

**NC COASTAL RESOURCES ADVISORY COUNCIL**  
**September 24-26, 2008**  
**Sea Trail Resort & Convention Center**  
**Sunset Beach, NC**

*\*\*Per CRAC bylaws, Article XIII, Section 5, Members are reminded to refrain from voting on rules and policies for which they have a significant and unique familial or financial interest.*

**AGENDA**

**Wednesday 24<sup>th</sup>**

- |             |   |                                    |
|-------------|---|------------------------------------|
| <b>1:00</b> | <b>Council Call to Order</b> (Jones Byrd Salon 1) <ul style="list-style-type: none"><li>▪ Roll Call</li><li>▪ Approval of July 2008 minutes</li><li>▪ Announcements</li></ul> | Dara Royal                         |
| <b>1:15</b> | <b>Land Use Plan Reviews</b> <ul style="list-style-type: none"><li>▪ Currituck County LUP Amendment</li><li>▪ Carolina Beach Plan Amendment</li></ul>                         | Charlan Owens<br>Mike Christenbury |
| <b>2:00</b> | <b>Beach Nourishment Funding</b>  | Dara Royal                         |
| <b>2:30</b> | <b>Sea Level Rise Update</b>  | Tancred Miller                     |
| <b>2:45</b> | <b>Old/New Business</b> <ul style="list-style-type: none"><li>▪ Future agenda items</li></ul>   | Dara Royal                         |
| <b>2:50</b> | <b>Adjourn</b> ( <i>CRC convenes at 3 pm</i> )  |                                    |

**Thursday 25<sup>th</sup> & Friday 26<sup>th</sup>**

*\*\*Meet in session with CRC, see CRC agenda\*\**

NEXT MEETING: November 19-21, 2008  
Crystal Coast Civic Center  
Morehead City, NC



*N.C. Division of Coastal Management*  
<http://www.nccoastalmanagement.net>



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

September 11, 2008

**MEMORANDUM**

**TO:** Coastal Resources Advisory Council  
**FROM:** Dara Royal  
**SUBJECT:** Preparation for September Meeting

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Greetings! We have a full slate for September, continuing our regular business as well as following up from our July meeting. For starters, please see Hope Sutton's memo about an optional field trip to the Bird Island Coastal Reserve on the morning of the 24th.

We have two land use plan amendments on our Wednesday agenda, Currituck County and the town of Carolina Beach. Both of these amendments have issues that require our close attention, so please be prepared for the presentations and discussion.

I would like to have some follow up discussion on Peter Ravello's talks about local funding for beach nourishment projects. Having heard his presentation again I believe our next order of business is to start developing plans to put some of these techniques into place in North Carolina. I look forward to your thoughts on this.

One of the CRAC & CRC's joint priorities is planning for sea level rise. We have spent very little time on this issue this year, and I am proposing that we make it a focal point in our upcoming meetings. Staff will provide us with an update of some recent activity around the state, and will lead a discussion on possible future activities.

As follow up to our July meeting, the CRC has assembled a series of presentations and a panel discussion on wind energy. This promises to be an excellent opportunity to learn more about the subject and issues that will be of interest to our appointing bodies. Most of Thursday will be devoted to wind energy.

I hope that in November staff will come back to us to continue our discussion on public water access through CAMA permitting. I also anticipate a presentation from NCDOT on providing access at bridge crossings.

Some CRC re-appointments to the CRAC are due. Expect CRC to establish a nominations committee at this meeting that will return with their recommendations in November. CRC-appointed members will be advised accordingly following that meeting.

I look forward to seeing you all in Sunset Beach. Please travel safely.

Long live our beaches.

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

Michael F. Easley, Governor

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## MEMORANDUM

CRC-08-37

**To:** The Coastal Resources Commission and Coastal Resources Advisory Council  
**From:** Charlan Owens, AICP, DCM Elizabeth City District Planner  
**Date:** September 12, 2008  
**Subject:** Map and Text Amendment to the Currituck County 2006 Core Land Use Plan (LUP)–  
(September CRC Meeting)

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Currituck County requests a Land Use Plan (LUP) amendment to reconfigure the designation of 120 acres on the Future Land Use Plan Map (FLUPM) and to revise a table that indicates acreage totals for each designation compared with projected land needs, consistent with the FLUPM change.

The Board of Commissioners adopted the amendment by a 3-2 vote at their August 18<sup>th</sup> meeting. Objections concerning the impacts of proposed future site development were voiced at the public hearing and two (2) written objection emails were submitted to DCM.

### OVERVIEW

Currituck County desires to convert approximately 40 acres of the Future Land Use Plan Map (FLUPM) to “Full Service Areas” from “Conservation Areas” and approximately 80 acres to “Conservation Areas” from “Limited Service Areas”; and to revise acreage totals shown in Table 11.1 of the LUP to be consistent with map changes. (See Attachment B, Pages 3 and Page 4)

The map amendment area is located on mainland Currituck County, west of US 158 at the terminus of West Side Lane (SR 1112), adjacent to the Kilmarlic subdivision, near Harbinger. The area is located along the Albemarle Sound and contains Areas of Environmental Concern (AECs), which are subject to CAMA permitting requirements. The entire amendment area is located within the 100-year floodplain (Zone AE).

The request to add acreage to “Full Service Areas” was initiated by an applicant interested in developing the property. Preliminary development plans include an upland marina as well as residential and non-residential uses. The 40-acre amendment area includes approximately 23 acres of uplands, 2 acres of wetlands, and 14 acres of canals and a lake. An LUP amendment is the first step in the process to ensure development plans are consistent with the LUP. Local zoning, State permits, and local development approvals are separate issues that have not yet been decided. During future zoning and project approvals, the County intends to obtain public access to the proposed marina that will include: boat slips available to the general public, public boat launching to the Albemarle Sound, and 10 to 11 public access parking/trailer spaces.

The County's "Conservation Areas" designation policy is meant to provide for the long-term management and protection of significant, limited, or irreplaceable areas. While much of the land included in this designation is environmentally sensitive, areas that would be considered developable are envisioned for agriculture and agriculture related uses and extremely low density residential (1 unit per 3 acres or less). This designation will not support the residential densities and non-residential uses contemplated.

The County's "Full Service Areas" designation is preferred for community centers. Designation areas include parts of the County where a broad range of infrastructure and service investments have been provided or will be made available by the public and/or private sector. Residential density is contemplated to be 2 units per acre, but could be increased to 3-4 units an acre through local overlay zoning. Nonresidential uses may include clusters of businesses serving the immediate area and, where appropriate, a more extensive market territory. This designation will support the development plan contemplated on the 40 acre portion of the amendment.

The request to convert 80 acres to "Conservation Areas" from "Limited Service" was initiated by County Planning staff in order to offset the proposed expansion of "Full Service Areas". The current "Limited Service Areas" designation policy prefers primarily residential development at low densities of 1 unit per acre, which may be increased up to 1.5 units per acre through local overlay zoning. Neighborhood commercial uses are considered appropriate in these areas along with businesses designed to serve the tourist industry, such as small gift shops and agri-tourism related uses. The 80-acre amendment area consists of undeveloped open space that is part of the adjacent Kilmarnock subdivision and that already has deeded easements for Ducks Unlimited. A change to "Conservation Areas" is consistent with existing conditions and use of the area.

The text amendment to Table 11.1 Comparison of Land Allocated to Future Land Use and Projected Land Needs, 2025 shows the revised acreage allocated to "Full Service Areas", "Limited Service Areas" and "Conservation Areas" that would result from the map amendment and the revised amount of acreage available for development within each designation. As submitted, the table indicates that the map revisions will not result in acreage allocated for development exceeding the projected land needs consistent with the 7B rules.

**ATTACHMENTS:** The following provides an overview and summation of the attachments provided, including DCM staff's analysis in Attachment A; a copy of Currituck County's Planning Department staff report in Attachment B; and a copy of the written objection in Attachment C.

**Attachment A** contains a detailed Land Use Plan Analysis prepared by DCM staff. During creation of the LUP, the FLUPM is prepared with consideration given to natural constraints and land suitability for development. When development patterns depicted on the FLUPM are not consistent with the natural systems or the land suitability analysis, a description of the steps that the local government shall take to mitigate impacts is required. The DCM staff review indicates that the proposed "Full Service Areas" designation is not consistent with the analysis and cites



existing policies and implementation actions that would mitigate the impacts. Within this attachment, DCM staff also reviews the County's Staff Report (Attachment B) and written objection (Attachment C).

**Attachment B** contains the Currituck County Report prepared by County Planning Department staff. The report includes: a Resolution of Approval, a Case Analysis prepared by County Planning Staff, the proposed map and text changes, minutes highlighting local Planning Board and Board of Commission discussion, and the applicant/developer's amendment application. These materials provide the background and analysis that went into the Board of Commissioner's decision of approval.

**Attachment C** contains the submitted written objections. The objections are specific to the change of 40 acres to "Full Service Areas" from "Conservation Areas" and consist of two (2) emails submitted by Gary and Brenda Kleman, an initial email submitted on August 21<sup>st</sup>, and a second email dated September 2<sup>nd</sup>. The second email relates the objections to the criteria for CRC certification as required in 15A NCAC 07B.0802. DCM staff believes that the objections are addressed through existing local policies and/or are more directly related to site development than the LUP amendment.

**DCM STAFF RECOMMENDATION:** DCM staff has determined that Currituck County has met the substantive requirements outlined in the 2002 Land Use Plan Guidelines and that there are no conflicts evident within either state or federal law or the State's Coastal Management Program.

DCM staff recommends that the CRAC forward the Currituck County Land Use Plan amendment to the CRC for certification approval.

*If you have any questions please do not hesitate to contact me (Charlan Owens) at 252-264-3901.*

## ATTACHMENT A LAND USE PLAN ANALYSIS

### ENVIRONMENTAL CONSTRAINTS AND LAND SUITABILITY

Map 11.1 Future Land Use Plan Map (FLUPM) depicts the application of policies for growth and development and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure policies. If the FLUPM shows development patterns or land uses that are not consistent with the natural systems analysis or the land suitability analysis, then the plan shall include a description of the steps that the local government shall take to mitigate the impacts [15A NCAC 07B.0702 (d) (4) (E)].

The natural systems analysis of the LUP is indicated on Map 3.6 Environmental Composite, which shows the extent and overlap of natural features based on the local government's determination of the capabilities and limitations of these features for development practices as indicated in the following three (3) categories:

- Class I – land containing only minimal hazards and limitations that may be addressed by commonly accepted land planning and development practices;
- Class II – land containing development hazards and limitations that may be addressed by methods such as restrictions on the types of land uses; special site planning; or the provision of public services; and
- Class III – land containing serious hazards for development or lands where the impact of development may cause serious damage to the functions of natural systems

Within the proposed 40-acre “Full Service Areas”, uplands, the lake, and adjacent canal are within Class I and Class II areas, while wetland areas and adjacent canal are located within Class III area.

Within the proposed 80-acre “Conservation Areas”, the open space is located primarily within Class III area.

The land suitability analysis of the LUP is provided on Map 6.1 Land Suitability Analysis, which indicates the supply of land suited for development based on natural system constraints, compatibility with existing land uses and development patterns, the existing land use and development criteria of local, state and federal agencies, and the availability and capacity of water, sewer, stormwater management facilities, and transportation systems as suggested in the following four (4) categories:

- Least Suitable for Development
- Low Suitability for Development
- Medium Suitability for Development
- High Suitability for Development

Within the proposed 40-acre “Full Service Areas”, uplands to the northeast are within Medium Suitability for Development; remaining uplands, the lake, and adjacent canal are within Low Suitability for Development; while wetland areas and adjacent canal are located within Least Suitable for Development.

Within the proposed 80-acre “Conservation Areas”, the open space is located primarily within Least Suitable for Development.

## MITIGATION STRATEGIES

As indicated in the review of natural constraints and land suitability, the proposed 40-acre “Full Service Areas” is located adjacent to and within lands that contain development hazards with low suitability for development. Therefore, the LUP must include a description of the steps that the local government shall take to mitigate impacts when development patterns are not consistent with the natural systems analysis or the land suitability analysis.

LUP policy and implementation statements qualify as mitigation for impacts. Those that would be associated with a “Full Service Areas” development pattern located within constrained areas adjacent to the Estuarine Shoreline include the following, organized by State Management Topic:

### *Public Access*

*POLICY PA5: PUBLIC AND PRIVATE MARINAS offering access to area waters should be encouraged when developed in accordance with the CAMA specific use standards for marinas (i.e. docks for more than 10 vessels). Marinas shall not be approved, however, that are incompatible with nearby land uses or whose designs fail to meet the environmental quality and development standards of the County’s Unified Development Ordinance.*

*POLICY PA6: MARINAS IN UPLAND LOCATIONS generally shall be preferred over marinas in open water, thereby better preserving the visual appearance of the shoreline as well as avoiding the “consumption” of available public trust surface waters.*

*Action PA-5: Open water marinas often “consume” large areas of public trust surface waters and can interfere with the rights of navigation for small sailing vessels and other water users. Amend the Currituck County Unified Development Ordinance to provide incentives for constructing non-wetland, upland marinas as opposed to open water marinas.*

*POLICY PA7: Currituck County marina owners shall be encouraged to participate in BEST PRACTICE OPERATING PROGRAMS, such as the “Clean Marina” program sponsored by the NC Division of Coastal Management and the NC Marine Trades Services organization. The County encourages marina operators to apply for grants that may be available to help pay for pump-out facilities or other environmental improvements.*

POLICY PA8: DEVELOPMENT STANDARDS FOR BOAT RAMPS AND/OR PARKING AREAS associated with public access sites shall address, at a minimum, requirements for stormwater runoff, water quality protections, aesthetic concerns and adequate water depth at low tide.

Action PA-6: The County shall continue to require major residential subdivisions that abut public trust waters to provide public access to those waters. Access for the general public is preferred.

### **Land Use Compatibility**

POLICY ES1: New development shall be permitted to locate only in areas with SUITABLE SOIL and where ADEQUATE INFRASTRUCTURE is available. For existing development located on poor soils, and where sewage treatment upgrades are necessary, engineering solutions may be supported, provided that environmental concerns are fully addressed.

POLICY ES2: NON-COASTAL WETLANDS, including FRESHWATER SWAMPS, AND INLAND, NON-TIDAL WETLANDS, shall be conserved for the important role they play in absorbing floodwaters, filtering pollutants from stormwater runoff, recharging the ground water table, and providing critical habitat for many plant and animal species. Currituck County supports the efforts of the U.S. Army Corps of Engineers in protecting such wetlands through the Section 4042 permit program of the Clean Water Act, as well as Section 4013 water quality certifications by the State of North Carolina.

POLICY ES3: COASTAL WETLANDS shall be conserved for the valuable functions they perform in protecting water quality and in providing critical habitat for the propagation and survival of important plant and animal species. CAMA use standards and policies for coastal wetlands shall be supported. Uses approved for location in a coastal wetland must be water dependent (i.e. utility easements, bridges, docks and piers) and be developed so as to minimize adverse impacts.

POLICY ES4: In approving new developments, Currituck County shall support the retention or creation of a vegetated buffer area along ESTUARINE SHORELINES as a simple, effective and low-cost means of preventing pollutants from entering estuarine waters. Exceptions to this requirement may include developments involving pre-existing man-made features such as hardened shorelines, ditches, and canals. Farming and forestry operations that abide by appropriate "best management practices" are also exempt. The County also supports CAMA use standards for all COASTAL SHORELINES, whether estuarine or otherwise.

POLICY ES5: *Uses allowed in ESTUARINE WATERS must be water dependent (public access, docks, piers, erosion control, and other CAMA-approved uses) and must not interfere with the proper function, cleanliness, salinity, and circulation of the resource. FLOATING HOMES shall not be approved for placement in the estuarine waters of Currituck County. (Also see the Public Access section of this plan for policies concerning new MARINAS.)*

POLICY ES8: *Areas of the County identified for significant future growth shall avoid NATURAL HERITAGE AREAS (e.g. Great Marsh on Knotts Island, Currituck Banks/Swan Island Natural Area, Currituck Banks Corolla Natural Area, Pine Island/Currituck Club Natural Area, Northwest River Marsh Game Land, and many other marsh areas on the mainland.)*

POLICY HNI: *Currituck County shall encourage development to occur at densities appropriate for the location. LOCATION AND DENSITY FACTORS shall include whether the development is within an environmentally suitable area, the type and capacity of sewage treatment available to the site, the adequacy of transportation facilities providing access to the site, and the proximity of the site to existing and planned urban services. For example, projects falling within the Full Services areas of the Future Land Use Map would be permitted a higher density because of the availability of infrastructure as well as similarity to the existing development pattern. Such projects could be developed at a density of two (2) or more dwelling units per acre. Projects within areas designated as Limited Service would be permitted a density of one (1) to one and one half (1.5) units per acre depending upon the surrounding development pattern and availability of resources. Projects within areas designated as Rural or Conservation by the Future Land Use Plan would be permitted a much lower density of 1 dwelling unit per 3 acres because of the lack of infrastructure in the area, the existing low density development pattern, and presence of environmentally sensitive natural areas.*

### **Infrastructure Carrying Capacity**

POLICY WS3: *Currituck County endorses UTILITIES EXTENSION POLICIES that focus water and sewer services (1) within existing developed areas and in nearby targeted growth areas identified as Full Service and Limited Service areas, (2) where development densities would make the provision of all public services more efficient, (3) where the land is particularly well suited for development and (4) away from environmentally sensitive areas, such as areas with extensive wetlands or the northern beaches of the Outer Banks.*

*Action WS-4: Prohibit any new wastewater treatment plant from locating in any Area of Environmental Concern (AEC) as designated by CAMA.*

POLICY WS8: *CENTRAL AND PACKAGE TREATMENT PLANTS shall be designed using best available technology to eliminate or reduce odors. In addition, such plants shall be properly located so as not to adversely impact nearby land uses.*

POLICY PR6: *All new residential development shall provide for ADEQUATE OPEN SPACE AND RECREATION IMPROVEMENTS including, as may be appropriate, funding in proportion to the demand created by the development. The amount of open space and improvements may be determined according to the number of dwelling units in the development and/or by a percentage of the total acreage in the development. Fees in lieu of land dedication shall be based on the inflation adjusted assessed value of the development or subdivision for property tax purposes.*

POLICY PP2: *Currituck County shall continue to implement a policy of ADEQUATE PUBLIC FACILITIES, sufficient to support associated growth and development. Such facilities may include but not be limited to water supply, school capacity, park and open space needs, fire fighting capability, and law enforcement.*

### **Natural Hazard Areas**

POLICY NHI: *The County recognizes the risks to life and property that exist within SPECIAL FLOOD HAZARD AREAS (i.e. areas having a 1% chance of flooding in any year) that may be inundated during major storm events. The County will continue taking measures to mitigate these risks and will avoid taking any action in these areas that materially increases risks to life and property.*

POLICY NH2: *The County shall require development and redevelopment within SPECIAL FLOOD HAZARD AREAS to meet the standards of the National Flood Insurance Program and the County's Flood Damage Prevention Ordinance. Particular attention shall be given to development in VE (i.e. velocity wave) zones concerning standards for breakaway walls, no land disturbing activities, and no permanent enclosures below the base flood level.*

*Action NH-3: Continue to monitor and implement appropriate sections of the April 2004 Currituck County Hazard Mitigation Plan.*

POLICY NH8: *Currituck County encourages owners of PROPERTIES ALONG ESTUARINE SHORELINES to employ the least hardened approach to shoreline stabilization (i.e. marsh grass favored over riprap favored over bulkheading, etc.), provided that reasonable access is available to install the technology available.*

## *Water Quality*

*POLICY WQ3: Currituck County supports policies, plans and actions that help protect the water quality of the county's estuarine system by preventing SOIL EROSION AND SEDIMENTATION, and by controlling the quantity and quality of STORMWATER RUNOFF entering the estuary.*

*Action WQ-3: Continue to implement the recently adopted amendment to the Currituck County Unified Development Ordinance requiring an engineer's certification that new development will not cause flooding on adjacent properties.*

*Action WQ-7: Amend the UDO to provide incentives for buffers and setbacks for development adjacent to public trust waters.*

*Action WQ-8: Consider amending the UDO to incorporate "Low Impact Development" (LID) concepts for all new development in the County. LID concepts focus especially on minimizing impervious surface areas, preserving natural vegetative ground covers, absorbing stormwater runoff into the ground rather than collecting and piping it elsewhere, and ultimately cutting down on stormwater runoff into the estuary.*

*POLICY WQ4: RUNOFF AND DRAINAGE from development, forestry and agricultural activities shall be of a quality and quantity as near to natural conditions as possible. Postdevelopment runoff shall not exceed pre-development volumes.*

*POLICY WQ5: Development that preserves the NATURAL FEATURES OF THE SITE, including existing topography and significant existing vegetation, shall be encouraged. COASTAL AND NON-COASTAL WETLANDS shall not be considered part of a lot's acreage for the purpose of determining minimum lot size or development density. Open space developments shall be encouraged to REDUCE IMPERVIOUS SURFACE AREAS associated with new development and redevelopment.*

*POLICY WQ6: Currituck County supports the retention or preservation of VEGETATED BUFFERS along the edge of drainage ways, streams and other components of the estuarine system as an effective, low cost means of protecting water quality.*

The proposed "Conservation Areas" designation is consistent with the natural constraints and land suitability analysis, therefore an identification of mitigation strategies for this portion of the amendment is not required.

## PROJECTED FUTURE LAND NEEDS

Table 11.1 Comparison of Land Allocated to Future Land Use and Projected Land Needs, 2025 indicates the acreage allocated to each designation on the FLUPM and the total acreage available for development as compared to the projected land need for development to the year 2025. As indicated in 15A NCAC 07B.0702 (d), last paragraph, the amount of land allocated to various uses may not exceed projected land needs.

The table indicates a projected land need of 37,183 acres. The existing acreage for development is 37,094 acres. The proposed acreage for development resulting from the map amendment to “Full Service Areas”, “Limited Service Areas” and “Conservation Areas” designations is 37,073 acres. The amendment meets the requirements of the Rule.

## REVIEW OF COUNTY REPORT

**Attachment B** contains the Currituck County Report prepared by County Planning Department staff. The report includes: a Resolution of Approval, a Case Analysis prepared by County Planning Staff, minutes highlighting local Planning Board and Board of Commission discussion, and the applicant/developer’s amendment application. These materials provide the background and analysis that went into the Board of Commissioner’s decision of approval. Verbal objections were expressed at the Board of Commissioner’s public hearing and are included in the minutes.

Much of the review and discussion relates to development plans. The County report indicates three (3) policies that are considered to be unsupportive of the map amendment request:

- Policy ES2 concerning the conservation of non-coastal wetlands [and support of the U.S. Army Corps of Engineers in protecting such wetlands through the Section 4042 permit program of the Clean Water Act, as well as Section 4013 water quality certifications by the State of North Carolina];
- Policy WQ 5 encouraging the preservation of existing topography and significant vegetation, and indicating that Coastal and Non-Coastal wetlands shall not be considered as part of a lot’s acreage for determining minimum lot size or development density; and
- Policy TR11 indicating that access to higher intensity development shall generally not be permitted through an area of lower intensity development.

DCM staff considers Policy ES2 and Policy WQ 5 to be directly related to future site development rather than the map amendment. Policy TR11 is stated as “generally” rather than mandatory. Buffering or other effective design features may be employed as part of a site development to address the intensity difference concerns mentioned in TR11.



## REVIEW OF WRITTEN OBJECTION

**Attachment C** contains the submitted written objection. The objection is specific to the change of 40 acres to “Full Service Areas” from “Conservation Areas” and consists of two (2) emails submitted by Gary and Brenda Kleman, an initial email submitted on August 21<sup>st</sup>, and a second email dated September 2<sup>nd</sup>. The second email relates the objection to the criteria for CRC certification as required in 15A NCAC 07B.0802.

The objection indicates that the proposed LUP amendment is not consistent with criteria concerning the following Management Topics:

- Land Use Compatibility,
- Infrastructure Carrying Capacity; and
- Water Quality

**Land Use Compatibility.** The management goal of this topic is to ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety, and welfare, and is consistent with the capability of the land based on considerations of interactions of natural and manmade features. The planning objective is to adopt and apply local development policies and balance protection of natural resources and fragile areas with economic development, with policies providing direction to assist local decision making and consistency for zoning, divisions of land, and public and private projects. LUP requirements include establishing density and intensity criteria for each designation on the FLUPM consistent with the land suitability analysis and the establishment of local mitigation criteria and concepts, which may include cluster subdivision design, enacting local buffers, impervious surface limits, and innovative stormwater management alternatives.

The objection notes surrounding development as “Limited Service” with wetlands and adjacent Significant Heritage Areas, and that condominium development will do harm to fragile wetlands. DCM staff believes that existing LUP policies providing guidance for appropriate density (POLICY HN1), providing for the conservation and preservation of wetlands (POLICY ES2 and POLICY ES3), and calling for significant future growth to avoid natural heritage areas (POLICY ES8) are sufficient to address this Management Topic relative to the proposed amendment.

**Infrastructure Carrying Capacity.** The management goal of this topic is to ensure public systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored. The planning objective is to establish level of service policies and criteria for infrastructure consistent with the projection of future land needs. LUP requirements include the establishment of service boundaries for existing and future infrastructure and the correlation of FLUPM designations with existing and planned infrastructure such as wastewater, water infrastructure, and transportation.

The objection indicates the lack of adequate fire, ambulance, and transportation services in the area. DCM staff believes that existing LUP policies addressing continued implementation of adequate public facilities sufficient to support growth and development (POLICY PP2) address this Management Topic relative to the proposed amendment.

Traffic impacts are more directly related to development plans. The map amendment area is located off of a publicly maintained road that connects to US Highway 158. The lower Currituck area experiences heavy traffic flow along this highway during the tourist season. Currituck County policy indicates that Highway 158/168 shall receive special attention concerning the proper development of land and properties adjoining and/or accessing this critical arterial (POLICY TR6) and indicates that local streets shall be designed and built to allow for convenient circulation within and between neighborhoods with care taken to encourage local street "connectivity" without creating opportunities for cut-through traffic from outside the connected areas (POLICY TR8). Additionally, the County also supports a new Mid-County Bridge between the mainland and Corolla that will reduce tourist traffic impacts in the lower Currituck area. The bridge is currently in the design and funding phase and is targeted to open in 2013.

**Water Quality.** The management goal of this topic is to maintain, protect, and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries. The planning objective is to have policies for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired. LUP requirements include the inclusion of policies that help prevent or control nonpoint source discharges (sewage and stormwater) such as but not limited to the following: impervious surface limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.

The objection indicates a compromise of the Albemarle Sound due to dredging and runoff resulting from the development in addition to the brine that will be discharged from the County's Reverse Osmosis (R. O.) Water Treatment Plant that is currently under construction. DCM staff believes that existing policies including the conservation of wetlands for filtering pollutants (POLICY ES2), the use of estuarine shoreline buffers to prevent pollutants from entering estuarine waters ( POLICY ES4), the prevention of soil erosion and sedimentation and control of stormwater runoff (POLICY WQ3), and requirements that runoff from development be of a quality and quantity as near to natural conditions as possible and that post-development runoff shall not exceed pre-development volumes (POLICY WQ4) are sufficient to address this Management Topic relative to the proposed amendment.

The dredging of estuarine and public trust waters and siting of an R. O. discharge are activities that require the review and approval of State environmental agencies and are not part of a map amendment request. Dredging will be subject to CAMA permit review as part of a site development application. The County's R. O. plant has been approved and permitted by State agencies and is currently under construction. The brine waste of the R.O. plant will be discharged into the Albemarle Sound from a pipe located 1,800 feet offshore of Newbern's Landing Road, approximately 3 miles north of the map amendment site.



## Currituck County

Department of Planning  
Post Office Box 70  
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252-232-6029  
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### MEMORANDUM

**To:** Charlan Owens, AICP  
DCM Elizabeth City District Planner

**From:** Ben E. Woody, AICP  
BEW  
Planning Director

**Cc:** Dan Scanlon  
County Manager

**Date:** August 21, 2008

**Re:** PB 08-22 Currituck Marina Land Use Plan Amendment

RECEIVED  
NC DENP  
AUG 25 2008  
COASTAL MANAGEMENT  
Elizabeth City

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The Currituck County Board of Commissioners is requesting an amendment to the Currituck County Land Use Plan to designate approximately 40 acres of the Future Land Use map from Conservation area to Full Service area and approximately 80 acres from Limited Service area to Conservation area.

The request for 40 acres of Full Service area was initiated at the request of Michael Perry of MSA Engineering and represents a portion of a larger 119 acre parcel. The request for 80 acres of Conservation area was initiated by county planning staff.

This request was approved by the Board of Commissioners at their August 18 meeting, and recommended by the Planning Board at their July 8 meeting.

As required by the Coastal Area Management Act (CAMA), the Board of Commissioners is submitting a local resolution of adoption which includes findings that demonstrate this amendment is consistent with the policy objectives of the Plan.

Please find the following information also included with this request:

- map amendment to the Future Land Use Map
- text amendment to Section 11 of the Land Use Plan
- case analysis of amendment request (including policy and management topics analyses, recommendations, and additional map exhibits)
- narrative of the request, application, and property survey as submitted by the applicant
- meeting minutes of the Planning Board and Board of Commissioners

Should you have any questions, do not hesitate to contact me at 232-6029.



**RESOLUTION OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS  
AUTHORIZING AN AMENDMENT TO THE CAMA LAND USE PLAN**

**WHEREAS**, the County desires to amend its 2006 CAMA Land Use Plan, specifically the Future Land Use Map, to designate approximately 40 acres as "Full Service Area" from "Conservation Area", and

**WHEREAS**, the County also desires to amend its 2006 CAMA Land Use Plan to designate approximately 80 acres of the Future Land Use Map as "Conservation Area" from "Limited Service Area", and

**WHEREAS**, on July 8, 2008, the Planning Board unanimously recommended adoption of the draft amendment to the CAMA Land Use Plan; and

**WHEREAS**, the County conducted a duly advertised public hearing on the draft amendment to the CAMA Land Use Plan at the Regular Meeting of the Board of Commissioners on Monday, August 18, 2008; and

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

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


**WHEREAS**, the amendment is consistent with the six management topics outlined in the County's Land Use Plan; and


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

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board of Commissioners of Currituck County, North Carolina, has adopted the draft CAMA Land Use Plan amendment; and

**BE IT FURTHER RESOLVED** that the County Manger of Currituck County is hereby authorized to submit the adopted CAMA Land Use Plan amendment to the State for certification as described above.

Adopted this 18 day of August 2008.

  
Board of Commissioners' Chairman  
Attest:

  
Clerk to Board.

**MAP OF THE AMENDMENT AREA**



**PB 08-22 CURRITUCK MARINA  
Land Use Plan Amendment**

0 750 1,500 3,000  
Feet  
Currituck County Planning Department





## LAND USE PLAN TEXT AMENDMENT

Section 11: Land Classification System, Table 11.1 is amended by adding the following underlined language and deleting the strikethrough language:

**Table 11.1 Comparison of Land Allocated to Future Land Use and Projected Land Needs, 2025**

<b>Land Use Class</b>	<b>Total Acres Allocated to Each Land Class (a)</b>	<b>% of Each Land Class in Development (b)</b>	<b>Total Acreage Available for Development as Projected (a) x (b)</b>	<b>Total Acreage Projected for Development</b>
Full Service Areas	<del>17,613</del> <u>17,653</u>	80%	<del>14,090</del> <u>14,122</u>	
Limited Service Areas	<del>26,706</del> <u>26,626</u>	65%	<del>17,359</del> <u>17,306</u>	
Rural Areas	40,218	10%	4,021	
Conservation Areas	<del>81,183</del> <u>81,223</u>	2%	<del>1,623</del> <u>1,624</u>	
Totals	165,720	--	<del>37,094</del> <u>37,073</u>	37,183

**CASE ANALYSIS FOR THE  
COASTAL RESOURCES COMMISSION  
MEETING DATE: September 25 - 26, 2008  
Currituck County Land Use Plan Amendment  
PB 08-22 Currituck Marina**

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**TYPE OF REQUEST:** To amend the Currituck County Land Use Plan to designate approximately 40 acres of the Future Land Use map from Conservation area to Full Service area and approximately 80 acres from Limited Service area to Conservation area.

**LOCATION:** Located near the terminus of West Side Lane, adjacent to Kilmarlic Subdivision.

**CURRENT ZONING:** Agricultural (A)

**SURROUNDING PROPERTY:**

	<b>Land Use</b>	<b>LUP Classification</b>
<b>NORTH:</b>	Undeveloped	Conservation
<b>SOUTH:</b>	Albemarle Sound	N/A
<b>EAST:</b>	Kilmarlic Subdivision	Limited Service
<b>WEST:</b>	Undeveloped	Conservation

**LAND USE PLAN  
ANALYSIS:**

**CLASSIFICATIONS**

**Conservation Area** – The purpose of the Conservation class is to provide for the long-term management and protection of significant, limited, or irreplaceable areas. Proper management is needed to conserve the natural, cultural, recreational, scenic or biologically productive values of these areas. The Conservation class should be applied to areas that should not be developed at all (preserved), or if developed, done so in a very limited manner characterized by careful planning and cautious attention to the conservation of environmental features. Infrastructure and services, public or private, should not be provided in these areas as a catalyst that could stimulate development.

Due to the low-lying nature of much of Currituck County, and the prevalence of wetlands in the County, the Conservation class is the most extensive of the four land classes. Oftentimes, the scattered, widespread nature of such areas (e.g. 404 wetlands) precludes their mapping except at a very generalized level of detail. In such instances, the standards of the Conservation class shall be applied in accordance with the site specific information

made available during special studies and/or the land development process.

**Full Service Area** – Areas designated as Full Service are those parts of the county where a broad range of infrastructure and service investments have been provided or will be made available by the public and/or private sectors. Infrastructure investments may include, for example, community level or centralized water, parks, schools, fire and rescue facilities. Central wastewater treatment and disposal whether public or community is considered reasonable in the Full Service Areas.

**Point Harbor Sub-Area** – The policy emphasis is to allow portions of the Point Harbor area to continue to evolve as a full service community, but with better attention to the planning needed to protect residential areas and the natural features that make the area so attractive. Vegetative buffers should be required/maintained along shorelines to preserve public access and open space at the waters edge and to protect water quality in the sound.

## **SUPPORTIVE POLICIES**

**POLICY PA1:** Public access to the sound and ocean waters of Currituck County is essential to the quality of life of residents and visitors, as well as the economy of the area. The County supports the establishment of ADDITIONAL PUBLIC AND PRIVATE ACCESS opportunities to the waters of Currituck County.

**POLICY PA2:** The County supports MANY FORMS OF “ACCESS” to the water, including scenic outlooks and boardwalks, boat ramps, marinas and docks, fishing piers, canoe and kayak launches, and other means of access. Whenever possible, such facilities shall be designed to accommodate the needs of handicapped individuals.

**POLICY PA5:** PUBLIC AND PRIVATE MARINAS offering access to area waters should be encouraged when developed in accordance with the CAMA specific use standards for marinas (i.e. docks for more than 10 vessels). Marinas shall not be approved, however, that are incompatible with nearby land uses or whose designs fail to meet the environmental quality and development standards of the County’s Unified Development Ordinance.

**POLICY PA6:** MARINAS IN UPLAND LOCATIONS generally shall be preferred over marinas in open water, thereby preserving the visual appearance of the shoreline as well as avoiding the “consumption” of available public trust surface waters.



**POLICY PP2:** Currituck County shall continue to implement a policy of ADEQUATE PUBLIC FACILITIES, sufficient to support associated growth and development. Such facilities may include but not be limited to water supply, school capacity, park and open space needs, fire fighting capability, and law enforcement.

**POLICY WQ6:** Currituck County supports the retention or preservation of VEGETATED BUFFERS along the edge of drainage ways, streams and other components of the estuarine system as an effective, low cost means of protecting water quality.

**POLICY ML3:** The interests of Mainland Area residents in having ACCESS TO THE AREA'S OCEAN AND ESTUARINE WATERS shall be fostered through County actions to increase the number of additional public access sites at a rate commensurate with the population growth of the Currituck County. Included in the actions taken to increase public access shall be a consideration given to transportation needs, including boat docks and ferry services.

### **UNSUPPORTIVE POLICIES**

**POLICY ES2:** NON-COASTAL WETLANDS, including FRESHWATER SWAMPS, AND INLAND, NON-TIDAL WETLANDS, shall be conserved for the important role they play in absorbing floodwaters, filtering pollutants from stormwater runoff, recharging the ground water table, and providing critical habitat for many plant and animal species.

**POLICY WQ5:** Development that preserves the NATURAL FEATURES OF THE SITE, including existing topography and significant existing vegetation, shall be encouraged. COASTAL AND NON-COASTAL WETLANDS shall not be considered part of a lot's acreage for the purpose of determining minimum lot size or development density.

**POLICY TR11:** ACCESS TO HIGHER INTENSITY DEVELOPMENT shall generally not be permitted through an area of lower intensity development. For example, access to a multi-family development, a major park facility or other large traffic generator shall not be permitted through a local street serving a single-family residential neighborhood.

### **MANAGEMENT TOPICS**

*Staff responses are in italics and follow each management topic.*

**Public Access** – To provide suitable public access opportunities to the County's public trust waters and shorelines so as to allow for a wide range of activities.

*The 40 acre site proposed for Full Service area would provide the County's first direct public access to the Albemarle Sound.*

**Land Use Compatibility** – To properly develop in accordance with the suitability of the land, infrastructure availability and the compatibility of surrounding uses.

*The upland area of the 40 acre site proposed for Full Service area is classified as low suitability for development. There is county water and emergency medical services readily available to the site, as well as vehicular access from a State maintained road. The surrounding land uses include the Kilmarlic subdivision and golf course, a regional health and racquet club, and approximately 25 acres of land zoned for multifamily uses (4 du/acre).*

**Infrastructure Carrying Capacity** – To avoid taking or approving actions related to infrastructure and the provision of services that could induce intensive development in environmentally fragile areas.

*Infrastructure capacity such as improved roads and public water are directly accessible to the 40 acre site proposed for Full Service area.*

**Natural and Man-Made Hazards** – To exercise caution, foresight, and common sense in dealing with the risks of coastal development.

*With environmental oversight from the State and local tools such as conditional zoning and floodplain management, the county is in a position to ensure development proposals are responsive to coastal development concerns.*

**Water Quality** – To preserve and improve water quality in the coastal waters of Currituck County; To preserve critical natural areas as the source of biological diversity and productivity on the County's ocean and estuarine environments.

*The intent of this request is primarily limited to the upland areas of the 40 acre site proposed for Full Service. The overall intensity of the project is of concern and will need to be designed in a manner to minimize potential impacts on water quality. The use of central wastewater, Low Impact Development (LID) stormwater techniques, and vegetative buffers are critical to the proposal's consistency with Land Use Plan management topics.*

**Local Concerns** – To protect and conserve the area's natural beauty and coastal resources as the County's greatest asset for economic development and a high quality of life.



*The request attempts to minimize the impact of the developable area while promoting a high quality project that provides public access and other economic benefits to the county.*

**CAMA LAND  
SUITABILITY:**

According to the land suitability analysis included in the Land Use Plan, the majority of the 40 acre site proposed for Full Service designation is classified as low suitability for development (see Land Suitability Map - Pg. 13).

**PUBLIC SERVICES  
AND UTILITIES:**

The amendment area is located within the Jarvisburg Elementary School District. The Lower Currituck Volunteer Fire Department (Kilmarlic Station) provides fire protection for this area. EMS coverage is provided from the Grandy Volunteer Fire Department Station. Public water is available to this site from the Kilmarlic Subdivision.

**TRANSPORTATION:**

The 40 acre site proposed for Full Service area is accessible by vehicle from West Side Lane and presumably by boat from the Intracoastal Waterway.

**FLOOD ZONE:**

The 40 acre site proposed for Full Service area is located in Flood Zone AE(7).

**WETLANDS:**

Approximately 95+/- acres of wetlands are located on the larger 119 acre parcel (including the existing lake and canal). The remaining 23+/- acres primarily consists of uplands and is included in the 40 acre site proposed for Full Service designation (see Property Survey - Pg. 26).

**SOILS:**

The Currituck County Soils map indicates the majority of the 40 acre site proposed for Full Service designation contains primarily suitable soils (see Soil Suitability Map - Pg. 14).

**RECOMMENDATION:**

After hearing evidence presented at the public hearing and based on recommendations from the Planning Board and Planning Staff, the Board of Commissioners recommended approval of the request due to its consistency with existing Land Use Plan policies and management topics. Further, the Board of Commissioners included the following recommendations as part of their approval:

- In order to maintain balance in Land Use Plan classifications, adjacent wetlands currently designated as Limited Service should be incorporated into this amendment request and designated as Conservation. Considering the intensity of

development allowed by the proposed Full Service designation, staff would recommend a 2/1 ratio for exchanging Conservation areas (i.e., for every 1 acre of Full Service created, 2 acres of Conservation is created).

- Future development proposals for the subject property must maintain public access, public boat launching, and parking facilities to the Albemarle Sound (Policies PA1, PA2, PA5, ML3).
- Any future marina proposal shall participate and become a Certified Clean Marina in the North Carolina Clean Marina program (Policy PA7).
- This site is adjacent to the Albemarle Sound. In addition, the wetlands on this site are designated as a Significant Natural Heritage Area by the North Carolina Natural Heritage Program for their presence of rare and important ecological features. In an effort to protect these areas and preserve water quality, priority should be given to the retention and preservation of wetland areas. It is recommended that no development, land disturbing, or logging activities occur in areas designated by the 2006 Land Use Plan as Conservation. (Policies ES2, WQ 5, WQ 6, ML1)
- Future development proposals for the subject property must demonstrate that water quality is not adversely impacted. The use of Low Impact Development (LID) techniques and wetland preservation should be given high priority. In addition when developing near the shoreline, precedence should be given to “soft” stabilization approaches including but not limited to preservation of existing vegetation, creation of natural, living shorelines for areas needing stabilization, and establishment of vegetative buffers (Policies ES4, WQ3, WQ6, and Point Harbor Sub-Area description).



AERIAL PHOTOGRAPH



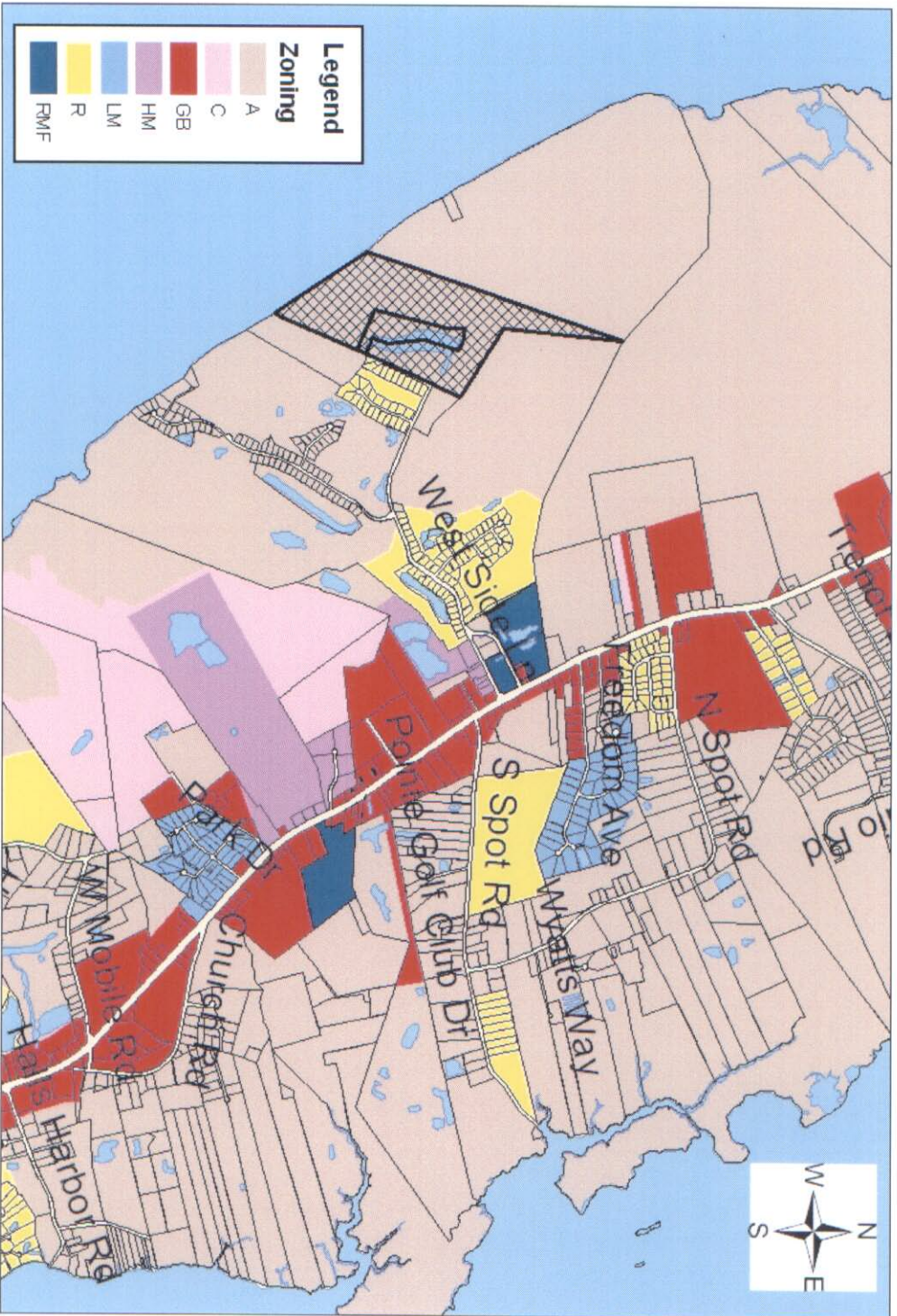
**PB 08-22 CURRITUCK MARINA  
Land Use Plan Amendment**

Currituck County Planning Department





**ZONING MAP**

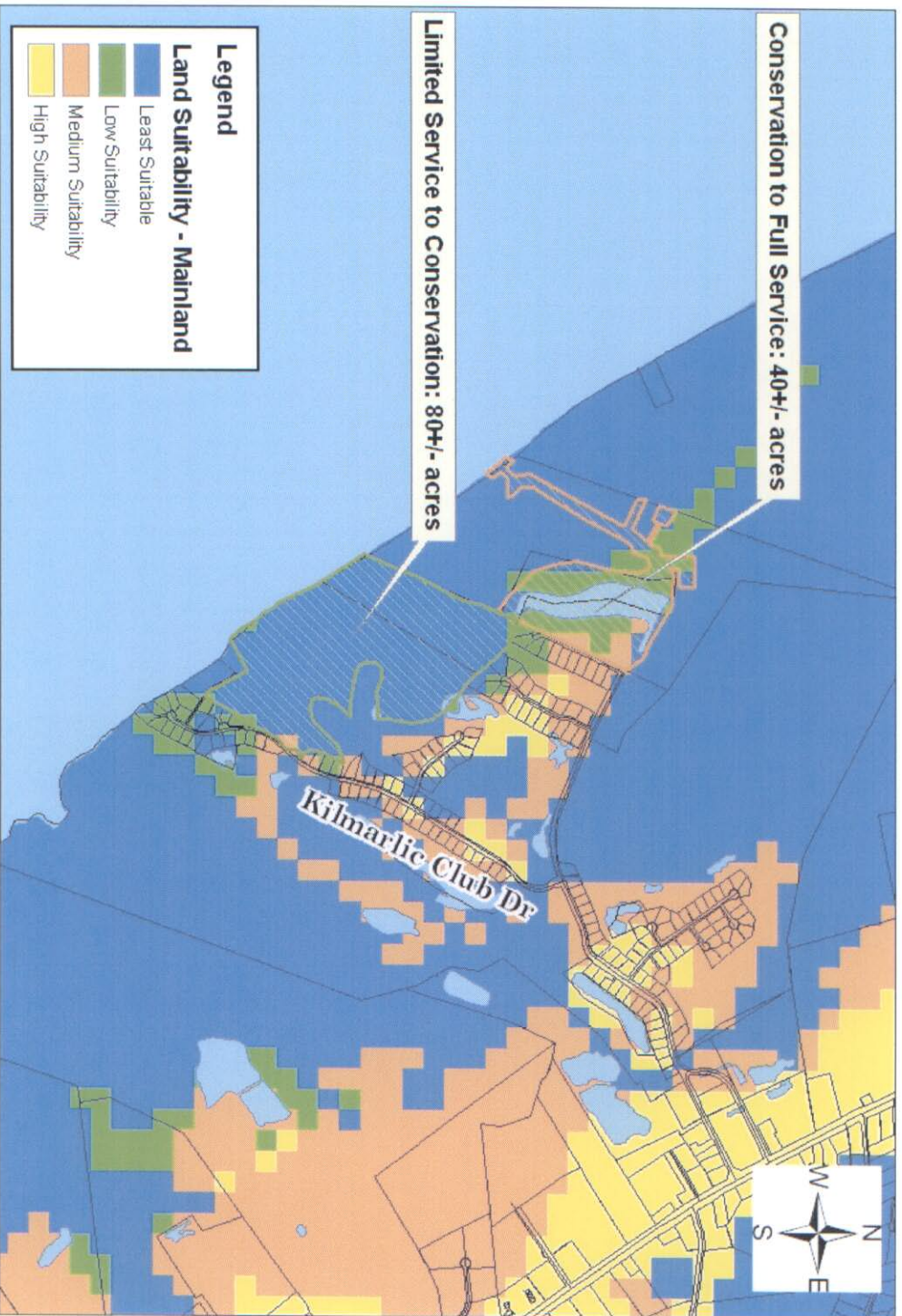


**PB 08-22 CURRITUCK MARINA  
Land Use Plan Amendment**

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Feet  
Currituck County Planning Department



LAND SUITABILITY



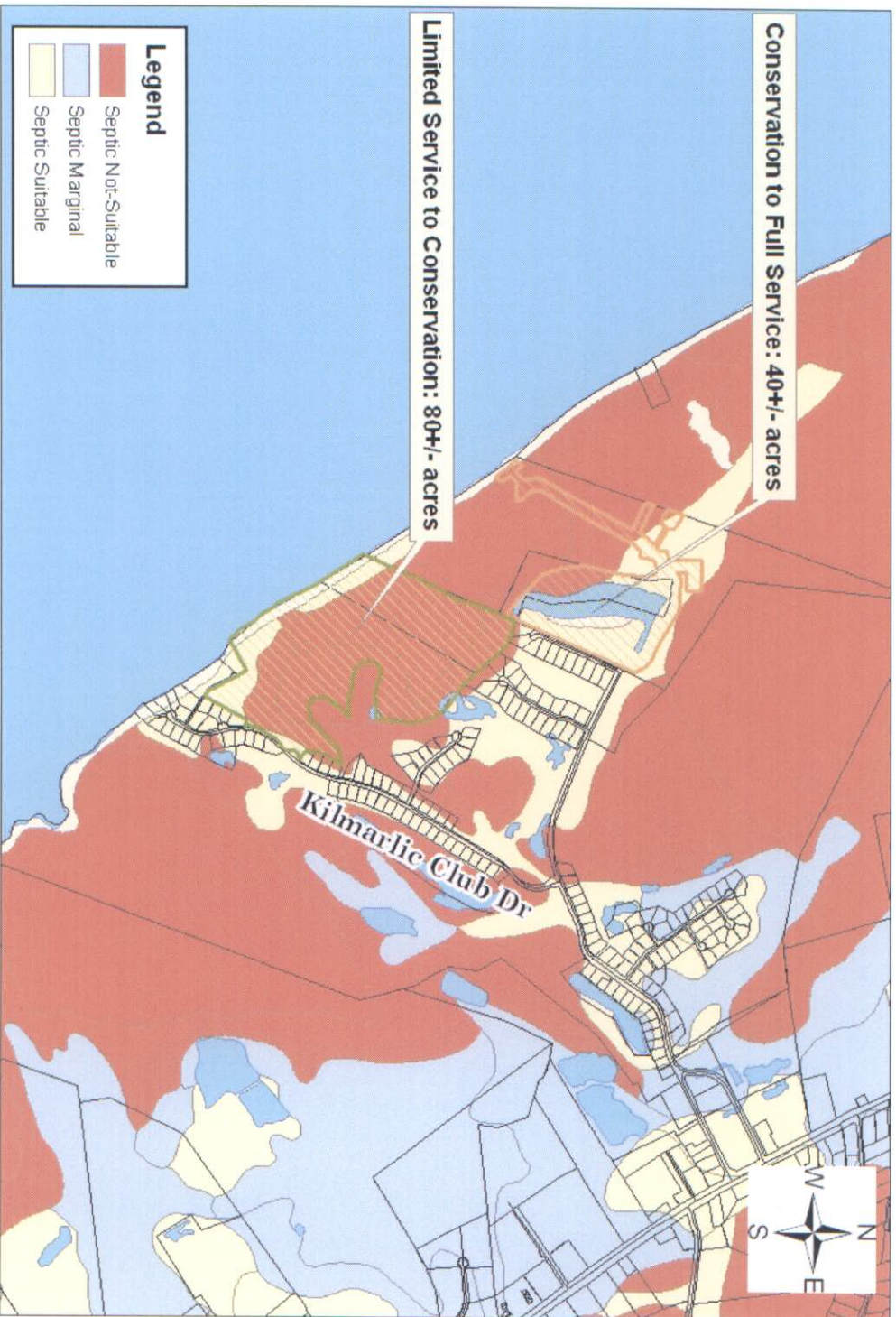
**PB 08-22 CURRITUCK MARINA  
Land Use Plan Amendment**

0 750 1,500 3,000  
Feet  
Currituck County Planning Department





SOIL SUITABILITY



**PB 08-22 CURRITUCK MARINA  
Land Use Plan Amendment**

Currituck County Planning Department









**NCDENR SIGNIFICANT NATURAL HERITAGE AREAS**



**PB 08-22 Currituck Marina**  
**Significant Natural Heritage Areas**



## **PLANNING BOARD DISCUSSION – June 10, 2008 Meeting**

Mr. West stated that this is not part of the Kilmarlic property but access would need to go through a portion of the Kilmarlic property.

Mr. West asked how can wetlands in the Kilmarlic Club be designated to an conservation area if they are already designated to another subdivision.

Mr. Webb stated the county has sole authority to amend the plan if, the state certifies the change, and determine the outlook of the Future Land Use Plan.

Mr. West asked if public access would be available to the marina.

Mr. Webb stated the West Side Lane is a public road and the applicants have indicated there would be public marina access.

Mr. Morrison stated they think this is a great project for the citizens of Currituck having direct access to the Albemarle Sound. They have been in contact with the Kilmarlic golf course and they are working with them because this project will help their project.

Mr. Midgette asked Mr. Morrison if they are in agreement with staff recommendations.

Mr. Morrison stated yes.

Ms. Turner asked Mr. Morrison if he was okay with public access to sound and boat launch.

Mr. Morrison stated yes.

Mr. Bell asked who is responsible for checking the water quality?

Mr. Webb stated that a CAMA permit is reviewed by 12 different state agencies and a thorough review is done.

Mr. Kovacs asked if the Board of Commissioners are the only ones that can make changes to the Land Use Plan since they approve it.

Mr. Webb stated this is an amendment to a county planning document and staff would want a recommendation from the Planning Board.

Mr. West asked how does the next item on the agenda, which is a Currituck County request to amend the Land Use Plan, impact this request which is also a request to amend the Land Use Plan.

Mr. Webb stated that the applicants are asking the Planning Board to consider immediate action on this request tonight. What will be reported next is a report on the process the county is looking for a much wider area.

Mr. Woody stated that this request is totally separate from the County's request.

Mr. Midgette asked with this being an amendment to the Land Use Plan will this have an affect on any other conversation areas in the county.

Mr. Webb stated no.

Mr. Keel stated that since another Town Meeting is scheduled on June 17, 2008 for the citizens in the Crawford Township to offer comments on the proposed amendment and learn more about the County's Land Use Plan, wouldn't it be better to do the two amendments at the same time.

Mr. Woody stated he would encourage the board to consider this entirely separate from what the county is requesting.

Ms. Turner asked if the only reason they want to get the amendment is so they can obtain the CAMA permit.

Mr. Webb stated that this was the county's view. Mr. Webb stated that whatever action the county takes, The Division of Coastal Management will make a recommendation from the county's action afterwards or before it goes to Coastal Resources Commission (CRC).

Mr. West asked Mr. Morrison where they are with the project, i.e. permits, etc.

Mr. Morrison stated they have been working on this project for approximately three years which included all the engineering and surveying.

Mr. West stated that if this was put off for another month since the county is going through this Town Meeting process looking at the LUP and this could or could not have an impact on it.

Mr. Morrison stated he attended and participated at the Town Meeting on June 5, 2008 and thought it was fantastic to understand the LUP which is totally different and separate from what they are requesting. Mr. Morrison is asking the board to make a recommendation on their request and look at it as an individual project.

Mr. Webb stated that the LUP map is not the only component of the Land Use Plan, this is why we look at the polices.

Mr. West stated this will add 40 acres of full service to the LUP.

Mr. Woody stated it will add 40 acres of full service and 40 acres of conservation to the LUP.

Mr. Webb stated that there were no potential marina sites on the map when the LUP Committee met in 2006.

Mr. West stated that there is no opposition to the marina but with the Town Meetings still taking place he feels they should wait until they have taken place before the board makes a recommendation. Mr. West stated that it is not the marina that is requiring an amendment to the LUP, but the density of the property surrounding the marina to full service.

Mr. Midgette asked why the county has conservation areas.

Mr. West stated that the definition in the case analysis states "the purpose of the Conservation class is to provide for the long-term management and protection of significant, limited, or irreplaceable areas".

Mr. Midgette stated that the board has approved projects with conservation areas and now they would be going back on what has been done in the past. Mr. Midgette stated he has no problem



with the marina but feels if they were to make a recommendation then other citizens within the county could do the same thing.

Mr. Morrison stated that the county would be gaining an extra 40 acres of conservation area.

Ms. Turner asked if this request is allowed to change, is it a way to ensure that the county doesn't lose conservation land?

Mr. Webb stated that what the board is looking at is the Future LUP and the other would be mitigation.

Ms. Turner stated if the board moves forward she would like to see keeping the same amount of conservation area.

Mr. Kovacs asked for clarification on the 2/1 ratio for exchanging Conservation area (i.e., for every 1 acre of Full Service created, 2 acres of Conservation is created.)

Mr. Webb stated the plan would change to add 40 acres of land to the conservation class.

Mr. West asked if the full service would be county wide for every 1 acre.

Mr. Webb stated it would be just for this property.

Mr. Wright stated he served on the LUP committee and one of the things they were concerned with was accessibility of the Albemarle Sound, which is one of great water resources of North Carolina and the nation. Currituck does not have any public access from Point Harbor to Coinjock to get to the Albemarle Sound. Mr. Wright feels that this proposal would give the public access to the Albemarle Sound. Mr. Wright stated he also has concerns. When Kilmarric was done it was titled a great conservation, open space subdivision. Much of the open space in Kilmarric was put under conservation easement to Ducks Unlimited. Mr. Wright asked if the land are already on a permanent easement for Ducks Unlimited. Mr. Wright is also concerned with the amount of density in an important wetlands area. He feels a lot of people will get confused with the whole process until the Town Meetings are done and the general question about unlimited vs. full services. Mr. Wright recommends the board table this request.

Mr. Morrison states he agrees with what Mr. Wright stated. Mr. Morrison did state this should be viewed separately from the Currituck County's LUP amendment. He is asking that the planning board make a recommendation on this request tonight so it can move to the June's Board of Commissioners meeting.

Ms. Turner stated that the marina is a positive project but she is concerned with the density and with one Town Meeting just taking place to discuss the LUP and another 2 weeks away, she feels it would be good to table this item.

#### **ACTION**

Mr. Keel motioned to table the request to amend the Currituck County Land Use Plan to designate approximately 40 acres of the Future Land Use map from Conservation Area to Full Service Area. Mr. West seconded the motion. Motion passed unanimously.

## PLANNING BOARD DISCUSSION – July 8, 2008 Meeting

Mr. Webb stated that the conservation area for Kilmarlic, Phase I does have a deeded easement for Ducks Unlimited and changing this to a conservation in the Land Use Plan would not have much affect on the plan. The other question Mr. Webb addressed was how the county's Land Use Plan (LUP) process is going to affect this request and Mr. Webb stated that it would have no affect.

Mr. Myers asked if the board had any questions.

Mr. Kovacs asked if this goes from limited service to a full service district, what is the difference in the number of units.

Mr. Webb stated approximately 55 units.

Mr. Kovacs asked if this request has to go before CAMA and that CAMA would not approve the request because the density is too high.

Mr. Webb stated that the county does not know because no reports have been seen regarding limited service vs. full service district.

Mr. Kovacs asked what is the number of conservation acreage the county would gain if this request was approved.

Mr. Myers stated 40 acres.

Mr. Kovacs stated if it was limited service it would be approximately 60 units less.

Mr. Myers stated the housing would be mixed use with duplexes/condo's and town homes.

Mr. Morrison stated the price range will be approximately \$299,000 for a 1,800 sq. ft. unit.

Mr. Kovacs stated that if it were to stay at limited service vs. full service would the price for a unit would change.

Mr. Myers stated that there are some conditions that you have with limited service that you don't have with full service, i.e. wastewater permitting and this is why it needs to be a full service district.

Mr. Kovacs asked if it were limited service that you couldn't get approval for wastewater treatment system.

Mr. Webb stated that the county's LUP would allow for this system in limited service.

Mr. West stated this was tabled from last month's meeting because of the process that the county is going through and the county has not gotten any further on the LUP. Mr. West stated he understands why they are asking for a full service district but he is concern with what precedent this will set for future developments in the area.

Mr. Morrison stated that the reason they are asking for the full service is so they can get the CAMA permit. Mr. Morrison stated this project will be beautiful for Currituck County and they are



also looking at units that will sell. This project will have public access to the sound. They are asking for the density to be 1.9 per unit.

Mr. Keel asked what the square footage will be per unit.

Mr. Morrison stated approximately 1,800 sq. ft.

Mr. West asked what size the parking space would be for the public access to the pier and launch area.

Mr. Myers stated 10-11 spaces which will be your average parking space and it will accommodate a trailer.

Mr. Morrison stated that you could store your boat at the boat house for a fee, which will include once a day your boat be taken out of storage and put in the water. Boat slips will be available to the general public.

Mr. Kovacs asked if another canal will be cut for this project.

Mr. Morrison stated that in 1986 a permit was granted to keep this canal open which was a drainage canal for the property which goes all the way to the river.

Mr. West asked if it will need to be dredged.

Mr. Morrison stated yes.

**ACTION**

Mr. Keel motion to recommend approval with staff recommendations to amend the Currituck County Land Use Plan to designate approximately 40 acres of the Future Land Use map from Conservation Area to Full Service Area. Mr. West seconded the motion. Motion passed unanimously.

**BOARD OF COMMISSIONERS DISCUSSION – August 18, 2008 Meeting**

*\* Meeting minutes were not completely transcribed at the time of DCM submission*

Ben Woody, Planning Director, reviewed the request.

Chairman Nelms opened the public hearing.

Tim Morrison and Fred Myers, Developer, reviewed their request.

Linda Pasqua, Harbinger, expressed concerns with the additional traffic this request would bring.

Ellen Eddie, opposed the request.

June Rapper, opposes the request and wanted to know if the Board was going to provide the additional fire and EMS. She requested her comments be sent to CAMA.

Judy from Harbinger, expressed concerns with traffic and no EMS or Fire.

Gwenn Cruickshanks, opposes this change to the LUP and the lack of EMS and Fire protection and increase in traffic. She requested her remarks be sent to CAMA.

There being no further comments, Chairman Nelms closed the public hearing.

**ACTION**

Commissioner Bowden moved to approve with findings of fact. Chairman Nelms seconded the motion. Motion carried with Commissioner Gregory and Etheridge voting no.



## AMENDMENT NARRATIVE (FULL SERVICE AREA)



**Narrative  
Currituck Marina  
Powell's Point, NC  
MSA Project No. 07177**

The baseline purpose of the CAMA is to protect valuable natural heritage assets. These are uniquely valuable, coastal ecosystems. They are complex with regard to habitats and the biota that rely on these areas for survival. This project, Currituck Marina, honors that important commitment, through avoidance, minimization and conservation. It seeks to maintain the assets that make this as such a beautiful area, by developing areas that are upland, while capturing any runoff that could adversely affect the receiving waters.

By using cluster development and smaller footprints, the amount of impervious surface is kept to a minimum. Adjacent properties include single family development and a golf course, which will not be affected by this amendment. In fact, the golf course would be considered an amenity for this project and our project, potential income source for the golf course.

As a Community that targets "Active Adults" and is basically self contained. There would be minimal impact on County resources. There would be no affect on the local school system. While there would be a need to have public utilities, these would be consistent with existing demand. What makes this project truly unique and of public benefit is the opportunity to offer safe harbor to local and transient boaters. It is the intent of the developers to allow the general boating public to use the inland harbor in the event of foul weather. This is an unparalleled opportunity for the intracoastal boater. This change of use for the project and an identified public need truly justifies its approval and its land space to be reclassified.

Reviewing the County's Land Use Plan, indicates that is a conforming use. While there is a development aspect of the proposed project, the conservation component is a significantly larger area. The use of upland areas, translates into the honoring of the AECs to the maximum extent practicable. Additionally, it appears as if this area is designated to be acceptable as a "Full Service Area", under the Guidelines.

This project and project location offer a unique opportunity for public benefit. It is a positive mix of upland and coastal habitat. This applicant is committed to conserving the ecological benefits, while creating a safe harbor for the boating public.

**AMENDMENT APPLICATION (FULL SERVICE AREA)**

Land Use Plan Amendment Chapter 11 Section (s) 3 as follows:

Full service area district  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Property Information (if amending a LUP map)**

Street Address: 291 West Side Lane

Parcel ID Number(s): 0112000003c0000

Deed Reference:                   Book 398   Page 694

Township: Powells Point

**Description of Property (if amending a LUP map)**

Size (in acres): ±123.1 Ac

Size of Area for Amendment ±40 Ac Upland

Street Frontage (feet): 60 ft

Current Zoning District: N/A

Current Land Use of Property: Residential

Surrounding Land Use:       North Fortune Bay Golf Club  
  South Albemarle Sound  
  East Kilmarlic Golf Community  
  West Property of Robert E. Wells &  
  Ronald K. Bennett ("Joyce Christiansen TRACT")

Current Future Land Use map designation: Conservation Area District

Proposed Future Land Use map designation: Full Service Area District

**Pre-application Conference Information**



Date of pre-application conference: April 10, 2008

Applicant/ representative in attendance: Mike Perry, Fred Myers

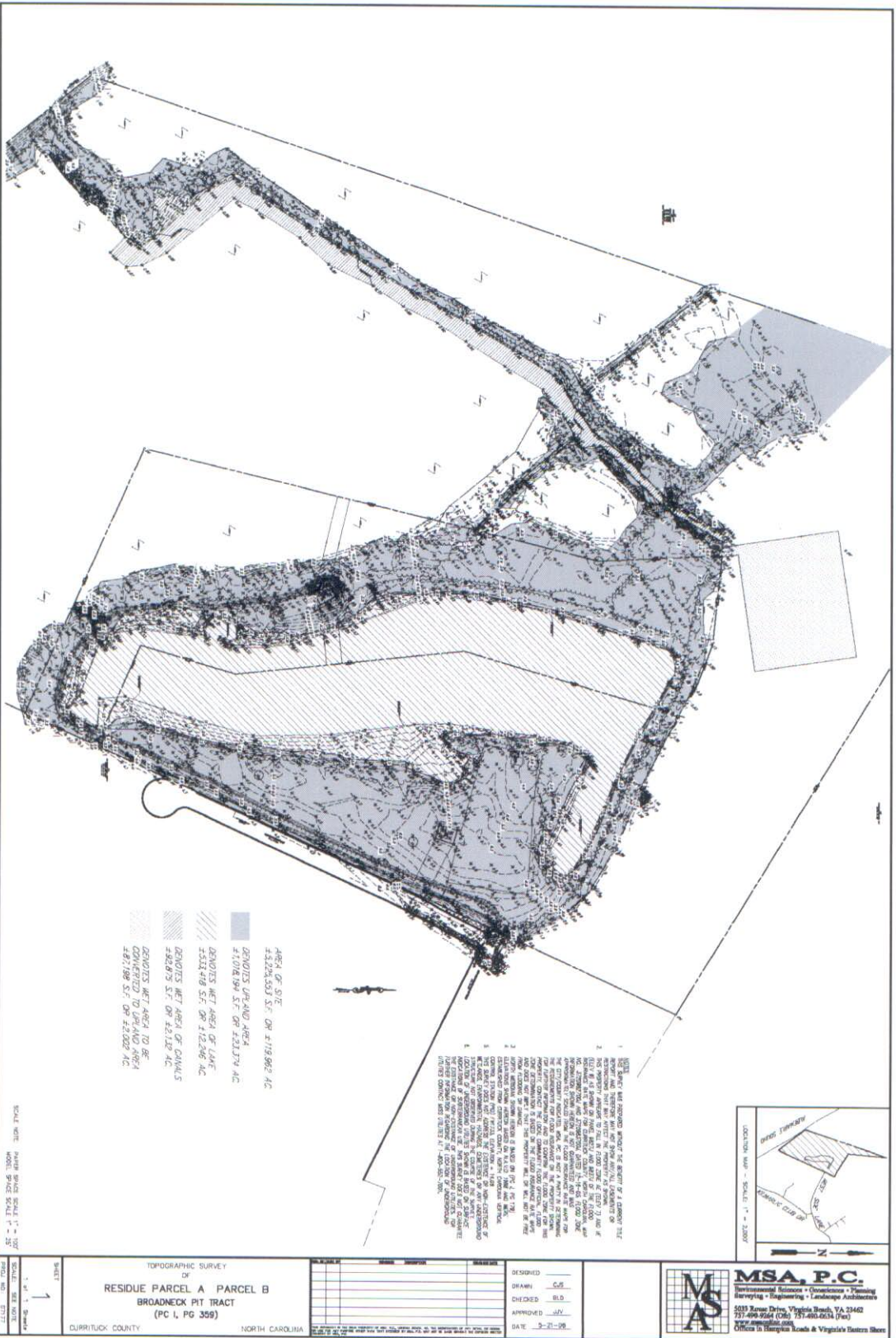
Planning Department staff in attendance: David Webb

### **Justification**

Please provide sufficient information to explain and justify how the Land Use Plan Amendment request satisfies the following questions. Attach additional sheets if necessary.

1. Will the proposed amendment support uses that are suitable in view of the use and development of adjacent and nearby properties? **Yes.**
2. Will the proposed amendment adversely affect the existing use or usability of adjacent or nearby properties? **No.**
3. Would the proposed amendment support uses that could result in an excessive or burdensome use of existing public facilities such as streets, schools, transportation facilities, or utilities? **No.**
4. How does the proposed amendment conform to the recommendations of the Future Land Use Plan, and any other applicable long range plans? **The Kilmarlic Golf Club property is located to the east of the proposed Currituck Marina project. The land use of Kilmarlic Golf Club was amended from a conservation district to a full-service area district and thus, the Kilmarlic community accommodates single-family homes. This area has illustrated growth on its long range plan. By amending the Land Use Plan for Currituck Marina, this will leave a ±68.51% conservation area district, and a ±19.48% full-service area district within the boundaries of the subject property. (See Section II, Attachment B)**
5. Are there any existing or changing conditions affecting the use or development of the property which justifies either approval or disapproval of the request? **No.**
6. Is there a public need for additional land space to be classified to this request? **Yes, Upland Marina: used for the public as a hurricane evacuation marina.**
7. How does this request relate to the land suitability analysis found in the Land Use Plan? Are there factors that have changed since the suitability analysis was completed? **This area is medium suitability to low suitability with wetlands. (See Section II, Attachment C)**

# PROPERTY SURVEY (FULL SERVICE AREA)



**Subject:** Changing of Currituck's Land use Plan

**From:** "Brenda Kleman" [REDACTED]

**Date:** Tue, 2 Sep 2008 16:36:19 -0400

**To:** <charlan.owens@ncmail.net>

September 2, 2008

To Whom it May Concern,

We are writing to object to a request by the developers of Currituck Marina and the Currituck Board of Commissioners (in a 3-2 vote) to change 40 acres of Currituck County's Land Use Plan from Conservation to Full Service based on the following criteria:

15A NCAC 07B.0702 (d)(3)(B)- Land Use Compatibility- The surrounding land and development is Limited Service and wetlands. It is also adjacent to a designated Significant Heritage Area. We believe a request to change the LUP just to allow additional condominiums will do harm to the fragile wetlands.

15A NCAC 07B.0702 (d)(3)(C)- Infrastructure Carrying Capacity- Lower Currituck, south of Grandy, does not have a usable fire station; nor does it have an ambulance, EMS or any other government support buildings. The proposed development will also feed onto the most heavily traveled section of U.S. Highway 158 due to tourist traffic, and does not have any established feeder roads for residents, nor plans to construct any.

15A NCAC 07B.0702 (d)(3)(E)- Water Quality- Has the potential to severely compromise the already shallow Albemarle Sound because of the need to dredge, and the proposed development is just south of where the county will start dumping its briny discharge from a Reverse Osmosis Plant next year. It is difficult to believe that the dredging, briny discharge and runoff from such a large development will not have a negative impact on the area's ecosystem and water.

Thank you for giving us the opportunity to express our concerns.

Sincerely,

Gary and Brenda Kleman

203 Waterside Drive  
Harbinger, NC 27941  
[REDACTED]

:

**Subject:** Fw: Currituck's request to change 40 acres from Conservation to Full Service

**From:** "Brenda Kleman" [REDACTED]

**Date:** Thu, 21 Aug 2008 16:10:06 -0400

**To:** <charlan.owens@ncmail.net>

Dear Ms. Owens

We are residents of Harbinger who are very concerned with a request made by the developer's of Currituck Marina, and a split decision approval made by the Board of Commissioners, to change 40-acres of Lower Currituck's Land Use Plan from Conservation to Full Service. The property is located in the Kilmarlic Club.

According to the developers' plans, they want to build over 220 condominiums, a "public marina", a boatel and shops on property designated Limited Service and Conservation. A point that seems to have been missed by most Currituck officials is that the developers can build the marina, boatel, shops and 180 condominiums without changing an additional 40-acres from Conservation to Full Service.

There are very few remaining areas in Lower Currituck, especially along the Albemarle Sound that are designated wetlands. This particular property is also adjacent to an identified Significant Heritage Area.

We are concerned that the large development will do harm to the fragile wetlands. We also have concerns that the proposed packaged wastewater systems and run-off could eventually harm the Albemarle.

It was determined that the developers' will need to dredge at least 800 to 1,000 feet due to the Albemarle's shallow waters, and that the site is located just south of where the county's new Reverse Osmosis Plant will start dumping its briny discharge next year.

It is our belief that the Commissioners (in a 3-2 vote) approved the project because of the developers' highlighting the need for a "public marina". However, it should be noted that according to their plans, only 10 public parking spaces will be available. If this gets built the Kilmarlic Subdivision alone, will have over 400 to 500 homes.

In addition, the developers' stated that they will substitute 80 acres of upland Limited Service land for the 40 acres of Conservation. According to CAMA's own criteria; the 40-acres is deemed unsuitable for development.

We also feel that CAMA should not approve the Land Use Plan change because of all the policies that it is in conflict with, including a lack of public services. The proposed property & our residents have a condemned fire station, and the closest ambulance and EMS station is 14 miles away.

Highway 158 from Jarvisburg south to the Wright Memorial Bridge suffers from the most congested tourist traffic in the county. We do not have feeder roads that can be used to get us where we need to go, and all this additional traffic from another large multi-family subdivision will only add a greater stress to the area and its residents..

There is a public pier and boat access 2 miles from this site and no residents can get onto the highway to use it on weekends.

The developers' told the Commissioners at their Aug. 18 meeting, that if CAMA approves the Land Use Plan change, they will ask for a rezoning of the Conservation area to Full Service prior to getting Army Corp. of Engineers and other environmental permits for the marina. Our fear is that if they are denied the marina, it will be just another 220+ condominium project and our wetlands will be gone forever. There is already a great deal of vacant land zoned for housing subdivisions in Lower Currituck.

For all these reasons, which we believe are important, we ask that CRC not allow the LUP change from Conservation to Full Service.

Thank you for your time.

Sincerely,  
Mr. & Mrs. Gary Kleman

203 Waterside Drive  
Harbinger, NC 27941  
[REDACTED]





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-08-38

**To:** The Coastal Resources Commission & Coastal Resources Advisory Council  
**From:** Michael Christenbury, Wilmington District Planner  
**Date:** September 15, 2008  
**Subject:** Carolina Beach Land Use Plan Amendment (September 2008 CRC Mtg.)

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 height limits for Hotels.

**Recommendation:** That the CRAC recommend to the CRC the denial of the Town of Carolina Beach amendment request based on the determination that the Town has failed to meet the public notice requirements of G.S. 113A-110(e) and (f) as well as '15A NCAC 07B.0801(a)', not less than 30 days prior to the CRAC meeting; and,

That the Town be directed to re-notice and re-consider adoption of the proposed amendment to include the required disclosure of .0802(b)(3), that the public has the opportunity to provide written comment following the local adoption of the Land Use Plan amendment no less than 15 business days prior to next scheduled CRAC/CRC meeting.

**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 August 22, 2008, the Town of Carolina Beach 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.**

127 Cardinal Drive Ext., Wilmington, North Carolina 28405  
Phone: 910-796-7426 \ Internet: [www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

The Carolina Beach Town Council adopted the amendment by a 3 – 1 vote at their August 22, 2008 meeting. At the hearing, three (3) individuals spoke in opposition to this amendment, and one (1) written objection was submitted to DCM. Attachment A provides the letter submitted by the Attorney for Carolina Beach PACE, W. Dan Bell.

The written objection submitted stated that the public notice published in the July 23, 2008 edition of the *Island Gazette* did not meet requirements per '15A NCAC 07B.0801(a) Public Hearing and Local Adoption Requirements'. Specifically, the public notice omitted the disclosure of the public opportunity to provide written comment following local adoption of the plan as noted per 07B.0802(b)(3). It was further noted that the notice in Attachment 1 was the only public notice that was published not less than 30 days prior to the public hearing as required in 07B.0801. Attachment 1, provides a copy of the notice.

DCM staff agrees that the notice is deficient and communicated the same to the Town with the recommendation that the request be withdrawn and resubmitted following re-notice and decision as required. It was noted that if that approach was pursued, it was possible for the Town to meet the deadlines to meet the November CRC meeting in Morehead City.

The Town has chosen to both move forward with this request before the CRAC and at the same time re-notice a hearing that would make it possible to return at the November CRAC/CRC meeting.

**BASIS FOR DETERMINATION:** State rules must be used in conjunction with each other. The CAMA Act per G.S.113A-110 (e) 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.

(See Attachment B for a complete copy of section .0800.)



As cited .0801(a) cross-references the sub-section below regarding the public disclosure requirements: (See Attachment B for a complete copy of section .0800.)

**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.

The above section in .0802 was adopted to specifically 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.

Amendments to CAMA Land Use Plan are provided for in 07B .0900. Attachment C provides a copy of Section .0900. No mention of local hearing requirements are provided in .0900, the rules rely on .0801(a) for local hearing requirements.

**DISCUSSION:**

Objection Letter: The objection letter submitted by Attorney, Dan Bell was hand delivered to Mr. Christenbury late Thursday, September 4, 2008 which was only fourteen (14) business days prior to the CRAC meeting. Though technically shy a day it is still provided in Attachment A. The single substantive objection, in DCM staff's view is the July 22<sup>nd</sup> public notice not being consistent with the state's rules.

Town's Response to Issue: The correspondence in Attachment D, by Mr. Ferguson (Planning Director) and Steve Goggins, (Town Attorney) email is provided in Attachment F, each making arguments that the Town relied on section .0900 pertaining to amendments (see Attachment C) and that the disclosure requirement was both not specifically required or applicable. Their correspondence implies that 7B .0900 is separate and distinct from .0800 or the cited 113A-110(e). The Town believes it has

exceeded the state's public notice requirements including having provided the public with disclosure statements, though not in the first, but in numerous subsequent notices.

DCM recognizes that the Town of Carolina Beach did advertise five (5) additional times (which was not required) in order to notify the public of the scheduled hearing, and in fact these subsequent notices did include language consistent with state rules, to include the disclosure of the public opportunity to provide written comment following the local adoption (See Attachment 2#).

None of these additional notices were published in time to meet the specific requirements of *not less than 30 days* prior to the public hearing consistent with G.S. 113A-110(e) and 07B .0801(a)

DCM staff does not accept the argument that 7B.0900 can be viewed and used as a stand-alone section for amendments to local Land Use Plan's. Other 7B sections, most notably ' . 0700 CAMA Land Use Planning Requirements' and ' . 0800 CAMA Land Use Plan Review and Certification', must be used and considered in concert when determining whether the local plan or amendment has met the state's rules, whether content, processing or public notice.

**SUMMATION:** As noted earlier in the memo DCM staff recommended to the Town that the request be withdrawn and resubmitted following re-notice and decision as required.

The Town has chosen to both move forward with this request before the CRAC and at the same time re-notice a hearing that would make it possible to return at the next November CRAC/CRC meeting in Morehead City.

## **ATTACHMENTS**

- A: Objection Letter by Dan Bell hand delivered on September 4, 2008
- 1: Town of Carolina Beach July 23, 2008 PH notice
- 2: Other PH Notices
- 3: Town of Carolina Beach Resolution 08-926
- B: 15A NCAC 07B .0800 CAMA Land Use Plan Review and CRC Certification
- C: 15A NCAC 07B .0900 CAMA Land Use Plan Amendments
- D: Town of Carolina Beach's Comments
- E: Town's Power Point Presentation
- F: TCB Attorney Steve Coggin's email

**Bell Law Office PC  
W. Dan Bell  
Mailing Address: PO Box 136  
206 K Avenue, Ste. 205  
Kure Beach NC 28449  
910/458-4370 Fax 910/458-4309  
email [lawbell@juno.com](mailto:lawbell@juno.com)**

RECEIVED  
DCM WILMINGTON, NC

SEP 04 2008

September 4, 2008

HAND DELIVERED

Michael Christenbury  
NC Division of Coastal Management  
127 Cardinal Drive Ext.  
Wilmington NC 28505

RE: Proposed Amendment to Carolina Beach Land Use Plan

Dear Mr. Christenbury:

Pursuant to 15A NCAC 07B .0802(b)(3) and on behalf of my client Carolina Beach PACE I am submitting objections to the proposed amendment to Policy #30. These objections apply specifically to the entire amendment which adds the following provision:

Policy #30 ....

\*

\*

\*

4. hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

## HISTORY

The Carolina Beach Land Use Plan (“LUP”) was approved by the Town on October 23, 2007, and by the Coastal Resource Commission (“CRC”) on November 30, 2007. A hotel developer known as The Hilton requested that the LUP be amended to allow for appurtenances which extend above the 115’ height limit. Carolina Beach Town Council (“Council”) set a public hearing on the proposed amendment for August 22, 2008. The published notice which appeared on July 23, 2007, is attached hereto as Exhibit A. The Town’s altered notice which was published on July 30 and August 6, 13, and 20 is attached as Exhibit B. These notices are verified in an August 5 memo from Ed Parvin, senior planner, to the Mayor, Council and the Planning and Zoning Commission (“P&Z”) which is attached as Exhibit c.

At this public hearing the Coouncil approved by a 3 to 1 vote a Resolution approving the amendment which is attached as Exhibit d. This Resolution was sent to CRC which placed the amendment on its agenda for its September 24-26 meeting.

**ATTACHMENT A**

## **GROUNDNS FOR OBJECTIONS**

### **1. The July 23 published notice of the August 22 hearing was not consistent with the Rules of the CRC.**

First, in order to legally notify the public of the required public hearing on the proposed amendment, 15A NCAC 07B.0801(a) requires the local government to adhere to G. S. 113A-110(e) by, not less than 30 days before the hearing, placing a notice in a newspaper of general circulation in the county. Exhibit A is the only notice which met that time deadline.

This statute requires the notice to state, among other things, “the subject of the hearing.” This was not done. Paragraph 1 of that notice reads: “Amending the 2007 CAMA Land Use Plan to consider modifying the limitations to building height in the Commercial 2 Land Use Classification Area”

This paragraph plainly states that this LUP amendment would result in consideration of modifications to the building height. It says “consider”. It doesn’t say “change.” It doesn’t say if the height will be increased or decreased. It doesn’t say that the increased height will be for appurtenances. These factors are essential parts of the actual proposed amendment. They were omitted from the only timely notice. Therefore, the notice is invalid and inconsistent with the Rules of the CRC.

Second, 15A NCAC 07B.0801(a) requires a valid notice to include the provisions of .0802(b)(3) relating to the right to provide written objections. This Rule provides, among other things, that objections “...are limited to the criteria for CRC certification as defined in Subparagraph (c)(3) of this Rule” and that the “written objections shall identify the specific plan elements that are opposed.”

Neither of these provisions was included in Exhibit A or in any of the subsequent notices. This made the notices incomplete, ineffective, misleading and inconsistent with CRC Rules. A citizen following the instructions of the notice would have filed an invalid objection. Surely, the CRC did not include these very specific provisions in its Rule only to have them ignored. Surely, the CRC does not want to concede that they have no meaning. Surely, it is no burden on a local government to include these provisions in its notice.

In summary, the required the Town’s notice for the August 22 hearing was inconsistent with the Rules of the CRC and the amendment must not be certified.

### **2. The resolution was adopted in violation of State law.**

The notice for the August 22 meeting stated that the public hearing was the only business to be conducted. The public had no notice that Council intended to vote on a Resolution. There is no provision in G.S. 160A-81 for voting at a public hearing.

If the vote on the Resolution was taken after the public hearing was officially closed, then the vote at an illegal special meeting of Council. G.S. 160A.71 requires special meetings to be properly and publicly noticed and it limits the business conducted at the special meeting to agenda items.

If the vote on the resolution at the August 22 meeting was taken before the public hearing was closed, it was an action on a non-agenda item. It would be contrary to the

spirit of the law to sanction an action at a public hearing which could not be taken at a Council meeting.

The vote on the resolution violated state law, invalidating the resolution and making certification of the amendment improper.

**3. The Resolution does not contain findings which demonstrate that policy statements and the Future Land Use Plan Map have been evaluated as is required by 15A NCAC 07B.0802(c)(3)(E).**

The Resolution contains not a single finding. The Resolution only parrots the language of the Rule. If this is what the Rule intended, this is all the Rule would have required.

Webster defines "finding" as "the result of an investigation". For example, the Town could have included language stating the results of an investigation to determine if the increased height conflicted with the future characteristics of Commercial 2 found on Page 95 of the LUP. There are many other possible examples.

The fact is that the Resolution completely disregards this Rule. Therefore, the certification must be denied.

**4. The passage of the Resolution ratified a procedure which was rife with internal inconsistencies.**

Part 1, Section 1.5 of the LUP is entitled "Public Involvement." This section requires public involvement at every stage of the process. This simply did not occur. The notice of the public hearing on the amendment actually gives notice that the Council will approve it and that it will be sent to CRC. Not only is this arrogant, it also completely disregards the LUP requirement of public participation.

In fact this amendment was not intended for public debate. In fact, it was a special amendment to serve the needs of a private developer.

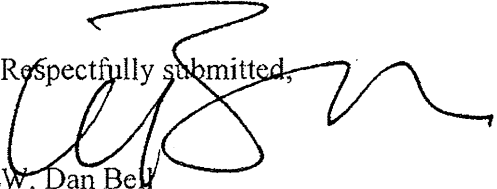
This mocks the LUP which was designed by the public and intended to be revised by the public. If sanctioned by the CRC, my clients are gravely concerned that this will set a precedent, and that the LUP will no longer be a document of the people, but will become a document for special interests.



## CONCLUSION

For all of the above reason, I respectfully respect that you deny certification to this proposed amendment.

Respectfully submitted,



W. Dan Bell

Attorney for Carolina Beach PACE  
Bell Law Office PC  
PO Box 136  
205 K Avenue, Ste 205  
Kure Beach NC 28449  
State Bar 26946

ATTACHMENT #1

JULY 23, 2007 advertisement

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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 August 22, 2008 at 6:00p.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:

1. Amending the 2007 CAMA Land Use Plan to consider modifying the limitations to building height in the Commercial 2 Land Use Classification Area; and/or
2. Amending the Zoning Ordinance, Section 3.9.1 to limit the maximum height of commercial buildings to 115 feet excluding appurtenances in the central business district (CBD) zoning district.

A copy of the amendment can be viewed at Town Hall and/or at the New Hanover County Courthouse during normal work hours.

Questions and/or comments on the 2007 CAMA Land Use Plan amendment can be directed to Gary Ferguson, Director of Planning & Development at (910) 458-2986 or Ed Parvin, Senior Planner at (910) 458-2526.

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Ex A

ATTACHMENT #2

July 30, 2008; August 06, 2008; August 13, 2008; and August 20, 2008

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*NOTICE OF PUBLIC HEARING TO AMEND THE TOWN OF CAROLINA BEACH 2007 COASTAL AREA MANAGEMENT ACT (CAMA) LAND USE PLAN*

---

The Town of Carolina Beach will hold a public hearing on August 22, 2008 at 6:00p.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 August 22, 2008 at 6:00p.m. at the Town Administration Building.**

Once 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 September 24<sup>th</sup>-26<sup>th</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).

Ex B





**RESOLUTION IN SUPPORT OF THE AMENDMENT OF THE 2007 TOWN OF CAROLINA BEACH CAMA LAND USE PLAN**

**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,

**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 August 22, 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 September 24-26, 2008 Commission meeting.

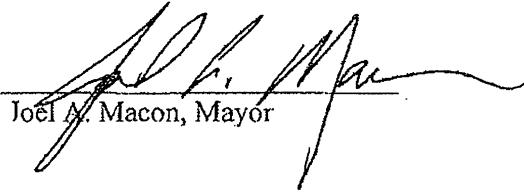
POLICY 30 AMENDED TO ADD ITEM #4 AS SHOWN BELOW:

Policy #30: Building Height shall be defined as that distance measured from the highest appurtenance on the structure to:

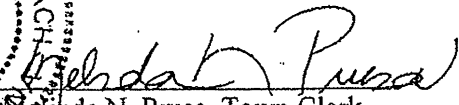
1. The front street line.
2. The nearest front street line where there is not an adjacent right-of-way.
3. An average of each front street line on through lots.
4. Hotels – appurtenances ten (10) feet or less in height shall be exempted from the height measurement.

Approved by a vote of 3 in favor and 1 opposed on this 22<sup>nd</sup> day of August, 2008.

Signed by:

  
Joel A. Macon, Mayor

Attest:

  
Melinda N. Prusa, Town Clerk



Ex C

ATTACHMENT 3

## 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, 2008.*



## SECTION .0900 – CAMA LAND USE PLAN AMENDMENTS

### 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. 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.
- (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.
- (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) 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 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.*

Joel Macon  
Mayor

Alan Gilbert  
Councilman

Jerry Johnson  
Councilman



TOWN OF CAROLINA BEACH  
1121 N. Lake Park Boulevard  
Carolina Beach, North Carolina 28428  
910 458 2526  
FAX 910 458 2997

Dan Wilcox  
Mayor Pro Tem

Pat Efird  
Councilwoman

Timothy Owens  
Town Manager

September 12, 2008

Mr. John Thayer  
N.C. Division of Coastal Management  
400 Commerce Ave .  
Morehead City, NC 28557

Dear Mr. Thayer,

As you are aware the Town of Carolina Beach has serious objections to the Division of Coastal Management (DCM) Staff position that our noticing requirements for amending our 2007 CAMA Land Use Plan (LUP) failed to meet the provisions of 15A NCAC 07B .0901. In support of our position please find our Town attorneys opinion that was emailed to you on September 8, 2008 and also a brief power point presentation that we wish to make available to the CRAC members at your next meeting in Sunset Beach on September 25-26 2008.

In summary our issues can be confined to the following points relative to your position that we have failed to meet the noticing requirements for LUP amendments.

1. Town Staff relied on the noticing provisions as outlined in Section .0900 and entitled "CAMA Land Use Plan Amendments". More specifically Section 07B .0901 (a)(4) gives the reader of this rule clear direction concerning exactly what DCM wishes such notice to include. Item (a)(4) clearly states "CRC review and action on CAMA Land Use Plan amendments shall be in the same manner as provided in 15A NCAC07B .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).
2. It is my understanding that DCM staff agrees that the Town of Carolina Beach has met the requirements of 15A NCAC 0B .0802 (b), (c), (d) and (e). This provision is entitled "Presentation to Coastal Resources Commission for Certification".
3. What DCM Staff is objecting to is that the Town has failed to meet, in its first of eight (8) notices of our LUP amendment, the provisions found in Section .0800 which is entitled CAMA Land Use Plan Review and CRC Certification. More specifically, DCM Staff is saying the

**ATTACHMENT D**

provision found in 15A NCAC 07B.0801 (a) were not provide in our first notice advertising a public hearing in that we have failed to adhere to the final part of this provision which states, “; 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”.

4. Clearly the provisions of .0800 are designed in part, to address the noticing requirements of new Land Use Plans and not newly adopted and certified LUP's that are now undergoing an amendment. This seems clear because of the direction the authors of this rule provided in Section .0901 to local governments when it says in item number (4), “amendments shall be in the same manner as provided in 15A NCAC 07B .0802 (b), (c), (d) and (e)”. Nowhere in this amendment language is there any reference for the reader to be made aware that they must also follow the requirements of 07B .0801(a). In other words, the noticing requirements gives the reader very exact and specific direction for Land Use Plan amendments but fails to tell the reader that they must also follow disclosure provisions located in another part of the 7B rules. Why does DCM not provide guidance that local governments must also follow 07B .0801 (a) when they give explicit reference and direction to many other items in this rule for noticing?? In our opinion, this is an oversight on DCM's part by not including the correct reference to the required provisions yet we must live with the consequence of a delayed action by the CRC.

Although it should be noted that the Town has far exceeded the minimum advertising requirements for this proposed amendment which was locally adopted through a public hearing process at which only three (3) individuals spoke in opposition, DCM appears adamant in delaying this certification due to an omission of a reference to this newly crafted rule. The reference of course, should clearly direct the reader to 7B.0801 and it clearly does not.

Lastly, and from a rational planning point of view concerning the disclosure statement that must be included in the notice of the initial LUP amendment, why does DCM require such a statement prior to local government acting on such an amendment? Said amendment may or may not be adopted locally yet DCM is mandating that such an advertisement include language directing those who may object to send objection letters to the regional DCM planner. Are you not putting the cart before the horse? In closing, Carolina Beach only wishes that the CRAC and CRC read the literal wording and the direction given to the reader in these provisions and consider certifying this proposed Land Use Plan amendment.

Gary Ferguson, AICP  
Planning Director



# Carolina Beach Land Use Plan Amendment

Coastal Resources Commission  
September 24-26, 2008

## Advertising and Notification Process

# Advertisement Requirements

## **SECTION .0900 – CAMA LAND USE PLAN AMENDMENTS**

15A NCAC 07B .0901 (a)(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

- (1) written notice of the public hearing,**
- (2) a copy of the proposed amendment (including text and maps as applicable), and the**
- (3) reasons for the amendment no less than 30 days prior to the public hearing.**

July 23, 2008 original advertisement meets the guidelines for a CAMA LAND USE PLAN AMENDMENT as described in SECTION .0900

HEARING REQUIREMENTS FROM 15A NCAC 07B. 0901 CAMA LAND USE PLAN AMENDMENTS:

**"(1) written notice of the public hearing, (2) a copy of the proposed amendment (including text and maps as applicable), and the (3) reasons for the amendment no less than 30 days prior to the public hearing."**

Language included in the July 23 ad:

- (1)** The Town of Carolina Beach will hold a public hearing on August 22, 2008 at 6:00p.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: Amending the 2007 CAMA Land Use Plan to **(3)** consider modifying the limitations to building height in the Commercial 2 Land Use Classification Area;
- (2)** A copy of the amendment can be viewed at Town Hall and/or at the New Hanover County Courthouse during normal work hours.

*\*note: Along with advertising and notices posted, this amendment was provided to Mike Christenbury 30 days prior to our public hearing as required by 15A NCAC 07B .0901.*

# CROSS REFERENCES FROM 0900 CAMA LAND USE PLAN AMENDMENTS

15A NCAC 07B .0802 (b), (c), (d) and (e).

0802 (b), (c), (d), and (e) explains the CRC certification process for presentation and approval of land use plans and amendments. No additional local government requirements are addressed in these sections, although 0802 (b) was addressed in the following notices and advertisements:

Notices posted on July 23, 2008: Town Hall, New Hanover County Courthouse, Carolina Beach Parks and Recreation Center, Carolina Beach Library, and the Carolina Beach Senior Center

6 Island Gazette advertisements

- July 30, 2008
- August 27, 2008
- August 06, 2008
- September 3, 2008
- August 13, 2008
- September 10, 2008

1 Star News advertisement

- July 26, 2008

OUR NOTICE GAVE THE PUBLIC 38 DAYS TO SEND COMMENTS TO DCM

## Advertising for the August 22, 2008 meeting

- 8 total advertisements were completed for the Land Use Plan Amendments
- Notices posted on July 23, 2008 in 5 locations
  - (1) Town Hall, (2) New Hanover County Courthouse, (3) Carolina Beach Parks and Recreation Center, (4) Carolina Beach Library, and (5) the Carolina Beach Senior Center

## SECTION .0800 CAMA LAND USE PLAN REVIEW AND CRC CERTIFICATION

- This section lays out the adoption requirements for a CAMA Land Use Plan.
- Amendments are not addressed in this section
- There are no cross references from .0900 CAMA LAND USE PLAN AMENDMENTS to 0801 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

## REVIEW OF THE LUP AMENDMENT



## Current 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

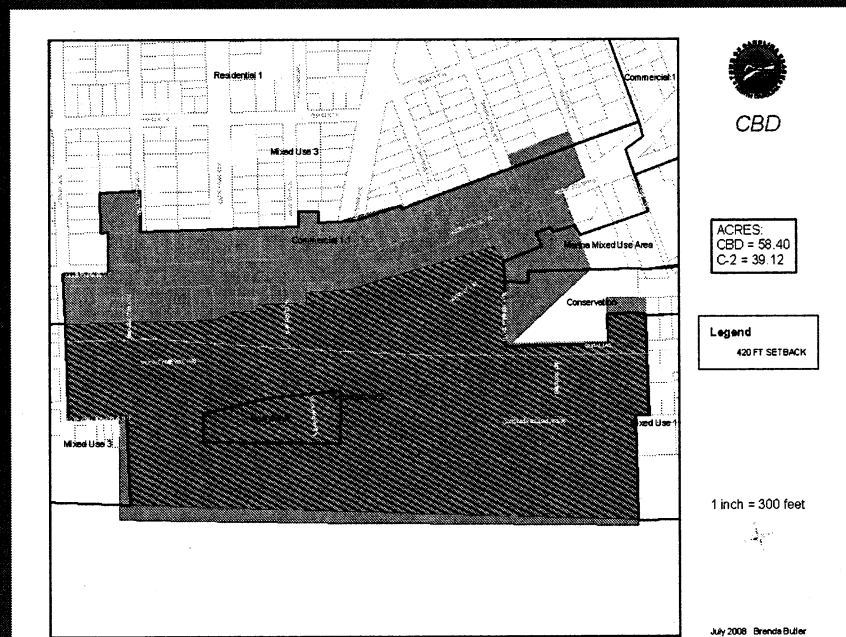
## Current Policy #32

“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.

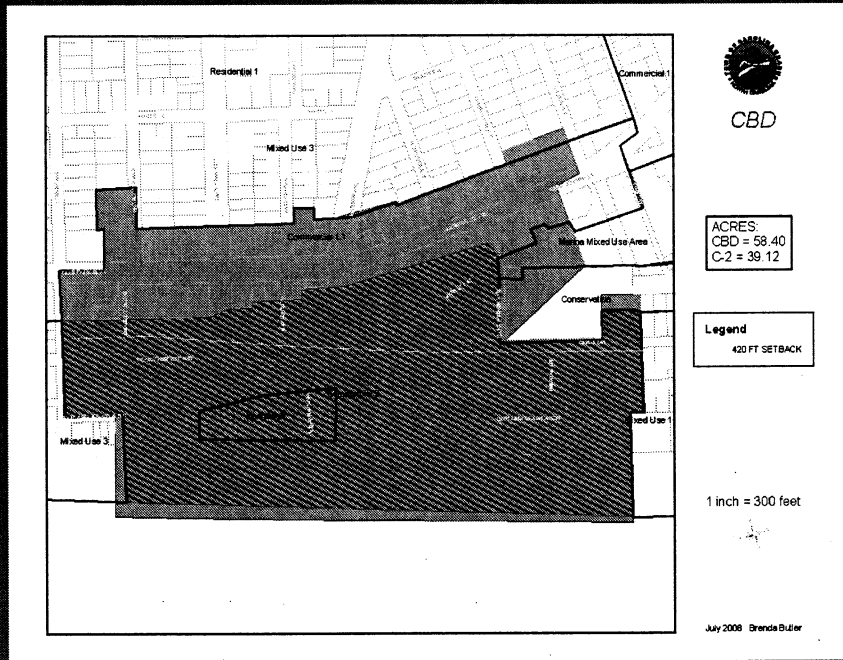
An average of each front street line on through lots.

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.

# CAMA Ocean Hazard A.E.C.



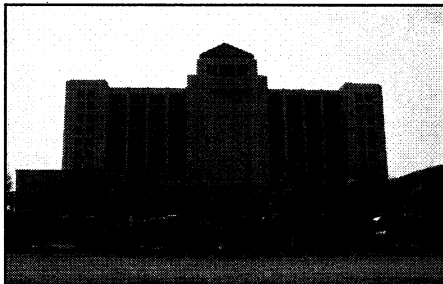
## CBD Zoning Use Regulations

for commercial uses and services, and entertainment, “maximum building height shall be solely based on conditional use permit review” – Section 3.9-1 Zoning Ordinance



## Height of Existing High Rise Structures

- Courtyard Marriott 136 feet
- Pelican Watch 120 feet
- Harbor Oaks 120 feet plus appurtenances
- Atlantic Towers 110 feet
- Golden Sands 75 feet



Courtyard Marriott: 136 feet



Pelican Watch: 120 feet



Golden Sands: 75 feet



Harbor Oaks: 120+



Atlantic Towers: 110 feet



## LUP Amendment Pros

- The Master Development Plan supports this amendment with suggested heights +/- 130 feet.
- Currently, there is no building cap outside AECs, therefore, zoning outside AECs would support this.
- The Hilton's requests will add economic viability to our CBD.

## LUP Amendment 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.

## No Recommendation by P&Z Required

- GS 113A – 110. Land-use plans
  - e) Prior to adoption or subsequent amendment of any land-use plan,  
(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.

Subject: TIME OF ESSENCE!--Proposed Amendment Adding Item 4 to Policy # 30 of the Town of Carolina Beach CAMA Land Use Plan

From: "Steve Coggins" <scoggins@rblawfirm.com>

Date: Mon, 8 Sep 2008 21:57:52 -0400

To: <John.Thayer@ncmail.net>

CC: <Steve.Underwood@ncmail.net>, <Jim.Gregson@ncmail.net>, "Gulick, James" <JGULICK@ncdoj.gov>, <Mike.Christenbury@ncmail.net>, "Tim Owens" <tim.owens@carolinabeach.org>, "Gary Ferguson" <gary.ferguson@carolinabeach.org>, "Ed Parvin" <ed.parvin@carolinabeach.org>, <alan.gilbert@carolinabeach.org>, <dan.wilcox@carolinabeach.org>, <jerry.johnson@carolinabeach.org>, <joel.macon@carolinabeach.org>, <pat.efird@carolinabeach.org>

**Monday, September 08, 2008**

**TIME OF THE ESSENCE**

**Mr. John Thayer**  
**Manager of Planning /Public Access**  
**Division of Coastal Management**  
**N.C. Department of Environment & Natural Resources**  
**400 Commerce Avenue**  
**Morehead City, NC 28557**  
**John.Thayer@ncmail.net**

**Re: Invalid Objections to Prior Notice of 8/22/08 Resolution of Town of Carolina Beach (TCB) Council Resolution No. 08-926 to Amend TCB's CAMA Land Use Plan, Policy # 30.4 to Allow Exemption of 10 feet From Height Requirement for Hotel Appurtenances;**

**Dear Mr. Thayer:**

**I serve as Town Attorney for the Town of Carolina Beach. On 8/22/08, TCB Council passed a resolution to amend its CAMA Land Use Plan to allow appurtenant structures atop hotels in the Commercial 2 Land Use Plan Classification Area to deviate up to 10 feet from the applicable height requirement. That proposed amendment is pending before the CRC for adoption on September 26, 2008 during its regularly scheduled meeting. The proposed amendment has been noticed so that the public may submit comments and objections to the CRC/DCM before the 9/26/08 meeting.**

**I understand that DCM has received a letter dated 9/4/08 to Mike Christenbury objecting that TCB did not give adequate notice of TCB's adoption of the Resolution in favor of the amendment in that the notice(s) allegedly did not (a) give notice of the subject of the hearing; or (b) give notice of the action which is proposed. The objection consequently requests the CRC not to certify the Amendment.**

**TCB strongly disagrees with this objection. *TCB urges DCM and the CRC to notify TCB before the close of business tomorrow, 9/9/08 of its position on the notice issue.***

**Accordingly, I write you in your capacity as Manager of Planning /Public Access, for I understand that you serve as a primary actor and advisor in the course of DCM application and interpretation of statutory and regulatory requirements for CAMA Land Use Plan Amendment procedures.**

**TCB points out in the strongest possible terms that, it has not only complied with statutory and regulatory requirements for CAMA Land Use Plan Amendment procedures, but it has gone beyond what is required. In support, TCB offers the attachments to this email, and the following**

ATTACHMENT F



summary:

## I. CAMA STATUTE COMPLIANCE

The applicable CAMA statute provides:

### **N.C.G.S. § 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. (*italics added*)

Note that N.C.G.S. § 113A-110(e) of CAMA does not provide what precisely must be the content of the notice regarding the “subject of the hearing” or the “action which is proposed”.

In order to comply with the CAMA statutory notice requirement, TCB issued a published July 23, 2007 notice indicating that the Town Council on 8/22/08 would have before it the matter of “*amending the 2007 CAMA Land Use Plan to consider the limitations to building height in Commercial 2 Land Use Classification Area*”. This was published in the *Island Gazette* on 7/23/08 and the *Star News* on 7/26/08. TCB provided the same to Mike Christenbury of DCM on 7/23/07. Copies of proposed amendment were posted for public viewing at the (1) TCB Town Hall; (2) New Hanover Courthouse; (3) Wilmington/Cape Fear Coast Convention and Visitors Bureau; (4) Katie B. Hines Senior Center; (5) Carolina Beach Library; (6) Carolina Beach Parks and Recreation Center.

On 8/22/08, the TCB Council passed Resolution 08-926 Amending Policy #30 of the CAMA Land Use Plan (dealing with how one defines the distance to be measured for Building Height) by adding a Item 4 to Policy # 30 by stating: “*Hotels—appurtenances ten (10) feet or less in height shall be exempted from the height requirement.*”

Discussing and adding Item 4 to Policy 30 of TCB’s CAMA Land Use Plan were actions that precisely fall within description of the “subject of the hearing” and “proposed action” in the 7/23/07 notices as required by G.S. 113A-110. The notices stated the Council was to meet for the purposes of “*amending the 2007 CAMA Land Use Plan to consider the limitations to building height in Commercial 2 Land Use Classification Area*”. Discussing and adopting the exemption of hotel appurtenances from Building Height limits deals with “limitations on building height in Commercial 2 Land Use Classification Area”. Thus, the notice of the discussion and action falls within the scope of the CAMA G.S. 113A-110(e) statutory 30 day prior notice requirement of both (a) the subject of the hearing and (b) the action proposed. TCB discussed the subject of “Exempting hotel appurtenances by 10 feet or less from determining Building Height” and acted on that language. Further, the precise wording of the proposed action was available for viewing at the above locations.

However, the Town did not stop there. Further notices were published on July 30, August 6,

August 13, and August 20 in which the precise wording of the proposed amendment were stated. Not only that, these notices provided information set forth in 15A NCAC 07B .0802(b)(3), *although the information is not required to be given (let alone by any form of notice) by the particular regulation.*

## II. CAMA REGULATORY COMPLIANCE

### a. Section .0800 requirements

By the express language of Section 0800, its provisions apply to adoption of LUP's. Nothing in Section .0800 refers to procedures for LUP Amendments.

### b. Section .0900 requirements;

Section .0900 applies to LUP Amendments. CAMA Land Use Plan Amendment procedures are found exclusively in Section .0900. Section .0901(a) (4) merely provides for "CRC review and action" (note the lack of reference to notice) on amendments as per Section .0802(b), (c), (d), and (e). *Note that none of those provisions in Section .0802 provide anything about what a local government must provide as notice, if any, to the general public regarding CRC meetings to certify LUP Amendments. Still, TCB provided abundant notice of the subject and proposed action of the proposed amendments to be certified by the CRC.*

### c. Section .0802(b)

As an example that Section .0802 does not deal with notice, note that subsection (3) merely states:

"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."

No language in .0802(b)(3) provides an express obligation, means, precise mechanics or content requirements for notices to the public of requests to the CRC to certify LUP Amendments.

Assume, however, for the sake of argument, a local government is to provide prior notice of the matters described in Section.0802(b)(3). Take note that TCB again,

again, again, and again provided the public prior notice *the precise wording of the amendment* when it published in the *Island Gazette* on July 30, August 6, August 13, and August 20 the following:

- 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.

**Not only that, in those same notices, TCB again, again, again, and again, notified the public of “an opportunity to submit written objections, comments, or statements of support” [see Section .0802(b)(3) above] to the CRC by including the following language in the *Island Gazette*:**

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 August 22, 2008 at 6:00p.m. at the Town Administration Building.

Once 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 September 24<sup>th</sup>-26<sup>th</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).

These repeated notices amply advised the public of:

- i. An opportunity to provide the CRC
- ii. written objections, comments or statements to support
- iii. no less than 15 business days prior to the September 24-26 CRC meeting.

Further, these notices provided that, should the public have any questions about the content of any such comments, they could call the TCB Director of Planning and Development (at the noted phone #, email address, and physical address).

d. Section .0801(a) requirement

This section by its terms applies only to notice of Public Hearing Requirements for adopting LUP's. There is no reference to procedures for LUP amendments. The provision merely requires that the local government:

- (1) comply with G.S. 113A-110 (which it has amply done, as shown in Part I above); and
- (2) Disclose to the public the “opportunity to provide written comment following local adoption of the Land Use Plan”. Assuming for the sake of argument this provision applies to LUP Amendments, TCB has nonetheless abundantly done so because it:
  - a. disclosed to the public
  - b. its opportunity to submit written comment by way of

- i. the *Island Gazette* notices of July 30, August 6, August 13, and August 20
- ii. which notices informed the public that it could:
  - 1. submit:
    - a. written objections, comments or statements to support to DCM
    - b. no less than 15 business days prior to the September 24-26 CRC meeting; and
  - 2. ask any questions about the content of any such comments by calling the TCB Director of Planning and Development at the listed phone #, email, and address.

TCB accordingly respectfully requests immediate response of the position of DCM/CRC on this matter by the close of business on 9/9/08 that TCB has fulfilled its obligations under CAMA and applicable regulations.

*Steve Coggins*  
 Stephen D. Coggins  
 Rountree, Losee & Baldwin  
 P.O. Box 1409  
 Wilmington NC 28402-1409  
[scoggins@rlblawfirm.com](mailto:scoggins@rlblawfirm.com)  
[www.rlblawfirm.com](http://www.rlblawfirm.com)  
 (910)763-3404; fax (910) 763-0080  
 cell and voice mail: (910) 524-9515

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## MEMORANDUM

To: CRC and CRAC Members  
From: Hope Sutton, Stewardship Coordinator, NC Coastal Reserve  
Re: Bird Island Coastal Reserve field trip during September CRC meeting

The option field trip to see the Bird Island component of the NC Coastal Reserve is scheduled for Wednesday, September 24<sup>th</sup>, from 9 am to 11 am. Participants should meet on the beach at the 40<sup>th</sup> St. walkover on Sunset Beach. The walk is approximately 1.5 miles down the beach. (3 miles total) We will walk at a moderate pace. Trip leaders will be Frank Nesmith and Hope Sutton.

On the field trip to Bird Island you can expect to see the various natural communities that make up a typical barrier island – ocean beach, dunes, maritime shrub forest, salt marsh, and tidal flat. You will also learn about barrier island dynamics, the history of Bird Island and management of this Reserve under the Coastal Reserve program. Various migrating shorebirds and the endangered Sea Beach Amaranth are likely to be seen. The walk will conclude with a visit to the Kindred Spirits mailbox.

### Directions to the 40<sup>th</sup> St. walkover:

From Sea Trail Resort, take Hwy 179 East to Sunset Beach (also Shoreline Drive). Cross the bridge and follow Sunset Blvd. south to W. Main St. Turn right and continue to the end of the road. There are only a few marked parking spaces, but parking on the side of Main St. is allowed. The walkover is directly across from 40<sup>th</sup> St. and is obviously marked as a public access.



## MEMORANDUM

To: Jim Gregson, Director  
From: Hope Sutton, Stewardship Coordinator  
Re: Masonboro Island NERR Post-season Report

The 2008 summer season at Masonboro Island was not unlike the last several years. The Fourth of July drew a similar large crowd of several thousand visitors, both to the waters behind the island and to the northern cove beaches of the island. Like previous years, many of the law enforcement agencies had active patrols in the waters around Masonboro, but there were few actual calls to law enforcement.

Markedly different this season was the fact that several boat loads of drunken revelers were deposited post-party on the south end of Wrightsville Beach and at private boat docks by water taxi service captains. Also, at least three visitors with emergency health situations were delivered to Wrightsville Beach. Wrightsville Beach Police and Ocean Rescue, by necessity, handled these cases and dealt with the drunken visitors as they made their way up Wrightsville Beach and back to their homes or cars. Additionally, significant quantities of trash were left behind by the crowd, which area residents and businesses stepped in to clean up on July 5<sup>th</sup>.

Several newspaper articles followed, stirring up public concern over use and management of the island, the "out of control" party atmosphere, and the overflow burden to the Town of Wrightsville Beach. In order to get a handle on the situation and gather information to inform future management of the island, especially during holidays, peak times and on the popular north end, two meetings were coordinated. The first was intended to bring together all of the law enforcement agencies associated with the island. Despite the fact that this meeting was by invitation, the Mayor of Wrightsville Beach, two alderman, a New Hanover County Commissioner, the County Assistant Attorney and a State Representative attended, in addition to the invited representatives from the Town of Wrightsville Beach Police Department, Fire Department and Town Administration, the Division of Marine Fisheries Marine Patrol, the Wildlife Resources Commission, the New Hanover County Sheriffs Patrol, the US Coast Guard, NC State Parks, and the Town of Carolina Beach Police Department. The meeting was productive and led to the possibility of an interlocal agreement between the agencies, which will facilitate enforcement and reduce confusion and liability concerns. Also discussed were plans for the approaching Labor Day holiday, with agencies clarifying what resources they would have on the ground in the Masonboro Island area and the Sheriff's Department committing to having officers on the island no later than two weekends prior.

The meeting received media attention from two local papers and two local TV stations. One question that came out of this meeting from both the State Representative and the County Assistant Attorney is whether

it would be appropriate to include Masonboro under the Parks Department. Reserve staff and County staff are both looking into this possibility.

Prior to the second meeting, which was originally intended to better coordinate cleanup efforts after the Labor Day holiday, the idea of creating a proactive trash reduction and public education event came about. Therefore, the second meeting also became a planning effort to rally partners and volunteers to support this event. This meeting and the organizational effort that followed were also covered extensively by the media.

Eventually a number of sponsors and partner agencies and organizations, along with over 50 volunteers, came together to create what was loosely known as the Masonboro Island Trash Blitz. (Sponsors included the Carolina Estuarine Reserve Foundation, Green Coast Recycling, Waste Management, Wrightsville Water Taxi, Tidal Creek Cooperative Food Market, local resident Richard Johnson and Sea Tow. Partners included New Hanover County, the Towns of Wrightsville Beach and Carolina Beach, The Nature Conservancy, and the Coastal Land Trust.) Three stations were manned at three public boat ramps for the three days of the holiday weekend, dumpsters were placed near booths where volunteers educated boaters about Masonboro Island and appropriate use, and hundreds of trash bags were handed out. The event was again covered in the local press and news.

During the Labor Day holiday, the Sheriff's department had a complement of officers assigned to the Masonboro effort. The peak staffing on Saturday was 13 officers with two boats, two ATVs and two tents. By Monday, the effort was scaled back to 7 officers. The officers' protocol was to speak with visitors upon landing to distribute the CR's "Guide to Visiting Masonboro Island" and offer trash bags. Captain Ward and Lieutenant Payne, the commanding officers for the effort, report that the vast majority of interactions they had with visitors to the island were very positive. There were some visitors who chose not to stay on the island after becoming aware of the presence of law enforcement officers. There were other visitors who thanked the officers for their presence and mentioned that it was the first time in years they felt comfortable bringing their children to the island on a holiday weekend.

The post-holiday cleanup became yet another media event, with two reporters and photographers and one TV crew accompanying the Site Manager and a single volunteer to assess the damage. Less than a single trash bag's worth of waste was collected from the northern quarter of the island.

Follow up through the winter and spring will include pursuing the interlocal agreement between the law enforcement agencies, additional public education efforts such as workshops, website content and outreach to area organizations, planning for similar efforts during next seasons big holiday weekends, and additional planning with the Sheriff's Department for next season to find the best compromise between allowing the Reserve to be accessible for recreation and appropriate use of protected resources.