much better chance of survival.

### SITE DRAWING/APPLICATION CHECKLIST

Please make sure your site drawing includes the following information required for a CAMA minor development permit. The drawing may be simple and not necessarily to scale. The Local Permit Officer will help you, if requested.

#### PHYSICAL DIMENSIONS

- Label roads
- Label highways right-of-ways
- Label local setback lines
- Label any and all structures and driveways currently existing on property

#### PHYSICAL CHARACTERISTICS

- Draw and label mean high water mark
- Draw location of on-site wastewater system

If you will be working in the ocean hazard area:

- Draw and label dune ridges (note height)
- Draw and label toe of dune
- Identify and locate first line of stable vegetation
- Draw and label setback line under CAMA
- Draw and label topographical features (optional)

If you will be working in an estuarine shoreline area:

- Draw and label landward limit of AEC
- Describe terrain (slope)

#### DEVELOPMENT PLANS

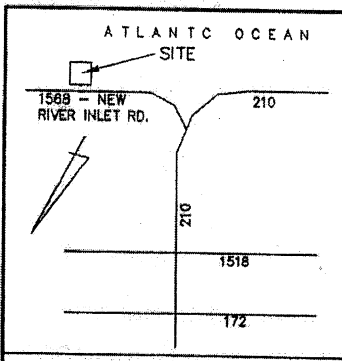
- Draw and label areas that will be disturbed
- If a house is to be placed on lot, describe location of house
- Note size of piling and depth to be placed in ground
- Draw and label all areas to be paved or graveled
- Describe composition of surface
- Note and list fully all trees and vegetation to be removed or relocated
- Show landscaping

#### NOTE TO APPLICANT

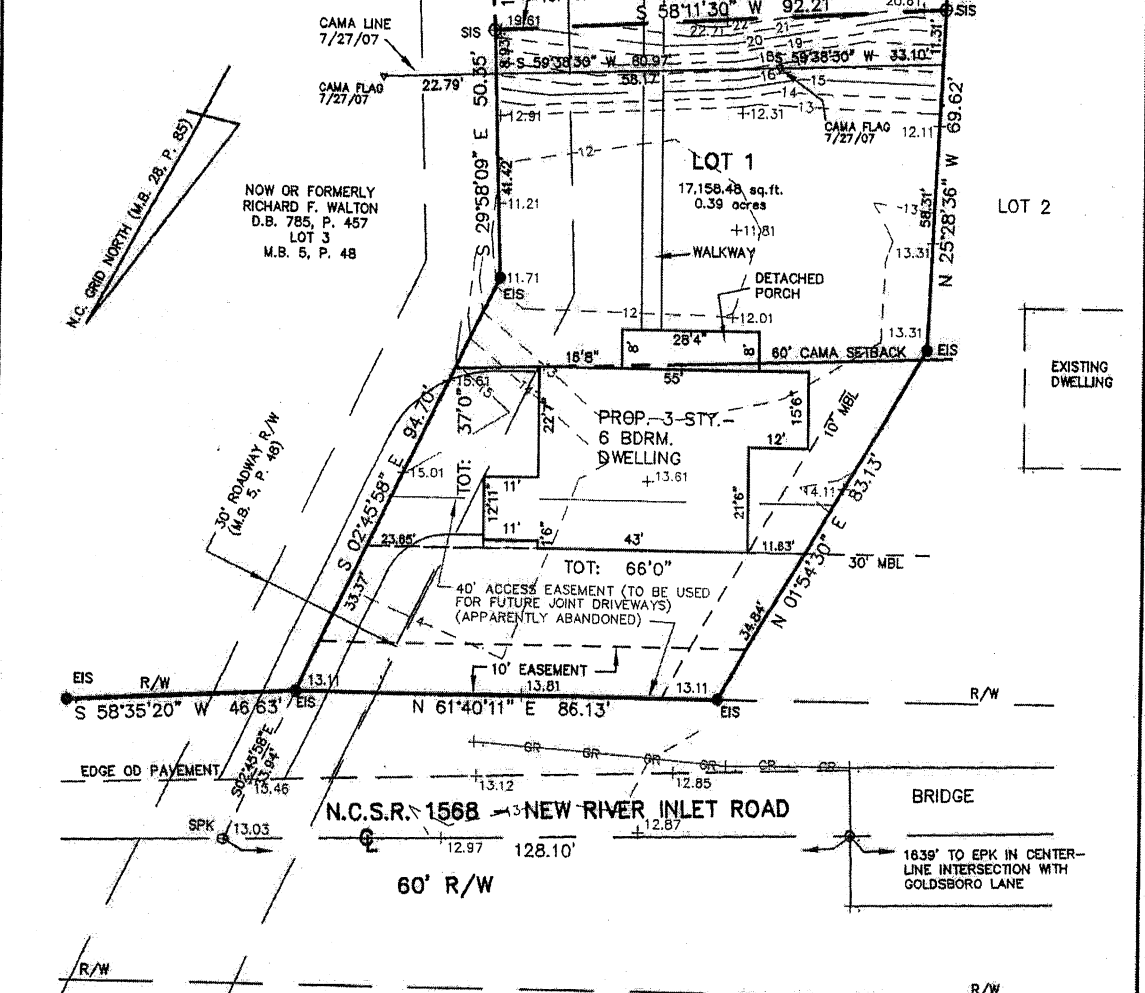
Have you:

- completed all blanks and/or indicated if not applicable?
- notified and listed adjacent property owners?
- included your site drawing?
- signed both application and statement of ownership?
- enclosed the \$100.00 fee?
- completed an AEC Hazard Notice, if necessary?

FOR STAFF USE			
Site Notice Posted	_____	Final Inspection	_____
	_____	Fee Received	_____
Site Inspections			
_____			
_____			
_____			
Date of Action: Issued _____ Exempted _____ Denied _____ Appeal Deadline (20 days) _____			



VICINITY MAP - NOT TO SCALE



LEGEND:  
 EIS = EXISTING IRON STAKE  
 SIS = SET IRON STAKE  
 R/W = RIGHT OF WAY  
 SPK = SET PK NAIL  
 +13.01 = SPOT ELEVATION  
 --GR-- = GUARDRAIL  
 CP = COMPUTED POINT

SITE DATA:  
 ZONE: R-20 (FOR SINGLE FAMILY)  
 SETBACKS: FRONT-30'; SIDE-10'  
 REAR-60' CAMA SETBACK  
 (NOTE: UP TO 500 SQUARE FEET OF  
 OPEN DECK MAY BE CANTILEVERED IN  
 THE CAMA SETBACK.)

NOTE:  
 THIS LOT IS LOCATED IN A 100-YEAR  
 FLOOD ZONE PER FEMA MAP 370466-  
 4288J, DATED NOV. 3, 2005. IT IS  
 IN A COBRA ZONE FOR WHICH FEDERAL  
 FLOOD INSURANCE IS NOT AVAILABLE.

REF: M.B. 28, P. 85, SL. F-193

**PRELIMINARY PLOT PLAN** 1090 NEW RIVER INLET ROAD

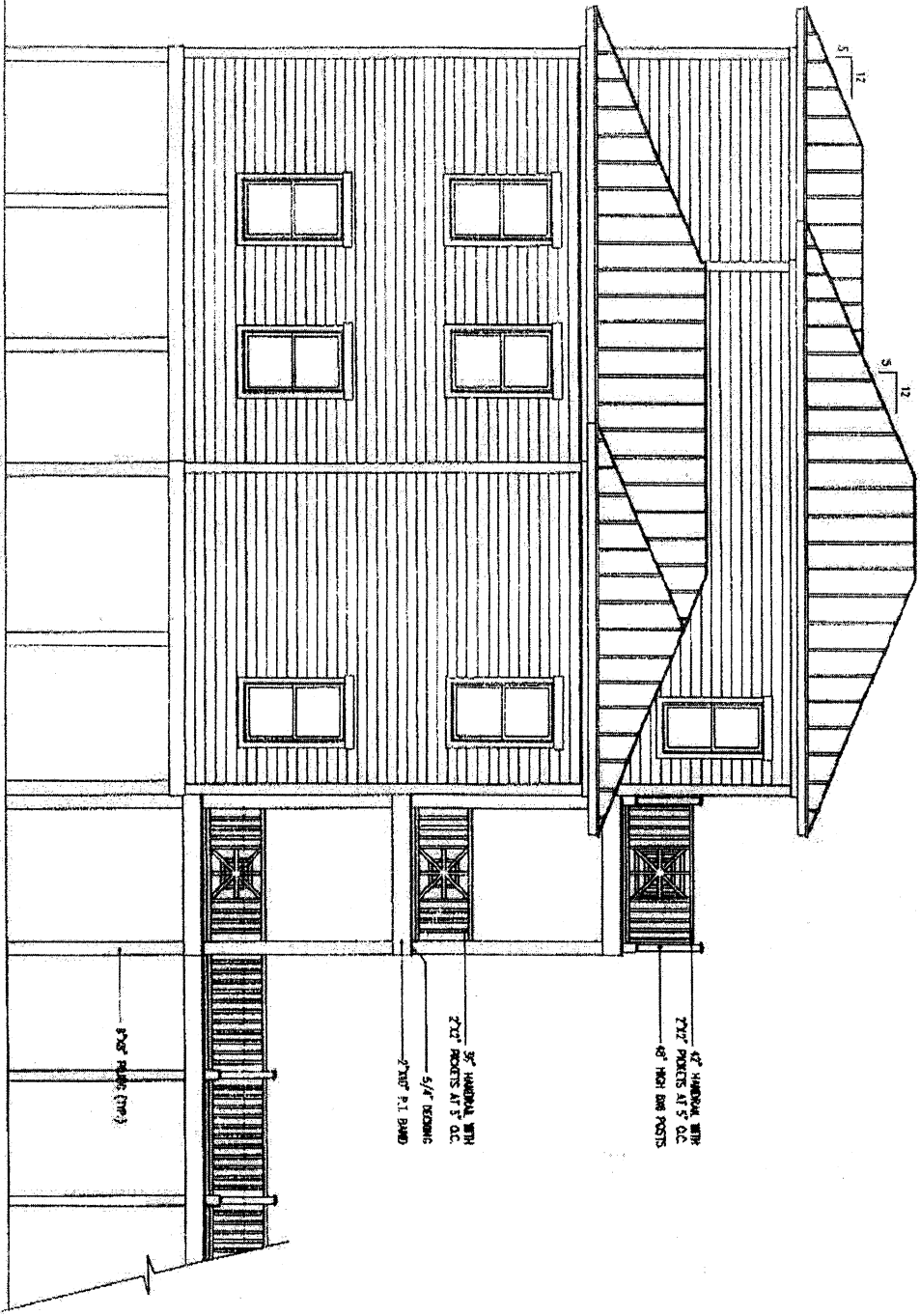
THIS IS TO CERTIFY THAT THIS MAP IS A TRUE REPRESENTATION OF THE PROPERTY HEREON AS COMPILED BY ACTUAL SURVEY OF THE PREMISES AND THAT THERE ARE NO ENCROACHMENTS ACCORDING TO THE BEST OF MY KNOWLEDGE, EXCEPT AS SHOWN. THE RATIO OF PRECISION IS 1:10,000+.

SEAL  
 2-2596  
 JOHN L. PIERCE, P.L.S. SURVEYOR

LOT NO. 1 BLOCK \_\_\_\_\_  
 SUBDIVISION CHARLES PADGETT  
 STUMP SOUND TOWNSHIP ONSLOW COUNTY, N.C.  
 PREPARED FOR: MLK CONSTRUCTION, INC.

**JOHN L. PIERCE & ASSOCIATES, P.A.**  
 409 JOHNSON BLVD., JACKSONVILLE, NC 28540  
 PHONE: (910)346-9800 FAX: (910)346-1210  
 DATE: JAN 7, 2008 SCALE: 1" = 30'  
 F.B. 471 P. 23-25 JOB # 28004

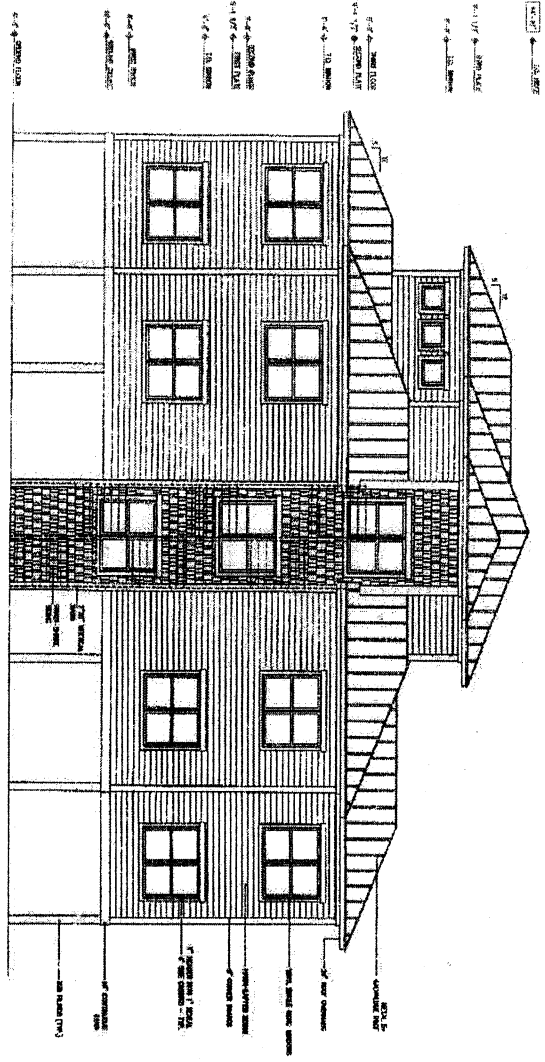




RIGHT ELEVATION



8 PAGES TOTAL



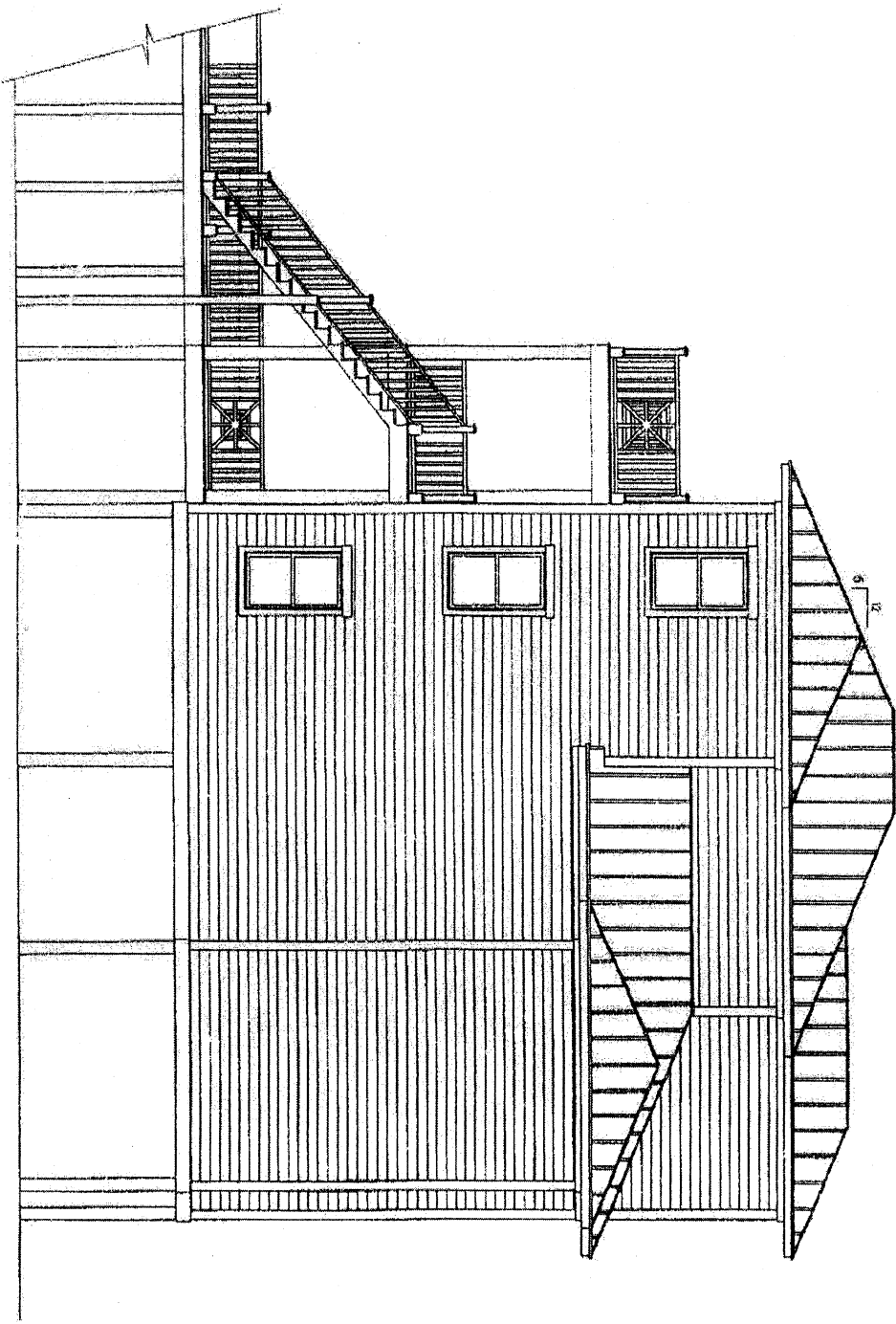
FRONT ELEVATION



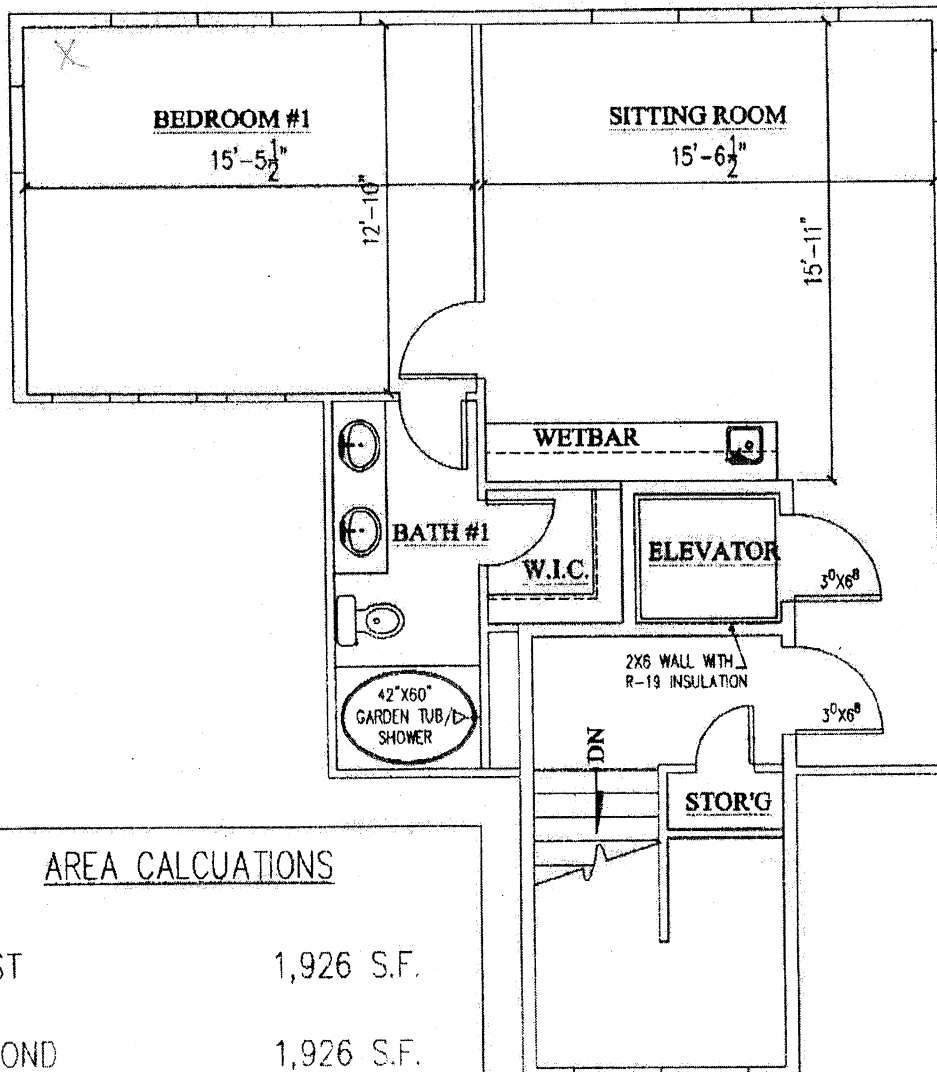
SEE PLAN

SEE PLAN

LEFT ELEVATION



# THIRD FLOOR



## AREA CALCUATIONS

FIRST	1,926 S.F.
SECOND	1,926 S.F.
THIRD	815 S.F.
<b>TOTAL HEATED</b>	<b>4,667 S.F.</b>



# Town of North Topsail Beach



June 16, 2005

Mr. Leland Eglund  
43 South Bounty Lane  
Key Largo, FL 33037

RE: CAMA MINOR DEVELOPMENT PERMITS #05/38

Dear Mr. Eglund;

I have enclosed your CAMA Minor Development Permit for your property in North Topsail Beach. Please read your permit carefully before conducting any development. If you have any questions, please call me.

Please sign your permit **retain the original for your records and return a signed copy** to me for my files.

Thank you,

A handwritten signature in cursive script, appearing to read "Sue McLaughlin".

Sue McLaughlin  
CAMA LPO

# CAMA MINOR DEVELOPMENT PERMIT



as authorized by the State of North Carolina, Department of Environment,  
and Natural Resources and the Coastal Resources Commission for development  
in an area of environment concern pursuant to Section 113A-118 of the  
General Statutes, "Coastal Area Management"

Issued to Mr. Leland Egland, authorizing development in Ocean Hazard AEC at, 1090 New River Inlet Road, North Topsail Beach, NC 28460, as requested in the permittee's application, dated April 14, 2005. This permit, issued on June 16, 2005 is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

**OCEAN HAZARD AEC 15 NCAC 7H.0300  
RESIDENTIAL DEVELOPMENT IN AN OCEAN HAZARD AEC**

*This permit authorizes the construction a single family dwelling with landscaping, crosswalk and driveway.*

1. The structure shall comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume 1 or Section 39, Volume 1-B, and the Local Flood Damage Prevention Ordinance as required by the National Flood Insurance Program. If any provisions of the building code or a flood damage prevention ordinance are inconsistent with any of the following AEC standards, the more restrictive provision shall control. All proposed development and associated construction must be done in accordance with the drawings as submitted on April 14, 2005.
2. The structure must set back 90 feet from the first line of stable natural vegetation.
3. The structure must be located entirely off of the frontal dune, and if a primary dune is present, behind the crest of the primary dune. **The uncovered deck located in the CAMA setback maybe cosmetically attached but not structurally attached.**

Conditions continued on second page

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. From the date of an appeal, any work conducted under this permit must cease until the appeal is resolved.

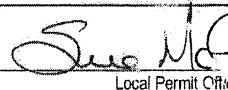
This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance.

Any maintenance work or project modification not covered under this permit, require further written permit approval.

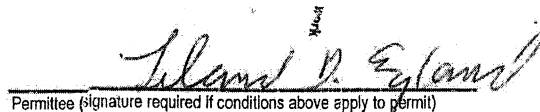
All work must cease when this permit expires on **December 31, 2008**.

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances.

This permit may not be transferred to another party without the written approval of the Division of Coastal Management.

  
Local Permit Offi

Sue McLain  
Chief Local Permi

  
Permittee (signature required if conditions above apply to permit)

ne: EGLAND

Minor Permit #05/38

Date: 06/16/05

4. The structure must be elevated on pilings with a diameter of at least 8 inches and the first floor level of the sills and joists must meet the 100-year flood level elevation.
5. All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet (5') below mean sea level.
6. No impermeable surfaces shall be allowed over any functional part of the septic tank system.
7. Dune disturbances will be allowed only to the extent necessary for development and if the dune's protective value is not weakened or reduced. Disturbed areas will be immediately stabilized.
8. This permit may be renewed for one (1) year if requested before the expiration date.
9. The amount of built-upon area shall be limited to no more than 30% of the AEC area of the land to be developed, in this case 5,147 square feet.
10. Pursuant to 15 NCAC, Subchapter 7J.0406 (b), this permit may not be assigned, transferred, sold or otherwise disposed of to a third party.
11. This permit other than those shown on original plot design permits no additional covered structures.
12. The permitted is required to contact the Local Permit Officer shortly before he plans to begin construction to arrange a setback measurement which will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be redone.
13. Sand used to strengthen dunes must be brought in from an outside source and must be of the same nature as the sand in the area which it is to be placed. No sand is to be removed from the lot.
14. Sand held in storage in any dune, other than frontal or primary dunes, may be moved laterally in order to strengthen existing primary or frontal dunes if the work would enhance the protection to the proposed development activity and the sand is immediately stabilized.
15. All development must be consistent with all-applicable Federal, State and Local Standards.
16. Any structure authorized by this permit shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration. The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under CRC rules.
17. Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
18. A copy of this permit must be posted on the property during construction. Please call (910-328-1349) for final inspection.

*Town of North Topsail Beach*

Donald Martin, Mayor  
Larry Hardison, Mayor Pro Tem  
Aldermen:  
Richard Farley  
Richard Peters  
Robert Swantek  
Daniel Tuman



Henry Luxem  
Town Manager  
Kathleen Lennon Clough  
Town Clerk

May 6, 2008

**CERTIFIED MAIL – 7007 0710 0001 5258 3613**  
**RETURN RECEIPT REQUESTED**

Leland Eglund  
43 South Bounty Lane  
Key Largo FL 33037

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT**  
**APPLICATION NUMBER- # 08-11**  
**PROJECT ADDRESS- 1090 New River Inlet Drive**

Dear Mr. Eglund:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed.

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to construct a single family dwelling which is inconsistent with 15 NCAC 7H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS, which states that:

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

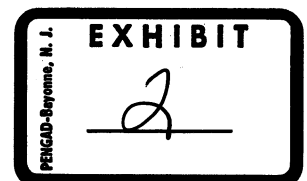
- (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable

Your application is also inconsistent with our Local Land Use Plan. On page IV-5 of the Land Use Plan, you will find that North Topsail Beach will support only uses within the ocean hazard areas which are allowed by 15A NCAC 7H and are consistent with the town's zoning and dune and vegetation protection ordinances.

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Deborah J. Hill, MPA  
Planning & Zoning/CAMA LPO  
cc: JON GILES, DCM FIELD REPRESENTATIVE





Locality DTB/1090 New River Inlet Permit Number 05/38

Ocean Hazard  Estuarine Shoreline  ORW Shoreline  Public Trust Shoreline  Other   
(For official use only)

PI GENERAL INFORMATION

LAND OWNER

Name LELAND D. EGLAND  
Address 43 SOUTH BOUNTY LAKE  
City KEY LARGO, FL State FL Zip 33037 Phone 305-852-3029

AUTHORIZED AGENT

Name MICHAEL MLETTNER  
Address 1351 WASHINGTON ARCHERS RD.  
City HAMPSTEAD State NC Zip 28443 Phone 910-264-8587

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody?) 1090 NEW RIVER INLET RD.

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.)  
PERSONAL RESIDENCE

SIZE OF LOT/PARCEL: 26,630 square feet \_\_\_\_\_ acres

PROPOSED USE: Residential  (Single-family \_\_\_\_\_ Multi-family \_\_\_\_\_) Commercial/Industrial \_\_\_\_\_  
Other \_\_\_\_\_

TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): 552 square feet (includes all floors and roof-covered decks)

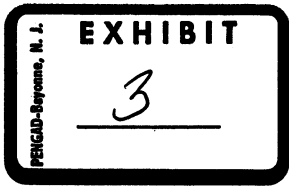
SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT-UPON SURFACES IN THE COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN (AEC) 2400 sq. ft. <sup>FT</sup>  
(Calculations include the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

Choose the AEC area that applies to your property:

- (1) within 75 feet of Normal High Water for the Estuarine Shoreline AEC
  - (2) within 575 feet of Normal High Water for the Estuarine Shoreline AEC, adjacent to Outstanding Resource Waters
  - (3) within 30 feet of the Public Trust Shoreline AEC
- (Contact your Local Permit Officer if you are not sure which AEC applies to your property.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the N.C. Division of Water Quality?  
YES \_\_\_\_\_ NO

If yes, list the total built-upon area/impervious surface allowed for your lot or parcel. \_\_\_\_\_ square feet.



**OTHER PERMITS MAY BE REQUIRED:** The activity you are planning may require permits other than the CAMA minor development permit. As a service we have compiled a list of the kinds of permits that might be required. We suggest you check over the list with your LPO to determine if any of these apply to your project: Zoning, Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, and Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway, Connection, and others.

**STATEMENT OF OWNERSHIP:**

I, the undersigned, an applicant for a CAMA minor development permit, being either the owner of property in an AEC or a person authorized to act as an agent for purposes of applying for a CAMA minor development permit, certify that the person listed as landowner on this application has a significant interest in the real property described therein. This interest can be described as: (check one)

an owner or record title. Title is vested in LELAND D. EGLAND see Deed Book 2152 page 383 in the ONSLOW County Registry of Deeds.

an owner by virtue of inheritance. Applicant is an heir to the estate of \_\_\_\_\_; probate was in \_\_\_\_\_ County.

if other interest, such as written contract or lease, explain below or use a separate sheet and attach to this application.

**NOTIFICATION OF ADJACENT PROPERTY OWNERS:**

I further certify that the following persons are owners of properties adjoining this property. I affirm that I have given **ACTUAL NOTICE** to each of them concerning my intent to develop this property and to apply for a CAMA permit.

(Name)	(Address)
1) <u>SUTTON PROPERTIES LLC</u>	<u>P.O. BOX 80010 BILLINGS MT. 59108</u>
2) <u>HOFFMAN BARRY W &amp; JAYNE</u>	<u>1078 NEW RIVER INLET RD.</u>
3) _____	<u>N. TOPSAIL BEACH, NC. 28460</u>
4) _____	_____

**FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:**

I acknowledge that the land owner is aware that the proposed development is planned for an area which may be susceptible to erosion and/or flooding. I acknowledge that the local permit officer has explained to me the particular hazard problems associated with this lot. This explanation was accompanied by recommendations concerning stabilization and floodproofing techniques.

**PERMISSION TO ENTER ON LAND:**

I further certify that I am authorized to grant and do in fact grant permission to the local permit officer and his agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the AEC hazard notice where necessary, a check for \$100.00 made payable to the locality, and any information as may be provided orally by the applicant. The details of the application as described by these sources are incorporated without reference in any permit which may be issued. Deviation from these details will constitute a violation of any permit. Any person developing in an AEC without permit is subject to civil, criminal and administrative action.

This the 13 day of APRIL, 2005  
Leland D. Eglund

Landowner or person authorized to act as his agent for purpose of filing a CAMA permit application.

APPLICATION:

LELAND

LOCALITY:

1090 New River Mt Rd

05/38

# AEC HAZARD NOTICE

Project Is In An:  Ocean Erodible Area  High Hazard Flood Area  Inlet Hazard Area

Date Lot Was Platted: 1982

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and dune alteration are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual ocean erosion rate for the area where your property is located is 3 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 210 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 18 feet deep in this area.

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary devices, including sand bags, may be allowed under certain conditions.

This structure shall be relocated or dismantled within two years of becoming imminently threatened.

The applicant must acknowledge this information and requirements by signing this notice in the below space. Without the proper signature, the application will not be complete.

Ieland D. Eglund  
Applicant's Signature

4-14-05  
Date

**SPECIAL NOTE:** This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer will determine the vegetation line and setback distance at your site. If the property has seen little change and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal may not be necessary. If substantial progress has not been made, the permit must be renewed and a new setback line established. It is unlawful to continue work after permit expiration without this approval.

For more information, contact:

Irene McLaughlin  
Local Permit Officer

2008 Loggerhead Crt  
Address

D.T.B. NC 28460  
Locality

910-328-1349  
Phone

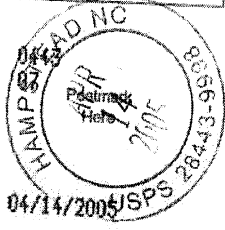
7003 3110 0005 5000 01TE 6007

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**CERTIFIED MAIL™ RECEIPT**  
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For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**  
SNEADS FERRY NC 28460

Postage	\$ 0.37
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>



Sent To  
 Mr. Barry + June Hoffman  
 Street, Apt. No.,  
 or PO Box No. 1078 New River Inlet Rd.  
 City, State, ZIP+4  
 N. Topsail Beach, NC. 28460  
 PS Form 3800, June 2002 See Reverse for Instructions

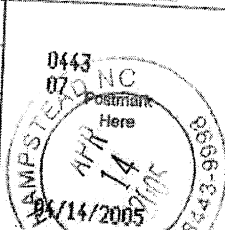
7003 3110 0005 5000 01TE 6002

U.S. Postal Service™  
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(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**  
BILLINGS MT 59108

Postage	\$ 0.37
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
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<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>



Sent To  
 SUTTON PROPERTIES LLC  
 Street, Apt. No.,  
 or PO Box No. P.O. BOX 80010  
 City, State, ZIP+4  
 BILLINGS, MT. 59108  
 PS Form 3800, June 2002 See Reverse for Instructions

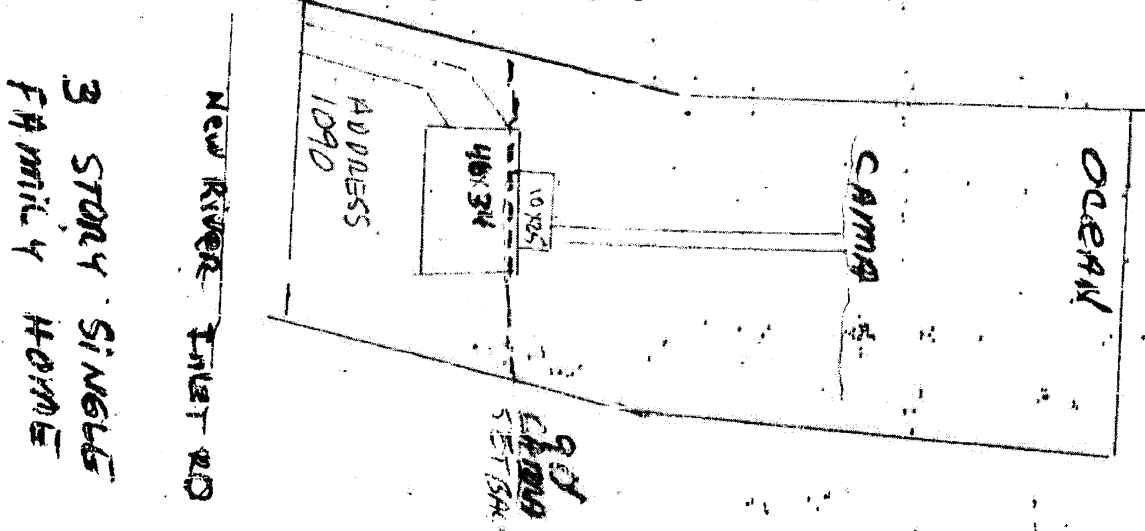
I hereby certify that I own property adjacent to LELAND D EGLAND  
(Name of Property Owner)

property located at 1090 NEW RIVER INLET RD.  
(Lot, Block, Road, etc.)

on ATLANTIC OCEAN, in ONSLOW COUNTY, N.C.  
(Waterbody) (Town and/or County)

He has described to me as shown below, the development he is proposing at that location,  
and, I have no objections to his proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT  
(To be filled in by individual proposing development)



Signature \_\_\_\_\_

Print or Type Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Date: \_\_\_\_\_

**NOTICE OF FILING  
OF APPLICATION FOR  
CAMA MINOR DEVELOPMENT  
PERMIT**

Pursuant to NCGS 113A-119(b), the Town of North Topsail Beach, a locality authorized to issue CAMA permits in Areas of Environmental Concern, hereby gives NOTICE that on April 14, 2005, Mr. Leland Eglund, applied for a CAMA permit to construct a single family dwelling with a foot print of 1,656 at 1090 New River Inlet Road, North Topsail Beach, Onslow County, North Carolina. The application may be inspected at the address below. Public comments received by April 27, 2005, will be considered. Later comments will be accepted and considered up to the time of permit decision. Project modifications may occur based on further review and comments. Notice of the permit decision in this matter will be provided upon written request. CAMA PERMIT # 05/38

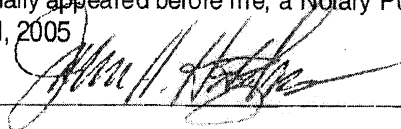
Sue McLaughlin  
CAMA, Local Permit Officer  
Town of North Topsail Beach  
2008 Loggerhead Court  
North Topsail Beach, NC 28460

Please print on April 19, 2005

168474  
15066094  
1 of 2

**Affidavit of Publication  
Jacksonville Daily News  
Jacksonville, NC**

Personally appeared before me, a Notary Public of the County of Onslow, State of North Carolina, on this the 19th day of April, 2005



of The Daily News, who being duly sworn, states that the advertisement entitled **CAMA - EGLAND, LELAND** a true copy of which is printed herewith, appeared in The Daily News, a newspaper published in the City of Jacksonville, NC, County of Onslow, State of North Carolina, 1 day a week for \_\_\_\_\_ weeks on the following dates:

April 19, 2005

NORTH CAROLINA  
ONSLow COUNTY

NOTICE OF FILING  
OF APPLICATION  
FOR CAMA MINOR  
DEVELOPMENT PERMIT

Pursuant to NCGS 113A-119 (b), the Town of North Topsail Beach, a locality authorized to issue CAMA permits in Areas of Environmental Concern, hereby gives NOTICE that on April 14, 2005, Mr. Leland Egland, applied for a CAMA permit to construct a single family dwelling with a foot print of 1,656 at 1090 New River Inlet Road, North Topsail Beach, Onslow County, North Carolina. The application may be inspected at the address below. Public comments received by April 27, 2005, will be considered. Later comments will be accepted and considered up to the time of permit decision. Project modifications may occur based on further review and comments. Notice of the permit decision in this matter will be provided upon written request. CAMA PERMIT #05/38

Sue McLaughlin, CAMA  
Local Permit Officer  
Town of  
North Topsail Beach  
2008 Loggerhead Court  
North Topsail Beach,  
NC 28460

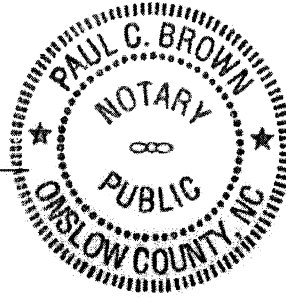
April 19, 2005

168474  
15066094  
2 of 2

**Affidavit of Publication  
Jacksonville Daily News  
Jacksonville, NC**

Subscribed and sworn to this 19th day of April, 2005

x Paul C. Brown  
Notary Public



My Commission Expires:  
July 11, 2007



# Town of North Topsail Beach



April 28, 2005

Mr. Leland Eglund  
43 South Bounty Lane  
Key Largo, FL 33037

RE: INCOMPLETE APPLICATION: PERMIT # 05/38  
(1090 NEW RIVER INLET ROAD)

Dear Mr. Eglund;

I originally accepted your applications under the impression that they were complete. On subsequent review, I have discovered it lacks certain necessary information. Accordingly, I am requesting you to submit the following information to me.

The reason for adjudging the applications to be incomplete is as follows:

1. Your personal Check #1840 has been returned to the town for insufficient funds.

In accordance with the Department of Environment, and Natural Resources regulations, we can note that a certain time has passed while the application has remained in our office. Accordingly, upon resubmission of the required documents, a local decision will be made in 25 days, provided this period is not extended as provided by law.

Please contact me at 910-328-1349 as soon as possible concerning this matter.

Respectfully yours,

A handwritten signature in cursive script, appearing to read 'Sue McLaughlin', is written over the typed name.

Sue McLaughlin  
NTB CAMA LPO

LELAND D. EGLAND  
43 S. BOUNTY LN.  
KEY LARGO, FL 33037-2325

03-01

1840

63-4/630 FL  
1289

Date 4-14-05

Pay to the order of

Town of North Topsail Beach

\$ 100.00

One Hundred Dollars

Bank of America



04/21/05 85808 T5806 P05 0835644607

Dollars



Security watermark  
appears on back  
of this check

01  
F01

ACH R/T 063100277

Memo CAMMA

Leland D. Eglund

063000047: 003443681009 1840 0000010000

RIA

### Return Item Advice

Date:	04-22-2005
Account Number:	4571310860
Item:	1
Total:	\$100.00

Dear Valued Customer:

We have charged your account 4571310860 on 04-22-2005 for the amount of the included item listed below. Please reference the face of checks for return reason and makers name.

Should you have questions concerning this notice or believe an error has occurred, you may contact your local branch or call 1-888-FC DIRECT or 1-888-323-4732.

Sincerely,

First Citizens Bank

Bank ABA  
0630-0004

Return Reason
INSUFFICIENT FUNDS
1 Item

Check Amount
\$100.00
\$100.00

Fee Amount
\$0.00
\$0.00

Trace ID
3800210088

6/16/05 VERIFIED WITH Lydia King  
check cleared no time

05/38

# Town of North Topsail Beach



June 16, 2005

Mr. Leland Eglund  
43 South Bounty Lane  
Key Largo, FL 33037

RE: CAMA MINOR DEVELOPMENT PERMITS #05/38

Dear Mr. Eglund;

I have enclosed your CAMA Minor Development Permit for your property in North Topsail Beach. Please read your permit carefully before conducting any development. If you have any questions, please call me.

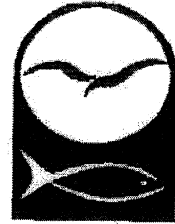
Please sign your permit **retain the original for your records and return a signed copy** to me for my files.

Thank you,

A handwritten signature in black ink, appearing to read "Sue McLaughlin".

Sue McLaughlin  
CAMA LPO

# CAMA MINOR DEVELOPMENT PERMIT



as authorized by the State of North Carolina, Department of Environment,  
and Natural Resources and the Coastal Resources Commission for development  
in an area of environment concern pursuant to Section 113A-118 of the  
General Statutes, "Coastal Area Management"

Issued to Mr. Leland Eglund, authorizing development in Ocean Hazard AEC at, 1090 New River Inlet Road, North Topsail Beach, NC 28460, as requested in the permittee's application, dated April 14, 2005. This permit, issued on June 16, 2005 is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

**OCEAN HAZARD AEC 15 NCAC 7H.0300  
RESIDENTIAL DEVELOPMENT IN AN OCEAN HAZARD AEC**

*This permit authorizes the construction a single family dwelling with landscaping, crosswalk and driveway.*

1. The structure shall comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume 1 or Section 39, Volume 1-B, and the Local Flood Damage Prevention Ordinance as required by the National Flood Insurance Program. If any provisions of the building code or a flood damage prevention ordinance are inconsistent with any of the following AEC standards, the more restrictive provision shall control. All proposed development and associated construction must be done in accordance with the drawings as submitted on April 14, 2005.
2. The structure must set back 90 feet from the first line of stable natural vegetation.
3. The structure must be located entirely off of the frontal dune, and if a primary dune is present, behind the crest of the primary dune. The uncovered deck located in the CAMA setback may be cosmetically attached but not structurally attached.

Conditions continued on second page

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. From the date of an appeal, any work conducted under this permit must cease until the appeal is resolved.

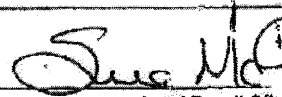
This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance.

Any maintenance work or project modification not covered under this permit, require further written permit approval.

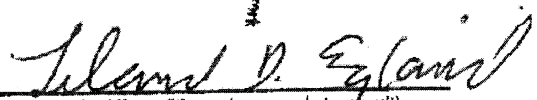
All work must cease when this permit expires on December 31, 2008.

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances.

This permit may not be transferred to another party without the written approval of the Division of Coastal Management.

  
Local Permit Off.

Sue McLane  
Off. in Local Permi.

  
Permittee (signature required if conditions above apply to permit)

BOARD OF ALDERMEN  
W. Rodney Knowles, Mayor  
Larry Hardison, Mayor Pro Tem  
Fred Handy  
Daniel Tuman  
Richard Farley  
Richard Peters

*Town of North Topsail Beach*  
**Planning Department**

Thomas S. Taylor, Interim Town Manager  
Kathleen L. Clough, Town Clerk



January 10, 2008

# Memo

**To:** Randall Moudy, Code Enforcement Officer  
**From:** Deborah J. Hill, CAMA Local Permit Officer  
**CC:** Thomas S. Taylor, Interim Town Manager  
Jon W. Giles, Field Representative, NCDRCM Wilmington Regional Office  
**Date:** January 10, 2008  
**Re:** 1090 New River Inlet Road

---

## **Project not in compliance with CAMA Permit 05-38**

In accordance with COASTAL AND FLOOD PLAIN CONSTRUCTION STANDARDS Ch. 45 Sec. 4502 and 4503, I request that you issue a Stop Work Order immediately on 1090 New River Inlet Road, owned by Leland D. Egland as the project is not in compliance with the CAMA Permit #05-38 issued on June 16, 2005, as the CAMA setback is 90 feet from the 1<sup>st</sup> line of natural stable vegetation established on July 27, 2007.

As a reminder, the permittee is required to contact the CAMA Local Permit Officer, shortly before he plans to begin construction to arrange a setback measurement that will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be redone.

*Town of North Topsail Beach*

Donald Martin, Mayor  
Larry Hardison, Mayor Pro Tem  
Aldermen:  
Richard Farley  
Richard Peters  
Robert Swantek  
Daniel Tuman



Henry Luxem  
Town Manager  
Kathleen Lennon Clough  
Town Clerk

May 6, 2008

**CERTIFIED MAIL – 7007 0710 0001 5258 3613**  
**RETURN RECEIPT REQUESTED**

Leland Eglund  
43 South Bounty Lane  
Key Largo FL 33037

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT**  
**APPLICATION NUMBER- # 08-11**  
**PROJECT ADDRESS- 1090 New River Inlet Drive**

Dear Mr. Eglund:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed.

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to construct a single family dwelling which is inconsistent with 15 NCAC 7H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS, which states that:

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

- (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable

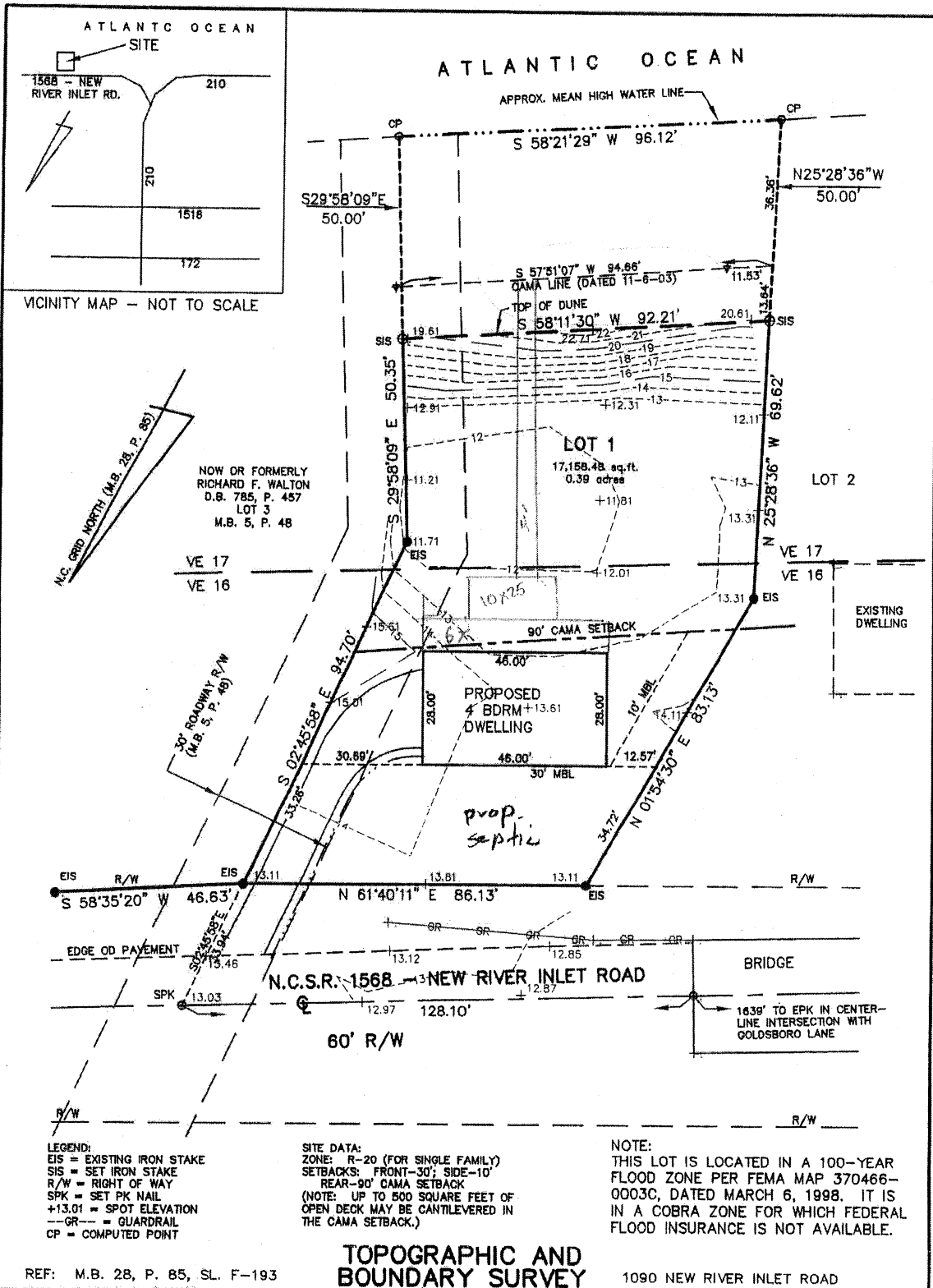
Your application is also inconsistent with our Local Land Use Plan. On page IV-5 of the Land Use Plan, you will find that North Topsail Beach will support only uses within the ocean hazard areas which are allowed by 15A NCAC 7H and are consistent with the town's zoning and dune and vegetation protection ordinances.

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Deborah J. Hill, MPA  
Planning & Zoning/CAMA LPO

cc: JON GILES, DCM FIELD REPRESENTATIVE



REF: M.B. 28, P. 85, SL. F-193

**TOPOGRAPHIC AND BOUNDARY SURVEY**

1090 NEW RIVER INLET ROAD

LOT NO. 1 BLOCK \_\_\_\_\_

SUBDIVISION CHARLES PADGETT

STUMP SOUND TOWNSHIP ONSLOW COUNTY, N.C.

PREPARED FOR: LELAND D. EGLAND

**JOHN L. PIERCE & ASSOCIATES, P.A.**  
 409 JOHNSON BLVD., JACKSONVILLE, NC 28540  
 PHONE: (910)346-9800 FAX: (910)346-1210  
 DATE: NOV. 11, 2003 SCALE: 1" = 30'

F.B. 471 P. 23-25 JOB # 231124








CRC-VR-08-52

## State of North Carolina

Department of Justice  
PO Box 629  
Raleigh, North Carolina  
27602

ROY COOPER  
ATTORNEY GENERAL

TO: Coastal Resources Commission

FROM: Christine A. Goebel   
Assistant Attorney General

DATE: November 7, 2008 (for the November 19-20, 2008 CRC Meeting)

RE: Variance Request by Bogue Watch, LLC

Petitioner, Bogue Watch, LLC, proposes to dredge a new 40-foot access channel to connect an existing channel to a proposed upland basin on its property located at the confluence of Sanders Creek and Bogue Sound (part of the AIWW at this location). The property is located on the south side of NC 24 in the Newport area of Carteret County. At this location, Sanders Creek is designated as a Primary Nursery Area by the NC Division of Marine Fisheries. The proposed development is inconsistent with the Commission's specific use standards for estuarine shorelines which require that navigation channels avoid areas that are designated as "primary nursery areas" by the Marine Fisheries Commission. Petitioner seeks a variance primarily from CRC's rule in 15A NCAC 7H .0208(b)(1) in order to dredge a navigation channel as proposed.

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: Other Referenced Materials

cc: Charlotte Mitchell, Esq. & Eric Braun, Esq., Petitioner's Counsel  
Jim Gregson, Director, DCM  
Ted Tyndall, Assistant Director, DCM  
Tere Barrett, DCM Morehead City District Manager  
Carteret County LPO  
Angela Willis, Assistant to the Director  
Jennie Hauser, Special Deputy Attorney General & CRC Counsel

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0200 THE ESTUARINE AND OCEAN SYSTEMS

7H .0208(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. Bogue Watch, LLC (Petitioner) is developing a 287-lot subdivision on 195 acres in Carteret County. The subdivision is called Bogue Watch. It lies adjacent to the confluence of Sanders Creek and Bogue Sound in the Newport area of Carteret County on the south side of Highway 24 East. The site has approximately 5550 feet of shoreline along Sanders Creek and Bogue Sound.
2. Both Sanders Creek and Bogue Sound carry water quality classifications of SA-ORW. Sanders Creek is closed to the taking of shellfish, while Bogue Sound is open. The Division of Marine Fisheries designated this portion of Sanders Creek as a Primary Nursery Area (PNA) in August of 2004. Bogue Sound at this location is not designated as a Primary Nursery Area.
3. The development proposed in the major modification would be located within the Estuarine Waters, Estuarine Shoreline, Coastal Wetlands and Public Trust Areas of Environmental Concern (AECs).
4. According to DCM's Field Investigation Report dated May of 2007, the substrate in the project area is... "sandy, with visible beds of submerged vegetation offshore, also evidenced by wrack line of the same. While the substrate contains shells, no oyster beds were observed within the area of the proposed project." A copy of this report is attached.
5. In 1984, the prior owners of this property were issued CAMA Major Permit #176-84 to develop the property into a residential subdivision. The permit approved the construction of a 2500 foot long channel from the Atlantic Intracoastal Waterway (AIWW) in Bogue Sound, connecting to a proposed upland basin at or near an existing earthen boat ramp.
6. In 1986, the prior owners of this property commenced work pursuant to the permit, excavating the channel from Bogue Sound through Sanders Creek. However, the basin excavation portion of the permitted project was never completed, and the channel dredging terminated near the shoreline, at the existing boat ramp. The access channel was used thereafter.
7. In or around January 2006, Petitioner purchased the property for development. DCM issued CAMA Major Permit #141-06 on September 13, 2006 for the development of the subdivision, including utilities, road infrastructure, a vehicle bridge, a waste-water treatment facility and three observation piers.

8. On April 11, 2007, Petitioner submitted a major modification request for CAMA Major Permit #141-06. The major modification proposed maintenance excavation of the existing channel from the AIWW to the shore and construction of a 9-slip (request was originally for a 29-slip marina, but reduced to 9-slips by the applicant) upland basin community docking facility. The upland basin would serve the subdivision as an amenity for the community on a common area.

9. During its review of the permit application, the Division of Coastal Management determined that dredging the channel from the point where dredging terminated in 1984 to the current shoreline location would constitute new dredging, and not maintenance dredging of an existing channel.

10. The distance between the end of the previously excavated channel and the shoreline, or that area for the proposed new dredging, is approximately 40 feet long. The proposed width of this 40-foot section is 38' for the first 19 linear feet, and 28' for the remaining 21 feet, totaling approximately 1310 square feet of affected area. While it appears that the earlier excavation in the 1980's had once ended near the shoreline, it also appears that the erosion of the shoreline created this 40-foot gap.

11. 15A NCAC 7H .0208(b)(1) prohibits new dredging in a designated Primary Nursery Area. A copy of this rule is included in the variance packet at Attachment A.

12. In the denial letter dated October 20, 2008, a copy of which is attached, DCM made the following specific finding, relevant to this variance request:

- 3) The proposed project involves both maintenance excavation of approximately 590 linear feet of a previously excavated navigation channel, as well as a new excavation of approximately 40 linear feet of shallow bottom habitat between where the existing navigation channel ends and the current shoreline. At the time of its original construction, the navigation channel ended in close proximity to the shoreline. However, since that time the shoreline has eroded landward approximately 40 feet, resulting in a 40 foot gap of shallow bottom habitat between the end of the navigation channel and the existing shoreline.

13. Based on the foregoing finding, the designation of the proposed site as a PNA, and the language of 15A NCAC 7H.0208(b)(1), the major permit modification request was denied under N.C.G.S. § 113A-120(a) which requires permit denial when a proposal is determined to be inconsistent with the state standards or guidelines.

14. In reviewing the permit modification request, the Division of Marine Fisheries commented that "...the DMF continues to object to this proposal for new dredging because it is prohibited by rule of the Coastal Resources Commission, but removes its concern about significant adverse impacts." A copy of DMF's written comments, dated October 15, 2007, is attached.

15. Petitioner also proposed maintenance dredging for the approximately 590 linear feet of the previously excavated channel. This proposed development was not a basis for the denial of Petitioner's major modification request.

16. Petitioner plans to install breakwaters along the east and west sides of the channel, at the entrance to the basin in order to prevent sedimentation of the basin and channel and to confine boat traffic to the defined channel area. Neither the creation of the upland basin for excavation of the channel will result in an expansion of the shellfish closure in Sanders Creek.

17. Petitioner filed this variance request on October 22, 2008, seeking relief from the CRC rule prohibiting navigation channels in PNAs, (15A NCAC 7H .0208(b)(1)), in order to develop the proposed 40-foot long channel, as well as the development of the upland basin and maintenance dredging of the existing channel. This would allow Bogue Watch residents to make use of the existing channel by way of a defined channel from the proposed upland basin instead of accessing the channel otherwise.

## 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.**

Without a variance, Petitioner will not be permitted to connect the upland basin to the pre-existing, established Access Channel to provide deep water access to the residents of the Bogue Watch community. Instead, the basin will be connected to a pre-existing boat ramp which will allow boaters direct access to Sanders Creek/Bay with no restriction on where boaters may travel within the creek/bay to access deep water.

This hardship is unnecessary because the Access Channel exists, is well-established and provides a direct, defined passage to deep water. If Petitioner is not permitted to connect the upland basin to the Access Channel, boaters will be able to enter the creek/bay by way of an existing boat ramp and will access deep water through the channels that form as a result of propeller dredging and boating activity. Thus, the unrestricted, undirected use of Sanders Creek/Bay by Bogue Water boaters has the potential to result in significant damage to PNA and aquatic habitat of the creek/bay.

**Staff's Position: Yes.**

Staff agree that Petitioner's inability to dredge a 40-foot long access channel connecting the proposed upland basin and the existing channel does create a hardship in this case. Staff also note that this apparent gap was likely caused by erosion of the shoreline between the time the existing channel was permitted and dredged, and now. Staff also note that the hardship is also caused in part, but the designation of Sanders Creek as a PNA in 2004, after the original permit was issued and the existing channel was dredged.

- II. Do such difficulties or hardships result from conditions which are peculiar to the property, such as location, size or topography of the property? Explain.**

**Petitioner's Position: Yes.**

As described above, the Access Channel connects Sanders Bay to the deep water of the Intracoastal Waterway. The Access Channel was permitted in 1984 pursuant to CAMA Major No. 176-84 issued to T.M. Singleton/Holiday Village (the "Original Permit"). A copy of the Access Channel Permit is attached as Exhibit B. The Original Permit authorized the excavation of the Access Channel from high ground, through Sanders Creek/Bay and into Bogue Sound. As

intended under the Original Permit, the Access Channel would connect to an upland basin, providing boaters with an upland put in and docking area and with access to deep water.

The Access Channel was excavated in 1986 and is depicted in multiple aerial photographs. Those aerial photographs are attached as Exhibit C. The estimated length of the Access Channel is 2500 linear feet.

Sanders Creek/Bay designation as PNA was made subsequent to the excavation of the Access Channel.

**Staff's Position: Yes.**

Staff believe that combination of (1) the extent of the erosion along this shoreline that occurred between 1986 and today, (2) the gap between the permitted existing access channel and the current shoreline, (3) the current gap creating a "channel to nowhere", and (4) the designation of this part of Sanders Creek as a PNA after the existing channel was dredged, combine to create Petitioner's hardship.

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

**Petitioner's Position: No.**

As described above, the Access Channel has existed since approximately 1986. As envisioned by the original permittee and by the Division of Coastal Management at the time the Original Permit was issued, the Access Channel would connect to an upland basin in order to provide deep water access to boaters. The current predicament was created by the previous permittee, who was directed to cease dredging at the foot of a pre-existing boat ramp, in order to give boaters access to the channel until the excavation of the upland basin was completed. See Statement of James Mercer, former staff member of Division of Coastal Management, attached as Exhibit D; see also additional affidavits attached as Exhibit E. A subsequent and unexpected change in ownership of the property resulted in the upland basin (that was permitted by the Original Permit) never being excavated. Additionally, as described above, the PNA designation was made by the Division of Marine Fisheries subsequent to the dredging of the Access Channel.

**Staff's Position: No.**

The alleged hardship is generally caused by the erosion of the shoreline which occurred between the time of the permitting and dredging of the existing channel and today. Then, the designation of the PNA in Sanders Creek after the existing channel was dredged in the 1980's added to the hardship. Additionally, Staff note that Petitioner has sited the upland basin in a way to create the shortest area of new dredging to connect the proposed basin and the existing access channel.



- 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.**

Granting the variance will be consistent with the spirit, purpose and intent of the CRC's rules, standards and orders as it will facilitate the construction of an upland basin and the Division of Marine Fisheries has determined that the activity will not significantly adversely impact fisheries resources and habitat.

Granting the variance will preserve substantial justice by affording members of the Bogue Watch community with the access to deep water envisioned by the Original Permit and substantially completed by the original permittee. Moreover, granting of the variance will allow Petitioner to make use of the Access Channel and to provide the residents of the Bogue Watch community with an upland community docking area and with access to deep water. If the variance is not granted, the residents of the Bogue Water community will lose this valuable asset.

Granting the variance will preserve public safety and welfare by mitigating the potential impact of boating on the PNA in the Sanders Creek/Bay area. If boating traffic is directed through a clearly defined channel, any adverse impacts of boating on the PNA will be limited.

**Staff's Position: No.**

The variance will be consistent with the spirit, purpose, and intent of the rules. In this case, the Commission must balance competing policies and goals within CAMA and the CRC's rules, those that favor access to the public trust waters and those that require protection of important coastal resources and habitat. The CRC's waterfront access policies strongly promote public access, described as follows in the "Declaration of General Policy:"

The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance and ensure optimum access to the public beaches and waters of the 20 county coastal region. Access shall be consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.

15A NCAC 7M .0301(a). As stated in the policy above, the right of the boating public to enjoy the proposed facility must be consistent with "the concurrent need to protect important coastal natural resources." 15A NCAC 7M .0301(a). In this case, the natural resource is the designated

PNA adjacent to the boat ramp. The Marine Fisheries Commission established PNAs in order to "protect those fragile estuarine areas which support juvenile populations of economically important seafood species." 15A NCAC 3N .0101. The CRC's rules recognize the importance of PNAs by prohibiting navigation channels within them.

However, in this case, DMF staff concluded that the proposed project would not cause any significant adverse impacts, and their denial was only based on the CRC's rules prohibiting dredging in a designated PNA. DCM's field report found no oyster beds and only sandy bottom in the proposed area for the new channel. Staff believes that in this case, the potential for public trust access outweighs the need for protection of this area of eroded shoreline which is now below mean high water, and although it is located within the PNA boundary, this marginal area has minimal habitat value. On balance, the proposed dredging within this PNA would be consistent with the spirit, purpose and intent of the CRC's rules.

The variance will secure the public safety and welfare because DMF has determined that while the area for the proposed dredging is designated as a PNA, DMF removed objections that the work would cause significant adverse impacts to the marine resources at this site. DMF's denial was a technical denial based on the CRC's rules and not impacts to the PNA resources.

Allowing a variance from the prohibition on dredging in PNAs will preserve substantial justice in this case. The conditions at the site have changed dramatically since the existing channel was constructed, including the subsequent PNA designation and the erosion of the shoreline creating a gap and an existing "channel to nowhere." The Commission's rules encourage upland basins, and only the small channel gap, affecting approximately 1310 square feet of area, prevents the proposed basin from accessing Bogue Sound. These changed conditions were not caused by Petitioners, and were probably not foreseen in 1986 when the existing channel was permitted. Accordingly, substantial justice would be preserved by granting this variance.

## Attachment D

# Petitioner's Variance Request Materials

ENCLOSURE MEMO

RECEIVED

OCT 22 2008

N.C. ATTORNEY GENERAL  
Environmental Division

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

DATE: October 21, 2008

RE: CAMA Variance Request

---

Enclosed herewith is the Certificate of Service copy of a CAMA Variance Request submitted today by our Firm. Please call me directly if you have any questions or concerns. 743.7352.

Thank you.

K&L Gates LLP

By:



Charlotte A. Mitchell

08-52

(revised 6/26/06)

Petitioner supplies the following information:

Your Name	Bogue Watch, LLC
Address	c/o Jeffrey Milligan 5511 Capital Center Drive, Suite 105 Raleigh, North Carolina 27606
Telephone	(919)-256-1981
Fax and/or Email	jmilligan@landquestdevelopment.com
Name of Your Attorney (if applicable)	Eric M. Braun, Esq. Charlotte A. Mitchell
Address	K&L Gates, LLP PO Box 17047 Raleigh, North Carolina 27619
Telephone	(919)-743-7300
Fax and/or Email	eric.braun@klgates.com charlotte.mitchell@klgates.com

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?

**Petitioner seeks a permit to excavate a basin from high ground to create a community docking area with nine boat slips and a boat ramp to serve the Bogue Watch community. In addition, petitioner seeks to perform maintenance excavation on a previously permitted and dredged deep water access channel (the "Access Channel") that connects to the Intracoastal Waterway. The excavation of the Access Channel will involve the excavation of 40 linear feet of shallow bottom. Petitioner seeks to connect the upland basin to the Access Channel to provide residents of the Bogue Watch community with access to deep water.**

What Coastal Resources Commission rule(s) prohibit this type of development?

Sanders Creek/Bay is classified as primary nursery area ("PNA"). See 15A NCAC 3N.0103; 3R.0103(12) and North Carolina Marine Fisheries, Fishery Nursery Areas, Map 21. The Specific Use Standards for the Estuarine and Ocean System, set forth in 15A NCAC 7H.0208, disallow dredging in PNA under certain circumstances. Specifically, as set forth in 15A NCAC 7H.0208(b)(1), navigation channels "shall be aligned or located so as to avoid primary nursery areas. . . ."

Thus, based on 15A NCAC 7H.0208(b)(1), the Division of Coastal Management ("DCM") has denied Petitioner's permit application to connect an upland basin to the Access Channel. A copy of the denial letter is attached hereto as Exhibit A.

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 Access Channel was originally permitted in 1984 with the intent to provide access from high ground to the deep water of the Intracoastal Waterway. Thus, the location of the Access Channel is well-established, and the channel itself remains functional. Avoiding PNA to connect to the Access Channel would be impossible, given the location of the Access Channel and the area of PNA designation in Sanders Creek/Bay.

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

Petitioner could obtain a permit to excavate the upland basin and to perform maintenance excavation in the Access Channel up to approximately 40 linear feet from the shoreline.

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.

As maintained by DCM, Petitioner may not excavate the approximate 40 linear feet of shallow bottom in order to connect the upland basin to the Access Channel.

**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).]

Without a variance, Petitioner will not be permitted to connect the upland basin to the pre-existing, established Access Channel to provide deep water access to the residents of the Bogue Watch community. Instead, the basin will be connected to a pre-existing boat ramp which will allow boaters direct access to Sanders Creek/Bay with no restriction on where boaters may travel within the creek/bay to access deep water.

This hardship is unnecessary because the Access Channel exists, is well-established and provides a direct, defined passage to deep water. If Petitioner is not permitted to connect the upland basin to the Access Channel, boaters will be able to enter the creek/bay by way of an existing boat ramp and will access deep water through the channels that form as a result of propeller dredging and boating activity. Thus, the unrestricted, undirected use of Sanders Creek/Bay by Bogue Watch boaters has the potential to result in significant damage to PNA and aquatic habitat of the creek/bay.

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

As described above, the Access Channel connects Sanders Bay to the deep water of the Intracoastal Waterway. The Access Channel was permitted in 1984 pursuant to CAMA Major No. 176-84 issued to T.M. Singleton/Holiday Village (the "Original Permit"). A copy of the Access Channel Permit is attached as Exhibit B. The Original Permit authorized the excavation of the Access Channel from high ground, through Sanders Creek/Bay and into Bogue Sound. As intended under the Original Permit, the Access Channel would connect to an upland basin, providing boaters with an upland put in and docking area and with access to deep water.

The Access Channel was excavated in 1986 and is depicted in multiple aerial photographs. Those aerial photographs are attached as Exhibit C. The estimated length of the Access Channel is 2500 linear feet.

Sanders Creek/Bay designation as PNA was made subsequent to the excavation of the Access Channel

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

As described above, the Access Channel has existed since approximately 1986. As envisioned by the original permittee and by the Division of Coastal Management at the time the Original Permit was issued, the Access Channel would connect to an upland basin in order to provide deep water access to boaters. The current predicament was created by the previous permittee, who was directed to cease dredging at the foot of a pre-existing boat ramp, in order to give boaters access to the channel until the excavation of the upland basin was completed. See Statement of James Mercer, former staff member of Division of Coastal Management, attached as Exhibit D; see also additional affidavits attached as Exhibit E. A subsequent and unexpected change in ownership of the property resulted in the upland basin (that was permitted by the Original Permit) never being excavated.

Additionally, as described above, the PNA designation was made by the Division of Marine Fisheries subsequent to the dredging of the Access Channel.

- 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.

Granting the variance will be consistent with the spirit, purpose and intent of the CRC's rules, standards and orders as it will facilitate the construction of an upland basin and the Division of Marine Fisheries has determined that the activity will not significantly adversely impact fisheries resources and habitat.

Granting the variance will preserve substantial justice by affording members of the Bogue Watch community with the access to deep water envisioned by the Original Permit and substantially completed by the original permittee. Moreover, granting of the variance will allow Petitioner to make use of the Access Channel and to provide the residents of the Bogue Watch community with an upland community docking area and with access to deep water. If the variance is not granted, the residents of the Bogue Watch community will lose this valuable asset.

Granting the variance will preserve public safety and welfare by mitigating the potential impact of boating on the PNA in the Sanders Creek/Bay area. If boating traffic is directed through a clearly defined channel, any adverse impacts of boating on the PNA will be limited.

Please attach copies of the following:

- Permit Application and Denial documents, attached as Exhibit F.
- Site Drawing with Survey and Topographical Information, attached as Exhibit G.
- 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.]

A list of proposed facts is attached as Exhibit H.

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: October 21, 2008

Signature:

A handwritten signature in black ink, consisting of a stylized 'E' followed by a 'B' and a long horizontal line extending to the right.

*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  
VIA FEDERAL EXPRESS

copy: Attorney General's Office  
Environmental Division  
9001 Mail Service Center  
Raleigh, NC 27699-9001  
VIA U.S. MAIL

This the 21st day of October, 2008.

A handwritten signature in black ink, consisting of a large, stylized 'S' or '8' shape followed by a horizontal line extending to the right.

Signature of Petitioner or Attorney

**Exhibit A**



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

October 20, 2008

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Bogue Watch LLC  
c/o John Netherton  
5511 Capital Center Drive, Suite 105  
Raleigh, NC 27606

Dear Sirs:

This letter is in regard to your application request under the Coastal Area Management Act (CAMA) and the State Dredge and Fill Law to construct an upland basin, construct 9 boat slips, and perform both new and maintenance excavation within the waters of Bogue Sound, in Carteret County. Processing of the application, which was received by the Division of Coastal Management's Morehead City office on April 11, 2007, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The proposed project represents a Major Modification request to CAMA Permit No. 141-06. CAMA Permit No. 141-06 authorized the construction of a 287-lot subdivision on +/- 195 acres of land.
- 2) The original major modification request involved the construction of a proposed upland basin and a 29-slip marina. On September 3, 2008, your authorized agent modified the major modification proposal by reducing the number of requested slips to 9. This slip reduction was done to address inconsistencies with the 1996 Carteret County Land Use Plan, which was certified by the Coastal Resources Commission on November 19, 1999.
- 3) The proposed project involves both maintenance excavation of approximately 590 linear feet of a previously excavated navigation channel, as well as new excavation of approximately 40 linear feet of shallow bottom habitat between where the existing navigation channel ends and the current shoreline. At the time of its original construction, the navigation channel ended in close proximity to the shoreline. However, since that time the shoreline has eroded landward approximately 40 feet, resulting in a 40 foot gap of shallow bottom habitat between the end of the navigation channel and the existing shoreline.

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

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Bogue Watch LLC  
October 20, 2008

- 4) The waters of Bogue Sound within the proposed area of excavation are designated as a primary nursery area (PNA), so designated by the Marine Fisheries Commission to afford such areas special protection.
- 5) During the course of the joint state and federal review of the application, the Division of Marine Fisheries, by way of a memo dated October 15, 2007, commented that "...the DMF continues to object to this proposal for new dredging because it is prohibited by rule of the Coastal Resources Commission but removes its concern about significant adverse impacts."
- 6) Based upon the findings outlined above, the excavation of the +/- 40 foot shallow bottom habitat between the end of the existing navigation channel and the existing shoreline has been determined to be inconsistent with the following Rule of the Coastal Resources Commission:

*15A NCAC 07H.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 Modification to Permit No. 141-06 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 Jefferson Ryscavage - U.S. Army Corps of Engineers, Wilmington, NC  
Mr. David Kennedy, Director - OCRM/NOAA, Silver Spring, MD

**Exhibit B**

Permit Class

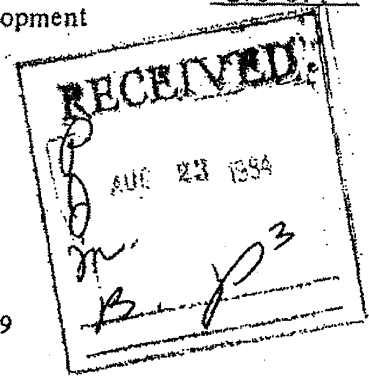
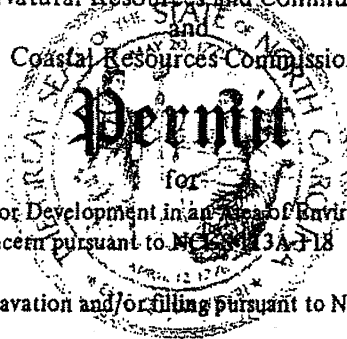
Net

*Jim Miller*  
Permit Number

176-84

STATE OF NORTH CAROLINA  
Department of Natural Resources and Community Development

Coastal Resources Commission



- Major Development in an Area of Environmental Concern pursuant to NCGS 13A-118
- Excavation and/or filling pursuant to NCGS 113-229

Issued to Messrs. T.M. Singleton & W.B. Fowler, 5214 Boque Sound Dr., Emerald Isle, NC 28557  
 authorizing development in Carteret County at Boque Sound at Sanders Creek  
 as requested in the permittee's application dated 3/26/84 including  
attached plats, sheets 1-14 of 14 dated received 6/30/84.

This permit, issued on 8/21/84, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action; or may cause the permit to be null and void.

- (1) The work will be accomplished in strict accordance with revised drawings which eliminated dredging in Sanders Creek and excavation and enlargement of boat basins Nos. 2 and 3.
  - (2) In order to protect juvenile shrimp populations, <sup>open water</sup> no excavation or filling will be permitted between April 1 and September 30 of any year without the prior approval of the Office of Coastal Management.
  - (3) The canal between proposed boat basin No. 1 and Point A (Sanders Creek) will be excavated no deeper than the controlling depth in this area of the creek, approximately 2 feet, mean low water (MLW).
  - (4) The maximum depth of the boat basin No. 1 and the access channel/canal will not exceed 6 feet, mean low water (MLW).
  - (5) All upland excavation, boat basin No. 1 and the access canal, will be accomplished landward of a plug. To prevent unnecessary sediments from reaching adjacent waters, a 24-hour period will be allowed to elapse after excavation prior to removal of the plug.
- (See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on December 31, 1987

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DNRC and the Chairman of the Coastal Resources Commission.

*David W. Owens*  
for David W. Owens, Director  
Office of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

- (6) No excavated or fill material will be placed at any time in any marsh or surrounding waters outside of the alignment of the fill area indicated on the plat.
- (7) The diked disposal area will be constructed a sufficient distance from the MHW level or any marsh to eliminate the possibility of dike erosion into or upon any marsh and/or surrounding waters.
- (8) The dike, excavated area, backfill material, spoil area, and all disturbed areas will be properly graded and provided a ground cover sufficient to restrain erosion within 30 days of project completion.
- (9) All excavated materials will be confined landward of the mean high water (MHW) elevation contour within adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.
- (10) The terminal end of the pipeline from the dredge into the diked retention area will be positioned at or greater than 50 feet from any part of the dike and at a maximum distance from spillways to prevent dike erosion and to allow adequate settlement of suspended solids.
- (11) A water control structure will be installed at the intake end of the effluent pipe leading from the retention area in order to insure maximum settlement of suspended solids.
- (12) Flow from the diked retention area will be confined by pipe, trough or similar device to a point at or below the mean low water (MLW) elevation contour to prevent gully erosion and resultant unnecessary siltation.
- (13) No wetland will be excavated or filled as a result of the construction of the new bridge located east of the proposed excavated material retention area.
- (14) Grading of adjacent property will be such that no surface run-off enters the marina basin or access canal.
- (15) Should the permittees encounter cultural resources during accomplishment of the work, they will immediately cease work and notify the Wilmington District Engineer and the Office of Coastal Management.
- \* (16) Prior to occupancy of any slips authorized under this permit, the permittee will permanently equip the marina with a pump-out facility to service boats with holding tanks.
- (17) All floating structures, other than boats, used for habitation or commerce (as defined in 15 NCAC 7M.0602) shall be in conformance with local regulations for on-shore sewage treatment.
- \* (18) A locked head policy must be posted and enforced at the marina.



Messers. T.M. Singleton  
W. B. Fowler  
Holliday Village

Permit #176-84  
Page 3 of 3

ADDITIONAL CONDITIONS

NOTE: The permittee and/or his contractor is urged to meet with a representative of the OCM and a representative of the U.S. Army Corps of Engineers prior to project initiation.

NOTE: This project is certified by the Division of Environmental Management under Section 401 General Water Quality Certification No. 1272 for bulkhead construction and No. 1273 for discharges from diked upland disposal areas.

NOTE: The permittee is advised that the Sanders Creek area is classified as Zone V-3 with a Base Flood Elevation of 9.1'. If natural grade is not above that elevation, structures must be elevated on pilings.

NOTE: An Erosion and Sedimentation control plan will be required for this project. This plan must be filed at least thirty (30) days prior to beginning any land disturbing activity. Submit this plan to the Department of Natural Resources and Community Development, Land Quality Section, 7225 Wrightsville Avenue, Wilmington, NC 28403.

Permit Class  
Modified by CRC

STATE OF NORTH CAROLINA  
Department of Natural Resources and Community Development  
and  
Coastal Resources Commission

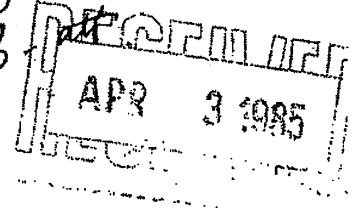
Permit Number  
176-84

# Permit

for

Major Development in an Area of Environmental Concern pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229



Issued to Messers. T.M. Singleton & W.B. Fowler, 5214 Bogue Sound Dr., Emerald Isle, NC 28557  
authorizing development in Carteret County at Boque Sound at Sanders Creek  
as requested in the permittee's application dated 3/26/84 including  
attached plats, sheets 1-14 of 14, dated received 6/20/84.

This permit, issued on 3/20/85, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action; or may cause the permit to be null and void.

**Re: Excavation, Filling, Grading & Erosion Control**

- (1) The work will be accomplished in strict accordance with revised drawings which eliminated dredging in Sanders Creek and excavation and enlargement of boat basins Nos. 2 and 3.
- (2) The permittee and/or his contractor must meet with a representative of the DCM and a representative of the U.S. Army Corps of Engineers prior to project initiation. At such meeting, the permittee will be requested to stake and flag the offshore channel alignment as approved in the permit in order to preclude any misunderstanding of the permit and to allow for minor adjustments in said alignment to protect area shellfish beds and sea grass beds.
- (3) In order to protect juvenile shrimp populations, no excavation or filling will be permitted between April 1 and September 30 of any year without the prior approval of the Division of Coastal Management with the exception that the highground basin may be excavated behind a plug (See Condition #6) at anytime.
- (4) The canal between proposed boat basin No. 1 and Point A (Sanders Creek)

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on  
December 31, 1987

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DNRC and the Chairman of the Coastal Resources Commission.

David W. Owens, Director  
Office of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

will be excavated no deeper than the controlling depth in this area of the creek, approximately 2 feet, mean low water (MLW).

- (5) The depth of the boat basin No. 1 and the access channel/canal will not exceed 6 feet, mean low water (MLW).
- (6) All upland excavation, boat basin No. 1 and the access canal will be accomplished landward of a plug. To prevent unnecessary sediments from reaching adjacent waters, at least a 24-hour period will be allowed to elapse after excavation prior to removal of the plug and removal of the plug will be in consultation with a DCM field consultant.
- (7) No excavated or fill material will be placed at any time in any marsh or surrounding waters outside of the alignment of the fill area indicated on the plat.
- (8) The diked disposal area will be constructed a sufficient distance from the MHW level or any marsh to eliminate the possibility of dike erosion into or upon any marsh and/or surrounding waters.
- (9) The dike, excavated area, backfill material, spoil area, and all disturbed areas will be properly graded and provided a ground cover sufficient to restrain erosion within 30 days of project completion.
- (10) All excavated materials will be confined landward of the mean high water (MHW) elevation contour within adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.
- (11) The terminal end of the pipeline from the dredge into the diked retention area will be positioned at or greater than 50 feet from any part of the dike and at a maximum distance from spillways to prevent dike erosion and to allow adequate settlement of suspended solids.
- (12) A water control structure will be installed at the intake end of the effluent pipe leading from the retention area in order to insure maximum settlement of suspended solids.
- (13) Flow from the diked retention area will be confined by pipe, trough or similar device to a point at or below the mean low water (MLW) elevation contour to prevent gully erosion and resultant unnecessary siltation.
- (14) No wetland will be excavated or filled as a result of the construction of the new bridge located east of the proposed excavated material retention area.
- (15) Grading of adjacent property will be such that no surface runoff enters the marina basin or access canal.

NOTE: An Erosion and Sedimentation control plan will be required for this project. This plan must be filed at least thirty (30) days prior to beginning any land disturbing activity. Submit this plan to the Department of Natural Resources and Community Development, Land Quality Section, 7225 Wrightsville Avenue, Wilmington, NC 28403.

NOTE: The permittee is advised that the Sanders Creek area is classified as Zone V-3 with a Base Flood Elevation of 9.1'. If natural grade is not above that elevation, structures must be elevated on pilings.

ADDITIONAL CONDITIONS

Re: Cultural Resources

- (15) Should the permittees encounter cultural resources during accomplishment of the work, they will immediately cease work and notify the Wilmington District Engineer and the Division of Coastal Management.

Re: Marina Operation & Water Quality

- (16) In order to protect the public interest with respect to applicable factors enumerated in G.S. 113A-120(a) and based on the application and supporting documents, use and operation of the development shall be restricted, through duly recorded restrictive covenants and/or Declaration of Unit Ownership and bylaws of a homeowner's association, in accordance with the terms and conditions of this permit.

A copy of the recorded document certified to be true and correct by the Carteret County Register of Deeds, shall be filed with the Div. of Coastal Management prior to beginning construction. The restrictive covenants or similar documents shall not be subject to the expiration date applicable to the permit.

- (17) No person shall be allowed to live aboard vessels in the marina.
- (18) Prior to occupancy of any slips authorized under this permit, the permittee will permanently equip the marina with a pumpout facility to service boats with holding tanks.
- (19) All floating structures, other than boats, used for habitation or commerce (as defined in 15 NCAC 7M.0602) shall be in conformance with local regulations for onshore sewage treatment.
- (20) A locked-head policy must be posted and enforced at the marina.
- (21) Prior to marina occupancy, the permittee must construct restrooms at the marina and operate same in compliance with standards and guidelines of the Division of Health Services and/or the Carteret County Health Department.
- (22) Trash receptacles, sufficient in number to provide easy access and capacity, will be installed at the marina prior to occupancy.
- (23) Water quality monitoring on a monthly basis, starting prior to occupancy of any slips within the basin, will be accomplished by the permittee contracting the services of an independent consulting firm. Testing will be carried out for coliform bacteria and other pollutants. Samples will be taken from the marina basin, connector canal, and circulation canal. Test results will be submitted monthly to the Div. of Environmental Management, the Div. of Health Services and the Div. of Coastal Management and the N.C. Coastal Federation.
- (24) Marina operation rules detailing safe and clean boating handling practices will be posted.
- (25) Fueling facilities will not be allowed at the marina.

NOTE: It is strongly recommended that the permittee require his engineering consultant to design all available and reasonable safeguards into the marina concept in order to protect water quality of adjacent waters.

NOTE: It is strongly recommended that the permittee seek approval from the N.C. Wildlife Resources Commission to post "No Wake" signs in the channel and marina in accordance with the Uniform State Waterway Marking System

Messrs. T. M. Singleton & W. B. Fowler  
Holliday Village

Permit #176-84  
Page 4 of 4

ADDITIONAL CONDITIONS

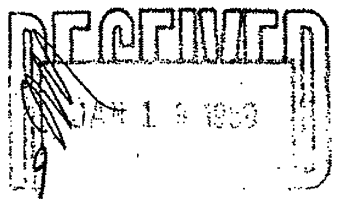
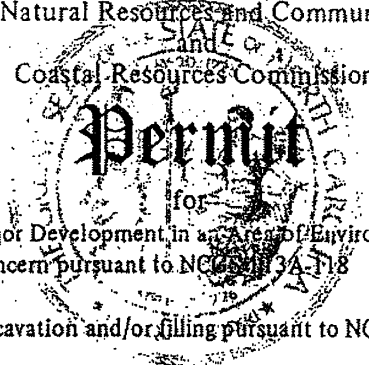
so that such posting is legally enforceable by that agency.

NOTE: This project is certified by the Division of Environmental Management under Section 401 General Water Quality Certification No. 1272 for bulkhead construction and No. 1273 for discharges from diked upland disposal areas.

Permit Class  
2nd RENEWAL

Permit Number  
176-84

STATE OF NORTH CAROLINA  
Department of Natural Resources and Community Development  
Coastal Resources Commission



- Major Development in an Area of Environmental Concern pursuant to NCGS 113-34-118
- Excavation and/or filling pursuant to NCGS 113-229 *COT*

Issued to Messrs. T. M. Singleton & W. B. Fowler, c/o A.R. Denning, P.O. Box 310, Morehead City, NC 28557  
 authorizing development in Carteret County at Boque Sound at Sanders Creek  
 as requested in the permittee's application dated 3/26/84 including  
project plats, sheets 1-14 of 14, dated received 6/20/84.

This permit, issued on 1/11/85, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action; or may cause the permit to be null and void.

\*This permit renewal must be attached to the renewal of November 20, 1987 and be available on-site when Division representatives inspect the project for compliance. All conditions of the 11/87 renewal apply to this renewal.

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on January 15, 1990

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DNRCD and the Chairman of the Coastal Resources Commission.

*David W. Owens*  
 \_\_\_\_\_  
 David W. Owens, Director  
 Division of Coastal Management

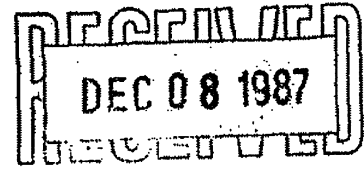
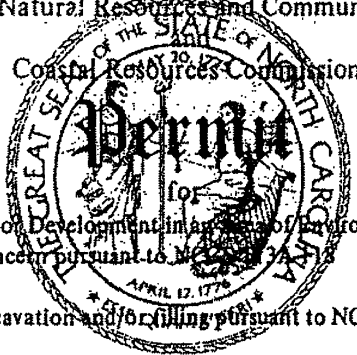
This permit and its conditions are hereby accepted.

\_\_\_\_\_  
 Signature of Permittee

Permit Class  
Renewal

Permit Number  
176-84

STATE OF NORTH CAROLINA  
Department of Natural Resources and Community Development



Major Development in an Area of Environmental Concern pursuant to NCGS 113-229

Excavation and/or filling pursuant to NCGS 113-229

Issued to Messrs. T. M. Singleton & W. B. Fowler, c/o A.R. Denning, P.O. Box 310 Morehead City

NC 27557

authorizing development in Carteret County at Boque Sound at Sanders Creek

as requested in the permittee's application dated 3/26/84 including

attached plats, sheets 1-14 of 14, dated received 6/20/84.

This permit, issued on 11/20/87, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action; or may cause the permit to be null and void.

Re: Excavation, Filling, Grading & Erosion Control

- (1) The work will be accomplished in strict accordance with revised drawings which eliminated dredging in Sanders Creek and excavation and enlargement of boat basins Nos. 2 and 3.
- (2) The permittee and/or his contractor must meet with a representative of the DCM and a representative of the U.S. Army Corps of Engineers prior to project initiation. At such meetings, the permittee will be requested to stake and flag the offshore channel alignment as approved in the permit in order to preclude any misunderstanding of the permit and to allow for minor adjustments in said alignment to protect area shellfish beds and sea grass beds.
- (3) In order to protect juvenile shrimp populations, no excavation or filling will be permitted between April 1 and September 30 of any year without the prior approval of the Division of Coastal Management with the exception that the highground basin may be excavated behind a plug (See Condition (See attached sheet for Additional Conditions))

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on  
December 31, 1988

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DNCRD and the Chairman of the Coastal Resources Commission.

David W. Owens, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

#6 at anytime.

- (4) The canal between proposed boat basin No. 1 and Point A (Sanders Creek) will be excavated no deeper than the controlling depth in this area of the creek, approximately 2 feet, mean low water (MLW).
- (5) The depth of the boat basin No. 1 and the access channel/canal will not exceed 6 feet, mean low water (MLW).
- (6) All upland excavation, boat basin No. 1 and the access canal will be accomplished landward of a plug. To prevent unnecessary sediments from reaching adjacent waters, at least a 24-hour period will be allowed to elapse after excavation prior to removal of the plug and removal of the plug will be in consultation with a DCM field consultant.
- (7) No excavated or fill material will be placed at any time in any marsh or surrounding waters outside of the alignment of the fill area indicated on the plat.
- (8) The diked disposal area will be constructed a sufficient distance from the MHW level or any marsh to eliminate the possibility of dike erosion into or upon any marsh and/or surrounding waters.
- (9) The dike, excavated area, backfill material, spoil area, and all disturbed areas will be properly graded and provided a ground cover sufficient to restrain erosion within 30 days of project completion.
- (10) All excavated materials will be confined landward of the mean high water (MHW) elevation contour within adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.
- (11) The terminal end of the pipeline from the dredge into the diked retention area will be positioned at or greater than 50 feet from any part of the dike and at a maximum distance from spillways to prevent dike erosion and to allow adequate settlement of suspended solids.
- (12) A water control structure will be installed at the intake end of the effluent pipe leading from the retention area in order to insure maximum settlement of suspended solids.
- (13) Flow from the diked retention area will be confined by pipe, trough or similar device to a point at or below the mean low water (MLW) elevation contour to prevent gully erosion and resultant unnecessary siltation.
- (14) No wetland will be excavated or filled as a result of the construction of the new bridge located east of the proposed excavated material retention area.
- (15) Grading of adjacent property will be such that no surface runoff enters the marina basin or access canal.

NOTE: An Erosion and Sedimentation control plan will be required for this project. This plan must be filed at least thirty (30) days prior to beginning



Messrs. T. M. Singleton &  
W. B. Fowler

Permit #176-84  
Page 3

#### ADDITIONAL CONDITIONS

any land disturbing activity. Submit this plan to the Department of Natural Resources and Community Development, Land Quality Section, 7225 Wrightsville Ave., Wilmington, NC 28403.

NOTE: The permittee is advised that the Sanders Creek area is classified as Zone V-3 with a Base Flood Elevation of 9.1'. If natural grade is not above that elevation, structures must be elevated on pilings.

#### Re: Cultural Resources

- (15) Should the permittee encounter cultural resources during accomplishment of the work, they will immediately cease work and notify the Wilmington District Engineer and the Division of Coastal Management.

#### Re: Marina Operation & Water Quality

- (16) In order to protect the public interest with respect to applicable factors enumerated in G.S. 113A-120(a) and based on the application and supporting documents, use and operation of the development shall be restricted, through duly recorded restrictive covenants and/or Declaration of Unit Ownership and bylaws of a homeowner's association, in accordance with the terms and conditions of this permit.

A copy of the recorded document certified to be true and correct by the Carteret County Register of Deeds, shall be filed with the Div. of Coastal Management prior to beginning construction. The restrictive covenants or similar documents shall not be subject to the expiration date applicable to the permit.

- (17) No person shall be allowed to live aboard vessels in the marina.
- (18) Prior to occupancy of any slips authorized under this permit, the permittee will permanently equip the marina with a pumpout facility to service boats with holding tanks.
- (19) All floating structures, other than boats, used for habitation or commerce (as defined in 15 NCAC 7M.0602) shall be in conformance with local regulations for onshore sewage treatment.
- (20) A no sewage discharge policy must be posted and enforced at the marina.
- (21) Prior to marina occupancy, the permittee must construct restrooms at the marina and operate same in compliance with standards and guidelines of the Division of Health Services and/or the Carteret County Health Department.
- (22) Trash receptacles, sufficient in number to provide easy access and capacity, will be installed at the marina prior to occupancy.
- (23) Water quality monitoring on a monthly basis, starting prior to occupancy of any slips within the basin, will be accomplished by the permittee contracting the services of an independent consulting firm. Testing will be carried

ADDITIONAL CONDITIONS

out for coliform bacteria and other pollutants. Samples will be taken from the marina basin, connector canal, and circulation canal. Test results will be submitted monthly to the Div. of Environmental Management, the Div. of Health Services and the Div. of Coastal Management and the N. C. Coastal Federation.

- (24) Marina operation rules detailing safe and clean boating handling practices will be posted.
- (25) Fueling facilities will not be allowed at the marina.

NOTE: It is strongly recommended that the permittee require his engineering consultant to design all available and reasonable safeguards into the marina concept in order to protect water quality of adjacent waters.

NOTE: It is strongly recommended that the permittee seek approval from the N. C. Wildlife Resources Commission to post "No Wake" signs in the channel and marina in accordance with the Uniform State Waterway Marking System so that such posting is legally enforceable by that agency.

NOTE: This project is certified by the Division of Environmental Management under Section 401 General Water Quality Certification No. 1272 for bulkhead construction and No. 1273 for discharges from diked upland disposal areas.

Permit Class

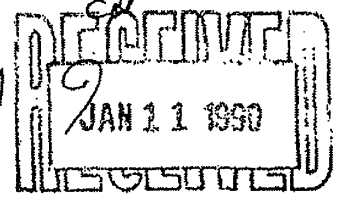
Permit Number

3rd Renewal

176-84

STATE OF NORTH CAROLINA  
Department of Natural Resources and Community Development  
and  
Coastal Resources Commission

**Permit**



Major Development in an Area of Environmental Concern  
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to Messrs. T. M. Singleton & W.B. Fowler, c/o A.R. Denning, P.O. Box 310, Morehead City, NC 28557

authorizing development in Carteret County at Bogue Sound at Sanders Creek  
as requested in the permittee's application dated 3/26/84 including  
project plats, sheets 1-14 of 14, dated received 6/20/84.

This permit, issued on \_\_\_\_\_, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

\*This permit renewal must be attached to the renewal of January 11, 1989 and be available on site when Division personnel inspect the project for compliance. All conditions of the 1/11/89 renewal apply to this renewal.

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on

January 15, 1991

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DNRCD and the Chairman of the Coastal Resources Commission.

George T. Everett, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.

\_\_\_\_\_  
Signature of Permittee

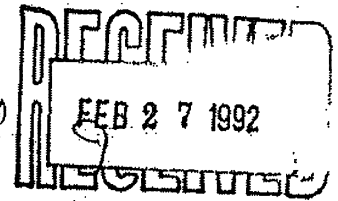
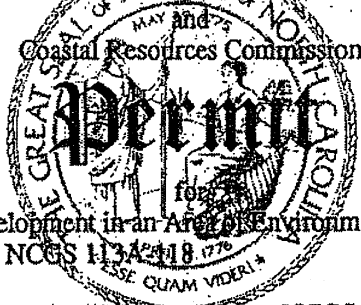
Permit Class

Permit Number

4th RENEWAL

176-84

STATE OF NORTH CAROLINA  
Department of Environment, Health & Natural Resources



- Major Development in an Area of Environmental Concern pursuant to NCGS 113A-418
- Excavation and/or filling pursuant to NCGS 113-229

Issued to T. M. Singleton, (Holiday Village), 1891 Hwy. 24, East, Newport, NC 28570

authorizing development in Carteret County at Boque Sound at Sanders Creek as requested in the permittee's application dated 3/26/84 including work plan drawings, sheets 1-14 of 14, dated received 6/20/84 and deed plat for relocated spoil area dated 1/10/90.

This permit, issued on February 19, 1992, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

**NOTE:**

All development authorized herein must take place on land owned by the permittee or for which an easement has been provided. Any revision to the marina development authorized herein will require a modification of this permit. Development of the remainder of the 84.2 acre tract for residential or other use may require permit modification. And all development on the tract must be under a current stormwater management plan as required by the Division of Environmental Management.

**Re: Excavation, Filling, Grading and Erosion Control**

- 1) The work will be accomplished in strict accordance with revised drawings which eliminated dredging in Sanders Creek and excavation and enlargement of boat basins Nos. 2 and 3.

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

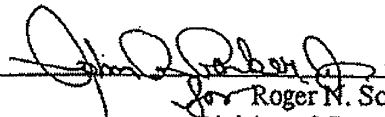
Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on

February 28, 1993

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DEHNR and the Chairman of the Coastal Resources Commission.

  
for Roger N. Schecter  
Division of Coastal Resources

This permit and its conditions are hereby

ADDITIONAL CONDITIONS

- 2) The permittee and/or his contractor must meet with a representative of the DCM and a representative of the U. S. Army Corps of Engineers prior to project initiation. At such meeting, the permittee will be requested to stake and flag the offshore channel alignment as approved in the permit in order to preclude any misunderstanding of the permit and to allow for minor adjustments in said alignment to protect area shellfish beds and sea grass beds.
- 3) In order to protect juvenile shrimp populations, no excavation or filling will be permitted between April 1 and September 30 of any year without the prior approval of the Division of Coastal Management with the exception that the highground basin may be excavated behind a plug (See Condition #6) at anytime.
- 4) The canal between proposed boat basin No. 1 and Point A (Sanders Creek) will be excavated no deeper than the controlling depth in this area of the creek, approximately 2 feet, mean low water (MLW).
- 5) The depth of the boat basin No. 1 and the access channel/canal will not exceed 5 feet, mean low water (MLW).
- 6) All upland excavation, boat basin No. 1 and the access canal will be accomplished landward of a plug. To prevent unnecessary sediments from reaching adjacent waters, at least a 24-hour period will be allowed to elapse after excavation prior to removal of the plug and removal of the plug will be in consultation with a DCM field consultant.
- 7) No excavated or fill material will be placed at any time in any marsh or surrounding waters outside of the alignment of the fill area indicated on the plat.
- 8) The diked disposal area will be constructed a sufficient distance from the MHW level or any marsh to eliminate the possibility of dike erosion into or upon any marsh and/or surrounding waters.
- 9) The dike, excavated area, backfill material, spoil area, and all disturbed areas will be properly graded and provided a ground cover sufficient to restrain erosion within 30 days of project completion.
- 10) All excavated materials will be confined landward of the mean high water (MHW) elevation contour within adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.
- 11) The terminal end of the pipeline from the dredge into the diked retention area will be positioned at or greater than 50 feet from any part of the dike and at a maximum distance from spillways to prevent dike erosion and to allow adequate settlement of suspended solids.

**ADDITIONAL CONDITIONS**

- 12) A water control structure will be installed at the intake end of the effluent pipe leading from the retention area in order to insure maximum settlement of suspended solids.
- 13) Flow from the diked retention area will be confined by pipe, trough or similar device to a point at or below the mean low water (MLW) elevation contour to prevent gully erosion and resultant unnecessary siltation.
- 14) No wetland will be excavated or filled as a result of the construction of the new bridge located east of the proposed excavated material retention area.
- 15) Grading of adjacent property will be such that no surface runoff enters the marina basin or access canal.

**NOTE:** An Erosion and Sedimentation Control Plan will be required for this project. This plan must be filed at least thirty (30) days prior to beginning any land disturbing activity. Submit this plan to the Department of Environment, Health and Natural Resources, Land Quality Section, 127 Cardinal Drive, Wilmington, NC 28405-3845

**NOTE:** The permittee is advised that the Sanders Creek area is classified as Zone V-3 with a Base Flood Elevation of 9.1'. If natural grade is not above that elevation, structures must be elevated on pilings.

**Re: Cultural Resources**

- 16) Should the permittee encounter cultural resources during accomplishment of the work, they will immediately cease work and notify the Wilmington District Engineer and the Division of Coastal Management.

**Re: Marina Operation and Water Quality**

- 17) In order to protect the public interest with respect to applicable factors enumerated in G.S. 113A-120(a) and based on the application and supporting documents, use and operation of the development shall be restricted, through duly recorded restrictive covenants and/or Declaration of Unit Ownership and bylaws of a homeowner's association, in accordance with the terms and conditions of this permit.

A copy of the recorded document certified to be true and correct by the Carteret County Register of Deeds, shall be filed with the Division of Coastal Management prior to beginning construction. The restrictive covenants or similar documents shall not be subject to the expiration date applicable to the permit.

- 18) No person shall be allowed to live aboard vessels in the marina.

ADDITIONAL CONDITIONS

- 19) Prior to occupancy of any slips authorized under this permit, the permittee will permanently equip the marina with a pumpout facility to service boats with holding tanks.
- 20) All floating structures, other than boats, used for habitation or commerce (as defined in 15 NCAC 7M.0602) shall be in conformance with local regulations for onshore sewage treatment.
- 21) A "no sewage discharge" policy must be posted and enforced at the marina.
- 22) Prior to marina occupancy, the permittee must construct restrooms at the marina and operate same in compliance with standards and guidelines of the Division of Health Services and/or the Carteret County Health Department.
- 23) Trash receptacles, sufficient in number to provide easy access and capacity, will be installed at the marina prior to occupancy.
- 24) Water quality monitoring on a monthly basis, starting prior to occupancy of any slips within the basin, will be accomplished by the permittee contracting the services of an independent consulting firm. Testing will be carried out for coliform bacteria and other pollutants. Samples will be taken from the marina basin, connector canal, and circulation canal. Test results will be submitted monthly to the Division of Environmental Management, the Division of Health Services and the Division of Coastal Management and the N. C. Coastal Federation.
- 25) Marina operation rules detailing safe and clean boating handling practices will be posted.
- 26) Fueling facilities will not be allowed at the marina.

NOTE: It is strongly recommended that the permittee require his engineering consultant to design all available and reasonable safeguards into the marina concept in order to protect water quality of adjacent waters.

NOTE: It is strongly recommended that the permittee seek approval from the N. C. Wildlife Resources Commission to post "No Wake" signs in the channel and marina in accordance with the Uniform State Waterway Marking System so that such posting is legally enforceable by that agency.

NOTE: This project is certified by the Division of Environmental Management under Section 401 General Water Quality Certification No. 1272 for bulkhead construction and No. 1273 for discharges from diked upland disposal areas.

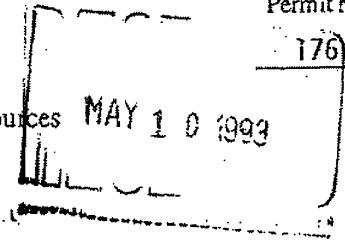
Permit Class

5th RENEWAL

Permit Number

176-84

STATE OF NORTH CAROLINA  
Department of Environment, Health & Natural Resources  
and  
Coastal Resources Commission



# Permit

for

- Major Development in an Area of Environmental Concern pursuant to NCGS 113A-118
- Excavation and/or filling pursuant to NCGS 113-229

Issued to T.M. Singleton, (Holiday Village), 1891 Hwy. 24, East, Newport, NC 28570

authorizing development in Carteret County at Boque Sound at Sanders Creek  
as requested in the permittee's application dated 1/27/93 letter dated 1/27/93.

This permit, issued on March 5, 1993, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

\*This permit renewal must be attached to the renewal dated 2/19/92 and both documents, with attachments, must be readily available on site when a Division representative inspects the project for compliance. All conditions and stipulations of the permit issued on 2/19/92 remain in force under this renewal.

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not listed hereunder requires further Departmental approval.

work must cease when the permit expires on March 1, 1994

If this permit, the State of North Carolina agrees that the project is consistent with the North Carolina Management Program.

Signed by the authority of the Secretary of DEHNR and the Chairman of the Coastal Resources Commission.

\_\_\_\_\_  
Roger N. Schecter, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.

\_\_\_\_\_  
Signature of Permittee



Permit Class

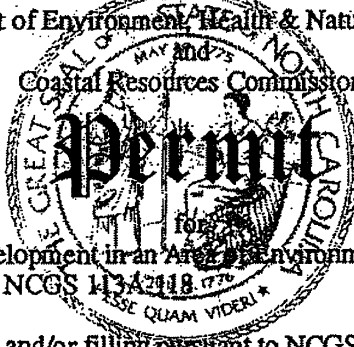
Permit Number

4th RENEWAL

176-84

STATE OF NORTH CAROLINA  
Department of Environment, Health & Natural Resources

Coastal Resources Commission



MAY 10 1993

- Major Development in an Area of Environmental Concern pursuant to NCGS 113A-2118
- Excavation and/or filling pursuant to NCGS 113-229

Issued to T. M. Singleton, (Holiday Village), 1891 Hwy. 24, East, Newport, NC 28570

authorizing development in Carteret County at Bogue Sound at Sanders Creek as requested in the permittee's application dated 3/26/84 including work plan drawings, sheets 1-14 of 14, dated received 6/20/84 and deed plat for relocated spoil area dated 1/10/90.

This permit, issued on February 19, 1992, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to a fine, imprisonment or civil action; or may cause the permit to be null and void.

**NOTE:**

All development authorized herein must take place on land owned by the permittee or for which an easement has been provided. Any revision to the marina development authorized herein will require a modification of this permit. Development of the remainder of the 84.2 acre tract for residential or other use may require permit modification. And all development on the tract must be under a current stormwater management plan as required by the Division of Environmental Management.

**Re: Excavation, Filling, Grading and Erosion Control**

- 1) The work will be accomplished in strict accordance with revised drawings which eliminated dredging in Sanders Creek and excavation and enlargement of boat basins Nos. 2 and 3.

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance, as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

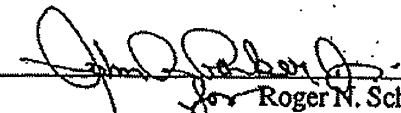
Any maintenance work or project modification not covered hereunder requires further Departmental approval.

All work must cease when the permit expires on

February 28, 1993

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DEHNR and the Chairman of the Coastal Resources Commission.

  
\_\_\_\_\_  
for Roger N. Schecter, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.

\_\_\_\_\_  
Signature of Permittee

ADDITIONAL CONDITIONS

- 2) The permittee and/or his contractor must meet with a representative of the DCM and a representative of the U. S. Army Corps of Engineers prior to project initiation. At such meeting, the permittee will be requested to stake and flag the offshore channel alignment as approved in the permit in order to preclude any misunderstanding of the permit and to allow for minor adjustments in said alignment to protect area shellfish beds and sea grass beds.
- 3) In order to protect juvenile shrimp populations, no excavation or filling will be permitted between April 1 and September 30 of any year without the prior approval of the Division of Coastal Management with the exception that the highground basin may be excavated behind a plug (See Condition #6) at anytime.
- 4) The canal between proposed boat basin No. 1 and Point A (Sanders Creek) will be excavated no deeper than the controlling depth in this area of the creek, approximately 2 feet, mean low water (MLW).
- 5) The depth of the boat basin No. 1 and the access channel/canal will not exceed 5 feet, mean low water (MLW).
- 6) All upland excavation, boat basin No. 1 and the access canal will be accomplished landward of a plug. To prevent unnecessary sediments from reaching adjacent waters, at least a 24-hour period will be allowed to elapse after excavation prior to removal of the plug and removal of the plug will be in consultation with a DCM field consultant.
- 7) No excavated or fill material will be placed at any time in any marsh or surrounding waters outside of the alignment of the fill area indicated on the plat.
- 8) The diked disposal area will be constructed a sufficient distance from the MHW level or any marsh to eliminate the possibility of dike erosion into or upon any marsh and/or surrounding waters.
- 9) The dike, excavated area, backfill material, spoil area, and all disturbed areas will be properly graded and provided a ground cover sufficient to restrain erosion within 30 days of project completion.
- 10) All excavated materials will be confined landward of the mean high water (MHW) elevation contour within adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.
- 11) The terminal end of the pipeline from the dredge into the diked retention area will be positioned at or greater than 50 feet from any part of the dike and at a maximum distance from spillways to prevent dike erosion and to allow adequate settlement of suspended solids.

**ADDITIONAL CONDITIONS**

- 12) A water control structure will be installed at the intake end of the effluent pipe leading from the retention area in order to insure maximum settlement of suspended solids.
- 13) Flow from the diked retention area will be confined by pipe, trough or similar device to a point at or below the mean low water (MLW) elevation contour to prevent gully erosion and resultant unnecessary siltation.
- 14) No wetland will be excavated or filled as a result of the construction of the new bridge located east of the proposed excavated material retention area.
- 15) Grading of adjacent property will be such that no surface runoff enters the marina basin or access canal.

**NOTE:** An Erosion and Sedimentation Control Plan will be required for this project. This plan must be filed at least thirty (30) days prior to beginning any land disturbing activity. Submit this plan to the Department of Environment, Health and Natural Resources, Land Quality Section, 127 Cardinal Drive, Wilmington, NC 28405-3845

**NOTE:** The permittee is advised that the Sanders Creek area is classified as Zone V-3 with a Base Flood Elevation of 9.1'. If natural grade is not above that elevation, structures must be elevated on pilings.

**Re: Cultural Resources**

- 16) Should the permittee encounter cultural resources during accomplishment of the work, they will immediately cease work and notify the Wilmington District Engineer and the Division of Coastal Management.

**Re: Marina Operation and Water Quality**

- 17) In order to protect the public interest with respect to applicable factors enumerated in G.S. 113A-120(a) and based on the application and supporting documents, use and operation of the development shall be restricted, through duly recorded restrictive covenants and/or Declaration of Unit Ownership and bylaws of a homeowner's association, in accordance with the terms and conditions of this permit.

A copy of the recorded document certified to be true and correct by the Carteret County Register of Deeds, shall be filed with the Division of Coastal Management prior to beginning construction. The restrictive covenants or similar documents shall not be subject to the expiration date applicable to the permit.

- 18) No person shall be allowed to live aboard vessels in the marina.

ADDITIONAL CONDITIONS

- 19) Prior to occupancy of any slips authorized under this permit, the permittee will permanently equip the marina with a pumpout facility to service boats with holding tanks.
- 20) All floating structures, other than boats, used for habitation or commerce (as defined in 15 NCAC 7M.0602) shall be in conformance with local regulations for onshore sewage treatment.
- 21) A "no sewage discharge" policy must be posted and enforced at the marina.
- 22) Prior to marina occupancy, the permittee must construct restrooms at the marina and operate same in compliance with standards and guidelines of the Division of Health Services and/or the Carteret County Health Department.
- 23) Trash receptacles, sufficient in number to provide easy access and capacity, will be installed at the marina prior to occupancy.
- 24) Water quality monitoring on a monthly basis, starting prior to occupancy of any slips within the basin, will be accomplished by the permittee contracting the services of an independent consulting firm. Testing will be carried out for coliform bacteria and other pollutants. Samples will be taken from the marina basin, connector canal, and circulation canal. Test results will be submitted monthly to the Division of Environmental Management, the Division of Health Services and the Division of Coastal Management and the N. C. Coastal Federation.
- 25) Marina operation rules detailing safe and clean boating handling practices will be posted.
- 26) Fueling facilities will not be allowed at the marina.

NOTE: It is strongly recommended that the permittee require his engineering consultant to design all available and reasonable safeguards into the marina concept in order to protect water quality of adjacent waters.

NOTE: It is strongly recommended that the permittee seek approval from the N. C. Wildlife Resources Commission to post "No Wake" signs in the channel and marina in accordance with the Uniform State Waterway Marking System so that such posting is legally enforceable by that agency.

NOTE: This project is certified by the Division of Environmental Management under Section 401 General Water Quality Certification No. 1272 for bulkhead construction and No. 1273 for discharges from diked upland disposal areas.

Exhibit C

Color copies available at the  
CRC Meeting



M-389Z 1-808-2-96-95 RC-20 NCDOT DIV HWS PLTGM UNIT 39-480



**Exhibit D**



Robert Jackson / Holiday Village / October 2007

In July of 1980, I was hired by the Office of Coastal Management (OCM) as a Senior Field Representative located in Morehead City. At that time, there were only 20 to 25 people employed in the entire North Carolina program that implemented the Coastal Area Management Act (CAMA). Ken Stewart was the Director, David Owens was the Assistant Director and John R. Parker, Jr. was the Permit Coordinator located in Raleigh. Preston P. Pate, III was the Chief of the Field Services Section headquartered at the Division of Marine Fisheries office building on Arendell Street. Charles S. Jones and I were the two CAMA field consultants in the Morehead City office until the mid 1980s.

We covered all activities in 26 counties and 12 different towns related to Land Use Planning, Minor CAMA Permit Program, Major CAMA Permits and Regulatory Monitoring and Enforcement. During that time, the pressure for waterfront development in the central district was extraordinary. The CAMA permit program not only offers authority over water related activities but also over planned development on the highground property. Before a permit could be issued the proposed project would have to be deemed "consistent" with all local, State and Federal regulations. It was known as the "total scope" of development authority.

I was personally involved in regulatory oversight of the Holiday Village project, for which Will Fowler and Tom Singleton applied for a CAMA major permit. I recall that the CAMA permit issued for Holiday Village Project was very carefully reviewed by many agencies. The advisory stage for the Holiday Village project began sometime in 1982 with a lengthy series of on site meetings with the property owner(s) and their support team as well as the applicable local, State and Federal permit-review agencies.

I was the primary contact person for the meetings between the permit applicants and the permit-review agencies. My counter-part with the Corps of Engineers was Bob Johnson from Wilmington. We worked closely to insure the project would meet agency expectations. David Taylor with the Division of Marine Fisheries conducted extensive surveys in Sanders Creek to determine significance of shellfish resources in the proposed channel alignment and the overall impact of the project on Sanders Creek. My recollection is that it took months if not years to modify the initial project to the point that it finally met the regulatory standards for development, particularly as it related to dredging an open water access channel in Sanders Creek, excavating of an inland canal through the highground and creating marina boat basin. Each element of the project was accurately surveyed by Art Denning. The plans were confirmed by a group of agency representatives prior to the "start" application process. The project received a final consistency determination from the Division of Coastal Management and CAMA permit #176-84 was issued.

The channel alignment and location of the upland canal was surveyed and marked by Denning Survey. The hydraulic dredging was accomplished by Charles King Dredging in the winter months of 1986 in accordance with the permit conditions.

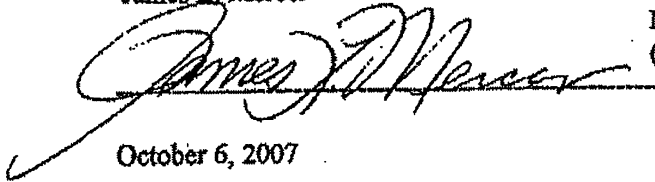
The Permittees decided to phase the project by starting with the dredged channel to the Intracoastal Waterway as reflected on the maps submitted with the Permit Application. There was not a specific point of reference on the engineered plans to terminate the access channel on the north side of the channel. All parties were faced with the decision of where to stop the dredging. It was, however, a collective decision by the Division of Coastal Management (those staff personnel listed above) not to allow the open water access channel to be connected to the highground property. Not even just a few feet.

An earthen boat ramp existed along the shoreline at the point where the channel was to be connected to highground (it is reflected in the survey and engineered maps attached to the Permit). The existing earthen boat ramp was a logical termination point for dredging of the channel, for several reasons. Preserving the boat ramp allowed continued use of the ramp for launching purposes and accessing the dredged channel. Preserving the boat ramp also served as a natural earthen "plug" as required in the permit conditions. It may have been my idea to terminate the dredged channel in proximity of the boat ramp so that the permittees could utilize a mechanical excavator to reach from the shoreline and remove the ramp area and complete the connection when the time was right with the Permittees. This would have been more practical since returning with a hydraulic dredge for the final connection would have been costly. Any time there is a question as to the timing or final completion of a project, it is advisable to terminate offshore dredging in an effort to prevent erosion event of upland property while also maintaining a sufficient barrier between the upland-interior development.

This is a highly abbreviated account of a very complex project. Please keep in mind that my recollections are made without the advantage of my working field notes and the original CAMA permit application file that maintained a chronology of meetings, project proposals, modifications, and agency comments.

James L. Mercer

98 West Old County Road  
Newcastle, Maine 04553  
(207) 586-5067



October 6, 2007

**Exhibit E**

STATE OF NORTH CAROLINA  
AFFIDAVIT OF ARTHUR R. DENNING  
COUNTY OF CARTERET

Arthur R. Denning, being first duly sworn, alleges and says as follows:

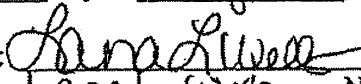
1. I am over eighteen (18) years of age and under no disability.
2. I am a resident of Carteret County, North Carolina and am personally familiar with the real property located on Highway 24 East, Carteret County, North Carolina adjacent to Sander's Creek and Bogue Sound in the Newport area (the "Property").
3. I am presently employed as a land surveyor registered in the State of North Carolina.
4. I have personal knowledge of the Coastal Area Management Act Permit No. 176-84, authorizing the development of the Property, which was issued to Mr. W.B. Fowler and Mr. T. M. Singleton in 1984 (the "CAMA Permit") and which authorized, among other activities, the excavation of an offshore channel from the Intracoastal Waterway to high ground (the "Channel") on the Property to connect to an upland boat basin.
5. An earthen boat ramp (the "Boat Ramp") exists on the Property in the same location where the Channel was to be dredged to high ground. I have been personally aware of the existence of the Boat Ramp since the early 1970s. The Boat Ramp was used frequently by Mr. Fowler and by me and by other individuals who lived in proximity to the Property both prior to the dredging of the Channel and subsequent thereto.
6. I personally prepared plans and drawings submitted in support of the application for the CAMA Permit and attended meetings with personnel from the North Carolina Department of Environment and Natural Resources ("DENR") at which the CAMA Permit and the Channel were discussed.
7. I prepared the plans for the Channel, which were submitted as part of the application for the CAMA Permit and approved by DENR.
8. The Channel was dredged by Mr. King, doing business as King's Dredging. I personally observed the dredging of the Channel and was present during the dredging of the Channel.
9. During the dredging of the Channel, Mr. King and I were instructed in the field by DENR personnel to terminate the dredging at the foot of the Boat Ramp. In fact, we intended and were prepared to dredge upland approximately 50' beyond the existing boat ramp.
10. DENR personnel instructed Mr. King and me that the termination of the Channel at the foot of the Boat Ramp would be beneficial for two reasons: a) to continue to have an operational launch into the Channel; and b) to prevent environmental impacts to the water from upland activities.

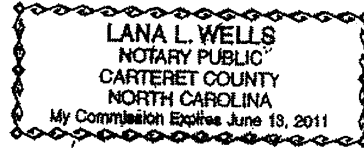
11. The earthen boat ramp and immediate area in question on Mr. Fowler's property was known as Seth's Point.

Further, affiant saith not

  
Arthur R. Denning - Affiant

Sworn to and subscribed before me this  
24 day of August, 2007

Sign:   
Print: Lana L. Wells - Notary Public  
My Commission Expires: June 13, 2011



STATE OF NORTH CAROLINA  
AFFIDAVIT OF L. B. PAGE  
COUNTY OF CARTERET

L. B. Page, being first duly sworn, alleges and says as follows:

1. I am over eighteen (18) years of age and under no disability.
2. I am a resident of Carteret County, North Carolina and formerly owned the real property located on Highway 24 East, Carteret County, North Carolina adjacent to Sander's Creek and Bogue Sound in the Newport area (the "Property") and made plans to develop the Property.
3. Coastal Area Management Act Permit No. 176-84, authorizing the development of the Property, was issued to Mr. T. M. Singleton and W. B. Fowler in 1984 and was subsequently amended on multiple occasions (the "CAMA Permit"). I formed a business relationship with Mr. Will B. Fowler and Mrs. Diane Fowler to develop a portion of the Property. I have been familiar with this Property because my family previously owned this Property as well as other property adjacent to the Bogue Sound.
4. The CAMA Permit authorized, among other activities, the excavation of an offshore channel from the Intracoastal Waterway to high ground (the "Channel") on the Property to connect to an upland boat basin.
5. Although the upland boat basin was never excavated, the Channel was excavated. The Channel was excavated by Mr. King, doing business as King's Dredging. I personally used the earthen boat ramp there on regular occasion and launched into the channel. I have personal knowledge of other Carteret County residents using the channel and earthen boat ramp on regular occasion both prior to and after the completion of the dredged channel referenced above.
6. I currently own a landscaping and grading business in Cape Carteret, NC, L.B. Page Landscaping, and was born and raised in this area.

Further, affiant saith not

  
L. B. Page - Affiant

Sworn to and subscribed before me this  
24 day of August, 2007

Sign: Casey Lynette Brown  
Print: Casey Lynette Brown - Notary Public  
My Commission Expires: 08-14-2010

STATE OF NORTH CAROLINA  
AFFIDAVIT OF W. F. PARKER  
COUNTY OF CARTERET

W. F. Parker, being first duly sworn, alleges and says as follows:

1. I am over eighteen (18) years of age and under no disability.
2. I am a resident of Carteret County, North Carolina and my family formerly owned the real property located on Highway 24 East, Carteret County, North Carolina adjacent to Sander's Creek and Bogue Sound in the Newport area (the "Property").
3. I am presently self-employed as a licensed engineer in the State of North Carolina. I have no ownership, financial interest, or benefit favoring the prior or existing owners of the Property.
4. My family, the Parker Family, owned the Property dating back prior to 1928. My father personally excavated the basin and channel on the portion of the Property known as Holiday Village Mobile Home Park, west of the Channel permitted under CAMA Permit No. 176-84. My father excavated an earthen boat ramp prior to 1960 on the Property which now terminates at the end of the permitted Channel referenced in the prior mentioned Permit No. 176-84.
5. Throughout my teenage life dating back to 1960-1962 I personally launched watercraft on an earthen boat ramp at the site where the dredged channel to the Intracoastal Waterway now exists. While we also used the basin and channel through Sander's Creek, we frequently would use a road we constructed (still there today) to drive through the woods, picnic and enjoying boating in the Bogue Sound, launching from the earthen boat ramp. We permitted many local residents to use our ramp even though it was on our private property. Likewise, the Smith family farm adjacent to us on the west boundary (known as Cannonsgate now) also allowed folks to use their earthen boat ramp.

6. I have personally observed others launching personal watercraft from the Boat Ramp and using the Channel to access the Intracoastal Waterway.

Further, affiant saith not

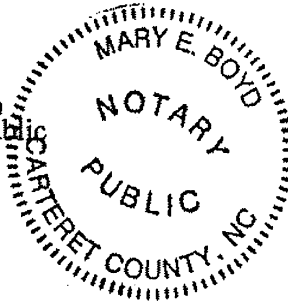
W.F. Parker, PE  
W. F. Parker – Affiant

Sworn to and subscribed before me this  
24th day of August, 2007

Sign: Mary E. Boyd

Print: Mary E. Boyd - Notary Public

My Commission Expires: 10-24-2011





**Exhibit F**



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

October 20, 2008

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Bogue Watch LLC  
c/o John Netherton  
5511 Capital Center Drive, Suite 105  
Raleigh, NC 27606

Dear Sirs:

This letter is in regard to your application request under the Coastal Area Management Act (CAMA) and the State Dredge and Fill Law to construct an upland basin, construct 9 boat slips, and perform both new and maintenance excavation within the waters of Bogue Sound, in Carteret County. Processing of the application, which was received by the Division of Coastal Management's Morehead City office on April 11, 2007, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The proposed project represents a Major Modification request to CAMA Permit No. 141-06. CAMA Permit No. 141-06 authorized the construction of a 287-lot subdivision on +/- 195 acres of land.
- 2) The original major modification request involved the construction of a proposed upland basin and a 29-slip marina. On September 3, 2008, your authorized agent modified the major modification proposal by reducing the number of requested slips to 9. This slip reduction was done to address inconsistencies with the 1996 Carteret County Land Use Plan, which was certified by the Coastal Resources Commission on November 19, 1999.
- 3) The proposed project involves both maintenance excavation of approximately 590 linear feet of a previously excavated navigation channel, as well as new excavation of approximately 40 linear feet of shallow bottom habitat between where the existing navigation channel ends and the current shoreline. At the time of its original construction, the navigation channel ended in close proximity to the shoreline. However, since that time the shoreline has eroded landward approximately 40 feet, resulting in a 40 foot gap of shallow bottom habitat between the end of the navigation channel and the existing shoreline.

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

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

Bogue Watch LLC

October 20, 2008

- 4) The waters of Bogue Sound within the proposed area of excavation are designated as a primary nursery area (PNA), so designated by the Marine Fisheries Commission to afford such areas special protection.
- 5) During the course of the joint state and federal review of the application, the Division of Marine Fisheries, by way of a memo dated October 15, 2007, commented that "...the DMF continues to object to this proposal for new dredging because it is prohibited by rule of the Coastal Resources Commission but removes its concern about significant adverse impacts."
- 6) Based upon the findings outlined above, the excavation of the +/- 40 foot shallow bottom habitat between the end of the existing navigation channel and the existing shoreline has been determined to be inconsistent with the following Rule of the Coastal Resources Commission:

*15A NCAC 07E.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 Modification to Permit No. 141-06 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 Jefferson Ryscavage - U.S. Army Corps of Engineers, Wilmington, NC  
Mr. David Kennedy, Director - OCRM/NOAA, Silver Spring, MD

OFFICE COPY  
PM/1633

NCM NP-1

# APPLICATION for Major Development Permit

(last revised 12/27/06)



North Carolina DIVISION OF COASTAL MANAGEMENT

1. Primary Applicant/ Landowner Information			
Business Name Bogue Watch, LLC		Project Name (if applicable) Bogue Watch	
Applicant 1: First Name John	MI	Last Name Netherton	
Applicant 2: First Name	MI	Last Name	
<i>If additional applicants, please attach an additional page(s) with names listed.</i>			
Mailing Address 5511 Capital Center Drive Suite 105		PO Box	City Raleigh
		State NC	
ZIP 27608	Country USA	Phone No. 252 - 256 - 1981 ext.	FAX No. - -
Street Address (if different from above)		City	State ZIP
Email			

2. Agent/Contractor Information			
Business Name Stroud Engineering, Pa			
Agent/ Contractor 1: First Name Ronald	MI D	Last Name Cullipher	
Agent/ Contractor 2: First Name	MI	Last Name	
Mailing Address 151 A Highway 24		PO Box	City Morehead City
		State NC	
ZIP 28557		Phone No. 1 252 - 247 - 7479 ext. 224	Phone No. 2 - - ext.
FAX No. 252 247 4098	Contractor #		
Street Address (if different from above)		City	State ZIP
Email rcullipher@stroudengineer.com			

<Form continues on back>

<b>3. Project Location</b>			
County (can be multiple) Carteret		Street Address 1130 Situs Ct. gtg 250	
State Rd. # NC Hwy 24			
Subdivision Name Bogue Watch		City Newport	State NC
Zip 28570 -			
Phone No. 919 - 256 - 1981 ext.		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 Sanders Creek	
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. Bogue Sound	
e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Carteret County	

<b>4. Site Description</b>	
a. Total length of shoreline on the tract (ft.) 5550 ft +/-	b. Size of entire tract (sq.ft.) 195 acres +/-
c. Size of individual lot(s) previously permitted & approved, (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) 8 feet <input type="checkbox"/> NHW or <input checked="" type="checkbox"/> NWL
e. Vegetation on tract woods, grass fields, 404 and coastal wetlands	
f. Man-made features and uses now on tract streets for subdivision	
g. Identify and describe the existing land uses adjacent to the proposed project site. mixed residential	
h. How does local government zone the tract? PUD & R10	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. If yes, by whom? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	
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	

<Form continues on next page>

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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
n. Describe existing wastewater treatment facilities. approved package treatment plant†	
o. Describe existing drinking water supply source. West Carteret Water Corporation	
p. Describe existing storm water management or treatment systems. low-density with bmp's	

**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. This application is for the construction of an inland basin for 29 boats with a boat ramp, for maintenance dredging on an existing channel and new excavation of 25 feet +/- plug to connect existing channel to proposed basin. This also includes a bulkhead around the basin, sheetpile breakwater and boardwalk around the new basin.	
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. Trackhoe & dragline for upland basin construction, hydraulic dredge for channel dredging, sheet pile driving equipment, dozers and backhoes for final grading	
d. List all development activities you propose. Construct upland basin, boat ramp with docks and piers with dredging of existing channel including breakwater.	
e. Are the proposed activities maintenance of an existing project, new work, or both?	both
f. What is the approximate total disturbed land area resulting from the proposed project?	2 <input type="checkbox"/> Sq.Ft or <input checked="" 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. Stormwater runoff on ramp into upland basin	
i. Will wastewater or stormwater be discharged into a welland?	<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 checked="" type="checkbox"/> No <input type="checkbox"/> NA
j. Is there any mitigation proposed? If yes, attach a mitigation proposal.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA

<Form continues on back>

**6. Additional Information**

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 Island View Shores, LLC	Phone No. unknown
Address 1463 hwy 24E Newport, NC 28570	
Name Sue Bullard	Phone No. unknown
Address 4019 hwy 24 Newport, NC 28570	
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.
 

Cama Major 141-06 issued 9/14/06	Stomwater SW8 060614 issued 9/13/2006
Cama Major 176-84 issued 3/20/85	Erosion Control Carte -2006-376 issued May 4, 2006
- 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.

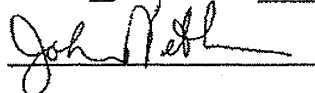
**7. Certification and Permission to Enter on Land**

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 April 3, 2007 Print Name John Netherton

Signature 

Please indicate application attachments pertaining to your proposed project.

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

# EXCAVATION and FILL

(Except for 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. Please include all supplemental information.

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

	Access Channel (NLW or NWL)	Canal	Boat Basin	Boat Ramp	Rock Groin	Rock Breakwater	Other (excluding shoreline stabilization)
Length	630'		190'	75'			
Width	30' to 45'		130'	20'			
Avg. Existing Depth	-3.9 NLW		+4 MSL	+4 MSL	NA	NA	
Final Project Depth	-6 NLW		-4.5 MLW AVG.	-3 MLW	NA	NA	

## 1. EXCAVATION

This section not applicable

- a. Amount of material to be excavated from below NLW or NWL in cubic yards.  
1776.5 CY
- b. Type of material to be excavated.  
SILT/SAND
- c. (i) Does the area to be excavated include 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 578 SF  SAV \_\_\_\_\_  SB \_\_\_\_\_  
 WL 167 SF  None
- (ii) Describe the purpose of the excavation in these areas:  
CREATE ACCESS FROM HIGH GROUND BASIN TO EXISTING CANAL
- d. High-ground excavation in cubic yards.  
190'X130'X11'/27= 10063 CY

## 2. DISPOSAL OF EXCAVATED MATERIAL

This section not applicable

- a. Location of disposal area.  
ONSITE WITHIN SUBDIVISION FOR LOT FILL ON HIGH GROUND
- b. Dimensions of disposal area.  
6.23 ACRES OF ONSITE DISPOSAL AT 1' AVG. FILL
- c. (i) Do you claim title to disposal area?  
 Yes  No  NA
- (ii) If no, attach a letter granting permission from the owner.
- d. (i) Will a disposal area be available for future maintenance?  
 Yes  No  NA
- (ii) If yes, where?
- e. (i) Does the disposal area include any 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 \_\_\_\_\_  SB \_\_\_\_\_  
 WL \_\_\_\_\_  None
- (ii) Describe the purpose of disposal in these areas:
- f. (i) Does the disposal include any area in the water?  
 Yes  No  NA
- (ii) If yes, how much water area is affected?



**3. SHORELINE STABILIZATION**

(If development is a wood groin, use MP-4 - Structures)

This section not applicable

- a. Type of shoreline stabilization:  
 Bulkhead    Riprap    Breakwater/Sill    Other: \_\_\_\_\_
- b. Length: 608 LF BASIN AND BOAT RAMP BULKHEAD  
 Width: 12" ESTIMATED FOR MAX. STRUCTURE WIDTH
- c. Average distance waterward of NHW or NWL: 0'
- d. Maximum distance waterward of NHW or NWL: 0'
- e. Type of stabilization material:  
VINYL SHEETPILE WITH WOODEN OR CONCRETE CAP
- f. (i) Has there been shoreline erosion during preceding 12 months?  
 Yes    No    NA  
 (ii) If yes, state amount of erosion and source of erosion amount information.
- g. Number of square feet of fill to be placed below water level.  
 Bulkhead backfill  Riprap \_\_\_\_\_  
 Breakwater/Sill \_\_\_\_\_ Other \_\_\_\_\_
- h. Type of fill material.  
N/A
- i. Source of fill material.  
N/A

**4. OTHER FILL ACTIVITIES**

(Excluding Shoreline Stabilization)

This section not applicable

- a. (i) Will fill material be brought to the site?  Yes    No    NA  
 If yes,  
 (ii) Amount of material to be placed in the water \_\_\_\_\_  
 (iii) Dimensions of fill area \_\_\_\_\_  
 (iv) Purpose of fill \_\_\_\_\_
- b. (i) Will fill material be placed in 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 \_\_\_\_\_    SB \_\_\_\_\_  
 WL \_\_\_\_\_    None  
 (ii) Describe the purpose of the fill in these areas:  
 \_\_\_\_\_  
 \_\_\_\_\_


**5. GENERAL**

- a. How will excavated or fill material be kept on site and erosion controlled?  
DIKE WALL OF UPLAND BASIN
- b. What type of construction equipment will be used (e.g., dragline, backhoe, or hydraulic dredge)?  
TRACKHOE, HYDRAULIC DREDGE, DUMP TRUCKS
- c. (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.  
 \_\_\_\_\_
- d. (i) Will wetlands be crossed in transporting equipment to project site?  Yes    No    NA  
 (ii) If yes, explain steps that will be taken to avoid or minimize environmental impacts.  
 \_\_\_\_\_

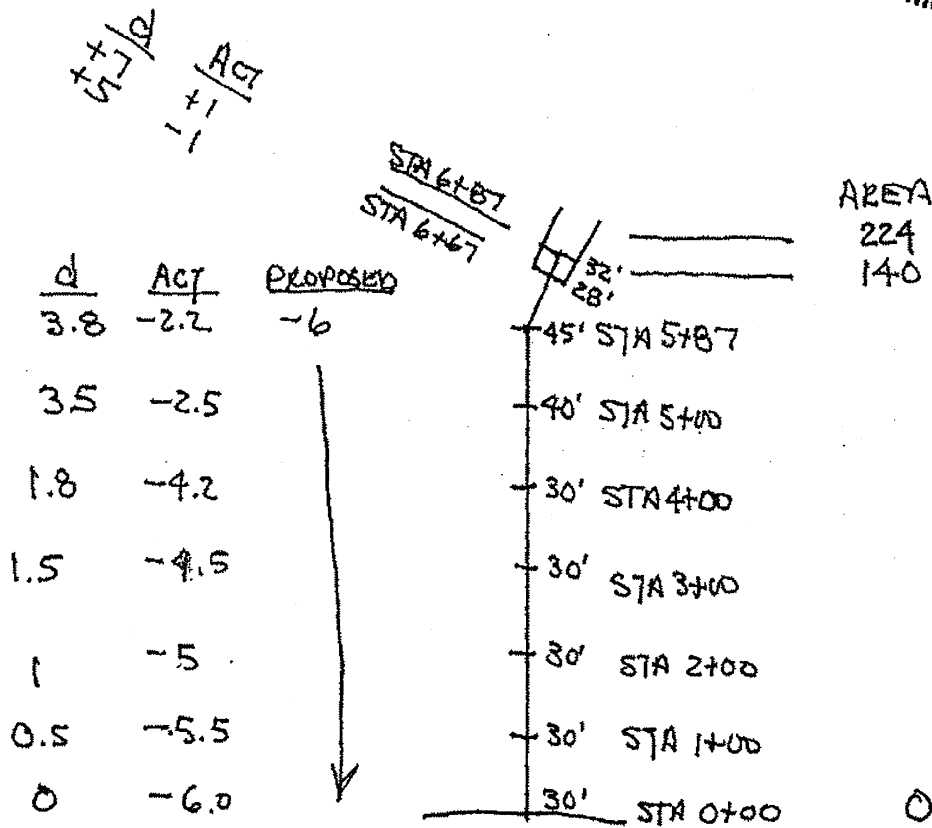
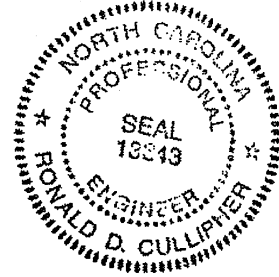
Date 4/3/07

Project Name Boque Water

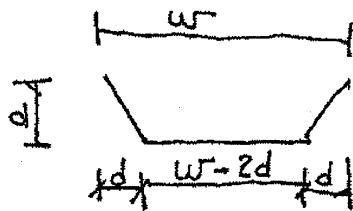
Applicant Name John Netherton

Applicant Signature 

BOGUE WATCH  
 DEPOSING CALCULATION  
 SH 1 OF 2  
 R. Cullipier 4/3/07



- STA 12+82 TO INTERCOASTAL

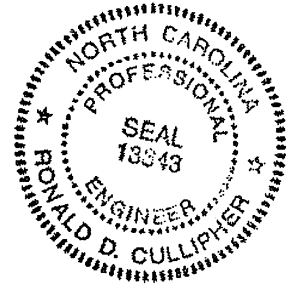


$$\text{Area} = [d \times (w - 2d)] + 2 \left( \frac{1}{2} d^2 \right)$$

$$= [d \times (w - 2d)] + d^2$$

BOGUE WATCH  
 DREDGING CALCULATIONS  
 SH 20P 2  
 R. Cullipher 4/3/07

Area - STA	AREA (SF)
0+00	0
1+00	14.75
2+00	29.00
3+00	42.75
4+00	50.76
5+00	127.75
5+87	156.56
6+67	140
6+87	224



STA	DISTANCE	AREA 1	AREA 2	AVG	VOLUME
0+00 >	100	0	14.75	7.4	27.4
1+00 >	100	14.75	29.00	21.9	81.1
2+00 >	100	29.00	42.75	35.9	133
3+00 >	100	42.75	50.76	46.7	173
4+00 >	100	127.75	50.76	89.2	330
5+00 >	87	127.75	156.56	142.1	42+458
6+00 >	80	156.56	140.00	148.2	439
6+87 >	20	140.00	224	182	135

1176.501

# 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. Please include all supplemental information.

## GENERAL UPLAND DEVELOPMENT

- a. Type and number of buildings, facilities, units or structures proposed.  
High ground boat basin and boat ramp with 6' boardwalk and 4' boardwalk on high ground around marina
- b. Number of lots or parcels.  
1
- c. Density (give the number of residential units and the units per acre).  
n/a
- d. Size of area to be graded, filled, or disturbed including roads, ditches, etc.  
2 acres which includes the basin construction and the channel dredging
- 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.
  - (i) If applicable, has a sedimentation and erosion control plan been submitted to the Division of Land Resources?  
 Yes  No  NA
  - (ii) If yes, list the date submitted: issued on May 4, 2006  
Carte- 2006-376 for entire project
- f. List the materials (such as marl, paver stone, asphalt, or concrete) to be used for impervious surfaces.  
concrete boat ramp
- g. Give the percentage of the tract within the coastal shoreline AEC to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.  
600 sf of boat ramp, less than 25% from previously permitted project
- h. Projects that require a CAMA Major Development Permit may also require a Stormwater Certification.
  - (i) Has a site development plan been submitted to the Division of Water Quality for review?  
 Yes  No  NA
  - (ii) If yes, list the date submitted: issued on 9/13/2006  
SW8 060614\_for entire project
- i. Give the percentage of the entire tract to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.  
less than 25% for entire project
- j. Describe proposed method of sewage disposal.  
package treatment plant for subdivision, none proposed for upland basin
- k. Have the facilities described in Item (i) received state or local approval?  
 Yes  No  NA  
If yes, attach appropriate documentation.
- l. Describe location and type of proposed discharges to waters of the state (e.g., surface runoff, sanitary wastewater, industrial/commercial effluent, "wash down" and residential discharges).  
surface runoff from boat ramp only
- m. Does the proposed project include an innovative stormwater design?  
 Yes  No  NA  
If yes, attach appropriate documentation.

Form DCM MP-3 (Upland Development, Page 2 of 2)

\_\_\_\_\_

\_\_\_\_\_

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

Public water for the subdivision

\_\_\_\_\_

\_\_\_\_\_

o. When was the lot(s) platted and recorded?

2006

\_\_\_\_\_

\_\_\_\_\_

n. (i) Will water be impounded?  Yes  No  NA

(ii) If yes, how many acres? \_\_\_\_\_

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?

Yes  No  NA

4/3/07

Date

Bogue Watch

Project Name

John Netherton

Applicant Name

Applicant Signature

Form DCM MP-4

# STRUCTURES

(Construction within Public Trust Areas)

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 2 AT BOAT RAMP  
(iii) Length 30  
(iv) Width 6  
(v) Floating  Yes  No

d. (i) Are Finger Piers included?  Yes  No  
If yes:  
(ii) Number 14  
(iii) Length 20  
(iv) Width 3' max  
(v) Floating  Yes  No

e. (i) Are Platforms included?  Yes  No  
If yes:  
(ii) Number \_\_\_\_\_  
(iii) Length \_\_\_\_\_  
(iv) Width \_\_\_\_\_  
(v) Floating  Yes  No  
Note: Roofed areas are calculated from dripline dimensions.

f. (i) Are Boatlifts included?  Yes  No  
If yes:  
(ii) Number \_\_\_\_\_  
(iii) Length \_\_\_\_\_  
(iv) Width \_\_\_\_\_

g. (i) Number of slips proposed  
29  
(ii) Number of slips existing  
0

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: 29  
 Dry storage; number of boats: \_\_\_\_\_  
 Boat ramp(s); number of boat ramps: 1  
 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).  
open runabout, with less than 24' in length and no heads

k. Typical boat length: 20'

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?  
14

**2. DOCKING FACILITY/MARINA OPERATIONS**

This 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: \_\_\_\_\_
  - Showers
  - Boatholding tank pumpout; Give type and location: \_\_\_\_\_
  
- b. Describe treatment type and disposal location for all sanitary wastewater.  
none proposed
  
- c. Describe the disposal of solid waste, fish offal and trash.  
none proposed
  
- d. How will overboard discharge of sewage from boats be controlled?  
limit size of boat and enforce "no head" policy
  
- e. (i) Give the location and number of "No Sewage Discharge" signs proposed.  
one at entrance
  
- (ii) Give the location and number of "Pumpout Available" signs proposed.  
none proposed
  
- f. Describe the special design, if applicable, for containing industrial type pollutants, such as paint, sandblasting waste and petroleum products.  
n/a
  
- g. Where will residue from vessel maintenance be disposed of?  
n/a
  
- h. Give the number of channel markers and "No Wake" signs proposed. n/a
  
- i. Give the location of fuel-handling facilities, and describe the safety measures planned to protect area water quality.  
n/a
  
- j. What will be the marina policy on overnight and live-aboard dockage?  
no overnight or live aboard dockage allowed
  
- k. Describe design measures that promote boat basin flushing?  
tapered corners, elevation transition -3 MLW to -6 MLW
  
- l. If this project is an expansion of an existing marina, what types of services are currently provided?  
n/a
  
- m. Is the marina/docking facility proposed within a primary or secondary nursery area?  
 Yes  No

**Form DCM MP-4 (Structures, Page 3 of 4)**

- n. Is the marina/docking facility proposed within or adjacent to any shellfish harvesting area?  
 Yes  No
- 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 576 sf  SAV \_\_\_\_\_  SB \_\_\_\_\_  
 WL 187 sf  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.

\_\_\_\_\_  
 \_\_\_\_\_

**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 1 @ 63.2, 1 @ 59.4
- b. Average distance from NHW, NWL, or wetlands 38'
- c. Maximum distance beyond NHW, NWL or wetlands 40'

**6. MOORING PILINGS and BUOYS**  This section not applicable

- a. Is the structure(s):  
 Commercial  Public/Government  Private/Community
- b. Number \_\_\_\_\_
- c. Distance to be placed beyond shoreline \_\_\_\_\_  
*Note: This should be measured from marsh edge, if present.*
- d. Description of buoy (color, inscription, size, anchor, etc.)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- e. Arc of the swing \_\_\_\_\_

**7. GENERAL**



Form DCM MP-4 (Structures, Page 4 of 4)

a. Proximity of structure(s) to adjacent riparian property lines  
2000' plus

b. Proximity of structure(s) to adjacent docking facilities.  
none known

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

c. Width of water body  
greater than 1 mile

d. Water depth at waterward end of structure at NLW or NWL  
-6MLW

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:

Bogue Watch Subdivision has previously been permitted by appropriate agencies for high ground development. This application is for construction of a high ground marina for 29 wetpits constructed in accordance with Shellfish Sanitation marina exclusion policy, the marina is proposed to be bulkheaded and contain a boat ramp. Additionally, the project includes channel maintenance dredging and plug removal, along with the installation of sheet pile breakwaters at the basin entrance.

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4/3/07  
Date

Bogue Watch

Project Name

John Netherton

Applicant Name

Applicant Signature

## Bogue Watch CAMA Major Permit Application Narrative

Bogue Watch LLC is applying for a Major Modification to its existing CAMA Major Permit. Their existing Major Permit, permit number 141-06 was issued on 9/14/06. This permit was issued in conjunction with State Stormwater and Erosion and Sedimentation Permits for the development of a 287 lot single family subdivision. Included within the original permit are observation decks out over the water.

This CAMA Major Permit application is for the proposed construction of a high ground boat basin capable of storing 29 boats in wet slips, including a boat ramp and dredging of an existing channel that was permitted by CAMA Major Permit 176-84 which was issued on 3/20/85. The boat basin is to be restricted to small boats, no larger than 24 feet and contain no heads to comply with Shellfish Sanitation Marina Policy that would not result in closure of shellfish waters.

The proposed high ground boat basin is to be bulkheaded and as proposed the connector between this basin and the existing channel is to be excavated. Vinyl sheet pile breakwaters are proposed at the basin entrance and a plug of new excavation is proposed to connect the boat basin with the existing channel.

Limited coastal wetlands and 404 wetlands are requested to be excavated to allow for the entrance canal construction. The application shows this as 576 sf of coastal wetlands and 167 sf of 404 wetlands. Wetlands surveys were provided by Carolina Engineers in a digital format and were used as base maps for this project submittal.



STROUD ENGINEERING, P.A.

CONSULTING ENGINEERS  
HESTRON PLAZA TWO  
151-A HWY. 24  
MOREHEAD CITY, NORTH CAROLINA 28557  
(252) 247-7479

April 4, 2007

Island View Shores LLC  
1463 Hwy 24E  
Newport, North Carolina 28570

Ms. Sue Bullard  
4019 Hwy 24  
Newport, North Carolina 28570

Re: Bogue Watch Subdivision- CAMA Major Permit Application

Dear Riparian Owners to Bogue Watch Subdivision,

You have been identified as riparian property owners to the Bogue Watch subdivision located off of HWY 24. As such, we are required to notify you of our CAMA Major Permit Application for the proposed construction of a high ground boat basin and boat ramp along with the proposed dredging of an existing channel from Bogue Sound through a portion of Sanders Creek.

We have enclosed a copy of our application and drawings for your review. If you have any questions, please do not hesitate to call me. You may contact the NC Division of Coastal Management directly with any comments or concerns. The phone number for Coastal Management in Morehead City is 252-808-2808.

Sincerely,  
  
Ronald D. Cullipher, P.E.

Cc: Ms. Tere Barrett, NCDCM

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DIVISION OF COASTAL MANAGEMENT  
ADJACENT RIPARIAN PROPERTY OWNER NOTIFICATION/WAIVER  
FORM

Name of individual applying for the permit: BOGUE WATCH LLC

Address of property: 1130 Situs Ct. gty 250  
(Lot or street#, street of road)

Newport, Curlewet County  
(City & County)

I hereby certify the I own property adjacent to the above referenced property. The Individual applying for this permit has described to me (as shown on the attached drawing) the development they are proposing. A description or drawing, with dimensions, should be provided whit this letter.

     I have no objections to this proposal

If you have objections to what is being proposed, please write the Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557 or call (252) 808-2808 within 10 days of receipt of the notice. No response is considered the same as no objection if you have been notified by Certified Mail.

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Waiver Section

I understand that a pier, dock, mooring pilings, breakwater, boathouse, lift or sandbags must be set back a minimum distance of 15' From my area of riparian access unless waived by me. (If you wish to waive the setback, you must initial the appropriate blank below.)

     I do wish to waive the 15' setback requirement

     I do not wish to waive the 15" setback requirements

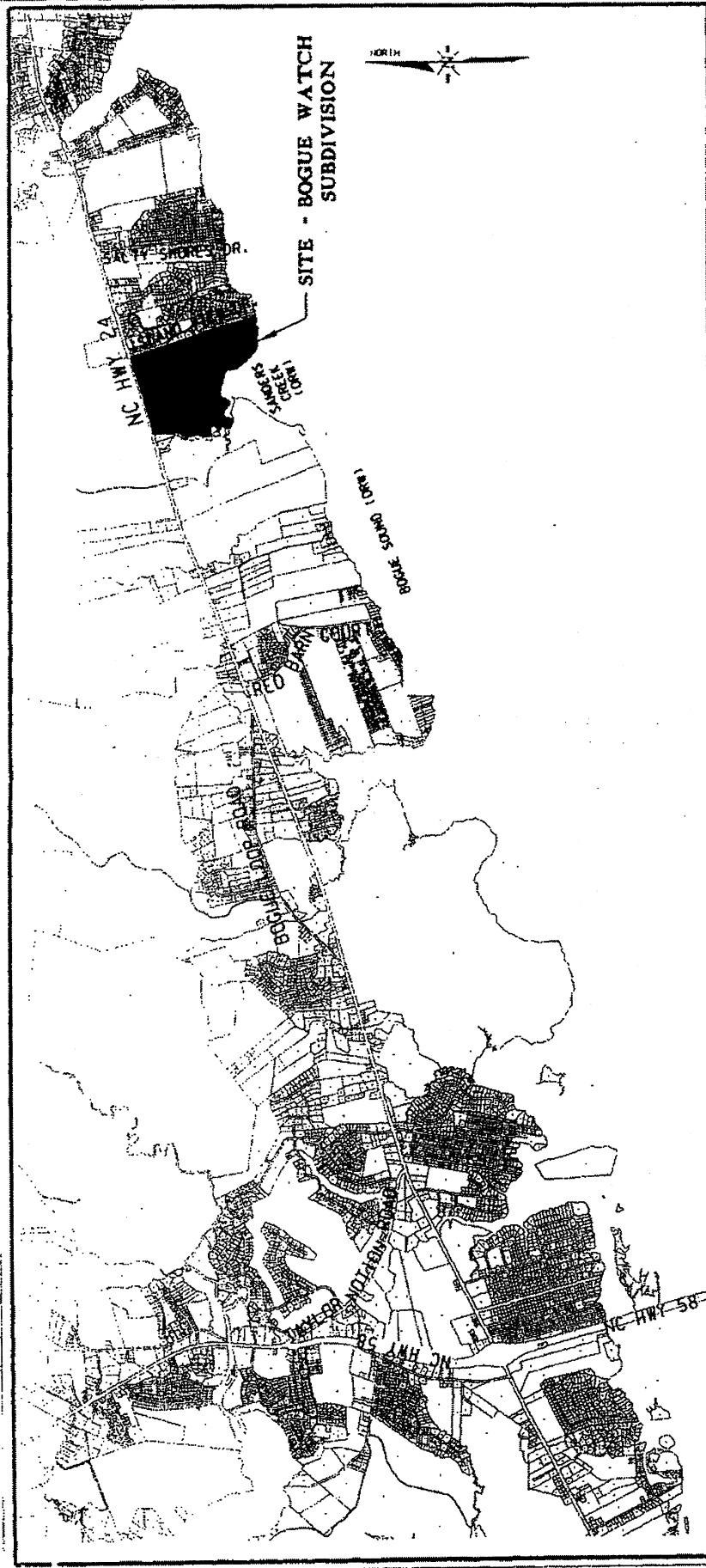
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Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Telephone number with area code \_\_\_\_\_

**Exhibit G**



**BOGUE WATCH - CARTERET COUNTY**

CE1 - VICINITY MAP

**STROUD ENGINEERING, P.A.**

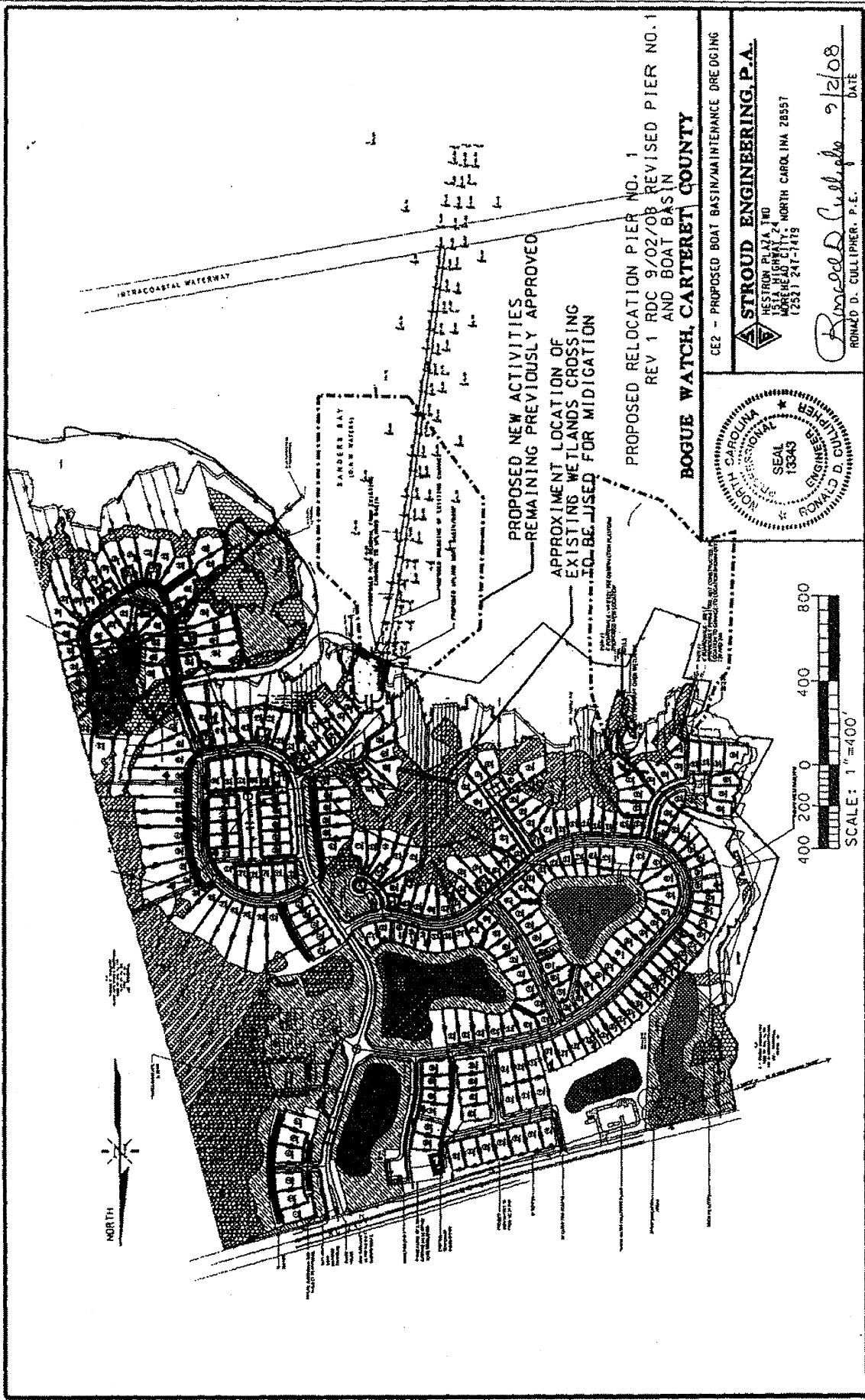
HESTRON PLAZA, 1<sup>ST</sup> FLOOR  
 1515 S. GUNN ST., NORTH CAROLINA 28557  
 (252) 241-1415

*Ronald D. Cullipher*  
 RONALD D. CULLIPHER, P.E.      4/3/07      DATE

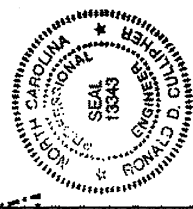
**TABLE OF CONTENTS**

- C1 VICINITY MAP
- C2 PROPOSED BOAT BASIN/MAINTENANCE DREDGING
- C3 PROPOSED BOAT BASIN/MAINTENANCE DREDGING TO -6 M.L.W. & BOAT BASIN EXCAVATION
- C4 PROPOSED BOAT BASIN & RAMP (ENLARGED)
- C4A PROPOSED PLUG REMOVAL, END OF EXISTING CHANNEL / UPLAND BASIN
- C5 BULKHEAD & BREAKWATER AND BOAT RAMP DETAILS
- C6 DREDGING DETAILS





**STROUD ENGINEERING, P.A.**  
 NESTRON PLAZA, 110  
 WALKER DRIVE, SUITE 24  
 WILMINGTON, NORTH CAROLINA 28403  
 (910) 762-1415



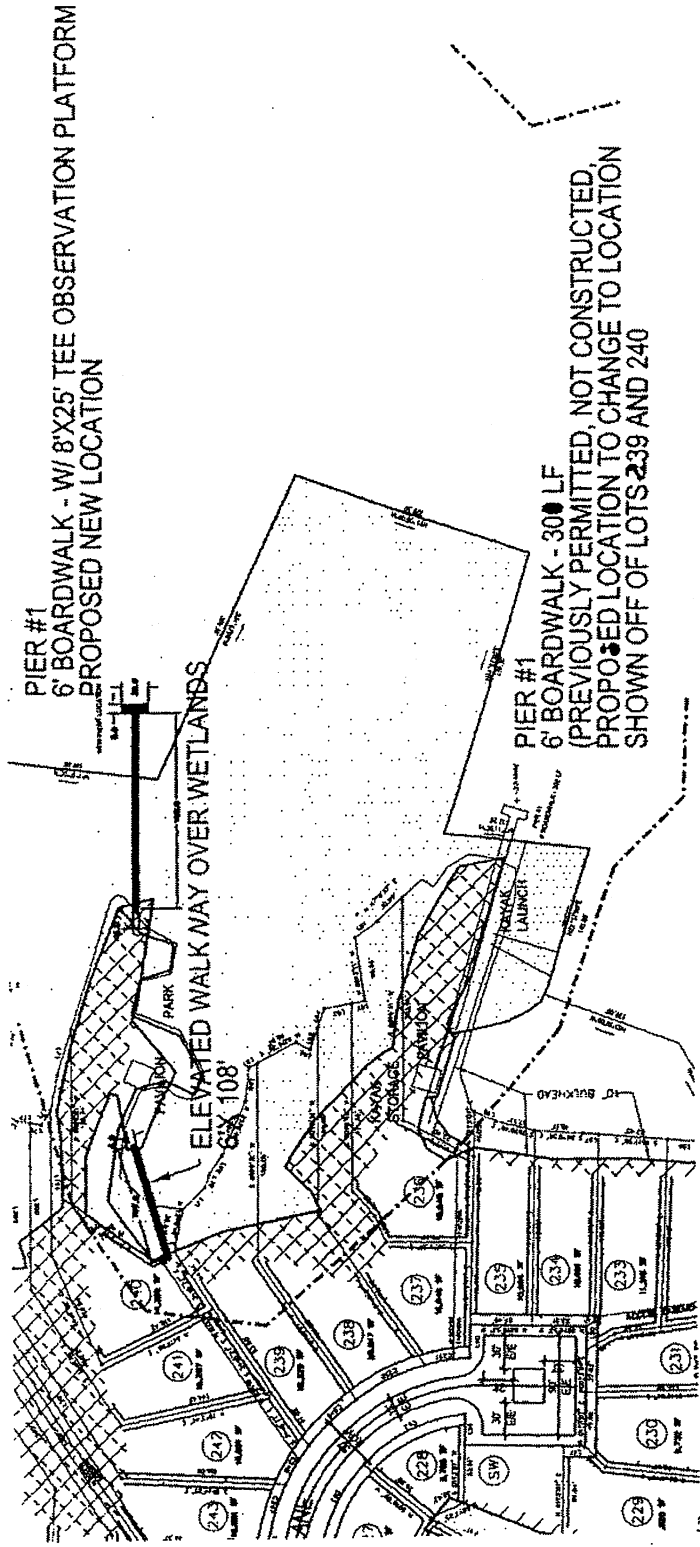
*Ronald D. Cullipher*  
 RONALD D. CULLIPHER, P.E.  
 DATE: 9/2/08

PROPOSED RELOCATION PIER NO. 1  
 REV 1 RDC 9/02/08 REVISED PIER NO. 1  
 AND BOAT BASIN  
**BOGUE WATCH, CARTERET COUNTY**

PROPOSED NEW ACTIVITIES  
 REMAINING PREVIOUSLY APPROVED  
 APPROXIMATE LOCATION OF  
 EXISTING WETLANDS CROSSING  
 TO BE USED FOR MIGATION

CE2 - PROPOSED BOAT BASIN/MAINTENANCE DREDGING

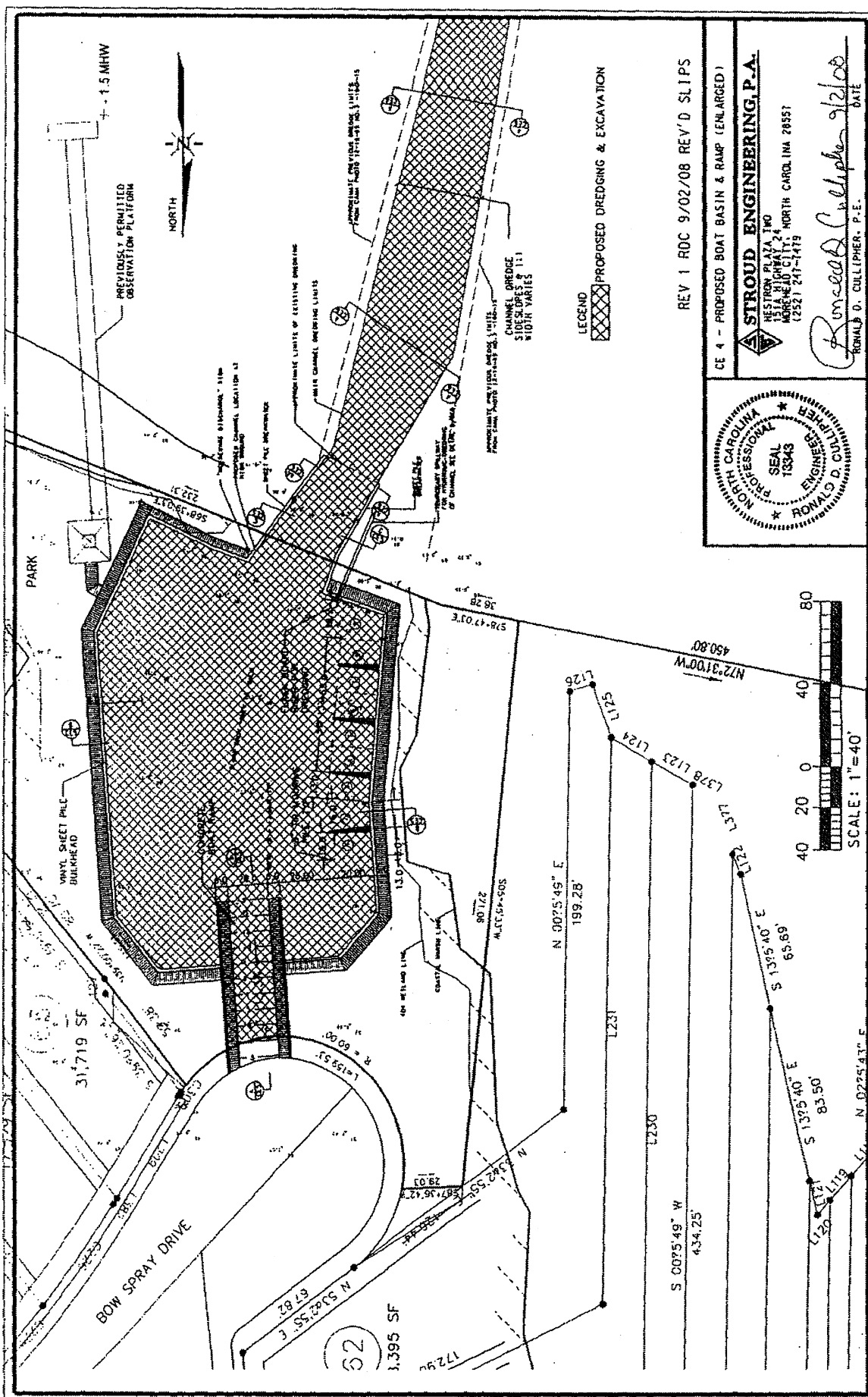
400 200 0 400 800  
 SCALE: 1" = 400'



CE 2A  
ENLARGED AREA PLAN  
SCALE 1" = 100'  
9/2/08







REV 1 ROC 9/02/08 REV'D SLIPS

CE 4 - PROPOSED BOAT BASIN & RAMP (ENLARGED)

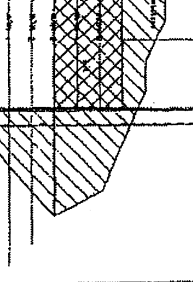
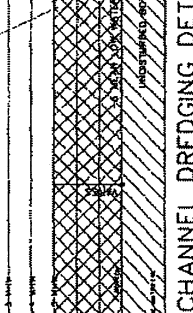
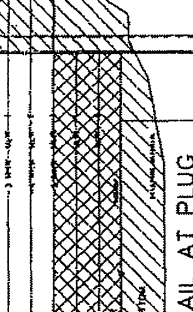
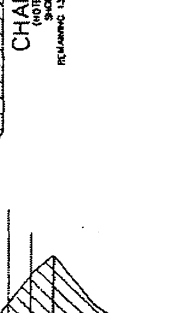
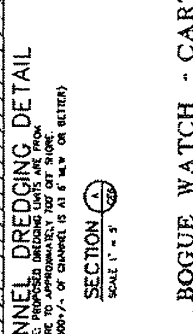
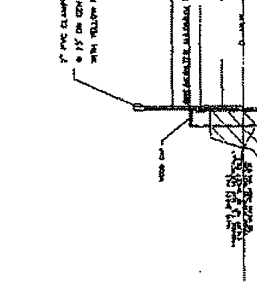
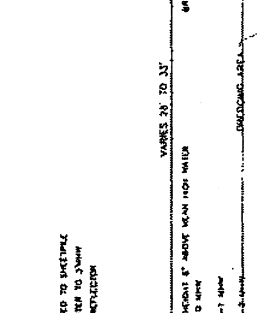
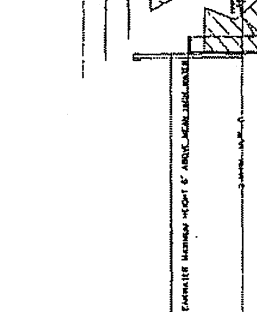
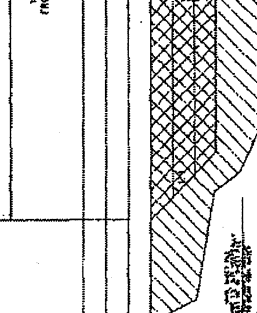
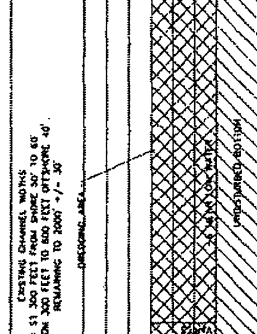
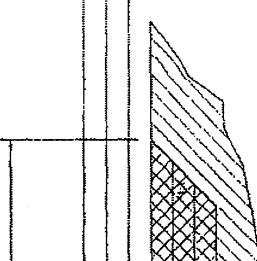
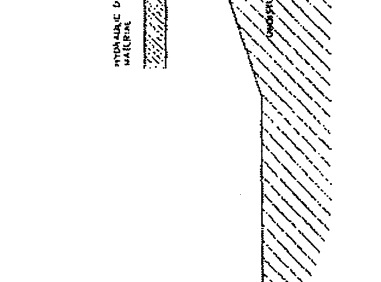
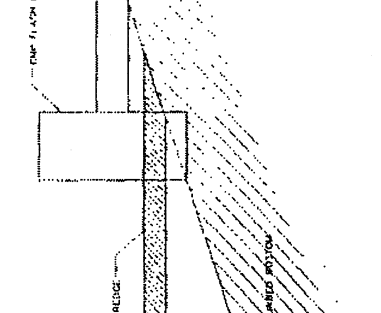
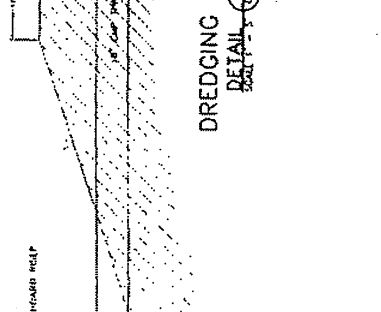
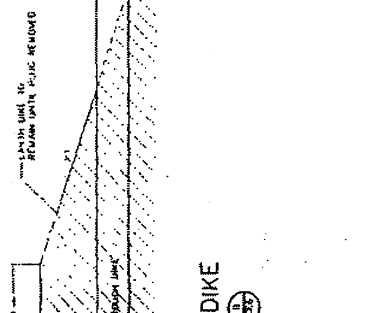
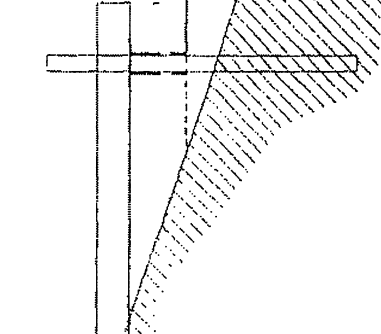
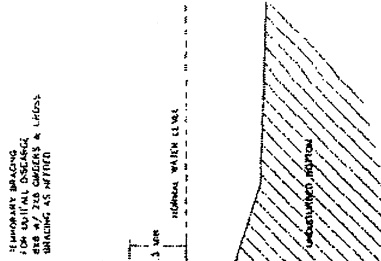
**STROUD ENGINEERING, P.A.**  
 WESTON PLAZA, TWO  
 FLOORS  
 100 NORTH CITY, NORTH CAROLINA 28857  
 (252) 241-7479



*Ronald D. Cullipher*  
 RONALD D. CULLIPHER, P.E.  
 DATE 9/2/08







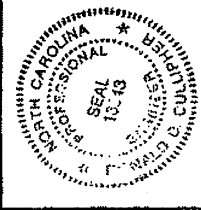
EXISTING CHANNEL WIDTHS  
 1.51' TO 2.00' FROM 100' TO 150'  
 FROM 200 FEET TO 300 FEET OTHERWISE 40'  
 REMAINING TO 2000' +/- 30'

CHANNEL DREDGING DETAIL  
 (NOTE: PROPOSED DREDGING LIMITS ARE FROM  
 CENTERLINE OF CHANNEL TO 15' MIN. OR BUTTER)  
 REMAINING 1500 +/- OF CHANNEL IS AT 6" MIN. OR BUTTER)

SECTION 1" = 5'

BOGUE WATCH - CARTERET COUNTY

CE6 - DREDGING



**STROUD ENGINEERING, P.A.**  
 105 TRON PLAZA TWO  
 WILMINGTON, NORTH CAROLINA 28557  
 12521 247-7479

*Ronald D. Cullipher*  
 RONALD D. CULLIPHER, P.E.  
 DATE 4/3/07



SCALE: 1" = 5'

## Attachment E

### Other referenced Exhibits



-----  
**THIS APPLICATION REPRESENTS A MAJOR MODIFICATION REQUEST TO STATE PERMIT #141-06, ISSUED TO BOGUE WATCH, LLC, VIA THE EXPRESS PERMIT PROGRAM.**

9. Narrative Description:

The applicant is Bogue Watch, LLC, the entity having received State Permit #141-06 to develop the high ground infrastructure for a 287-lot subdivision on 195 acres. This permit was reviewed and authorized under the express permitting program, and allowed for the installation of roadways and utilities, 3 observation piers, a vehicular bridge, and a community wastewater treatment system. The subdivision lies adjacent to Sanders Creek/Bay and Bogue Sound in the Newport area of Carteret County, on the south side of Highway 24 East. The applicant is in the process of completing that development, and now wishes to request a marina for the community on the common area, located at 1130 Situs Court.

The property is 195 acres in size, and is presently vegetated with lawn grasses, pines, and oaks. Roadways into the subdivision are currently being installed, as are stormwater ponds, and the wastewater treatment system. The average tract elevation is +6.5' nhw, with the property having approximately 5550' of shoreline along Sander's Creek and Bogue Sound. Both Sander's Creek and Bogue Sound carry water quality classifications of SA-ORW. Substrate in the project area is sandy, with visible beds of submerged vegetation offshore, also evidenced by a wrack line of the same. While the substrate contains shells, no oyster beds were observed within the area of the proposed project. Sander's Creek is closed to the taking of shellfish by the DEH, while Bogue Sound is open. Sander's Creek is a designated Primary Nursery Area per the DMF, while Bogue Sound is not.

The Carteret County Land Use Plan classifies this area of the county as Limited Transition, with all AEC's classified as Conservation. The body of water within the area of this proposal is in excess of one mile across. Section 404 Wetlands, high marsh, and low marsh border the shoreline along the entire project site. Tidal amplitude in the project area is approximately 1.2'. The NC Division of Land Resources issued Sedimentation/Erosion Control Permit CARTE-2006-376 on 5/04/06 for the subdivision presently under construction. NC Division of Water Quality Stormwater Permit SW8 060614 was issued on 9/13/06 for the same. State CAMA Permit #141-06 authorized 15.3% impervious within the AEC.

In 1984, State Permit #176-84 was issued to T.M. Singleton/Holiday Village that included the excavation of a channel from the shoreline of the current project site, through Sander's Creek, into Bogue Sound. At the time, there were two parties involved who had further plans that never came to fruition. However, the channel was excavated, and is first depicted on aerial photography between the years of 1984 and 1989. The authorized depth of excavation was -6' nlw, with a width of 60'. Aerial photography from 1989 indicates that the actual excavation was probably closer to 60' at shore, narrowing to 45' offshore. The overall channel length from the shoreline to the connecting water depths within the AIWW of Bogue Sound was approximately 2500 linear feet.



On the south side of the new subdivision lies a lot designated for community use, between lots 62 and 63, approximately 50,000 sf in size. This area contains the narrowest fringe of coastal wetlands along the development shoreline, approximately 35' wide, containing Spartina patens, Distichlis spicata, and sparse juvenal Spartina alterniflora. Along this area of the shoreline there are remnants of shrub vegetation in the form of small stumps below the nhw line. To each side of the common area lot, the marsh has a distinct 6" or greater erosion escarpment, however the sandy/clay bottom area in the vicinity of the proposed channel nearest the shoreline does not. Further offshore, the substrate turns to sand with little silt. Photography indicates that the channel was originally excavated to the shoreline, but that the shoreline has lost approximately 40' since the time of excavation. Specifically, there was approximately 25' of erosion between 1989 and 1995, and another 15' by the 2000 photography series. Site indicators such as the shrub stumps, clay content of the substrate, and juvenal marsh vegetation confirm this recent shoreline loss. Consequently, the channel as it exists today, begins approximately 40' + offshore.

The applicant proposes to excavate a basin from high ground, approximately 24,700 sf, with dimensions approximating 190' x 130'. The basin has been designed to avoid 90-degree corners, to aid in flushing. Elevations in the area currently are +4' msl, and the excavation will result in average soundings of -4.5' nlw, removing approximately 10,063 cubic yards of material from high ground. Finished bottom contours will be -3' at the landward end, tapering to -6' at the channel, as an aid to flushing. Spoil excavated from the basin will be removed by track hoe and dragline, and will be incorporated into the development of the subdivision, as well as forming the dike wall for the hydraulic spoil disposal area. A plug will be left between the basin and channel until all dredging is completed.

Upon completion of basin excavation, a berm with a top width of 4' and 3:1 side slopes will be constructed around the new basin. This will serve as the spoil disposal area for channel excavation. A flashboard riser will be installed in the southwest corner of the disposal area, with an effluent pipe to discharge into Sander's Creek to the west of the entrance channel.

The applicant is proposing to maintenance excavate the landward 630' of the original channel. Because of shoreline erosion since the time of original excavation, this will include approximately 40 linear feet of area not involved in the original excavation, which will be considered new dredging. The channel entrance at the basin is proposed for 38' in width, crossing high ground for the first 19' ±. The channel will taper to a top width of 28' where it will intersect the existing channel, excavating approximately 300 sf of Spartina patens and Distichlis spicata, and approximately 750 sf of Spartina alterniflora. The applicant has shown 743 sf of wetland fringe, combining the high marsh (shown as Section 404 Wetlands) with the low marsh. Since the plats were originally drawn, the marsh has expanded territory with sparse but healthy Spartina alterniflora, making for a total wetland area destined for excavation of approximately 1050 sf at this time.

Where the excavation approaches the new channel, the top width will expand to 45', narrowing for the last 300' to a top width of 30'. All excavation will be within and narrower than the originally excavated footprint. Channel side slopes are proposed for 1:1. The channel excavation will disturb 23,625 sf of shallow bottom habitat inclusive of the wetlands,

and approximately 720 sf of high ground. Approximately 1777 cubic yards of material will be removed during the excavation of the access channel, changing the bottom contours from the existing average of -3.9' nlw to -6' nlw. This excavation will be accomplished hydraulically, with spoil pumped into the disposal area around the newly created basin.

The basin will be stabilized with 608' of vinyl bulkhead. Tie back/deadman installation will disturb 6080 sf of high ground around the basin. A 75' x 20' boat ramp will be installed at the north end of the basin, connecting to the cul-de-sac of Bow Spray Drive. Two 6' wide docks are proposed along the sides of the ramp, 80' and 76' in length. The project includes a 513' x 6' boardwalk around the basin, with a 53' x 4' boardwalk on the southeast side. The drip-thru boardwalks will extend from the bulkhead over high ground. Extending 20' into the basin will be 14 fixed docks, 3' wide at the bulkhead, 1.5' wide at the end. Fourteen pilings will be installed between the docks at the waterward ends, creating 29 boat slips.

Along the east and west sides of the entrance channel, the applicant proposes to install breakwaters to prevent sedimentation of the basin and entrance channel. The breakwater to the east is proposed for 63.2', or 40' from nhw. The breakwater to the west is proposed for 59.4', or 38' from nhw. The breakwaters are designed with a 1.5" gap for every 18" of vinyl sheetpile, extending to 6" above nhw. Both structures are to be located in excess of 2000' from the riparian shoreline of the development, though closer to the lots yet to be sold.

This will be a private marina, to serve boats with an average size of 20', and maximum of 24'. There will be a "no head" policy, and no overnight or "live-aboards" allowed, per the applicant. A "No Sewage Discharge" sign will be posted at the entrance to the marina.

#### 10. Anticipated Impacts:

The entrance channel for this project will require the excavation of 722 sf of high ground, 300 sf of high marsh, 750 sf of low marsh, and 22,155 sf of shallow bottom habitat. With the exception of the marsh area and 540 sf of shallow bottom, the proposed channel area has been excavated previously. The basin will require the excavation of 25,420 sf of high ground, within which the ramp will fill 1500 sf. The bulkhead will require the filling of approximately 6080 sf of high ground outside of the footprint of the basin, in the area where the dike wall will be removed. The boardwalk and upper portion of the ramp docks will shade 3,972 sf of high ground, while the lower end of the ramp docks and finger piers will shade 920 sf of newly created open water, and incorporate 8,320 sf of the new marina basin. The breakwaters will be installed through 35 sf of high ground, 40 sf of high and low marsh, and 49 sf of open water. The channel excavation will have short-term turbidity impacts, while the basin excavation should not. The permit can be conditioned to require that the ramp and all docks be installed prior to the basin plug being removed, which will eliminate turbidity impacts from piling installation. The project will add 940 sf of impervious area in the form of the boat ramp to the existing AEC coverage of 15.3%. Neither the creation of the slips in the upland basin, nor the excavation from a closed shellfish area with effluent returning to the same should result in an expansion of the shellfish closure in Sander's Creek.



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

DATE: September 12, 2008

TO: Doug Huggett

THRU: Tere Barrett *TJ*

FROM: Barry Guthrie *BG*

SUBJECT: Bogue Watch LLC, modification to Major Modification request currently on hold

Please find enclosed a letter from Mr. Ronald Cullipher of Stroud Engineering, on behalf of Bogue Watch LLC, requesting changes to a Major Modification application currently on hold. The Major Modification request is for existing permit number 141-06, issued on 9/14/06 to Bogue Watch, located on Sanders Creek and Bogue Sound in Carteret County.

Original permit 141-06 was issued for a 287-lot subdivision under the express permit program. The Major Modification request includes construction of an upland basin for 29 wet slips, the maintenance dredging of the existing channel, and a boat ramp. In addition to the maintenance dredging, 40 linear feet of new excavation is proposed at the landward terminus of the existing channel. This is due to the loss of approximately 40 feet of shoreline since the time of original excavation. The waters of Sanders Creek are classified as SA/ORW as well as a Primary Nursery Area. The applicant wishes to modify the current application by reducing the number of wet slips proposed from 29 to 9. By reducing the number of slips, the applicant meets the guidelines drawn out by the Carteret County LUP regarding construction in a primary nursery area. The dimensions of the upland basin shall remain the same. The applicant also wishes to relocate previously approved Pier #1 to a location designated in attached plans. The proposed Pier #1 location will require an elevated access walkway to transverse Section 404 Wetlands near lots 239 and 240.

Per the request of Mr. Ronald Cullipher in an e-mail correspondence dated September 3, 2008, I recommend that the permit application be taken off of hold and processing to resume with any necessary agency re-circulation.

Cc: Dave Timpy, USACE  
Joanne Steenhuis, DWQ  
Trish Murphey, DMF  
Maureen Will, DCM

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

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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

# Memo

**To:** Doug Huggett  
Major Permits Processing Coordinator

**From:** Patricia L. Murphey *PLM*  
Marine Biologist Supervisor

**Thru:** Mike Marshall *MM*  
Central District Manager

**Date:** 10/15/2007

**Re:** Bogue Watch LLC, c/o John Netherton, Carteret County

---

North Carolina Division of Marine Fisheries (DMF) staff met with staff of the Division of Coastal Management (DCM) and representatives for the applicant of Bogue Watch LLC. The applicant proposes to excavate a basin from high ground to create a private marina with 29 boat slips and a boat ramp in Sanders Creek. They also propose new dredging of 40 linear feet of shallow bottom habitat, coastal marsh and 404 wetlands in Sanders Creek, designated by rule by the Marine Fisheries Commission. New dredging in a PNA is prohibited by rule of the Coastal Resources Commission. After discussion of impacts to the PNA with DCM staff and the applicants, the DMF continues to object to this proposal for new dredging because it is prohibited by rule of the Coastal Resources Commission but removes its concern about significant adverse impacts.

3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina 28557  
Phone: 252 726-7021 \ FAX: 252 727-5127 \ Internet: www.ncdmf.net

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**NC COASTAL RESOURCES COMMISSION (CRC)**  
**September 24-26, 2008**  
**Sea Trail Resort and Convention Center**  
**Sunset Beach, NC**

**Present CRC Members**

Bob Emory, Chairman (absent 9/24/08)  
Joan Weld, Vice-Chair

Chuck Bissette	Melvin Shepard
Charles Elam	Bob Wilson
David Webster	Lee Wynns (absent 9/26/08)
Bill Peele	Veronica Carter
Wayland Sermons	Ed Mitchell (absent 9/24/08 and 9/26/08)

**Present Coastal Resources Advisory Council Members (CRAC)**

Dara Royal, Chair  
Penny Tysinger, Co-Chair

Bob Shupe	Judy Hills
William Wescott	Eddy Davis
Tim Tabak	Spencer Rogers
Randy Cahoon	Joe Lassiter
Dave Weaver	Joy Wayman
Nick Santoro (for Chris Mele)	Maximilian Merrill
W.H. Weatherly	Lee Padrick
Bill Morrison	Renee Gledhill-Earley
Joe Beck	Anne Deaton
Webb Fuller	Al Hodge
J. Michael Moore	Phil Harris
Frank Rush	Travis Marshall
Harry Simmons	David Stanley (for Don Yousey)
Bert Banks	

**Present Attorney General's Office Members**

Jennie Hauser  
Allen Jernigan  
Christine Goebel  
Amanda Little  
Ward Zimmerman

## CALL TO ORDER/ROLL CALL

Vice-Chair Joan Weld 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.

Angela Willis called the roll. Melvin Shepard and Veronica Carter both indicated conflicts. Based upon this roll call, Vice-Chair Weld declared a Quorum.

Joan Weld announced that two Commissioners have been appointed and the CRC is now full. She introduced Veronica Carter and announced that Ed Mitchell would be in attendance tomorrow.

On Thursday, Bob Emory stated he is a friend with one of the attorneys that will be presenting today, but does not feel there is a conflict. Joan Weld stated she would recuse herself on one issue.

## VARIANCE REQUEST

### Town of Kure Beach – (CRC-VR 08-45) Kure Beach, Oceanfront Setback

Amanda Little of the Attorney General's Office represented Staff. Ms. Little stated the Petitioners applied for a CAMA minor permit to construct a dune infiltration system to treat stormwater at the existing ocean outfall at K Avenue and Atlantic Avenue in Kure Beach, New Hanover County. All of the proposed development is landward of the static vegetation line within the oceanfront setback. Petitioner has applied for a variance seeking relief from strict application of the Commission's ocean hazard rules 15A NCAC 07H .0306(a), 07H .0309(b) and 07H .0601.

Ms. Little stated there were no representatives present on behalf of the Town of Kure Beach, but there were representatives present from the Department of Transportation (authorized agent for the Petitioner).

Ms. Little reviewed the stipulated facts of this variance request. Staff and Petitioners agree on all four of the statutory criteria which must be met in order to grant the variance. Ms. Little further stated the NC Dept. of Transportation and the Town of Kure Beach are working to reduce the impacts to water quality and the restrictions of the use of the beach for swimming through this innovative dune infiltration system.

**Charles Elam 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. Lee Wynns seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).**

**Melvin Shepard made a motion to support the Staff's position that hardships result from conditions peculiar to the Petitioner's property. Lee Wynns seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).**

**Melvin Shepard made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Charles Elam seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).**

**Chuck Bissette made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure public safety and welfare; and preserve substantial justice. Bob Wilson seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Sermons, Shepard, Carter, Bissette, Webster).**

This variance was granted.

**Wilmington Light Infantry Beach Club-(CRC-VR 08-47) Wrightsville Beach, Combined finger piers, T's and decks exceeding 4 sq.ft. per linear foot of shoreline**

Amanda Little of the Attorney General's Office represented Staff. Ms. Little stated the Petitioners applied for a CAMA major permit to replace an existing docking facility with a new fixed pier, gazebo, and floating docks in Banks Channel in Wrightsville Beach, New Hanover County. The proposed development exceeds the combined total area of four square feet per linear foot of shoreline. Petitioner applied for this variance seeking relief from strict application of the Commission's ocean hazard rules 15A NCAC 07H .0208(b)(6)(D).

Ms. Little reviewed the stipulated facts of this variance request. She further stated that Staff and Petitioners do not agree on any of the four criteria which must be met in order to grant the variance. She introduced Ralph Mullis, WLIBC President, who represents Petitioner.

Jennie Hauser of the Attorney General's Office advised Mr. Mullis that if he speaks on behalf of the organization, the NC State Bar considers this to be the unlicensed practice of law. This is a relatively recent Bar ruling. After discussion, the CRC decided to hear from Mr. Mullis.

Ralph Mullis, President of Wilmington Light Infantry Beach Club, spoke on behalf of Petitioners. He stated that he had been authorized by the Club to pursue the variance request. He stated the intent of the club (43 members) is to provide a safe facility for the WLI Club and that is the only position that he has. Mr. Mullis reviewed the stipulated facts which he contends supports the granting of the variance.

**Melvin Shepard made a motion to support Staff's position that strict application of the development rules, standards, or orders issued by the Commission do not cause the Petitioner unnecessary hardships. David Webster seconded the motion. The motion failed with three votes in favor (Wynns, Shepard, Webster) and six opposed (Wilson, Elam, Wayland, Carter, Bissette, Peele).**

**Charles Elam made a motion to support Petitioner's position that strict application of the 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, Elam, Sermons, Shepard, Carter, Peele) and three opposed (Wynns, Bissette, Webster).**

**Bill Peele made a motion to support Petitioner's position that hardships result from conditions peculiar to the property. Charles Elam seconded the motion. The motion passed with five votes (Wilson, Elam, Sermons, Bisette, Peele) and four opposed (Wynns, Shepard, Carter, Webster).**

**Melvin Shepard made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Veronica Carter seconded the motion. The motion failed with three votes (Shepard, Carter, Webster) and six opposed (Wynns, Wilson, Elam, Peele, Sermons, Bisette).**

**Wayland Sermons made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Charles Elam seconded the motion. The motion passed with six votes (Wynns, Wilson, Elam, Peele, Sermons, Bisette) and three opposed (Shepard, Carter, Webster).**

**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; will secure the public safety and welfare; and will preserve substantial justice. Bob Wilson seconded the motion. The motion passed with six votes (Wynns, Wilson, Elam, Peele, Sermons, Bisette) and three opposed (Shepard, Carter, Webster).**

This variance was granted.

**NC Aquarium (CRC-VR 08-50) – Nags Head, Pier House in Oceanfront Setback**

Christine Goebel of the Attorney General's Office represented Staff. Ms. Goebel introduced Anita LeVeaux of the Attorney General's Office who represents the Petitioner and David Griffin the Director of NC Aquariums. Ms. Goebel stated that the Petitioner owns property located on the oceanfront near the intersection of NC 12 and NC 158 in Nags Head, Dare County. Petitioner applied for a CAMA major permit to construct an ocean fishing pier and educational public pier facility on the oceanfront at the site of the old Janette's Pier. The permit was denied for many reasons. The pier house, pump house and bathhouse do not meet applicable oceanfront setbacks. The proposed 2.5-story pier house exceeds the existing height limit in the CRC's rules. Lastly, at the time of the permit decision, the project did not meet local zoning however the zoning has been amended. Petitioner seeks relief from strict application of 15A NCAC 07H .0306, 07H .0309 and 07H .0601.

Ms. Goebel reviewed the stipulated facts of this variance request. Ms. Goebel stated that Staff and Petitioners agree on all four statutory criteria which must be met in order to grant the variance.

Anita LeVeaux of the Attorney General's Office represented the Petitioner. Ms. LeVeaux reviewed the stipulated facts that she contends support the granting of the variance. She further stated that strict application of the CAMA rules will result in the failure of this project and the citizens of the State will reap the benefits.

**Melvin Shepard made a motion to support Staff's position that difficulties or unnecessary hardships result from strict application of the guidelines, rules, standards or restrictions**



**applicable to the property. Wayland Sermons seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).**

**Melvin Shepard made a motion to support Staff's position that difficulties or hardships result from conditions which are peculiar to the property. Bill Peele seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).**

**Melvin Shepard made a motion to support Staff's position that hardships do not result from actions taken by the Petitioner. Charles Elam has seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).**

**Bill Peele 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. Melvin Shepard seconded the motion. The motion passed unanimously (Wynns, Wilson, Elam, Peele, Sermons, Shepard, Carter, Bissette, Webster).**

This variance was granted.

## **MINUTES**

**Lee Wynns made a motion to approve the minutes of the July 2008 CRC meeting. Melvin Shepard seconded the motion. The motion passed with eleven votes (Weld, Bissette, Elam, Webster, Peele, Sermons, Shepard, Wilson, Wynns, Carter) (Mitchell abstained).**

## **EXECUTIVE SECRETARY'S REPORT**

Jim Gregson, DCM Director, welcomed Veronica Carter and Ed Mitchell to the Commission on behalf of the DCM Staff and gave the following report.

### **Sandbag Enforcement Update**

After a short delay due to Tropical Storm Hanna, last Friday DCM mailed 21 letters to property owners requesting removal of sandbag structures that have exceeded their time limits. Staff will continue to follow standard enforcement procedures in this endeavor and take all appropriate action as required. In addition, the sandbag map we showed you at our July meeting is now available on our web site, under What's New.

### **Storm Damage**

Tropical Storm Hanna mostly spared our coast any significant damage. However, some of the Cape Fear region, including Carolina Beach, Bald Head Island, Caswell Beach, Ocean Isle Beach, and Holden Beach did experience some erosion and ocean overwash that damaged roads and buildings. A damage assessment team from the Federal Emergency Management Agency was in Brunswick County on Tuesday to reassess damages from Hanna in Holden Beach, Ocean Isle Beach and other beach communities.

### Cape Carteret Enforcement Plan

On Sept. 17, the Town of Cape Carteret submitted their letter of intent to amend and update its local implementation and enforcement plan, which is required for the Town to re-institute their CAMA minor development permit program. The Town held a public hearing regarding the plan at the April 21 meeting of the Board of Commissioners, and will present their proposed plan to the Commission for review at the November meeting.

### Coastal Training Program Update

The Coastal Training Program will host three workshops in October on grant writing, coastal community planning and development, and public issues and conflict management training.

### Staff News

Ward Zimmerman has been hired as an Assistant Attorney General, and will be representing DCM staff in our legal matters. Wilmington Office field representative Robb Mairs has left DCM for a position with a private company. Rich Weaver, Assistant major permits coordinator in the Morehead City office, has also left DCM for a position with the Environmental Affairs Department at Marine Corps Air Station, Cherry Point.

### SC Visitors

I want to welcome several visitors from the South Carolina Office of Ocean and Coastal Resource Management who are with us today. Marvin Pontiff, Assistant Deputy Commissioner of S.C. Dept. of Health & Environmental Control; Barbara Neale, Director of the Regulatory Division; Braxton Davis, Director of the Science and Policy Division and Shawn Kiernan, Senior Planner in the Coastal Planning Division.

## **CHAIRMAN'S COMMENTS**

Bob Emory stated that since the last CRC meeting there has been a meeting of the CHPP Steering Committee. The minutes of the meeting were included in the CRC's materials. There has also been a meeting of the Estuarine Shoreline Stabilization Subcommittee and the main outcome of this meeting was that Staff of the effected agencies was asked to make use of the N.C. estuarine and biological and physical processes workgroup report which analyzed the different shoreline types in North Carolina and what the most appropriate stabilization techniques for each of these shorelines. The Staff was instructed to look at this report and tailor some rules that match stabilization type to shoreline type.

Robin Smith stated she has provided a brand new Department guidance manual on preparation of environmental documents under the State Environmental Policy Act. This has a special emphasis on providing some guidelines for assessing secondary and cumulative impacts. This is the product of 2-3 years of work with a lot of input from our permitting staff. This will be useful both on the Staff side as well as the applicant side. It is on the Department's website.

## **CONTESTED CASES**

### Cowell/Dressler v. DCM & Westphal 06 EHR 1185

Attorney Jim Conner represented Petitioners Mr. Hank Cowell and Dr. Carolyn Dressler. Mr. Conner stated this case involves a pier permit issued by DCM. Mr. Conner stated the Petitioners have submitted written exceptions to the Administrative Law Judge's decision and a proposed

decision that the Petitioners would wish for the CRC to adopt. The main issue in this case was a 110-foot pier which was installed through a coastal wetland when there was a practical alternative that would have avoided the impact. Mr. Conner further contended there were six violations of the law in issuing this permit. Respondents request that the permit be declared invalid, the pier be removed from the wetlands, and the wetlands be ordered to be restored.

Christine Goebel of the Attorney General's Office represented the Division of Coastal Management, the Respondent in this case. Ms. Goebel stated the Permittees, Earl and Mary Jane Westphal, are present and have requested to present oral arguments. This case is a third party petitioner challenging the issuance of a CAMA General Permit for a two-slip pier in Pamlico County near Oriental. The ALJ in this case ruled that the permit was properly issued by DCM Staff and is consistent with the CAMA and CRC's rules.

Mary Jane Westphal spoke on behalf of herself and Earl Westphal, the Respondent-Intervenors in this case. Mrs. Westphal stated Mr. Conner's case is about significant impact. However, the area that was affected by this pier is less than five percent.

**Bob Wilson made a motion that the Coastal Resources Commission adopt the Administrative Law Judge's decision and issue a final agency decision affirming the Respondent's decision to issue the CAMA General Permit. Lee Wynns seconded the motion. The motion passed with nine votes (Sermons, Wynns, Wilson, Elam, Peele, Weld, Carter, Bissette, Webster) and one opposed (Shepard) (Mitchell abstained).**

**NC Coastal Federation v. DCM & Wind Over Waves, LLC 07 EHR 0345**

*Joan Weld stated she has an appearance of conflict in this matter and recused herself. Veronica Carter stated she has an actual conflict with this case and recused herself. Melvin Shepard stated he has an actual conflict with this case and recused himself. Bob Emory stated he is a friend of Mr. Sheffield, but it will not hinder his ability to make an objective decision.*

John Suttles of the Southern Environmental Law Center represented Petitioners, North Carolina Coastal Federation. Mr. Suttles stated this case involves a CAMA Major development permit for the third phase of the Wind Over Waves development complex which is located on the shores of Pamlico Sound and Britt Creek which is a tidal creek on Hatteras Island, North Carolina. The decision of the Division of Coastal Management relies on a stormwater permit that was issued by the Division of Water Quality. In July 2008, the EMC considered the entire record in that case, considered the briefs filed by counsel and the arguments of counsel and vacated the stormwater permit. The Petitioner urges the CRC to deny the permit in this case because it would violate 3 state laws. The Petitioners have file exceptions to the ALJ's recommended decision.

Christine Goebel of the Attorney General's Office represented the Respondents, NC Division of Coastal Management. Ms. Goebel stated this case started as a challenge to the CAMA permit (specifically the coastal wetlands line that was delineated) and throughout this case Petitioners have attempted to bring in the stormwater permit and the EMC's decisions related to the stormwater permit. One of the very first things that happened in this case was a motion to sever filed on behalf of the Respondents. The ALJ has split this case and severed it into two separate cases. The Petitioners are still trying to bring in the stormwater permit into this case to challenge the CAMA permit that was issued for a road and utilities. Mr. Suttles has gone outside the record in this case by referencing the newer occurrences that have been handled on the EMC side

and we would object to consideration of these new facts. The Respondents have filed a memorandum in support of the ALJ's decision.

Amy Wang of Ward and Smith, P.A. represented the Respondent-Intervenor, Wind Over Waves, LLC. Ms. Wang stated the Intervenor-Respondent agrees with Staff and Ms. Goebel's representation of the delineation that was done in this matter. According to the testimony in the record, this was a conservative call and it took months to go through the evidence that could be found. Ms. Wang stated the CRC should adopt the decision of the ALJ to uphold the CAMA permit. The Respondent-Intervenor has filed a statement in support of the ALJ's decision as well as an exception and proposed alternative to the ALJ's conclusion of law number 3.

**Bob Wilson made a motion that the Coastal Resources Commission adopt the Administrative Law Judge's decision and issue a final agency decision affirming the Respondent's decision to grant the CAMA permit. Lee Wynns seconded the motion. The motion passed with five votes (Wynns, Wilson, Elam, Peele, Bissette) and two opposed (Sermons, Webster) (Mitchell abstained).**

#### **CRAC Report**

**\*\*See attached for CRAC report.\*\***

The CRC took the following actions:

The CRAC recommended certification of the Currituck County Land Use Plan amendment. **Charles Elam made a motion that the Coastal Resources Commission certify the Currituck County Land Use Plan amendment. David Webster seconded the motion. The motion passed unanimously (Sermons, Wynns, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette, Webster) (Mitchell abstained).**

The CRAC recommended certification of the Town of Carolina Beach Land Use Plan amendment.

**Dara Royal made a motion that the Coastal Resources Commission certify the Town of Carolina Beach Land Use Plan amendment. Melvin Shepard seconded the motion. The motion failed unanimously (Sermons, Wynns, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette, Webster) (Mitchell abstained).**

**Bill Peele made a motion to deny certification of the Town of Carolina Beach Land Use Plan amendment. Joan Weld seconded the motion. The motion passed unanimously (Sermons, Wynns, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette, Webster) (Mitchell abstained).**

#### **PRESENTATIONS**

**South Carolina Coastal Program – S.C. Coastal Issues Update  
Marvin Pontiff, Asst. Deputy Commissioner of S.C. OCRM**

Marvin Pontiff stated that Carolyn Boltin, Deputy Commissioner of OCRM was unable to attend. We are happy to talk today about the challenges and opportunities that we face in coastal

zone management in South Carolina. Earlier this year Jim and members of his staff came down and visited with us. We had a very productive meeting and learned a lot. We are looking forward to a continued long-term relationship with the state of North Carolina.

In the mid-1970's while the country was focused on issues of clean water and air, there was another federal effort underway and that was the passage of the Federal Coastal Zone Management Act in 1972. In response to this federal legislation, the South Carolina General Assembly and Governor, recognizing the importance of coastal tourism as an economic driver for the State, passed the South Carolina Coastal Tidelands and Wetlands Act in 1977. In 1979 as directed by the 1977 Act, the General Assembly and the Governor approved South Carolina's Coastal Zone Program. This was later approved by NOAA. Our program oversees the activities in the coastal zone (made up of 8 coastal counties). Direct permitting authority is in the critical area and this direct permitting authority includes the tidelands, coastal waters, beaches, and the oceanfront sand and dune system. South Carolina has 2,876 miles of tidal shoreline and 187 miles of Atlantic coastline. A few interesting facts show the value of our coastal resources. One hundred eighty million Americans annually make 2 billion visits to ocean, Gulf and inland beaches. Over 15 million tourists visit the South Carolina coast each year. Beaches contribute more than 320 billion dollars annually to the national economy while coastal states receive about 85 percent of tourist related revenues in the United States. South Carolina coastal tourism is a 6 billion dollar plus industry. We have discovered that marshes and the dune system provide a critical buffer from storms and hurricanes.

The OCRM is part of the Department of Health and Environmental Control in South Carolina. We have six divisions and about 60 staff. Our main office is in Charleston and there are regional offices in Beaufort and Myrtle Beach. The regulatory division is our permit division and they handle all critical area permitting, dock permits, stormwater and land disturbance permits, and the State and Federal certification activity. They are also involved in beach monitoring and beach management issues and conduct compliance inspections. The coastal planning division provides expertise and project management to local governments and other agencies to encourage sustainable coastal development and resource protection. They do special area management plans and work with local beachfront communities to develop the beachfront management plans and coordinate the coastal nonpoint program. Our science and policy division leads the science and policy research for short-term decision making and long-term policy development.

Our program goals are to implement the Coastal Zone Management Act through our regulatory programs. We foster public participation and outreach and develop partnerships with other state and federal agencies. We are facing significant coastal challenges. We are trying to manage coastal growth with an increased number of permits and pressure on our limited staff resources. There has been an increased level of public interest with a greater number of comments for our permit applications, permit appeals, and public hearing requests. We are addressing coastal hazards throughout the process particularly erosion, climate change, sea level rise and hurricanes. We have seen a rise in the last decade in the stormwater permit applications. Even as these are increasing, we note that buildable coastal areas are becoming more scarce. The review of projects is becoming increasingly technical as smaller lots with varying terrain, wetlands, and possible cultural resource issues are being developed. About 23% of the state's land is in the coastal zone, but roughly 42% of the stormwater permits are processed within the 8 coastal counties. For critical area permit applications we have seen a small decrease. We have a

renewed focus on shoreline management due to chronic erosion issues. OCRM is under growing pressure to allow increased shoreline protection measures such as seawalls, bulkheads and development within the immediate beachfront. Sea level in the Charleston area has risen 9-12 inches in the past 100 years and the intergovernmental panel on climate change predicts this rate will accelerate over the coming decades. Erosion is a significant issue for us. Some beaches in South Carolina are stable or even accretional, but most beaches experience some degree of long-term erosion of about 1-3 feet per year. Some of our beaches are eroding between 8-10 feet per year. It is challenging to apply a retreat policy. South Carolina also experiences erosion along estuarine shorelines due to sea level rise, shoreline hardening and increased boat traffic. In 2007, we were in the middle of a chronic erosion event on the northern end of the Isle of Palms. We ultimately took enforcement action on the property owners for failure to maintain sandbags, but along the way we learned a lot of lessons. We learned a lot about the use of sandbags for property protection. Our regulations specify five-gallon bags, they do allow for some discretion with application. The smaller sandbags were not the way to go, as they would get scattered up and down the beach. We recognized issues we had with local governments and their issuance of emergency orders. South Carolina has relied on beach renourishment as a viable solution to maintain our beaches. Since 1990 over 220 million dollars has been spent on renourishment projects in our state. Typically 45% of the funding is from the federal government, 45% is from the state/municipal governments and 10% is from private resources. Some of these projects have been privately funded at gated-communities. Sixteen of the eighteen Atlantic and Gulf Coast states have beach renourishment policies. We are revisiting our state long-term policy of retreat as renourishment may not be a definite, viable option. We have two jurisdictional beach lines (baseline and a setback line). There are three defined zones a standard zone, a stabilized inlet zone and an unstabilized inlet zone. Erosion data is collected at an ongoing basis and our erosion rates are calculated by scientists at Coastal Carolina University. Our lines are set by staff and may move landward or seaward depending on the calculations and the zone designations. Our Statute requires that when these lines are reviewed/revised that they are publically noticed for a 30-day period and public hearing be held. In the standard and stabilized inlet zones, the baseline is established at the crest of the primary oceanfront sand dune. The setback line is landward of the baseline at a distance of 40 times the calculated erosion rate, but no less than 20 feet. In the unstabilized inlet zones the baseline is the most landward shoreline during the past 4 years based on historical aerial photos. The setback line is landward of the baseline and is calculated at a distance of 40 times the annual erosion rate with a minimum of 20 feet. We are targeted to complete the beach jurisdictional line review in August 2009. These lines will be the jurisdictional lines for the next ten years. Our staff worked with the city of Isle of Palms to develop the first local comprehensive beachfront management plan. The Beachfront Management Act states the management of the beachfront is both a local and state responsibility. Thirteen of our eighteen communities currently have approved plans and these plans have to be updated every 5 years. There are 10 required elements in these plans. Some of these elements include inventories of beach erosion, public beach access, structures located in the setback area, and turtle nesting and other habitats. We have initiated a shoreline change effort with the designation of a Shoreline Change Advisory Committee. This is a multi-year effort and is designed to help guide us in considering our experiences over the past 20 years. A Shoreline Change Advisory Committee was established in late 2007 and is comprised of 23 coastal managers, scientists, representatives of non-governmental organizations, municipal officials, developers and legal professionals. The advisory committee will work on identifying research needs and identifying pros and cons of various broad policy options (information is available on the website). We have also recently constituted an ocean planning workgroup. It is made up of

federal, state and academic partners. A series of workshops will be held on emerging sand, energy, mapping, and habitat issues. We also have a very active abandoned vessel removal program. This addresses the water quality threat, threats to shellfish, navigation and recreation. We are very proud of the S.C. coastal information network. This website was launched in January 2008 and addresses information and training opportunities. We look forward to a long-lasting relationship with our N.C. counterparts.

**Offshore Wind Energy**  
**Bob Leker, State Energy Office**

Bob Leker, renewables program manager for the State Energy Office of the North Carolina Department of Administration, gave an overview of the wind resource. International examples of offshore wind and some of the North Carolina opportunities and issues were illustrated by maps. There are opportunities in the mountains, but the focus will be on the coastal region. Some of the opportunities on the coast include some of the large landowner-held coastal farms. There are vast areas of good wind resource in the sounds. In the ocean off the Outer Banks the wind resource gets better. Generally wind developers look for high level winds that are stable and away from sea level. The point at which blades attach to the turbine motor is between 70-80 meters in height. The focus will be on utility scale. Mr. Leker said he hadn't seen anything other than utility scale being proposed on the water, except for sailboats to power their batteries. A land-based example case study at North River Farms estimates that this 7 square mile plot of land could support about 25 turbines at the 2-mega watt size. Although this example takes up 7 square miles, the actual footprints of turbines are quite small.

The Department of Energy looks at offshore wind potential and in North Carolina we have plenty of wind resource and plenty of shallow water which are the two ingredients that make wind potential. The benefits for sighting offshore include less turbulence, higher capacity factor, the visual effects are less since they can be sighted further away from habitable areas, and it avoids some of the land-based weight constraints. Offshore wind is being installed as we speak. Britain has wind farms installed and operating. There is international experience with offshore wind farms. One development example is the Horns Rev wind farm off of Denmark. It has 2 MW machines and the hub height is 70 meters. Some of the upward cost pressures on the industry include turbine supply shortages, steel and material prices, regulatory uncertainties in the United States, and risk uncertainty related to public acceptance for individual sites. There are downward cost drivers also including the experience we are learning with land based sites and increased mass production. There are technology improvements that we will be applying to water-based siting. Some of the U.S. projects that have been proposed are in Delaware, the Great Lakes and the Gulf Coast. There are no installed offshore projects in this country as of this date. The most common foundation would be the monopole foundation. A Danish study of birds at a wind farm system was looked at and radar plots have been documented. The birds see the farm and go around it. We can learn from the European experience about birds and migration. There is sophisticated software about what the wind farms would look like prior to construction. A model wind ordinance is available. Results from surveys were discussed. These surveys indicated that there is significant support for wind turbines. Some of the benefits of wind energy are that wind is renewable, the fuel is free, cost competitive, land-lease payments made to local land owners, local property tax revenues, and no emissions. Project review areas include land use planning, zoning, wildlife, aviation concerns, visual impacts and shadow flicker, wetlands, noise, construction traffic, radio wave interference, cultural concerns, and plants and

soils issues. Some of the key issues for wind power installation include incentive uncertainty, siting and permitting issues, transmission infrastructure issues, operation impacts, and accounting for non-monetary values.

### **Offshore Wind Energy in NC: Legal Framework**

**Lisa Schiavinato, NC Sea Grant**

**Joe Kalo, UNC Law School**

Joe Kalo, co-director of N.C. Coastal Resources Law Planning and Policy Center, stated offshore wind turbines are not legally simple. There are significant legal uncertainties that may impede water-based wind turbine projects. We will identify some of the legal uncertainties and what may be needed to resolve them. There are at least three important state entities that will play a role in the permitting of water-based wind turbines in N.C. The placement of wind turbines in coastal waters would be a major development and require a CAMA major development permit. Would the CRC be the entity that is establishing the environmental and natural resource protection rules that would govern the permitting of these facilities in coastal waters? CAMA creates an exception to the definition of development. It excludes work done by any utility or 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. The permitting of wind turbines may be out of the purview of the CRC. Currently, the N.C. Utilities Commission focuses on whether to grant a certificate of public convenience and necessity. They do not get into questions of environmental protection or natural resource protection. Should CAMA or the Utilities Commission have authority over maintenance and the decommissioning of these facilities? The Environmental Management Commission was given the authority to evaluate a procedure for evaluating renewable energy technologies that are proposed to be employed as part of a renewable energy facility. The EMC may establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State, and to the extent that there is not an environmental regulatory program to implement these protective standards. Is the EMC to develop all the rules for land and water-based wind turbines? This is a problem that needs to be worked out. The CAMA permit program is an existing regulatory program with standards for development in coastal waters. It will not be necessary for the EMC to develop another environmental regulatory program.

Is there the necessary statutory authority to grant the necessary rights to developers of wind energy projects to place them in coastal waters? The developers will need the right to occupy specific areas of state owned public trust submerged lands, the right to occupy some specific portion of the associate water column, and the right to occupy some specific area of air space above the water surface. There are existing statutes, but these statutes do not appear to be broad enough to grant all of the rights that developers would need.

Lisa Schiavinato, coastal law policy and community development specialist and co-director of N.C. Coastal Law Planning and Policy Center, continued the presentation by covering several of the existing statutes and their limitations. A solution would be for the General Assembly to enact a comprehensive statute do address the granting of rights to use submerged lands, the water column and the air space for wind turbine facilities. The CRC does currently have some general permit authority that could apply to wind turbine facilities in coastal waters {G.S. 113A-120(a)}.



However, there is a water dependency rule. Unless there is a specific exception in the rule, if it is not water dependent you cannot permit for waters in AEC's. The CRC deemed wind turbines to not be water dependent. If the CRC decides that it wants to craft some rules for wind turbine facilities, one solution would be to craft an exception to this rule and another specific rule for water-based wind turbines with factors such as project size, permissible site issues, and transmission lines.

### **Overview of Local Wind Ordinances** **Paul Quinlan, N.C. Sustainable Energy Association**

Paul Quinlan, Director of Economic Research and Development, stated the mission statement of the N.C. Sustainable Energy Association is to promote renewable energy and energy efficiency through public policy education and economic development. Wind energy has been a part of North Carolina's history. Prior to electricity windmills were used (photo of 1890 windmill in Beaufort was shown). After electricity was available, a 2 MW turbine was used on Howard's Knob in Boone, N.C. At that time this turbine was the largest turbine in the world. There hasn't been much happen on this front for awhile. In 2006 the interest in wind energy started picking back up. A project was proposed in Ashe County by the Northwest Wind Developers, but ultimately this project disappeared when the developers were unable to secure a certificate of public convenience and necessity from the Utilities Commission. More recently we have had a utility scale project proposed in Carteret County. This project is still pending because of an ordinance that the county is developing. The reason we are seeing a lot of discussion about wind energy in North Carolina is because of the passage of the N.C. Renewable Energy and Energy Efficiency Portfolio Standard (REPS). This Bill requires public electric utilities to generate 12.5% of their electricity from renewables and/or energy efficiency by 2021. A few counties have enacted ordinances (Watauga, Ashe, Camden, Currituck, and Carteret). The regulatory spectrum was explained (via a PowerPoint slide). Why would a community need local ordinances? To ensure public safety, promote good land use practice, mitigate off-site impacts, to inform and involve the public, provide developers clear and predictable standards, and to express local preferences. Mitigation strategies for local concerns were discussed. After the REPS Bill passed, the two existing wind-working groups merged to form the North Carolina Wind Working Group. The goals are to understand what needs to be done to encourage responsible wind energy development in North Carolina. In January 2008 we started building a model local ordinance to be used as a tool for local conversations. In July 2008 this process was completed. The model wind ordinance addresses minimum setback requirements, noise, shadow flicker, application requirements, installation and design requirements, and decommissioning requirements.

### **Environmental Management Commission's Renewable Energy Committee** **Steve Smith, EMC**

Steve Smith, Chairman of the EMC and Chair of EMC's Renewable Energy Committee, began his presentation with Senate Bill 3. The statutory language is the reason the EMC created a renewable energy committee in January 2008. We saw our charge as involving four elements. First, is to evaluate renewable energy technologies that are proposed to be employed as a part of a renewable energy facility. Second is to ensure that renewable energy technologies do not harm

the environment, natural resources, cultural resources, public health, safety or welfare of the State. Third is to evaluate whether or not there is an existing environmental regulatory program to protect these things. Lastly, if there is not an existing environmental regulatory program then establish an environmental regulatory program to implement those standards. The EMC asked the Attorney General's Office to give some advice on interpreting this. On September 10, an advisory memo from the AG's office was received by the EMC which states that the EMC has the authority to develop and implement regulatory programs for renewable energy resources that are not adequately covered by an existing regulatory program and secondly, the protective standards developed for a new regulatory program may be implemented through a permitting procedure. The EMC's Renewable Energy Committee was then able to go forward with Senate Bill 3.

You have heard about the application for the Certificate of Public Convenience by the Carteret County wind farm. The application came in the name of Nelson Paul (Golden Wind Farm). The Utilities Commission entered its order granting the certificate of public convenience in April. After the Renewable Energy Committee was formed, we put out a scoping notice asking the world at large to make submissions to us about the matters that we were interested in looking at. We received submissions on a variety of technologies including wind, biomass (woody mass and poultry litter), and solar methane from swine farms. After receiving these various submissions, we undertook to hear from various individuals about these various technologies. All of the submissions are listed on the EMC's webpage as well as the presentations. These are categorized so you can pull only the wind energy submissions if you wish. From this, the Renewable Energy Committee came to a consensus. There was a realization that the bulk of the people that has presented to the Committee on wind energy believe that any potential regulation would be more effective if it combined both local government and state involvement. The Renewable Energy Committee agreed with this and at our last meeting we began the process of trying to put this into specifics. We are moving towards considering a state regulatory block to cover wind energy that will carve out some issues that rise to the state level and leave the other issues at the local government level where they have more traditionally been handled (land use issues, zoning issues). Local government issues would include setback and lot size, lighting, shadow flicker, zoning). State level issues would include minimum standards for withstanding severe weather, standards for transmission lines, protection of significant state vistas, protection of wildlife, civilian/military air traffic routes, and civilian/military communications. We still have under consideration what to about standards for maintaining and decommissioning. We are moving forward to begin the process of considering how the state level issues should be regulated. The Renewable Energy Committee will make a recommendation to the full EMC. The EMC will then decide how it will proceed.

### **Wind Energy Panel Presentations**

Steve Smith introduced the panelists in attendance. The panelists were as follows:

Curtis Smalling – Audobon of N.C., important bird areas coordinator and mountain program manager. Mr. Smalling is also a member of the N.C. Wind Working Group.

Anne Deaton – N.C. Division of Marine Fisheries, section chief of habitat protection.

Joy Wayman – N.C. Dept. of Administration, real property agent in the state property office.

Doug Huggett – N.C. Division of Coastal Management, major permits coordinator.

Maria Dunn – N.C. Wildlife Resources Commission, northeast permit coordinator.

Paul Friday – Marine Corps Installations East, community plans and liaison coordinator.

John Langdon – Carteret County Manager.

Curtis Smalling stated Audubon of N.C. is the state office of the National Audubon Society. It has been the position of the state office as well as the National Audubon that renewable energy and renewable energy development is an important step in the right direction. The impacts of traditional methods of energy production are well known. Some of the impacts are quite severe on some of our natural resources. Using these renewable sources is an important part of some of our solutions along with aggressive conservation. It is important for all of us to highlight the need for responsible siting. Over a several year period, the National Renewable Energy lab and the National Wind Coordinating Committee poured millions of dollars into studying wind out west where the original installations were done. After the fourth national meeting, the bottom line was to reduce the impact on birds, put them where there aren't many birds. Birds use the wind for energy. In North Carolina there is a high diversity of bird life. A number of these species utilize our coastal resources. Up to 75% of the Atlantic flyaway populations of waterfowl use northeast North Carolina as a wintering area and stopover site. Millions of other birds use this corridor to migrate. A number of species in the world are pelagic species that only use offshore waters. We have to keep these resources in mind as we think about allowing the wind energy efforts in these areas. Many of our most productive areas for shore birds are in the inlets. Any utility scale project, whether wind or chicken litter, will have environmental impacts. Sometimes the impacts are not direct mortality impacts. Often times large wind farms take habitats out of the useful area for species. Where we place turbines offshore can have a tremendous impact on the amount and availability of foraging habitats. Audubon has taken a stand that we really want to see more resources put into post construction monitoring. The other important component is mitigation. We are starting to move into this on land-based systems. If we find that wind developments off shore are completely disrupting the sea mammal migration off of our coast, what do we do? We have to be informed about this and make choices in an informed way. All of these issues point back to the fact that we need some regulatory framework that addresses the statewide and regional wide issues rather than leaving up to local government. There is a need for the oversight of the CRC and EMC can help provide.

Anne Deaton stated she was here to discuss how the Division of Marine Fisheries would feel about wind energy. It has been discussed as a Division. Overall, DMF supports the concept of promoting wind energy or other renewable energy sources as long as it is properly sited. Eventually this will come through some sort of permit application and the Division would be asked to review it. Whenever we review any type of permit application we look at potential impacts on habitats, fish, fishing activities, and navigation. We know where most of our habitats occur. There have been studies done on the effects noise and electromagnetic field from wind turbines on fish. These studies have been inconclusive and we need more information before we know if it will affect migration routes. If you site the wind farms in Pamlico Sound then you have fishing activity interests to consider. There are a lot of shrimp trawlers in Pamlico Sound. I am not sure whether there would be restrictions on fishing. I have read that the blades are so high that you could actually fish under the structures. However, if there are cables on the surface of the seafloor, there will be concerns about trawling. We need to be sure that we do pre-monitoring and post-monitoring so we can adapt and modify these to minimize impacts.

Joy Wayman stated she had concerns about the effects of windstorm and hurricanes and how to prepare for reconstruction, repair, replacement, and the underground and submerged hazards. Also, we need a process in the new legislation to reassign the facilities should the operator fail.

Doug Huggett stated the Division of Coastal Management's regulatory program is an umbrella program. We bring in the resources and concerns of many other state and federal resource agencies. The CAMA actually lends their support to these agencies concerns and as we have heard, it is all in the siting of these types of facilities. There are a couple of regulatory impediments to permitting these facilities that currently exist within the CRC's rules. The water dependency issue has been brought up, but I will say that in 2005 the CRC was asked their opinion of whether offshore wind farms would be considered water dependent structures. The CRC's response was no. The second regulatory impediment would be for any ocean based system where any kind of transmission cabling would have to come back in through the ocean beaches or inner tidal areas. The CRC rules require, with certain exceptions, all structures have to be located landward of the appropriate vegetation and setback lines on the ocean beaches. Because our permit authority is three dimensional (into the air and into the ground), aerial lines would violate the setback standard because it is not currently exempted in the rules. In addition to any of the environmental issues that would come up on a case-by-case basis, we could not permit a facility of this nature.

Maria Dunn stated the Wildlife Resources Commission generally supports the alternative energy resources, however we want to make sure that all impacts to aquatic and terrestrial wildlife resources would be considered prior to moving a project forward. We have consulted several of our biologists and have come up with some concerns we would look for during review. Project details including exact location, total project size, facility operation, and any restrictions of public use. The presence of biological resources would need to be known up front before we could adequately assess what types of impacts a project would have. The land-based facilities would not have as large of a public trust concern as a facility proposed in the sounds. There would be cumulative concerns. We would also have concerns about structure stability during hurricanes. Other concerns include shadow affect from large wind turbines, placement of turbines in shallow water habitats, avian mortality and migration route changes. The placement of these facilities on land can be looked at on a case-by-case basis, however placements of facilities in the Pamlico, Albemarle and Currituck Sounds would be more difficult to monitor and impact a larger population and diversity of birds. The placement of turbines in shallow water areas near SAV would impact the foraging behaviors of many species. Studies indicate that wind facilities in areas of migratory routes have higher mortality rates. The North Carolina coast is a heavily traveled route and information should be obtained to determine if certain away from shorelines would have less of an impact.

Paul Friday stated he would present the military's perspective on wind energy. Marine Corps Air Stations East's area covers from Quantico, Virginia down through Florida and are housed at Camp Lejeune, North Carolina. Mr. Friday introduced Dave Plummer, Aviation Manager for Marine Corps Installations East and Bill Van Houden from the Office of the Secretary of Defense Installations and Environment. Mr. Friday stated their purpose for being here is to help identify Marine Corps needs and interests on wind energy. In eastern North Carolina we do a lot of training. From the Marine Corps' perspective, we train from sea, in the coastal areas, on land, and we train in the air. The major flying areas were shown. There are some specific concerns about wind energy. The wind energy systems can be as tall as 500 feet. There are safety ramifications with the way we train and the way we fly. We fly at treetop level with our helicopters and as low as 200 feet above ground with regard to high performance jet aircraft. These are in specially designated areas, but has an effect on the placement of wind turbines and transmission lines. The electromagnetic spectrum impacts are of interest to us. It will affect our

radars and airborne aircraft systems. We are bound by federal law as it pertains to energy sources, particularly alternative energy and renewable energy resources. We have goals of 30% reduction in our BTU capacity between FY 06 and FY 16. We will work aggressively to meet these goals. We understand that we are competing for alternative energy, as we are both a user of it and a supplier. We are in the midst of significant population growth in our coastal county areas.

Dave Plummer discussed specific maps and airspace issues. The restricted airspace area map of 1957 was shown. In 1963, the airspace was shrunk. In 1972 there was a significant reduction in airspace and connectivity with offshore waters was lost. By 1978, we were a shadow of our former selves. By volume we had lost 85% of the training spaces. Significant erosion of airspace has occurred overtime and a piece of it was removed to allow civilian flights to fly to Morehead City and to the beaches. The remaining training space must be protected from further erosion. We have had to be creative on how to share the airspace with the many new users. Our military aircraft have to check in with an air traffic controller to gain access to airspace. We manage the military activities inside these areas with access to civilian flights. In bringing wind energy and development into the picture, we have tried to identify areas of grave interest to our military operations. The low-flying altitude areas of concern were discussed and maps shown. Anything that is constructed above 500 feet will change the level of flight that the aircraft may be maneuvered at to join a final approach course. Maps were shown which displayed the areas of greatest concern. Development in these areas have the potential of adverse impact upon the Marine Corps' mission. Some of these areas are not just of concern to the Marine Corps, but to County airport managers as well.

Paul Friday stated we do support the development of wind energy and other alternatives in North Carolina. Our primary concerns are on compatible use and many competing uses for the space. We suggest that North Carolina policy and guidance include that all proposed wind energy projects be coordinated with the Department of Defense and that any wind energy project that will negatively impact the Department of Defense's operation and training be mitigated to prevent the impact as a condition of approval. Future Marine Corps action include working aggressively to meet our goals, meet with state regulatory agencies, meet with local government officials, and work proactively to meet our alternative energy goals and do our training in an environmentally sustainable manner.

John Langdon stated it is encouraging that the EMC has taken a leadership role in alternative energy. It is clear that the Legislature recognized that North Carolina has a problem in defining what the State's interests are. Carteret County was not involved in this until a News and Observer article indicated that there has been a proposal in front of the Utilities Commission to have 3 MW generators in Carteret County. Two years ago, a man wanted to know if there would be any ordinances or restrictions to building some small scale wind towers (about 100 feet high, 1-10 KW) and there wasn't. There was an ordinance that came out of a land use plan controversy and the height restrictions for buildings did not apply to wind towers. Everything changed with the presentation to the Utilities Commission, which hasn't been granted yet. Carteret County held public hearings and declared a moratorium which ends in December. But if we don't come up with a position, we will find ourselves where we were in January/February in that if an application is made, we have no criteria for which to deny a permit. This is true for the State as well. The Utilities Commission is evaluating the business relationship between the generators of power and to whom they would sell it. What we are facing is a land use and

zoning issue. From what we have learned is that the hardest thing to get a handle on is not what the EMC or the CRC should be doing in their clearly defined roles. We have heard about various easements and authorities and exemptions that may have to be considered, but we need to have Commissions and Departments in North Carolina government in partnership with local communities to figure out the boundary issues. The most positive thing I have heard today is that is generally recognized that North Carolina's model is going to be a state and local government partnership. All eyes are on Carteret County and it will be colorful before we are done, but in the end what we will decide is a matter of setbacks and considerations in terms of maintenance. There are much greater issues statewide that need to be considered. I am hopeful that there are forward-thinkers that are working on this. As we work on our setbacks and what might be appropriate for the public safety of our citizens, it has become apparent to us that our jurisdiction is questionable over public trust waters. If we were to determine several thousand feet for our setback from existing residences, I would ask that the CRC consider local governments or residents along the shoreline to be a part of it.

**CAMA Major Permit and Dredge & Fill Review Process (CRC 08-39)**  
**Doug Huggett**

Doug Huggett stated under the CAMA the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the natural shorelines of this state shall preserved to the greatest extent feasible. Water resources shall be managed in order to preserve and enhance water quality and to provide optimal utilization of water resources. Land resources shall be managed in order to provide growth and development and to minimize damage to the natural environment. This article mandates that we protect a lot.

The CAMA was enacted in 1974. The CAMA also set up the Coastal Resources Commission. Sometime between 1974 and 1977 a group started to enact the rules of the CRC. In one of the first rules of the CRC simply states, "the intent of this authority is not to stop development, but rather to ensure the compatibility of development with the continued productivity and value of certain critical land and water areas". There are two different ways to implement this protection measure. The first would be to create a super-Division that has expertise in all of the various areas that would be necessary to protect coastal resources. The second would be to set up a focal point for a coordinated effort and to utilize the expertise of existing state agencies to protect the resources. The second option was utilized with the Division of Coastal Management being the focal point. The state dredge and fill law was put into place first. This law states that applicants for permits shall be circulated by the Department among all state agencies and at the discretion of the Secretary to appropriate federal agencies having jurisdiction over the subject matter. The CAMA which was enacted 5-6 years later, a similar statement is included which states, "upon receipt of the application, the Secretary shall issue a public notice of the proposed development by mailing a copy of the application or modification to, among others, appropriate or interested state agencies". The rules of the CRC took the guidance that was put forth by the dredge & fill law and CAMA and in 7J standards it states that the Department will circulate major development permit applications to the several state agencies having expertise in the criteria in CAMA or the state dredge & fill law. The 7J standards set forth the template for our permit process. If you read through the CAMA you can see what CAMA considers to be a coastal resource. These resources include fisheries, wildlife, recreation, air quality, water quality, cultural, state transportation system, energy, economic, and aesthetics. The number and diverse

nature of the coastal resources makes it almost impossible for any one agency to have an expertise to make all of the findings needed during the permit process. Almost every one of these areas has expertise in another state agency. This is why the drafters of the dredge & fill law, CAMA, and the original CRC rules developed the coordinated review process. **Another reason for bringing so many other agencies into the permit review process is because prior to issuing a permit, we have to determine that a project is not detrimental to public trust rights in the biological and physical functions of the estuary, we have to find that projects shall not block or impair navigation channels or increase shoreline erosion or deposit soils below normal high water or cause adverse circulation patterns or violate state water quality standards or cause degradation of shellfish waters.** Projects shall have a minimum adverse impact on the productivity and biological integrity of coastal marshlands, shellfish beds, beds of SAV, spawning and nursery areas, nesting and wintering sites for waterfowl and wildlife, and important natural barriers. This encompasses a lot and brings multiple agencies into the review process. There are further standards that state that development shall not violate water and air quality standards, development shall not cause major or irreversible damage to documented archeological or historic resources, and development shall be timed to have minimum adverse significant effects on life-cycles of estuarine and ocean resources. There are standards for navigation channels and excavation projects. There are standards for maintenance excavation. No development shall be allowed in any AEC which would have the likelihood of causing pollution of waters in which shellfishing is an existing use to the extent that the waters would be officially closed to the taking of shellfish. There is also a rule that states that no development shall be allowed in any AEC which would result in a violation of any rules, regulations, or laws of the state of North Carolina or the local government in which the development takes place. All of these issues were used as a guidance document to develop our major permit process. The major permit process was discussed (provided in a handout). A pre-application meeting takes place, the application package and permit fee is submitted to the field representative, the field staff takes the application, makes a site visit, and reviews the application for completeness. Then the field rep completes a field investigation report. This is a summary of the proposed project. This allows the review agencies and the public to be able to get a good feel for the project. A copy of the application and field investigation report are sent to all of the state and federal review agencies. A public notice is done at this time and an opportunity is given for comments. A placard is placed at the project site requesting comments. The comments from agencies are submitted to the major permit staff in Morehead City. When a negative comment is received, DCM staff will suggest solutions to the permit applicant. After all of this takes place, a permit decision can be made. The permit coordinator makes a recommendation to either issue or deny the permit. If a permit is denied, the permit applicant can appeal it or a variance can be applied for. If a permit is issued, a third party appeal can be filed. The permit process for major permits is generally 75 days, with the possibility of an extension of 75 days if necessary to complete the review. Unless the project is put on hold for additional information, a permit decision must be made within the 150-day deadline. When we collect our permit fees for the permit application, we are actually collecting two different fees. One is for DCM and one is for DWQ for the state water quality permit. There is a cooperative agreement with DWQ to collect the joint fee and based on the type of development the fees represent a cost savings to the applicant. The application process suffices for applications for potentially five different permits (CAMA, Dredge & Fill, Division of Water Quality Certification, Federal Wetlands permit, and Navigational permit from the Corps).

## **CHPP Shoreline Stabilization Subcommittee Update**

### **Bob Emory**

Chairman Emory stated we have wrestled with the shoreline stabilization rules for 4-5 years. When Jim Gregson became the director he issued some policy direction to all of the DCM offices about where bulkheads should be located relative to mean high water. There had been some interoffice differences in interpretation and now there is uniformity. We were contemplating regulations on bulkheads that would place them landward of mean high water and then we had a conflict with the DWQ buffer rules. Our rules require alternative structures for stabilization where possible. The problem is we have not defined "where possible". Bonnie Bendell led a group of scientists who put together an excellent assessment of shoreline types in North Carolina and identified a hierarchy of stabilization techniques for each shoreline type that, in their opinion, went from most desirable to least desirable. We have not attempted to put this into rule language. We have not resolved where we want to go with shoreline stabilization. Since we are beginning to see that this is not something that one agency can address, we have begun to discuss this at the CHPP Steering Committee. There is a Subcommittee of the CHPP Steering Committee that met and some next steps came from this meeting to include (1) ask an interagency group to create an outline of an analysis to match stabilization method with shoreline type, (2) direct the agencies to simplify the General Permit for marsh sills, and (3) for each Commission to take educational opportunities and interact with marine contractors and landowners.

## **Ocean Policy Study Committee Update (CRC 08-40)**

### **Scott Geis**

Scott Geis gave an update on the Ocean Policy Study Committee. Mr. Geis stated at the last meeting the CRC had asked for an update on what the committee was doing and Dr. Leutze asked who is taking a look at comprehensive coastal management? DCM's approach is a three-part process. (1) Working from the estuaries out, we have an estuarine shoreline mapping project, (2) the Beach and Inlet Management Plan, and (3) the Ocean Policy Steering Committee. The estuarine shoreline-mapping project is DCM's methodology for delineating a contiguous estuarine shoreline for the state which currently does not exist. We are working with our sister agencies as well as stakeholders to create one shoreline for the estuaries and characterize the shoreline. During this process we will take an inventory of shoreline structures. A working group has been working with our sister agencies to make sure that they are on board with how we are coming up with this line, how they would use it, and what we should take into consideration. The goals of the mapping project are to (1) quantify how many miles of estuarine shoreline there are in North Carolina, (2) characterize the shoreline types, and (3) what is the coverage of public trust waters. The Ocean Policy Steering Committee is a 14-member committee. It is comprised of various academics as well as members from our sister agencies. It is chaired by Joe Kalo and Lisa Schiavinato. We also have representation from non-profit groups as well as local stakeholders. The charge that DCM gave this group is three fold. We wanted to identify emerging ocean and coastal issues. This project stems from a 1994 Coastal Management study that looked at what we could expect in the future. This committee has been asked to look at existing state rules and policies in order to see if there is anything that needs to be changed/updated to meet these emerging issues. Lastly, we will be making recommendations to the CRC based on these emerging issues. The goals we hope to reach include preparing North Carolina to meet these changes as the coastal setting continues to experience technological,



social and economic changes. It will also help insure there is federal consistency as new technologies are employed in the federal waters outside of our state water jurisdiction. The emerging issues we have identified are sand resource management, barrier island and inlet management, ocean based renewable energy, ocean outfalls, open ocean aquaculture, and comprehensive ocean management (ocean zoning). The next meeting is scheduled for October 3 in Raleigh. We have gone through the emerging issues and we are now in the process of coming up with draft recommendations. Before we present the draft recommendations to the CRC we will have a public outreach component which will consist of three public meetings. We hope to have the final draft and recommendations in front of the CRC in February.

### **Beach and Inlet Management Plan Update (CRC 08-41)**

**Steve Underwood**

Steve Underwood showed the draft region and sub-region boundaries and how we came up with this. There are four regions with various sub-regions inside. These will be used to work with our federal partners to start a regional approach to sediment management along our coast. We are working with the Army Corps of Engineers in the Wilmington district. Some of the approaches and descriptions of what regional sediment management is a holistic approach. It has to recognize sediment as a resource and an asset. The idea that all of these sediments; whether coming through the estuary, the rivers, or down the coastline we should be able to come up with sustainable solutions to some of the issues we may be currently be creating ourselves and keep them to a minimum. We are getting away from a project-by-project basis. We are establishing partnerships with the stakeholders which include local governments, representatives of CRAC, and NCBIWAY. Some of the benefits are the cost savings, reducing materials, and mobilization and demobilization costs. We need to understand the processes that are going on along our coast, minimize impacts, and knowing where our sensitive environments are located. We have a database that we have adopted that the Corps has that will allow us to share information. We will be able to do things more quickly because we will have all the information out of people's files in a common database and working together. We can also leverage financial and other resources and streamline the regulatory process. Our goals are to maximize the beneficial use of sediments, minimize the environmental impacts, and optimize expenditures. (The regions were explained with slides/photos).

### **Public Comment Summary – 15A NCAC 07H .0306/07J .1200 (CRC 08-42)**

### **Staff Recommendations – 15A NCAC 07H .0306/07J .1200 (CRC 08-43)**

**Jeff Warren**

Jeff Warren stated this is a project that we have worked on for two years. What you have in front of you today is a policy that is built on our current setback factors of 30 and 60 and now we are recommending 90 for larger structures which will prepare the state for the next 30 years. If you look at the statistics for development on the oceanfront, there is about 85% single family. There are about 8,300 structures total and only about 15% of that is commercial or multi-family. The nature of our coast is much different than that of South Carolina. You may have heard from some stakeholders in the past that argue against the 30-year setback that South Carolina has at least a 40-year setback. I hope you realize that S.C. has a ½ foot erosion rate as their minimum, but North Carolina's is 2 feet per year. With statistics you need to be careful and paint the whole picture. This is the second time that 7H .0306 has been out for public comment. There were five regional hearings to receive as much public input as possible. The comments received either

focused on the static line exception or the graduated setback. This rule covers a lot of territory, but a lot of folks only commented on one part or the other. Changes were made to the rule language that went to public hearing. Most of these are wordsmithing and changing rule references. One addition was made that was based on a stakeholder comment in 7H .0306(a)(8)(F) which states, “shall be as far landward on the lot to the maximum extent feasible”. This was to try to incorporate comments from Oak Island and Ocean Isle. This was only part of their comment. They wanted to do something as far back as feasible in conjunction with a construction line. Staff does not support a construction line because that gives you another static line and we are uncomfortable drawing another static line when this is a rule that is trying to work around some of our static line issues. This is a substantive change and would require this rule to go back to public hearing. The stakeholder has indicated that they would prefer for this rule to be adopted, rather than to add this language and send it back for public hearing. In 7J .1200 we want to eliminate “long-term” because we have already defined long-term as 30-years. We would also like to change the 30-year period to 25 years. The spirit was that there be a 30-year project and the spirit is still there because there is a 5-year waiting period before a town can come forward for a static line exception.

This is a very complicated rule and it does a lot. This rule changes the calculation of total floor area. This removes structurally attached roof covered porches and decks from the calculation of total floor area and just make it heated square footage. This puts it in line with how towns calculate it and doesn't penalize folks for having large porches that can easily be unattached if the structure needs to be moved or is in jeopardy. This rule states that setback shall be based on size and not use. Currently there is a 30-year setback for single-family homes regardless of size. We are seeing homes that are 10,000 or 12,000 square feet being built on the oceanfront. We have a setback for larger structures that are 5,000 square feet or greater, but this is limited to commercial and multi-family (4 units or more). At the 5,000 feet threshold, you must follow a 60-times the erosion rate setback. The proposal here is that all structures at 5,000 square feet go to 60-times the erosion rate to be consistent because the hazard is the same to the structures. In current policy there is a decreased setback as the erosion rate gets above 3.5 feet per year. This proposal states the higher the erosion rate, the higher the hazard. This proposed policy makes it an easy formula. The CRC suggested eliminating cantilevering into the setback and over the setback. The current proposal eliminates cantilevering altogether over and into the setback. There is a provision in the proposed rule for relief for linear infrastructure. There is a proposal for a graduated setback for structures greater than 10,000 square feet. This increases the setback from 60-times to 90-times the erosion rate in a graduated fashion. There is a provision in the rule which addresses the two philosophies communities have for mitigating coastal erosion. The first is to move the structure farther from the shoreline. The other is beach-fill which moves the shoreline farther from the structure. CAMA is a state and local partnership. If the town is going to be proactive and go after a long-term beach fill program to mitigate the hazard, then the CRC recognizes they can fall under different development standards. As part of the graduated setback there is a provision that states if you get a static line exception you do not have to follow the graduated setback. The final provision in this policy is an exception to the static vegetation line. A static vegetation line is the location of the vegetation prior to a large-scale beach fill project. The policy has never allowed development to follow vegetation that moves oceanward of that line. However, we have seen many communities make the commitment to maintain these projects. For towns that will commit to 30-years plus of beach fill and they can't meet the static line setback, there is a provision to allow them to measure a setback from the actual line of vegetation. They also have to be in line with the landward most adjacent structure. This is not

allowing development to move any further oceanward than it currently is or than adjacent properties are located. The procedures are in 7J .1200 which state what a town needs to do to get an exception. You have to wait five years after the initial project. You have to come before the CRC to provide the plan from the engineer or the Corps. You have to show where the sand will come from and that it will follow the compatibility rule. You also have to show the funding mechanisms. Staff recommends adoption of these rules with the minor changes.

**Charles Elam made a motion to adopt 15A NCAC 07H .0306 removing the proposed language in (a)(8)(F) adding the recommended change of a 25-year period. Bob Wilson seconded the motion. The motion passed with seven votes (Sermons, Wilson, Elam, Peele, Weld, Shepard, Carter,) and one opposed (Bissette) (Webster absent for vote).**

**Charles Elam made a motion to adopt 15A NCAC 07J .1200 with the recommended change of a 25-year period. Melvin Shepard seconded the motion. The motion passed with eight votes (Sermons, Wilson, Elam, Peele, Weld, Shepard, Carter, Bissette) (Webster absent for vote).**

### **PUBLIC HEARINGS**

Chairman Emory opened the public hearing and gave an overview of the rules subject to the hearing. 15A NCAC 07H .0205, .1401, .1402, .1404, .1405, .2101, .2102, .2104, .2105, .2401, .2402, .2404, .2405, 07J .0701, .0703, 07M .0301, .0302, .0303, .0306, .0307.

There were no comments presented for this public hearing.

### **PUBLIC COMMENT AND INPUT**

Susan Bullock stated she represents the Holiday Inn Sunspree, her company is Independent Opinion Research, our lobbyist and attorney Steve Levitas was unable to be here and she is here to give the CRC thanks and praise for all of the hard work that has gone into the setback rules and regulation. She is the information gatherer and has passed on a lot of information to Jeff Warren and DCM staff and we look forward to the final report and final summary. Whether we agree or disagree we feel we have had a good working relationship.

### **ACTION ITEMS**

### **OLD/NEW BUSINESS**

Dara Royal stated in 2005 the CRC made a full slate of appointments for the 12 positions on the CRAC that they are authorized to appoint. The CRC's policy is that initial appointments are two years and reappointments every four years. A few of the appointments that were made in November 2005 were initial appointments and therefore the term has expired. Joan Weld, Dara Royal, and Chuck Bissette will serve on the CRAC nominating committee and will report at the next meeting.

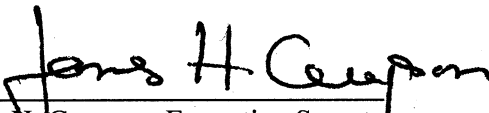
Chairman Emory stated that November's meeting would likely be full of variances. He stated with the recent talks of exploration for oil, should the CRC look at this issue? Jim Gregson stated Mike Lopazanski is keeping up to speed on what is going on in Washington daily. We will keep the November agenda open pending several variances, but a comprehensive update

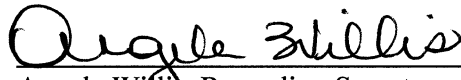
could be given in November if time allows. Mike Lopazanski stated Congress has let their moratorium expire at the end of the month. They have chosen to not include OCS moratoriums for the Atlantic or Pacific coast into their continuation resolution. At the same time the President has directed the Department of Interior to get a head start on the new lease program. The Mineral Management Service does a lease program in five-year intervals. They have requested information from all Governors for the latest round for the new lease plan which would take effect in 2010. The MMS has received 180,000 comments on the proposed plan. They hope to have a draft ready for review sometime in January 2009. This is an extensive process and an update will be available in November. Bill Peele requested a presentation on how transmission cables are laid for wind turbines. Wayland Sermons stated he would like to be reminded of the strategic planning session goals and that Veronica and Ed could benefit from this as well.

Jennie Hauser, CRC Counsel, updated the CRC on two cases that had been before them previously. The Bryant case was a case that involved a pier decision. The Superior Court Judge who received the petition for judicial review has denied the petition and will be upholding the CRC's decision. The Canady case was a case that involved a small house situation, the Superior Court Judge in this case also denied judicial review and will uphold the CRC's decision.

With no further business, the CRC adjourned.

Respectfully submitted,

  
James H. Gregson, Executive Secretary

  
Angela Willis, Recording Secretary

**NC COASTAL RESOURCES COMMISSION (CRC)**  
**October 9, 2008**  
**Conference Call Meeting**

**CALL TO ORDER/ROLL CALL**

Chairman Emory called the meeting to order at 10:00 a.m. and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll. The following Commissioners were present for the phone conference meeting when the roll was called: Bob Emory, Joan Weld, James Leutze, Chuck Bisette, Renee Cahoon, Charles Elam, David Webster, Jerry Old, Bob Wilson, Lee Wynns, Veronica Carter, Ed Mitchell, Wayland Sermons, Bill Peele. There were no reported conflicts. Based upon this roll call, Chairman Emory declared a Quorum.

Chairman Emory gave some background about the issue that would be discussed today. He stated there are sandbags whose permits have expired but, until Hurricane Hanna and the unnamed storm which followed Hanna, these bags had been covered and vegetated. As a result of these two storms some of these sandbags have now become uncovered. Since these bags were covered and vegetated, they were exempt from removal. Now that these bags are uncovered and their permits have expired they are not eligible to be recovered with sand and would therefore go on the list of sandbag structures that are involved in the sandbag removal index and would have to be removed unless they become naturally covered. Senator Basnight's office has submitted a request to the CRC requesting, "If a storm exposes sandbags that had been covered and vegetated, I believe the affected property owner should be allowed to return his or her property to its pre-storm condition."

Jim Gregson stated the current CRC rules state that the removal of temporary erosion control structures shall not be required if they are covered with sand and stable, natural vegetation. Typical procedures for sandbags whose time has run out and have become uncovered are subject to removal. The sandbag database shows that there are approximately 65 structures that were covered with sand and stable, natural vegetation prior to the storms. There are 174 that were covered with sand (and may or may not have vegetation).

Renee Cahoon stated the recent unnamed storm reminded her of Hurricane Dennis in Nags Head. She stated it is the most erosion she has seen since 1995. The elevation of the beach has dropped 1 ½ to 2 feet and there is a 20-foot escarpment that has not been there since the mid-1990's.

Jim Leutze stated this request seems very reasonable. He stated he would like to hear a reason why people should not be allowed to recover their sandbags. Although this storm may be the worst storm in ten years, there will be other storms and we will be faced with this after every storm. We need to be careful what precedent we set. There should be a certain set period of time to recover the sandbags.

Bill Peele asked if the CRC could redefine this? He stated we could include what Wayland is saying and change it to “cyclonic event” or “lunar tide and storm combined that does substantial erosion.” It seems the definition is where the problem exists.

Bob Emory stated that at a later time the CRC could consider an amendment of the rule that governs this General Permit.

Chuck Bisette stated that at some point the word “tropical” could be taken out of 7H .2500. The Secretary would still have the authority to make the evaluation of whether to activate the emergency permit.

Wayland Sermons asked the Commission if any of them had any real problems with linking the Emergency Permit with the sandbags being recovered?

Joan Weld stated that she does have a problem with it. We should hold fast to our present sandbag regulations. As I listen to this, there are too many gray areas and it weakens our efforts on sandbags. I am worried that what we do today will have long-range effects. This is not the first or last that we will see severe erosion. I think we need to stay the course and then talk about it more comprehensively.

Bill Peele stated he was thinking about the removal of existing bags that are damaged. Are there too many to deal with on a variance basis?

Chairman Emory asked Jim Gregson if he knows how many sandbags have become exposed.

Jim Gregson stated 23 letters have been sent out to property owners for bags that are subject to removal. We will be dealing with these for the next six months to one year. The reports coming in that were part of the 65 that were covered and vegetated and subject to removal prior to the storm are Figure Eight Island (2-3), Topsail Beach (2-3) and Kill Devil Hills/N. Nags Head (6-12). In the standard practice today if the bags are uncovered and their time has run out, the property owners would be sent a letter notifying them that they have 30 days to remove the bags. The problem now is there are already so many of them that are subject to removal (about 150) and we are expecting variances, therefore we will probably not get out there to see the ones that have been uncovered as a result of this storm for six months to a year so they are low on the priority list.

Ted Tyndall stated the thirty-day notices went out September 19<sup>th</sup> and therefore these property owners have another 10 days or so before we even start to verify if the bags have been removed. One thing I want to emphasize is the properties that received the thirty-day notices were validated with this storm because these bags are now scattered even more than they were before. This is a logical progression and is following a logical sequence, but it will take time to go through the legal maneuvers to have all the pieces put into place. We will be working down the list we already have and these newly uncovered sandbags would not rank as highly as sandbags already on the list. A thirty-day removal letter would not go out to these property owners for months because there are already so many that are substantially worse than these newly uncovered bags.

Jim Leutze stated that he would like to put this into a broader context. Our sandbag rules are not universally popular. It looks to some as if the CRC sets arbitrary rules and the CRC is insensitive. This is an act of God. If we are not considerate and flexible in this situation we will reinforce the antipathy that people have towards all of our sandbag rules. I want to demonstrate that we are willing to be reasonable and considerate. We are going to stick to our sandbag removal rules, but that when something extraordinary or unusual happens that we will demonstrate concern for the property owners that find themselves in an unusual situation.

Bill Peele stated that we are looking at pushing sand back up and if we don't put sandbags back into these areas that are subject to high levels of erosion, it will remove the last line of defense for another storm. There may be beach nourishment that comes along, but if we do this and the sandbags go back and are covered then retreat needs to happen if this happens again.

Wayland Sermons asked if the rules state that property owners may only use this one time?

Lee Wynns stated that of the 20 sandbag structures that are in play, are these people asking to put more sandbags back or are they asking to just cover the sandbags. With the emergency permit, even though the fee is waived it still requires a permit. Won't staff be going out and looking at these bags during the permit process? Can we give the staff some parameters for these newly uncovered bags to give them a one-time permit?

Charles Elam asked Ted Tyndall, since there are so many other sandbags in line ahead of these newly uncovered bags, if someone was to get a permit under the emergency act by the Secretary would they be looked at immediately?

Ted Tyndall stated that if they requested to push sand, we would look at their permit request immediately. But if the property owners do not come to us, we would continue to go through the prioritization list that we already have.

Lee Wynns stated that this could be a public relations nightmare if we do not handle it right.

Bob Wilson asked if it matters if the bags had been covered by normal accretion or by machine?

Jim Gregson stated that we don't know. The majority have been covered by trucking in sand or by beach bulldozing. For the purposes of removal, DCM does not care how they were covered as long as they are covered and have stable, natural vegetation.

Renee Cahoon stated that no sandbags are covered by accretion. When the bags are put in they are covered by trucking in sand. In the winter beach bulldozing permits are obtained.

Bob Emory stated that one direction we could go would to be under the direction of the Emergency Permit. We could tell the Division to issue permits to recover sandbags that had previously been covered prior to these two storms. The theory would be the permit allows repair to the dune and the covered sandbags were the dune.

Wayland Sermons asked if this would always be subject to the Emergency Permit Rules?

Jim Leutze stated that he would vote in favor of this.

Ted Tyndall asked if the proposal was for previously covered and vegetated.

Bob Emory stated that he only mentioned covered.

Ted Tyndall stated that the sandbags that were covered with sand, but were unvegetated, would add another 100 or so to the 65 that Jim had talked about.

Bob Emory stated that his counsel would be to limit it to covered and vegetated. The fact that they are vegetated would indicate that they are not impacted as much by chronic erosion problems, but in fact it was the storm that uncovered them. A covered bag could have been covered the day before the picture was taken. A vegetated bag would indicate that it had been stable long enough for vegetation to be established.

Steve Underwood stated that when the sandbag inventory was done there were over 300 sandbag structures permitted. When we went and did the inventories, over 100 were in violation. What we are talking about here is 15-20 structures above the ones we already know are in violation. The ones in violation are getting letters and we are slowly working through the list.

Jim Gregson clarified that of the 150 sandbag structures on the list and the 23 that received letters, none of the property owners are in violation yet. It is only when the 30 days is up and there has been failure to remove the bags that these property owners would be in violation of our sandbag rules. The rules require us to give property owners 30 days to remove the bags. None of the 23 property owners that received 30-day removal letters have received notices of violation.

Joan Weld stated that what we do today could result in more public relations concerns from the citizens of the state.

Bob Emory stated that no matter what decision the CRC makes, we can expect criticism.

Bob Wilson stated that he would err on the side of the homeowners on this.

**Bob Wilson made a motion that the CRC, under the authority of the Secretary's Emergency General Permit that was issued September 29, 2008, that sandbags which were previously covered and vegetated that became exposed either during Hurricane Hanna or the unnamed storm be allowed to be recovered under Emergency General Permit 7H .2500.**

**Charles Elam seconded the motion.**

Bill Peele asked what do we do the next time these bags are exposed during another storm?

Bob Emory stated that 7H .2500 includes the ability to declare an emergency. Can a property only get the benefit of the emergency permit once?

Jim Gregson stated that the permit states there is a one-time fee waiver. The emergency permit for repairing frontal dunes or covering sandbags is self-limiting in that it is a response to storm events. If it becomes uncovered again as a result of a high tide, you could not use the emergency permit for this.



Bob Emory asked if the emergency permit is utilized by a property owner and then five years later a new declaration is made due to a similar storm event, could the property owner use the emergency permit again?

Chuck Bissette stated they could use the permit, but would have to pay the permit fee.

Veronica Carter stated that she would feel better if the motion were amended to add the words "uncovered that were previously in compliance".

Jim Gregson asked what "in compliance" refers to? Are we talking about dimensions or something else? One recommendation would be that if the bags were covered and vegetated prior to the storm and then they become exposed and then we notice that they are out of size compliance, the CRC would need to require them to come into compliance and then be recovered.

Veronica Carter stated that her concern would be not to open a Pandora's box. We should only be giving leeway to structures that were in compliance prior to this act of God. "In compliance" would mean were covered and vegetated.

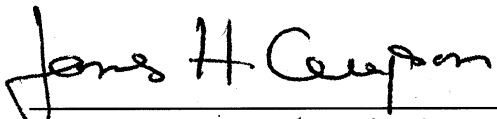
Bob Wilson accepted this amendment to the motion.

Charles Elam accepted this amendment to the motion.

**The motion passed with eleven votes (Bissette, Carter, Elam, Leutze, Mitchell, Old, Peele, Sermons, Webster, Wilson, Wynns) and one opposed (Weld) (Cahoon did not vote).**

The CRC adjourned at 10:53 a.m.

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

**MEMORANDUM**

**CRC-08-44**

**To:** The Coastal Resources Commission & Coastal Resources Advisory Council  
**From:** Michael Christenbury, Wilmington District Planner  
**Date:** November 4, 2008  
**Subject:** Carolina Beach Land Use Plan Amendment (November 2008 CRC Mtg.)

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The Town of Carolina Beach is requesting CRC Certification of an amendment to the Town of Carolina Beach Land Use Plan's Policy #30, to permit appurtenances of up to 10 feet above the 115 feet height limits for Hotels.

**Recommendation:** That the CRAC recommend to the CRC Certification of the Town of Carolina Beach Land Use Plan Amendment.

**History:** This amendment was originally brought before the CRC for Certification at the September 2008 CRC Meeting in Sunset Beach. At that meeting, the CRC voted to deny Certification of the amendment based on the determination that the Town failed to meet the public disclosure requirements per 07B.0801(a).

**Overview:** The Town of Carolina Beach is located on Pleasure Island in southern New Hanover County, located to the north of Kure Beach and to the south of the City of Wilmington. The Town of Carolina Beach 2007 Land Use Plan was certified by the CRC on November 30, 2007.

On October 17, 2008, the Town of Carolina Beach held a duly advertised public hearing and voted by resolution to adopt the land use plan amendment. The Public Hearing was advertised on September 16<sup>th</sup>, September 17<sup>th</sup>, October 8<sup>th</sup>, and October 15, 2008. The town amended the 2007 Carolina Beach Land Use Plan to include the following to policy statement # 30 (subsection # 4 added in italics, bold and underlined) that would only be applicable to areas designated Commercial 2, on the Town's Future Land Use & Classification Map for Hotels:

**Policy # 30:** Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

1. The front street line.
2. The nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots.
4. **Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.**

The Carolina Beach Town Council adopted the amendment by a unanimous vote of those present at their October 17, 2008 public hearing. At the hearing, no individuals spoke in opposition to this amendment, and one (1) written objection was submitted to the Town.

The Town of Carolina Beach reviewed the amendment and determined that it is not in conflict with other policies or sections of the 2007 Carolina Beach Land Use Plan [see exhibit (A) Letter from the Town of Carolina Beach with Attachments pages 2 - 13].

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.

**Recommendation:** DCM Staff recommends that the CRAC forward this amendment to the CRC for Certification based on the determination that this 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.

## **ATTACHMENTS**

Exhibit (A) Letter from the Town of Carolina Beach with Attachments

Joel Macon  
Mayor

Alan Gilbert  
Councilman

Jerry Johnson  
Councilman



Dan Wilcox  
Mayor Pro Tem

Pat Efirid  
Councilwoman

Timothy Owens  
Town Manager

**TOWN OF CAROLINA BEACH**  
1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428  
910 458 2526  
FAX 910 458 2997

October 17, 2008

Mike Christenbury  
District Planner – Wilmington Region  
NC Division of Coastal Management  
127 Cardinal Drive  
Wilmington, NC 28401

Dear Mr. Mike Christenbury,

The Carolina Beach Town Council adopted an amendment to our 2007 CAMA Land Use Plan after holding a public hearing on October 17, 2008. Public notifications were completed in accordance with the requirements of 15A NCAC 07B .0901 and 15A NCAC 07B .0801.

In closing, the Town respectfully request this amendment be heard by the Coastal Resources Commission meeting scheduled for November 19-21, 2008. If you have any questions regarding our submittal or the process that has led to the submittal, please contact me at (910) 458-2999.

Sincerely,

Timothy W. Owens, AICP  
Town Manager

**ATTACHMENTS**

- #1 *Staff Analysis*
- #2 *Advertisements and Notices Posted*
- #3 *Resolution supporting the amendment*
- #4 *Staff report for the September CRC*
- #5 *Zoning Ordinance Amendments*
- #6 *PowerPoint Presentation*

## ***ATTACHMENT #1***

### **Staff Amendment Analysis**

The Town has carefully reviewed this amendment to ensure it is consistent and no conflicts exist with the 2007 Land Use Plan (LUP). To ensure consistency staff evaluated the policy change with:

- (A) All policies,
- (B) Each management topic including (1) Public Access, (2) Land Use Compatibility, (3) Infrastructure Carrying Capacity, (4) Natural Hazard Areas, (5) Water Quality, and (6) Local Concerns,
- (C) The Future Land Use Plan Map (FLUP), and
- (D) Descriptions of existing and future development characteristics in land classification areas,
- (E) Policy 32 of the 2007 Land Use Plan states *“The Town policy on height for the Commercial 2 area shall require no commercial structures to exceed 115 feet. Any structure with residential units shall not exceed a maximum height of 50 feet unless the one to one rule is applied not to exceed 60 feet. The Town will undertake a master planning effort with ample public participation in the Commercial 2 area and other areas that tie into the Commercial 2 and Boardwalk Area.”* The last statement in this policy is included due to the arbitrary nature utilized during the LUP development process to pick a specific height limit. The Central Business District Master Development Plan thoroughly examines the height issue as referenced in policy 32. The 2007 Land Use Plan amendment is consistent with the Central Business District Master Development Plan, which was created and adopted through a process designed to maximize public participation.
- (F) No changes have been made to the 2007 Land Use Plan proposed amendment from when it was presented at the September CRC meeting (see attachment #4). The change was supported by Town Council at that time, although due to concerns with the advertisement process the amendment did not pass at the September CRC meeting. The Town has advertised for the November CRC meeting in accordance with DCM Staff’s recommendations.
- (G) By unanimous decision, Town Council has modified our zoning ordinance to be consistent with the proposed 2007 Land Use Plan amendment (see attachment 5).

Staff’s report was presented at our scheduled public hearing held on October 17, 2008 where Town Council voted to adopt this change in our 2007 Land Use Plan.

### **Notice and Advertisement**

The Town of Carolina Beach posted notices on September 16, 2008 in the following locations:

1. Carolina Beach website: [www.carolinabeach.org](http://www.carolinabeach.org)
2. Carolina Beach Senior Center
3. Carolina Beach Parks and Recreation Center
4. Carolina Beach Town Hall (copies are also available)

5. New Hanover County Courthouse (Office of the Wilmington/Cape Fear Coast Convention and Visitors Bureau, 24 N. 3<sup>rd</sup> Street, Room 201, Wilmington, NC 28401)

Advertisements were posted in local papers of general circulation on the following dates:

1. Star News: September 16, 2008
2. Island Gazette: September 17, 2008
3. Island Gazette: October 08, 2008
4. Island Gazette: October 15, 2008

**ATTACHMENT #2**

Joel Macon  
Mayor

Alan Gilbert  
Councilman

Jerry Johnson  
Councilman



Dan Wilcox  
Mayor Pro Tem

Pat Efird  
Councilwoman

Timothy Owens  
Town Manager

**TOWN OF CAROLINA BEACH**  
1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428  
910 458 2526  
FAX 910 458 2997

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**NOTICE OF PUBLIC HEARING TO AMEND THE TOWN OF CAROLINA BEACH 2007  
COASTAL AREA MANAGEMENT ACT (CAMA) LAND USE PLAN**

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The Town of Carolina Beach will hold a public hearing on Friday, October 17, 2008 at 6:30p.m. or soon thereafter in the Town Administration Building at 1121 North Lake Park Blvd in Carolina Beach. The Town Council will consider the following:

**Land Use Plan Amendment** – Consider amending the 2007 CAMA Land Use Plan to modify the limitations to building height in the Commercial 2 Land Use Classification Area by specifically amending Policy #30 to add Item #4 as shown below.

Policy #30: Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

- i. The front street line.
- ii. The nearest front street line where there is not an adjacent right-of-way.
- iii. An average of each front street line on through lots.
- iv. Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

A copy of the amendment can be viewed at Town Hall (1121 N. Lake Park Blvd, Carolina Beach, NC 28428) and/or at the New Hanover County Courthouse (Office of the Wilmington/Cape Fear Coast Convention and Visitors Bureau, 24 N. 3<sup>rd</sup> Street, Room 201, Wilmington, NC 28401) during normal work hours.

The Town of Carolina Beach invites your comments to this important Land Use Plan Amendment. **Again, the Town will consider this issue on October 17, 2008 at 6:30p.m. at the Town Administration Building.**

If adopted, the amendment will be submitted to the Coastal Resources Commission (CRC) for Certification. Written objections, comments or statements of support shall be submitted to the NC Division of Coastal Management District Planner, Michael Christenbury, 127 Cardinal Drive Ext., Wilmington, NC 28405. Written comments must be received no less than 15 business days prior to the November 19<sup>th</sup>-21<sup>st</sup> CRC meeting at which time the amendment is scheduled to be considered for Certification. Copies of the amendment are available for review and may be checked out for a 24-hour period at the Carolina Beach Town Hall during normal business hours. The public is encouraged to review the amendment.

For questions or additional information on this Land Use Plan amendment, please contact Gary Ferguson, Director of Planning & Development at 1121 N. Lake Park Blvd, Carolina Beach, NC 28428, by phone at 910-458-2986, or by email at [gary.ferguson@carolinabeach.org](mailto:gary.ferguson@carolinabeach.org).

\*\*\*

**Publish In Island Gazette on: September 17, 2008; October 8, 2008 and October 15, 2008**

**Publish in the Star News on Tuesday, September 16, 2008.**

**Caption of Ad: Town of Carolina Beach Public Hearing Notice**

*(Mail Invoice and Affidavits of Publication to Attention of Lynn Prusa, Town Clerk, Town of Carolina Beach, 1121 N. Lake Park Blvd., Carolina Beach, NC 28428. Thank You!)*





**RESOLUTION IN SUPPORT OF THE AMENDMENT OF THE 2007 TOWN OF CAROLINA BEACH  
CAMA LAND USE PLAN**

**WHEREAS**, the 2007 Land Use Plan amendment is entirely consistent with the Central Business District Master Development Plan which included countless hours of work by the public, elected officials, appointed officials, volunteers, staff and others who participated in the preparation of the plan, and

**WHEREAS**, the Town Council realizes the importance of the amendment in guiding the future growth and development of the Town, and

**WHEREAS**, the Town of Carolina Beach has met the intent and requirements as set forth in the North Carolina General Statutes and the North Carolina Administrative Code, and

**WHEREAS**, the Town Council certifies that the Town has followed the process as required in GS 113A-110 and notices as referred to in 15A NCAC 07B.0802 (b)(3), and

**WHEREAS**, the Town Council hereby finds that the amended policy statement has been evaluated with other existing policies and the Future Land Use Plan Map, and it has been determined that no internal inconsistencies exist, and

**WHEREAS**, the Town Council hereby finds that the six management topics including (1) Public Access, (2) Land Use Compatibility, (3) Infrastructure Carrying Capacity, (4) Natural Hazard Areas, (5) Water Quality, and (6) Local Concerns have been evaluated and it has been determined that no internal inconsistencies exist

**NOW, THEREFORE BE IT RESOLVED, THAT** the Town Council of the Town of Carolina Beach hereby adopts this amendment as reviewed for public hearing on October 17, 2008 and hereby requests that the amendment and it's supporting documentation be sent forward to the Coastal Resources Commission for their review at the November 19-21, 2008 meeting.

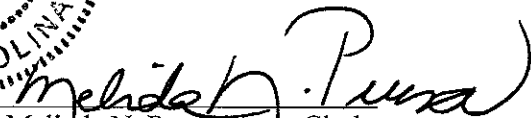
POLICY 30 AMENDED TO ADD ITEM #4 AS SHOWN BELOW:

Policy #30: Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

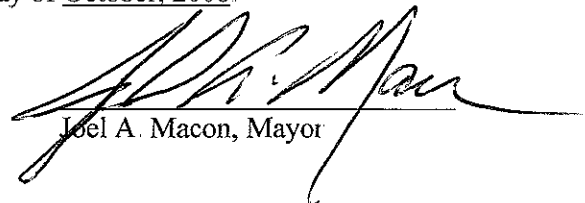
- i. The front street line.
- ii. The nearest front street line where there is not an adjacent right-of-way.
- iii. An average of each front street line on through lots.
- iv. Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement

Approved by a vote of 3 in favor and 0 opposed on this 17<sup>th</sup> day of October, 2008.



Attest:   
Melinda N. Prusa, Town Clerk

Signed by:

  
Joel A. Macon, Mayor

**ATTACHMENT #4**

Joel Macon  
Mayor

Alan Gilbert  
Councilman

Jerry Johnson  
Councilman



Dan Wilcox  
Mayor Pro Tem

Pat Efird  
Councilwoman

Timothy Owens  
Town Manager

**TOWN OF CAROLINA BEACH**  
1121 N Lake Park Blvd  
Carolina Beach, North Carolina 28428  
(910) 458-2978  
FAX (910) 458-2997

**Memorandum**

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TO: Honorable Mayor, Town Council  
FROM: Gary Ferguson, Planning Director  
RE: Land Use Plan Amendment  
MTG DATE: August 22, 2008

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On July 22, 2008 the Planning and Zoning Commission and Town Council had a joint meeting where Staff was directed to advertise for a public hearing to amend our 2007 Land Use Plan (LUP). The amendment addresses the C-2 Future Land Classification Area as it relates to maximum building height. In the Land Use Compatibility section of the LUP there are two policies that address building height. Policy 32 reads, "The Town policy on height for the Commercial 2 area shall require no commercial structures to exceed 115 feet. Any structure with residential units shall not exceed a maximum height of 50 feet unless the one- to -one rule is applied not to exceed 60 feet. The Town will undertake a master planning effort with ample public participation in the Commercial 2 area and other areas that tie into the Commercial 2 and Boardwalk Area." Staff is not proposing to amend this policy but instead policy #30. More specifically Staff is proposing, at the request of the Hilton, to modify Policy #30 which currently defines maximum building height to include the highest appurtenance on the structure. The Policy reads, "Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

1. The front street line.
2. The nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots."

The purpose of this amendment is to accommodate ten (10) additional feet of building height for the Hilton as well as all other future hotels in the same Land Classification and thereby raise the maximum building height from 115 feet **including** appurtenances to 115 feet **excluding** appurtenances. To accomplish this amendment request, Staff presented the following two options at the joint meeting:

**OPTION 1:** This option keeps specific regulatory language in the 2007 Land Use Plan.

- 30) Building Height:
- (A) Building height shall be defined as that distance measured from the highest point of the structure to:
    1. The front street line.

2. The nearest front street line where there is not an adjacent right-of-way.
  3. An average of each front street line on through lots.
- (B) Appurtenances such as: parapet walls, skylights, domes, flagpoles, cooling towers and structures for housing elevator equipment, stairways, tanks, fans, air conditioning or similar equipment required for the operation or maintenance of the building may be erected above the maximum height requirement if placed on the roof of the building.

32) The Town policy on height for the Commercial 2 area shall limit commercial structures to 115 feet excluding appurtenances as defined in policy 30 (B). Any structure with residential units shall not exceed a maximum height of 50 feet unless the one-to-one rule is applied not to exceed 60 feet. The Town will undertake a master planning effort with ample public participation in the Commercial 2 area and other areas that tie into the Commercial 2 and Boardwalk Area.

**OPTION 2:** This allows the 2007 Land Use Plan to be utilized as a guide for making future modification to the zoning ordinance.

30) The Town shall maintain a clear method for measuring building height in the zoning ordinance. This definition shall establish a fair method independent of individual lot grades.

32) During the 2007/2008 Central Business District master development plan process, the Town, general public, private developers, applicable development regulatory agencies, and community interest groups discussed and developed build-out scenarios that brought to the community a plan for reaching the goal of revitalization and sustainability for the Boardwalk and Central Business District. Implementation of specific heights in the zoning ordinance will be done pending the Town choosing the appropriate development scenarios. Each development concept places an emphasis on striking an appropriate balance between building massing, public space and enhancement of public access/ views to the ocean.

## ANALYSIS OF OPTIONS

It should be noted that Option 2 was not discussed at our joint meeting, and although it may be a viable and preferred option, it is significantly different and a major deviation from the current policies. Making such a change would most likely require a full review by the CRC.

In reviewing Option 1 in more detail, Staff is concerned that this allowance may open the door too wide and pave the way for any commercial or residential buildings to have a limitless height for any and all appurtenances. If Option 1 was adopted in the zoning ordinance it could have a negative aesthetic impact Town-wide. Therefore, in order to restrict this allowance for additional building height and to minimize the degree of policy change, staff is now proposing the language below to amend policy #30 only:

### **ALTERNATIVE POLICY #30**

- Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:
  1. The front street line.
  2. The nearest front street line where there is not an adjacent right-of-way.
  3. An average of each front street line on through lots.
  4. Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

## **POLICY #32 – LEAVE AS IS**

With this alternative policy #30, Staff is proposing to define appurtenances in the Town zoning ordinance and not include this language as a definition in the 2007 Land Use Plan. In addition, the above language is the exact wording that has been advertised in the newspapers and posted in the Town Hall Complex. This alternative policy change would accomplish the following:

1. Maintain heated space or occupancy area to a maximum height of 115 feet.
2. Restrict the applicability of this allowance to only hotels in the C-2 Designation; and
3. Restrict the height of appurtenances to a maximum of only ten (10) feet above the permitted maximum building height of 115 feet.

It should be noted that this Land Use policy change will only effect or regulate those areas of the Town that are located within an “Area of Environmental Concern” (AEC’s) as designated by the Division of Coastal Management. Within these AEC’s CAMA has jurisdiction, and they must examine our Land Use Plan for consistency when permitting CAMA Major Development plans. For those areas outside of AEC’s but within our CBD and for commercial uses and services, and entertainment, “maximum building height shall be solely based on Conditional Use Permit Review” as prescribed in Section 3.9-1 of our zoning ordinance (see Exhibit #1). What this means is that consistency with the Land Use Plan outside of AEC’s is not a mandate and, therefore, no building height cap exists for these uses in the CBD zoning district. These projects must however obtain a CUP from the Town Council in order to exceed the maximum zoning height requirement of 50 to 60 feet.

### **Discussion**

From a Staff perspective, this proposed policy change assumes a number of value latent issues including the following:

1. The Town values the construction of high rise hotels in a portion of our CBD.
2. The Town is willing to accommodate additional building height to achieve the value noted above.
3. The 2007 Land Use Plan should be flexible enough to allow this increase in height with no appreciable negative impacts (e.g. density, parking, stormwater, etc.)
4. This amendment will not result in a significant policy change as the over arching goals and values found in the Land Use Plan will be maintained.

Some, and perhaps many, individuals may not agree with these assumptions, most notably those who were directly involved in crafting the Land Use Plan policies as members of the Public Participation Plan, Planning and Zoning Commission and Town Council. Recognizing this from a Staff perspective, the question of building height does not lend itself to a “right or wrong” or objective answer but instead to a very subjective answer about how we want our community to look. Building height does, to a large degree, define a community and as such this question is best answered by the people and their elected representatives and not the Planning Staff. Given this, there are a variety of facts that should perhaps be considered in this decision making process, which include the following:

1. The 2005 Town of Carolina Beach Vision Statement

“The Town of Carolina Beach, its citizens, property owners, and business owners, hereby strive to safeguard the standards for living, work and recreation that have made Carolina Beach a preferred residential and vacationing community. The Town shall seek to promote a family-oriented residential community with entertainment, recreation and commercial services geared toward both the town’s permanent and vacationing families. Shopping and dining at the Boardwalk, enjoying the entertainment area, and relaxing at the public beaches, waters, parks, or marinas are all

activities to be preserved and enhanced in Carolina Beach. The Town recognizes the protection of its environmental and natural characteristics as being crucial in maintaining residents' enjoyment of their surroundings and quality of life. Sustaining economic growth from tourism and recreation is also a Town goal relying on a healthy and preserved ecosystem. Therefore, the duty of the Town of Carolina Beach shall be to manage and encourage sustainable growth through its policies and regulations in the pursuit of a safe, healthy and small-scale family community."

2. Height of Existing High Rise Structures in Town: (except for the Marriott these are approximate building heights)

The Marriott – 136 feet

Pelican Watch – 120 feet

Harbor Oaks – 120 feet plus appurtenances (cell tower)

Atlantic Towers – 110 feet

Golden Sands – 75 feet

3. C-2 Land Area in Acres as shown on the Future Land Use and Classification Map along with the Map: See Exhibit 2 for the Map

Total C-2 acreage is 39.12

Total CBD acreage is 58.40

4. Master Development Plan Proposed Regulations (page 36). Below are recommended revisions to the zoning ordinance in addition to the implementation plan as outlined by Peter J. Smith.

"Require a building height restriction of +/- 130 feet on the buildings fronting Canal Drive (parallel to the beach) to minimize summer shadow impacts as shown in figure 9," which is the Shadow Study Illustration (Extent Shadows on September 1<sup>st</sup> at 4:00 p.m.)

"Require buildings to step down from setback buildings as outlined in the Plan."

"Require the preparation of shadow impact studies for all future development over 50 feet."

Below is the insert found in the MDP that illustrates the shadow effect on September 1<sup>st</sup> and which shows the "Branded Hotel" shadow at a presumed height of 115 feet. The MDP also suggests limiting the height of buildings to minimize shadow impacts. The figure below illustrates the shadow impact on September 1 at 4 p.m. Taller buildings can possibly shade out areas of the beach.



## **ADVERTISEMENTS AND NOTIFICATIONS**

### NEWSPAPER ADVERTISEMENTS

1. Island Gazette on July 23, 2008 – This ad contained: (1) a general description of the amendment; and (2) locations where the amendment could be viewed.
2. Island Gazette on July 30, 2008; August 06, 2008; August 13, 2008; and August 20, 2008 – an increase level of detail is provided in this ad that shows: (1) the specific language recommended for approval; (2) additional locations where the ad may be viewed; and (3) information on how to provide written comments to the Division of Coastal Management.
3. Star News on July 26, 2008 – same ad as described in #2.

### PUBLIC NOTIFICATIONS

1. On July 23, 2008 information on the amendment was posted in the following locations: (1) Town Hall; (2) New Hanover County Courthouse (Office of the Wilmington/Cape Fear Coast Convention and Visitors Bureau; (3) Katie B Hines Senior Center; (4) Carolina Beach Library; (5) Carolina Beach Parks and Recreation Center

### DIVISION OF COASTAL MANAGEMENT NOTIFICATIONS

A copy of the notification was provided to Mike Christenbury on July 23, 2008.

If the Town agrees to amend the 2007 Land Use Plan on August 22, 2008, then the amendment will be emailed to Mike Christenbury on the evening of August 22 in order to be heard at the September 24-26 CRC meeting.

## **RECOMMENDATION**

### **PROS:**

- The Master Development Plan supports this amendment with suggested heights +/- 130 feet.
- Currently, there is no building cap outside AEC's, therefore, zoning outside AEC's would support this.
- The Hilton's requests will add economic viability to our CBD.

### **CONS:**

- It is a change against the final decisions made during the planning process that went into the 2007 Land Use Plan adoption.
- This is another incremental increase in the building height cap without addressing the issue as a whole.

In conclusion and because this is a value driven issue, Staff is not proposing a technical recommendation for your consideration. We are of the opinion that this decision is best suited to those who recommend and decide on the future look of what we want our Town to become.

### **Planning and Zoning Commission Recommendation**

On August 14, 2008 the Planning and Zoning Commission was scheduled to hear both the Land Use Plan amendment as well as two zoning amendments and to advance their recommendation on each to Town Council. Due to an advertising oversight by the Island Gazette, the ad for August 6, 2008 was not run which invalidated the zoning text amendment public notice requirements specified in Section 21.2(e)(4) of the zoning ordinance. This prevented the Planning and Zoning Commission from hearing this request on the two proposed zoning amendments. These amendments will be addressed at a Special P&Z meeting scheduled for September 4, 2008 at 7:00pm in the Town Council Chambers.

Concerning their recommendations for the Land Use Plan amendment, the Planning and Zoning Commission voted not to advance a recommendation because of the omitted public notice advertisement. It should be noted that according to GS 113A-110 which is referenced in the CAMA Land Use Plan Review and CRC Certification requirements only the body charged with adoption or subsequent amendment shall hold a public hearing on the issue and therefore no required P&Z recommendation is necessary or required.

ORDINANCE NO. 08-757

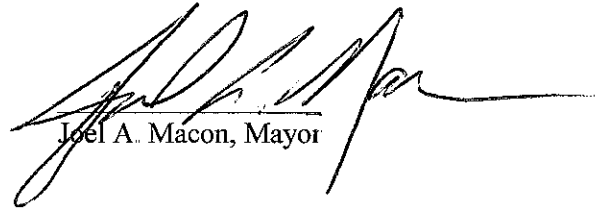
Amend Article 23 3 Definitions

**Building Height** shall be defined as that distance measured from the highest appurtenance on the structure to:


1. The front street line.
2. The nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots.
4. Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

Appurtenance(s): Items required for the operation and maintenance of a building including parapet walls, skylights, ventilation equipment, domes, flagpoles, cooling towers, housing for elevator equipment, stairways, tanks, fans, air conditioning and heating equipment and similar operational devices.

Adopted this 9th day of September 2008



Joel A. Macon, Mayor

Attest:   
Melinda N Prusa, Town Clerk





## Carolina Beach Land Use Plan Amendment

OCTOBER 17, 2008

### AMENDMENT

- AUGUST 22, 2008 – APPROVED BY TOWN COUNCIL
- SEPTEMBER 24, 2008 – RECOMMENDED FOR APPROVAL BY CRAC
- SEPTEMBER 25, 2008 DENIED BY CRC

## Advertising and Notification Process

Star News: 9/16/08  
Island Gazette: 9/17/08  
Island Gazette: 10/8/08  
Island Gazette: 10/15/08

### Current Policy #30

- Building height shall be defined as that distance measured from the highest appurtenance on the structure to:
  - 1 The front street line
  - 2 The nearest front street line where there is not an adjacent right-of-way
  - 3 An average of each front street line on through lots

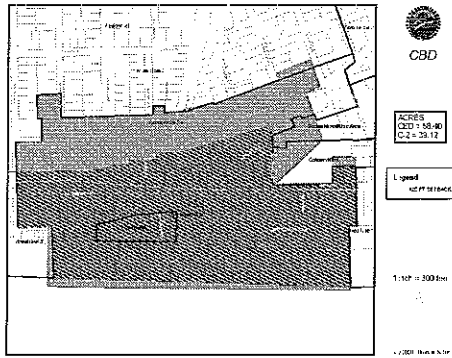
### Current Policy #32

"The Town policy on height for the Commercial 2 area shall require no commercial structures to exceed 115 feet. Any structure with residential units shall not exceed a maximum height of 40 feet unless the one-to-one rule is applied not to exceed 60 feet. The Town will undertake a master planning effort with ample public participation in the Commercial 2 area and other areas that tie into the Commercial 2 and Boardwalk Area."

### Purpose of the LUP Amendment

- To accommodate 10 additional feet of building height for hotels in the C-2 Future Land Use Classification Map by raising the maximum building height from 115 feet including appurtenances to 115 feet excluding appurtenances

### C-2 Land Use Plan Classification Area



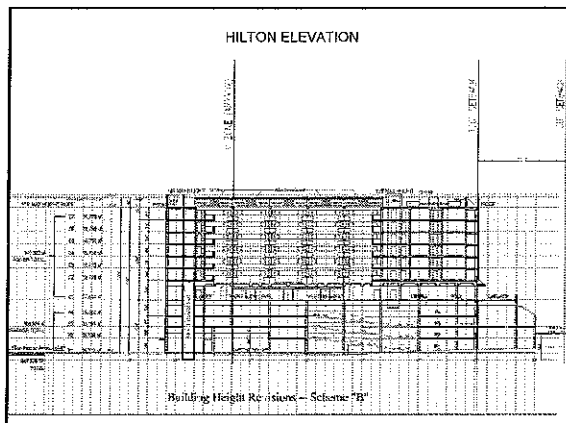
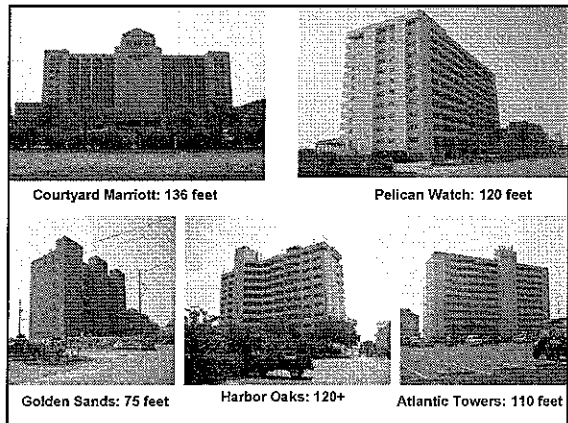
### Proposed Policy #30

Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

- The front street line.
- The nearest front street line where there is not an adjacent right-of-way.
- An average of each front street line on through lots.
- Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

### Policy Changes Will Accomplish the Following:

1. Maintain heated space or occupancy area to a maximum of 115 feet.
2. Restrict the applicability of this allowance to only hotels in the C-2 designation
3. Restrict the height of appurtenances to a maximum of only 10 feet above the permitted maximum building height of 115 feet



### SUPPORT FOR THE AMENDMENT

- 1 CONSISTENT WITH THE MDP ADOPTED BY TOWN COUNCIL ON JUNE 24, 2008. THE MDP SUGGESTED BUILDING HEIGHTS OF +/- 130 FEET.

2. CONSISTENT WITH THE 2007 LUP  
CORE GOAL TO:

"REVITALIZE THE LOCAL ECONOMY AND  
MAKE IT SUSTAINABLE" (pg. 73 1<sup>st</sup>  
Core Goal)

3. CONSISTENT WITH THE  
FOLLOWING 2007 LUP  
POLICIES

> POLICY #22 ... PROMOTE AND  
ENCOURAGE RULES THAT INSURE  
THE COMPACT PEDRESTRIAN  
ORIENTED NATURE OF THE TOWN'S  
HISTORIC CENTER – THE  
BOARDWALK...

> POLICY #26

> THE TOWN SHALL CONSIDER NEW  
ECONOMIC DEVELOPMENT AND  
REDEVELOPMENT PROJECTS THAT  
SUPPORT A RESORT-MARKET NICHE

> #4

> CONSISTENT WITH THE NEWLY AND  
UNANIMOUSLY ADOPTED ZONING  
AMENDMENTS FOR HOTELS WHICH  
EXCLUDES APPURTENANCES 10 FEET  
OR LESS IN HEIGHT FROM THE  
HEIGHT MEASUREMENT. (9/9/08)



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-08-45**

## **MEMORANDUM**

**To:** The Coastal Resources Commission and Coastal Resources Advisory Council  
**From:** Maureen Meehan Will, DCM Morehead City District Planner  
**Date:** November 4, 2008  
**Subject:** Town of Pine Knoll Shores Core Land Use Plan (November CRC Meeting)

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**The Town of Pine Knoll Shores is requesting certification of their 2008 Core Land Use Plan (LUP).**

### **Overview**

The Town of Pine Knoll Shores is located on Bogue Banks between the Towns of Atlantic Beach and Indian Beach. The town has a mixture of full time and part time residential units as well as vacation rentals. The majority of the town is zoned residential with some commercial uses mixed through town.

This small town had a permanent population of 1,524 in 2000 and has a projected total peak seasonal population of 12,654 by 2025. Pine Knoll Shores is the second fastest growing municipality in Carteret County after Emerald Isle. There are sufficient community facilities (water) to accommodate the projected population and development. The town relies on and will continue to rely on private septic systems for single-family homes and package treatment plants for multi-family developments.

As an ocean front community, beach nourishment and meeting the associated beach access requirements are regularly discussed. The town beaches received nourishment in 2007 and currently the town is working on establishing the required public beach access and parking. The plan includes policy and implementation statements supporting beach nourishment projects and public beach access requirements.

Key local issues that are illustrated in the vision statement and further outlined in the policy statements include: maintaining diverse natural areas, offering a single-family residential community, maintaining a moderate growth rate, limiting commercial uses, and providing efficient and cost-effective community services.

The following policy statements exceed State development regulations:

**Policies – Land Use Compatibility – Commercial:**

*P.19 The Town of Pine Knoll Shores prohibits the construction of any additional public or private open water or upland marina facilities. Modification of existing marinas will be permitted, assuming the geographical extent of the existing facility is not expanded. This policy exceeds guidelines established under 15 NCAC 7H. While the Town prohibits construction of new marinas, it supports maintenance and no net loss of existing marinas. (pg. 102)*

**Policies – Water Quality:**

*P.58 The Town of Pine Knoll Shores does not support the location of floating homes within its jurisdiction. This policy exceeds state requirements. (pg.112)*

The Pine Knoll Shores Board of Commissioners adopted the land use plan by resolution, on September 25, 2008, after a duly advertised public hearing. The resolution adopting the plan is attached. 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.

As a reminder, the LUP, including maps and an executive summary can be found online at [http://www.nccoastalmanagement.net/Planning/under\\_review.htm](http://www.nccoastalmanagement.net/Planning/under_review.htm). If you have any questions please do not hesitate to contact me at 252-808-2808.

**DCM Staff Recommendation:** DCM Staff recommends that the CRAC forward this Land Use Plan to the CRC for Certification based on the determination that it 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.

Attachment:  
Pine Knoll Shores Resolution of Adoption

**RECEIVED**

OCT 21 2008

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE  
TOWN OF PINE KNOLL SHORES, NORTH CAROLINA  
ADOPTING THE TOWN'S CAMA CORE LAND USE PLAN**

**Morehead City DCM**

**WHEREAS**, the Town's CAMA Core Land Use Plan was financed in part through a grant provided by the North Carolina Coastal Management Program through funds provided by the Coastal Zone Management Act of 1972, as amended, which is administered by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration; and

**WHEREAS**, from 2004 through 2008, the Town drafted a Land Use Plan with the assistance of its consultant T. Dale Holland, Holland Consulting Planners, and conducted a series of public workshops and meetings as part of a comprehensive public participation program under the leadership of the CAMA Land Use Plan Committee; and

**WHEREAS**, on October 9, 2007, the Planning Board recommended adoption of the draft CAMA Core land Use Plan; and

**WHEREAS**, at a duly advertised Regular Meeting of the Board of Commissioners of the Town of Pine Knoll Shores, North Carolina found the policies in the draft CAMA Core Land Use Plan to be internally consistent; and

**WHEREAS**, at the Regular Meeting on Tuesday, September 9, 2008 the Board of Commissioners of the Town of Pine Knoll Shores, North Carolina found the policies and Future Land Use Map in the draft CAMA Core Land Use Plan to be consistent with the Town's desired version for the future and unanimously approved to adopt the draft CAMA Core Land Use Plan as amended; and

**WHEREAS**, the adopted Plan will be submitted as required by state law to the Morehead City District Planner for the Division of Coastal Management under the North Carolina Department of Environmental and Natural Resources and forwarded to the Coastal Resources Commission; and

**WHEREAS**, a presentation by the Town to the Planning and Special Issues (P&SI) committee of the Coastal Resources Commission will be scheduled; and

**WHEREAS**, the P&SI committee will decide on a recommendation to the Coastal Resource Commission (CRC) at the meeting; and

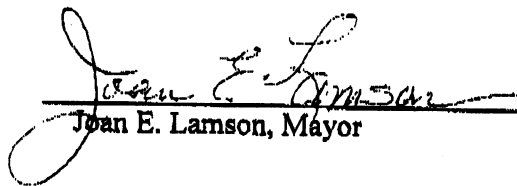
**WHEREAS**, the P&SI committee chairman will submit the recommendation to the CRC and the CRC will then vote on certification of the Town's Land Use Plan; and

**WHEREAS**, a certified Pine Knoll Shores CAMA Core Land Use Plan will be forwarded to the Office of Ocean and Coastal Resource Management (OCRM) for federal approval.

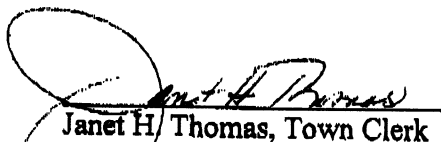
**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Commissioners of the Town of Pine Knoll Shores, North Carolina, has unanimously adopted the draft CAMA Core Land Use Plan; and

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

Adopted this 25<sup>th</sup> day of September, 2008.

  
Joan E. Lamson, Mayor

Attest:

  
Janef H. Thomas, Town Clerk





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

## North Carolina National Estuarine Research Reserve North Carolina Division of Coastal Management

### Headquarters

101 Pivers Island Road  
Beaufort, NC 28516  
Tel. (252) 838-0883  
Fax. (252) 838-0890

### Northern Sites

983 W. Kitty Hawk Rd.  
Kitty Hawk, NC 27949  
Tel. (252) 261-8891  
Fax. (252) 261-8892

### Southern Sites

5600 Marvin Moss Ln.  
Wilmington, NC 28409  
Tel. (910) 962-2300  
Fax. (910) 395-3942

November 10, 2008

### MEMORANDUM

To: Coastal Resources Commission Members  
From: Paula Gillikin, Rachel Carson Reserve Site Manager  
Re: Rachel Carson National Estuarine Research 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 (NCNERR). Acquisition of the 2,625-acre Rachel Carson National Estuarine Research Reserve (Rachel Carson NERR) was completed in 1985. Middle Marsh – a 650-acre complex of tidal creeks and marshes – was acquired four years later in 1989.

#### Rachel Carson NERR Site Description:

The Rachel Carson NERR is a complex of small islands located just inside the Southern Outer Banks and across from the historic Beaufort waterfront. The site is bound by the mainland to the north, inhabited islands to the east and west, and Beaufort Inlet and Cape Lookout National Seashore to the south. The islands at the western end of the site – Carrot Island, Town Marsh, Bird Shoal, and Horse Island – are more than three miles long and less than a mile wide, covering 2,025 acres. Middle Marsh, separated from the rest of the site by the North River Channel, is made up of an additional 650 acres of salt marsh.

The Rachel Carson site represents a typical mid-Atlantic coast intertidal estuarine-marsh system that is strongly influenced by both river and inlet dynamics. The range of tidal changes at Middle Marsh, the low-salinity variation of the western section, and topography of the entire site have created a diverse and productive estuarine system. Habitats found within the site are tidal flats, salt marshes, ocean beach, sub-tidal soft bottoms, hard surfaces, upland dredge material deposition areas sand dunes, shrub thicket, maritime forests, and seagrass beds.

More than 200 species of birds have been observed at the site, which is located within the Atlantic Flyway. Many of these species are considered rare or decreasing in number. The site is

The North Carolina National Estuarine Research Reserve is part of the North Carolina Coastal Reserve program, a cooperative collaboration between the North Carolina Division of Coastal Management and the National Oceanic and Atmospheric Administration.



an important feeding area for Wilson's plovers in the summer and piping plovers in the winter. The shrub thicket of Middle Marsh supports an egret and heron rookery. In addition to feral horses, river otters, gray foxes, raccoons and marsh rabbits inhabit the islands. The Atlantic bottlenose dolphin swims in the waters around the islands, along with over 50 commonly found species of fish.

#### Rachel Carson NERR Management:

Feral horses on the Rachel Carson site pose a unique management challenge, as they are a non-native species whose presence is in conflict with the NCNERR mission. Currently a resident population of 38 animals roams freely throughout the reserve. A birth control program was implemented in 1999 with the goal of stabilizing the population with an eventual decrease in herd size. Immunocontraceptive vaccines are administered to adult female horses on an annual basis.

Another management concern is dredge spoil deposition. The U.S. Army Corps of Engineers performs periodic maintenance dredging of Taylor's Creek and surrounding channels. Sites for dredge material deposition are within a permanent easement along Taylor's Creek and Carrot Island. Though the disposal must be done within existing diked areas and according to federal and state regulations, the process temporarily disrupts visitor and wildlife use of the area and has major ecological consequences.

Other management concerns for the Rachel Carson site include: control of invasive species, enforcement of the Reserve's visitor use policies, and marine debris reduction. Increased commercial and residential development directly across from the reserve as well as throughout the entire watershed, could potentially cause deleterious impacts to water quality.



The North Carolina National Estuarine Research Reserve is part of the North Carolina Coastal Reserve program, a cooperative collaboration between the North Carolina Division of Coastal Management and the National Oceanic and Atmospheric Administration.





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

November 7, 2008

CRC-08-50

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Scott Geis  
Ocean and Coastal Policy Analyst

**SUBJECT:** Ocean Policy Steering Committee Draft Recommendations

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Within the last ten years, many of the issues facing North Carolina's coastal ocean have changed, and new issues have come to the forefront of policy and planning decisions. These changing needs signal a crucial time for North Carolina to review its ocean policy structure and to devise policy options that ensure we are prepared to meet the challenges of tomorrow. In February 2008, the Ocean Policy Steering Committee (OPSC) was established to identify emerging environmental, legal and policy issues associated with the use and development of ocean resources in North Carolina's coastal ocean waters and in adjacent federal waters. Since that time, the OPSC has been meeting every other month and the Committee's efforts have been aimed at assessing NC's current CAMA rules and policies for their effectiveness in protecting NC's coastal ocean. Specifically, the OPSC has worked to ensure that:

1. NC will be prepared as the ocean and coastal setting experiences technological, social and economic changes; and
2. NC policies assure consistency of federal actions when new technologies are employed in federal waters that are beyond NC's jurisdictional limit.

As a result of the OPSC's activities, the following emerging policy areas have been identified and each of these issues has had recommendations drafted by the OPSC for review by the NC Coastal Resources Commission.

- Sand Resource Management;
- Ocean Based Alternative Energy;
- Comprehensive Ocean Management;
- Ocean Outfalls and Alternative Wastewater Management; and
- Mariculture

The OPSC intends for these draft recommendations to be presented at a series of three public meetings, which are anticipated to take place in December 2008. The OPSC intends for these meetings to generate community support of the initiative as well as to identify additional issues local communities may be experiencing as the coastal climate has been continuously reshaped by natural processes and policy decisions. At the conclusion of the public meetings, the OPSC's final report and recommendations will be prepared and presented to the CRC for review and comment. The draft recommendations presented in this memo were previously highlighted at the 2008 "Shape of the Coast" event, a CLE program offered by UNC Law School and the NC Law, Planning and Policy Center.

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## **Recommendations on Emerging Issues**

### *Sand Resource Management*

Climate change, sea level rise, and the continued erosion of many North Carolina beaches will inevitably require the State and coastal communities to confront serious and difficult policy issues concerning the protection of coastal resources. Currently, North Carolina's general policy has been to protect shorelines through beach nourishment projects or retreat, as North Carolina law prohibits the use of hardened structures to protect eroding shorelines along the oceanfront.<sup>1</sup>

Despite this policy, available data shows that beach-quality sand sources may in fact be limited and considered insufficient to meet all the demands for beach nourishment in the future. Furthermore the location of sand deposits may render their extraction economically unfeasible to some municipalities. These limitations have the potential to create conflicts over the right to use available beach-quality sand. Under current State and federal regulatory systems, beach-quality sand is available on a "first come, first served" basis. The legal means for acquiring a continuing priority to, and legal rights to, sand sources located in State waters does not exist; and, neither the State nor federal system prioritizes access to sand resources based on an assessment of whether the proposed sand use is the wisest use of this public resource.

As a result of the anticipated conflict underlined by sand availability and sand source location, the OPSC recommends the following;

1. Development of State Comprehensive Plan to Protect Beaches and Inlets
2. Identification of Available Sand Sources
3. Establishing a Set of Priorities for Allocation of Limited Sand Resources
4. Establishment of a System of Legal Rights to State-Owned Sand Resources
5. Development of a Coastal Vulnerability Index
6. Sea Level Rise Component to CAMA Land Use Plans
7. Disclosure of Natural Hazards when purchasing Coastal Real Estate
8. Management of Ebb Tide Delta Sand Sources
9. Preventing Loss to Barrier Sand System of Sand in Inlet Channels
10. Amendment To Rules Regarding Dredging Around High-Bottom Areas
11. "Worst-Case Scenario" State Level Planning Document

### *Ocean-Based Renewable Energy*

As the CRC heard at its September 2008 meeting, alternative energy technologies are no long emerging, they are "here and now." While the September CRC meeting focused on the installation and use of wind turbines in NC sound and ocean waters, there are a myriad of alternatives to oil and gas drilling for both renewable, and non-renewable energy technologies. Wave, wind, current, and tidal energies are just a few of these technologies which are being studied, and in some cases used, around the world and even in the United States.

The OPSC recommends that DCM staff review existing rule language for 15A NCAC 07M.0400 on coastal energy policies to ensure it adequately covers alternative energy development and is updated to address new technologies. Currently, the regulation focuses on oil and gas development and LNG facilities. Additionally, the OPSC feels that there exist several limitations in current statutes, particularly N.C. Gen. Stat. § 146-10 and § 146-11, and the Committee recommends exploring the benefits to the State enacting a comprehensive statute to address the granting of rights to use public trust submerged

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<sup>1</sup> §113A-115.1(b) & 15A NCAC 07H .0308(a)(1)(B).

lands and associated water column and air space for wind turbines and other alternative energy facilities. This statute could be similar to N.C. Gen. Stat. § 146-12, the easements to riparian owners statute. Factors a comprehensive statute and implementing regulations could address include:

- Identification of areas that could be occupied;
- Include submerged lands, water column and air space;
- Duration of the easement or lease;
- Rights of the lease or easement holder;
- Maintenance and decommissioning obligations;
- Performance bonds or other security;
- Compensation to the State;
- Identify other permitted uses in the area;
- Authorize granting of easements for transmission cables; and
- Require all of the above to be subject to CAMA, EMC and Utilities Commission permit requirements.

In light of current studies being conducted on the feasibility of wind energy in coastal waters, the Committee recommends that the CRC review its policy defining wind turbines as non-water dependent structures. Instead of changing the water dependency requirement to allow wind turbines in coastal waters, the CRC could craft an exception for water-based wind turbines and develop a new rule for wind energy projects. Such a rule could, for instance, address project size, analogous to the dock and pier rules; permissible sites; and transmission lines.

### *Comprehensive Ocean Management*

As North Carolina considers addressing such issues as sand resources management, a beach and inlet management plan, and renewable energy development in its sounds and coastal ocean, a comprehensive plan for managing uses in state waters could be beneficial to the State and its communities. Exploring the idea of having a comprehensive plan in place to address various use issues, providing mapping of ocean resources and providing an atmosphere of regulatory certainty will afford the State an opportunity to develop sound development practices that will promote wise use of its resources and that will benefit North Carolina's coastal communities and various user groups. Coastal states such as Massachusetts, Oregon, California and Rhode Island can serve as models from which North Carolina can learn.

The OPSC recommends that North Carolina update its mapping ocean resources. This information is critical to an understanding of the resources the State has in its coastal waters in order to effectively manage their uses. Mapping also will be critical to engage in comprehensive ocean management.

### *Ocean Outfalls and Alternative Wastewater Management*

The OPSC supports the recommendation in the Coastal Habitat Protection Plan (CHPP) that there should be no new or expanded ocean outfalls. Furthermore, the OPSC recommends decommissioning existing outfalls by using a phase-out process. This would include source reduction to existing outfalls, use of best management practices to clean discharge as needed and retrofitting existing outfalls in the interim.

Due to increased development along the North Carolina coast and the increased need for freshwater, the OPSC recommends as an alternative that the State examine the potential for alternative water treatment methods, such as water reclamation and reuse facilities.

## *Mariculture*

The OPSC recommends that the State conduct a technical assessment to research the feasibility of marine-based aquaculture in North Carolina's coastal-ocean waters. An assessment would be beneficial to study the feasibility of aquaculture operations in state coastal waters. Marine-based aquaculture requires certain water depth, and coastal waters in North Carolina may not be deep enough. Sufficient water depth may require going many miles off the coast (15 miles or more), which would be in federal waters. Furthermore, a suitable location would be needed where wave action is not too rigorous and offer some protection from tropical systems. Some experts estimate water depth requirements to be at least 140 feet to protect submerged cages from tropical systems.

Another issue hinges on Congress passing a "National Offshore Aquaculture Bill." Provided this Bill is passed, there are provisions in initial drafts that will allow commenting states to restrict the location of offshore aquaculture farms to no less than 12 miles offshore. Therefore NC should examine the steps necessary to amend the enforceable policies of its coastal management plan if a law is passed authorizing a permitting program for aquaculture in federal waters. The OPSC recommends that DCM continue to monitor the progress of the National Offshore Aquaculture Act of 2007, or similar/future bills. If a bill is passed, the Committee recommends the State implements relevant policies as part of its coastal management plan for CZMA Consistency purposes.



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-08-54

November 6, 2008

**MEMORANDUM**

**TO:** CRC & CRAC

**FROM:** Steve Underwood, Assistant Director for Policy and Planning

**SUBJECT:** CRC Comprehensive Beach Management Subcommittee Report Update

Committee members:

Bob Emory (CRC, Subcommittee Chair)

Spencer Rogers (CRAC)

Jim Leutze (CRC)

Wayland Sermons (CRC)

Renee Cahoon (CRC, by phone)

Bill Morrison (CRC)

Harry Simmons (CRAC)

Joan Weld (CRC)

Phil Harris (CRAC)

A list of recommendations was developed for discussion at the May CRC meeting in Washington. This memo provides an update on the progress of those 10 Recommendations since that meeting:

**Recommendations**

1. Resolution to the General Assembly supporting additional funding to accelerate development of the BIMP. Request additional resources and personnel to act as a liaison with local governments and to serve on the Project Delivery Team.

*Update:* The current BIMP is due to be completed in April 2009. Funding for this effort has been \$750,000 in FY 07 (currently under contract with Moffitt and Nichol) with an additional \$250,000 for FY 08 (currently being withheld by DENR per Governor). Because of the current downturn in the economy and budget constraints placed on DENR and its Divisions, it may be wise to delay a Resolution at this time until further work on the BIMP is completed and some stability in the economy occurs.

2. Statement or letter to General Assembly supporting a stable and dedicated source of funding for beach nourishment to include:

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- Beaches as critical infrastructure
- Maintenance of federal participation
- Support for current federal funding formula
- Use of BIMP data in justification

Update: The CRAC is working on this issue and will report out on its progress at the November meeting.

3. Creation of a committee to develop a beach education plan
  - Target coastal and inland communities
  - Include the protective value to non-project areas
  - Committee to also include non-CRC/CRAC members

Update: No progress to date – could be considered with money appropriated for FY 08 (\$250,000)??

4. Coastal Hazards Disclosure Efforts
  - Creative initiatives such as utilizing DCM Beach Access signs
  - Additional data on DCM website (sandbag locations)
  - Utilize Coastal Reserve Realtor workshops
  - Update Sea Grant publication Answers on *Purchasing Coastal Real Estate in NC*
  - Engage coastal realtors

Update: Coastal Hazards Disclosure is a recommendation from the Ocean Policy Steering Committee (OPSC-see Scott Geis update). Sandbag locations are posted on DCM's website:

[http://www.nccoastalmanagement.net/sandbag\\_locations.htm](http://www.nccoastalmanagement.net/sandbag_locations.htm)

5. Condition certain CAMA permits to preclude the use of sandbags (single family exception)

Update: Probably need further discussion on this. Sandbags are one strategy used by property owners to temporarily protect their properties until a long-term solution is obtained.

6. Consideration of amendments to sandbag rule

Update: new draft rules are going to Public Hearing

7. Consideration of alternative sandbag structure design (geo-textile tube)

Update: While there has been some informal discussion of the use of geo-textile bags, there has not been an official determination on their use.

8. Letter to Governor endorsing NC involvement in Southeast Alliance

Update: DENR working towards a signing ceremony by all the Governors of the Alliance before the end of this year.

9. Presentation to CRC on innovative funding strategies for beach nourishment projects

Update: Peter Ravella of Peter A. Ravella Consulting, L.L.C gave a presentation at the July CRC meeting in Raleigh

10. Consideration of beach management and oceanfront development strategies consistent the CRC's current authority.

Update: Setback rules just adopted by CRC at the September meeting, Public input meetings for discussion of BIMP draft Management Strategies will be held the first two weeks of December.





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

November 4, 2008

**MEMORANDUM**

CRC 08-46

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** OCS Update

Offshore Drilling Moratoriums

Prompted by the sharp rise in gasoline prices since Hurricane Katrina in 2005, there has been much discussion in Congress regarding the expansion of opportunities for oil and gas exploration in the Outer Continental Shelf (OCS) waters of the United States. Numerous bills have been introduced with such titles as Ocean States Option Act, Deep Ocean Energy Resources Act, OCS Natural Gas Relief Act, the Gulf of Mexico Energy Security Act and, most recently, the New Energy Reform Act of 2008 (commonly known as the "Gang of Ten" legislation). What all these bills have in common is a lifting of the Congressional ban on offshore drilling which covered much of the OCS area (3 – 200 miles) in the Pacific and Atlantic Oceans.

Due largely to a spill from an oil platform off the coast of Santa Barbara in 1969, California was the first state to have its coastal waters come under a ban on leasing activities by the Minerals Management Service for oil and gas exploration and development. By the 1980's oil and gas drilling began appearing as a ballot issue in California with many coastal communities passing zoning ordinances that prohibited the onshore support facilities for drilling operations. These ballot issues culminated in the State enacting a permanent ban on drilling in California waters not already covered by existing leases.

In 1982, Congress passed legislation that prevented the MMS from including unleased areas ("pre-leasing" ban) in future 5-Year Lease Programs in California only. In 1983, this pre-leasing ban was extended to the North Atlantic and in 1988 the first drilling ban was enacted that covered the Gulf of Mexico. In 1990, President George H. Bush, citing the National Research Council findings and concerns about preserving the ocean and coastal environment, supplemented the existing moratorium by prohibiting offshore leasing or pre-leasing activities in areas covered by the legislative ban until 2000. 1990 also saw enactment of the Outer Banks Protection Act (later repealed) that specifically prohibited leasing activities in North Carolina's OCS area. In 1998, President Clinton extended the moratorium to 2012.

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During the first half of 2008, gasoline prices reached \$4.00 per gallon commensurate with oil prices reaching record levels. Amid calls for more domestic production, President George W. Bush lifted the executive moratorium in June and directed the MMS to begin preparation of a new 5-Year Lease Program to take effect once the current Program expires. The MMS began to solicit comments from the states on August 1<sup>st</sup> of this year. Despite a flurry of proposals that, in some combination, would allow states to independently choose to participate in oil & gas production, maintain bans in state waters, open all waters at specific distances from shore, Congress allowed the legislative moratorium to lapse on September 30, 2008 by not renewing it in the appropriations bill. While the majority of the OCS is now no longer under a moratorium, this action does not affect the moratorium enacted under the Gulf of Mexico Energy Security Act that prevents leasing activities within 100 miles of the Florida coastline in the eastern Gulf of Mexico until 2022.

### The Role of the Minerals Management Service (MMS)

The MMS manages the 1.76 billion acre OCS area through leases on approximately 43 million acres accounting for about 15% of the Nation's domestic natural gas production and 27% of the domestic oil production. Under the authority of the Outer Continental Shelf Lands Act (OCSLA), the MMS leases the federal lands of the OCS through the development of a 5-Year Lease Program. A 5-Year Program consists of the schedule for lease sales as well as the size and location of blocks to be offered. Once a 5-Year Program is developed, MMS will allow companies to bid for specific lease areas. Oil and gas leases are issued for an initial period of five years or not to exceed 10 years where such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions. Once production is established, the term continues as long as there is production. Upon completion of a lease sale, a company submits a Plan of Exploration (POE) with associated environmental documents. Exploration is comprised of seismic studies and exploratory wells. If a discovery is made, a company may submit a Plan of Development and Production to MMS. There are about 20 federal and state permits required for production which include air and water quality permits from the EPA. It takes about 1-3 years to reach production.

In addition to oil, gas and sand resources, MMS has been granted authority under the Energy Policy Act of 2005 to develop lease programs for alternative energy development. In a manner similar to oil and gas leasing, MMS is developing policies to issue OCS leases, easements or right-of-ways for activities that produce or support production, transportation, or transmission of energy from sources other than oil and gas.

### The Current 5-Year Lease Program

The current 5-Year Program took effect July 1, 2007 and runs through June 30, 2012. Because this Program was developed under the legislative and presidential moratoriums, it does not include areas under those bans. However, the current

Program does include a special interest lease sale of a 500,000-acre block off the coast of Virginia approximately 25 miles north of the North Carolina-Virginia border. This lease sale could proceed as early as 2011. North Carolina submitted comments on the proposed Program in which the Governor raised concerns that by virtue of our close proximity, North Carolina's coast would bear the direct adverse impacts of such a sale, with no commensurate benefit. In essence, the Governor opposed inclusion of the area in the proposed Program. In addition to the proposed lease sale of the area off the Virginia coast, the 2007-2012 Lease Program includes 21 lease sales, focusing on areas in the western Gulf of Mexico off Texas, Louisiana and Alabama as well as areas off Alaska.

### The New 5-Year Lease Program

The MMS announced in July 2008 that it was jump starting the development of a new 5-Year Lease Program, giving the next administration a two-year head start in expanding energy production in federal waters (beyond three miles) that would include areas under the Congressional moratorium. In contrast to the development of the current Program, MMS solicited comments from all 50 Governors relative to issues that were specific to their state. While unusual, the OCSLA does allow for "out-of-cycle" leasing programs.

The rationale for initiating this process now is that the nation is dependent upon supply from too limited an area (Gulf of Mexico and southern California) with the recent disruptions in supply due to hurricanes cited examples. According to MMS, 27% of US oil and 15% of natural gas comes from the Gulf of Mexico. Southern California accounts for about 70,000 barrels/day.

North Carolina has submitted comments on this proposal citing concerns about the effects on fisheries, tourism and continued dependency on fossil fuels. The MMS is currently reviewing 180,000 comments (compared to 5,000 comments on the last Program) that will be used in the development of the 5-Year Program. A draft proposed Program is expected to be completed by January 2009 at which point there will be another 60-day comment period. A proposed Program and draft Environmental Impact Statement is projected to be available by March 2010 giving the new administration a two-year head start should they decide to continue. The current Program will continue till 2012 at which point the new Program would go into effect. If implemented by the new administration, the new Program could replace and supercede the portion of the current Program remaining after the effective date of the new Program with any currently schedule sales for mid-2010 to mid-2012 being included in the new Program.

Under the current procedures outlined by the OCSLA, it takes approximately 2.5 years to develop a lease program and, absent additional Congressional action, this is the fastest a new plan can be prepared. With the lapse of the legislative ban in September, the House and Senate have stopped having hearings on the issue and no legislation has been passed. There have been some discussions of streamlining the process – the National Environmental Policy Act requires three public comment periods and there is interest in reducing that to two.

## Interest in North Carolina's OCS

In the past, no interest in oil and gas exploration has been shown off the North Carolina Coast except for the Manteo Exploration Unit (MEU). The MEU is comprised of 21 blocks, each approximately nine square miles in size located about 38 miles east of Rodanthe. This is the location of an ancient reef structure with the age and composition likely to hold hydrocarbons, most likely natural gas. Industry experts estimate that there is a 7% chance of finding hydrocarbons in the area and 2% chance that it would be economically viable. However, the estimated potential reservoir (by federal and industry geologists) if a discovery is made is five trillion cubic feet of natural gas with a field life of 20-30 years. This puts the site on par with the largest finds such as Prudhoe Bay Alaska.

## The Role of North Carolina in OCS Decisions

When it comes to offshore energy development, the State has the ability to comment on the project under several authorities - the federal OCSLA, the NC CAMA and the administrative rules of the CRC. The OCS Lands Act outlines the provisions under which the Governor comments on a POE. The CAMA and the NC Coastal Program provide the authority for making consistency determinations. The CRC's administrative rules (15A NCAC 7M .0400 Coastal Energy Policies) outline the information needs and issues of importance in making the consistency determination under the Federal Coastal Zone Management Act (CZMA). The CZMA gives states the authority to review federal activities, licenses and permits that have reasonably foreseeable effects on any land or water use or natural resources of the coastal zone. This authority is known as a consistency determination. Federal activities must be consistent to the *maximum extent practicable* with the enforceable policies of a coastal state's federally approved coastal management program. North Carolina may review the following stages of oil and gas development under the consistency authority:

- 1) Development of MMS-5 Year Plan;
- 2) Lease sale: the "bulk" lease sale that allows companies to bid for particular lease areas;
- 3) Plan of exploration: the plan of how a company will explore in order to determine if they will develop their lease site;
- 4) Plan of development and production: this lays out the plan for producing oil or gas from the lease site; and
- 5) Decommissioning: (federal consistency review may be required, but not in all cases) there is likely to be a review at this stage, especially if the rig is decommissioned as part of a Rigs To Reef Program. However, decommissioning might also be included in the Plan of Development and Production in which case those activities are reviewed/approved under 4.

## The Future?

There are quite a few uncertainties to consider in trying to project when oil and gas exploration might be seen in the State's coastal ocean. In addition to addressing the status of the new 5-Year Program, the new administration and Congress will need to address such things as royalties as well as areas that should be protected from exploration activities. Under the current 5-Year Program, there are no royalty provisions for activities beyond the three-mile state waters jurisdiction. The lapsed legislative moratorium also contained specific exclusions to prevent oil and gas activities in certain areas such as National Marine Sanctuaries. The most recent indications are that the House Natural Resource Committee will revisit the moratoriums as the first order of business next year with the intent of determining whether or not there should be drilling within three miles of the coast. There are also plans to revisit the Department of Interior Royalty Collection Program as part of a comprehensive energy bill.



CRC-08-49

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

November 6, 2008

**MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Tancred Miller  
**SUBJECT:** Public Comments and Recommended Changes to 7H.0205

The Commission sent its Coastal Wetlands rule, 7H.0205 to public hearing in September in order to begin regulating coastal wetland alteration, through mowing, cutting, burning, and herbicide use. DCM staff first brought this issue to the Commission in March 2006 citing instances of repeated marsh mowing for the purpose of altering the character of coastal wetlands in order to facilitate development. Staff noted that the Commission does not currently regulate marsh mowing, but has the authority to do so under CAMA. In subsequent discussions the Commission registered their desire to regulate other types of coastal wetland alteration, particularly by burning and herbicide use.

The Commission directed staff to draft a rule amendment that would limit mowing and cutting by private entities, and that would allow any activity by federal and state resource management agencies subject to approval by DCM. The CRC's and DCM's intent in this rule change has always been to curtail the conversion of coastal wetlands by private parties, and not to impede the activities of resource management agencies or research institutions.

The Commission held a public hearing in September 2008 at which no one spoke for or against the proposed amendments. Immediately prior to the September 30<sup>th</sup> close of the required public comment period the Division received a flood of comments on the proposed rule, mostly from state and federal resource management agencies and registered foresters. Their comments are attached. The comments strongly questioned the CRC's authority to regulate burning and herbicide use, its need to do so, and the added bureaucracy that this rule change might create.

DCM staff held a meeting on October 31<sup>st</sup> to which all parties who commented were invited. Participants reiterated their strong objections against the CRC regulating marsh alteration by burning or chemical use, and against the CRC requiring state and federal resource management agencies to seek DCM approval prior to carrying out their normal resource management activities.

In light of these discussions, staff believes that the alteration of coastal wetlands by resource agencies in connection with their management strategies do not warrant DCM approval or notification. The Division is primarily concerned with the cutting and mowing by private entities are the practices that the CRC needs regulate, and that there is no evidence that burning or

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chemical use are—or are soon likely to become—wetland alteration methods that require regulatory control. Staff will present these recommended rule changes in November, including clarification that state and federal resource agency activities are exempt from the proposed limitations on mowing and cutting. Staff feels that the proposed changes will address stakeholder concerns and still afford the sought after protections.

### **DCM-Recommended Changes (highlighted) based on Public Comment.**

#### **15A NCAC 07H .0205 COASTAL WETLANDS**

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Coastal wetlands contain **some, but not necessarily all, any** of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*),
- (2) Black Needlerush (*Juncus roemerianus*),
- (3) Glasswort (*Salicornia* spp.),
- (4) Salt Grass (*Distichlis spicata*),
- (5) Sea Lavender (*Limonium* spp.),
- (6) Bulrush (*Scirpus* spp.),
- (7) Saw Grass (*Cladium jamaicense*),
- (8) Cat-tail (*Typha* spp.),
- (9) Salt Meadow Grass (*Spartina patens*),
- (10) Salt Reed Grass (*Spartina cynosuroides*).

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

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

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

The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes

resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

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

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

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

~~Unacceptable~~ Examples of unacceptable land uses include: restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways, and factories. ~~may include, but would not be limited to, the following examples: restaurants and businesses; residences, apartments, motels, hotels, and trailer parks; parking lots and private roads and highways; and factories.~~ Examples of acceptable land uses may include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses uses, such as farming and forestry drainage drainage, as permitted under North Carolina's Dredge and Fill Law, Act or other ~~applicable~~ applicable laws.

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

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

- (1) Alteration of coastal wetlands ~~shall be is~~ exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
  - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
  - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
  - (C) Alteration of the substrate ~~shall not be is not~~ allowed;
  - (D) All cuttings/clippings shall remain in place as they fall;



~~(E)~~ — All mowing, cutting or burning Mowing or cutting of coastal wetlands by federal and state resource management agencies, or by academic institutions associated with research efforts, efforts shall be allowed subject to approval from the Division of Coastal Management;

~~(F)~~ — Coastal wetlands may be burned at no less than five year intervals provided that proposals for the area to be burned are submitted to the Division of Coastal Management 30 days prior to the planned activity, and the applicant is able to document that he/she has given notice of the proposed activity to the adjacent riparian property owner(s); and

~~(G)~~(E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; access; and

~~(F)~~ Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.

~~(2)~~ — Alteration of coastal wetlands with chemicals or herbicides of any type shall be allowed only when conducted by Federal or State resource management agencies or as part of academic research efforts.

~~(3)~~(2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations shall be subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have an adverse impact on the habitat or fisheries resources.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124;*

*Eff. September 9, 1977;*

*Amended Eff. December 1, 2008; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978.*

**October 31, 2008 Interested Parties Meeting Summary  
MOAA Auditorium, Beaufort**

**Participants**

Jim Kinghorn	Cape Hatteras Electric Cooperative (CHEC)
Lonnie Moore	Cape Hatteras Electric Cooperative (CHEC)
Gail Bledsoe	N.C. Division of Forest Resources (DFR)
Gary Curcio	N.C. Division of Forest Resources (DFR)
Jean Lynch	N.C. Division of Parks & Recreation (DPR)
Maria Dunn	N.C. Wildlife Resources Commission (WRC)
Angie Carl	The Nature Conservancy (TNC)
Dennis Stewart	U.S. Fish & Wildlife Service (FWS)
Liz Barnhardt	Registered Forester, private consultant
Jim Gregson	DCM
Ted Tyndall	DCM
Terry Moore	DCM
Doug Huggett	DCM
Mike Lopazanski	DCM
Tancred Miller	DCM

Jim Gregson welcomed participants and thanked them for their comments and interest. Terry Moore explained that the CRC and DCM initiated this action because of observed instances of private parties repeatedly cutting, mowing, and occasionally burning coastal wetlands or cuttings. Moore explained that over time these activities could eliminate coastal wetland vegetation, effectively removing the wetlands from the Coastal Wetlands AEC and CAMA permitting jurisdiction. Once the wetlands are no longer under CAMA jurisdiction property owners become eligible for a nationwide permit to fill the wetlands, creating developable high ground. Moore stated that after DCM alerted the CRC to this activity, the CRC decided to seek broad protection of coastal wetlands, including limitations on cutting and mowing, burning, and chemical use. Moore noted, however, that the CRC's and DCM's regulatory interest remained directed towards private party activities, not towards activities by state or federal resource agencies, or academic research institutions. Moore further noted that DCM still did not see burning or chemical use as activities that are resulting in widespread marsh alteration.

Gary Curcio (DFR) stated that the rule needs to pinpoint the problem that we are seeing. Curcio asked whether the rule could exempt state and federal agency activities on private land since DFR does a lot of work with private landowners. Curcio also said that the proposed burn interval is too rigid.

Jean Lynch (DPR) said that all of the activities that the CRC now proposes to regulate are also tools for wetland and forest restoration and invasive species control. Lynch said that DFR is ramping up its fire program in state parks, and wants to use the marsh as a natural firebreak to save having to construct fire lines. Lynch added that DFR uses herbicides to kill phragmites, then disposes of the waste by burning.

Angie Carl (TNC) said that TNC uses prescribed burning in its forestlands, and may soon begin using it in their marshlands as well. Carl said that TNC would want to mimic the natural burn cycle, which could be a 1-12 year interval, so therefore the proposed CRC interval is too strict.

Jim Kinghorn (CHEC) said that fire use is their biggest concern in the proposed rule. Kinghorn said that the U.S. Fish & Wildlife Service currently uses fire, mowing, and occasionally herbicides to control fuel buildup along their utility easements. Kinghorn expressed concern that if the CHEC has to take over those responsibilities from the federal agency they would be subject to impractical limits on easement maintenance.

Liz Barnhardt remarked that she has seen private individuals mowing and burning the marsh in an attempt to eliminate coastal wetland vegetation, and that she fully supports regulating that activity. Barnhardt questioned whether the rule could use some sort of trigger (e.g. a minimum acreage threshold, or an approved management plan) above which private activities on private lands are exempt from permitting requirements.

Dennis Stewart (FWS) said he felt that many of the public comments and sentiments expressed were too harsh, given the CRC and DCM's task of regulating a resource with so much ecological and potentially economic value. Stewart believes that the CRC should indeed add regulatory protections against private burning and chemical use. Stewart added that marsh alteration combined with climate change and sea level rise will result in accelerated loss of the resource.

After continued discussion DCM staff told the participants that we are prepared to recommend the following changes to the proposed rule:

1. Clarify the exemption for activities by state and federal resource management agencies
2. Exempt easement maintenance by utility companies
3. Remove regulation of burning from the proposed rule language
4. Remove regulation of chemical use from the proposed rule language

Participants were in general agreement, subject to their review of the revised language, that these changes should adequately address their concerns while appropriately targeting the undesirable activity.

**Subject:** 15A NCAC 07H .0205(e)(2) Coastal Wetlands proposed

**Date:** Fri, 10 Oct 2008 11:33:33 -0400

**From:** Henry Wade <[Henry.Wade@ncmail.net](mailto:Henry.Wade@ncmail.net)>

**To:** [Mike.Lopazanski@ncmail.net](mailto:Mike.Lopazanski@ncmail.net)

**CC:** Burnette, James <[james.burnette@ncagr.gov](mailto:james.burnette@ncagr.gov)>, Patrick Jones <[Patrick.Jones@ncagr.gov](mailto:Patrick.Jones@ncagr.gov)>, Bob Bruss <[Bob.Bruss@ncmail.net](mailto:Bob.Bruss@ncmail.net)>, Ray Starling <[Ray.Starling@ncmail.net](mailto:Ray.Starling@ncmail.net)>

Mike,

The NC Dept of Agric. has reviewed the proposed rule 15A NCAC 07H .0205(e)(2) and offer our following concerns regarding the adoption of this rule by another entity in NC.

We have reviewed the proposed rules 15A NCAC 07H .0205 Coastal Wetlands and identified a problem with (e)(2): "Alteration of coastal wetlands with chemicals or herbicides of any type shall be allowed only when conducted by Federal or State resource management agencies or as part of academic research efforts."

The North Carolina Pesticide Law of 1971 (Chapter 143, Article 52) states in GS 143-437: "Pesticide Board functions. The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article: (1) To adopt rules and regulations and make policies for the programs set forth in this Article." Also, in GS 143-435, "Preamble. (b) The purpose of this Article is to regulate in the public interest the use, application, sale, disposal and registration of insecticides, fungicides, herbicides, defoliant, dessicants, plant growth regulators, nematicides, rodenticides, and any other pesticides designated by the North Carolina Pesticide Board."

The proposing agency lacks statutory authority to regulate pesticide use even within defined coastal wetlands, and any attempt by the Division of Coastal Management to do so would most likely be subject to objection by the Rules Review Commission and/or legal challenge after adoption. The Pesticide Board strongly discourages the creation of parallel systems of pesticide regulation in North Carolina. Such a system would be confusing and would unnecessarily complicate the regulatory scheme in this state.

If the Division of Coastal Management would like for pesticides to be further regulated in specific areas, the government appointed Pesticide Board can be petitioned to adopt rules in a public forum. Please contact the Structural Pest Control and Pesticides Division, NC Dept of Agriculture and Consumer Services at 919-733-3556 if you would like to pursue the rulemaking process for pesticides.

Henry



## ⊠ North Carolina Wildlife Resources Commission ⊠

Gordon Myers, Executive Director

### MEMORANDUM

**TO:** Ted Tyndall  
Division of Coastal Management  
North Carolina Department of Environment and Natural Resources

**FROM:** Maria T. Dunn, Northeast Coastal Region Coordinator  
Habitat Conservation Program

**DATE:** October 10, 2008

**SUBJECT:** Proposed rule change of 15A NCAC 07H. 0205 Coastal Wetlands

Biologists with the North Carolina Wildlife Resources Commission (NCWRC) reviewed the proposed rule change with regard to impacts on fish and wildlife resources and the management of coastal wetland resources.

The NCWRC supports the Division of Coastal Management's attempt to prevent and minimize significant and avoidable impacts to fragile coastal wetland systems by regulating unnecessary alterations to coastal wetland vegetation. Recent alterations to systems in residential or future residential areas have caused changes coastal wetlands that impact not only the vegetation but also wildlife habitat, water quality functions, and shoreline stability.

The NCWRC manages numerous public areas throughout the coast including areas with coastal wetlands. We understand our habitat management practices would be allowed as stated under 15A NCAC 07H. 0205 (e) (1) (E):

*All mowing, cutting or burning coastal wetlands by federal and state resource management agencies, or by academic institutions associated with research efforts, shall be allowed subject to approval from the Division of Coastal Management;*

However, we are concerned with the wording of this provision and the conditions under which our existing management activities would be allowed. Therefore, we have the following comments:

- We believe federal and state resource management agencies should be referenced separately from academic institutions. Resource agencies have managed these lands for years to benefit coastal

wetland vegetation and wildlife habitat. Academic institutions may have different objectives that and may not benefit wildlife and coastal wetland habitats.

- We understand the “*shall be allowed subject to approval from the Division of Coastal Management*” statement does not mean that federal or state resource management agencies would need to get permits to perform management activities. However, this sentence could be interpreted that permits are now required. We suggest the following to clarify resource management activities:

All mowing, cutting or burning coastal wetlands by federal and state resource management agencies shall be allowed by the Division of Coastal Management as part of the resource agency’s management strategy.

- The Division of Coastal Management would be notified prior to coastal wetland alteration. This would be done either with a letter stating proposed management areas for the upcoming season or with contact to the regional office as site management needs arise.
- The proposed rule does not clarify if impoundment management constitutes coastal marsh alteration. Mowing of dike walls and other impoundment maintenance within the permitted impoundment area should be exempt from the proposed rule change.

The NCWRC appreciates the opportunity to comment on this proposed rule change. We understand this process may need further discussion and consideration and encourage any dialogue between our agencies to expedite the process. Please contact me at (252) 948-3916 if we can be of further assistance.

cc: Hughes, T. – NCWRC



Division of Forest Resources  
Region 1 Headquarters  
2958 Rouse Road Extension  
Kinston, North Carolina 28504-7320

Comments on  
7H-0205

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Thanks: Enjoy!  
Angela

DATE: 9/30/08

Number of Pages (including cover sheet) 4

TO: James H. Gregson

FR

Phone: 252-808-2808

Phone: 252-520-2402

Fax: 252-247-3330

Fax: 252-522-1289

CC: \_\_\_\_\_

REMARKS:

- Urgent
- For Your Review
- Reply as soon as possible
- Please Comment

& Comment

The Fire Environment response to proposed rule,  
15A NCAC 07H .0205.

Thank You  
&

Respectfully

Gary H. Curcio

(C) 919-810-5623.



North Carolina  
Department of Environment  
And Natural Resources

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



North Carolina  
Division of Forest Resources

Wib L. Owen, Director

September 30<sup>th</sup>, 2008

James H. Gregson, Director  
NC Dept. of Environmental and Natural Resources  
Division of Coastal Management  
400 Commerce Ave.  
Morehead City, NC 28557

**Subject: NC Division of Forest Resources (DFR) comments on:  
NC Division of Coastal Management proposed rule Chapter 07 Subchapter 07H  
Section .0200 / 15A NCAC 07h .0205**

Dear Mr. James H. Gregson:

The NCDFR appreciates this opportunity to provide comments on this proposed rule. Because of their brevity they are included in this letter. The DFR is objecting to the proposed rule Chapter 07 Subchapter 07H Section .0200 / 15A NCAC 07h .0205 and in particular, (e) Alteration of Coastal Wetlands. This is entirely new. The DFR's objection is being made on the following points:

- 1) The DFR is a lead agency in the management and protection of North Carolina's forests and other adjacent vegetative ecosystems. The NCDFR did not receive timely notification to review and to discuss this new rule and its changes with the Division of Coastal Resource Management nor with other strategic partners. It is unfortunate that there has been not dialogue between DENR's agencies to fully comprehend the need for such a rule or that DFR and its programs may be able to provide assistance.
- 2) It is anticipated that the proposed rule will impose management, operational and fiduciary impacts to DFR when attempting to manage NC's natural resources.



- 3) It is mentioned in the proposed rule that mowing, cutting or burning is considered an alteration of coastal wetlands. The DFR does not view these practices as alterations but means to manage and maintain the health of coastal wetlands and other adjacent, neighboring wetlands (pocosins, pond pine forests, etc.). All these wetlands are intertwined and transition into each other. These are managed for private ownerships or other entities using best management practices (BMP) and the NC Smoke Management Program (NCSMP). Therefore, the DFR is requesting that (e) Alterations of Coastal Wetlands and all its provisions be removed from the proposed rule.
- 4) The DFR manages various ecosystems for private landowners as well as with our federal and state strategic partners. This management is for ecosystem diversity and health. It is not for "human development activities". It is fully appreciated that human development activities when occurring within a coastal wetland ecosystem need to be regulated. However, with the Division's BMP and NCSMP, this and other vegetative ecosystems are already directly or indirectly addressed and are covered by an existing permit system. There is not a need for duplicating permitting systems when using prescribed fire.
- 5) Under the NCSMP the DFR is the sole agency responsible for the daily authorization of prescribed fire smoke emissions and compliance with the NCSMP. This program is managed by the DFR. The proposed rule states in criteria (E) that the Division of Coastal Management approves burning coastal wetlands. This is already addressed under the NCSMP. There is not a need for duplicating authorizations.
- 6) In the proposed rule under criteria (F) which comments on frequency of burn, the NCDFR recognizes that reintroduction of fire to the same ecosystem cannot be set or limited. It is dependent and determined by annual examinations that assess the system's recovery and need for the reintroduction of prescribed fire. Also under present state law and the NCSMP, it is required that adjacent landowners be notified of the intent that fire will be introduced into the ecosystem. Again, this is a duplication of effort as it already is addressed by state law and NCSMP.

The Division looks forward to your response to these comments. The DFR apologizes that there has been no formal dialogue on the proposed rule as it was only brought to DFR's attention yesterday. Our review and preparation of these comments were completed as required by proposed rule protocol. It is sincerely hoped that a meeting to discuss this rule and its impact can now be conveniently convened.

If you require further information or have questions concerning comments prepared by the DFR Fire Environment Branch, please feel to call me. I am best accessible by telephone, (c) 919-810-5623 or can be reached by email at [gary.curcio@ncmail.net](mailto:gary.curcio@ncmail.net).

Respectfully,

*Gary M. Curcio* / gmc

---

**Gary M. Curcio, Fire Environment Branch**

cc **Wib Owen, Director**  
**Larry Such, Deputy Director**  
**David Lane, Forest Protection Section**  
**Gary Curcio, Fire Environment Branch**  
**William G. Ross Jr., Secretary DENR**  
**Angelia Willis, NCDCM**

1616 Mail Service Center, Raleigh, North Carolina 27699-1601

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**E.A. Barnhardt**

\* **From:** Terry Sharpe [sharpetl@etinternet.net]  
**Sent:** Tuesday, September 30, 2008 6:40 AM  
**To:** joe.deluca@ncmail.net; bobby.bryan@ncmail.net  
**Cc:** molly.masich@ncmail.net; 'E.A. Barnhardt'; simondm@earthlink.net  
**Subject:** FW: Coastal Resources Commission

\* Good Morning,

I am the current chairman of the NC Prescribed Fire Council. I learned last evening of the proposed rule change in CAMA (referenced below) that would impact prescribed burning in coastal marshes. The Council would like to have an opportunity to comment on this rule, but there is not time.

The Council would like to request an extension of the comment period to provide us with time to get input from our members who may be impacted by the rule change?

Thanks for consideration of this request.

Sincerely,

Terry Sharpe

**RULE REFERENCE:**

**CHAPTER 07 - COASTAL MANAGEMENT**  
**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS**  
**OF ENVIRONMENTAL CONCERN**  
**SECTION .0200 - THE ESTUARINE AND OCEAN**  
**SYSTEMS**  
**15A NCAC 07H .0205 COASTAL WETLANDS**

(See e-mail string below for time line of receipt of notice by NC Prescribed Fire Council)

Terry Sharpe  
Certified Wildlife Biologist  
NC Registered Forester 1147  
956 W Hwy 73  
Ellerbe, NC 28338  
910-652-6403 Home  
910-206-0602 Cell

*FAXED ON BEHALF OF TERRY SHARPE, CHAIRMAN,  
NC PRESCRIBED FIRE COUNCIL. PLEASE RESPOND  
TO TERRY VIA PHONE OR EMAIL. THANK YOU.  
EAB*

*TO: JIM GREGSON*

*FAX #: 252-247-3330*

9/30/2008



ALLIGATOR RIVER  
NATIONAL WILDLIFE REFUGE  
U.S. Department of the Interior  
Fish and Wildlife Service  
NATIONAL WILDLIFE REFUGE SYSTEM  
(Fax Cover Sheet)



TO: JIM GREGSON

FROM: DENNIS STEWART

Date: 9/30/08 Pages: 1  
(Excluding Cover sheet)

NOTES:

JIM,  
I AM PUTTING THE ORIGINAL  
COPY IN TODAY'S MAIL -  
Thanks!

Dennis Stewart

Alligator River NWR  
PO Box 1969 (Mailing)  
708 N. Highway 64 (Shipping)  
Manteo, NC 27954

Phone: (252) 473-1131  
Fax: (252) 473-1668  
Email: [alligatorriver@fws.gov](mailto:alligatorriver@fws.gov)  
Web: [www.fws.gov/alligatorriver](http://www.fws.gov/alligatorriver)



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Alligator River National Wildlife Refuge  
Pea Island National Wildlife Refuge  
Post Office Box 1969  
Manteo, North Carolina 27954  
(252) 473-1131 473-1668 (fax)  
September 30, 2008

Mr. Jim Gregson  
N. C. Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

Ref: Propose rule changes under NCAC 07H.0205

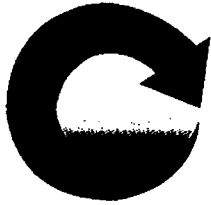
Dear Mr. Gregson:

We received information with regards to the referenced propose rule changes for coastal wetlands late in the review and comment period. The purpose of this letter is to advise you that the U. S. Fish and Wildlife Service - National Wildlife Refuge System is very concerned as to how these changes will affect our ability to manage wildlife habitat in coastal refuges. In particular, we believe that wording in paragraph (e)(1)(E) needs some modification to accommodate complexities associated with wildlife management. As I am sure you are aware, wildlife managers depend upon techniques such as mowing and prescribed burning for enhancing habitat value for a wide range of wildlife species. Because of work schedules, we are unable to assimilate these comments by close-of-business today, but will forward them to you within the next week.

We look forward to working with you and your agency on this matter and other wildlife management issues. If you need additional information, please contact Dennis Stewart, Refuge Biologist at (252) 473-1131 ext 231. Thank you for the opportunity to provide this input.

Sincerely,

Mike Bryant  
Project Leader  
North Carolina Coastal Refuge Complex



# COMPREHENSIVE FORESTRY SERVICES, INC.

September 29, 2008

Mr. Jim Gregson  
400 Commerce Avenue  
Morehead City  
North Carolina 28557

RE: Comments on Proposed Rule Change (NCAC 07.0205)

Dear Mr. Gregson:

I am a Registered Consulting Forester in North Carolina providing professional forest management services to private landowners. Part of my business includes prescribed (controlled) burning. It has come to my attention (belatedly!) that the Coastal Resources Commission plans to change NCAC 07.0205 to include burning in the activities subject to CRC oversight. I must respectfully object to that inclusion for the following reasons:

1. Burning of a marsh certainly does NOT harm or alter the vegetation present. To the contrary, burning enhances the growth and vigor of the existing vegetation. Burned marsh almost immediately re-sprouts with lush, vigorous marsh plant species.
2. While burning is not necessarily prohibited in the proposed rules, the requirement to submit a proposal within thirty days of the burn will cause delays while the bureaucracy tries to make a decision. Such delays will probably cause the landowner to plow control lines just outside the CAMA vegetation line to prevent the fire from entering the marsh. This just happens to be the very site preferred by many endangered plants that thrive in a fire maintained ecosystem. The fire should be allowed to burn into the marsh to enhance the plants on the marsh's fringe and the ecotone rising from the marsh to the high ground adjoining it.
3. Burns on the adjoining uplands should be conducted every two to five years for best results and ease of control. If the marsh can only be burned on greater than every five years, fire lines will again be required to keep the fire out of the marsh. Again, the fire should be allowed to burn into the marsh rather than being artificially stopped short.
4. Finally, the requirement to submit a proposal implies that approval will be required before the burn can go forward. This is an unnecessary and unjustified intrusion into the planning and control of prescribed burns. CRC does not have the staff or the expertise to approve or deny a proposal for burning. I oppose the concept under any conditions but, if it must be done, the Division of Forest Resources is the only organization with the expertise and manpower to handle the job.

I appreciate the opportunity to comment. Please feel free to contact me if you have questions or if I can provide clarification.

Sincerely,

Allen L. Plaster, CF, ACF  
NC Registered Forester #616



*Elizabeth A. Barnhardt, R. F.*

110 W. 13<sup>th</sup> Street Washington, NC 27889

business/cell: 252-974-3205 residence/fax: 252-975-5132 email: [eabarnhardt@embargmail.com](mailto:eabarnhardt@embargmail.com)

---

MEMO/FAX

TO: Jim Gregson, Director  
NC Division of Coastal Management  
Fax # 252-247-3330

DATE: 09/29/2008

No. PAGES: 3

RE: **Comments on Proposed Rule Change 15A NCAC 07H .0205**

Please see letter, attached.



*Elizabeth A. Barnhardt, R. F.*

110 W. 13<sup>th</sup> Street Washington, NC 27889

business/cell: 252-974-3205 residence/fax: 252-975-5132 email: [eabarnhardt@embarqmail.com](mailto:eabarnhardt@embarqmail.com)

---

September 29, 2008

Mr. Jim Gregson, Director  
NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

**RE: Proposed Rule Change 15A NCAC 07H .0205**

Dear Mr. Gregson:

The purpose of this letter is to oppose the proposed amendments to 15A NCAC 07H .0205, as published in the NC Register, volume 23, issue 03, page 200 and following.

I am a registered forester, providing independent, professional forest management services to private landowners in eastern North Carolina. I am also a forest landowner in a CAMA county. I am proud of the extensive education and experience my professional colleagues and I have regarding management of our natural resources. Many of the landowners with whom I work also are knowledgeable and passionate about wise management of the resources within their stewardship. Restrictions on mowing, burning, and herbicide application, as proposed, will hinder our collective ability to manage the resources your agency purports to protect.

Following are my objections to the wording, in the order in which they are addressed in the text:

Regarding Fiscal Impact: I do not see how there could be no fiscal impact. In addition to permit fees required of private landowners seeking to mow, burn, or apply herbicides, there is the potential cost of fireline construction to prevent burning to water's edge. Those costs are quantifiable, in terms of construction equipment and labor. Furthermore, any fees for professional planning and oversight would need to be factored in. Less obvious costs would include those for agency personnel to review new permit applications, time and expenses of documentation and follow up on notification of neighbors, and environmental damage caused by construction of fire lines in fragile soils or ecotones which support a diversity of plant and animal life.

Sub-paragraph(e)(1)(E), while allowing for potential continued burning by federal and state agencies and academic institutions, makes no provision for exempting private



landowners or non-governmental land managers from the permit process. Further, criteria upon which DCM's "approval" would be based (for those entities exempt from the permit process) are not identified.

Sub-paragraph(e)(1)(F) states an apparently arbitrary allowable burn interval. Land managers and owners who are experienced in the use of prescribed fire and its effects on soil, plants, and fauna would be the best judges of appropriate timing of burns for a given set of site conditions and management objectives. Additionally, it's not clear what manner of "notification" would be required. (As a courtesy, Certified Prescribed Burners already notify neighbors, though they are not required to ask permission. Voluntary Smoke Management Guidelines are already in place, and are factored into the burn planning process as well.)

Sub-paragraph(e)(1)(G) might interfere with road maintenance and timber stand improvement in ongoing silvicultural operations. (Such operations are already exempt from federal 404 permit requirements.)

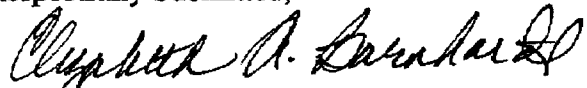
Sub-paragraph(e)(2) would prevent certain vegetation control measures beneficial to forestry and wildlife, including the control of exotic invasive species such as phragmites.

Sub-paragraph(e)(3) means that the owners and managers of private lands, mentioned above, would be required to go through a permit process. As alluded to in foregoing paragraphs, this could be a hindrance to beneficial management.

In conclusion, I'd like to suggest that modifications to the proposed rules are still necessary. A variety of state and federal regulations, as well as voluntary guidelines and best management practices, already exist to protect and enhance our coastal resources, *including* forest soils, plants, and animals. Restricting or impeding the land owners' and managers' ability to responsibly implement established practices is both unnecessary and potentially detrimental to those resources.

I appreciate the opportunity to comment and would welcome your call if I can provide clarification or additional information.

Respectfully Submitted,



Elizabeth A. Barnhardt, R. F.  
NC Registered Forester #810

**FAX TRANSMISSION SHEET**

**DATE:** 9-30-08

**TO:** Jim Gregson

**FAX#:** 252-247-3330

**FROM:** Brent Wilson

**2 PAGES ARE INCLUDED COUNTING THIS COVER SHEET. PLEASE  
DIRECT ANY QUESTIONS TO 252-975-5132.**

**Comments on proposed rule change.**

110 West 13th Street  
Washington, NC 27889

Director  
NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

RE: Comment on proposed rule change to NCR-15A NCAC 07H.0205

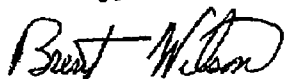
The purpose of this contact is to object to the proposed rule change impacting management of marsh vegetation using prescribed fire, herbicides or mechanical means in coastal counties regulated by the Division of Coastal Management.

Regardless of the intent of the proposed change, it is anticipated that the scope of the impact would reach far into the arena of forestry and wildlife management. The proposed language would regulate the forest landowner with coastal marsh as a small subset of the entire ownership. Management practices anticipated to be impacted would include but not be limited to prescribed burning for silvicultural and habitat management purposes, as well as selective herbicide use for phragmites or other invasive species control. As a landowner and professional land manager, I see the proposed rule change as a major impediment to private landowners responsibly managing the environment to the resources benefit, as well as an infringement of property rights.

Both private landowners and public agencies already adhere to guidelines and rules regarding timber management, prescribed burning and herbicide use. An additional regulatory layer to permit existing practices poses an unnecessary financial and time burden on the managing entities with no foreseeable benefits to the resource.

Finally, I highly resent guideline development and plan approval by a regulatory body with less expertise in land management than my colleagues and many landowners.

Sincerely,



Brent Wilson  
NC Register Forester #1109  
TWS Certified Wildlife Biologist

RECEIVED

SEP 29 2008

Morehead City DCM

**Moore & Van Allen**

**William A. White**  
Attorney at Law

T 704 331 1098  
F 704 378 2098  
billwhite@mvalaw.com

Moore & Van Allen PLLC

Suite 4700  
100 North Tryon Street  
Charlotte, NC 28202-4003

September 29, 2008

**VIA OVERNIGHT MAIL**

Director, NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

Jim Gregson  
400 Commerce Avenue  
Morehead City, NC 28557

**Re: Objection to Proposed 15A NCAC 07H.0205(e)  
Comments on Proposed 15A NCAC 07H.0205(e)**

To the Director and Mr. Gregson,

We are writing on behalf of the North Carolina Electric Membership Corporation (NCEMC). On behalf of its members, NCEMC hereby objects to, and submits comments on, the aspects of Proposed NCAC 07H.0205(e) identified and discussed below.

If it is published as proposed, Section NCAC 07H.0205(e) would effectively require NCEMC members to obtain a CAMA permit before mowing around and under their transmission lines and before applying herbicides, both of which actions are necessary to protect critical transmission equipment during regular burning conducted by the US Fish and Wildlife Service. In addition, if the Fish and Wildlife Service accepts the time limits imposed on burning by the permit the threat of damage to transmission lines could increase.

A member could be required to obtain a permit to mow because our members' available equipment cannot comply with the proposed height restrictions on mowing in every part of the areas under their transmission lines. Our Members would therefore be required to obtain permits to protect transmission property during a federal agency's burning activities, the timing of which they cannot control. Their ability to obtain these permits in a timely fashion would be questionable, given their lack of control over the schedules of the Division and the Fish and Wildlife Service. In addition, proposed section NCAC 07H.0205(e) would prohibit our Members' use of herbicides necessary to control a fast growing, invasive species that presents a particular fire hazard during this burning.

To provide you additional details and background on these issues, we quote the following information we received from one of our Members, Cape Hatteras Electric Cooperative, on three aspects of its particular situation:

Director, NC Division of Coastal Management  
Jim Gregson  
September 29, 2008  
Page 2 of 2

- 1) The US F&WS regularly conducts "proscribed burns" of areas on the Pea Island Wildlife Refuge. While these burns create operational problems for our 115 kV transmission line by causing faults from flashover, damaging plastic guy guards, potentially setting poles on fire and causing potential damage to polymer insulators, we have worked closely in recent years with the Service to mitigate damage. The requirement under section e.1.F to restrict burning "at no less than five year intervals" will result in substantial fuel build up, resulting in larger and much hotter fires and more potential damage to our transmission line.
- 2) We typically mow areas under and around our line close to scheduled burns to reduce fire damage. Under e.1.A and e.1.B it is not practical to mow these areas to not less than two feet above the substrate, or even 6 inches with available mechanized mowing equipment. Cut levels in places will be near or at the ground line due to the irregularity and boginess of the terrain.
- 3) CHEC cooperates with funding of herbicide spraying to control *Phragmites*, a very aggressive non-native species of tall growing and very hot burning reed. We have received permission to conduct spraying in the past ourselves. This practice would be prohibited under section e.2 as this cannot correctly be characterized as "academic research", should it be necessary for us to supplement or take over federal and state control of this species due to federal budget constraints in the future.

These three issues will severely impact our mission of providing reliable electric service to not only Hatteras and Ocracoke Island residents and businesses, but also to federal and state facilities located in our service area. Cape Hatteras Electric Cooperative has no practical alternative route for this power line that is the only source of electricity for Hatteras and Ocracoke Islands.

NCEMC questions whether the Fish and Wildlife Service will consider itself subject to the same activity and permit limitations in the Wildlife Refuge as the proposed rule would impose on our Members. If the Fish and Wildlife burns do not comply with Division of Coastal Management time limitations, and a permit to mow is not available, our Members will be placed in an extremely difficult position and critical electrical service equipment could be endangered. The pesticide prohibition also endangers transmission equipment unnecessarily

We request that the Division of Coastal Management provide an exception to the requirements in Proposed 15A NCAC 07H.0205(e) that would exempt mowing and herbicide applications necessary to protect electrical transmission equipment from fire damage during burning conducted by Federal agencies from the requirement to obtain a CAMA permit.

Very truly yours,

Moore & Van Allen PLLC



William A. White

cc: June Small, Jim Kinghorn

September 29, 2008

Mr. Jim Gregson  
400 Commerce Avenue  
Morehead City, NC 28557

RE: Proposed Rule Change (NCAC 07H .0205)

Dear Mr. Gregson:

On behalf of the NC Forestry Association, a private non-profit association representing more than 4,000 forest landowners, managers, wood producers and manufacturers of wood and paper products, I submit the following comments on the proposed rule change concerning coastal wetlands. Specifically, we are concerned with the proposed rule as it would affect burning. While we appreciate the stated purpose of the rule, we are also concerned that it could inadvertently affect ongoing forestry practices and operations.

The use of fire is a well established and necessary practice in forest management. It is a relatively common practice to allow a fire on an adjacent upland to burn into the marsh. We don't believe that burning of a marsh harms or alters the vegetation present. To the contrary, burning usually enhances the growth and vigor of the existing vegetation. Burned marsh almost immediately re-sprouts with lush, vigorous marsh plant species.

While burning is not necessarily prohibited in the proposed rules, the requirement to submit a proposal within thirty days of the burn will cause delays while the bureaucracy tries to make a decision. This requirement implies that permission is needed before such burning can proceed. Such delays would probably cause the landowner to plow control lines just outside the CAMA vegetation line to prevent the fire from entering the marsh. Along with being an expense to the landowner, this is the very site preferred by many endangered plants that thrive in a fire maintained ecosystem. We believe fire, being used as part of a forestry operation, should be allowed to burn into the marsh to enhance the plants on the marsh's fringe and the ecotone rising from the marsh to the high ground adjoining it.

For forestry operations, burns on the adjoining uplands should be conducted every two to five years for best results and ease of control. If the marsh can only be burned on greater than every five years, fire lines will again be required to keep the fire out of the marsh. Again, the fire should be allowed to burn into the marsh rather than being artificially stopped short.

In summary, we recommend the following:

The rule should contain an exemption for the use of fire and burning that is conducted as part of a forestry operation (defined as a practice being carried out under a forest management plan prepared, or approved by a registered forester or on lands enrolled as timberland in the use value tax program). Any prescribed burning done for forestry already obtains a permit through the Division of Forest Resources. This could be utilized by the CRC to assure that the burning was done as part of a forestry operation.

The rule should allow more frequent burning if done as part of a forestry operation;

The rule should not impose any new permit requirements or delays on forest landowners or managers engaged in forestry operations.

We appreciate the opportunity to comment. Please feel free to contact me if you have questions or if I can provide clarification.

Sincerely,

Robert W. Slocum, Jr.  
Executive Vice President  
Registered Forester #1003



The Nature Conservancy  
North Carolina Chapter  
4705 University Drive  
Suite 290  
Durham, NC 27707

Tel (919) 403-8558  
Fax (919) 403-0379

[nature.org/northcarolina](http://nature.org/northcarolina)

September 30, 2008

James Gregson  
NC Dept. of Environmental and Natural Resources  
Division of Coastal Management  
400 Commerce Ave.  
Morehead City, NC 28557

Re: proposed CAMA rule change

Dear Mr. Gregson,

Coastal Area Management Act (CAMA) rules are essential to the protection of North Carolina's coastal wetlands, but a proposed rule change that would require a CAMA permit for prescribed burns is likely to harm coastal wetlands, rather than protecting them, which I am sure is not the intention. North Carolina already has a permitting system for prescribed burning through the Division of Forest Resources. This additional requirement would be another level of bureaucracy on top of that system.

As a fire ecologist, state fire manager and LANDFIRE application project manager in the Onslow Bight, I understand that coastal marshes have historically burned frequently with an average 2-10 year Fire return interval (Frost 1995, Gulf and Atlantic Coastal Plain Tidal Marsh System, LANDFIRE Biophysical Setting Model pp 95-111). Regular flooding and fire are ecosystem dynamics vital in maintaining healthy marshes critical for ecosystem function and the ability of marshes to protect our coast line, especially in light of rising sea levels. Prescribed burning in marshes is a common management practice in the southeastern United States used by government and private entities in marsh ecosystems. Requiring an additional permit from CAMA would likely inhibit the use of fire to protect and restore coastal wetland ecosystems.

This rule change only came to my attention yesterday and the cutoff for comments is today; I've been unable to make contact with you. I'm hoping that you will delay this rule change so that we could discuss its potential negative impact. I expect the members of the North Carolina Prescribed Fire Council would like the opportunity to have a dialogue with the Division of Coastal Management regarding this change. The Prescribed Fire Council (<http://ncprescribedfirecouncil.org/>) includes a number of entities with expertise in fire and the important role it plays in our natural ecosystems. The Fire Environment



Working Group (lead Gary Curcio with NC DFR (919) 810-5623) addresses fire issues state wide. I sincerely hope that CAMA will seek such a dialogue prior to rule making.

Sincerely,

*Margit Bucher*

Margit Bucher  
Fire Manager and Assistant Director for Science

A few references for fire regimes in marshes:

Frost, Cecil C. 1995. Presettlement Fire Regimes in southeastern marshes, peatlands and swamps. Pages 39-60 in: Susan I. Cerulean and r. Todd Engstrom, eds. Fire in wetlands: a management perspective. Proc. Tall Timbers Fire Ecol. Conf. No. 19.

Gulf and Atlantic Coastal Plain Tidal Marsh System, LANDFIRE Biophysical Setting Model pp 95-111. LANDFIRE: LANDFIRE National Vegetation Dynamics Models. (2007, January - last update). [Homepage of the LANDFIRE Project, U.S. Department of Agriculture, Forest Service; U.S. Department of Interior], [Online]. Available: <http://www.landfire.gov/index.php> [2007, February 8].



North Carolina  
Department of  
Environment  
And Natural Resources

Michael F. Easely,



North Carolina  
Division of Forest  
Resources

Wib L. Owen, Director

September 30<sup>th</sup>,  
2008

James H. Gregson, Director  
NC Dept. of Environmental and Natural  
Resources  
Division of Coastal Management  
400 Commerce Ave.  
Morehead City, NC 28557

**Subject: NC Division of Forest Resources (DFR) comments on:  
NC Division of Coastal Management proposed rule Chapter 07  
Subchapter 07H  
Section .0200 / 15A NCAC 07h .0205**

Dear Mr. James H. Gregson:

The NCDFR appreciates this opportunity to provide comments on this proposed rule. Because of their brevity they are included in this letter. The DFR is objecting to the proposed rule Chapter 07 Subchapter 07H Section .0200 / 15A NCAC 07h .0205 and in particular, (e) Alteration of Coastal Wetlands. This is entirely new. The DFR's objection is being made on the following points:

- 1) The DFR is a lead agency in the management and protection of North Carolina's forests and other adjacent vegetative ecosystems. The NCDFR did not receive timely notification to review and to discuss this new rule and its changes with the Division of Coastal Resource Management nor with other strategic partners. It is unfortunate that there has been not dialogue between DENR's agencies to fully comprehend the need for such a rule or that DFR and its programs may be able to provide assistance.

- 2) It is anticipated that the proposed rule will impose management, operational and fiduciary impacts to DFR when attempting to manage NC's natural resources.
  
- 3) It is mentioned in the proposed rule that mowing, cutting or burning is considered an alteration of coastal wetlands. The DFR does not view these practices as alterations but means to manage and maintain the health of coastal wetlands and other adjacent, neighboring wetlands (pocosins, pond pine forests, etc.). All these wetlands are intertwined and transition into each other. These are managed for private ownerships or other entities using best management practices (BMP) and the NC Smoke Management Program (NCSMP). Therefore, the DFR is requesting that (e) Alterations of Coastal Wetlands and all its provisions be removed from the proposed rule.
  
- 4) The DFR manages various ecosystems for private landowners as well as with our federal and state strategic partners. This management is for ecosystem diversity and health. It is not for "human development activities". It is fully appreciated that human development activities when occurring within a coastal wetland ecosystem need to be regulated. However, with the Division's BMP and NCSMP, this and other vegetative ecosystems are already directly or indirectly addressed and are covered by an existing permit system. There is not a need for duplicating permitting systems when using prescribed fire.
  
- 5) Under the NCSMP the DFR is the sole agency responsible for the daily authorization of prescribed fire smoke emissions and compliance with the NCSMP. This program is managed by the DFR. The proposed rule states in criteria (E) that the Division of Coastal Management approves burning coastal wetlands. This is already addressed under the NCSMP. There is not a need for duplicating authorizations.
  
- 6) In the proposed rule under criteria (F) which comments on frequency of burn, the NCDFR recognizes that reintroduction of fire to the same ecosystem cannot be set or limited. It is dependent and determined by annual examinations that assess the system's recovery and need for the reintroduction of prescribed fire. Also under present state law and the NCSMP, it is required that adjacent landowners be notified of the intent that fire will be introduced into the ecosystem. Again, this is a duplication of effort as it already is addressed by state law and NCSMP.

The Division looks forward to your response to these comments. The DFR apologizes that there has been no formal dialogue on the proposed rule as it was only brought to DFR's attention yesterday. Our review and preparation of these comments were completed as required by proposed rule protocol. It is sincerely hoped that a meeting to discuss this rule and its impact can now be conveniently convened.

If you require further information or have questions concerning comments prepared by the DFR Fire Environment Branch, please feel to call me. I am best accessible by telephone, (c) 919-810-5623 or can be reached by email at [gary.curcio@ncmail.net](mailto:gary.curcio@ncmail.net).

Respectfully,

*Gary M. Curcio*

gmc

---

**Gary M. Curcio, Fire Environment**

**Branch**

**cc Wib Owen, Director  
Larry Such, Deputy Director  
David Lane, Forest Protection Section  
Gary Curcio, Fire Environment Branch  
William G. Ross Jr., Secretary DENR  
Angelia Willis, NCDCM**

1616 Mail Service Center, Raleigh, North Carolina 27699-1601  
Phone: 919 – 733-2162 \ FAX: 919 – 733-0138 \ Internet: [www.dfr.state.nc.us](http://www.dfr.state.nc.us)  
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CONSUMER PAPER

**RECEIVED**

SEP 29 2008

**Morehead City DCM**

**Moore & Van Allen**

**William A. White**  
Attorney at Law

T 704 331 1098  
F 704 378 2098  
billwhite@mvalaw.com

**Moore & Van Allen PLLC**

Suite 4700  
100 North Tryon Street  
Charlotte, NC 28202-4003

September 29, 2008

**VIA OVERNIGHT MAIL**

Director, NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

Jim Gregson  
400 Commerce Avenue  
Morehead City, NC 28557

**Re: Objection to Proposed 15A NCAC 07H.0205(e)  
Comments on Proposed 15A NCAC 07H.0205(e)**

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To provide you additional details and background on these issues, we quote the following information we received from one of our Members, Cape Hatteras Electric Cooperative, on three aspects of its particular situation:

Director, NC Division of Coastal Management  
Jim Gregson  
September 29, 2008  
Page 2 of 2

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- 2) We typically mow areas under and around our line close to scheduled burns to reduce fire damage. Under e.1.A and e.1.B it is not practical to mow these areas to not less than two feet above the substrate, or even 6 inches with available mechanized mowing equipment. Cut levels in places will be near or at the ground line due to the irregularity and boggy terrain.
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These three issues will severely impact our mission of providing reliable electric service to not only Hatteras and Ocracoke Island residents and businesses, but also to federal and state facilities located in our service area. Cape Hatteras Electric Cooperative has no practical alternative route for this power line that is the only source of electricity for Hatteras and Ocracoke Islands.

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We request that the Division of Coastal Management provide an exception to the requirements in Proposed 15A NCAC 07H.0205(e) that would exempt mowing and herbicide applications necessary to protect electrical transmission equipment from fire damage during burning conducted by Federal agencies from the requirement to obtain a CAMA permit.

Very truly yours,

Moore & Van Allen PLLC



William A. White

cc: June Small, Jim Kinghorn



**NORTH CAROLINA  
FARM BUREAU FEDERATION**

PO Box 27766, Raleigh, NC 27611 Phone: 919-782-1705 Fax: 919-783-3593 www.ncfb.org

September 30, 2008

Mr. James H. Gregson, Director  
Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557  
*Delivered via email & fax*

Re: Proposed Amendments to 15A NCAC 07H .0205

Dear Mr. Gregson:

The North Carolina Farm Bureau Federation (NCFB) is North Carolina's largest general farm organization, representing the interests of farm and rural people in our state. This letter is to comment on the proposed amendment to the Coastal Wetlands regulation (15A NCAC 07H .0205) as published in the August 1, 2008 North Carolina Register.

Farming and forestry have always been acceptable land uses under the Coastal Area Management Act and the supporting administrative regulations. Though farming and forestry are listed as examples of acceptable land uses in paragraph (d), the proposed rule amendment does not specifically address alteration of coastal wetlands on agricultural land. This proposed rule should be clarified to specifically exempt from permitting the alteration of coastal wetlands on agricultural land.

The North Carolina Pesticide Law of 1971 establishes programs of pesticide management and control under the authority of the North Carolina Pesticide Board. The Pesticide Board regulates the use, application, sale, disposal and registration of pesticides. The Coastal Resources Commission likely lacks the authority to prohibit the use of pesticides to alter coastal wetlands, as proposed in paragraph (e) (2). The Pesticide Board is the only North Carolina entity that has the authority to regulate the use of pesticides.

Thank you for allowing us the opportunity to comment on the proposed amendment to the Coastal Wetlands regulation. Please do not hesitate to contact us if you have any questions or if we can provide any further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Paul Sherman', written over a horizontal line.

M. Paul Sherman  
Air & Energy Programs Director

*Farm Bureau and Agriculture...  
We keep North Carolina growing!*





## North Carolina Farm Bureau

P.O. Box 27766

Raleigh, NC 27611

(919) 782-1705

FAX (919) 783-3593

### FACSIMILE TRANSMITTAL SHEET

Facsimile Telephone No.	(252) 247-3330
Date	9/30/08
To	Jim Gregson
From	Paul Sherman
Subject	Comments ISA NCAC '07H .0205
No. Of Pages	2 (including cover)

NOTES



North Carolina  
Department of  
Environment  
And Natural Resources

Michael F. Easely,



North Carolina  
Division of Forest  
Resources

Wib L. Owen, Director

November 12<sup>th</sup>,  
2008

James H. Gregson, Director  
NC Dept. of Environmental and Natural  
Resources  
Division of Coastal Management  
400 Commerce Ave.  
Morehead City, NC 28557

**Subject: NC Division of Forest Resources (DFR) comments on:  
NC Division of Coastal Management proposed rule Chapter 07  
Subchapter 07H  
Section .0200 / 15A NCAC 07h .0205**

Your invitation to discuss DCM's proposed rule, 15A NCAC 07H.0205 Coastal Wetlands on October 31<sup>st</sup> was certainly appreciated. It was valuable to have relaxed professional dialogue amongst all concerned parties.

The NCDFR again presented its concerns over the potential duplication of effort by having two DENR agencies handling permits and authorizations for marshland prescribed burning. If this becomes rule, the implication is that it can and would affect the total cohesive management of other NC ecosystems that are associated with marshlands. It is hoped that the new rule when put forth, does not handicap the application of sound resource management practices that actually facilitate good stewardship of these interrelated systems.

With regards to the Attorney General Office's letters of 1998 and 2007 that express their position on DCM's authority on mowing and burning, the NCDFR was not aware of their existence and therefore, the positions taken. If there had been previous dialogue, I wonder if the positions would have taken a broader

and more inclusive perspective when it was realized that there was impact to other natural resource managers. After reading these letters my thoughts kept coming back to the same sentence on page 2 of the top paragraph of the March 20, 2007 letter, "The advisory letter (referring to the letter of July 21<sup>st</sup>, 1998) concluded that if cutting, pruning, burning etc. of coastal wetlands is deemed to alter the shore, bank, or bottom of the adjoining water body, those activities would fall within the definition of development." This sentence can be interpreted that these practices or any practice once falling under classification of development, constitutes the need for a CAMA permit and therefore, DCM has the purview to create rules necessary to preserve and manage this ecosystem. However, if natural resource managers are managing this unique ecosystem in conjunction with other adjoining systems for their health and perpetuation, then there is no altering of the marshland and it would not justify a rule. Or, if there was a rule one would not be subject to a rule because there is no plan for altering the site to support development. It appears that it all depends on whether there is management, based on a plan, exhibiting good stewardship.

The NCDFR FE Branch considers marshland as one of NC's unique natural ecosystems. If this system is under a sound management plan that is prepared by a landowner, private consulting forester, or state (DFR, WRC, SP, etc.) or federal (USFS, USFWS, USNPS, etc.) natural resource agency, or an entity (TNC, etc.) whose mission is good stewardship of natural resources, then any proposed rule by DCM needs to contain an exemption or the rule contains a not applicable clause as there is no intent to alter the ecosystem. In reality the rule writing is only to be directed for those persons or entities that are altering the system with intent to change the ecosystem. Natural resource managers or landowners who are doing it right should not be burdened with additional rules or processes. The proposed rule in its present form will burden natural resource managers with additional paperwork, permits, etc. It could also prevent marsh protection or restoration efforts as well as promote destruction of adjacent sensitive areas (if firelines must be plowed to keep fire out of the marsh).

In closing I would like to mention for your consideration that under the NC Prescribed Burning Act, GS 113-60.40., it states *"that many of NC's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities."* When the NCDFR recommends or itself utilizes prescribed fire, it is for the health of the ecosystem, natural reseeding, and / or to minimize the devastating impacts of wildfire. The current proposed DCM rule duplicates the permit and approval processes, and imposes restrictions on fire frequency which can be damaging to what this unique ecosystem may require. Under Prescribe

Burning Act and existing NCDFR Programs, there is permitting and authorization processes for prescribed fire, and the ability to obtain management plans from NCDFR and other sources (forest industry, WRC, landowners, consulting foresters or natural resource entities). These existing programs or services can be used by DCM in the preservation and management of this ecosystem. With a combined effort of government agencies and private entities a very formidable, education outreach program can be developed so this ecosystem and the associated adjacent ecosystems can be preserved and managed into perpetuity.

The NCDFR looks forward to receiving the second revised proposed rule that will be addressing or including the comments recently received during the last comment period and at our meeting in Beaufort. It is our understanding that this second revision will be presented to the Coastal Resource Commission on November 20<sup>th</sup>, 2008 and it will then be subject to review and comments by the natural resource agencies and entities who attended the October 31<sup>st</sup> meeting. During the second week of February there will be another meeting to address the second draft of this proposed rule. Do you know when the NCDFR will be receiving a copy of this second draft? Will it be prior to the Coastal Resource Commission meeting being held next week?

Respectfully,

*Gary M. Curcio /*

gmc

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**Gary M. Curcio, Fire Environment**

**Branch**

**cc Wib Owen, Director  
Larry Such, Deputy Director  
David Lane, Forest Protection Section  
Gary Curcio, Fire Environment Branch  
Angelia Willis, NCDCM**

1616 Mail Service Center, Raleigh, North Carolina 27699-1601  
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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

November 6, 2008

**MEMORANDUM**

**CRC 08-48**

**TO:** Coastal Resources Commission

**FROM:** Jeffrey Warren, PhD  
Coastal Hazards Specialist

**SUBJECT:** Inlet Hazard Area Policy Recommendations

At the May 2008 CRC meeting in Raleigh, I presented an update on the inlet hazard area (IHA) boundaries and policy recommendations being assembled by DCM staff. After discussing the issue, and hearing from CRAC and CRC Science Panel member Spencer Rogers, the CRC requested DCM staff to engage the Science Panel in the policy recommendations, specifically to address three items: 1) the DCM revision of the Science Panel's IHA box for Bald Head Island, 2) the calculation of erosion rates within the IHA, and 3) the appropriateness of using the vegetation line as a reference for measuring oceanfront setbacks.

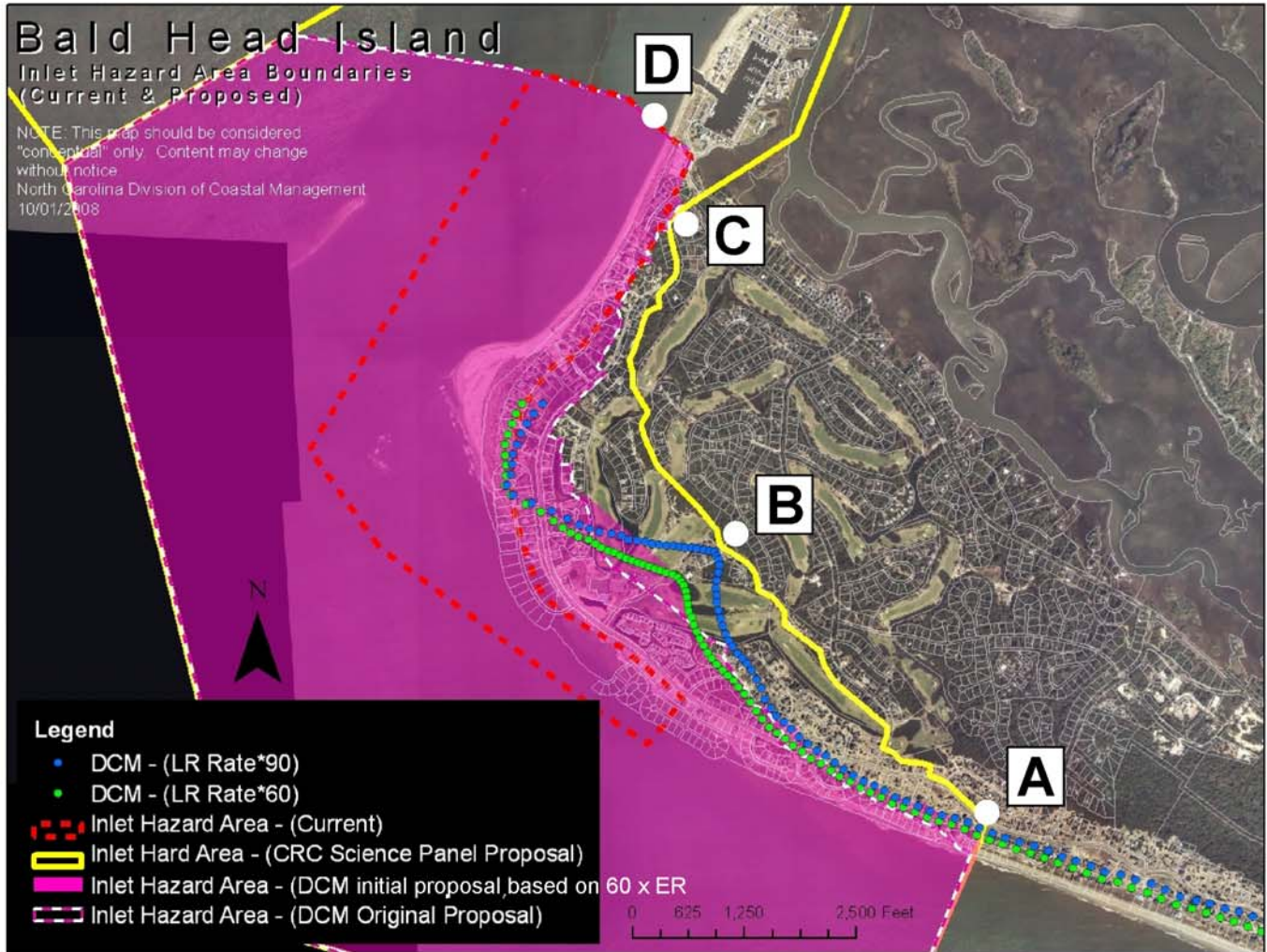
Since the July CRC meeting, the Science Panel has met three times to discuss the three inlet-related issues identified above (September 10, October 15, November 5). The minutes to these meetings are attached to this memo. Dr. Margery Overton, chair of the Science Panel, and Spencer Rogers will present an overview of these meetings to the CRC at the November meeting. Furthermore, the Science Panel is planning on meeting in Raleigh on January 14<sup>th</sup> to further review shoreline and related data and consider how these data can be utilized to mitigate inlet-related hazards to adjacent development. DCM continues to use Science Panel input to guide the ongoing review and revision of inlet-related policy recommendations, which DCM is planning on presenting to the CRC in February 2009.

Following the presentation by Overton and Rogers, I will answer any policy related questions. I will also address the issue of the proposed Bald Head Island IHA boundary in greater detail and request guidance from the CRC on defining a final boundary. A schematic showing numerous boundary options is included in this memo with a description on the combination of methods that are used to define DCM's inlet hazard boundary recommendation. Although the DCM recommendation includes part of the Science Panel's recommended boundary, it is a separate recommendation for the CRC to consider.

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# BALD HEAD ISLAND PROPOSED INLET HAZARD AREA BOUNDARY UPDATE



DCM's inlet hazard boundary revision for Bald Head Island is based on a distance of 90 times the erosion rate completed by the Science Panel for the inlet hazard study (not the same erosion rate currently used for setbacks) between points A and B (follow blue dotted line), the Science Panel's recommended boundary based on paleo dune ridge morphology (follow yellow line between points B and C) and the existing inlet hazard boundary (follow red line between points C and D). A revised graphic will be shown at the November CRC meeting without the existing pink box, which was an interim recommendation of DCM based on a distance of 60 times the erosion rate (green line). Since the CRC's adoption of a maximum setback factor of 90 at the September 2008 meeting, DCM has revised its recommended inlet hazard boundary to be consistent with the new maximum setback.

**MEETING MINUTES**  
**CRC SCIENCE PANEL ON COASTAL HAZARDS**  
September 10, 2008

North Carolina Museum of Natural Sciences  
Basement Classroom  
11 West Jones Street  
Raleigh, NC 27601-1029  
*(minutes compiled by Jeff Warren, DCM)*

**Panel Members in Attendance:**

Steve Benton, DCM retired  
Bill Cleary, UNCW  
Tom Jarrett, CP&E  
Margery Overton, NCSU  
Stan Riggs, ECU  
Spencer Rogers, NC SeaGrant  
Beth Sciaudone, NCSU adjunct / consultant

**Panel Members not in Attendance:**

Bill Berkemeier, USACE ERDC  
Dave Mallinson, ECU  
Pete Peterson, UNCCH IMS  
Tony Rodriguez, UNCCH IMS  
Rob Young, WCU  
Greg Williams, USACE

**DCM Staff in attendance:**

Heather Coates  
Steve Everhart  
Guy Stefanski  
Ken Richardson  
Steve Underwood  
Jeff Warren

**Other Attendees:**

Paul Hearty, Bald Head Island Conservancy  
Dara Royal, CRAC Chair



## MEETING SUMMARY

Overton opened the meeting at 10:10 and had attendees introduce themselves. Overton started the meeting by defining the goals of the next three meetings for the Science Panel: 1) Bald Head Island Inlet Hazard Area (BHI IHA) proposed amendment by Division of Coastal Management (DCM) staff, 2) IHA setbacks, 3) and IHA erosion rates (ERs). Warren provided an intro to these three issues based on Coastal Resources Commission (CRC) needs and DCM staff recommendations for the IHA policies.

There was a brief discussion on the erosion rates around the inlet. Overton wanted to clarify that the IHA numbers were setback factors and not rates. Warren also noted that although the maps on DCM's websites had blocked setback factors in the existing IHAs all the way to the throat of the inlet (on 1998 aerials), the factors inside the existing IHAs were actually the setback factor in the immediately adjacent ocean erodible area (OEA) extrapolated through the IHA to the inlet throat. On the 1998 ER maps, it appears to be a setback factor block in the IHA, similar to the blocks in the OEAs, but it is not.

Warren presented the image of the BHI IHA proposed by DCM staff, which was smaller than the Science Panel's recommendation but larger than the existing IHA. Royal asked what was the science for including the sand spit on BHI (where the marina is). Warren noted that inclusion of the sand spits at or near the inlets was a method used in all inlets that had spits. There was some discussion on the northernmost location of the current BHI IHA after Warren noted that the portion of the existing IHA along west beach, including the north boundary just south of the marine entrance, was part of DCM's recommended IHA. This northern boundary was coincident with the US Coast Guard COLREGS line (the location between ocean and river on nautical charts). Benton noted that the boundary between an inlet shoreline and an ocean shoreline is fuzzy.

The Science Panel still agreed with their original IHA boundary recommendations, but generally had no heartburn with the proposed boundary by DCM staff (in that they recognized staff was making an alternate recommendation based on policy decisions and not completely a science-based decision). Overton reiterated that this is a policy-based recommendation at this location at the marina. Warren noted that the original Priddy and Carraway recommendation also included the sand spit but the CRC added rule language to keep the marina out of the IHA. Warren noted that the rule language suggested the boundary should go all the way up to the marina's southern jetty but the DCM digital maps do not take it that far. Benton stated that this was not a mapping error. The line was not drawn up to the marina entrance because of the issues associated with creating a shoreline that is part of an ocean hazard system.

After Warren discussed what methods were used along each portion of the proposed DCM IHA boundary for BHI, Benton wanted to make sure to note that the 60 x ER method used by DCM for BHI (at least along a portion of the new recommendation) is unlike any other method used for IHA boxes and AEC definitions in general.

Riggs wanted to know more about the original Science Panel recommendation's boundary. Rogers stated that the Panel was asked for an opinion on DCM's proposed IHA boundary change for BHI, so he proposed that the original line the panel chose was different than any other method for the other inlets (larger scale timeframe) and also accept the staff's recommendation as a reasonable approach. Jarrett seconded. Riggs commented that there was a third part to this discussion. There's a good reason that 1800s shoreline was where it was and the present shoreline could go back to that point in the future. The USACE's projects are not forever (which is one reason the mid 1800s shoreline accreted oceanward).

Rogers asked that if Riggs had something better than staff's recommendation he should throw it on the table. Jarrett noted that the whole bulge of the BHI is a product of the dredged shipping channel. When the USACE fixed the channel, the delta changed and the material moved in and welded to the beach. That area had been stable through the 1970s, but I don't think the natural processes, at least within the next 50-60 years, will take that beach back to its 1800s location. Riggs said that anything is possible and it is hard to predict. He thought the line the Panel had recommended is reasonable. Maybe you have a secondary line where the regulations apply, but use the original Science Panel line to educate the public?

Overton was concerned that DCM staff had presented their method, in part, as a science issue with by using beach width methods, which made her uncomfortable because this was primarily a policy-driven boundary change to the IHA. Jarrett suggested to maybe just use the same 60 x ER setback for the whole IHA instead of working in some beach width methods on the east side of the southern beach. Underwood gave example of the estuarine buffer where we started with a science-based decision that changed during the public vetting process. Overton felt it was important that the record contains the Science Panel's original recommendation. Benton's concern about this, and there's no big deal changing the northern boundary near the marina, is changing a boundary based on erosion rates. That may be logical but there are some other elements. One problem is that we don't have a report of the methods we used for each inlet. Warren responded that there was a methods report. Sciaudone commented that she had a copy with her. Overton noted a copy was received last year.

Riggs wanted the motion to read that the original line was based on the Panel's best understanding of the science at the time, and he didn't think there was a scientific reason for changing it. There's a big problem in this area if you are hit it with a 20-foot storm surge. Warren noted that, to put this in perspective, none of the CAMA AECs ban development outright. Cleary commented that the Panel could not use that analogy, and was not saying either Riggs' or DCM's approach is incorrect, going to other inlets. A 20-foot storm surge analogy was Hurricane Hazel and that didn't do anything major to Shallotte Inlet except in narrow zones away from the inlets. It is unlikely that a Hazel-like storm would erode 2,000 feet of shoreline at BHI. Cleary's objection is the taper between transect 1010 and 1025 – that's just not realistic for an inlet hazard zone. He could not agree with a motion based on that.

Rogers offered he was open to a friendly amendment that may address areas where the DCM IHA proposal is inadequate. If you want another dune ridge to look at, go to Middle Island (on BHI). Benton noted that they had looked at geomorphic features at other inlets but also limited decisions to recent history (e.g., post 1930s related to post AICWW). Sciaudone had been reading the proposed IHA method report and the report says that the Science Panel recommendation that BHI recognized that the IHA may be too large. Overton thought that the Panel did need to move through this BHI IHA issue today. There was a consensus for the final Science Panel IHA recommendation, but now there is a recommendation to comment on an alternative line by DCM. Rogers seems ready to amend the motion to address areas of concern where DCM should re-look at their proposal. Specifically, transect 1025 to 1010. Rogers – ask DCM staff to take another look at this portion of the IHA and take another look at the data. Science Panel’s science methods are still the other line. The CRC was very clear that the Science Panel should not be involved in the policy discussion. Jarrett – How about just dividing by two? If the original line is too large and the current line is too small, just come up with a width that is halfway between the two. Sciaudone liked that approach.

Cleary’s biggest problem with the current erosion rates is that there has been a lot of change and the “bump” has migrated. Rates could be substantially higher than current data so basing a boundary on current rates was inappropriate. Riggs thought it was important to have two lines on the map. That old shoreline could be re-occupied under the right set of conditions. Rogers noted that was essentially what he was trying to propose - the Science Panel stands behind its original recommendation but can offer comment on the DCM proposal.

Overton had heard from DCM that there might be a regulatory issue (confusion) if there were two lines on the map. However, DCM could put together the hazard information on the website, such as all of the existing shorelines in the database, for public inspection. Underwood – the rule will reference a report, but I don’t think there’s anything wrong as we talk about this specific inlet where we have two figures – one used for regulatory (DCM line) and one used for education (Science Panel line).

Jarrett noted that, after looking back on what we did on the basic IHA re-delineation study, he would have done it differently. The Panel focused on the lateral extent of the inlet hydrodynamics but didn’t focus as much on the depth of the box. Maybe they should have just come up with some type of multiplier that is already used in the rules. If the current max setback is 60, then use 120. We could have also taken into account lateral shifts and then extend that up and down the coast a little bit.

Overton appreciated the extra information, but didn’t know if they needed to have these discussions. Sciaudone – it seems that the Panel likes its original line for the reasons why it defined the line in the first place. What I am hearing from Jeff is that there was an alternative line drawn to address policy issues. Underwood, though, wants as much science involved as possible. That is, if we are going to make the BHI IHA smaller, let’s make it smaller in a reasonable way.

Rogers – when we went through this the first time, everything we tried did not work. Therefore, the final recommended boundary was the only thing we could come up with. If there's something different, we need to throw it on the table now or just accept the DCM proposal as a policy alternative. Underwood felt that he doubted they all threw up their hands when trying to define a revised IHA boundary for BHI and said, "That's it. We can't do anything else."

Overton noted that she believed the Panel was split on BHI but the final decision was a general consensus. Jarrett suggested getting rid of the anomalous shoreline associated with the bulge (1944) and coming up with an excursion width between the early shoreline (1970s) and the 2004 shoreline and use that width to define the IHA box (an envelope of maximum and minimum shoreline excursion swings). Rogers asked if the Panel was going to support that "envelope" method as a reasonable approach that is more consistent with science versus what DCM used? Overton suggested that maybe they could break for lunch at noon, and Rogers and Sciaudone could modify the motion. After lunch, the Panel could vote on it and be done.

Riggs noted that on all those shorelines up on the screen, does anyone know the history of those shorelines relative to individual storm events? Are the shorelines all calm-weather conditions? That doesn't necessarily reflect what truly is happening along the shoreline during all conditions. Paul Hearty (BHI Conservancy conservation director) showed a USGS topo map on the screen and stated that there are no shorelines between the dune ridge from the mid-1800s shoreline and the current shoreline. The DCM IHA boundary alternative line doesn't represent a hazard at all – it is arbitrary.

Cleary said that there is relative lowland between that dune ridge (which is an erosional feature) and the accretion of the lowlands oceanward out to the recent shorelines (past 50 years). There's a paper from the mid-1980s that shows all of the available photography related to historical shorelines. Almost all of the accretion of the shoreline (~95%) had occurred by 1925.

Overton asked if she could get a smaller group to refine the Science Panel motion during the lunch hour? It would be a working lunch, so maybe lunch could be brought back to this room. Jarrett asked what would happen if they left the DCM line where is? Overton wondered if the Panel should endorse this other line or do we just say, "It's policy, DCM can do whatever it needs to do." Overton wanted to see if the Panel could get a motion and be done with this issue. Underwood made a general comment that it was nice to have a group like the Science Panel to vet methods that DCM comes up with. Feedback on these efforts is necessary.

Overton adjourned the meeting for lunch at 12:05 and reconvened the Panel at 1:15.

Once started, Rogers read some ideas for a proposed motion:

We acknowledge that the methods used to identify other IHAs based on shoreline positions are not effective on BHI and that the topographic indicators we used to draw the

BHI line were based on a longer time scale than used at the other IHAs. We understand that the proposed line from DCM is a policy determination and we encourage DCM to consider a more consistent method based on shoreline position data. DCM may want to consider a method based on shoreline envelope method or one based on actual shoreline erosion rates.

Riggs felt that the Science Panel used the best data they had – the pale shoreline from the mid 1800s. Rogers commented that the Panel was not removing their original recommendation but acknowledged that DCM is creating an alternative IHA zone that is not as wide. Overton noted that DCM recognizes the proposed line is a policy-based effort but DCM wants to incorporate as much science and engineering as possible in the alternative IHA boundary recommendation.

Overton wondered if today was the end of the comments (i.e., Panel provides comments and DCM takes them into consideration) or would DCM take the comments, re-draw the line and come back to the Panel for input? Does there need to be a letter written to the CRC on this issue or would an email to the chairman suffice? Underwood felt that the Panel did not need to re-visit the comments they made today and that DCM could “run with them.”

Benton didn't hear any concern expressed about changing the boundary at the marina on West Beach. Everyone seemed to be on board with the policy challenges of development associated with the marine. However, Benton was wondering what the argument was for changing the proposed IHA width along South Beach. Warren responded that DCM felt the proposed box was too big. The CRC has had the opportunity to review the Panel's original box, which is not changing, as well as DCM proposal for smaller IHA boxes. In the end, The CRC may choose one or the other or neither.

Overton clarified that DCM was not going to bring back a re-drafted IHA box for BHI IHA. Underwood agreed. Overton was then trying to develop the best way to proceed through the next IHA issues (setbacks and erosion rates). However, Underwood could update the Science Panel as we proceeded through these inlet-related issues. Overton commented that it might be helpful to talk about the overall goals for development within the IHAs, now that the boxes had been defined. Rogers recollected from the last Science Panel meeting where this was discussed (March 2008) that the vegetation line was not the best point for measuring setbacks because of its short-term variability. It is a highly oscillating reference feature. Maybe we can come up with something as an alternative to building setbacks such as those used along the oceanfront.

Underwood stated that we could discuss the general draft language and concepts for IHA development presented by DCM to the CRC, but the details of that shouldn't be discussed (square footage of homes, etc.).

Benton felt that there were different ways inlets behaved versus the oceanfront. Oceanfront is simple and inlets are complex – channel migration, sediment bypass which work on a different timeframe than the oceanfront shoreline transgression. Benton felt

that a broad discussion was needed to handle development standards based on inlet processes (a much shorter timeframe). Overton asked if that would be setbacks, and Benton said it could be but was a much broader discussion - shoreline slopes are broader, shoal complexes migrate, etc. Benton felt that we had the data to look at these inlet-related processes and how the shorelines respond to these processes so we can understand what each inlet is doing as well as the timeframe and the magnitude of the processes involved. Overton understood Benton's concepts but was trying to define what management strategies should be considered. Setbacks? Benton said setbacks were important but you also had to look at inlet management issues such as channel alignment, etc. Rogers stated that the only way to apply setbacks was a fixed line. Jarrett felt that setbacks should not be based on long-term erosion rate factors used on the oceanfront. What about the short-term variability? We need to implement standard deviation of the shoreline to help guide development.

Royal remembered that there was discussion on decadal oscillations of inlet shorelines that may justify having a building line wherein nothing could be built oceanward of that line. Overton added that the vegetation could be one consideration but a stationary line could also be included in the management decisions.

Jarrett commented that getting into the setback issue means that you start to get into the issues of potentially limiting or eliminating development from certain areas directly bordering on the shoreline. I remember some discussion about subdividing these IHAs into different zones based on higher and lower risks. Should the areas of lower risk, on the outlying edge of the IHA, have a different set of building setbacks or other regulations? Overton summarized Jarrett's comments by stating that maybe what the Panel did would reflect the different risks in the different areas? Benton agreed with that approach. Cleary felt that some of these detailed inlet processes could not be determined with the datasets on hand. The real problem is that you cannot capture the beginning and end of many of the storm episodes with aerial pictures that are spaced 5-6 years apart when you miss some of these cycles (example - missing an ebb-tidal delta breaching episode the occurs over 3 years).

Rogers felt that we didn't need a perfect method, just something better than what we have now. What we have now stinks. Overton mentioned that DCM had the 100-year storm recession number based on a dune erosion model and that the concept of integrating storm penetration into coastal management. Rogers felt that the original report and the numbers were wrong but the concept was good. Overton mentioned that new models are being used and that these data should be updated. However, the point was that storm processes were partially addressed in existing policy.

Underwood commented that upper level DENR people have expressed concern about drawing lines in the sand. NC has avoided a lot of the issues SC has had with takings issues because it has not relied on fixed lines and bases setbacks on vegetation and shoreline erosion. Underwood said it might be worth discussion but he is afraid that going down that route would be a route that DENR would not want to go down. Overall, the current setback issues have worked well and kept us out of the courts. Rogers has

talked with DENR and understands there are reservations about fixed lines. The Lucas case in SC, however, was a situation where there were no possibilities for a variance situation. Rogers added that DENR may not understand how bad of a system that we had around the inlets – that's where the major erosion problems on the state were. Look at where the houses are falling in and where the sandbags are.

Rogers felt that the Panel could address the inlet situation by finding a way to define the highest risk places and then let the policy folks take that information and decide what to do regarding development. What we have now that we didn't have before is GIS-based shoreline data and shoreline excursion data. We also have the data why the vegetation line doesn't work. Overton wanted that clarified. Rogers re-phrased the question – Why does the vegetation line work? It defines the landward limit of seasonal erosion over the last year or two. The winter storms keep the vegetation off the active portion of the beach and the beach recovers over the summer. The vegetation position includes major storms, too. However, with a big storm, you get a very rapid landward movement of vegetation loss (could be 50 to 100 feet) so you have a conservative limit of development (i.e., can't build until vegetation recovers). We've never been able to accurately predict recovery of vegetation lines but because so the current policy (actual vegetation line) is a convenient and conservative approach. Think of how many miles of shoreline currently are under a static line in North Carolina. Warren commented that such a line had created issues and why the CRC was considering a static line exception. Rogers pointed out that the key was exception. The Panel needs to understand that they can come up with a stationary line but that there will have to be policy exceptions. Underwood didn't like the idea of static-type lines on dynamic barriers. However, discussions are probably worth playing out but our hands may be tied by what policies are endorsed by DENR and the CRC.

Overton wondered what the various types of data are that the Science Panel would like to see regarding these issues. Jarrett pointed out that the standard deviation we had were based on shorelines and not vegetation lines, so a new set of data would need to be defined to address variability of the vegetation. That variability could then be built into the setback requirement, but as measured landward from the vegetation line on the ground at the time. Furthermore, this should be done using radial transects versus some of the existing transects used (perpendicular to general island trend and not wrapping around the inlet throat shoreline). Rates and variabilities based on these data might blow up in our face but it would be nice to see the data.

Underwood felt that Jarrett's comments were reasonable and doable. Overton felt that these were the types of data that were hinted at last March. It's ambitious to look at all the inlets but we could look at a few inlets to develop the initial methodology. Rogers was hoping to illustrate a problem that concerned him related to Lockwood Folly inlet. Richardson brought up the image on the screen. Rogers presumption is that if you wait long enough, the vegetation will follow the shoreline and they are related over the long term. In 1979 and 1980, the houses at the west end of Oak Island were falling into the inlet. The problem with the vegetation line is that it would allow development oceanward of those same buildings now that the shoreline has built out hundreds and

hundreds of feet. A setback here should not just consider vegetation lines in this case – the setback should be at least as far back as the pre-existing homes (that were falling in a few decades ago). However, what do you do on the west side of the inlet (Holden Beach) where the shoreline was currently at its maximum excursion.

Overton asked if we need to start including the 1800s shoreline in discussions and observations, especially since it was used in the BHI IHA determination. Riggs felt that is was fairly well georeferenced. Rogers felt it was worth looking at but the AICWW changed the conditions along the shoreline at that time.

Warren asked if the Panel wanted to see a brief presentation on what DCM proposed to the CRC in July for draft inlet development strategies. Riggs had a question about whether satellite data could be used to map inlet processes over a period of a few years. Rogers felt the timescale was way too short. Riggs said it was to look at a short time frame around storm events to see how the inlet responds. Riggs felt that the Panel should look into satellite data to see if the imagery were available and whether the resolution was appropriate. Overton said it was a good discussion but didn't want to get too far off track.

Warren gave an annotated version of his July CRC presentation to the Panel so they could put in context the straw man policy proposal by DCM staff for IHA development standards.

Warren suggested that erosion rates could be developed for the proposed IHAs and included in the IHA report. Therefore, the rules could reference not only the IHA boundaries but also the erosion rates used for setback determination. In this way, it would not be necessary to correct wait for erosion rate updates for the entire oceanfront (as referenced in the report listed in 07H.0304). Numerous members of the Panel liked the idea of addressing all of the inlet issues in the IHA report (lumping them together).

Overton reviewed the data requests by the Panel for DCM staff to have for review at the next meeting: erosion rate (linear regression), R2, standard deviation of shoreline erosion rates based on new radial transects as well as vegetation line digitization and trend analysis (similar to shoreline studies but using vegetation lines). Richardson reported that he had already digitized the vegetation lines so analysis should not be too hard. Warren asked if there were select inlets on which these data should be calculated? The Panel suggested Lockwood Folly and Shallotte Inlet to start with. Maybe Rich inlet as well? A comment was made about including end point methods as well. Overton noted that the issue was not necessarily the method (end point versus regression) but the snapshot in time that was used.

Overton plugged DCM's coastal data website and suggested homework for the Panel to visit the site and overlay the shoreline data on the aerial photos. Richardson also reported that the current erosion rates (the blocked setback factors) are online.

With no further comment, Overton adjourned the meeting at 3:00.



**MEETING MINUTES**  
**CRC SCIENCE PANEL ON COASTAL HAZARDS**  
October 15, 2008

North Carolina Department of Environment and Natural Resources  
Washington Regional Office  
943 Washington Square Mall  
Washington, NC 27889  
Raleigh, NC 27889  
(252) 946-6481

*(minutes compiled by Jeff Warren, DCM)*

**Panel Members in Attendance:**

Steve Benton, DCM retired  
Tom Jarrett, CP&E  
Dave Mallinson, ECU  
Margery Overton, NCSU  
Spencer Rogers, NC SeaGrant  
Beth Sciaudone, NCSU adjunct / consultant

**Panel Members not in Attendance:**

Bill Berkemeier, USACE ERDC  
Bill Cleary, UNCW  
Pete Peterson, UNCCH IMS  
Stan Riggs, ECU  
Tony Rodriguez, UNCCH IMS  
Rob Young, WCU  
Greg Williams, USACE

**DCM Staff in attendance:**

Ken Richardson  
Steve Underwood  
Jeff Warren

**Other Attendees:**

Dara Royal, CRAC Chair

## MEETING SUMMARY

Overton opened the meeting at 10:13 and outlined the general agenda of discussing the Bald Head Island IHA discussed at the last meeting. In addition, Richardson also has erosion rates calculated on radial transects from Lockwood Folly and Shallotte inlets. Today will be data intensive. Maybe we can come to closure on the BHI issue but probably not on the setback and erosion rate issues. Remember that the CRC is scheduled to hear about inlet hazard areas at their November meeting. The Science Panel only has one more meeting between now and then. Finally, Overton stated that the group might try to adjourn early today.

Warren updated the Panel on the Bald Head Island (BHI) inlet hazard are (IHA). He reminded the Panel that they continue to support their IHA boundary revision recommendation for BHI based on the geomorphology of the paleo dune ridge that corresponds with a mid-1800s shoreline position. At the last Science Panel meeting, the Panel reviewed a modified IHA box for BHI drawn by DCM. The Panel suggested at that meeting that DCM consider a method that was based on the actual erosion rates calculated for the IHA update study rather than the 1998 blocked erosion rate data currently used to establish setbacks. Furthermore, they suggested applying this method to the entire portion of South Beach for consistency rather than using an amalgam of methods (i.e., average beach width, maximum beach width, 60 times erosion rate, etc.). DCM presented two lines showing both 60 and 90 times the erosion rate (linear regression rate data from the IHA study and not 1998 data) as measured landward from the static vegetation line. Because the rate peaked around the BHI clubhouse and then decreased in a westward direction as it approached the accretional horn that transitions to West Beach, DCM reminded the Panel that none of the other IHA box revisions were allowed to decrease in width as you got closer to the inlet. In cases like that, the line was extrapolated in a shore-parallel fashion until it intersected with another line drawn by a different method which was also used to draw the IHA box. This method of not allowing the IHA box to decrease in width was consistent for all 12 of the inlets reviewed during the study. In light of this, Warren showed the Panel how this method would apply to the BHI IHA box based on a 60 and 90 times the erosion rate method. Using the 90 times the erosion rate was done because it was the new maximum setback factor recently approved by the CRC at their last meeting (at the previous Science Panel meeting, prior to the CRC approving the new policy, the maximum setback factor had been 60). With this larger distance, the line intersected the Science Panel's boundary landward of the BHI clubhouse and Warren suggested a good compromise might be to use this method and make a hybrid box (part Science Panel recommendation and part DCM recommendation).

Rogers wondered what the Panel needed to do and felt that if DCM did not have a preference of its two alternative methods discussed today, then there was no comment they could offer. Warren suggested that the Panel could judge which of the two DCM alternatives was better. Warren also stated that DCM had not discussed both methods in enough detail to have a preference one way or the other. In fact, Warren could justify both setback factors since 60 could still be used in areas receiving a static line exception

where 90 would be used in areas without one. BHI has a static line and intends to have a long-term beach fill project in place to qualify for a static line exception.

Overton stated that she felt it was good that DCM listened to DCM's recommendations and the Panel appreciated what staff did but she is not sure if the Panel could provide any input if there was not a preferred IHA box on the table. Overton was concerned that there was a lot of policy discussion mixed with science, but that discussions such as this (policy and science) were not carried out for each of the boxes. Benton liked the approach and thought it was better than what was presented at the last meeting. Mallinson addressed the shoreline bulge at BHI, which was not natural (related to channel dredging), and discussed how it was the reason behind the erosion rate decrease from the hotspot in front of the clubhouse. Overton reminded the group that the Science Panel motion was the largest of all proposed IHA boxes on BHI (the original geomorphic, topographic high boundary) and the Panel continues to stick with that recommendation.

The discussion moved to the IHAs in general. Rogers felt that the first thing that needed to be discussed was that the setback should not be measured from the vegetation line. Overton felt it was a piece of the equation, because the setback had to be measured from something, but she was not sure if that should be the first discussion item. Benton wanted to see the inlet data from Richardson (Shallotte and Lockwood Folly) to kick off the discussion. Richardson showed Shallotte data using 2004 bases photos. Radial transects were shown and two lines were calculated using 60 and 90 times the erosion rate (the linear regression data used for the IHA study and not the 1998 erosion rate data). The setback multiplied by the erosion rate data was done to illustrate where setbacks would be located and not as a suggestion for amending the IHA boundary. Benton wondered if we really captured the hazard of the inlet-related shoreline processes by looking at a long-term (end point) time frame or should we look at shorter time frames?

Overton commented that the Panel was trying to work with DCM to do the shoreline analysis so that the Panel could look at the data to make some decisions. DCM has done this. Overton asked Richardson if he had used DSAS for the shoreline rate calculations because the related statistics would be in that data table (e.g., standard deviation, etc.). Sciaudone asked Richardson to display the hybrid shoreline (which is the landward-most shoreline position for all digital shorelines in the dataset).

Rogers wanted the Panel to try and define what they are trying to achieve. Maybe defining the area where the house may be sitting on the beach in the next thirty years based on inlet-related processes? Benton added that a 60-year window could also be addressed. The essence of the question is that an erosion hazard exists related to the inlets and Rogers is trying to show where the house might be after thirty years. Overton agreed if they could predict the shoreline movement. Benton suggested adding an additional buffer of 60 feet landward of the vegetation line to protect the primary and frontal dunes. Mallinson stated that they were trying to forecast where the maximum extent of vegetation movement would be. Overton polled the Panel to define their goal. Abandon the erosion rate and develop some other setback mechanism? Benton felt that

this was exactly why the processes and physical aspects of each inlet should be defined to help define policy (some inlets migrate, some oscillate, others are more stable than others, some are dredged, etc.). Underwood felt that those types of information were already factored into the discussion by helping define the total IHA polygon proposal (especially the landward side of the box).

Rogers suggested that erosion rate multipliers could be used where the shoulder of an inlet was experiencing a terminal erosion cycle. What about on the other shoulder where accretion might be taking place? Sciaudone wondered if the hybrid shoreline plus the average beach width could be used as a reference line (in lieu of a vegetation line)? Benton pointed out that Sciaudone's proposal was a fixed line. This had been brought up as a worry point before (i.e., a fixed line). Rogers stated that he had discussed fixed lines with Robin Smith and she was not supportive, and that may throw out any type of fixed-line proposal in the end, but we should at least discuss the option. If these lines were updated when shoreline erosion rates were updated, then Overton argued it may not be truly a "static" line (in place forever from this point forward). Benton felt we were moving in the right direction. However, where you have a high erosion rate, you can end up with a narrow beach width. Therefore, using these average and maximum beach widths measured landward from some reference point (veg line, static line, hybrid shoreline) then you don't accurately identify the true hazard (you're actually closer to the shoreline with thin beach widths).

Jarrett pointed out that everything oceanward of the reference lines being discussed for setbacks could not be rebuilt (because it would be oceanward of the setback). Rogers mentioned that the State already allowed exceptions for development based on a minimum of 60 feet from the actual vegetation line. Warren mentioned that the single-family exception could not be used in the current inlet hazard rules and that the exception could only be used for lots platted before 1979. Overton asked if DCM was considering suggesting allowing the single-family exception within the proposed IHAs, and Warren said it had been proposed in discussions in front of the CRC. Overton thought it was appropriate to define the extent of the oceanfront/inlet hazards but not worry about policy (don't automatically say there is a no-build zone because the CRC has rules in place to allow exceptions to setback rules). If the Panel stayed focused on the inlet hazards and defining those hazards then the process would be cleaner.

Underwood was concerned about promising regular shoreline study updates when future datasets were never guaranteed. Limited resources forces DCM to be opportunistic with aerial photos or shoreline data (but these opportunities are not guaranteed and cannot be predicted). Benton wondered how regularly DCM would need to update datasets. Oceanfront shorelines (erosion rates) had been consistently done in 5-6 year intervals. Is five years too long of a period for inlet areas? Should it be an annual update? Rogers wondered if two lines in the IHA could be defined. One could be something measured from a hybrid shoreline or an average beach width while using the erosion rate. You could also measure from the vegetation line using the same multiplier and then use the more restrictive of the two (i.e., the landward most line).

Sciaudone agreed with Rogers and added that looking only at Shallotte Inlet could be misleading to this discussion (i.e., Shallotte might be the only inlet where the most recent shoreline IS the hybrid shoreline). In addition, the hybrid shoreline may not need the frequent updates of five to ten years. Overton pointed out that the discussion has been in depth regarding the reference point from where measurements are made but the issues regarding erosion rate calculations have not yet been addressed. Rogers pointed out that the variability was built in to the composite line. Overton agreed that it was built in to the reference point but not the prediction for the next thirty years.

Jarrett felt that the new radial shoreline data could help produce standard deviation data that were more accurate. These deviations could be used to define minimum setbacks compared to the oceanfront beach (i.e., a deviation three times the oceanfront setback would require a setback three times farther back than the oceanfront). Overton noted that you could use the standard deviation with a prediction interval (e.g., use a 95% confidence interval) and how could we apply this approach to the inlets. The Panel agrees that there are statistical methods that are not hard to study and DCM could apply these methods and bring back the results to the Panel for discussion.

Richardson showed the Holden Beach side of Shallotte Inlet to compare to the previous datasets overlaid on Ocean Isle Beach. Since this side of the inlet has been in an accretion cycle for the last few decades, accretion should be set at an erosion rate value of zero (although it is a net positive trend). Sciaudone joked that this side of the inlet appears to be an appropriate application of DCM's proposal of not just using the vegetation line but also not allowing development to go farther oceanward than adjacent development. Warren commented that we have just seen two extreme end member scenarios. On Ocean Isle Beach, where the vegetation line was at its most landward excursion, it is an appropriate reference point for measuring setbacks. However, on the Holden Beach side of the inlet, where the vegetation is at one its most oceanward positions, setbacks from the vegetation line would not work but holding the line with existing development could be an additional criterion for development (i.e., must meet both vegetation line setback AND be no farther oceanward than adjacent structures). Mallinson liked that approach, but Overton felt that the Panel needed to be discussing data and not policy.

Rogers recommended regionalizing the baselines on an inlet-by-inlet basis or from multiple inlets. Sciaudone liked the concept of a beach width and hybrid shoreline combination. Jarrett liked keeping the vegetation line as a reference point but add to it the variability of standard deviations and other factors that incorporate the shoreline cycles that occur (erosion and accretion). Overton asked if Richardson had created a hybrid vegetation line since Richardson mentioned that digitized all the vegetation lines for each inlet in the study.

Overton acknowledged that the hybrid shoreline shows that the shoreline was actually right in front of the houses back in 1970 and 1981. Because this area is accretional, the current CAMA setback is based on a minimum erosion rate of 2 feet per year (60 foot setback). Mallinson asked what the Panel is going to do to move forward. Overton

stated that there seemed to be a group of folks considering the hybrid shoreline as a reference point but that other ideas have been discussed too (and potentially DCM would work on some data requests and bring them back to the Panel). Jarrett had trouble with changing a reference point, especially when you get to the last house in an IHA adjacent to the first house outside of the IHA. They're neighbors so why should their setback reference points be different? That's why Overton thought the reference point should be the same but that the setback factor or multiplier should be different for the IHA versus the oceanfront.

Benton recapped that on the ocean oceanfront (OEA) there was an erosion rate times a multiplier. In the IHA, the Panel has been discussing an erosion rate plus a multiplier plus a variance multiplier (based on standard deviations or other statistical data). The Panel also discussed considering a maximum landward excursion of the shoreline (the hybrid or composite shoreline – no development seaward of that). Mallinson pointed out that this is where it would be helpful to see a hybrid vegetation line. Richardson brought up the data for Lockwood Folly Inlet. The Panel applied the concept of the average beach width line as a reference point plus 60 feet landward of that position. It appeared to work as a setback determinator for both sides of the inlet.

**Lunch break at 12:05. Re-convene at 1:05.**

Overton suggested using the next hour of the meeting to formulate what is needed to review (data wise) to address the IHA issues. For example, a hybrid vegetation line is necessary. Prediction of shoreline position needs to be a combination of rate plus some variance variable. DSAS kicks out some variability statistics so we should look at the DSAS data (R square of regression, standard error). DSAS also has rate calculation options (end point, linear regression, least median of squares). Rogers felt we absolutely need to look at New Topsail Inlet because of its migrating nature (this would be in addition to Lockwood Folly and Shallotte). Mallinson wondered if a standard deviation with only ten data points (ten shorelines in this case) provides enough confidence. Overton mentioned that ten shorelines was a great step forward compared to the two shoreline points DCM and the Science Panel was dealing with in the past using end point erosion rate methods.

Jarrett wondered if you could also factor in the variability of the position of the vegetation line within IHAs. Use that value plus 30 times the erosion rate measured landward from the existing vegetation line. The maximum vegetation excursion would be an envelope to show how much the vegetation has actually moved. Use this in conjunction with an erosion rate. Overton wondered if you would use end point versus linear regression rates? Jarrett figured it was best to use the linear regression data. The question arose whether the envelope of the vegetation. Use the maximum excursion distance along any given transect and measure that value landward from the vegetation line at any given time? Sciaudone thought that this method would work better on the accretion side of an inlet. She also felt this was an easier concept to calculate compared to some of the shoreline statistics discussed during the meeting.

Richardson showed a hybrid vegetation line on Oak Island (Lockwood Folly) that was post storm and farther landward than expected. Overton mentioned that it was appropriate to remove certain vegetation data from the time series if it reflected a post storm condition. Rogers agreed and added that the vegetation was still there after a storm and would recover but, at least temporarily, it was merely buried by the overwashed sand. The vegetation excursion envelope was rather large on the Holden Beach side of Lockwood Folly Inlet. The issue seems to be that certain methods work on one side of the inlet and not the other. Is there one method that can be applied to both sides or do different methods have to be employed based on erosional or accretional trends. It seemed that a static line such as a hybrid shoreline or vegetation line seemed to be the most favored approach of the Panel because it would work on both sides of the inlet. Warren mentioned that one way a static approach could be acceptable was that there was an inlet-specific exception for development that could not meet development criteria based on a static-type line but could have limited development opportunities based on other factors such as location of adjacent structures, actual vegetation line, size limitations (square footage and footprint).

Any time linear regression is less than two feet per year, make it equal to two. Then, add the prediction interval for extrapolating into the future over a certain period of time – in this case, 30 years (which is different from the confidence band which is only based on historical data). Add these values to the hybrid shoreline plus average beach width as well as the hybrid vegetation line (measured landward from these two reference lines). Try to do this for the two inlets discussed today – Shallotte and Lockwood Folly – plus New Topsail if at all possible. In addition, the numbers already exist to calculate 30 times the erosion rate landward of the average beach width. Use the erosion rates from the radial transects. Start using the raw data and potentially use a five-point smoothing window. A five-point smoothing window was used in the inlet hazard subcommittee when defining the position along the oceanfront shoreline where the inlet processes no longer dominated the hydrodynamics. Overton wondered if any of the shorelines needed to be dropped out of the data manipulation citing concerns with storm-affected shorelines and the confidence of photo rectification. Overton mentioned that the 1938 shoreline, when used during the last erosion rate update, was the T-sheet shoreline and not from the 1938 aerial photos (because geo-referencing confidence was not as high as T-sheets). For shoreline calculations, leave out the 1938 shoreline. For vegetation line studies, ignore pre-1940 data as well.

Underwood mentioned that DCM was also doing a total floor area inventory for all structures inside the existing and proposed IHAs. Overton expressed an interest for the Panel to see these data at the next meeting and wondered if they would be available by then, at least for the three focus inlets (Shallotte, Lockwood Folly, New Topsail). Warren stated that he would make sure DCM would focus on those three inlets first to ensure those data are available as soon as possible.

With no further business, the meeting adjourned at 2: 12.

**MEETING MINUTES**  
**CRC SCIENCE PANEL ON COASTAL HAZARDS**  
November 5, 2008

UNC-W Center for Marine Science  
5001 Masonboro Loop Road  
Wilmington, NC 28409  
Reception desk telephone #: (910) 962-0301  
*(minutes compiled by Jeff Warren, DCM)*

**Panel Members in Attendance:**

Bill Berkemeier, USACE ERDC  
Bill Cleary, UNCW  
Tom Jarrett, CP&E  
Dave Mallinson, ECU  
Margery Overton, NCSU  
Stan Riggs, ECU  
Tony Rodriguez, UNCCH IMS  
Spencer Rogers, NC SeaGrant  
Beth Sciaudone, NCSU adjunct / consultant

**Panel Members not in Attendance:**

Steve Benton, DCM retired  
Pete Peterson, UNCCH IMS  
Rob Young, WCU  
Greg Williams, USACE

**DCM Staff in attendance:**

Ken Richardson  
Guy Stefanski  
Steve Underwood  
Jeff Warren

**Other Attendees:**

Paul Hearty, Bald Head Island Conservancy  
Dara Royal, CRAC Chair  
David Webster, CRC



## MEETING SUMMARY

Overton opened the meeting at 10:03 and noted that Rodriguez and Sciaudone would be attending but late. David Webster and Paul Hearty introduced themselves. Royal's attendance was also acknowledged. Overton pointed out that the last meeting of the Panel was data intensive. There had not been a lot of communication between DCM and Overton on data requests and the status of those data resulting from the previous meeting. Therefore, Overton suggested that the Panel needed to discuss what has happened as far as what data are being presented today. Overton also acknowledged the budget challenges of State agencies and thanked those associated with State agencies and universities or those who might have limited travel funds for being present at the meeting.

Overton asked Warren to update the Panel on the upcoming CRC meeting discussion on inlet hazard areas (IHAs). Warren stated that the November meeting had been an initial yet arbitrary date to report back to the CRC since they asked the Panel's input after DCM's IHA presentation in July. Warren felt that the Science Panel felt it was getting close to having a better grasp on the data issues and could use another few meetings to discuss. Warren also stated that DCM did not want to make final IHA recommendations in November (policy related) prior to the Panel's discussions being completed. Therefore, DCM was willing to wait until the February meeting to make policy recommendations and the Panel has the option of meeting one or two more times between November and February. Rogers felt it was still important for the Panel to report back to the CRC in November since the CRC wants to implement the IHA maps and move forward with policy changes. Rogers felt that they did not need a final set of recommendations in November but could go back to the CRC at that time with a basic set of concerns and issues and/or recommended methods to address the concerns/issues.

Overton moved on to IHA data issues and stated that the discussion could focus on how best to use these data to come up with numerous methods to address setbacks and erosion rates. Let's push these data as far as we can. Overton asked Richardson to discuss the data he had ready to present today. Rogers noted that the real reason the Panel was doing this effort was that the vegetation line reference worked away from the inlets (it was the landward limit of ocean processes) but, at the inlets, the vegetation line is going through cycles that in many cases are running in much higher frequencies than that along the oceanfront. These rapid migrations of vegetation do not allow it to work as well as it does as a reference feature along the oceanfront. Underwood did mention that the vegetation line was worked well with NC's regulatory program so it would be nice to maintain this as a reference feature in some form instead of abandoning it altogether. Overton felt that the science might be telling us one thing but that DCM has been using something that has worked well legally and policy wise. The Panel could still advise based on the science so it is out on the table. DCM may decide to not use it based on policy and legal factors but at least the argument has been made.

Richardson noted that the biggest requests from the last meeting were: 1) a hybrid vegetation line and 2) some type of offset from that line based on the new set of radial transects (the offset being the average beach width distance plus the erosion rate from the IHA study multiplied by 30 years – as measured landward from the hybrid vegetation line, which is the landward most position of vegetation from all of DCM’s historical aerial photo data). Jarrett asked if the hybrid vegetation line could actually become a fixed point. Overton mentioned that it would be part of the overall discussion. Cleary wondered how the data should account for sandbags. For example, the Panel was looking at imagery from Shallotte Inlet at the east end of Ocean Isle Beach. What would happen to the shoreline (and vegetation line) if those sandbags were removed? The same argument can be extrapolated to Rich Inlet at Figure Eight Island.

Overton asked if anything was adjusted for accretion with the erosion rate data. Richardson said he did not adjust for erosion and merely took the absolute value of the shoreline movement and used it in his “setback” calculation. Rogers brought up the question about what the Panel really wanted to do with these “lines” – keep the houses off the public beach, keep the houses farther away from storms, and minimize or avoid the need to nourish the beach by keeping houses back.

Birkemeier postulated that the erosion rate and hybrid vegetation line were conservative and not as far back as they would be without the shoreline protection structures that had been (and are being) used along Shallotte Inlet (and all inlets for that matter). Warren pointed out that the hybrid vegetation line at Shallotte was virtually the same location as the current sandbags along the east end of OIB. Richardson pointed out that the beach width data here were small because of the narrow beach width linked to erosional conditions. Richardson wondered if not changing the signs of the shoreline movement trends (erosion versus accretion) affected the data on the screen. Overton pointed out that the influence of shoreline protective measures was a completely different issue than some of the ones being discussed here today regarding inlets and that DCM hadn’t really address the overall issue (in any of the DCM data, methods, and policy).

Overton stated that the Panel who were not at the last meeting in Washington could now see the challenges that the Panel was up against. Which erosion rates are the best to use? What kind of error bars can be put in place to address the predictability where the shoreline might be in the future? Overton also noted the statistical tools that were available with DSAS and could these be used as metrics with the IHAs (or would the Panel have to use other statistical tools outside of DSAS). (Note – DSAS is the Digital Shoreline Analysis System developed by the US Geological Survey). Riggs wondered if there was a database of all the shoreline structures. Warren noted that Richardson had developed a database of permitted sandbag structures but didn’t think that Richardson had incorporated that shape file into the current IHA investigation. Riggs asked if other structures such as historical bulkheads and revetments were included in that database. Warren said they were not. Riggs also felt that the geomorphic features of the inlets are also important to consider (specifically the remnant features that show the position of the vegetation and dunes at the start of an accretional cycle). Jarrett pointed out that the geomorphology was used when the proposed IHA box boundaries were developed.

Rogers said the other thing that has happened since the last meeting is that the CRC took action on the setback in that it left the 30-year setback in place. They increased the setback for larger buildings but the setback factor for houses smaller than 5,000 square feet were left untouched. In that vein, the Panel can talk about 100-year changes but the CRC has decided to use a 30-year window for smaller structures. That was a policy decision. Rogers also commented that he would try and keep the Panel discussions away from policy (such as structure sizes, etc.). Overton wondered if the Panel should include a 30-year setback component in their potential methods in the IHAs or could the Panel suggest a different setback for the IHAs.

Sciaudone started to summarize the potential setback methods being discussed on the room's white board as follows:

Hybrid vegetation line + [(30 x erosion rate) + average beach width]

*The ER here was done with a linear regression that had been smoothed using a 5-pt moving average (which was consistent with how the rates were considered when defining the IHA boxes). In this case, there was a reference point (hybrid veg line), a rate (30 x ER) plus an additional setback distance (avg beach width).*

Sciaudone changed strategies and listed different potential reference features from which a setback could be measured:

Hybrid veg line

Hybrid shoreline

Existing vegetation line

Alignment of existing houses (one of DCM's recommended approaches)

Sciaudone moved on to discuss the setback rates and used the existing factors of 30, 60, and 90

Rogers noted that these factors had been accepted by the CRC so there was no need to look at any options beyond these. The policy had been set. Overton suggested that a predictability interval might be more appropriate than a confidence interval since, even though the equation is similar, it has numerous variables that help it predict shoreline movement into the future. Adding in such a factor decreases uncertainty.

Jarrett wrote the following equation on the board:

(sigma within the inlet divided by the sigma inside the IHA) multiplied by either 30, 60 or 90 (alpha) where sigma is some measure of variability of the shoreline movement (standard deviation, predictability, etc.).

The standard deviation does drop quite a bit along the oceanfront shoreline and it was the point along the shoreline used to define the boundary of the proposed IHA box (along the oceanfront shoreline). Overton clarified that she was suggesting the prediction interval (in this case, a number in feet) that would be multiplied against the other numbers (such as the erosion rate). Jarrett was suggesting that the multiplier be the ratio of the prediction interval within the IHA compared to the prediction interval outside the IHA.

Overton demonstrated that the predictability index was similar to an error envelope to the actual linearly regressed erosion rate. To be conservative you could just take the more restrictive value (the uppermost limit of error) the value instead of the actual central erosion rate. At some point, it would be nice to capture the variability phenomenon and make it straightforward for policy development and application. Birkemeier pointed out that the challenges of standard deviation was the temporal “clustering” of shoreline data. Overton pointed out the limitation of historical aerial photography. Underwood mentioned that DCM tried to acquire aerial photo data that was spread out through time and not temporally clustered.

Sciaudone asked the Panel if they wanted to look at any other erosion rate calculation methodology besides linear regression (e.g., end point). Should there be a different time interval of study? Jarrett commented that the time interval needed to capture the cycle of inlet movement / behavior was based on what the channel inside the inlet was doing. Riggs added that the channel movement was also influenced by storms.

Rogers felt that the rate column on the board was the policy already set by the CRC. Rogers also felt that the hybrid shoreline reference feature could also be considered as a combination of both the hybrid shoreline and the average beach width. Warren pointed out that “none” should be placed in the additional setback column on the board because the Panel could find that, based on the reference feature from which the setback was measured and the setback rate employed, that there was no need for an additional setback distance. Warren also pointed out that a note should be placed by the use of the actual vegetation line as a reference feature as long as it was considered with additional criteria (i.e., a minimum setback from the vegetation line while going no further oceanward that adjacent structures and no further oceanward of the hybrid shoreline or hybrid vegetation line). Warren also reminded the Panel that they had discussed in the past that maybe there was no need for a setback calculation at all if a demarcation line could be drawn (i.e., build anywhere except oceanward of a certain position such as the hybrid shoreline or hybrid vegetation line). Warren then commented that this position would become the de facto setback (i.e., everybody would build along a demarcation line).

Richardson finished his ad hoc statistical calculations and was ready to display them on the screen for discussion. Overton thought it would be appropriate to show the hybrid vegetation line on both sides of Shallotte Inlet to start the discussion (and to consider the challenge of applying methods on both sides of an oscillating inlet where a method works on once side and not the other). Rogers wanted to also see the hybrid shoreline displayed with the hybrid vegetation line. Overton also asked for the average beach width line to be displayed to see if the hybrid vegetation line was any improvement.

Richardson showed the datasets for both Shallotte and Lockwood Folly Inlet. Warren mentioned the fact the vegetation line only broke down as a reference point for setback measurement when the vegetation line was at its oceanward most position (or any further oceanward than its landward most position). In areas like the east end of OIB, where the vegetation line was at its maximum landward position, the setback from the existing vegetation line worked (especially because the probability of the vegetation line and

shoreline continuing to move oceanward during the next 30 years at the ER used in the setback was low – it was at its maximum landward excursion in the historical record). The vegetation line broke down in Holden Beach (west end) for example because the shoreline had accreted oceanward hundreds of feet. This was the reasoning for DCM's July IHA recommendation to the CRC. Using a combination of a vegetation line setback and not allowing development any further oceanward than adjacent development would address both end members discussed above. Overton summarized the discussion as stating that it seemed the Science Panel was warming up to the idea that the hybrid vegetation line might be a reference line that could be considered for IHA policy.

Rodriguez wondered why elevation was not addressed in these discussions, especially since elevation seemed to control overwash and vegetation line position after events such as Hurricane Hazel. Overton commented that only LiDAR datasets would have elevation so that would limit the amount of data. There would be no historical trends. Rodriguez suggested that you would only need to use the most recent data. Cleary pointed out one problem is that much of the land wasn't there in the past because it was either lower or was submerged. Rogers reminded that we're only looking at the inlet processes and not the storm processes. If you look at vegetation from storm conditions you might be further landward than necessary and basing a location on an event where the vegetation will recover. The storm event is not related to the inlet migration processes.

Rogers pointed out that other than Nags Head and Kitty Hawk, the vast majority of the threatened structures are associated with IHAs. Therefore, he would argue that DCM's position on using the adjacent structure position as a component of determining development location may not be appropriate because existing development may already be in harm's way. Jarrett commented that storm conditions were not as important as looking at shoreline history and the overall shoreline trends. He was unsure of how you can get away from the existing vegetation line. Maybe it would be appropriate to go ahead and put lines on each side of the inlets that show where the existing setback location would be. Would that be far enough back? Rogers asked if it was fair to expect the shoreline variability to be the same on both sides if the inlet is oscillating back and forth. Overton wondered if it was possible to zoom in on a transect to see a shoreline change graph to see if that particular location the shoreline was accreting or eroding and what the variability was. It seems that this is what the Panel is mulling about. They understand the datasets and the questions that the data can answer. It is the understanding of what the data are telling us on either side of the inlet so better data visualization would help the discussions.

**BREAK FOR WORKING LUNCH AT 12:16. RE-CONVENE AT 12:55.**

Rogers asked Richardson to display the datasets for New Topsail Inlet to look at a situation different than the oscillating inlets (Shallotte and Lockwood Folly). Richardson displayed the LiDAR (Light Distance And Ranging) elevation data on the Topsail Island side of the inlet. Overton noted the 1944 inlet opening associated with New Topsail Inlet. Overton commented that the Panel needed to discuss potentially a different reference line (for measuring setbacks) for migrating inlets (compared to oscillatory

inlets). Riggs suggested a line of demarcation that would keep development off the entire spit. Rogers stated that the goal of the rule was to keep the homes off the dry sand beach (or decrease the potential of this occurring). What was the potential that the inlet would close and re-open where it was in the 1940s?

Overton mentioned that there were not enough data to address some of the questions of the Panel (primarily related to the predictability index). Richardson would need some time to assemble these and other requested data. However, Overton wanted to push for the Panel to try and reach a consensus on what they were going to report to the CRC in two weeks. Rogers addressed Riggs' earlier comments about putting the whole end of the island (the whole IHA) in a zone where nothing could be built. Rogers pointed out that most of the island had been submerged after hurricanes but those were storm-related issues and not inlet process issues. Jarrett felt the Panel was trying to find a setback point where long-term erosion would not be an issue. The Panel was focusing on where the reference line should be (for measuring setbacks) and where the risk to buildings would be lower (not non-existent but lower). Riggs argued that storm dynamics were related to inlet geomorphology and processes. You can figure out why a storm does what it does on each of these different islands. Rogers stated that the Panel agreed on that.

Birkemeier recapped by stating that the Panel was trying to define the reference line and also trying to capture the variable nature of the system/shoreline/vegetation line. Once you capture the dynamic nature of the areas with deviation statistics, all you have to do is lay that on to some reference point. However, until we know how well the dynamics are captured in the numbers, it is tough to move forward. Maybe the current data will capture what we're trying to do. Birkemeier was still thinking that looking at a more recent time period (the past few decades) might be more appropriate instead of going back 50 to 100 years. Until we see the numbers, it's tough to settle the debate. Overton agreed. There's something to be said for people walking out on their lot and looking at the present location of vegetation, that it might be argued (by them) as a logical place to start for setback determinations.

Jarrett also stated that the Panel could put some type of recommendation together that considered some of Riggs' concerns about limiting development in the higher hazard areas. He didn't know what the regulatory implications would be, but that's not what the Panel was there to do (i.e., to develop policy).

Overton asked the Panel where they were in the discussion. Richardson mentioned that he felt some of these setback lines discussed would put people farther landward than they would want to be located so maybe a zonal approach could be taken (degrees of hazards). Jarrett stated that you could be consistent with an inlet by looking at the variability from both sides and applying some type of compromise variability to both sides of the inlet. Hearty commented that this system was so dynamic that it seems like trying to hit a moving target. Maybe that was illustrative in and of itself (i.e., it's so variable that development should not take place). Rogers felt that the Topsail side of the inlet was much safer (because it was on the accretional side of New Topsail Inlet) because of its 90-foot-per-year migratory pattern. The probability of a reversal of the inlet migration was highly unlikely. Cleary noted that the USACE's calculations showed the net drift of

the coastal system in this location was net drift to the north. Jarrett stated that what was driving this inlet system was the flip-flopping of the main channel in the throat of the inlet.

Overton tried to get the discussion back on target. Rogers had put on table that the Panel should have an answer to the question for the CRC as to if they had a better alternative to what was proposed by the DCM staff for an IHA policy (multiplier applied to the existing vegetation line as well as lining up with adjacent development). Overton noted that DCM has a great dataset but we were now limited to what could be done with the data because Richardson could only do so much with the data with the other responsibilities he had. Would it even be possible to address all of the Science Panel's questions if there was someone to address these data requests? Riggs still felt that there was a need to just state that the IHA should have no development. Sciaudone stated she would be willing to work on some of these data requests since she had experience with working with these types of data and methods (at least for one or two of the inlets). Underwood appreciated that offer and felt it would be a great help. Sciaudone didn't know what inlets would be best to analyze but felt it was easy enough to choose a few to manipulate the data and present a bulleted memo of the results. Maybe one inlet could be done to start? Overton recognized that all of the inlets behaved differently but, from an implementation point of view, it would be nice to have the same method used for every IHA.

Warren gave a quick review of DCM's staff proposal for the IHA polices that was presented to the CRC in July focusing on the erosion rate challenges (primarily the extrapolation of the 1998 end point blocked ER data throughout the entire IHA). It was discussed how realistic a Science Panel recommendation would be to eliminate all development within the IHA. Warren commented that none of the CRC's AECs completely eliminate development. Overton pointed out that DCM is not trying to achieve zero risk, but rather the hazard area has been mapped out there are things you can and cannot do inside the AEC. DCM is not letting the Science Panel know what level of risk the IHA AEC should reflect so it is a difficult task for the Panel to consider what policies could be put in place to mitigate the risk. The issue here is that the Panel is not in the business of eliminating risk altogether. Overton noted that Warren had mentioned updating the oceanfront shoreline in her entirety and that DCM needed the capability of running some analyses to consider what the best method is. In many cases, the applicability of the method could not be addressed until the methods were applied and the results synthesized and analyzed. Overton said there was a difference in having the data (which DCM does) versus knowing what the data are telling you (which DCM is challenged with). DCM needed the ability to run these studies to analyze the data.

Rogers wanted the Panel to remember what they were trying to do with the IHA. They were areas where the inlets put a greater risk on the affected properties than other oceanfront risks, flood risks, storm risks, etc. It seems reasonable that while there are currently increased risks associated with inlets, the risks are not constant across the zones. The CRC has adopted (and recently re-adopted) the 30-year risk window so that is easily used as a baseline since the CRC has accepted it. Assuming the Panel can come up with a favorable recommendation today, the Panel ought to be able to look at DCM's

proposed policy recommendations on a map and see how they compare to anything the Panel is considering. Rogers noted that he asked for that to be drawn during the last meeting. Warren reviewed the recommendations (use 1998 ER data for setback measured from the actual vegetation line and also ensure development was no further oceanward than landward most adjacent structure).

Royal was concerned that using adjacent homes might be an issue if the homes were built on an accretional beach in the last five years or so. New structures might be put in harm's way. What science is there that can help inform the policy? Overton mentioned that one goal of the Panel when this discussion was started was to avoid using the 1998 blocked erosion rate data, so she wanted the discussion to play out to see if the Panel could come up with a method or recommendation to address a better rate. Warren outlined the challenges with using the 1998 data as well as also using the new linear regression data (primarily applying different ERs to the same shoreline in cases where a 2<sup>nd</sup> row lot was in an OEA and the 1<sup>st</sup> row lot was in the IHA). It was clear the Panel did not agree with using the 1998 blocked end point data inside the IHA. Warren agreed that they were not the best data and the entire shoreline erosion rate set needed to be updated. However, in the meantime, something had to be applied.

Rogers pointed out that there was less than an hour left to come up with some final talking points. Sciaudone suggested that the Panel let the CRC know that they had looked at DCM's proposal for the IHA and that they are looking at additional ideas. November was the target meeting to get back to the CRC but the methods didn't have to be finalized (maybe these could be presented in February to the CRC). Overton said it was easy to say that, as a Panel, the ER rate needed to be improved (and the data exist to do that). The Panel was not as clear as what to use as a reference point or some additional type of setback measurement but they were clear about the erosion rate.

Underwood commented that a lot had been accomplished, primarily the development of new, updated IHA boxes. In addition, a lot of data had been analyzed since then and the issues were very clear. The major challenge left to do was to write some rule language to address this stuff. Rogers pointed out that the IHA method report needed to be reviewed one more time by the Panel because it was not yet final. For example, the Panel wanted all of the reference material to the Cleary Inlet Atlas report to be removed. Warren stated that the report was not final and could not be completed until the CRC signed off on what they wanted to do with the BHI IHA box. Once that was set, the report could be finalized.

Birkemeier asked what was next. How many more meetings, etc.? Warren mentioned the December 8<sup>th</sup> sediment criteria meeting that could be used as a date for the next IHA meeting. Overton felt safer picking an early January date to make sure there was enough time to look at data between meetings.

Hearty asked about sea level rise being incorporated into erosion rates. Jarrett stated that the historical shoreline data was driven by sea level so it was included by default. Overton mentioned that SLR was an important factor for discussion but it would take



multiple meetings. Overton suggested picking a date for the next meeting date before continuing that discussion. Wednesday, January 7<sup>th</sup> seemed to be a good date (except for Riggs and Rodriguez). Wednesday, January 14<sup>th</sup> seemed to work in Raleigh. Overton and Warren were going to check on locations. Overton said she would work with Sciaudone to see if the rate analyses discussed as measured from hybrid vegetation lines and using 30-year timeframes would get them the data that the Science Panel needed. Shallotte Inlet seemed to be a good inlet to focus these studies since the two sides of the inlet were so different from each other.

Overton went back to Hearty's comment on sea level rise and wanted to say to the Panel that there had been a climate change discussion at UNC Chapel Hill. At this meeting, Tancred Miller (DCM) stated that the CRC mentioned that sea level rise was going to be a major issue needed for discussion. Overton wanted the Panel to be part of that conversation. Riggs commented that there was a large group of people working on a project with him showing the NC SLR data that dealt with 1- and 2-m elevation rises. Overton wanted to ensure that the expertise on the Panel was part of the discussion(s) with the CRC and DCM and that the Panel had an active role – even if the discussion was a 2-day event instead of a single-day meeting focused on one topic. Multiple comments were made and it was apparent that there was interest amongst the Panel on the topic of sea level rise. Underwood and Overton were going to have additional conversations about this issue (and potential meetings to focus on it). Rogers moved for adjournment but reminded the Panel that everybody needed to be at the next meeting so the issue could be resolved and sent on its way so the Panel could move on to new issues.

Birekemeier asked about the December 8<sup>th</sup> sediment criteria meeting. Was this a Science Panel meeting proper or was it a meeting on sediment criteria to which the Panel was invited. No real answer was put forth except that it was a good opportunity for the Panel to see how rules were being applied to real-world projects, especially rules that were based heavily on science and Science Panel input.

With no further discussion, the meeting was adjourned at 2:40.

## MEMORANDUM (Draft)

**To:** Coastal Resources Commission & Coastal Resources Advisory Council

**From:** John Thayer Jr., AICP, Manager,  
CAMA Local Planning & Access Programs

**Date:** November 4, 2008 (CRC Meeting of 11/19/08)

**Subject:** Clarification of 7B Land Use Plan (LUP) Amendment Requirements

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*At the September CRC meeting, DCM staff promised the Commission that we would bring forth example language to both clarify and strengthen the linkages between the plan amendment section (.0900) and the LUP review and certification section (.0800) of the land use plan guidelines. This suggestion provided in Attachment 'D', would keep the rule change simple. This memo will provide first a reminder of how the issue has come up, then a brief overview of inter-related rules associated with local public hearing noticing, and finally a brief discussion of the options and issue.*

This item is for discussion purposes; no formal recommendation is requested from the CRAC at this time.

**Background:** At the September CRC meeting, The Town of Carolina Beach's request for certification of a Land Use Plan Amendment was denied, by the CRC, due to the Town's failure to provide within its first local public hearing notice the disclosure statement that the public has the opportunity to provide written comment following the local adoption of the Land Use Plan amendment prior to the next scheduled CRAC/CRC meeting.

**Overview of Rules:** The land use plan guidelines outlined in SUBCHAPTER 7B has three (3) major subheadings: SECTION .0700 - CAMA LAND USE PLANNING REQUIREMENTS, SECTION .0800 - CAMA LAND USE PLAN REVIEW AND CERTIFICATION, SECTION .0900 - CAMA LAND USE PLAN AMENDMENTS.

As with the CAMA permit rules, though they are divided into separate major sub-sections, the rules do not function as stand-alone sections. They are invariably linked not just under a common subchapter heading but also by formal cross-reference citations as well as inferred relationships. The mere absence of a specific cross-reference does not preclude linkage. Both major and minor subsections must be considered in concert when determining whether a local plan or amendment has met the state's rules for content, processing, and or public notice requirements.

Attachment 'B' provides an overview of the linkage between the CAMA Act Section 113A, and the 7B SUBCHAPTER associated with hearing and disclosure requirements for LUPs and amendments.

If the current .0900 rules are considered read only- a complete standalone, then one could argue that technically there are no specific requirements for the public notice or hearings, only the requirement for the documentation be provided as to what occurred per .0901(a)(2). (See bottom of page #2, Attachment 'B')

**Discussion:** The plan amendment section .0900 must be used and linked with other sections of the LUP Guidelines. Attachment 'D' provides a simple example of how the linkage between the plan amendment section with the LUP review and certification section can be strengthened in section .0900. This example provides an approach that avoids having to extensively rewrite the section which what would be required if all the applicable text portions within .0800 were also incorporated into .0900. Note it not just hearing related but also review and presentation and CRC Certification procedures.

Having same text rules in different sections, would then also likely require having to make duplicative changes to both sections every time there was a rule amendment to .0800. The State Rules Review Commission does not support duplicative text in the state rules, where cross-referencing can accomplish the same purpose. Ideally only what is different is provided with detail.

Also suggested in Attachment 'D', is rule language that would require that a copy of the local notice be provided to DCM staff - thirty-five (35) days prior to the local public hearing. Current language calls for thirty (30) day lead time to get paperwork to DCM staff before the hearing - that corresponds to the state deadline for actually publishing the public notice in a newspaper per CAMA Act (113A-110) requirements. Adding five (5) days would ensure DCM staff has an opportunity to review the public notice prior to its publication.

At the September meeting staff also proposed to more formally develop a packet for communities to assist them with an outline of the requirements for amendments. Attachment 'A' provides two notice examples for Public Hearing notices. The first is the one that we've been providing to local communities this past year principally for LUPs. The second is another example that can be provided specific for amendments to the land use plan.

At the meeting we will also provide you with other support material examples that we have been or will be making available to communities including: check off list, amendment process timeline example, and a mock resolution for adoption.

## **ATTACHMENTS:**

- A: Public Notice Examples
- B: Linkage Between State Public Notice Rules
- C: 07B .0800 CAMA Land Use Plan Review Requirements
- D: Suggested Language for 07B .0900 CAMA Land Use Plan Amendments

## ATTACHMENT A

**Public Hearing Notice Example(s), Including Required CRC Disclosure Requirement Per .0801 and .0802(b)(3)****Notice of Public Hearing  
Update of the LOCAL GOVERNMENT CAMA Land Use Plan**

Notice is hereby given that the GOVERNING BODY of the LOCAL GOVERNMENT will conduct a public hearing on DATE AND TIME to review the update of the County/Town's Coastal Area Management Act (CAMA) Land Use Plan. The meeting will be held at LOCATION. All interested citizens are encouraged to attend.

Following the public hearing, the GOVERNING BODY will consider adoption of the Land Use Plan. Once adopted, the Plan will be submitted to the Coastal Resources Commission (CRC) for certification.

Following adoption, the public has the opportunity to submit written objections, comments, or statements of support to the DCM District Planner, Maureen Meehan Will, 400 Commerce Avenue, Morehead City, NC 28557 no less than 15 business days prior to the CRC meeting at which the land use plan is scheduled to be considered for certification. Written objections shall identify the specific plan elements that are opposed and shall be limited to the criteria for CRC certification as defined in 15A NCAC 07B.0802 (c)(3). Further information can be obtained by contacting the District Planner at 252-808-2808.

Copies of the Land Use Plan Update are available for review by the public at the LOCATION during normal office hours (and if any other places). The public is encouraged to review the document and to attend the public hearing. For additional information, please contact LOCAL CONTACT AND NUMBER

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**Publication Dates:**

**Notice of Public Hearing**  
**Amendment of the LOCAL GOVERNMENT CAMA Land Use Plan**

Notice is hereby given that the GOVERNING BODY of the LOCAL GOVERNMENT will conduct a public hearing on DATE AND TIME to review amendments to the County/Town's Coastal Area Management Act (CAMA) Land Use Plan. The meeting will be held at LOCATION. All interested citizens are encouraged to attend.

Following the public hearing, the GOVERNING BODY will consider adoption of the amendments to the Land Use Plan. Once adopted, the amendments will be submitted to the Coastal Resources Commission (CRC) for certification.

***Amendments to the plan include:***

(This area will include a description of the changes to the plan OR the exact policy changes that are proposed, whichever is most appropriate for the amendment. A description of any map amendments must be outlined and include both the characteristics of the old map classification and the characteristics of the proposed classification. Subject properties need to be identified by a street address and/or legal description. A graphic depiction of the subject property including major roads can be substituted for a legal description.)

Following adoption, the public has the opportunity to submit written objections, comments or statements of support to the DCM District Planner, Maureen Meehan Will, 400 Commerce Avenue, Morehead City, NC 28557 no less than 15 business days prior to the CRC meeting at which the land use plan amendment is scheduled to be considered for certification. Written objections shall identify the specific plan elements that are opposed and shall be limited to the criteria for CRC certification as defined in 15A NCAC 07B.0802 (c)(3). Further information can be obtained by contacting the District Planner at 252-808-2808.

Copies of the Land Use Plan Amendment(s) are available for review by the public at the LOCATION during normal office hours (and if any other places). The public is encouraged to review the changes and to attend the public hearing. For additional information, please contact LOCAL CONTACT AND NUMBER

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***Publication Dates:***

## ATTACHMENT B

**Linkages Between CAMA Related Public Notice Rules**

Regarding public notice for CAMA Land Use Plans and plan amendments, State rules must be used in conjunction with each other. The CAMA Act per G.S.113A-110 (e) below requires a notice of a local public hearing not less than 30 days before the local hearing:

**§ 113A-110. Land-use plans.**

- (e) Prior to adoption or subsequent amendment of any land-use plan, the body charged with its preparation and adoption (whether the county or the Commission or a unit delegated such responsibility) shall hold a public hearing at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county courthouse during designated hours. Any such notice shall be published at least once in a newspaper of general circulation in the county.

Further the CRC has adopted '**15A NCAC 07B.0801 (a), PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS**', that states:

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

As cited 07B .0801(a) above there is a cross reference to the subsection below regarding the public disclosure requirements:

**15A NCAC 07B.0802(b)(3) PRESENTATION TO COASTAL RESOURCES COMMISSION FOR CERTIFICATION.**

- (3) The public shall have an opportunity to submit written objections, comments, or statements of support prior to action by the committee designated by the CRC. Written objections shall be received by DCM no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting and shall be limited to the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule. Written objections shall identify the specific plan elements that are opposed. A copy of any objections shall be sent by the DCM to the local government submitting the CAMA Land Use Plan.

*(See Attachment 'C' for a complete copy of section .0800.)*

Please note that the previous section in .0802 was added to the rules effective September 1, 2006, specifically to address the CAMA Act requirement found in **G.S. 113A-110** as follows:

- (f) No land-use plan shall become finally effective until it has been approved by the Commission. The county or other unit adopting the plan shall transmit it, when adopted, to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land-use plan in light of such objections and comments, the State guidelines, the requirements of this Article, and any generally applicable standards of review adopted by rule of the Commission. Within 45 days after receipt of a county land-use plan the Commission shall either approve the plan or notify the county of the specific changes which must be made in order for it to be approved. Following such changes, the plan may be resubmitted in the same manner as the original plan.

**‘Section .0901(a)(2)’**, requires documentation of the hearing notice and action be provided to DCM both 30 days prior to the local hearing and 30 days prior to the CRC meeting, as follows:

- (2) The local government proposing an amendment to its CAMA Land Use Plan shall provide to the Executive Secretary of the CRC or her/his designee written notice of the public hearing, a copy of the proposed amendment (including text and maps as applicable), and the reasons for the amendment no less than 30 days prior to the public hearing. After the public hearing, the local government shall provide the Executive Secretary or her/his designee with a copy of the locally adopted amendment no earlier than 45 days and no later than 30 days prior to the next CRC meeting for CRC certification. If the local government fails to submit the requested documents as specified above to the Executive Secretary within the specified timeframe, the local government shall be able to resubmit the documents within the specified timeframe for consideration at the following CRC meeting.

## ATTACHMENT C

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

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

- (a) Public Hearing Requirements. The local government shall provide documentation to DCM that it has followed the process required in G.S. 113A-110; and such notice shall include per .0802(b)(3), the disclosure of the public opportunity to provide written comment following local adoption of the Land Use Plan.
- (b) Final Plan Content. The final decision on local policies and all contents of the CAMA Land Use Plan consistent with the CAMA land use planning rules shall be made by the elected body of each participating local government.
- (c) Transmittal to the CRC. The local government shall provide the Executive Secretary of the CRC with as many copies of the locally adopted land use plan as the Executive Secretary requests, and a certified statement of the local government adoption action no earlier than 45 days and no later than 30 days prior to the next CRC meeting. If the local government fails to submit the requested copies of the locally adopted land use plan and certified statement to the Executive Secretary within the specified timeframe, the local government may resubmit documents within the specified timeframe for consideration at the following CRC meeting.

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

**15A NCAC 07B .0802 PRESENTATION TO COASTAL RESOURCES COMMISSION FOR CERTIFICATION**

- (a) Re-Certification: If the CRC adopts new CAMA Land Use Plan rules, plans shall be updated within six years of the effective date of the new rules. If a scoping process is held, a summary shall be provided to the CRC along with the request for re-certification of the existing CAMA Land Use Plan.
- (b) Committee Designated by CRC to Review Local Land Use Plans:
  - (1) The appropriate DCM District Planner shall submit a written report to the committee designated by the CRC as to the type of plan being presented, highlight any unique characteristics of the plan, identify any land use conflicts with adjacent planning jurisdictions or other state/federal agencies, identify any inaccuracy or inconsistency of items in the plan, and recommend certification, conditional certification, or non-certification.
  - (2) The local government shall submit its draft Land Use Plan to the committee designated by the CRC.
  - (3) The public shall have an opportunity to submit written objections, comments, or statements of support prior to action by the committee designated by the CRC. Written objections shall be received by DCM no less than 15 business days prior to the next scheduled CAMA Land Use Plan review meeting and shall be limited to the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule. Written objections shall identify the specific plan elements that are opposed. A copy of any objections shall be sent by the DCM to the local government submitting the CAMA Land Use Plan.
  - (4) The local government may withdraw the submitted CAMA Land Use Plan from CRC consideration at any time before review.
- (c) CRC Certification:
  - (1) The CRC shall certify the CAMA Land Use Plan following the procedures and conditions specified in this Rule.
  - (2) Provided the locally adopted land use plan has been received by the Executive Secretary no earlier than 45 days and no later than 30 days prior to the next CRC meeting, the CRC shall certify, conditionally certify or not certify the plan at that meeting or mutually agreed upon date. If the CRC fails to take action as specified above the plan shall be certified.
  - (3) The CRC shall certify plans which:
    - (A) are consistent with the current federally approved North Carolina Coastal Management Program;
    - (B) are consistent with the Rules of the CRC;
    - (C) do not violate state or federal law;



- (D) contain policies that address each Management Topic. If a local government cannot meet any CAMA Land Use Plan requirement contained within Paragraphs (d) and (e) of 15A NCAC 07B .0702 the plan shall include a description of the analysis that was undertaken, explain the reason(s) the requirement could not be met, and the local government's alternative plan of action to address the CAMA Land Use Plan requirements. If such description(s) are not included in the plan, it shall not be certified; and
  - (E) contain a local resolution of adoption that includes findings which demonstrate that policy statements and the Future Land Use Plan Map (FLUP) have been evaluated, and determine that no internal inconsistencies exist.
- (d) Non- Certification: If the plan is not certified the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. Until the plan is certified, the pre-existing certified CAMA Land Use Plan shall remain in effect.
  - (e) Conditional Certification: If the plan is conditionally certified, the CRC shall within 30 days provide the local government with condition(s) that shall be met for certification. Until the condition(s) is met on a conditionally certified plan, the pre-existing certified CAMA Land Use Plan shall remain in effect. When the local government complies with all conditions for a conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC.

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

## ATTACHMENT D

## Proposed Language Change For LUP Amendments

(11/05/08 version)

**15A NCAC 07B .0901 CAMA LAND USE PLAN AMENDMENTS***(a) Normal Amendment Process:*

(1) *The CAMA Land Use Plan may be amended and only the amended portions submitted for CRC certification. If the local government amends half or more of the policies of the CAMA Land Use Plan, a new locally adopted plan shall be submitted to the CRC.*

**(A) Local public hearing and notice requirements shall be in the same manner as provided in 15A NCAC 07B.0801(a).**

**(B) Except for Land Use Plans that were certified prior to August 1, 2002, amendments and changes to the local Land Use Plan shall be consistent with other required elements for the local land use plan per the requirements of 07B .0702.**

(2) *The local government proposing an amendment to its CAMA Land Use Plan shall provide to the Executive Secretary of the CRC or her/his designee written notice of the public hearing, a copy of the proposed amendment (including text and maps as applicable), and the reasons for the amendment no less than ~~30~~5 days prior to the public hearing. After the public hearing, the local government shall provide the Executive Secretary or her/his designee with a copy of the locally adopted amendment no earlier than 45 days and no later than 30 days prior to the next CRC meeting for CRC certification. If the local government fails to submit the requested documents as specified above and the resolution provided in subsection (5) below, to the Executive Secretary within the specified timeframe, the local government shall be able to resubmit the documents within the specified timeframe for consideration at the following CRC meeting.*

(3) *For joint plans, originally adopted by each participating jurisdiction, each government shall retain its sole and independent authority to make amendments to the plan as it affects their jurisdiction.*

(4) *CRC review and action on CAMA Land Use Plan amendments shall be in the same manner as provided in 15A NCAC 07B .0802 (b), (c), (d) and (e), except amendments to Land Use Plans which were certified prior to August 1, 2002 are exempt from subsection .0802(c)(3)(D)*

(5) *The local resolution of adoption shall include findings which demonstrate that amendments to policy statements or to the Future Land Use Plan Map (FLUP) have been evaluated for their consistency with other existing policies.*

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

(1) *A local government that desires to have the Executive Secretary instead of the CRC certify a CAMA Land Use Plan amendment shall first meet the requirements in Subparagraphs (a)(1) through ~~(3)~~(5) of this Rule and the following criteria defined in Parts (b)(1)(A) through (D) of this Rule. The local government may then request the Executive Secretary to certify the amendment. The Executive Secretary shall make a determination that all criteria have been met, and mail*

- notification to the local government and CRC members, no later than two weeks after receipt of the request for certification. The CRC's delegation to the Executive Secretary of the authority to certify proposed amendments is limited to amendments that meet the following criteria:
- (A) Minor changes in policy statements or objectives for the purpose of clarification of intent; or
  - (B) Modification of any map that does not impose new land use categories in areas least suitable for development as shown on the Land Suitability Map; or
  - (C) New data compilations and associated statistical adjustments that do not suggest policy revisions; or
  - (D) More detailed identification of existing land uses or additional maps of existing or natural conditions that do not affect any policies in the CAMA Land Use Plan.
- (2) If the Executive Secretary certifies the amendment, the amendment shall become final upon certification of the Executive Secretary, and is not subject to further CRC review described in 15A NCAC 07B .0802 (Presentation to CRC for Certification).
  - (3) If the Executive Secretary denies certification of the amendment, the local government shall submit its amendment for review by the CRC in accordance with the regular plan certification process in 15A NCAC 07B .0802 (Presentation to CRC for Certification).
- (c) Any amendments to the text or maps of the CAMA Land Use Plan shall be incorporated in context in all available copies of the plan and shall be dated to indicate the dates of local adoption and CRC certification. The amended ~~P~~ CAMA Land Use Plan shall be maintained as required by G.S. 113A-110(g).
  - (d) Within 90 days after certification of a CAMA Land Use Plan amendment, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common border, and to the regional planning entity.
  - (e) A local government that receives Sustainable Community funding from the Department pursuant to 15A NCAC 07L shall formulate and submit to the CRC for certification a CAMA Land Use Plan Addendum during its first year as a Sustainable Community, and if new planning rules have been adopted by the CRC, shall update the CAMA Land Use Plan within six years of adoption of these new planning rules.

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



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

November 4, 2008

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Ed Brooks, Minor Permit Program Coordinator

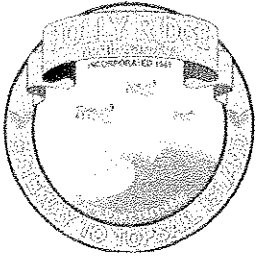
**SUBJECT:** Implementation and Enforcement Plan for the Town of Holly Ridge

The Town of Holly Ridge has expressed interest in assuming the responsibilities for the administration of the CAMA Minor Development Permit Program within their jurisdictional boundaries. Permit processing and enforcement for CAMA Minor Permits is currently provided by Onslow County. Pursuant to 15A NCAC 7I .0503, the Town of Holly Ridge submitted to the Commission at their July 2008 meeting, a Letter of Intent to adopt an Implementation and Enforcement Plan to administer their own CAMA Minor Development Permit Program.

The Town Council of Holly Ridge met on September 9, 2008 and approved and adopted the Town of Holly Ridge Implementation and Enforcement Plan to act as the local permit-letting authority for activities related to minor development within Areas of Environmental Concern. The Town has reviewed the proposed I & E Plan for consistency with their Zoning and Subdivision ordinances. Copies of the Implementation and Enforcement Plan and the minutes transcribed from the public hearing are attached.

Following a review of the submitted materials, staff believes that the submitted Implementation and Enforcement Plan complies with the guidelines and requirements of GS 113A-117 and 15A NCAC 7I .0500 – 7I .0700 and recommends acceptance of the Town of Holly Ridge Implementation and Enforcement Plan and the delegation of authority to the Town of Holly Ridge to administer the CAMA Minor Development Permit Program for activities related to minor development in Areas of Environmental Concern within their jurisdictional boundaries. As required by 15A NCAC 7I .0511, the Town of Holly Ridge has indicated their commitment to adopt the approved Implementation and Enforcement Plan into ordinance within three months of acceptance by the Commission.

127 Cardinal Drive Extension, Wilmington, North Carolina 28405-3845  
Phone: 910-796-7215\Fax: 910-395-3964 \ nccoastalmanagement.net



# Town Of Holly Ridge

PO Box 145 \* Holly Ridge, NC 28445 \* Phone (910) 329-7081 \* Fax (910) 329-1593  
Email: [hollyridge1@charter.net](mailto:hollyridge1@charter.net)

July 10, 2008

Coastal Resources Commission  
C/O James H. Gregson, Executive Secretary  
Director - Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

Dear Mr. Gregson:

The Town of Holly Ridge respectfully submits this Letter of Intent to prepare and adopt a local implementation and enforcement plan to allow the Town of Holly Ridge to act as the permit-letting agency to administer a permit program for minor development in areas of environmental concern within the corporate limits and ETJ of Holly Ridge, pursuant to G.S. 113A-121.

We understand that the local implementation and enforcement plan must include the content elements and be consistent with the criteria outlined in 15A NCAC 071.0500. Also, that the Town of Holly Ridge must compile and maintain a complete record of public hearings held for comment on the proposed implementation and enforcement plan, prior to submitting the plan for approval to the Coastal Resources Commission. We anticipate holding this public hearing at the September 9, 2008 meeting of our Town Council. Hopefully, the records of the hearings and comments, along with the proposed implementation and enforcement plan and accompanying ordinances will be presented to the Commission for review and approval at the September 2008 CRC meeting.

Should you require any additional information or documentation in the meantime, please do not hesitate to contact our office.

Sincerely,

Anthony D. Fann,  
Town Manager

cc: Ed Brooks, Minor Permit Program Coordinator

TOWN OF HOLLY RIDGE  
IMPLEMENTATION  
AND  
ENFORCEMENT PLAN

A LOCAL MANAGEMENT PROGRAM FOR THE  
IMPLEMENTATION AND ENFORCEMENT OF MINOR  
DEVELOPMENT PERMITS IN AREAS OF ENVIRONMENTAL  
CONCERN AND THE POLICIES AND REQUIREMENTS OF THE  
ADOPTED TOWN OF HOLLY RIDGE LAND USE PLAN

September 9, 2008

**ARTICLE I: GENERAL PROVISIONS**

SECTION 1. STATUTORY AUTHORIZATIONS

Pursuant to North Carolina Legislature G.S. 113A-117-124, the Coastal Area Management Act (CAMA) authorizes a city, county or joint city/county to adopt an Implementation and Enforcement Program to act as the local permit-letting authority for activities related to minor development within areas of environmental concern. This Implementation and Enforcement Plan is hereby adopted as of September 9, 2008, by the Holly Ridge Town Council for the Town of Holly Ridge, North Carolina.

SECTION 2. PURPOSES

(A) Intent:

The purposes of the Implementation and Enforcement Plan are to establish:

1. Procedures to be followed in issuing minor development permits in Areas of Environmental Concern (AEC) within the Holly Ridge jurisdictional limits, including methods of coordinating with other local permits.
2. Scope and coverage of the program including the geographic extent of jurisdiction of the local management program.

3. Responsibilities and capabilities of permit-letting agencies; including a description of the criteria to be used in choosing the Local Permit Officer.
4. Methods of identifying and taking into account projects and impacts of regional, state, and national concern where applicable.
5. Procedures to insure that the program is consistent with the adopted Land Use Plan for the entire jurisdiction.
6. Relates other governmental action in regards to the adopted Land Use Plan and provides procedures for assuring consistency of action.

### SECTION 3. GEOGRAPHIC EXTENT OF JURISDICTION

(A) Holly Ridge Jurisdiction:

The issuance of Minor Development Permits as required by the CAMA shall be administered and enforced in those AECs (or parts of those AECs), which are located within the Holly Ridge jurisdictional limits.

### SECTION 4. DEFINITIONS:

- (A) Town: means the Town of Holly Ridge.
- (B) Development: "Development means 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 alternation 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."
- (C) Major Development: Major development means any development, which requires permissions, licensing, approval, certification, or authority in any form from the N. C. Environmental Management Commission, the N. C. Departments of Human Resources, the N. C. Department of Environment and Natural Resources, the N. C. Department of Administration, the N. C. Mining Commission, the N. C. Pesticides Board, the N. C. Sedimentation Control Commission, or any Federal agency or authority; or development which occupies a land or water area in excess of 20 acres; includes a structure or structures in excess of a ground area of 60,000 square feet on a single parcel; or which contemplates drilling for or excavating natural resources on land or under water.
- (D) Minor Development: means any development other than a major development.
- (E) Adopted Land Use Plan: refers to the Holly Ridge Land Use Plan prepared and adopted by the Holly Ridge Town Council and approved by the Coastal Resources Commission (CRC) pursuant to Part 2 of the Coastal Area Management Act.
- (F) Local Permit Officer: refers to the locally designated official(s) who will administer and enforce the Minor Development Permit Program in Areas of Environmental Concern and the policy requirements of the Land Use Plan over the entire planning area of the Town of Holly Ridge.

- (G) Coastal Area Management Act (CAMA): The law that relates to the management program for orderly growth in the coastal area of North Carolina as adopted by the General Assembly in 1974.
- (H) Coastal Resources Commission (CRC): The Coastal Area Management Act established the Coastal Resource Commission within the Department of Environment and Natural Resources.
- (I) Areas of Environmental Concern (AECs): refer to areas designated by the CRC, in which development shall require a minor or major development permit.
- (J) Implementation and Enforcement Plan: refers to the Local Management Program for the implementation and enforcement of Minor Permit requirements within Areas of Environmental Concern and the policies of the adopted Land Use Plan, within the Town of Holly Ridge.

## **ARTICLE II: ADMINISTRATION**

### SECTION 1. DESIGNATED LOCAL PERMIT OFFICER

- (A) Creation of Position:  
The Town of Holly Ridge shall designate one or more employee(s) to hold the position of Local Permit Officer.
- (B) Qualifications:  
Any designated Local Permit Officer shall be required to complete an initial training course from the Division of Coastal Management (DCM), within twelve months of appointment. The Local Permit Officer(s) shall attend all regional work sessions held by DCM to inform and coordinate the activities of the Local Permit Officers in each region. In addition, the Local Permit Officer shall be knowledgeable of other local, state or federal permit or regulatory requirements.
- (C) Appointments:  
The Town of Holly Ridge shall notify the Commission of the names of all designated Local Permit Officers. In order to continue to process permits in a timely fashion and to avoid the issuance of passive grants, the Town of Holly Ridge shall immediately notify the Division of Coastal Management (DCM) and the Coastal Resources Commission in writing when the Local Permit Officer resigns or is for any reason unable to perform his or her duties. This notice shall indicate the method or methods by which the locality will continue to process permits in a thorough and timely fashion. Such methods can include, but are not limited to, the following:
  1. The appointment of a temporary Local Permit Officer (LPO) until such time as a permanent replacement is selected.
  2. The appointment of one or more LPO(s).
  3. Evidence that an agreement exists between the locality and another appropriate agency for the assumption of the permit program.
  4. A formal request that the Secretary/DCM assume the permit function for the locality.



## SECTION 2. DUTIES OF THE LOCAL PERMIT OFFICER

### (A) General Enforcement:

The Local Permit Officer shall administer and enforce in duly designated AECs; the Minor Development Permit process as herein established, as well as all applicable local ordinances, and all other guidelines and standards established by the Coastal Resources Commission (CRC) and the Town of Holly Ridge pursuant to the Coastal Area Management Act (CAMA). In addition the Local Permit Officer shall:

1. Be familiar with existing state and federal permits required in this jurisdiction so as to provide aid to potential developers in determining when a major development permit rather than minor development permit is required, and to aid the developers in applying to the CRC when a major development permit is required, and in general, aid applicants in regard to other state or federal permit requirements.
2. Assist in identifying and assessing projects of greater than local concern and bring them to the attention of the CRC. (Such projects of regional, state or national concern are almost certain to require some other state permit, and, therefore, require a major development permit from the Commission. Therefore, they will usually be brought to the attention of the Commission through the major development permit application.
3. Be responsible for implementing any procedures agreed on by the Holly Ridge Town Council to which this Plan applies for the purpose of coordinating the CAMA Minor Development Permits with other locally required permits. Such locally required permits include, but are not limited to, plumbing permits, electrical permits, building permits, septic tank permits, flood plain or sand dune permits, and certifications of compliance with zoning and subdivision regulations.
4. Be responsible for implementing any enforcement procedures, actions or standards that the Holly Ridge Town Council may wish to enforce in regards to the adopted Land Use Plan or revision thereof.
5. Assist in coordinating permit-letting activities with other local jurisdictions as necessary.

### (B) Records:

The Local Permit Officer shall maintain a log of all permit applications and their dispositions. This log shall be available, upon request, to the Holly Ridge Town Council for the Town of Holly Ridge, to the CRC and to the Secretary of the North Carolina Department of Environment and Natural Resources (NCDENR). Correct and comprehensive records of all transactions related to minor development permit requests (applications, grants, denials, other dispositions) shall be maintained by the Local Permit Officer, and such records shall be kept so long as any part of the structure or entity to which it relates remains in existence; or, in the case of denials or other instances, for a period of ten (10) years. Within five (5) days from the date of receipt and acceptance of any application and/or permit decision, the Local Permit Officer must mail and/or submit copies of same to their DistrictField Representative/District office of the Division of Coastal Management.

(C) Location:

The Local Permit Officer shall be located in the Holly Ridge Town Hall, located at 212 North Dyson Street, Holly Ridge, NC 28445, and can be reached at 910-329-7081. The mailing address is:

Local Permit Officer

P., O. Box 145

Holly Ridge, NC 28445

The Commission shall be notified immediately of any change in the location of the Local Permit Officer.

## **ARTICLE III: MINOR DEVELOPMENT PERMITS**

### SECTION 1. MINOR DEVELOPMENT PERMIT REQUIRED

(A) Designation of AECs Requiring Minor Development Permit:

The following permit-letting requirements and information in regards to AECs shall be available for review and inspection in the Town of Holly Ridge Planning, Zoning and Inspections Department:

1. Description of all AECs within the Town of Holly Ridge Planning and Zoning Jurisdiction that is sufficiently clear to provide notice to all property owners within those AECs that a permit must be secured before any development may proceed on that property.
2. A copy of the standards for development adopted by the Coastal Resources Commission for each type of AEC found in the jurisdiction and the statutory grounds on which a permit application may be denied or conditioned.
3. The statutory definition of development, as provided in the Coastal Area Management Act [G.S. 113A-103(5a)].
4. A copy of the approved permit application form for both major and minor development in AECs.
5. The name and officer address of the Local Permit Officer.
6. A copy of this plan.

### SECTION 2. MINOR PERMIT PROCESS

(A) Application:

An Application for a permit for minor development shall consist of a completed application using the applicable form adopted and approved by DCM and a check or money order, payable to the Town of Holly Ridge in the amount of \$100.00, or as amended in 15A NCAC 07J .0204(b)(6)(B). Monies so collected shall only be used in the administration of the permit program, specifically including the cost of required public notices and hearing.

(B) Application Review Period:

Disposition of the application by the Local Permit Officer shall take place within 25 days of receipt of a complete application, unless the Local Permit Officer gives written notice by registered mail of an additional 25 day extension as necessary for proper evaluation of the application.

(C) General Procedure for Processing an Application:

The Local Permit Officer shall return incomplete, insufficient, or unauthorized applications within a reasonable time. The 25-day period for consideration of the application shall begin to run upon receipt of a complete application. The time period will continue to run in the case of an incomplete or insufficient application until the Local Permit Officer returns it, with reasons for the rejection in writing, to the applicant for correction of the deficiencies. The time period will begin to run again when a correct application is returned to the Local Permit Officer. Any application received requesting a permit for an activity that constitutes major development shall be returned by the Local Permit Officer with appropriate instructions for submitting the Major Permit application to the DCM. The Local Permit Officer shall determine from the application what other permits are required for the development. The Local Permit Officer shall inform the applicant of these other permit requirements and aid him/her in properly applying for such permits. The Local Permit Officer shall ordinarily make final decisions concerning the Minor Development Permit only after he/she has determined that any other required local permits will be issued, the application is consistent with the applicable criteria set forth in G.S. 113A-120, the standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the CRC. When an evaluation results in none of the above findings, an unconditional approval shall be granted by the Local Permit Officer. Otherwise, the Local Permit Officer shall deny or conditionally approve a properly completed minor development permit application.

(B) Proper Procedural Requirements for Disposition:

The procedures and requirements of processing applications shall be conducted in a manner consistent with the expeditious and reasonable evaluation, as well as rational disposition of Minor Development Permits, as set forth and required by the Coastal Area Management Act. The following general procedures shall be followed in reference to application disposition:

1. Unconditioned Approval:

A Minor Development Permit shall be granted only if consideration of the applications results in no inappropriate findings, as set forth in Article III, Section 2 (C) above.

2. Denial:

Where the Local Permit Officer denies a Minor Development Permit or an application is returned to the applicant for reasons as set forth in Article III, Section 2 (C) above, statutory grounds upon which the denial is based or the reasons the Local Permit Officer returns an application shall be set forth in writing.

3. Conditional Approval:

The approval of a Minor Development Permit may be conditioned upon the applicant's amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the findings enumerated in Article III, Section 2 (C) above. Conditional approval shall be granted upon the acceptance by the applicant of certain reasonable conditions as set out by the

Local Permit Officer for public interest protection with respect to appropriate findings listed in G.S.113A-120. The applicant must sign the conditioned grant of approval as an acceptance of the permit conditions before the permit shall become effective. Statutory grounds upon which a conditional approval is granted shall be set out in writing.

4. Passive Approval:

Failure to approve, conditionally approve or deny a properly completed and filed application, or for the Local Permit Officer to not give notice of an extension beyond the initial 25 day disposition period shall result in passive approval. A passive approval shall have the full force and effect of an unconditioned approval.

(C) Property Owner Requirements:

The property owner shall display a properly granted Minor Development Permit in full view on the site of the development. This requirement shall apply to every permit no matter how it is granted. It is therefore necessary that the property owner acquire a permit received by passive approval for the purposes of posting on the site before proceeding with the development.

(D) Record Keeping Requirements:

Permit applications shall be numbered serially using a five-digit numbering system. The first two digits will indicate the year in which the application is made, and the last three digits will run serially in the order in which the applications are received. These numbers shall include the letter prefix HR to designate the Town of Holly Ridge. (For example, the first permit applications will be in 2007, and will be numbered HR-07-001, HR-07-002, and so on.) Along with the applications, the Local Permit Officer shall maintain a record of all evidence and all matters relevant to each Minor Development Application. Such relevant information shall include, but not be limited to applications, correspondence, public notices, responses to public notices, and a copy of the final disposition. In cases involving denial or conditional approval, the Local Permit Officer shall send a copy of a conditional approval or denial disposition record to the applicant, either in person or by registered mail. One copy shall be maintained by the Local Permit Officer.

## **ARTICLE IV: APPEALS, INJUNCTIVE RELIEF AND PENALTIES**

### SECTION 1. APPEALS

(A) Appeal to the Coastal Resources Commission (CRC):

Any person directly affected by the local decision of the Local Permit Officer including the Secretary of the NC Department of Environment and Natural Resources, may within twenty (20) days of the Local Permit Officer's disposition, request an appeal hearing by filing a Petition for a Contested Case Hearing with the Office of Administrative Hearings. The hearing shall be a quasi-judicial hearing conducted by an administrative law judge in accordance with the requirements of the Coastal Area Management Act (CAMA), 15A NCAC 07J .0302 and any other state laws applicable to such procedures. Final decision in

the contested case will be made by the CRC based on evidence presented in the hearing.

(B) Appeal to Superior Court:

Any person directly affected by any final decision or order of the Coastal Resources Commission may appeal to Superior Court.

(C) Appeal Pending:

No action for which a Minor Development Permit is required shall be taken while appeal of the Local Permit Officer's disposition of that permit request is pending.

SECTION 2. INJUNCTIVE RELIEF AND PENALTIES

(A) Injunctive relief:

Upon violation of the provisions adopted by the Town of Holly Ridge pursuant to the CAMA relating to the issuance of Minor Development Permits, the Local Permit Officer may, either before or after the institution of proceedings for the collection of any penalty imposed by the CAMA for such violation, institute a civil action in the General Court of Justice in the name of the Town upon the relation of the Local Permit Officer for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by the CAMA for any violation of same.

(B) Penalties:

Upon violation of any of the provisions of CAMA relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of CAMA relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by G.S. 113A-126 and 15A NCAC 07J .0409 for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with CAMA and the rules of the CRC. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with CAMA and rules of the CRC. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by G.S. 113A-126 and 15A NCAC 07J .0409 for any violation of same.

Any person who shall be adjudged to have knowingly or willfully violated any provision of CAMA, or any rule or order adopted pursuant to CAMA, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local

government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the civil penalties as prescribed by G.S. 113A-126 and 15A NCAC 07J .0409.

(C) Notice:

The Local Permit Officer shall notify the Secretary of any civil action undertaken by or against such officer under the CAMA

## **ARTICLE V: AMENDMENTS OF THE IMPLEMENTATION AND ENFORCEMENT PLAN AND COMPLAINT PROCEDURE**

### SECTION 1. AMENDMENT TO THE IMPLEMENTATION AND ENFORCEMENT PROGRAM

(A) Notice of Public Hearing:

Amendments to this Implementation and Enforcement Plan shall be in accordance with the notice and public hearing requirements set forth in the Coastal Area Management Act and the Coastal Resources Commission's "Criteria for Local Implementation and Enforcement Plans" pertaining to the adoption of the original plan. In addition the following shall be required:

1. Prior to this Plan being amended, a public hearing shall be held by the Town Council for the Town of Holly Ridge concerning the proposed amendment. It shall be open to comment from any interested persons, agencies, or groups.
2. Notice of such public hearing shall go out at least fifteen (15) days prior to the date of the hearing; shall state the time, place and subject matter of the hearing and shall indicate the nature of the proposed action; shall state that copies of the proposed amendment are available for public inspection at the Holly Ridge Town Hall, 212 North Dyson Street, Holly Ridge, NC 28445; and shall appear at least once no less than fifteen (15) days prior to the hearing in at least one newspaper of general circulation in the affected area.
3. A complete record of the public hearing and comments shall be compiled and maintained. The record of the public hearing, written comment, and any documentation filed with the Local Permit Officer as to the proposed amendment must:
  - a) Consist of a written account from the minutes or transcribed from an electronic recording, and all written documents.
  - b) Remain open for fifteen (15) days after the hearing.
  - c) Be available to the Commission upon request.

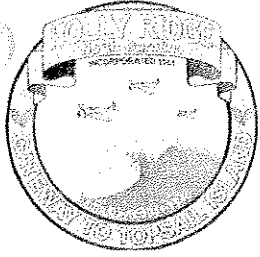
(B) Procedure to Amend:

Requests for amendment of this plan shall be referred to the Planning Board. If the amendment is recommended by the majority of the Planning Board, that recommendation shall then be conveyed to the Holly Ridge Town Council for final approval.

- (C) Request to Waive Formal Amendment Requirements:  
Whenever a proposed amendment is deemed by the Planning Board and Holly Ridge Town Council to be of little interest to the public, a petition may be sent to the Coastal Resources Commission for a waiver of the formal hearing and notice requirements. Such a petition shall include the proposed amendment and state why the Planning Board and Holly Ridge Town Council concluded that the rights or convenience of the public is not substantially affected by it.
- (D) Commission Approval:  
Upon local acceptance of any amendment requiring notice and hearing, the amendment shall be submitted to the Commission for approval. Upon Coastal Resources Commission's approval, the amendment shall be adopted as part of the ordinance(s) implementing this plan.

SECTION 2. PROCEDURES FOR RESPONDING TO COMPLAINT THAT THIS PLAN IS NOT PROPERLY ENFORCED AND ADMINISTERED

- (A) Citizen Complaints:  
Upon receiving complaints from local citizens that the Implementation and Enforcement Plan is not being properly administered and enforced, the Holly Ridge Town Council will investigate the situation and respond to the alleged deficiencies. If the person making the complaint is not satisfied, then he/she will be advised that he/she may take their complaint either in writing or in person to the CRC.
- (B) Response to the CRC:  
Upon notification from the CRC concerning deficiencies in administration and enforcement of the plan, the Holly Ridge Town Council will investigate the alleged problem and prepare a response for the CRC. If the allegation of deficiencies is found to be valid, the Holly Ridge Town Council will, within thirty (30) days of the original notifications from the CRC, inform the CRC of its willingness and ability to correct the deficiency and prevent similar problems in the future. If the Holly Ridge Town Council finds the CRC's allegation of deficiencies invalid, they will so inform the CRC. If the CRC disagrees with that finding, the Holly Ridge Town Council may request a hearing before the CRC or in some other manner attempt to reach a mutually acceptable agreement with the CRC within a ninety (90) day period after receipt of the CRC's original notification of the 90 day period, then the authority to issue permits for minor development pursuant to this plan shall be automatically relinquished until such a time as the CRC is convinced that the Program will be properly enforced.



# Town Of Holly Ridge

PO Box 145 \* Holly Ridge, NC 28445 \* Phone (910) 329-7081 \* Fax (910) 329-1593  
Email: [hollyridge\\_1@charter.net](mailto:hollyridge_1@charter.net)

## **HOLLY RIDGE TOWN COUNCIL REGULAR MONTHLY MEETING AGENDA September 9, 2008**

**All Items Are For Discussion and Possible Action**

1. Call to Order
2. Invocation & Pledge of Allegiance
3. Adoption of Regular Minutes of August 12, 2008 Meeting
4. Adoption of Agenda
5.
  - A. Persons Wishing to Address the Council
  - B. Council Responses to Item 5.A if Applicable
6. Committee Reports
  - A. Parks & Recreation Committee – Anita Dingler
7. General Reports
  - A. ONWASA Update – Mayor Pro-Tem Hines
- 8.. Public Hearings
  - A. Rezoning Request by Teresa Evans for a Portion of Parcel #735-49 from R20 (Residential) to NB (Neighborhood Business) Located at 922 Highway 17 S
    1. Motion to Open Public Hearing
    2. Discussion/Public Comments
    3. Motion to Return to Regular Session

**Recommendation:** Action to approve a rezoning request by Teresa Evans for a portion of Parcel #735-49 from R20 (Residential) to NB (Neighborhood Business) Located at 922 Hwy 17 S.



**B. Variance Request from Dorothy and Ricky Royal for the Subdivision of Parcel #734-99.1 that Includes Subdividing the Existing Structure (Quasi-Judicial Hearing)**

1. Motion to Open Public Hearing
2. Discussion/Public Comments
3. Motion to Return to Regular Session

**Recommendation:** Action to approve a variance request from Dorothy and Ricky Royal for the subdivision of Parcel #734-99.1 including the existing structure based on the Planning Board's recommendation.

**C. Amendment of Article 12-1 – Health Protection and Disease Prevention Ordinance**

1. Motion to Open Public Hearing
2. Discussion/Public Comments
3. Motion to Return to Regular Session

**Recommendation:** Action to amend or not amend Article 12-1 Health Protection and Disease Prevention.

**D. Adoption of Implementation and Enforcement Plan for CAMA**

1. Motion to Open Public Hearing
2. Discussion/Public Comments
3. Motion to Return to Regular Session

**Recommendation:** Action to adopt the Implementation and Enforcement Plan for CAMA.

**9. Old Business**

**A. Adoption of a Resolution Requesting that a Local Bill be Introduced into the General Assembly of the State of North Carolina that will Authorize the Town of Holly Ridge to Enact an Ordinance Regulating the Operation of Golf Carts on Public Roads and Streets in the Town of Holly Ridge**

**Recommendation:** Action to continue or not continue with pursuing a Golf Cart Resolution for the Town of Holly Ridge.

10. **New Business**

A. **Adoption of a Resolution Declaring the Week of September 17-23, 2008 as Constitution Week in Holly Ridge**

**Recommendation:** Action to adopt a Resolution Declaring the week of September 17-23, 2008 as Constitution Week in Holly Ridge.

B. **Adoption of a Resolution to Approve an Amendment to the Articles of Incorporation of Onslow Water and Sewer Authority**

**Recommendation:** Action to adopt or not adopt a Resolution to Approve An Amendment to the Articles of Incorporation of Onslow County Water and Sewer Authority.

C. **Discussion of an Annual Pledge for the Jacksonville/Onslow Economic Development**

**Recommendation:** Action to approve a \$1,000 per year pledge for five Years to help support the Jacksonville/Onslow Economic Development.

11. **Closed Session**

12. **Police Department Comments**

13. **Town Manager Comments**

14. **Council Concerns**

15. **Announcements**

A. **Mayor's Meeting – September 24<sup>th</sup>, 2008 - Hosted by Surf City – 6:30 pm**

B. **Four Town Meeting – September 11<sup>th</sup>, 2008 – Hosted by Holly Ridge – 6:30 pm**

16. **Adjournment**

**Minutes**

**September 9, 2008**

**Page 5**

**Adoption of Implementation and Enforcement Plan for CAMA**

A motion was made by **Councilwoman Bragg** and seconded by **Councilman Summerlin** to open the public hearing on the Adoption of Implementation and Enforcement Plan for CAMA. **All agreed.**

Manager Fann said that the Implementation and Enforcement Plan will allow Holly Ridge to establish procedures to be followed when issuing minor development permits within the town limit. This plan has to go before a public hearing in order to be adopted and allow staff to attend the next CAMA meeting which will be held in Brunswick County. Manager Fann said that the adoption of the Implementation and Enforcement Plan for CAMA allows a town to act as the permit-letting agency to administer a permit program for minor development in areas of environmental concern within the corporate limits.

A motion was made by **Councilman Edwards** and seconded by **Councilman Wright** to close the public hearing. **All agreed.**

A motion was made by **Councilwoman Edwards** and seconded by **Councilman Wright** to adopt the Implementation and Enforcement Plan for CAMA. **All agreed.**

**Adoption of a Resolution Requesting that a Local Bill be Introduced into the General Assembly of the State of North Carolina that will Authorize the Town of Holly Ridge to Enact an Ordinance Regulating the Operation of Golf Carts on Public Roads and Streets in the Town of Holly Ridge**

Manager Fann said that several towns have gotten this resolution passed due to the increase in gas prices and the cost of living, it was suggested by one of our councilmembers to look into getting this resolution approved through the legislature. North Topsail Beach had their Golf Cart Bill ratified the 10<sup>th</sup> day of July, 2007, and the bill was introduced by Representative Grady who has stated that if the council approves the resolution, he will be glad to assist the town. Manager Fann said that there is a copy of a proposed ordinance in the packets. He said the council doesn't have to do anything with the ordinance now, but they will have it available to read over and make corrections, additions, and deletions. Councilman Wright asked about the wording in the ordinance that reads "the growth and population in and around the Town of Holly Ridge has caused an increase in motor vehicular traffic in the Town of Holly Ridge". He asked why would

168473  
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Page 1 of 2

**Affidavit of Publication  
Jacksonville Daily News  
Jacksonville, NC**

Personally appeared before me, a Notary Public of the County of Onslow, State of North Carolina, on this the 30th day of August, 2008

*Sharon S. Williams*

of The Daily News, who being duly sworn, states that the advertisement entitled **SEPTEMBER 9, 2008 PUBLIC HEARINGS** a true copy of which is printed herewith, appeared in The Daily News, a newspaper published in the City of Jacksonville, NC, County of Onslow, State of North Carolina, 1 day a week for 2 weeks on the following dates:

August 23, 2008  
August 30, 2008

NORTH CAROLINA  
ONSLow COUNTY

**NOTICE OF PUBLIC HEARING  
SEPTEMBER 9, 2008**

The public will take notice that the Holly Ridge Town Council will hold public hearings at the Holly Ridge Town Hall on Tuesday, September 9, 2008 beginning at approximately 7:30 pm. The purpose of the public hearings will be to hear public comments and possibly make a decision on the following items:

- 1) Solicit comments and views regarding a local implementation and enforcement plan to allow the Town of Holly Ridge to act as the permit-letting agency to administer a permit program for minor development in areas of environmental concern within the incorporated limits and ETJ of Holly Ridge, pursuant to the Coastal Area Management Act (CAMA) GS 113-121.
- 2) Rezoning request for a portion of Parcel 735-49 located at 922 Highway 17 S to be rezoned from R20 (Residential) to NB (Neighborhood Business)
- 3) Variance request for the subdivision of Parcel 734-99.1 located at 300 and 302 Camp Davis Road which will also include the subdivision of the existing structure. This will be a Quasi-Judicial hearing.
- 4) Amendment to Article 12-1 "Health Protection and Disease Prevention" ordinance to possibly amend Section 4 "Weeds"

Copies of the items listed are available for public inspection from 9 - 4 M-F at the Holly Ridge Town Hall. All interested persons are invited to attend and make oral or written comments.

Brenda Padgett, CMC  
Town of Holly Ridge

August 23, 30, 2008

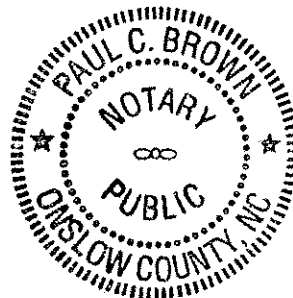
168473  
15235750  
Page 2 of 2

**Affidavit of Publication  
Jacksonville Daily News  
Jacksonville, NC**

Subscribed and sworn to this 30th day of August, 2008

x Paul C. Brown  
Notary Public

My Commission Expires:  
July 11, 2012





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

November 4, 2008

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Ed Brooks, Minor Permit Program Coordinator

**SUBJECT:** Amended Implementation and Enforcement Plan for the Town of Cape Carteret

The Town Cape Carteret of has resumed the responsibilities for the administration of the CAMA Minor Development Permit Program within their jurisdictional boundaries. The Town of Cape Carteret administered their own local Implementation and Enforcement Plan from 1978 through 1992, but withdrew from the program for administrative and personnel reasons. Permit processing and enforcement for CAMA Minor Permits was subsequently provided by Carteret County. In December of 2007, the Town of Cape Carteret contacted the Division requesting to resume the administration of the CAMA Minor Development Permit Program. The Town designated a Local Permit Officer, who received training from the Division and began issuing CAMA Minor Permits for the Town of Cape Carteret in January 2008. Also, the Division requested that the Town update their Implementation and Enforcement Plan at this time. Pursuant to 15A NCAC 7I .0602, the Town of Cape Carteret submitted to the Commission at their September 2008 meeting, a Letter of Intent to amend their Implementation and Enforcement Plan to administer their CAMA Minor Development Permit Program.

The Town of Cape Carteret Board of Commissioners met on April 21, 2008 and approved by resolution, the amended Town of Cape Carteret Implementation and Enforcement Plan to act as the local permit-letting authority for activities related to minor development within Areas of Environmental Concern. The Town has reviewed the amended I & E Plan for consistency with their Zoning and Subdivision ordinances. Copies of the Implementation and Enforcement Plan and the draft minutes transcribed from the public hearing are attached.

Following a review of the submitted materials, staff believes that the submitted amended Implementation and Enforcement Plan complies with the guidelines and requirements of GS 113A-117 and 15A NCAC 7I .0500 – 7I .0700 and recommends acceptance of the Town of Cape Carteret amendments to their Implementation and Enforcement Plan to administer the CAMA Minor Development Permit Program for activities related to minor development in Areas of Environmental Concern within their jurisdictional boundaries. As required by 15A NCAC 7I .0511, the Town of Cape Carteret has indicated their commitment to adopt the approved Implementation and Enforcement Plan into ordinance within three months of acceptance by the Commission.

127 Cardinal Drive Extension, Wilmington, North Carolina 28405-3845  
 Phone: 910-796-7215\Fax: 910-395-3964 \ nccoastalmanagement.net



## Town of Cape Carteret

102 Dolphin Street  
Cape Carteret, NC 28584  
Ph. 252.393.8483  
Fax 252.393.6799

Sept. 17, 2008

Coastal Resources Commission  
C/o James H. Gregson, Executive Secretary  
Director - Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557

Dear Mr. Gregson:

The Town of Cape Carteret respectfully submits this Letter of Intent to amend and update its local implementation and enforcement plan which allows the Town of Cape Carteret to act as the permit-letting agency to administer a permit program for minor development in areas of environmental concern within the limits of incorporated Cape Carteret, pursuant to G.S. 113A-121.

We understand that the updated local implementation and enforcement plan must include the content elements and be consistent with the criteria outlined in 15A NCAC 07I.0500. Also, that the Town of Cape Carteret must compile and maintain a complete record of a public hearing held for comment on the proposed implementation and enforcement plan changes, prior to submitting the amended plan for approval to the Coastal Resources Commission. We held this public hearing at the April 21<sup>st</sup>, 2008 meeting of our Board of Commissioners. Hopefully, the records of the hearings and comments, along with the proposed implementation and enforcement plan and accompanying ordinances will be presented to the Commission for review and approval at the November, 2008 CRC meeting.

Should you require any additional information or documentation in the meantime, please do not hesitate to contact our office.

Sincerely,

David M. Rief

Code Enforcement Officer

cc: Ed Brooks, Minor Permit Program Coordinator

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF CAPE CARTERET, NORTH CAROLINA, APPROVING A LOCAL IMPLEMENTATION AND ENFORCEMENT PLAN RELATED TO PERMITS FOR MINOR DEVELOPMENT IN AREAS OF ENVIRONMENTAL CONCERN WITHIN THE JURISDICTIONAL LIMITS OF TOWN OF CAPE CARTERET PURSUANT TO THE COASTAL AREA MANAGEMENT ACT

Resolution 2008-04-21

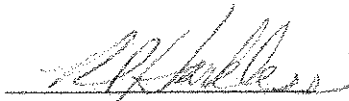
WHEREAS, North Carolina G.S. 113A-117 through 124, the Coastal Area Management Act (CAMA) authorizes the adoption of an Implementation and Enforcement Program to allow a municipality to act as the local permit-letting authority for activities related to minor development within areas of environmental concern; and

WHEREAS, a public hearing was held on April 21<sup>st</sup>, 2008, and public comments will be accepted through May 5<sup>th</sup>, 2008, on the Town of Cape Carteret's changes to the proposed Local Implementation and Enforcement Plan related to CAMA; and

WHEREAS, the Board of Commissioners of the Town of Cape Carteret feels that the interests of the property owners and residents of Town of Cape Carteret will be best served by the proposed changes to the implementation of a local management program;

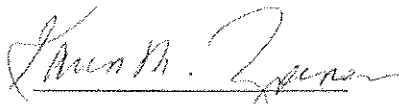
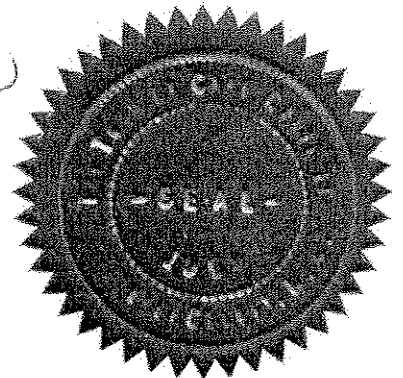
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF CAPE CARTERET, NORTH CAROLINA, THIS 21ST DAY OF APRIL 2008, that the Board of Commissioners of the Town of Cape Carteret, hereby approves the proposed changes to the local management program for the implementation and enforcement of minor development permits in areas of environmental concern and the policies and requirements of the adopted land use plan.

Adopted this 21st Day of April, 2008.



Ron Harkless, Mayor

ATTEST:

  
Karen Zornes, Town Clerk



IMPLEMENTATION  
AND  
ENFORCEMENT PLAN

A LOCAL MANAGEMENT PROGRAM FOR THE  
IMPLEMENTATION AND ENFORCEMENT OF MINOR  
DEVELOPMENT PERMITS IN AREAS OF ENVIRONMENTAL  
CONCERN AND THE POLICIES AND REQUIREMENTS OF THE  
ADOPTED LAND USE PLAN

April 21, 2008

**ARTICLE I: GENERAL PROVISIONS**

SECTION 1. STATUTORY AUTHORIZATIONS

Pursuant to North Carolina Legislature G.S. 113A-117-124, the Coastal Area Management Act (CAMA) authorizes a city, county or joint city/county to adopt an Implementation and Enforcement Program to act as the local permit-letting authority for activities related to minor development within areas of environmental concern. This Implementation and Enforcement Plan is hereby adopted as of April 21, 2008, by the Board of Commissioners for the Town of Cape Carteret, North Carolina.

SECTION 2. PURPOSES

(A) Intent:

The purposes of the Implementation and Enforcement Plan are to establish:

1. Procedures to be followed in issuing minor development permits in Areas of Environmental Concern (AEC) within the Town of Cape Carteret jurisdictional limits, including methods of coordinating with other local permits.
2. Scope and coverage of the program including the geographic extent of jurisdiction of the local management program.
3. Responsibilities and capabilities of permit-letting agencies; including a description of the criteria to be used in choosing the Local Permit Officer.
4. Methods of identifying and taking into account projects and impacts of regional, state, and national concern where applicable.
5. Procedures to insure that the program is consistent with the adopted Land Use Plan for the entire jurisdiction.
6. Relates other governmental action in regards to the adopted Land Use Plan and provides procedures for assuring consistency of action.

### SECTION 3. GEOGRAPHIC EXTENT OF JURISDICTION

(A) Town of Cape Carteret Jurisdiction:

The issuance of Minor Development Permits as required by the CAMA shall be administered and enforced in those AECs (or parts of those AECs), which are located within the corporate and extra-territorial boundaries of the Town of Cape Carteret.

### SECTION 4. DEFINITIONS:

(A) Town: means the Town of Cape Carteret.

(B) Development: "Development means 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 alternation 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."

(C) Major Development: Major development means any development, which requires permissions, licensing, approval, certification, or authority in any form from the N. C. Environmental Management Commission, the N. C. Departments of Human Resources, the N. C. Department of Environment and Natural Resources, the N. C. Department of Administration, the N. C. Mining Commission, the N. C. Pesticides Board, the N. C. Sedimentation Control Commission, or any Federal agency or authority; or development which occupies a land or water area in excess of 20 acres; includes a structure or structures in excess of a ground area of 60,000 square feet on a single parcel; or which contemplates drilling for or excavating natural resources on land or under water.

(D) Minor Development: means any development other than a major development.

(E) Adopted Land Use Plan: refers to the Town of Cape Carteret Core Land Use Plan prepared and adopted by the Cape Carteret Town Board and approved by the

Coastal Resources Commission (CRC) pursuant to Part 2 of the Coastal Area Management Act.

- (F) Local Permit Officer: refers to the locally designated official(s) who will administer and enforce the Minor Development Permit Program in Areas of Environmental Concern and the policy requirements of the Core Land Use Plan over the entire planning area of the Town of Cape Carteret.
- (G) Coastal Area Management Act (CAMA): The law that relates to the management program for orderly growth in the coastal area of North Carolina as adopted by the General Assembly in 1974.
- (H) Coastal Resources Commission (CRC): The Coastal Area Management Act established the Coastal Resource Commission within the Department of Environment and Natural Resources.
- (I) Areas of Environmental Concern (AECs): refer to areas designated by the CRC, in which development shall require a minor or major development permit.
- (J) Implementation and Enforcement Plan: refers to the Local Management Program for the implementation and enforcement of Minor Permit requirements within Areas of Environmental Concern and the policies of the adopted Core Land Use Plan, within the Town of Cape Carteret.

## **ARTICLE II: ADMINISTRATION**

### SECTION 1. DESIGNATED LOCAL PERMIT OFFICER

- (A) Creation of Position:  
The Town shall designate one or more employee(s) to hold the position of Local Permit Officer.
- (B) Qualifications:  
Any designated Local Permit Officer shall be required to complete an initial training course from the Division of Coastal Management (DCM), within twelve months of appointment. The Local Permit Officer(s) shall attend all regional work sessions held by DCM to inform and coordinate the activities of the Local Permit Officers in each region. In addition, the Local Permit Officer shall be knowledgeable of other local, state or federal permit or regulatory requirements.
- (C) Appointments:  
The Town shall notify the Commission of the names of all designated Local Permit Officers. In order to continue to process permits in a timely fashion and to avoid the issuance of passive grants, the Town shall immediately notify the Division of Coastal Management (DCM) and the Coastal Resources Commission in writing when the Local Permit Officer resigns or is for any reason unable to perform his or her duties. This notice shall indicate the method or methods by which the locality will continue to process permits in a thorough and timely fashion. Such methods can include, but are not limited to, the following:
  1. The appointment of a temporary Local Permit Officer (LPO) until such time as a permanent replacement is selected.
  2. The appointment of one or more LPO(s).

3. Evidence that an agreement exists between the locality and another appropriate agency for the assumption of the permit program.
4. A formal request that the Secretary/DCM assume the permit function for the locality.

## SECTION 2. DUTIES OF THE LOCAL PERMIT OFFICER

### (A) General Enforcement:

The Local Permit Officer shall administer and enforce in duly designated AECs; the Minor Development Permit process as herein established, as well as all applicable local ordinances, and all other guidelines and standards established by the Coastal Resources Commission (CRC) and the Town pursuant to the Coastal Area Management Act (CAMA). In addition the Local Permit Officer shall:

1. Be familiar with existing state and federal permits required in this jurisdiction so as to provide aid to potential developers in determining when a major development permit rather than minor development permit is required, and to aid the developers in applying to the CRC when a major development permit is required, and in general, aid applicants in regard to other state or federal permit requirements.
2. Assist in identifying and assessing projects of greater than local concern and bring them to the attention of the CRC. (Such projects of regional, state or national concern are almost certain to require some other state permit and, therefore, require a major development permit from the Commission. Therefore, they will usually be brought to the attention of the Commission through the major development permit application.)
3. Be responsible for implementing any procedures agreed on by the Board of Commissioners to which this Plan applies for the purpose of coordinating the CAMA Minor Development Permits with other locally required permits. Such locally required permits include, but are not limited to, plumbing permits, electrical permits, building permits, septic tank permits, flood plain or sand dune permits, and certifications of compliance with zoning and subdivision regulations.
4. Be responsible for implementing any enforcement procedures, actions or standards that the Board may wish to enforce in regards to the adopted Land Use Plan or revision thereof.
5. Assist in coordinating permit-letting activities with other local jurisdictions as necessary.

### (B) Records:

The Local Permit Officer shall prepare a quarterly summary of all permit applications and their disposition from the immediately preceding quarter, to be presented to the Board for the Town, to the CRC and to the Secretary of the North Carolina Department of Environment and Natural Resources (NCDENR). Correct and comprehensive records of all transactions related to minor development permit requests (applications, grants, denials, other dispositions) shall be maintained by the Local Permit Officer, and such records shall be kept so long as any part of the structure or entity to which it relates remains in existence; or, in the case of denials or other instances, for a period of ten (10) years. From

date of receipt and acceptance of application and/or decision on an application, the Local Permit Officer must, within five workings days, mail and/or submit copies of same to the appropriate field consultant or the nearest field office of the Division of Coastal Management.

(C) Location:

The Local Permit Officer shall be located in the Office of Planning and Inspections, located at 102 Dolphin St, and can be reached at 252-393-7901. The mailing address is:

Local Permit Officer  
Town of Cape Carteret  
102 Dolphin St.  
Cape Carteret, NC 28584

The Commission shall be notified immediately of any change in the location of the Local Permit Officer.

## **ARTICLE III: MINOR DEVELOPMENT PERMITS**

### SECTION 1. MINOR DEVELOPMENT PERMIT REQUIRED

(A) Designation of AECs Requiring Minor Development Permit:

The following permit-letting requirements and information in regards to AECs shall be available for review and inspection in the Town Planning and Inspections Office:

1. Description of all AECs within the Town Planning and Zoning Jurisdiction that is sufficiently clear to provide notice to all property owners within those AECs that a permit must be secured before any development may proceed on that property.
2. A copy of the standards for development adopted by the Coastal Resources Commission for each type of AEC found in the jurisdiction and the statutory grounds on which a permit application may be denied or conditioned.
3. The statutory definition of development, as provided in the Coastal Area Management Act [G.S. 113A-103(5a)].
4. A copy of the approved permit application form for both major and minor development in AECs.
5. The name and officer address of the Local Permit Officer.
6. A copy of this plan.

### SECTION 2. MINOR PERMIT PROCESS

(A) Application:

An Application for a permit for minor development shall consist of a completed application using the applicable form adopted and approved by DCM and a check or money order, payable to the Town of Cape Carteret in the amount of \$100.00, or as amended in 15A NCAC 07J .0204(b)(6)(B). Monies so collected shall only be used in the administration of the permit program, specifically including the cost of required public notices and hearing.

(B) Application Review Period:

Disposition of the application by the Local Permit Officer shall take place within 25 days of receipt of a complete application, unless the Local Permit Officer gives written notice by registered mail of an additional 25 day extension as necessary for proper evaluation of the application.

(C) General Procedure for Processing an Application:

The Local Permit Officer shall return incomplete, insufficient, or unauthorized applications within a reasonable time. The 25-day period for consideration of the application shall begin to run upon receipt of a complete application. The time period will continue to run in the case of an incomplete or insufficient application until the Local Permit Officer returns it, with reasons for the rejection in writing, to the applicant for correction of the deficiencies. The time period will begin to run again when a correct application is returned to the Local Permit Officer. Any application received requesting a permit for an activity that constitutes major development shall be returned by the Local Permit Officer with appropriate instructions for submitting the Major Permit application to the DCM. The Local Permit Officer shall determine from the application what other permits are required for the development. The Local Permit Officer shall inform the applicant of these other permit requirements and aid him/her in properly applying for such permits. The Local Permit Officer shall ordinarily make final decisions concerning the Minor Development Permit only after he/she has determined that any other required local permits will be issued, the application is consistent with the applicable criteria set forth in G.S. 113A-120, the standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the CRC. When an evaluation results in none of the above findings, an unconditional approval shall be granted by the Local Permit Officer. Otherwise, the Local Permit Officer shall deny or conditionally approve a properly completed minor development permit application.

(D) Proper Procedural Requirements for Disposition:

The procedures and requirements of processing applications shall be conducted in a manner consistent with the expeditious and reasonable evaluation, as well as rational disposition of Minor Development Permits, as set forth and required by the Coastal Area Management Act. The following general procedures shall be followed in reference to application disposition:

1. Unconditioned Approval:

A Minor Development Permit shall be granted only if consideration of the applications results in no inappropriate findings, as set forth in Article III, Section 2 (C) above.

2. Denial:

Where the Local Permit Officer denies a Minor Development Permit or an application is returned to the applicant for reasons as set forth in Article III, Section 2 (C) above, statutory grounds upon which the denial is based or the reasons the Local Permit Officer returns an application shall be set forth in writing.

3. Conditional Approval:

The approval of a Minor Development Permit may be conditioned upon the applicant's amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the findings enumerated in Article III, Section 2 (C) above. Conditional approval shall be granted upon the acceptance by the applicant of certain reasonable conditions as set out by the Local Permit Officer for public interest protection with respect to appropriate findings listed in G.S.113A-120. The applicant must sign the conditioned grant of approval as an acceptance of the permit conditions before the permit shall become effective. Statutory grounds upon which a conditional approval is granted shall be set out in writing.

4. Passive Approval:

Failure to approve, conditionally approve or deny a properly completed and filed application, or for the Local Permit Officer to not give notice of an extension beyond the initial 25 day disposition period shall result in passive approval. A passive approval shall have the full force and effect of an unconditioned approval.

(E) Property Owner Requirements:

The property owner shall display a properly granted Minor Development Permit in full view on the site of the development. This requirement shall apply to every permit no matter how it is granted. It is therefore necessary that the property owner acquire a permit received by passive approval for the purposes of posting on the site before proceeding with the development.

(F) Record Keeping Requirements:

Permit applications shall be numbered serially using a six-digit numbering system. The first two digits will indicate the year in which the application is made, and the last four digits will run serially in the order in which the applications are received. These numbers shall include the letter prefix CC to designate the Town of Cape Carteret. (For example, the first permit applications will be in 2007, and will be numbered CC-07-0001, CC-07-0002, and so on.) Along with the applications, the Local Permit Officer shall maintain a record of all evidence and all matters relevant to each Minor Development Application. Such relevant information shall include, but not be limited to applications, correspondence, public notices, responses to public notices, and a copy of the final disposition. In cases involving denial or conditional approval, the Local Permit Officer shall send a copy of a conditional approval or denial disposition record to the applicant, either in person or by registered mail. One copy shall be maintained by the Local Permit Officer.

## **ARTICLE IV: APPEALS, INJUNCTIVE RELIEF AND PENALTIES**

### **SECTION 1. APPEALS**

(A) Appeal to the Coastal Resources Commission:

Any person directly affected by the local decision of the Local Permit Officer including the Secretary of the NC Department of Environment and Natural Resources, may within twenty (20) days of the Local Permit Officer's disposition, request an appeal hearing by filing a Petition with the Office of Administrative

Hearings. The hearing shall be a quasi-judicial hearing conducted by an administrative law judge in accordance with the requirements of the Coastal Area Management Act (CAMA) and any other state laws applicable to such procedures. Final decision in the appeal will be made by the CRC based on evidence presented in the hearing.

(B) Appeal to Superior Court:

Any person directly affected by any final decision or order of the Coastal Resources Commission may appeal to Superior Court.

(C) Appeal Pending:

No action for which a Minor Development Permit is required shall be taken while appeal of the Local Permit Officer's disposition of that permit request is pending.

## SECTION 2. INJUNCTIVE RELIEF AND PENALTIES

(A) Injunctive relief:

Upon violation of the provisions adopted by the Town pursuant to the CAMA relating to the issuance of Minor Development Permits, the Local Permit Officer may, either before or after the institution of proceedings for the collection of any penalty imposed by the CAMA for such violation, institute a civil action in the General Court of Justice in the name of the Town upon the relation of the Local Permit Officer for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by the CAMA for any violation of same.

(B) Penalties:

Any person adjudged guilty of knowingly and willfully under-taking any development requiring a minor development permit without acquiring such a permit, or of conduct exceeding the authority of a permit or of failure to observe the agreed modifications of a conditioned grant, or of violation of any other applicable regulations adopted by the Town or the Commission pursuant to the CAMA shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues or further commits any of the above violations after written notice from the Local Permit Officer, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(C) Notice:

The Local Permit Officer shall notify the Secretary of any civil action undertaken by or against such officer under the CAMA

## **ARTICLE V: AMENDMENTS OF THE IMPLEMENTATION AND ENFORCEMENT PLAN AND COMPLAINT PROCEDURE**



SECTION 1. AMENDMENT TO THE IMPLEMENTATION AND ENFORCEMENT PROGRAM

(A) Notice of Public Hearing:

Amendments to this Implementation and Enforcement Plan shall be in accordance with the notice and public hearing requirements set forth in the Coastal Area Management Act and the Coastal Resources Commission's "Criteria for Local Implementation and Enforcement Plans" pertaining to the adoption of the original plan. In addition the following shall be required:

1. Prior to this Plan being amended, a public hearing shall be held by the Board concerning the proposed amendment. It shall be open to comment from any interested persons, agencies, or groups.
2. Notice of such public hearing shall go out at least fifteen (15) days prior to the date of the hearing; shall state the time, place and subject matter of the hearing and shall indicate the nature of the proposed action; shall state that copies of the proposed amendment are available for public inspection at the Office of Planning and Inspections; and shall appear at least once no less than fifteen (15) days prior to the hearing in at least one newspaper of general circulation in the affected area.
3. A complete record of the public hearing and comments shall be compiled and maintained. The record of the public hearing, written comment, and any documentation filed with the Local Permit Officer as to the proposed amendment must:
  - a) Consist of a written account from the minutes or transcribed from an electronic recording, and all written documents.
  - b) Remain open for fifteen (15) days after the hearing.
  - c) Be available to the Commission upon request.

(B) Procedure to Amend:

Requests for amendment of this plan shall be referred to the Planning Board. If the amendment is recommended by the majority of the Planning Board, that recommendation shall then be conveyed to the Board of Commissioners for final approval.

(C) Request to Waive Formal Amendment Requirements:

Whenever a proposed amendment is deemed by the Planning Board and Board of Commissioners to be of little interest to the public, a petition may be sent to the Coastal Resources Commission for a waiver of the formal hearing and notice requirements. Such a petition shall include the proposed amendment and state why the Planning Board and Board of Commissioners concluded that the rights or convenience of the public is not substantially affected by it.

(D) Commission Approval:

Upon local acceptance of any amendment requiring notice and hearing, the amendment shall be submitted to the Commission for approval. Upon Coastal Resources Commission's approval, the amendment shall be adopted as part of the ordinance(s) implementing this plan.

SECTION 2. PROCEDURES FOR RESPONDING TO COMPLAINT THAT THIS PLAN IS

NOT PROPERLY ENFORCED AND ADMINISTERED

(A) Citizen Complaints:

Upon receiving complaints from local citizens that the Implementation and Enforcement Plan is not being properly administered and enforced, the Board will investigate the situation and respond to the alleged deficiencies. If the person making the complaint is not satisfied, then he/she will be advised that he/she may take their complaint either in writing or in person to the CRC.

(B) Response to the CRC:

Upon notification from the CRC concerning deficiencies in administration and enforcement of the plan, the Board will investigate the alleged problem and prepare a response for the CRC. If the allegation of deficiencies is found to be valid, the Board will, within thirty (30) days of the original notifications from the CRC, inform the CRC of its willingness and ability to correct the deficiency and prevent similar problems in the future. If the Board finds the CRC's allegation of deficiencies invalid, they will so inform the CRC. If the CRC disagrees with that finding, the Board may request a hearing before the CRC or in some other manner attempt to reach a mutually acceptable agreement with the CRC within a ninety (90) day period after receipt of the CRC's original notification of the 90 day period, then the authority to issue permits for minor development pursuant to this plan shall be automatically relinquished until such a time as the CRC is convinced that the Program will be properly enforced.

**TOWN OF CAPE CARTERET  
BOARD OF COMMISSIONERS  
APRIL 21, 2008 AGENDA**

Call to Order                    Pledge of Allegiance

Roll Call                        Approval of Agenda

**APPROVAL OF THE CONSENT AGENDA**

Work Session minutes of March 10, 2008 and Budget minutes of March 12, 2008  
National Letter Carriers "Stamp-Out Hunger" Proclamation, Seat Belt Awareness Proclamation,  
Municipal Clerk Proclamation, Clerk's luncheon May 9, 2008; Appoint the Mayor as the  
alternate to the Fire/EMS board

**ANY COMMISSIONER OR COMMITTEE REPORTS**

**SCHEDULED PUBLIC HEARINGS**

**Public Hearing**

Amend 154.049, Section B, 3-Sidewalks and Hike Bike trails

**Public Hearing**

Amend 156.117, Section D- Building Permits

**Public Hearing**

Adopt revisions to Chapter 155 Waterways, Sections 155.01-.07

**Public Hearing**

Place Moratorium on Marina Construction

**Public Hearing**

Adopt a model resolution: Minor permit officer with CAMA ordinances

**Public Hearing**

Correction to zoning map

**PUBLIC COMMENT** (Limit 3 minutes)

(Please sign up and state which subject below that you would like to speak about. For all new subjects, please see the clerk so she may place them on the Work session agenda.)

**FOR DISCUSSION AND POSSIBLE ACTION**

**OLD BUSINESS:**

Amend 154.049, Section B, 3-Sidewalks and Hike Bike trails  
Amend 156.117, Section D- Building Permits  
Adopt revisions to Chapter 155 Waterways, Sections 155.01-.07  
Place Moratorium on Marina Construction  
Adopt a model resolution: Minor permit officer with CAMA ordinances  
Correction to zoning map- From B20 to R30  
Waste and Recycling Contract for Fiscal Year 2008-09  
Boat Ramp bid for single dock

**NEW ITEMS**

White Oak Elementary CSP  
Resolution Storm Water Run Off

**ANNOUNCEMENTS**

**ADJOURNMENT**

(Agenda April 08)

won't be any change to this. Smoke Betts question paragraph E the maximum length of a boat docking at the facility will be 25 feet, I think the intent should be specific larger than 25 feet boat, but any size. David's reply was if we do that then it would cause a lot of conflict and then we would have a lot of oversized boats. Paxon question what about those facilities that are in existence that are over 25 feet will those be grandfathered in? Commissioner King replied yes. This does not exclude boat lifts that exceed 25 feet at private residence. In addition, under definition small boat, we need to change not exceeding 25 feet in overall length. 155.03 sections (C) 4 take out toilet facilities. 155.04 (N) sanitary facilities should be deleted. David replied that also 155.04 (F) delete shower and bath facilities are not permitted in connection to a boat dock. An electrical permit is required for each boat slip and provides one 120-volt outlet. Enforcement is only when you can do it. It would be either the police department or me to enforce. Denny DelMauro questioned, several months ago we dealt with Water World does this change that ordinance? David's reply was no, 155.22 or 155.25 was left along so if we had another situation, that ordinance would still be in effect and take care of it. Commissioner Parrish brought up an example about commercial activity on a private boat dock. Down in Florida a gentleman opened up a parasailing business out of a boat dock that he was renting. When the town looked at their ordinances they had nothing preventing commercial activities at a private dock. Mayor Harkless stated that everyone needs to think about the ordinances that the town already have. We need to maintain some type of control for the town. We need to add ordinances as the situations occur. This revision on this ordinance has to do with these items list that we have run into items that haven't been covered as they should of in the past.

**Closed 8:41 pm**

**Public Hearing**

**Place Moratorium on Marina Construction (Attached)**

**Open 8:41 pm** Postponed until Planning Board can finish. Attorney Curtis suggested a time limit of 120 days. **Closed 8:43 pm**

**Public Hearing**

**Adopt a model resolution: Minor permit officer with CAMA ordinances (Attached)**

**Open 8:43 pm** David Rief- what you see before you is a model plan that CAMA has set forth for the issuing of CAMA Minor Permits. The Town of Cape Carteret in the past, has had an officer to issue CAMA Minor Permits, the last one being Guy Dark. Since that time there have been some changes to requirements on how CAMA Minor Permits are issued, in regards to time lines and things of that nature. The Implementation and Enforcement plan states that the Town of Cape Carteret is proposing to go with the state regulations on minor permits. There would have to be a second hearing to actually change the language of our ordinances to bring us up to CAMA standards, but this is where the process starts. Commissioner King stated that the purpose of this is to get all the permitting in one place instead of going to different places. This would be a final step in transferring inspections from the county to the town. Attorney Curtis stated that he had reviewed the I & E Plan in its entirety and was comfortable with it. There were no further comments or questions. **Closed 8:45 pm**

**Public Hearing**

**Correction to zoning map**

**Open 8:45 pm** This referring to parcel number 53 being changed from an R-20 to an R-30. Lura Fulcher it was a real surprise when we got this letter stating about the rezoning. Karen and Paxon have done their best to tell me that it was an honest mistake, that the map was changed by the mapping company. But how many years, 6 years have the commissioner approved that map. In the mean time we did change the lot next to it to residential. But then the business lot next to it has no buffer. So I don't know if that should be a residential, as the rumors have been stated. Going through our records that particular lot was never zoned as a B-20, it was purposed to be a B-20 with a number of other lots that were rezoned, all those lots were approved except that one lot, and I don't have any explanation to as why that particular lot was zoned that way, stated Mayor Harkless. Mac Stewart said that he could explain, I saw the Real Estate sign up and saw it was zoned a B-20 instead of an R-30 and I knew it was a mistake. I was very much involved in 1996 when all this came about. I own property across the canal; it adjoins what was changed back to the R-30. I have every reason to be involved with the zoning of that property. As an adjoining property owner I never received any change in the property zoning. The reason that I didn't was because there was supposed to be a buffer zone with residential, that was left between me and that property. This town needs to adopt some type of ordinance to post a sign on these properties when there

is a request for rezoning. Country Club opposed to the peninsula lot being zones as a commercial lot, until we saw a proper buffer zone, which were two or three residential lots between my property and a commercial entity. I am interested in that property, I have a situation and that is why I inquired about that property. I just can't believe that there is someone selling that property with a zoning error on. I had no way of knowing it was changed, until I went down to town hall and looked at the map. Marsha Jordan wanted it understood that we were all, under the understanding, that property was a B-20.

Closed 9:00 pm

## PUBLIC COMMENT

None from the floor

## FOR DISCUSSION AND POSSIBLE ACTION

### OLD BUSINESS:

#### Amend 154.049, Section B, 3-Sidewalks and Hike Bike trails

*On the motion by Commissioner Parrish, 2<sup>nd</sup> by Commissioner King to table amending 154.049. Vote approved 5-0*

#### Amend 156.117, Section D- Building Permits (Discussion)

**Commissioner Fowler:** This is directed towards Commissioner King, you would recall in the discussion before this I opposed amending 156.117, my oppositions at that time was I don't want residents to spend \$400 to build a \$50 dog house.

**Commissioner King:** This is exactly what we are trying to do, is make it less burdensome not to have residents to have to pay \$400 for a survey to put up a Lowes building on the corner of their lot. It was the original intent, but the last board misunderstood.

*On the motion by Commissioner Hunt, 2<sup>nd</sup> by Commissioner Parrish to amending 156.117, Section D- Building Permits. Vote approved 5-0*

#### Adopt revisions to Chapter 155 Waterways, Sections 155.01-.07 (Discussion)

**Commissioner King:**

**David Rief:** Wanted to clarify the definition of small boat, it is referring to length over all (LOA).

*On the motion by Commissioner Parrish, 2<sup>nd</sup> by Commissioner Hunt to amended during the Public Hearing to adopt Chapter 155. Vote approved 5-0*

#### Place Moratorium on Marina Construction

*On the motion by Commissioner King, 2<sup>nd</sup> by Commissioner Linden to place a 120 day moratorium on Marina Construction. Vote approved 5-0*

#### \* Adopt a model resolution: Minor permit officer with CAMA ordinances

*On the motion by Commissioner Parrish, 2<sup>nd</sup> by Commissioner Hunt to adopt a model resolution. Vote approved 5-0*

#### Correction to zoning map- Parcel # 5384.06.49.1073-From B20 to R30 (Discussion)

**Commissioner Parrish:** One comment on it, Karen and I deeply went through this just shows the better bookkeeping we have now, that was a big chore. I want to thank Karen for the help.

*On the motion by Commissioner Linden, 2<sup>nd</sup> by Commissioner Hunt to correct zoning map. Vote approved 5-0*

#### Waste and Recycling Contract for Fiscal Year 2008-11 3 yr. Contact (Discussion)

**Commissioner King:** When I put the spread sheets together I listed them as A, B, C and (A) Waste Industries was the low bidder.

**Commissioner Hunt:** Within that 3 year contract what are our ground for renegotiation that contract?

**Commissioner King:** There isn't any we are accepting the 3 year contract.

TOWN OF CAPE CARTERET

102 Dolphin Street  
Cape Carteret, NC 28584  
252-393-8483

FAX 252-393-6799

**PUBLIC HEARING NOTICE**

The Cape Carteret Board of Commissioners will hold a public hearing on Monday, April 21, 2008 at 7:30 p.m. in the Debbie E. Stanley Board of Commissioners Room.

The purpose of the hearing is to:

1. Correct the Cape Carteret town zoning map as it relates to parcel number 5384.06.49.1073000 from the zoning classification B20 to the zoning classification R30. The reason for the correction appears to be a clerical error.
2. Amend 154.049 Section B, 3 -Sidewalks and Hike-Bike Trails by deleting the words "sidewalks 6 feet wide and".
3. Amend 156.117 Section D Application for Building Permit by deleting section D in its entirety and replacing it with new wording. The basic change is to add "having a permanent foundation" to the section. The section will also have exceptions to the requirements of section D as proposed by the Planning Board.
4. Adopt revisions as recommended by the Planning Board to Chapter 155 Waterways Ordinance, Sections 155.01 through 155.07, to delete it from Appendix B (as permitted) and to permit it as a Conditional Use.
5. Place a moratorium on Marina Construction until the Planning Board finalizes approval of marina conditional use definitions and requirements.
6. Adopt a model resolution to update our current ordinance addressing the role of a minor permit officer with CAMA's new model ordinance.

The above can be changed or amended at the public hearing. The recommendations are on file at the clerk's office for inspection. Oral comments may be heard at the public meeting and written comments by interested parties are invited to be mailed to Cape Carteret Town Hall, 102 Dolphin Street, Cape Carteret, NC 28584 or dropped off at the Cape Carteret Town Hall during regular office hours of 9:00 a.m. to 1:00 p.m. and 2:00 p.m. to 5:00 p.m.

Karen M. Zornes, CMC  
Town Clerk  
Posted: April 2, 2008

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**Tideland News:**

Michelle,

Please print this under the legal section on Wednesday, April 9 & 16, 2008.

I will need an **affidavit**.

List under **billing as: PH April 08**

Thank you, *Karen*

PH notice 7 zoning corrections April 08.wpd

TOWN OF CAPE CARTERET  
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Cape Carteret, NC 28584  
252-393-8483

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2. Amend 154-043-0400 B.3. Sidewalks and Walkways Trails by deleting the words "sidewalks 6 feet wide and

3. Amend 156-117-Section D Application for Building Permit by deleting section D in its entirety and replacing it with new wording. The basic change is to add "having a permanent foundation" to the section. The section will also have exceptions to the requirements of section D as proposed by the Planning Board.

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7. Amend the Zoning Ordinance Chapter 156-004 Definitions, amending the definition of LOT as recommended by the Planning Board.

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Karen M. Zornias, CMC  
Town Clerk

Posted: April 2, 2008

CA 410

**NORTH CAROLINA'S COASTAL HABITAT PROTECTION PLAN**

**2007 - 2008**

**ANNUAL REPORT**

TO THE

JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE

AND

ENVIRONMENTAL REVIEW COMMISSION

OF THE

NORTH CAROLINA GENERAL ASSEMBLY

FROM

NORTH CAROLINA MARINE FISHERIES COMMISSION,  
NORTH CAROLINA COASTAL RESOURCES COMMISSION, AND  
NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION  
AND

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

September 2008



# Highlights

## September 2007 – August 2008 Accomplishments

### CHPP

- Coastal Habitat Protection Plan (CHPP) Steering Committee continues to meet quarterly to discuss multi-agency habitat issues.
- CHPP Quarterly Permit Coordination meetings continue to improve effectiveness of permit process.
- A CHPP publication highlighting CHPP implementation was produced by the Department of Environment and Natural Resources (DENR) using money allocated from the Marine Fisheries Commission's (MFC) Conservation Fund, and 100,000 copies are being distributed coast-wide.
- Staff began work on the 5 year CHPP review and update, with completion scheduled for December 2009.

### MFC/DMF

- Anadromous Fish Spawning Areas were designated by the MFC (effective Dec. 2007) and the Wildlife Resources Commission (effective July 2008).
- The Division of Marine Fisheries (DMF) conducted river herring spawning surveys in the Chowan River system and began identifying stream obstructions.
- Acquisition of aerial imagery of submerged aquatic vegetation (SAV), the coastal shoreline and wetlands was completed by multi-agency effort (Albemarle Pamlico National Estuary Program, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, DMF, and other DENR agencies). DMF was the lead agency for field groundtruthing and photo-interpretation for SAV, which is partially complete.
- Oyster sanctuaries in Pamlico Sound were enhanced through 1) additional rock placement, 2) development of remote setting tanks and seeding of oyster reefs, 3) establishment of a biological monitoring program to monitor survival, growth, and habitat colonization. Coordinating with several universities to provide additional monitoring in sanctuaries.
- Oyster shell recycling continues to grow; over 30,000 bushels of oyster shell have been recycled.
- A Strategic Habitat Area (SHA) analysis in the Albemarle region was completed, with assistance from a scientific advisory committee. Status - pending public input and approval.
- MFC SAV habitat definition was modified with input from DENR interagency workgroup to improve protection of the habitat and ensure consistency among regulatory agencies. Status - pending public hearing and MFC approval.
- Increased staffing allowed DMF to map an additional 83,000 acres of bottom habitat in Brunswick, Onslow, Carteret, Dare, Hyde, and Beaufort counties and to develop a process to map deeper areas.

### DWQ/EMC

- The Environmental Management Commission (EMC) adopted revised coastal stormwater rules in the twenty coastal counties, which will increase protection of coastal waters from the effects of stormwater pollution. These rules were signed into law and will be effective October 1, 2008 after extensive legislative review.
- A stormwater compliance position for the Washington office was created in 2007 and filled in 2008. Will begin work by establishing priorities and coordination of enforcement.
- Continued inspection of high density Coastal Stormwater Permits as they come up for renewal.
- Continued water quality monitoring in the Neuse Estuary by way of the MODMON and FerryMon programs with money appropriated by the General Assembly.

- Hosted a water quality monitoring forum, NC for Water, at UNC-Charlotte in May 2008, aimed at coordinating monitoring efforts among state and federal agencies, universities, and local governments.
- DWQ worked with DOT on a SAV and oyster habitat restoration and mitigation project in the Currituck Sound. Restoration work has been completed and monitoring continues to assess the success of the project.

### **DCM/CRC**

- Drafting of the Beach and Inlet Management Plan (BIMP) is underway. It will include establishing a database on past, current, and future beach nourishment and associated relevant geologic and ecological relevant data. Two advisory committees were formed to provide input.
- The Division of Coastal Management (DCM) completed a draft methodology for delineating the shoreline and structures for North Carolina. Once this methodology is approved, DCM will begin digitizing efforts.
- The Coastal Resources Commission (CRC) has proposed rule changes to its General Permit for shoreline stabilization that will reduce the distance waterward in which bulkheads encroach into public trust areas, and by promoting the benefits of rock structures through permit fee structure. Working with DWQ on other shoreline stabilization issues.
- DCM's N.C. National Estuarine Research Reserve (NERR) has received a Cooperative Institute for Coastal and Estuarine Environmental Technology (CICEET) grant for a proposal entitled "Sustainable estuarine shoreline stabilization: Research, education and public policy in N.C.," which will study the effects of various shoreline stabilization techniques on ecosystem services of shorelines, and include construction of demonstration projects and educational outreach.
- CRC has proposed changes to dock and pier rules, which give property owners flexibility in docking facilities (8 sq. ft./linear ft. shoreline) and includes minimum water depth for docks permitted under a General Permit (2') and minimum water depth for floating docking facilities under the General Permit if located in a Primary Nursery Area (PNA), SAV or Shell bottom (18").
- NCNERR and APNEP produced a Newspaper in Education insert for the Raleigh News and Observer in November 2007 about coastal fish habitat. 170,000 inserts were distributed throughout the state.
- NCNERR Coastal Training Program 1) held a course on alternatives to how and where growth will occur in their communities, 2) conducted online demonstrations of the Habitat Priority Planner, a geospatial planning tool that uses data to help people visualize ecological scenarios and make resource decisions, 3) conducted On-site Wastewater Treatment and Disposal Systems Basics workshops.
- DCM is participating in the Environmental Protection Agency's Coastal Elevations and Sensitivity to Sea Level Rise study. The study focuses on the coastal areas from New York to North Carolina.

### **DENR**

#### *Division of Soil and Water Conservation*

- The North Carolina Division of Soil and Water Conservation (NCDSWC) has begun implementing the Community Conservation Assistance Program on a statewide basis. No additional funding was received from the General Assembly in 2008. This program has great potential for retrofitting stormwater problems.
- The NCDSWC obtained USDA approval to expand CREP to include the Roanoke, Pasquotank, White Oak, Lumber, and Cape Fear River basins.
- The Lagoon Conversion Program selected 3 projects in Sampson County for assistance. NCDSWC may fund one additional project. \$2 million was appropriated in FY2007-08. The voluntary swine buyout program received a grant for the 4<sup>th</sup> phase of the buyout.
- In CREP training events in March 2008, the NCDSWC included information on the Neuse/Tar-Pamlico buffer rules and strategies to encourage proactive buffer installation.

#### *Division of Environmental Health*

- The Shellfish Sanitation shoreline survey coordinator has held several meetings with representatives of both DENR and county agencies. DEH-SS has produced a draft Standard Operating Procedure (SOP) document outlining new shoreline survey methodology program procedures. To expand the new shoreline methodology to all coastal growing areas, a shoreline survey “Task Force” is planned to meet in 2008 to review DEH-SS Shoreline Survey SOP and define an inspection program to enhance habitat protection.
- All shellfish closure maps are complete and online at the DEH-SS web site.

#### *Division of Forest Resources*

- The NCDFR purchased five additional sets of steel bridge mats and located two sets in the Neuse and Tar-Pamlico and Roanoke River Basins.
- The NCDFR produced a 2nd edition of the ‘Riparian & Wetland Tree Planting Pocket Guide for North Carolina.’ Ten thousand copies will be printed.
- The NCDFR has submitted documentation to NCDOT that will support a \$15,000 NCDOT stipend to fund startup of two water quality monitoring stations upstream and downstream of the Claridge Nursery project just west of Goldsboro.

#### *Environmental Enhancement Program*

- As of September 2008, EEP has over 150 restoration, enhancement and preservation projects within coastal river basins. These projects encompass more than 100 miles of stream, 22,000 acres of riparian and non-riparian wetland, 450 acres of coastal marsh, and 750 acres of buffer.
- EEP has engaged the U.S. Army Corps of Engineers in determining the practicality of developing dam removal projects in the mitigation context. Specific dam removal projects are being incorporated into the recommendations of ongoing Local Watershed Plans.

#### *Albemarle Pamlico National Estuary Program*

- APNEP, in partnership with NOAA and DMF, has overseen the production of aerial photographs covering all coastal waters of North Carolina where SAV habitat could exist. The digital images were acquired during 1,795 flight line miles in autumn 2007 and spring 2008, and are being used by DMF photo interpreters to create a baseline map of SAV presence as an initial step toward SAV habitat monitoring.
- Contracted with DMF to monitor water quality parameters for river herring in the Albemarle Sound. Purchased seven remote water quality sensors for the river herring work.
- In partnership with NCNERR, produced a *Newspaper in Education* insert for the *Raleigh News and Observer* in November 2007 about estuaries and coastal fish habitat. 170,000 inserts were distributed throughout the State.
- APNEP identified a stream segment in the upper Tar River Basin for restoration of degraded waters and work towards removal from the Federal 303-d impaired waters listing.

## September 2008 – August 2009 Planned Action and Needs

- Continue work towards full implementation of the EMC's amended Coastal Stormwater Rules (EMC/DWQ).
- Ensure the progress of the BIMP (CRC/DCM).
- Delineate SHAs in the Albemarle Sound and White Oak River priority areas (DMF/MFC, WRC).
- Continue to review "Inner Banks" development issues and address environmental issues (CRC/DCM, DWQ/EMC) .
- APNEP's Living Aquatic Resources and Water Resources Monitoring Teams, whose membership include state and federal agency plus university representatives, will begin work on developing monitoring plans for freshwater, estuarine, and marine habitat indicators.
- Begin to seriously address the challenges associated with Sea Level Rise (DENR).
- Continue to increase public awareness on the value of and threats to coastal fish habitats and the role of the CHPP process to protect and enhance these resources (DMF/DCM/DENR).
- Examine the feasibility and preferred siting of wind turbines in North Carolina without significantly impacting fish habitat (DENR).
- Pursue funding for the Community Conservation Assistance Program (CCAP) in the Division of Soil and Water Conservation (DENR).
- Seek dedicated funding to staff DCM's Clean Marina Program and effectively implement Best Management Practices as a non-regulatory way to improve water quality in and around marinas and docks (DENR).
- Continue development and refinement of shoreline stabilization rules that preserve ecosystem function and consider rising sea levels and a changing land/water interface (DCM/CRC).
- Form an Interagency Task Force to develop an effective Inspection Program to focus more resources on areas that are critical to coastal habitat protection (Shellfish Sanitation).
- Take steps to encourage more restoration of degraded waters and work towards removal from the Federal 303-d listing (APNEP/DWQ).
- APNEP will continue to collaborate with Environmental Defense to develop a comprehensive assessment methodology for wetland functionality in the Chowan Estuary of Western Albemarle Sound, as the basis for setting goals for wetland extent and condition, developing programs to achieve those goals, and tracking progress. This work will be used to prioritize short-term actions, and as an integral part of the long-term implementation plans for state and federal resource management in the region, and will include the establishment of a Core Wetland Reserve and implementation pilots in one or two key watersheds.
- APNEP will receive a grant from the US EPA to pilot a program addressing climate change issues in the A-P region. They will be working with the Nicholas Institute and others on the project.
- Continue to identify problems regarding infrastructure for Waste Water Treatment Plants and system maintenance. Work with the local governments to develop and implement plans to correct deficiencies (DWQ).
- Continue to develop a non-traditional mitigation strategy for the White Oak basin (EEP). The consultants developing the Local Watershed Plan (East Carolina University and Environmental Defense Fund) are working through EEP's Non-Traditional Mitigation Steering Committee and two ad hoc advisory committees to seek consensus goals and a viable mitigation strategy.
- The CHPP Steering Committee has extended an invitation to the WRC to formally join the steering committee with two members and to fully participate in the implementation of the CHPP.

- Work with the Division of Water Resources to minimize conflicts between Aquatic Weed Control practices and protection of SAV habitat (DMF/MFC, WRC).
- Consider development of a conservation lease for the purpose of oyster and other habitat restoration (DMF/MFC).
- Finalize and approve Strategic Habitat Areas in Region 1 and develop recommended work plans for those SHAs (DMF).
- Seek funding to initiate research on impacts of endocrine-disrupting chemicals to blue crabs and oysters (DENR).
- Work with the Department of Agriculture and Consumer Services to develop and implement a drug disposal program for pharmaceuticals (DMF/MFC).
- Complete photo-interpretation of SAV imagery of coast (DMF/APNEP).
- Complete river herring spawning surveys in Albemarle system and prioritize obstruction removals (DMF).
- Continue expanding the oyster sanctuary program, seeding sanctuaries with live oysters, and construct oyster hatchery (DMF).
- Update the Coastal Habitat Protection Plan (DMF).

# Introduction

## Fisheries Reform Act

The North Carolina General Assembly established the Coastal Habitat Protection Plan program within the North Carolina Department of Environment and Natural Resources (DENR) with passage of the Fisheries Reform Act of 1997. The Act (General Statute or G.S. 143B-279.8) requires preparation of Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats in the coastal area. The Act states “[t]he goal of the Plans shall be the long-term enhancement of coastal fisheries associated with each coastal habitat.” Within DENR, the Divisions of Marine Fisheries, Water Quality, and Coastal Management are designated as the lead agencies for implementing the CHPP program. Many other DENR agencies also participate in CHPP work. By law the CHPP includes:

1. A description of fisheries habitats and their biological systems;
2. An evaluation of the functions, fisheries’ values, status, and trends within the habitats;
3. Identification of existing and potential threats to the habitats and impacts of those threats on coastal fishing; and
4. Recommended actions to protect and restore the habitats.

## Role of the Commissions

The Coastal Resources, Environmental Management, and Marine Fisheries commissions adopted the CHPP in December of 2004. Now that the CHPP has been adopted, along with implementation plans which were adopted by each commission in June and July 2005 (see Implementing the North Carolina Coastal Habitat Protection Plan 2005), rule making and policy actions taken by all three commissions are to comply “to the maximum extent practicable” with the plan.

The three commissions are to report by 1 September each year to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on their progress in implementing the Coastal Habitat Protection Plan. This document reports on the progress made by the respective commissions and their supporting agencies in implementing the CHPP during year beginning in September 2007 and ending in August 2008.

## North Carolina Coastal Habitat Protection Plan (CHPP)

The CHPP focuses on six basic fish habitats: water column, shell bottom, submerged aquatic vegetation (SAV), wetlands, soft bottom, and ocean hard bottom. A chapter is devoted to each type. Each of the habitat chapters is organized to provide the information specified in the Act:

- Description and distribution of the habitat,
- Ecological role and function,
- Status and trends,
- Threats, and
- Recommended management actions to deal with the threats.

The CHPP describes the functions of habitats necessary for production of economically important fish stocks and the links between those habitats and various life history stages of the fish. The CHPP also discusses the various types of threats to the habitats upon which productive coastal fisheries depend. Moreover, the plan summarizes the institutional structures for management of fisheries habitat, adjacent

lands, water quality, and fisheries in eastern North Carolina. Finally, the plan includes 19 management recommendations for the Coastal Resources, Environmental Management, and Marine Fisheries Commissions, DENR (primarily the divisions of Water Quality, Coastal Management, and Marine Fisheries), and others to implement in order to address the identified threats.

Attachment 1 lists the current members of the CHPP Steering Committee.

## **Major Accomplishments of the CHPP Implementation Plan**

After the CHPP was formally adopted in December of 2004, the commissions, their administrative divisions, and DENR also developed and adopted implementation plans during the summer of 2005. These implementation plans detail more than 100 specific steps they would take during the 2005/06 – 2006/07 fiscal years to implement the CHPP recommendations. The accomplishments of the first two years of the CHPP were reported in the 2007 CHPP Annual Report.

In the fall of 2007 a second two-year Implementation Plan was adopted by the three commissions. Numerous specific actions have been accomplished during this past year or are well underway. All three commissions and their DENR agencies are active in using the CHPP and its recommendations as guidance in their regulatory and operational programs. Attachment 2 lists the major accomplishments that are part of the 2007-2009 CHPP Implementation Plan and have been completed this past year, or have realized significant progress.

### **Administration and Public Outreach**

- **Administrative Activities**

During this past year, the second two-year implementation plan (2007-2009) has been at the forefront of the Department's priorities, as well as those priorities of its divisions and their respective regulatory commissions. This second iteration of the two-year implementation plan once again details more than 100 specific action items the agencies within DENR have undertaken, or will undertake, in an effort to carry out the ambitious CHPP recommendations. This most recent implementation plan has been placed on the CHPP web site, along with the accomplishments documented in the 2007 Annual Report to facilitate public review. The research priorities associated with the implementation of the CHPP are also a part of the CHPP website.

The Coastal Habitat Protection Plan continues to receive significant support from the General Assembly. In the 2008-2009 fiscal year budget, the continuing effort to rebuild and rehabilitate North Carolina's oyster populations received a large amount of help from the legislature. The legislature appropriated \$2,000,000 to expand NC's Oyster Sanctuary Program, which included money for six new positions within DMF. Along with this appropriation, the General Assembly designated \$4.3 million of COPs money towards the building of an oyster research hatchery located at UNC-Wilmington. Additionally, \$146,312 was designated for River Herring restoration work from the money appropriated for the Fishery Resource Grant (FRG) Program.

In August of 2008, the first meeting was held by the CHPP Team to begin the 5-year review mandated by the Fisheries Reform Act of 1997. According to that legislation, every management plan must be reviewed and updated at least every 5 years. The Team will be diligently working on this review, with the goal of having it completed and presented to the respective commissions in late 2009. Included in the update will be CHPP accomplishments, emerging issues such as Sea Level

Rise, pharmaceuticals and population increase, status reports on each of the six identified CHPP habitats and any additional research needs that may be identified with the emerging issues.

- Public Outreach

The CHPP Steering Committee, comprised of two members each from the Environmental Management, Coastal Resources, and Marine Fisheries commissions, continues to play a very active role in the CHPP implementation process. Members of the Steering Committee meet quarterly with senior DENR officials and technical staff from DENR divisions and the Wildlife Resources Commission to discuss CHPP-related topics and exchange information regarding CHPP implementation activities of the respective commissions and divisions.

In 2006, DENR assigned its Eastern Regional Field Officer as the coordinator for CHPP implementation. The CHPP Coordinator is strategically housed in DENR's Office of Conservation and Community Affairs, which also includes the Albemarle-Pamlico National Estuary Program (APNEP) and the One North Carolina Naturally program, both of which focus heavily on improved management of important habitats, including the coastal area.

The CHPP Coordinator and the CHPP Team members participate in relevant meetings and give numerous CHPP presentations at various gatherings concerning coastal issues. These groups include DENR and its agencies, the regulatory commissions, the Coastal Resources Advisory Council, North Carolina Sea Grant Program, APNEP, The Nature Conservancy, the NC Coastal Caucus, the North Carolina Coastal Federation, local governments, and several local civic clubs and groups with environmental concerns. The CHPP Coordinator is working with the Soil and Water Conservation District supervisors in the 20 coastal counties regarding specific issues pertaining to habitat conservation and protection. Team members participate in meetings associated with various CHPP implementation actions, such as the Beach and Inlet Management Plan Advisory Committee, Ocean Policy Steering Committee, and Habitat Priorities Advisory Committee.

In 2008, the CHPP program published a twelve-page newsprint brochure entitled: "*Coastal Habitat Protection Plan for North Carolina: Celebrating Success and Looking Toward Tomorrow.*" This brochure provides some excellent examples of CHPP success stories as well as a look towards some future CHPP opportunities. This brochure has been well received by the public and will continue to be an excellent resource to keep CHPP in the forefront on the issues involving the coastal habitats of eastern North Carolina. The brochure has been widely distributed through the aquariums, environmental education centers, state parks and through various DENR divisions. It will be readily available at the Seafood Festival in Morehead City in October, as well as the State Fair.

The CHPP tabletop display was used at several meetings concerned with coastal habitat. CHPP Team members and the Eastern Regional Field Officer provided updates to the CRC, EMC and MFC on a regular basis.

## **Other Accomplishments**

The CHPP, as adopted in 2004, identified more than 90 research needs. In 2005, the CHPP Team summarized those needs in a report placed on the CHPP web site and distributed to the academic, and state and federal agency research community. The identified research needs continue to be a vital component of the CHPP and its 2007-2009 Implementation Plan. The original report of research needs continues to be available on the CHPP web site.



The APNEP, in conjunction with NOAA, NCDOT, ECSU and several DENR agencies has taken the lead in funding and coordinating a statewide effort to aeri ally photograph all high salinity and low salinity beds of Submerged Aquatic Vegetation. The flights to digitally photograph the coastal waters of North Carolina were flown during the fall of 2007 and remaining flight lines were flown this past spring. Some follow up flights may need to be flown this fall in an effort to achieve better resolution and clarity in specific areas. A GIS analyst has been allocated by DMF to photo-interpret the imagery. The photographs will be used by several agencies involved with permitting, as well as used to help inventory docks, piers and hardened shoreline structures. Currently, almost half of the pictures have been turned over to DMF for interpretation.

## ATTACHMENT 1.

### CHPP STEERING COMMITTEE MEMBERS, 2007 – 2008

#### Marine Fisheries Commission

Mr. Jess Hawkins	Morehead City	252-808-3354
Dr. B. J. Copeland	Pittsboro	919-837-5024

#### Environmental Management Commission

Dr. Charles H. Peterson	Morehead City	252-726-6841
Mr. Tom Ellis	Raleigh	919-872-0897

#### Coastal Resources Commission

Mr. Wayland Sermons	Washington	252-946-0006
Mr. Bob Emory	New Bern	252-633-7417

## **ATTACHMENT 2.**

### **NORTH CAROLINA COASTAL HABITAT PROTECTION PLAN GOALS AND IMPLEMENTATION RESULTS**

North Carolina has a number of programs in place to manage coastal fisheries and the natural resources that support them. The Coastal Habitat Protection Plan (CHPP) has identified gaps in the protection provided for important fish habitats under these programs, and also notes that these habitats would benefit from stronger enforcement of existing rules and better coordination among agencies. The focus of the CHPP, per the Fisheries Reform Act of 1997, is on activities regulated by the Marine Fisheries, Coastal Resources and Environmental Management Commissions. During the summer of 2007 each Commission and the Department of Environment and Natural Resources (DENR) adopted a second two-year set of plans to implement the recommendations found in the CHPP, once again with a focus on actions that could be taken based on existing resources and within the 2007-2009 budget cycle. Some actions are well underway towards being completed, while others are just beginning. Most will be completed before the CHPP update scheduled to be completed by December of 2009. There continues to be a basic understanding among agencies that all recommendations and their associated actions will be supported regardless of lead agency. Listed in this attachment are some of the recently completed actions, as well as those which will be completed within the year.

#### **Department of Environment and Natural Resources**

DENR is the lead stewardship agency for the preservation and protection of North Carolina's outstanding natural resources. The Department, which has offices from the mountains to the coast, administers regulatory programs designed to protect air quality, water quality, and the public's health. Through its natural resource divisions, DENR manages fish, wildlife, and wilderness areas. The DENR implementation plan focuses on coordination among the Commissions and the Department, as well as ensuring that all DENR Divisions are taking actions consistent with the goals and recommendations of the CHPP.

#### **Marine Fisheries Commission and Division of Marine Fisheries**

The Marine Fisheries Commission (MFC) and Division of Marine Fisheries (DMF) manage the commercial and recreational fisheries in North Carolina's estuarine and ocean waters. These waters, including their specific physical habitats (water column, wetlands, sea grasses, soft and hard bottoms, and shell bottoms), produce the finfish, shrimp, crabs, oysters, and other economically important species sought by fishermen, as well as the forage base that supports them. The Division implements the Commission's rules and Department initiatives. The Division's mission is to ensure sustainable marine and estuarine fisheries for the benefit of the people of North Carolina. Division staff drafted the CHPP, and they will staff many of the groups working on implementation actions. Staff in DMF district offices will also utilize CHPP information to review potential impacts of coastal development projects.

#### **Environmental Management Commission and Division of Water Quality**

The Environmental Management Commission (EMC) is responsible for adopting rules for the protection, preservation and enhancement of the State's air and water resources. The Commission oversees and adopts rules for several divisions of DENR, including the Divisions of Air Quality, Water Resources, and Water Quality. The goal of the Division of Water Quality (DWQ) is to maintain or restore and improve the aquatic environment and to ensure compliance with state and federal water quality

standards. In coordination with the CRC and MFC, and their respective staffs, the EMC and DWQ have developed specific actions to implement the CHPP recommendations.

### **Coastal Resources Commission and Division of Coastal Management**

The Coastal Resources Commission (CRC) establishes policies for North Carolina's Coastal Management Program and adopts implementing rules for both the N.C. Coastal Area Management Act (CAMA) and the N.C. Dredge and Fill Law. The commission designates areas of environmental concern, adopts rules and policies for coastal development within those areas, and certifies local land-use plans. The Division of Coastal Management (DCM) serves as staff to the CRC and works to protect, conserve, and manage North Carolina's coastal resources through an integrated program of planning, permitting, education and research. With jurisdictional authority at the interface of many of the habitats identified in the CHPP, the CRC and DCM take actions to complement those of the MFC/DMF and EMC/DWQ.

Action	Agencies					Target year	Status	Status (details)	ActionID
	DENR	DMF	DCM	DWQ	WRC				
<i>Recommendation 1.1 Enhance enforcement of, and compliance with, Coastal Resources Commission (CRC), Environmental Management Commission (EMC), and Marine Fisheries Commission (MFC) rules and permit conditions.</i>									
Strengthen enforcement programs by seeking legislation that will raise maximum Coastal Area Management Act penalties to \$1,000 for a minor development violation and \$10,000 for a major development violation.	-	-	X	-	-	2008	C	Rules effective 1 February 2008	289
The Department will seek funding for additional compliance positions in appropriate programs.	X	-	X	X	-	Ongoing	C	DWQ needs one more for Wilmington. Land Resources needs positions; CRAC sending letter of support for establishment of additional DWQ compliance positions (5/1/2007). Washington stormwater compliance position created in 2007 was filled in 2008. Will begin work by establishing priorities and coordination of enforcement. Do not know if Raleigh compliance positions have been filled or how msny inspections have been done. Continued inspection of high density Coastal Stormwater Permits as they come up for renewal.	253
The Division of Coastal Management will develop a Compliance Education Coordinator position. Compliance promotion by DCM will encourage voluntary compliance with CRC and CAMA/Dredge and Fill rules, laws, and requirements, helping overcome some of the barriers to a successful and effective enforcement program.	-	-	X	-	-		PC	Moving forward	290

Cross train Marine Patrol officers to take note of and report violations of EMC rules and permits in Coastal Waters to appropriate agencies.	-	X	X	X	-	Plan in FY 2007-08; train in 2008-09; implement following training.	NA	Marine patrol	168
Enhance DMF habitat alteration permit review capability.	-	X	-	-	-	Establish program and staff in FY 2008-09	PC	One position in each regional office plus one clerical position (total=5) as requested in DMF expansion budget (6/11/07). Requested 2 positions through CRFL grant and expansion budget processes. Currently pending.	165
Design an effective Inspection Program to focus more resources on areas that are critical to coastal habitat protection similar to Shellfish Sanitation shoreline survey program.	X	-	X	X	-	2007-08 (1st step)	PC	Steps: 1-Organize a DENR interagency inspection task force to examine the issue and develop a system to accomplish the objective - DEH – Shellfish Sanitation Shoreline Survey Coordinator has held several meetings with representatives of both DENR and County agencies. DEH-SS has produced a draft SOP document outlining the new shoreline survey methodology program procedures. Progress has continued on expansion of the new shoreline methodology to all coastal growing areas. Draft letter to lead CHPP agencies complete and will be sent to CHPP team for review. Shoreline survey “Task Force” will be formed by the end of this year to review DEH-SS Shoreline Survey SOP and define an inspection program to enhance habitat protection; 2-Produce a report with proposed new inspection regime and list of additional resources necessary to execute the plan; 3-Begin implementing the plan.	166
Conduct outreach to educate citizens in their jurisdictions about DWQ's Neuse and Tar-Pamlico riparian buffer rules.	-	-	X	X	-		DK	Additional needs?	167
Share ACE permit tracking system to address cumulative impacts.	X	-	X	-	-		NA	The Division is re-evaluating this proposed action.	153

Coordinate DMF, DWQ, and Dept. of Agriculture and Consumer Services actions concerning aquaculture operations in order to protect and enhance surface waters and estuarine resources.	-	X	-	X	X	2008-09	PC	Issue of striped bass pond discharge raised at MFC Habitat & Water Quality Committee due to high chl a levels at discharge sites. DWQ submitted a draft SOC for final review. Once a DWQ consensus has been reached the SOC will be sent to the first five farms for the signature. SOC calls for the preparation of a Farm Management Plan, which will minimize water quality impacts during the life of the SOC, and a Final Solution Plan which will, when implemented resolve all water quality standard impacts.	131
Develop permit application survey protocols for shellfish and SAV habitats for CAMA applicants to use.	-	X	X	-	-	2007-08	C	Draft protocol developed. Incorporated into DMF permit review guideline document.	133
Ensure consistency in habitat definitions among agencies and commissions.	X	X	X	X	X	Ongoing	PC	Habitat section - draft rule language for SAV habitat being developed by DENR interagency workgroup; public hearings in Oct. Working with DCM since its related to dredging and dock rules.	152
<i>Recommendation 1.2 Coordinate and enhance water quality, physical habitat and fisheries resource monitoring (including data management) from headwaters to the nearshore ocean.</i>									
Enhance dependable water quality monitoring by investing in Neuse Estuary MODMON and FerryMon.	X	-	-	-	-	Ongoing	C	Continued water quality monitoring in the Neuse River by way of the MODMON and FerryMon programs.	184
The Department, through the Division of Environmental Health, will develop a data system for monitoring data and mapping of the closure of shellfishing waters to enhance the sharing of information among Departmental Divisions.	X	X	X	X	X		PC	All shellfish closure maps available on DEH-SS and NC-One map websites (5/1/2007). Monitoring data IBEAM development has been at a stand still. No DENR programmer available to complete IBEAM system for water sampling data and shellfish closure data.	185

The Department, through the Division of Environmental Health, will continue to refine and expand the data gathered in shoreline surveys to more effectively assess pollution impacts to shellfish growing areas.	X	X	X	X	X	Ongoing	C	New shoreline methodology has been expanded to all shellfish growing areas for both the Triennial and Annual Shoreline Surveys with 60% complete. Problems/violations/areas of concern are reported to the appropriate agency with jurisdiction regarding the violation. Spreadsheet attached listing Growing Area Shoreline Surveys completed using the new methodology.	186
The Department, through the Albemarle-Pamlico National Estuary Program (APNEP), will develop a comprehensive monitoring plan for the estuarine system.	X	X	X	X	X	End of 2008	PC	Coordinate with data sharing processes (ActionID 132). Related to ActionID 188: development of estuarine and nearshore health indicators. APNEP's Living Aquatic Resources and Water Resources Monitoring Teams, whose membership include state and federal agency plus university representatives, began work on developing monitoring plans for freshwater, estuarine, and marine habitat indicators.	187
Analyze DMF data to develop fish-based habitat indicators.	X	X	-	-	-	End of 2008	C	Fisheries Management and Habitat sections. Indicators developed for DMF habitat and fish indicators selected by APNEP – so. Flounder, shrimp and crab populations, clam & oyster extent, obstructions to upstream migration, shellfish disease, anadromous fish spawning areas. SeaGrant fellow analyzed habitat indicators in Albemarle Region.	134
Develop a suite of indicators of estuarine and nearshore coastal health.	X	X	X	X	X	Start in 2006-07; complete development by Dec 2007	PC	Finalizing ecosystem indicators.	188



Work with other DENR agencies to develop data sharing processes. Specifically address data types and standards, data sharing standards, definitions, web services, scaling, integration mechanisms, administration, QA/QC, and other issues.	X	X	X	X	X	2007-09	PC	Coordinate with comprehensive monitoring program (ActionID 187). Fisheries Management and IT sections. 1) DMF is developing process for documenting DMF reports and data sets. Will be available on website for other agencies. 2) Provided GIS habitat data to One NC Naturally for the Conservation Planning Tool. DCM's Estuarine Shoreline Mapping Summit to develop consistent mapping strategies is part of this effort.	132
Host Forum for Coordinating Water Related Monitoring among Government Agencies, Universities, and Local Governments.	-	-	-	X	-	2008	C	Hosted NCforWater at UNC Charlotte in May 2008, a water quality monitoring forum aimed at coordinating monitoring efforts among state and federal agencies, universities, and local governments.	286
<i>Recommendation 1.3 Enhance and expand educational outreach on the value of fish habitat, threats from human activities, effects of non-native species, and reasons for management measures.</i>									
The Department, through the Public Information Office will coordinate with the Zoo, Aquariums, Museum of Natural Sciences, State Parks, Educational State Forests and Environmental Education Centers to integrate the relevant components of the CHPP into exhibits and programs.	X	-	-	-	-	2007-09	DK		190

Develop and implement an educational outreach plan for CHPP.	X	-	X	-	-	Ongoing	PC	NC-NERR included development of the plan in its activities for FY 07-08 (5/1/2007). NCNERR and APNEP produced a Newspaper education insert for the Raleigh News and Observer in November 2007. A full page of the insert was dedicated to Coastal Fish Habitats. 170,000 inserts were distributed throughout the State. NCNERR designed the centerfold of the CHPP update in May 2008. 100,000 copies were distributed throughout the State. NEER also: (1) produced an interpretive sign on Coastal Fish Habitats for the Rachel Carson Boardwalk, (2) developed two curricular activities (Estuary Keeper & ECO-Logical) that focused on CHPP habitats, (3) held a Stormwater Management workshop in the Fall of 2007, and (4) developed a one-page educational brief on Stormwater Management for the CRAC in Sept. 2007. NCNERR encourages Graduate Research Fellow applicants to address CHPP research priorities.	20
NERR will include a segment of E-Live to focus on fish habitat.	-	-	X	-	-	Ongoing	PC	E-Live has featured shell bottom and SAV in its 2007 session; 2008 session will focus on soft bottom.	192
North Carolina's Clean Marina Program and Clean Vessel Act activities will emphasize the threats to fish habitat and benefits of BMPs.	-	-	X	-	-	Ongoing	PC	DCM has partnered with Sea Grant to revitalize the Clean Marinas Program and to assist DCM with implementation of BMPs at all coastal marinas. Clean marinas BMP manual being reviewed by DWQ. An Advisory Committee has been established to review criteria and check list. Clean Boating Guide distributed to marinas (5/1/2007). Two Clean Marina workshops held in December 2007 focused on power washing.	193
DCM and N.C. Sea Grant will incorporate CHPP into their research and education efforts.	-	X	X	-	-		DK		195
Create interactive display(s) showing habitat functions and threats for use at festivals, etc.	X	X	X	X	X	2008	PC	Public Information section. DMF is partnering with other DENR agencies to develop a "Habitat House" (env. friendly house) as educational display at state fair.	135

Develop and distribute brochures about fish, fish habitat, and fishing to be available for general distribution by DENR staff.	X	X	X	X	X	2007-09	PC	NCNERR will print out copies of the Coastal Fish Habitat interpretive sign for the Seafood Festival	269
Educate traditional economic interests on the impact of stormwater rules	-	-	-	X	-	Ongoing	C	Sponsoring five workshops in September 2008 to inform consultants, developers, local government, and other state agencies on the impact of new stormwater rules	285
<i>Recommendation 1.4 Coordinate rulemaking and enforcement among regulatory commissions and agencies.</i>									
The Department will hold quarterly meetings on proposed projects and enforcement cases that are or may be subject to the permitting or enforcement jurisdiction of the programs of more than one division and invite other state and federal agencies to participate as appropriate.	X	X	X	X	X	Ongoing	PC	Divisions and agencies that will participate in meetings include Division of Coastal Management, Division of Water Quality, Division of Marine Fisheries, Division of Land Resources, Division of Environmental Health, Wildlife Resources Commission and U.S. Army Corps of Engineers. Discussion will include cumulative impact and SEPA concerns	196
The DFR will revise its Memorandum of Agreement (MOA) documents with the NC Division of Land Resources and the NC Division of Water Quality to ensure compliance monitoring and enforcement policies are consistently practiced in a timely and seamless manner. These MOAs primarily address interdivisional communication on the nine forestry performance standards known as the Forest Practice Guidelines Related to Water Quality (FPGs) and the Riparian Buffer Rules applicable to NC's river basins.	X	-	-	X	-	Late 2009	PC	Project delayed due to staff vacancy. [The Water Quality & Wetlands Staff Forester position accountable for completing this project was refilled in early 2008.] Additionally, the NCDFR will work with the US Army Corps of Engineers, Wilmington District, to create an additional guidance document for the forestry community that provides interagency consensus on what is allowable minor drainage in wetlands. Other forestry stakeholders will be involved in this guidance development process.	169

DWQ Basinwide Planners review CAMA Land Use Plans	-	-	X	X	-	Ongoing	PC	Reviewed plans for Caswell Beach, Holden Beach, North Topsail Beach, Ocean Isle Beach, Swansboro, Tyrrell County/Columbia, and Sunset Beach.	291
<i>2.1. Evaluate potential Strategic Habitat Areas by:</i>									
<i>a) coordinating, completing, and maintaining baseline habitat mapping (including seagrass, shellbottom, and other bottom types) using the most appropriate technology;</i>									
Map submerged aquatic vegetation (SAV) in coastal North Carolina.	X	X	X	X	X	Complete initial coastwide mapping 2007-08	PC	All photos taken (1795 linear mi) in fall 2007 and spring 2008 with pre-water clarity monitoring. 1490 ground truth points taken in 67 areas. Photos partially photo-interpreted. Expected due date mid 2009 for fall 2007 photos.	202
Continue mapping of all shallow estuarine bottom and bottom types.	-	X	-	-	-		PC	Resource Enhancement- working to complete western Pamlico near Swanquarter and Brunswick Co. In 07-08, mapped 83,676 acres in Brunswick, Onslow, Carteret, Dare, Hyde and Beaufort Counties. Expect to have all shellfish bottom mapped by Dec 2009.	203
Map deep (> 10 ft) estuarine bottoms, starting with lower Neuse River.	-	X	-	-	-	Begin 2007-08	PC	Resource Enhancement. Developing protocol using Acoustic Ground Discrimination System. Will train techs in fall.	254
NERR will map SAV within reserve boundaries with data acquisition coordinated with multi-agency coastwide mapping effort: Repeat Rachel Carson mapping and map Masonboro and Currituck sites.	-	-	X	-	-	2007-09	PC	Completed the mapping of Rachel Carson Reserve and Masonboro Island Reserve. Planning to map the Currituck Banks Reserve in 2009.	205
<i>b) selective monitoring of the status of those habitats;</i>									
Conduct cooperative DMF/NOAA research evaluating environmental conditions needed to provide suitable SAV habitat.	X	X	-	-	-	Begin summer 2007	PC	Habitat section. Original DOT funding fell through. However, APNEP/NOAA/ECU submitted CRFL proposal for this. Pending.	138

DMF and NERR will initiate SAV monitoring of sentinel sites	-	X	X	-	-	2008	NA	Initial concepts have been discussed at NC SAV Workgroup meetings. Monitoring activities are dependent on identification of funding; a multi-agency SAV Workgroup team submitted a proposal for long term field monitoring of SAV for CRFL funding in Aug. '08. NCNERR sites may be included in monitoring sites if the project is selected for funding.	154
<i>c) assessing effects of land use and human activities on those habitats.</i>									
Conduct research on the effects of current dock siting practices on SAV and shell bottom, and determine design modifications that would minimize impacts.	-	X	X	X	X	2008-09	NA	Possible federal aid or university research project.	208
<i>d) and other SHA related activities.</i>									
Expand CMAST fellows program to include habitat and SHA research.	-	X	-	-	-	2008-09	C	Habitat section and Directors Office. CMAST fellow Tim Ellis analyzed Prg 100 data in relation to SHA analysis.	278
<b>2.2. Identify and designate Strategic Habitat Areas using ecologically based criteria, analyze existing rules and enact measures needed to protect Strategic Habitat Areas, and improve programs for conservation (including voluntary actions) and acquisition of areas supporting Strategic Habitat Areas.</b>									
Integrate information resulting from SHA committee into DENR Divisions' guidelines, policies, and rulemaking.	X	X	X	X	X	Start July 2007; continue through SHA designation	PC	Habitat, MFC, and Directors Office. Meeting was held to discuss management options.	210
Conduct SHA evaluation and designation process for Albemarle Sound area.	-	X	-	-	X	2007-08	C	Habitat section. Region 1 (Albemarle Sound) SHA committee formed. HAVe completed draft selections and public workshop. Final report pending.	140
MFC/WRC designate Anadromous Fish Spawning Areas.	-	X	-	-	X	2007-08	C	Designated by MFC (eff. 12/07) and WRC (eff. 7/08)	207
Work with DENR to include SHA priorities within EEP local watershed plans and DENR conservation planning tool.	X	X	-	-	X	2007-09	PC	Some data provided to DENR for Conservation Planning Tool. Working with EEP on compensatory mitigation. EEP will continue to participate in the Conservation Planning Tool effort and help facilitate SHA updates as they become available.	270

Conduct SHA evaluation and designation process for White Oak basin.	-	X	-	-	X	2008-09	PC	Habitat section. GIS data layers being assembled	141
Conduct SHA evaluation and designation process for Pamlico Sound and tributaries	-	X	-	-	X	2008-09	PC	Habitat section. GIS data layers being assembled.	284
<i>3.1 Greatly expand habitat restoration, including:</i>									
<i>a) creation of subtidal oyster reef no-take sanctuaries,</i>									
Enhance oyster sanctuaries in Pamlico Sound system. Expand several sanctuaries; plan new sites.	-	X	-	-	-		PC	Resource enhancement. In 2008, ~7,300 bu rock and ~300 bu of oyster shell were deployed. Legislature allocated \$2 million in appropriations - will support 6 new positions, purchase of rock material, and establishment of remote setting programs.	212
Enhance Oyster Shell Recycling Program. Discourage use of shell material for landscaping or other uses besides shellfish cultch.	-	X	-	-	-	Ongoing	PC	Resource enhancement. State law prohibits shell disposal in landfills. Through increased public awareness, over 300,000 bu shell were collected in 2007. Increased partner assistance in collections. Appropriated additional \$ for seasonal recycling program.	213
Monitor all oyster sanctuaries for oyster recruitment, survival, and growth.	-	X	-	-	-		PC	Resource Enhancement. Prg. 611 established for oyster sanctuary monitoring. 7 of 9 oyster sanctuaries monitored this year. Parameters included size structure of oysters, survival, growth rates, wq conditions, colonization on oyster shell.	214
Work with university researchers to monitor fish/invertebrate use of oyster sanctuaries and effect of oysters on local water quality.	-	X	-	-	-	Start 2007-08	PC	Resource Enhancement. FRG underway by Dr. Peterson looking at fish utilization on oyster sanctuaries. DMF working to assign different researchers to different sanctuaries to spread out monitoring.	261
Cooperate with university researchers on oyster larvae distribution and movement investigations	-	X	-	-	-	2007-09	PC	Resource Enhancement. Ongoing FRG by Cudaback and Hasse/Egleston.	256

DMF Resource Enhancement Section will initiate dissolved oxygen (DO) sampling in Pamlico Sound system to aid in determining suitable sites for oyster restoration.	-	X	-	-	-	2007-08	C	Coordinate with DWQ Rapid Response Program data collection. Resource Enhancement (6/11/07). DMF working with UNC-G who is deploying continuous monitoring devices at 3 locations in Neuse R.	271
Support funding for establishment and operation of shellfish hatcheries	X	X	X	X	-	Ongoing	PC	General Assembly approved funds for building the hatchery. DMF and UNC will use the funds to build the hatchery. Coastal Resources Advisory Council submitted a resolution supporting funding of hatcheries	275
<i>b) reestablishment of riparian wetlands and stream hydrology.</i>									
Work with the Corps of Engineers and the Department of Transportation on innovative mitigation projects and an appropriate crediting system for them under the EEP. Such projects may include the protection and restoration of SAV and oyster beds, and the removal of certain dams and other aquatic organism barriers.	X	X	-	-	X	Ongoing	PC	EEP is incorporating CHPP priorities into its coastal cataloging unit screening process to promote internally (via its Full-Delivery and Design-Bid-Build programs) and externally (via programs like CREP) the implementation of restoration projects in hydrologic units where coastal functions can be most improved. Work continues on a rapid assessment method for evaluating the condition of estuarine habitats in order to target subwatersheds for mitigation/restoration. The consultants developing rapid assessment method (ECU and NC Environmental Defense) are working through EEP's Non-Traditional Mitigation Steering Committee and two ad hoc advisory committees to seek consensus goals and a viable mitigation strategy. This strategy will be presented to the Program Assessment and Consistency Group (PACG—includes representatives of the USACE and NCDOT) for review and approval during the following year.	265
DENR review of state agency requests to the Natural Heritage Trust Fund will place a priority on those proposals that would further the protection and restoration of critical fisheries habitats	X	X	-	-	X		DK	Coordinate with DENR Strategic Conservation Plan	217

habitats.									
Make protection and restoration of critical fisheries habitats a priority part of the One North Carolina Naturally initiative, such as developing conservation plans for the twenty coastal counties that identify potential conservation focus areas.	X	X	X	-	X	2007-09	DK	Coordinate with DENR Strategic Conservation Plan	218
The Department will assist coastal local governments in identifying navigation and stream restoration projects of particular importance to both fish and fisheries with grants from the State-Local projects program of the Division of Water Resources.	X	X	-	-	X		DK		219
Survey previously identified Albemarle Sound river herring spawning areas to estimate current condition and spawning function, and identify stream obstructions on river herring spawning streams.	-	X	-	-	X	2007-08	PC	Fisheries Management section. EC staff conducted surveys in Chowan R. system spring '08. Will continue '09	146
Include Strategic Habitat Areas as a priority area for CREP.	X	X	-	-	X	2007-09	NA	Once SHA maps are completed, CREP may incorporate them into the ranking	149



DSWC encourage local SWCDs to include Strategic Habitat Areas and other CHPP priorities in local priority ranking system for the Agriculture Cost Share Program and the Community Conservation Assistance Program.	X	-	-	-	-	2007-09	NA	Need strong emphasis on Community Conservation Assistance Program because it is the only retrofit program that can begin to reverse stormwater pollution. Waiting on completion of SHA designation.	150
Establish and maintain an inventory of restoration projects describing the location, amount, and type of habitat established in the coastal river basins.	X	-	-	X	-	Ongoing	PC	APNEP is conducting an inventory in northeast region; DWQ 319 Program and CWMT also have inventories. EEP maintains a database of restoration projects and will provide DMF with updates of projects located in coastal river basin SHAs. EEP tracks the number of stream, wetland (riparian, non-riparian, coastal marsh) and buffer projects. In the upcoming year, EEP will work with DMF to identify and track projects at the SHA scale. As of September 2008, EEP has over 150 restoration, enhancement and preservation projects within the drainages containing SHAs. These projects encompass more than 100 miles of stream, 22,000 acres of riparian and non-riparian wetland, 450 acres of coastal marsh, and 750 acres of buffer.	163
The DFR will partner with the DOT and EEP to restore ~13,000 linear feet of stream and floodplain (Priority 2 Restoration) and create ~10-30 acres of wetlands in the Little River watershed (Neuse River Basin).	X	-	-	-	-	Partial completion by late 2009	PC	The DOT and DFR have agreed to easement compensation for loss of nursery tree production and a NCDOT engineering consultant is completing engineering and design plans for the stream and riparian corridor; permitting of the project is pending. The EEP has secured lands north of the nursery property and is actively engaged with a landowner on the southern nursery property line to further expand the reach of the restoration project. They are currently pursuing funding for monitoring. EEP has been in negotiation with adjacent landowners to pursue the balance of the project.	170

The NCDFR will work with other DENR agencies to start pre-construction water quality and water quantity monitoring of 'The Canal'.	X	-	-	X	-	Start late 2008-early 2009	PC	This channelized stream runs through the Division's 700+ acre Claridge Nursery, located just west of the City of Goldsboro. The DFR has submitted documentation to DOT that will support a \$15,000 DOT stipend to fund startup of two WQ monitoring stations upstream and downstream of the project. Related to ActionID 170.	266
The CRC may amend its administrative rule governing coastal wetlands (15A NCAC 7H 0.0205 Coastal Wetlands) to prevent alteration resulting in conversion of wetlands to uplands over time.	-	-	X	-	-		PC	The proposed changes include a list of standards under which limited alterations, or alterations by resource agencies or academic institutions, shall be exempt from permit requirements. The changes were approved for public hearing at the March 2008 meeting with an anticipated effective date of December 1, 2008.	292
<i>c) and other habitat restoration.</i>									
Study the feasibility and benefits of developing an SAV Restoration Program.	X	X	X	X	X		PC	Needs further discussion among agencies regarding exotic SAV species. Note: Split into stepwise actions - much more needs doing (research, policy); could be a DENR issue (5/1/2007). DWQ coordinating with DOT to conduct a feasibility study regarding SAV restoration and mitigation in Currituck Sound. EEP has initiated internal research to determine the functional value of SAV restoration. EEP will investigate the DCM permitting requirements involving impacts to SAV. EEP will incorporate SAV restoration recommendations into the non-traditional mitigation strategy to be proposed to the PACG in the following year.	276
<i>3.2 Prepare and implement a comprehensive beach and inlet management plan that addresses ecologically based guidelines, socio-economic concerns and fish habitat.</i>									
Develop minimum criteria for monitoring beach nourishment projects.	X	X	X	X	-		NA	Part of the Beach and Inlet Management Plan (BIMP); no action at this time.	65

Convene stakeholder group to identify data gaps, funding needs, and framework, and develop a timeline for beach and inlet management plan.	-	-	X	-	-		C	Part of the Beach and Inlet Management Plan. The Advisory Committee is comprised of appropriate state and federal agencies and members from the affected coastal communities. BIMP Advisory Committee meetings were held in November 2007 and September 2008.	66
Complete beach and inlet management plan	X	-	X	-	-	April 2009	PC	DWR and DCM are collaborating and developing a comprehensive Beach and Inlet Management Plan (BIMP) for the State. Moffitt and Nichol were selected as the Contractor and began working in November 2007 to help with this effort. DCM and DWR have consulted with the Department and selected two different Committees to help with the initial plan development. The Advisory Committee(s) are comprised of an internal DENR working group made up of DENR agencies that will help with data gathering and coordination, and a BIMP advisory group made up of appropriate state and federal agencies and members from the affected coastal communities. Both these groups have met twice. The first meeting was in November 2007 when the work on the plan began, and in September 2008 to discuss the Draft Regional Management regions.	295
DCM will serve as a clearinghouse for beach nourishment monitoring data.	-	-	X	-	-		PC	This is part of DCM CZMA section 309 program for 2006-2010; portions of this dataset already have been compiled by state and federal agencies as well as academic institutions. DCM is currently merging these datasets. A database of historic, ongoing and future beach fill projects including beach nourishment, dredged material disposal, habitat enhancement, storm protection, and dune construction is also part of the BIMP database being gathered by Moffitt and Nichol. This information is being put into a database called E-Coastal. This database is also the one that the USACE is using for this effort as well.	222

*3.3. Protect Submerged Aquatic Vegetation (SAV), shell bottom, and hard bottom areas from fishing gear effects through improved enforcement, establishment of*

<i>protective buffers around habitats, and further restriction of mechanical shellfish harvesting.</i>									
Prepare maps identifying areas where allowed use of bottom disturbing fishing gear does or could overlap areas with sensitive estuarine habitat.	-	X	-	-	-	By December 2008	PC	Fisheries Management, IT, and Habitat sections. Bay scallop FMP (11/07) and oyster FMP (6/08) identified & resolved gear/habitat conflicts.	223
<i>3.4. Protect fish habitat by revising estuarine and public trust shoreline stabilization rules using best available information, considering estuarine erosion rates, and the development and promotion of incentives for use of alternatives to vertical shoreline stabilization measures.</i>									
Support/promote efforts to develop shoreline stabilization demonstration projects along non-ocean shorelines.	-	-	X	-	-	Ongoing	PC	DCM has identified possible funding sources and will be submitting applications for assistance July 2007 (5/1/2007). DCM NC NERR has received a CICEET grant to study marsh sills	78
Encourage alternatives to vertical shoreline stabilization methods through permit requirements and fees.	-	X	X	X	X	Ongoing	PC	The CRC has proposed rule changes to its GP for shoreline stabilization that reduce the distance waterward in which bulkheads encroach into public trust areas, by moving structure locations to approximate normal high water, and by promoting the benefits of rock structures through permit fee structure.	229
Refine rule 15A NCAC 07H .2700 GP for Marsh Sills.	-	-	X	-	-	Ongoing	PC	Included in ongoing effort of CRC Shoreline Stabilization Subcommittee.	74

Use NOAA grant to delineate estuarine shorelines; begin by developing mapping methods	-	-	X	-	-	2007-09	C	The Center for Geographic and Information Systems (CGIA) has been contracted to determine the methodology for delineating the shoreline and structures for North Carolina. They have evaluated techniques such as LIDAR, Feature Analyst, and digitizing from the best available aerial photography. By June 2007, CGIA will have delivered a suggested methodology report as well as a completed shoreline and delineated structures for all public trust waters in Carteret, Craven and Pamlico Counties (6/15/2007). DCM has generated a draft methodology for digitizing a contiguous estuarine shoreline for North Carolina. Additionally, DCM has established an Estuarine Shoreline Working Group (ESWG) comprised of Federal, state and local government agencies, academics and various stakeholders. The ESWG will review DCM's shoreline delineation methodology and their comments will be incorporated into the document in an effort to enhance stakeholder use and acceptance of the finalized shoreline. The ESWG met in August 2008.	80
Work with NOAA's Technical Advisory Committee members in their sponsored research program "Ecological Effects of Sea Level Rise" to develop information/tools to better forecast and manage landscape responses of critical natural resources relative to sea level rise.	-	X	X	-	-	Ongoing	PC	DCM and DMF staff serving as management representatives; Presentations on SLR scheduled for July 2007 CRC (Projects Status Report). DCM participating in EPA Coastal Elevations and Sensitivity to SLR study – focuses on coastal areas of NY to NC (5/1/2007). DCM and DMF staff continue serving as management representatives; Most recent meeting held May 1 & 2 in Morehead City. All three projects are progressing at various stages -- however, it appears each will be extended beyond the original 3-year time period. No products have been produced to this point as the hydrodynamic and habitat response models continue to be developed. Next meeting is assumed to be this fall.	230

Consider erosion rates as an additional factor in the siting of structures along estuarine and public trust shorelines.	-	-	X	-	-	2007-09	PC	Will be incorporated into DCM's draft methodology for digitizing a contiguous estuarine shoreline for North Carolina (ActionID 80).	267
<b>3.5 Protect and enhance habitat for anadromous fishes by:</b>									
<b>a) incorporating the water quality needs of fish in surface water use planning and rule-making</b>									
The Department, through the Division of Water Resources, will participate in a study of Kerr Lake with federal partners. The study will include the evaluation of modifying releases from the dam to benefit anadromous fish in the Roanoke River.	X	X	-	-	X	Complete study by 2012	DK	Conduct study under section 216 of the federal Clean Water Act; include other DENR agencies with appropriate knowledge and programs.	262
<b>b) eliminating obstructions to fish movements, such as dams, locks, and road fills</b>									
The Department, through the Division of Water Resources and the Ecosystem Enhancement Program will focus on evaluation and possible removal of lock and dams 1, 2, and 3 on the Cape Fear River.	X	X	-	-	X	Ongoing	PC	Being pursued by CHPP Steering Committee and FMP implementation group (5/1/2007). These dams are currently being scrutinized by the legislature for removal or modification. Inasmuch as these dams can be incorporated into River Basin Restoration Priorities or Local Watershed Planning, EEP will document their potential functional uplift and pursue project development if mitigation needs justify the cost.	160
The Department, through the Division of Water Resources and the Ecosystem Enhancement Program, will pursue dam removal projects where appropriate.	X	X	-	-	X	Ongoing	PC	EEP has engaged the ACE in determining the practicality of developing dam removal projects in the mitigation context. Specific dam removal projects are being incorporated into the recommendations of ongoing Local Watershed Plans. In any case, dam removal projects must yield affordable mitigation credits in cataloging units with mitigation needs in order for EEP to pursue them.	231
Modify dam removal policy with ACE to provide for accomplishing action #231.	X	X	-	-	X	2007-09	DK		268

Survey coastal river basins systematically to locate obstructions to fish migration and prioritize sites for removal/restoration.	-	X	-	-	X		PC	SHA Region 1 analysis identified all potential obstructions in Albemarle region. During spawning surveys in '08, information on type/size of obstructions recorded. Plan to survey thoroughly in '08-'09.	162
Obtain funding to restore designated streams and associated wetlands designated as anadromous fish spawning areas in the Albemarle Sound area as implementation steps for the River Herring Fishery Management Plan.	X	X	-	-	X		PC	Fisheries Management and cooperators. APNEP received money that was used to purchase conservation land and buy wq monitoring devices to be used at spawning locations.	164
Evaluate 15A NCAC 2H .0400 and 2B .0500 regulations for opportunities to provide incentives for upgrading all types of wastewater treatment systems and make recommendation to EMC.	-	-	-	X	-		DK		87
<i>4.2. Adopt or modify rules or statutes to prohibit ocean wastewater discharges.</i>									
Evaluate 15A NCAC 2H .0400 rules as they apply to ocean wastewater treatment systems and make recommendation to the EMC regarding modifications.	-	-	-	X	-		PC	Reviewed existing rules restricting ocean discharges and is asking DENR legal counsel to review findings and comment on the true extent of those restrictions.	88
<i>4.3. Prohibit new or expanded stormwater outfalls to coastal beaches and to coastal shellfishing waters (EMC surface water classifications SA and SB) except during times of emergency when public safety and health are threatened, and continue to phase-out existing outfalls by implementing alternative stormwater management strategies.</i>									
Work with DENR to prioritize stormwater outfall mapping efforts on areas near critical fisheries habitats and implement DOT's Stormwater Pilot Project on new and innovative technologies to clean up discharges from NC DOT outfalls and associated outlets (DWR action).	X	X	-	-	X		DK	Money with DENR; "Smart sponge" experiment underway in Dare County. Note: Consider UNC-Coastal Studies Institute as another partner in research.	232

Evaluate impact of deep-water ocean outfall for stormwater management.	X	X	X	X	-	2007-09	DK		89
Actively seek research on innovative technology to remove stormwater outfalls with 319 grant funding.	-	-	-	X	-		DK		234
Develop a plan to phase out municipal stormwater outfalls to sounds.	-	-	-	X	-	2007-09	C	All estuarine outfalls have been identified	233
Enhance DWQ coastal/state stormwater database by mid-2007	-	-	-	X	-	2007-09	PC	Awaiting report	94
<i>4.4. Enhance coordination with, and financial/technical support for, local government actions to better manage stormwater and wastewater.</i>									
Provide Phase II stormwater educational & technical assistance to local governments through the DENR Runoff Pollution Campaign and through partnerships with the Division of Community Assistance and UNC Institute of Government.	X	-	-	X	-		DK		235
Implement Community Conservation Assistance Program with emphasis on CHPP stormwater priorities in coastal counties.	X	-	-	-	-	Start in 2007-08	C	DSWC program patterned after Agriculture cost share program. Need strong emphasis on Community Assistance Program because it is the only retrofit program that can begin to reverse stormwater pollution (5/2007). Program being implemented statewide, but no additional funding from legislature in 2008.	151
<i>4.5. Improve land-based strategies throughout the river basins to reduce non-point pollution and minimize cumulative losses to wetlands and streams through voluntary actions, assistance, and incentives, including:</i>									
<i>a) improved methods to reduce sediment pollution from construction sites, agriculture, and forestry;</i>									



The DFR will use additional 319 Grant (NPS Pollution Prevention) funds in 2007 to purchase five additional sets of steel bridge mats for the Division's Bridge Mat Loan & Education Project.	X	-	-	-	-	2008	C	Some of these new mats will be located at coastal plain district offices and made available to local loggers. Using bridge mats for stream or ditch crossings is a preferred BMP with respect to protecting water quality and improving forest operation efficiency and costs (5/1/2007). The NCDFR purchased five additional sets of steel bridge mats and located two sets in the Neuse and Tar-Pamlico & Roanoke River Basins.	171
Enhance DCM education efforts such as the NERR Septic Systems Workshops.	-	-	X	-	-	Ongoing	PC	DCM NC NERR Coastal Training Program conducted three On-site Wastewater Treatment and Disposal Systems Basics workshops. DCM NC NERR Coastal Training Program conducted two Online demonstrations of the Habitat Priority Planner, a geospatial planning tool that uses data to help people visualize ecological scenarios and make decisions about resource management issues. Demonstration conducted by the NOAA Coastal Services Center and this program was offered as a regional collaboration between the Southeast Regional NERRs. DCM NC NERR Coastal Training Program hosted An introductory, two-day course that actively engaged participants in learning about alternatives to how and where growth will occur in their communities. It provided them with the background, examples, and strategies to support alternative development efforts in coastal communities. Conducted by the NOAA Coastal Services Center.	240
The DFR will complete, publish, and distribute statewide 10,000 copies of the NC Forestry BMP Quick-Reference Field Guide in 2007-08.	X	-	-	-	-	2007-08	C	This 140+ page color-illustrated handbook will complement the Division's 2006 release of the NC Forestry BMP Manual To Protect Water Quality. The Field Guide is a hands-on document targeted at reaching loggers including their heavy equipment operators and laborers (5/1/2007). The NCDFR completed this project and printed a total 20,000 copies.	172

The DFR will seek funding to purchase 'rehab' fire plows for five of its coastal-based district offices.	X	-	-	-	-	2007-08	PC	NCDFR submitted a grant application to NCDMF for funding of four rehab plows and personnel project time oriented towards this project and other Coastal Plain WQ Projects.	173
Obtain USDA approval to expand CREP to include the Roanoke, Pasquotank, White Oak, Lumber, and Cape Fear River basins.	X	-	-	-	-		C	USDA approval received to include Roanoke and Pasquotank basins.	180
Implement enhanced marketing strategy for CREP to include education on Neuse and Tar-Pamlico buffer rules.	X	-	-	-	-	Ongoing	C	Included information in Neuse/Tar-Pamlico buffer rules and strategies to encourage proactive buffer installation in CREP training events in March 2008	181
<i>b) increased on-site filtration of stormwater;</i>									
The DFR will begin long-term water quality and water quantity monitoring of Beddingfield Creek during 2007 in anticipation of implementing a 3,000+ acre watershed restoration effort in the Neuse River Basin.	X	-	-	-	-	2007-09	PC	The Division is using 319 Grant funds to startup this watershed monitoring. The restoration will be part of the 10-year Urban Forest Watershed Protection and Education Initiative (UFWPEI). The UFWPEI seeks to improve the water quality in urbanizing watersheds by integrating managed forests with planned and existing development and protecting and enhancing sensitive areas in the watershed. Phase 1 of the project has already generated > \$4.0 million in partnership funds, primarily use for land acquisition within the watershed.	174
<i>c) documentation and monitoring of small but cumulative impacts to wetlands and streams from approved, un-mitigated activities;</i>									
Coordinate with Wetland Functional Assessment Team to determine wetland status and trends.	X	X	X	X	X		NA	Proposed for adoption by letter 21 May 2007. No action since then.	241
<i>d) incentives for low-impact development (LID);</i>									

Implement five on-the-ground projects to increase understanding of the effectiveness of low impact development in coastal and piedmont North Carolina in meeting water quality goals, develop guidance for design considerations, and provide educational opportunities.	-	-	-	X	-	Dec 2010	DK	Four LID demonstration projects funded with Section 319 funds in Neuse, Tar-Pamlico, and Cape Fear basins	108
<i>g) other</i>									
The DFR will seek funding to establish two Water Quality Forester (WQF) positions in coastal-plain Districts 6 (Fayetteville) and 13 (Fairfield).	X	-	-	-	-	2007-09	NA	No progress to report. These positions will likely be included in NCDFR's 2009-2010 expansion budget for DENR review.	178
The DFR will implement 'Tailgate BMPs for Loggers' in 2007-08, a customer education outreach project designed to take the classroom into the woods.	X	-	-	-	-	2007-09	PC	The NCDFR purchased and field-tested one TV/DVD monitor and is now ready to move forward with the remaining equipment purchases.	175
The DFR will produce a 4th BMP video on forest operations. The video, entitled 'BMPs for Site Rehabilitation', will cover appropriate practices to use in stabilizing and closing out a harvested timber tract.	X	-	-	-	-	2007-08	NA	Project delayed to meet revised delivery schedule requested by NCFA.	176
The DFR will produce a 2nd edition of the 'Riparian & Wetland Tree Planting Pocket Guide for North Carolina'.	X	-	-	-	-	2007-08	C	The Division produced 5,000 copies of this 77-page booklet in September 2006. The 1st edition is projected to be out-of-print by mid to late 2007 (5/1/2007). The 2nd Edition is complete and at the printers. Ten thousand copies will be printed.	177

Through the Division of Land Resources (DLR), work with the Sedimentation Control Commission (SCC) to include CHPP presentations on the Commission agenda and to include information on CHPP actions in SCC and DLR publications.	X	-	-	-	-		DK		243
<i>4.6. Improve land-based strategies throughout the river basins to reduce non-point pollution and minimize cumulative losses to wetlands and streams through rule making, including:</i>									
<i>a) increased use of effective vegetated buffers,</i>									
EMC solicit public comment on a proposal to extend the vegetative setback for new development within the 20 CAMA Counties from 30 feet to 50 feet.	-	-	X	X	-	2007-08	PC	The EMC has initiated rulemaking action to revise DWQ's Coastal Stormwater rules. EMC is soliciting comment on the proposal.	280
<i>b) reduction of impervious surfaces where feasible and reduction of the level of impervious surface allowable in the absence of engineered stormwater controls,</i>									
Require the use of engineered stormwater controls for all new development within 1/2 mile and draining to Shellfishing Waters that exceeds 12% impervious surfaces and new development that is not within 1/2 mile and draining to shellfishing waters would be required to install engineered stormwater controls is the impervious surface density exceeds 24%.	-	-	X	X	-	2007-08	PC	The EMC has initiated rulemaking action to revise DWQ's Coastal Stormwater Rules. The current threshold for engineered stormwater controls is 25% within 1/2 mile of shellfishing waters and 30% beyond 1/2 mile (6/12/2007). EMC adopted revised coastal stormwater rules in the 20 coastal counties. The new rules were signed into law and will be effective October 1, 2008.	281
<i>c) expansion of CAMA Areas of Environmental Concern (AECs) upstream and landward, and</i>									
Expand CAMA Areas of Environmental Concern (AECs) upstream and landward within CAMA counties.	-	-	X	-	-	2007-09	DK		114
<i>e) Other</i>									

Evaluate stormwater pollution control mechanisms and cumulative wetland and stream losses in the Cape Fear and White Oak River basins to determine if additional regulatory controls are needed and present findings to the EMC.	-	-	-	X	-		PC	Study is underway.	244
Develop a mitigation policy for intermittent streams.	-	-	-	X	-		PC	In development.	245
EMC working on mandatory application of Phase II stormwater program to all 20 coastal counties. EMC approved initial concept at January 2007 meeting.	-	-	-	X	-		DK		288
<i>4.7. Develop and implement a comprehensive coastal marina and dock management plan and policy for the protection of shellfish harvest waters and fish habitat.</i>									
Inventory docks and piers in the 20 coastal counties.	-	-	X	-	-	Ongoing	PC	DCM has generated a draft methodology for delineating the shoreline and structures for North Carolina. This methodology was presented to an Estuarine Shoreline Working Group in August 2008 for review. Once the final methodology is accepted DCM will begin digitizing efforts.	122
Incorporate EMC's prohibition of marinas in ORWs into CRC rules.	-	-	X	X	-	2008-09	DK		247
Evaluate marina development standards (rule NCAC 7H .0208(b)(5)). CRC consider rule changes to implement in dock and pier management.	-	-	X	-	-	Ongoing	PC	CRC has proposed changes to docks and piers rules which give property owners flexibility in docking facilities (8 sq. ft./linear ft. shoreline) and includes minimum water depth (18 in.) for docking facilities under the General Permit if located in PNA, SAV or Shellbottom.	248
Improve wastewater/stormwater management at coastal marinas	-	-	X	X	-		PC	Evaluating existing and potential water/stormwater management at coastal marinas.	250
<i>4.8 Reduce non-point source pollution from large-scale animal operations by the following actions:</i>									
<i>a) support early implementation of environmentally superior alternatives to the current lagoon and sprayfield systems as identified under the Smithfield Agreement and continue the moratorium on new/expanded swine operations until alternative waste treatment technology is implemented;</i>									

The Department, through the Division of Pollution Prevention and Environmental Assistance, will provide contract and independent swine farms with the technical assistance and training needed to implement effective Environmental Management Systems.	X	-	-	-	-		DK		251
Support early implementation of environmentally superior alternatives to waste lagoon and spray field systems. Encourage commissions to express their support for early implementation.	X	-	-	X	-	Ongoing	C	\$2 million appropriated in FY2007-08. Lagoon Conservation Program selected 3 projects in Sampson County for assistance. Considering funding for one additional project from two applications on hand.	158
<i>b) seek additional funding to phase-out large-scale animal operations in sensitive areas and relocate operations from sensitive areas;</i>									
Seek funding for fourth phase of voluntary program to buy out active swine operations in the 100-year floodplain.	X	-	-	-	-		C	DSWC seeking funding from CWMTF (5/1/2007). Grant for 4th phase awarded. Have solicited applications from interested participants. Now collecting field data for ranking applications.	183

**CHPP Steering Committee Meeting**  
**October 10, 2008**  
**New Bern, NC**

Meeting Attendees: Jess Hawkins (MFC), BJ Copeland (MFC), Pete Peterson (EMC), Tom Ellis (EMC), Bob Emory (CRC), Coleen Sullins (DWQ), Louis Daniel (MFC), Scott Chappell (DMF), Anne Deaton (DMF), Brian Boutin (DMF), Michele Duval (DMF), Jeanne Hardy (DMF), Katy West (DMF), Steve Underwood (DCM), Tancred Miller (DCM), Scott Geis (DCM), Pete Caldwell (DWQ), Bill Diuguid (DWQ), Jimmy Johnson (DENR), Maria Dunn (WRC), Kristina Fischer (DSWC), Robin Smith (DENR), Dean Carpenter (APNEP), Rob Breeding (NCEEP), Matt Parker (NCDA&CS), Tracy Skrabal (NCCF), Robert P. Dru (UNC)

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Call to Order and Introductions:

Pete Peterson called the meeting to order at 1:00pm. Introductions of all attendees took place. The agenda was reviewed and no changes were made to the distributed agenda.

A motion to accept the minutes as presented was made by Bob Emory and a second was provided by Jess Hawkins. The motion passed without dissent.

CHPP Annual Report: Jimmy Johnson

The Draft CHPP Annual Report was discussed. It was requested that any additions or clarifications be sent to Jimmy as soon as possible. The three commissions will be voting to approve the report at each of their respective November meetings. Bob Emory made a motion to approve the CHPP Annual Report, along with any additions that may be submitted in the next few days by the divisions. Tom Ellis provided the second. The motion passed without dissent.

DCM/CRC Update: Tancred Miller

Tancred Miller reported that the rules regarding increased civil penalties were now in place. A person can now be fined up to \$10,000.00 for a major violation of their permit. A new position within DCM is being created in order to help increase understanding and increase outreach regarding permits and the permitting process. It was also reported that a newspaper insert had been published with help from APNEP and the NCNERR regarding the importance of NC's estuaries. These inserts were placed in the *Raleigh News and Observer*.

SAV mapping continues in the Coastal Reserve locations. Mapping of the Currituck Coastal Reserve should be completed in 2009. The Coastal Wetlands Rule as it pertains to wetlands modification (mowing and cutting) went to public hearings in September. Many comments were received from the public as well as other state agencies. There appears to be a substantial amount of confusion regarding these rules and they will need to be further clarified. A meeting is being set up with other agencies to help clarify these rules.

Steve Underwood gave an update on the Beach and Inlet Management Plan. He reminded everyone that this is a joint initiative with DWR and to date \$750,000.00 has been appropriated for this effort. Meetings with local governments will take place beginning in late November to begin

the process of drafting specific management strategies which will be included in the draft plan. In April of 2009, DCM will meet again with local governments with the completed draft BIMP.

Scott Geis gave a quick update on DCM's Estuarine Shoreline Delineation initiative. A summit was held in December of 2007 with various state agencies in order to assess the needs of those agencies. A second meeting was held this past August in order to introduce the plan and its methodologies to the agencies. A contract has been entered into with ECU in order for the University to begin digitizing the shorelines of Beaufort and Hyde Counties.

Tancred reported that the proposed language for the General Permit for bulkheads along estuarine shorelines would be going to public hearings in November. The purpose of these rules is to help minimize the encroachment of bulkheads into public trust waters.

Tancred also noted that the Coastal Reserves were involved in training programs to help property owners better understand the need for proper citing and placement of their docks and piers. The CRC's rules regarding docking facilities will also be going to public hearing this fall. Included in these rules is language regarding boat lifts, floating docks, dock and pier lengths, widths and heights and allowable water depths for dock placement.

#### DWQ/EMC Update: Pete Caldwell

Pete Caldwell reported that the stormwater compliance position in the Washington Regional Office had been filled in September. DWQ held five workshops in September in order to educate the general public on the new coastal stormwater rules. By all accounts, the workshops were successful in getting the word out and also in realizing areas where there were still lots of questions regarding the rules. The rules went into effect on October 1<sup>st</sup>.

Pete also reported that DWQ had hosted a water quality forum in Charlotte earlier this year. The forum was entitled, *NC4Water*. ModMon and FerryMon were both funded again by the General Assembly this year enabling both programs to continue collecting water samples in the Pamlico Sound.

#### DMF/MFC Update: Anne Deaton

Anne Deaton, with the Division of Marine Fisheries, reported that the Marine Fisheries Commission and the Wildlife Resources Commission had designated the new Anadromous Fish Spawning Areas in their respective rules. In the Chowan River, the spawning stock survey for River Herring is currently being conducted as well as a survey and identification of stream obstructions to fish migration.

DMF has begun the photo-interpretation of the pictures taken in the statewide effort to map submerged aquatic vegetation (SAV) throughout the state. Over half of the photographs taken last fall and earlier this year have been delivered to the state. The balance of the pictures should be delivered in late October or early November. The interpretation of the photographs will continue well into next year. The data base will be stored with DMF in Morehead City. The new definition for SAV will go to public hearing in October and November.



In an effort to “jump-start” oyster growth in the state’s oyster sanctuaries, oyster spat are being placed in and on several of eth sanctuaries. Rock and marl are still being set out as well. The oyster shell recycling program has collected over 30,000 bushels of oyster shells and these have been, or will be, returned to the waters of the state. The DMF continues its efforts to map the shellbottom areas of the coastal counties. Currently two staff members from the Wilmington office have been dedicated to this task.

The analysis of the Strategic Habitat Areas (SHAs) has been completed for the Albemarle Sound area. A public meeting will be held on October 8<sup>th</sup> in Edenton to introduce the SHAs to the general public. Comments will be received and incorporated into the analysis where appropriate.

#### DENR Update: Robin Smith

Robin Smith reported on the budget situation from DENR’s standpoint. The Governor has asked that 2% of each agency’s budget be withheld in order to deal with the state’s lower than expected revenues. There is a good possibility the amount held back from each agency will ultimately be greater than this 2%. The Department has asked its divisions to look at travel expenses and the filling of vacant positions as the beginning of this reduction effort.

#### EEP Update: Rob Breeding

Rob Breeding, with EEP, spoke about EEP’s participation in the statewide SAV mapping effort. He also noted that EEP was looking at mitigation opportunities and will be using this mapping effort to locate potential mitigation cites. They are working with Dr. Mark Brinson from East Carolina University to adopt mitigation strategies for this effort. EEP is also looking at potential dam removal options in some local watersheds.

Pete Peterson mentioned that the state should consider mitigation for beach nourishment work. It was suggested that this topic be referred to the MFC’s Habitat and Water Quality Committee.

#### NCS&WC: Kristina Fischer

Kristina Fisher reported that the Community Conservation Assistance Program (CCAP) was now part of 40 of the state’s Soil and Water Conservation Districts. Each district is having to pursue funding through local grants since there was no funding this year through the General Assembly. This program is the only program in the state which will provide funds to help local communities retrofit stormwater controls.

Kristina also mentioned the expansion of the Conservation Resource Enhancement Program (CREP). This program was recently expanded to include the following river basins; Cape Fear River, Lumber River, White Oak River, Pasquotank River and the Roanoke River. Property owners in these river basins are now eligible to apply for funding to help with their conservation needs.

## Estuarine Shoreline Presentation: Tracy Skrabal – NCCF

Tracy Skrabal with the North Carolina Coastal Federation led the committee through a PowerPoint presentation centered on successful living shorelines along the coast of North Carolina. Tracy stated that North Carolina needs to be moving away from the structured shoreline alternatives to more natural shoreline protection methods. There are several permitting issues that need to be addressed in order for this to happen. These issues include: disincentives for hardened structures and incentives for alternate shoreline protection methods, training for contractors and consultants, education of property owners. In her presentation, Tracy showed pictures from several locations along NC's coastal waterfronts of some successful alternative shoreline stabilization efforts.

Jess Hawkins urged the shoreline workgroup, which Steve Underwood has been tasked to lead, to begin and complete its work as quickly as possible. He also suggested that Doug Huggett reconvene the group that Doug met with several years ago, made up of various agency personnel, to look at the General Permit for shoreline stabilization. Are there concerns, or condition, that can now be removed from the GP in order to expedite and simplify the process for the permitting of alternative shoreline structures?

Tracy asked why the recommendations from the Estuarine Shoreline Stabilization workgroup's report completed in 2006 had not yet been implemented. This paper prioritized stabilization methods associated with specific shorelines. She also noted that the burden of proving the necessity of stabilization be placed on the property owner.

Robin noted that DCM needed to be sure that it addresses the concerns of all the resource agencies before making any changes to the permit process. She stated that currently there is no consensus on changes to the permit. Any changes made would need to involve the Army Corps of Engineers.

Luis Daniel stated that there is a definite need for the agencies to get together and discuss this issue. It needs to be determined exactly what the problems are and what concerns do the other agencies have with the alternative methods.

Pete noted that whatever decisions are made, there is a huge need to educate all involved in the permitting process.

Robin suggested that any workgroup dealing with this issue focus on specific areas of concern; primarily those areas where there currently is little or no habitat. She specifically mentioned those shorelines with high energy and lots of scouring. It will be important initially to "not use such a broad brush approach."

Jess asked that Steve Underwood and Doug Huggett convene/reconvene their respective agency workgroups to look at conditions and shoreline types appropriate for living shoreline methods.

Bob Emory suggested that DCM use a \$17,000 grant it was awarded to publish a piece of literature for the purpose of showing the interested public exactly what has been accomplished to date regarding this issue. He also suggested that the current shoreline mapping project should help with some of these issues of proper location. Bob agreed that the agencies needed to get back together to discuss these issues especially as they pertain to specific shoreline conditions. He also

noted that it was important to allow Steve Underwood's workgroup to complete its task of matching shoreline types with specific shoreline stabilization techniques. This should take approximately 6 months to complete.

#### Strategic Habitat Areas: Anne Deaton

Anne updated the CHPP Steering Committee on the progress of the Strategic Habitat Area designations in the Albemarle Sound area. The draft for the designation of the SHAs in the Albemarle has been completed. As mentioned earlier, there will be a public meeting in Edenton on October 8 to introduce the concept and show the suggested designated areas to the public. Input from the public will be welcome on the process and the suggested designations.

The next step will be for the MFC to endorse the report at the November meeting. Anne noted that 75% of the Anadromous Fish Spawning Areas in this region have been selected as Strategic Habitat Areas. It will be important for the MFC to work closely with the WRC on this issue since significant portions of the AFSA are in inland waters. These designations have the potential to be of significant importance to the recovery of the River Herring.

Each area selected for potential designation as a SHA has some form of multiple habitats and different ecological threats associated with them. The initial focus in these designated areas will be on non-regulatory actions. This includes monitoring of water quality parameters, land acquisition, easements, and research associated with spawning and nursery activities in the areas. Tom Ellis agreed that it was better to, "guide in a direction rather than to regulate at this point." Louis noted that what was being proposed is comparable to the South Atlantic Fishery Management Council's Habitat Plan. The SHA is analogous to the SAFMC's Essential Fish Habitat designation and their Habitat Areas of Particular Concern. He also noted that some of the work needed is currently being done with money appropriated by the General Assembly.

Of primary importance is the need to have the SHAs recognized. This should be done through the 2 year Implementation Plans and through the Annual Report of the CHPP, since the commissions vote and endorse both of these reports. The SHAs will then be included in the 5-year CHPP reviews as they are approved and as the document is updated.

Jess made a motion that the Coastal Habitat Protection Plan be the document where the Strategic Habitat Areas are listed and inventoried as they are designated. The motion was seconded by BJ Copeland. The motion passed without dissent.

#### Endocrine Disruptors: BJ Copeland

Dr. BJ Copeland supplied handouts of a white paper that had been presented to the MFC at their last meeting. Included in the white paper was a description of the issues associated with endocrine disruptors. The paper also included specific needs associated with determining the severity and the extent of the problem. These needs included:

- Estuarine monitoring of the concentration and prevalence of priority chemicals of concern,
- Specific, critical research on the effects of chemicals on fishery species, particularly blue crab, oysters and fish,
- Education and outreach,

- A plan for safe disposal of pharmaceuticals, pesticides and antibiotics,
- A plan for removal of chemicals from wastewater and run-off.

The white paper suggested that the monitoring and research begin in the Neuse River Basin.

BJ also provided the Steering Committee with a letter to Secretary Ross from the MFC asking for his assistance in addressing the problems associated with the disposal of unused endocrine disruptors, primarily found in prescription medicines. This effort will need to include the NC Department of Agriculture and Consumer Services' Pesticide Disposal Assistance Program as well as the assistance of the federal Drug Enforcement Administration.

#### Wind Energy: Pete Peterson and Tom Ellis

Dr. Pete Peterson gave a brief overview of the recent actions of the General Assembly with regards to alternative energy programs and the EMC. In 2007, the legislature asked the EMC to look at all alternative energy programs and determine what issues need to be addressed for the state to move forward with alternative energy programs. In 2008, the EMC was asked to conduct an environmental study to determine the need for a permitting process for wind energy specifically. Again in 2008, the EMC was asked to evaluate the potential of wind energy platforms in northeastern North Carolina and determine if the platforms could be combined with the development of oyster reefs in the area.

Currently, wind energy does not have the proper regulatory review that is needed. The EMC determined that the following issues need to be addressed before proceeding:

- Turbine effects on the migratory passageway of birds,
- Effects on local bird populations,
- Effects on bats and raptors,
- Are shellfish leases and water column leases analogous to a any type of lease or permit for a turbine platform?
- Are turbines compatible with oyster reefs and oyster sanctuaries?

BJ noted that there is a definite need for some type of literature search and review of existing wind programs, specifically in the northeast United States. Some of this information can be gathered from the NCSU Solar Center, the Renewable Energy Office in the NC Department of Commerce, Canada and the Netherlands.

Tom Ellis mentioned that other issues which have been discussed include viewscapes and the inclusion of wind energy facilities in local Land Use Plans. The EMC has no authority over either of these issues. Robin Smith mentioned that the Department was trying to work out an agreement with NCSU to utilize a person to help fill DENR's staffing needs. She also mentioned there are a lot of process issues which continue to need to be addressed. The General Assembly will need to re-enter the discussion in response to the need for a statewide permitting process and set out the role of the local governments in the process.

The Environmental Review Commission will ultimately need to determine what a wind energy permitting process will look like. Bob Emory raised the issue of whether or not we really want

wind energy in North Carolina anyway? This basic question needs to be answered before the state spends a lot of time and money setting up a policy or permitting procedure.

Robin shared another question that needs to be addressed too by asking who gets to have what level of input into locating wind energy fields. Again, what will the role of local governments be? What will the impacts of locating these “farms” in the coastal areas of NC be? Bob reminded the committee of the significant concerns the military will have over these turbines in NC.

Scott Geis noted that DCM’s Coastal Policy Group is looking at this issue of wind energy with regards to coastal zoning issues. Where is the best place to site a significant number of these turbines and their associated infrastructure facilities?

The Steering Committee, through Jimmy, received a request from Jack Spruill of the group, North Carolinians for Responsible Use of Sonar. His request was for the CHPP Steering Committee to send a letter to the Navy requesting an extension to the comment period for the Environmental Impact Statement for the Underwater Warfare Training Range. One of the proposed sights is off the coast of North Carolina. It was agreed by consensus that the letter be sent from the Steering Committee.

The next meeting of the Steering Committee will probably be in early December.

The meeting adjourned at 4:25pm.



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

November 6, 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 DESCRIPTIONS**

1. 15A NCAC 7H.0205 Coastal Wetlands (Marsh Alteration)

**Status:** Pending review of public hearing comments.

The purpose of the proposed amendments to this rule is to begin regulating certain types of marsh alteration, primarily mowing and burning. 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. CRC approved draft rule language in March. The rule has been through public hearing and DCM staff subsequently met with stakeholders for further discussion of their comments. Staff will recommend additional changes in November, which will require the rule to be sent for another public hearing.

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

**Status:** 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. The CRC approved the docks and piers provisions in July 2008, to be sent to public hearing.

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

**Status:** Pending approval by the NC Rules Review Commission.

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. Staff presented responses to public comments, and recommended final rule language, in September. The Commission adopted the rule and sent it to the RRC.

400 Commerce Avenue, Morehead City, North Carolina 28557

Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: [www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

4. 15A NCAC 7H.0308 Specific Use Standards for Ocean Hazard Areas  
**Status:** Going to public hearing.  
Staff presented proposed changes in July to the sandbag provisions in this rule. The changes lengthen the duration and number of times that sandbags can be used in inlet hazard areas when a community is pursuing inlet relocation, and allow sandbags to be placed more than 20 feet from the structure being protected if the Director finds that it is justified. The Commission approved the changes for public hearing.
5. 15A NCAC 7H.0309 Use Standards for Ocean Hazard Areas: Exceptions  
**Status:** Going to public hearing.  
The 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. The Commission approved the changes for public hearing.
6. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas  
**Status:** Scheduled for discussion in November 2008.  
The CRC has seen the new inlet hazard area delineations prepared by its Science Panel on Coastal Hazards and had further discussion in July 2008. Staff will present policy recommendations to the CRC at the November meeting.
7. 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.
8. 15A NCAC 7H.1200 GP for Construction of Piers, Docks & Boat Houses  
**Status:** Going to 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 permitting coordination with DCM. Staff presented an update in July on the interagency coordination protocols and review draft rule changes and the CRC approved the rule for public hearing.
9. 15A NCAC 7H.1400 GP for Construction of Groins in Estuarine & Public Trust Waters  
**Status:** Eligible for adoption.  
Proposed changes to this rule result from the CHPP recommendation to encourage alternatives to vertical stabilization on estuarine shorelines. Proposed changes include allowing materials other than wood, prescribing a maximum spacing and frequency, and clarifying how structures are measured. The rule was published and a public hearing held in September. No comments were received on the proposed amendments.
10. 15A NCAC 7H.2100 GP for Marsh Enhancement Breakwaters  
**Status:** Eligible for adoption.  
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Changes are primarily definitional and to ensure consistency with other shoreline stabilization rules. The rule was published and a public hearing held in September. No comments were received on the proposed amendments.

11. 15A NCAC 7H.2400 GP for Placement of Riprap for Wetland Protection  
**Status:** Eligible for adoption.  
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. The rule was published and a public hearing held in September. No comments were received on the proposed amendments.
12. 15A NCAC 7J.0701 Variance Petitions  
**Status:** Eligible for adoption.  
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. The rule was re-published and a public hearing held in September. No comments were received on the proposed amendments.
13. 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.
14. 15A NCAC 7J.0703 Procedures for Deciding Variance Petitions  
**Status:** Eligible for adoption.  
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. The rule was re-published and a public hearing held in September. No comments were received on the proposed amendments.
15. 15A NCAC 7J.1200 Static Line Exception Procedures  
**Status:** Pending approval by the NC Rules Review Commission.  
Staff developed 7J.1200 to define the requirements of applying for, receiving, and maintaining a static line exception. The rule also describes the criteria for qualifying for an exception, and CRC procedures for granting and repealing an exception. Staff presented responses to public comments, and recommended final rule language, in September. The Commission adopted the rule and sent it to the RRC.
16. 15A NCAC 7M.0300 Shorefront Access Policies  
**Status:** Eligible for adoption.  
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. The rule was published and a public hearing held in September. No comments were received on the proposed amendments.



**COASTAL RESOURCES COMMISSION RULEMAKING STATUS - SEPTEMBER 2008**

Item #	Rule Citation	Rule Title	November '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	Review public comments	Approved for Hearing			Public Hearing	Review public comments
2	15A NCAC 7H.0208	Estuarine System Use Standards	Scheduled for discussion	Discussion of SAV definition	Discussion of SAV definition	Approved for Hearing		
3	15A NCAC 7H.0306	General Use Standards for Ocean Hazard Areas	In public hearings	Approved for Hearings		Public Hearings	Adopted, sent to RRC	
4	15A NCAC 7H.0308	Specific Use Standards for Ocean Hazard Areas	Going to Public Hearing			Approved for Hearing		
5	15A NCAC 7H.0309	Use Standards for Ocean Hazard Areas: Exceptions	Discussion of staff changes	Discussed changes	Approved for Hearing	Approved for Hearing		
6	15A NCAC 7H.0310	Use Standards for Inlet Hazard Areas	Scheduled for discussion		Discussion of progress	Discussion of draft language		Discussion of use standards
7	15A NCAC 7H.1100	GP, Constr. of Bulkheads & Placement of Riprap	Going to Public Hearing		Approved for Hearing			
8	15A NCAC 7H.1200	GP for Construction of Piers, Docks & Boat Houses	Scheduled for discussion	Discussion of SAV Definition	Discussion of SAV Definition	Approved for Hearing		
9	15A NCAC 7H.1400	GP for Construction of Groins in Estuarine & PT Waters	Going to Public Hearing		Approved for Hearing		Public Hearings	Eligible for adoption
10	15A NCAC 7H.2100	GP for Marsh Enhancement Breakwaters	Going to Public Hearing		Approved for Hearing		Public Hearings	Eligible for adoption
11	15A NCAC 7H.2400	GP for Placement of Riprap for Wetland Protection	Going to Public Hearing		Approved for Hearing		Public Hearings	Eligible for adoption
12	15A NCAC 7J.0701	Variance Petitions	Going to Public Hearing		Approved for Hearing		Public Hearing	Eligible for adoption
13	15A NCAC 7J.0702	Staff Review of Variance Petitions		No legislative action, effective July 3rd. No further action necessary.				
14	15A NCAC 7J.0703	Procedures for Deciding Variance Petitions	Going to Public Hearing		Approved for Hearing		Public Hearing	Eligible for adoption
15	15A NCAC 7J.1200	Static Line Exception Procedures	In public hearings	Approved for Hearings		Public Hearings	Adopted, sent to RRC	
16	15A NCAC 7M.0300	Shorefront Access Policies	Going to Public Hearing				Public Hearings	Eligible for adoption