

NC COASTAL RESOURCES COMMISSION
September 15-17, 2010
NOAA/NCNERR Administration Building
Beaufort, NC

The State Government Ethics Act (Chapter 138A of the General Statutes) mandates that the Chair (1) remind members of their duty to avoid conflicts of interest or appearances of conflict, and (2) inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. If any member knows of a conflict of interest or appearance of conflict, please so state when requested by the Chairman.

Wednesday, September 15th

3:00 COMMISSION CALL TO ORDER (Auditorium) Bob Emory, Chair

- Roll Call
- Approval of July 15, 2010 Meeting Minutes
- Executive Secretary's Report
- Chairman's Comments

Jim Gregson
Bob Emory

VARIANCES

- Urbon - (CRC-10-06) Ocean Isle Beach, Oceanfront setback
- Town of Sunset Beach - (CRC-10-06), Dredging for boat ramp

Ward Zimmerman
Ward Zimmerman

PRESENTATIONS

- Terminal Groin Discussion

Bob Emory

6:00 EXECUTIVE COMMITTEE MEETING (TBA) Bob Emory, Chair

Thursday, September 16th

8:30 COMMISSION CALL TO ORDER (Auditorium) Bob Emory, Chair

- Roll Call

PRESENTATIONS

- Water Access and Marine Industry Fund
- Sandbag Overview/Update (CRC-10-29)
- Use of Geotextile Tubes for Temporary Erosion Control (CRC-10-30)

Louis Daniel, Director DMF
Mike Lopazanski
Tancred Miller
Spencer Rogers

11:45 PUBLIC INPUT AND COMMENT

12:00 LUNCH

1:00 PUBLIC HEARINGS

- 15A NCAC 7H .0106 General Definitions
- 15A NCAC 7H .0208(b)(13) – Use Standards (Wind Energy Facilities)
- 15A NCAC 7M .0400 Coastal Energy Policies

PRESENTATIONS

- CAMA Presentation
- Inlet Hazard Area Rule Options and Discussion (CRC-10-31)
- DCM Estuarine Shoreline Mapping Initiative (CRC-10-32)
- Draft Program Assessment & 5-Year Strategy 2011-2015 (CRC-10-33)

Dave Owens
UNC School of Gov't
Jeff Warren, Ken Richardson
Scott Geis
Guy Stefanski

5:00 RECESS

Friday, September 17th

8:30 COMMISSION CALL TO ORDER (Auditorium)

Bob Emory, Chair

PRESENTATIONS

- CICEET Project & DCM Marsh Sills Study – Update
- Sea Level Rise Policy Discussion (*CRC-10-35*)
- 50% Rule (7J .0210 – Replacement of Existing Structures)
- Gates County LUP Implementation Status Report

John Fear
Tancred Miller
Roy Brownlow
Information Item

OLD/NEW BUSINESS

- Future Meetings and Agenda Items

Bob Emory, Chair

12:00 ADJOURN



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

Next Meeting:
November 18, 2010
NOAA/NCNERR Administration Building
Beaufort, NC

NC COASTAL RESOURCES COMMISSION (CRC)
July 15, 2010
NOAA/NCNERR Auditorium
Beaufort, NC

Present CRC Members

Bob Emory, Chairman
Joan Weld, Vice-Chair

James Leutze	Melvin Shepard
Chuck Bissette	Ed Mitchell
Renee Cahoon	Lee Wynns
David Webster	Benjamin Simmons
Bill Peele	
Veronica Carter	

Present Attorney General's Office Members

Jennie Hauser
Christine Goebel
Ward Zimmerman

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act.

Angela Willis called the roll. Charles Elam and Jerry Old were absent. There were no conflicts or appearances of conflict declared by Commissioners. Based upon this roll call, Chairman Emory declared a quorum.

MINUTES

David Webster made a motion to approve the minutes of the May 19, 2010 Coastal Resources Commission meeting. Chuck Bissette seconded the motion. The motion passed unanimously (Weld, Bissette, Cahoon, Webster, Peele, Shepard, Simmons, Wynns) (Leutze, Carter, Mitchell absent for vote).

EXECUTIVE SECRETARY'S REPORT

DCM Director Jim Gregson gave the following report.

General Assembly/Budget

The General Assembly passed their budget bill on June 30. Fortunately, the Division of Coastal Management was minimally impacted this year. We are losing one vacant position, the Washington District Planner, which will be transferred to DENR to support a new Sustainable Communities Task Force. In addition, one half of the Washington District Manager position has been shifted to receipt funding. We are also losing about \$10,000 as our part of an IT budget reduction. The budget also includes two million dollars for the University of North Carolina Coastal Studies Institute to research coastal wave energy.

Bills of Interest:

SB 832 - CRC May Permit Terminal Groins – Legislation to allow terminal groins on the oceanfront was passed by the Senate during the 2009 session, and did not come up for a vote in the House. Very late in the short session, HB 1708, the Clean Marina Amendment bill, was amended by the Senate to include a section that would have allowed the CRC to permit a terminal groin by way of a variance. The amendment did not include any of the recommendations made by the CRC following the terminal groin study. This bill also did not come before the House for a concurrence vote before the session ended.

SB 836 - Oil Spill Liability – Removes the existing cap, which is linked to the federal limit, on damages from future oil spills or natural gas discharge in NC coastal waters. The Federal cap would still apply beyond the three mile limit. It requires the CRC to review its existing statutes and modify existing rules that pertain to offshore energy exploration and production, and make recommendations, if any, to the Environmental Review Commission by April 1, 2011. The bill also amends CAMA to detail additional criteria that must be met when the State makes a consistency determination for offshore energy facilities, including an assessment of the potential for spills and an oil spill response plan.

HB 683 Permit Extensions – Amends the permit extension act of 2009 to extend the expiration dates of all Coastal Area Management Act permits, along with several other environmental permits, to December 31, 2011. The original extension was until December 31, 2010.

SB 778 - Application of SEPA to Incentives – Ends the requirement for a State Environmental Policy Act (SEPA) review for projects that receive public monies in the form of certain economic incentives. This would not apply retroactively to the Titan project in New Hanover County.

SB 430 - Gives Carolina Beach more authority to regulate and enforce laws in Carolina Beach harbor and other shoreline areas near the town.

HB 1766 - Amend Environmental Laws. An amendment to this bill delays the effective date of the clean coastal water and vessel act from July 1, 2010 to April 1, 2011, and limits the Act's application to those areas designated as a no discharge zone by the Environmental Protection Agency. The Act requires certain large vessel marinas (with 10 or more slips) in communities with a "no discharge zone" designation to install a pumpout facility, prohibits discharge of sewage into coastal waters and requires vessel operators and marina owners to keep pumpout logs.

DCM is currently working to implement a pilot program to establish criteria within the No Discharge Zone program in New Hanover County, the only NC county currently designated by the EPA. Our Clean Marina coordinator, Pat Durrett, is conducting an inventory of all marinas that meet the large vessel marina definition in the legislation (marinas with ten or more wet slips for vessels 26 feet or greater that have marine sanitation devices). Currently Pat has identified approximately 77 marinas in New Hanover County that meet this criteria. Pat is also coordinating with the U.S. Coast Guard and the Division of Water Quality to educate marina

operators on record keeping requirements of the bill and is working to get informational material out to area marinas and boaters. We are also adding new pumpout logs and other materials to our websites for boaters and marinas to use. The Division has also proposed some amendments to some Departmental rules that would aid in the implementation of this pilot program.

Masonboro Island

This Fourth of July weekend left the Masonboro Island component of the North Carolina National Estuarine Research Reserve in much better shape than on previous holiday weekends. Increased law enforcement presence and the coordination of that presence by the Wildlife Commission, Wrightsville Beach police officers and the New Hanover County Sherriff's department was an effective deterrent to some of the most egregious behavior. Law enforcement did write citations for underage drinking and for boating violations, but indicated that activity on the island was kept in control relative to previous years. The Division contracted with the New Hanover County Sherriff's Department to have five additional uniformed patrol officers at the Island. I would like to thank Hope Sutton for her coordination efforts with New Hanover County. There was an effort by volunteers from Masonboro.org to hand out trash bags and educate visitors which resulted in a cleaner island by Monday morning, with no sign of the mountains of trash we saw left behind last year.

CZM Program Changes

NOAA has notified DCM of their acceptance of a proposed routine program change to the state's Coastal Management Program. These changes involved the incorporation of 7H.0306 Use Standards for Ocean Hazard Areas (setback rules) and 7J.1200 Static Vegetation Line Exception Procedures into our federally approved coastal management program.

Section 309 Assessment/Strategy

DCM has recently completed its draft FY2011-2015 Program Assessment and Strategy. This section is headed up by Guy Stefanski. Section 309 of the Coastal Zone Management Act establishes a voluntary coastal zone enhancement grant program which encourage states to develop program changes in one or more of the nine coastal zone enhancement areas. Every five years, coastal states conduct a detailed assessment of those enhancement areas and identify high priority areas for inclusion into a five year strategic plan. We have determined that two program areas (Coastal Hazards and Ocean Resources) will be included as part of our FY2011-2015 Strategy. Through this Strategy, DCM will develop the information and tools necessary to provide for new and/or revised regulations, authorities, guidelines, procedures, policy documents and memoranda of agreement that will result in meaningful improvements in coastal resource management on three major fronts: oceanfront shoreline, estuarine shoreline and coastal/ocean environment. This draft was submitted to NOAA/OCRM on June 30, 2010 and is currently being reviewed by their staff. We will be conducting a public review period concurrently with OCRM's review of this document. Beginning July 19, the draft will be available on our website under the "WHAT'S NEW" section. Written comments related to this document should be sent to Guy Stefanski in the Raleigh DCM office or by email at guy.stefanski@ncdenr.gov. All comments are due by August 31, 2010. In addition, Guy will provide us with an update on the

Assessment and Strategy during the September CRC meeting. The final document is due to OCRM by November 1, 2010.

LPO Workshops

DCM staff recently conducted three Local Permit Officer workshops for 69 Local Permit Officers. The workshops were held in Wilmington, Morehead City and Southern Shores. On the agenda were the many rule changes we've made during the past year, and the introduction of a newly redesigned CAMA Minor Permit Application form.

Staff News

Jim Hoadley, DOT field representative in the Elizabeth City office, has left DCM for a position with the NC Department of Transportation.

Jason Dail, Wilmington Express Permit Coordinator, has accepted a transfer to a new position with the Division's Coastal Reserve Program. Jason will serve as the Division's Stewardship and Education Specialist for the southern reserve sites. Jason will be responsible for the stewardship of the Zeke's Island component of the NCNERR and the state Bald Head Woods component. He will also be working to develop an education strategy for the southern Reserves and implementing the strategy primarily at the Masonboro Island and Zeke's Island components.

Kristen Hall has joined the Raleigh office as part of a paid summer internship through DENR's REACH program. Kristen will be completing her bachelor's degree in geology at N.C. State University in May and will start her Master's program in geology at UNC-Wilmington this fall. Both of her degrees have and will focus on coastal geological processes. Kristen is working with Jeff Warren on shoreline trend analysis to assist with DCM's erosion rate update.

David Nash Memorial

In a July 17 ceremony, the Live Oak Park at Southport Marina will be dedicated to David Nash, a longtime cooperative extension agent for Brunswick and New Hanover Counties as well as a CRAC member, who passed away in March. David's family has extended an invitation to the event, which will include a memorial Paddle Out at 8 a.m. at Beach Access #4 at Wrightsville Beach and the park dedication at 1 p.m. A reception will follow at the Southport Marina/Park location.

David Nash was an agent for more than 21 years in New Hanover and Brunswick County, earning a respected reputation for his work in beach restoration and preservation of the North Carolina coastline through the research and propagation of sea oats, urban forestry, commercial horticulture, and master gardener programs.

CHAIRMAN'S COMMENTS

Chairman Emory advised everyone in attendance that following the public input and comment section, the Commission will go into closed session to consider some ongoing litigation matters. At that time everyone else will be released for lunch. At the end of the closed session the Commission will recess for lunch. Renee Cahoon has mentioned that during the "Old Business"

session of the agenda she would like to have a discussion on clarification of the letter that the Commission sent to the Legislature on the terminal groin study. The Executive Committee met this morning and talked about some things that we would like to reinvigorate. When we talk about future meeting agenda items I will mention these things.

CONTESTED CASES

Jennie Hauser, CRC Counsel, stated we are dealing with three quasi-judicial matters. The first is a contested case, the second is a variance and the last is a request for certification of a land use plan. As you are aware, quasi-judicial decisions effect individual parties and you sit primarily as a judicial body which means that you need to be impartial in your decision making. The first thing we always ask members to do is to consider whether or not they have a direct financial interest with any of the parties appearing in front of the Commission for a quasi-judicial matter. If you don't have a direct financial interest, we ask you to think about whether you might have an indirect financial interest, either through yourself or through your family members, which might make you something other than an impartial decision maker. If you are not indirectly financially related to any of the parties then we ask you to consider whether or not your experience is such that you already have a predetermined idea of the outcome of the matter in front of you.

Hugh Donaghue, Petitioners, stated that in order to protect my rights I am objecting to the jurisdiction of this Board. I believe that in the current setting we have a comingling of both the adjudicative process and the prosecutorial process. The Notice of Violation and Continuing Notice of Violation were served by the very agency that this Board represents. This Board serves many functions but in today's function you sit as an independent judicial body to make an independent decision. At the same time the same Department of the State which is prosecuting the claim against me, the Attorney General's office, a member of that office is providing legal advice to this Board. I agree with Counsel's remarks except for one thing. The findings of fact, as set forth by the independent administrative law judge, must be considered as true unless there is no support for the same in the record. Counsel for the Attorney General's office has provided instruction to both parties that if you were to object to a finding of fact as made by the administrative judge then you are specifically to list in the record the support for which you are arguing or deeming the fact to not be true. I submit to this Board that the Counsel representing the agencies submitted 18 objections to the finding of facts of the administrative law judge, yet of the 18 he only pointed to the record with respect to seven. I believe, based on Counsel's remarks and based on Appellate Law this Board cannot consider any objection to a finding of fact by the previous judge if there is not specific support pointed to that objection in the record.

Jennie Hauser stated that Mr. Donaghue is taking objection because the Attorney General's office represents both the Division of Coastal Management and represents the Coastal Resources Commission. Our Appellate Law in North Carolina is well settled that it is not a problem. The Attorney General's office can bear both of those functions simultaneously. Therefore, you don't need to worry about jurisdictional issues on that basis. You may hear some other jurisdictional questions about the case, but that is not a basis for lack of jurisdiction with the Board. With regard to the standard by which you must review the evidence before you, I did not read through 150B-36 in our general comments because I preferred to let you hear the arguments of the

parties. At the time that the arguments are finished, the questions are finished and you are ready to begin deliberations, I would be happy to go back through the standards that you must apply to the evidence before you.

Donaghue v. DCM (09 EHR 0568), Carteret County, 50% Rule

Ward Zimmerman, of the Attorney General's Office, represented Staff and stated that Petitioner, Mr. Donaghue, is present and has requested to be heard in this matter. This is a contested case that involves the unpermitted development of pier. Some permitted development occurred on the property owned by the Petitioners, Hugh and Denise Donaghue, at 115 Bogue Court, Emerald Isle, Carteret County, North Carolina on the southwestern tip of the island facing Bogue Sound. This area is commonly referred to as the point. This property is classified as an ocean hazard AEC and is thus regulated by CAMA. As you are well aware, any development in this AEC requires a CAMA permit. Petitioners purchased this land in the early 2000's and built the house that currently occupies the property. At the time of purchase there was an existing pier that measured approximately 100 feet. A pier is categorized under CRC rules as a "water dependent structure". At some time after purchasing the property, Petitioners began removing portions of the pier. This eventually led to nearly all of the horizontal portions of the pier being removed, resulting in pilings sticking up from the sand. Generally speaking, there is nothing wrong with tearing down and removing structures from one's property. However, it is what Petitioners did next, or rather what they did not do, that caused the issue over which we are here before you today. They built back the pier, at least 62 feet of it, but did this without first seeking a CAMA permit. They added new stringers, joists, collar beams and decking. They build back nearly all the horizontal pieces of the pier. Petitioners did all of this without seeking a CAMA development permit. Upon becoming aware of this unpermitted development the administrative body charged with regulated CAMA, DCM, issued a Notice of Violation on December 31, 2008 and subsequent Continuing Notice of Violation on March 2, 2009 against the Petitioners requesting that the property be restored to "pre-development conditions". That is to remove all of the new components of the pier. Petitioners refused and cited 15A NCAC 07J .0210(2)(a). This rule sets forth the method for determining how to classify a project and states that the construction of water dependent structures is considered replacement if more than fifty percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. If bringing the structure back to its pre-damaged condition requires replacement of more than half of the framing and structural components of the original structure then the project is considered replacement and not repair and thus requires a CAMA development permit. As soon as Petitioners removed and replaced more than half of the framing and structural components of the original one hundred foot long pier then they needed to seek a CAMA development permit which they did not do. The policy behind the rule is to protect against someone wanting a new pier but not wanting to go through the CAMA permit development process. The purpose of this rule is to allow the repair of damaged or deteriorated structures, not to allow for the unpermitted full-scale development. Petitioners never rebuilt the structure back its pre-damaged condition. Instead they replaced 62 feet of an original one hundred foot long pier without seeking a CAMA permit. This alone removes Petitioners from the protection of the repair exception in 7J .0210. If they would have built back to the original one hundred feet it would have required even more new materials. Thus they are in violation of CAMA for conducting unpermitted development. Under the

equation set forth in the rule, it is abundantly clear that more than fifty percent of the framing and structural components were replaced. Petitioners did not seek a CAMA development permit, therefore DCM properly issued the NOV and CNOV to petitioners. DCM respectfully asks that you find that they acted appropriately and that you support DCM's continued request that petitioners restore the property to the pre-development conditions.

Hugh Donaghue, representing his wife Denise and himself, stated as the administrative law judge indicated in his conclusion of law #24 the appellants in this case acted erroneously in issuing a notice of violation and then a Continuing Notice of Violation based on erroneous conclusions that this was a "major development" and that the Donaghues entered into major development by constructing a 62 foot pier. When in fact the Donaghues attempted to explain to the State upon the first notice of violation what had occurred, the State did not undergo any investigation but then issued another Continuing Notice of Violation with no investigation. In the record on page 79, "there was not ground disturbance"; record page 79-80 "no knowledge as to when, how or why the decking was removed"; record page 80 "no investigation as to how and why what was done"; record pages 95-96 "no knowledge as to any excavation, no knowledge as to any dredging, no knowledge as to any filling, no knowledge as to any dumping, no knowledge to any removal of sand, no knowledge as to any bulkheading, no driving of pilings, there was no effect to any land mass" and these are the representatives of the State. When the prosecution went forward it did not go forward on development of a major pier because there was none. The State then resorted back to the fifty percent rule. This is a direct violation of due process rights. You cannot deprive one of his property rights and then threaten a \$10,000.00 fine and a \$10,000.00 fine per day unless you specifically elicit what the complaint was. To date, neither I nor my wife has ever received a proper complaint from the State of North Carolina as pointed out by the Administrative Law Judge. This is a violation of due process. The charging document of this case never specifically pointed to or in any way alluded to the fifty percent rule. Counsel begins his argument by suggesting that this a water dependent structure and the record is correct that at the time the hearing was conducted and at the time that the repairs were made it was a water dependent structure. But what Counsel has just suggested to you is a complete misstatement of the record. The misstatement of the record is he said that this is how this appeared. But it was how it appeared in 1982 as set forth in the record. What Counsel forgot to point out to you in the record was that it remained in that condition until very recently. What they have not told you, and is a part of the record, is that the State of North Carolina permitted a 250 foot bulkhead running 30 feet into the ground to my neighbor two doors down, to which I did not object. However, a discussion was held as set forth in the record with Mr. Bob Townsend that this would cause an escarpment. By erecting the bulkhead, an escarpment developed causing erosion on his property and my property thereby exposing the very walkway in question. When Counsel makes the representation to this Board that Counsel went and removed this, the record indicates that nothing to that effect happened. It was the gradual erosion that took place that the decking was removed. In a two day period the decking was replaced by myself and my sons. The independent law administrator, the judge, has already pointed out as a conclusion of law in this case that part of this repair was caused by the permitting of the bulkhead. I have recently shown the State pictures of how the present situation exists. As the ALJ pointed out, the decking is not to be considered in any way as part of the definition of a structural component. This is the ALJ's finding of fact and conclusion of law that decking does not comprise anything with respect to the fifty percent rule. We are talking about 18 pieces of wood and Counsel is suggesting to this

Board that the 18 pieces of wood somehow violates the fifty percent rule. That is ludicrous. If one was to accept Counsel's argument that decking is a structural component, anyone who has a deck or a walkway in the State of North Carolina and decides to replace their decking because it is weathered would be in violation of this rule if they replace all of their decking at the same time. That would be absurd. The ALJ was the only person in this case who visited this site, saw the bulkhead, saw what we put up, and saw that two neighbors to the north have a walkway that is twice the size of the one in question that was repaired, but there was no violation found there. The ALJ considered all the facts, those presented by the State and us and he reviewed the law very thoroughly. He reached the right decision. Unless there is some finding of fact that does not support the findings of fact as made by the ALJ, they must be accepted by you. Counsel has made an argument today in an attempt to reargue this case. This case has been argued and this case has been decided. The purpose of today's hearing is to point out errors made by the ALJ. It is not an opportunity to reargue the case.

Mr. Zimmerman stated the structure in question is a water dependent structure regardless of whether water laps up against it or not. This violation occurred for two main reasons. The first of these is that this pier was originally 100 feet long and that calculation was determined by aerial photographs. The rule that we have here is a repair rule. This rule is for structures (walkway or deck) and it gets damaged or deteriorates over time then it can be repaired. Framing and structural supports can be replaced as long as you don't do over fifty percent. The reason we have this rule is we don't want this to be a loophole so someone can go in and build an entirely new structure without getting a CAMA development permit. This 100 foot long pier was not built back to its proper, original, pre-damaged condition. Sixty-two feet were built back. Everything horizontal is new. Sixty-two feet out of an original 100 foot span is over fifty percent especially taking into account that the 100 foot original is the number that you have to use in the equation. At this point I think the record and pictures speak for themselves.

Mr. Donaghue stated the question is not that. The law in this case is as the ALJ has decided it. Counsel has yet to point to the record to indicate in this case where the ALJ made an incorrect finding of law or an incorrect finding of fact.

Melvin Shepard made a motion to reject the AJL's decision and Conclusion of Law #15 and adopt Respondent's comments that decking should be included as a structural and framing component. Veronica Carter seconded the motion. The motion failed with three votes in favor (Shepard, Carter, Wynns) and eight opposed (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Cahoon, Bisette).

Chuck Bisette made a motion to accept the ALJ's decision. Jim Leutze seconded the motion. The motion passed with nine votes (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Cahoon, Bisette, Wynns) and two opposed (Shepard, Carter).

Melvin Shepard made a substitution motion to reject the ALJ's decision based on the ALJ's conclusion of law #26 and adopt the Respondent's comments. This motion did not receive a second.

VARIANCES

Christine Goebel, of the Attorney General's office, represented Staff. Ms. Goebel stated Jim Hopf is in attendance and will represent Petitioner. Ms. Goebel stated this variance request is from V. Parker and Becky Overton for property located at 13 Comber Road on Figure Eight Island in New Hanover County. Ms. Goebel reviewed the stipulated facts in this variance request. The Overton's own 13 Comber Road as well as the interior lot located at 21 Comber Road. The long-term annual erosion rate for Petitioner's property is two feet per year; however since 1996 it has been subject to chronic erosion as a result of the northward movement of the main channel of Rich's Inlet. In 1996 Petitioners built a 5,379 square foot home along with driveways attached decking and fencing. On June 3, 2002, the structure was determined by the Division of Coastal Management to be imminently threatened and a General Permit was issued for the placement of a 6' by 20' sandbag revetment. In July 2003, the CRC granted a variance to increase the size of the sandbag revetment to 10' high by 40' wide. The sandbags were due to come out in May 2008. In February 2009, a CAMA Minor Permit was issued to authorize the relocation of the single family residence to the interior lot. On March 15, 2010 DCM staff sent a letter to Petitioners notifying Petitioners that the rules require that the sandbags be removed since the structure had been removed. Currently, the sandbags on the north end of Figure Eight Island cover 19 lots and approximately 1,730 linear feet. If petitioner's sandbags were removed, a gap of approximately 90 linear feet would result. Petitioners in this case are seeking a variance from the provision that requires the sandbags to be removed once the lot becomes vacant. During extreme high tides, storm events and other occasions when the ocean waves reach the sandbags, the areas adjacent to a sandbag gap resulting from the removal of the Petitioner's sandbags will likely experience accelerated erosion.

Ms. Goebel stated that Staff and Petitioners agree on all four facts in this case; however there is significantly different reasoning. Staff believe that the strict application of the rules would cause Petitioner and petitioner's adjacent neighbors unnecessary hardships. Staff notes that the sandbags already exist on Petitioner's property and are a part of a much larger sandbag revetment. To require removal would result in a 90 foot linear gap in the larger structure that could cause accelerated erosion on adjacent properties. Staff acknowledges that the increased erosion due to the typical inlet processes of this area are not peculiar, however the property's location in this area combined with its existence as one part of a much larger sandbag revetment is the peculiarity in this case. Staff do not believe that hardships result from actions taken by Petitioner. Staff notes that Petitioner has relocated the home to the interior lot as suggested by CRC rules. Staff agrees with Petitioner that the variance would be consistent with the spirit, purpose and intent of the rule.

Jim Hopf, of Hopf & Higley, P.A., represented Petitioners. Mr. Hopf stated Ms. Goebel has outlined the request. Petitioners are seeking to continue to be allowed to keep sandbags at the property as long as other sandbags are in the revetment so we don't create an erosion point from the gap. The property owners on each side of the Overton's are very much in support of this request and are concerned that if the bags are taken out then it would become a point of erosion and damage their properties. The Petitioner has taken the steps to move their house at a considerable expense. Mr. Hopf stated there is precedent in front of this commission for this sort of request. This request is reasonable and within the spirit of the rules of the CRC.

Joan Weld asked about the dog fence and concrete remaining at 13 Comber Road. Mr. Hopf stated that these are structures that have been there since the house was originally built. Mr. Hopf stated the materials that are on the lot are the remnants of having moved the house. Chairman Emory asked Mr. Hopf if the Commission grants the variance with a condition that the fence be removed, would it accomplish what the Petitioners need accomplished? Mr. Hopf stated that he believes the Petitioners could work through that.

Jim Leutze made a motion to accept Staff's position that strict application of the development rules issued by the Commission would cause the Petitioner unnecessary hardships. Ed Mitchell seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Carter, Cahoon, Bisette, Wynns) (Peele absent for vote).

David Webster made a motion to accept Staff's position that hardships result from conditions peculiar to the petitioner's property. Ed Mitchell seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Bisette, Wynns) (Peele absent for vote).

David Webster made a motion to adopt Staff's position that hardships do not result from actions taken by Petitioner. Jim Leutze seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Bisette, Wynns) (Peele absent for vote).

Jim Leutze made a motion to accept the Staff's position that the variance request will be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; will secure public safety and welfare; and preserve substantial justice. Chuck Bisette seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Bisette, Wynns) (Peele absent for vote).

Joan Weld made a motion that a condition be added onto the variance request that the dog fence and associated concrete be removed. Jim Leutze seconded the motion. The motion passed with eight votes in favor (Leutze, Webster, Simmons, Weld, Shepard, Carter, Cahoon, Wynns) and two opposed (Mitchell, Bisette) (Peele absent for vote).

This variance was granted conditional on the removal of the dog fence and associated concrete.

PUBLIC COMMENT

Allen Holden, Mayor of Holden Beach, stated Holden Beach is between Lockwood Folly Inlet and Shallotte Inlet. I am here today to specifically address your proposed inlet hazard area expansion and particularly on the east end of Holden Beach. Holden Beach is an engineered beach. We have an ongoing staff of engineers that tell us where we add sand, put sand fences, put beach grass and so forth on a year round basis. We grow our beach and the evidence shows

that we are spending a lot of money. We have a good intent to continue to grow this beach and the evidence shows that we are doing a pretty good job. Fencing, vegetation, hauling sand and so forth. The concern the Town of Holden Beach has, as well as the citizens and property owners of Holden Beach, is to find this proposed map without having our input. I am here today to ask that the CRC ask the DCM Staff to meet with the Holden Beach engineers and look at the data we have accumulated through the years resulting from a lot of expenses, a lot of education, a lot of heart ache, and a lot of planning. We feel like all of this money and effort is at a loss if it is not taken into consideration by the CRC and your decisions on what you are going to do with our beach and the public's beach. At the east end of Holden Beach alone, you are impacting over fifty million dollars of our tax base. You are going to devalue our property by millions of dollars and yet the results of our expenditures and our efforts and our professional engineers will show that we are growing our beach and yet you are penalizing us by expanding the proposed inlet hazard area. Take advantage of the evidence that we have and the data that we have in making your decisions of how you are going to more regulate our island, which we think is contradicting what we have proven to be the facts.

Dennison Breese, Coastal Coanda Partners, stated I have written a research paper based on ten years of living here and research on the causes of erosion. I have determined exactly and precisely what the cause is. The cause is excess water inside the shore. (*a visual demonstration was shown to the Commission*) If you elevate the water in the land, the water forms a siphon going offshore. That is what eats the beach. I have met with the Corps of Engineers on this. They have reviewed it. The Major said that he found my research so interesting that he might have changed to coastal engineering instead of structural engineering. The Major said to contact the Towns that have an erosion problem and work with them to try to get permits and I have done that. I have talked to Figure Eight and some people up in Dare County. Figure Eight is very interested, but they want an opinion from CAMA on whether or not they need a CAMA permit. Basically what we are proposing is done on land. There are no structures in shore or out in the water. It is water management ashore. I have brought a copy of my papers. Our wonderful representative Pat McElraft has suggested that I bring a copy for each of you. I would be delighted to share our knowledge and research with members of your staff. Figure Eight Island has asked for a letter from CAMA or from someone who is responsible. Hurricane season is here.

Joan Weld made a motion that the CRC move into closed session pursuant to NCGS 143-318.11(a)(3) to consult with legal counsel regarding Midgett v. CRC 08 CVS 372. Bill Peele seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Shepard, Carter, Cahoon, Bissette, Wynns).

The CRC went into closed session at this time.

ACTION ITEMS

Land Use Plan Certifications and Amendments

Town of Sunset Beach LUP Certification (CRC 10-24)

John Thayer stated the Town of Sunset Beach adopted their land use plan on June 7, 2010. Staff has reviewed the document and found that it does meet the substantive requirements of the

guidelines and that there are no conflicts or issues with the 7B guidelines or other state or federal rules. Staff recommends certification of the land use plan.

Ed Mitchell made a motion to certify the Town of Sunset Beach land use plan. Veronica Carter seconded the motion. The motion passed unanimously (Leutze, Mitchell, Webster, Simmons, Peele, Weld, Shepard, Carter, Cahoon, Wynns) (Bissette absent for vote).

PRESENTATIONS

**South Carolina Shoreline Change Advisory Committee Report (CRC 10-25)
Braxton Davis, Director
Policy and Planning Division, S.C. Ocean & Coastal Resource Management**

Braxton Davis stated we interact regularly with the Staff at DCM and continue to be impressed with the Staff and the work of the Commission in North Carolina. Staff came to South Carolina several times to inform the Committee of the beach management approaches in North Carolina.

South Carolina got going strong in 1987 with beachfront management. We had authorities with beachfront from the time our program was created in 1978, but very limited jurisdiction on the beachfront so there was a Blue Ribbon Committee appointed in 1987 by the Coastal Council (which is now OCRM) and they appointed 25 members to look at long-term solutions to beach erosion issues and to try to balance public and private interests. Of our 188 miles of oceanfront beaches, they found that 57 miles were considered critically eroding in their report. They cited sea level rise, development encroachment into the beach dune system, shoreline armoring that was ineffective or harmful, and a lack of beach management planning as major concerns that needed to be addressed by the State. Most of their recommendations were adopted the following year in the 1988 Beachfront Management Act. This Act established a comprehensive planning and management program within our agency, it enacted a long-term policy of retreat, and established a policy that encouraged responsible renourishment. It established our setback area, site specific erosion rates with a minimum of twenty feet on the beachfront. No seawalls or revetments, no shore parallel hardening structures and generally restricts new structures in the area to 5,000 square feet of heated space. It established standards for both a state beach management plan and local comprehensive beach management plan. While the CRC certifies land use plans we do a certification process for local comprehensive beach management plans under the Act. The Act also established real estate disclosure requirements for beachfront properties. Our shoreline can be thought about in three large regions. The Grand Strand region which is relatively high topography along the beachfront does not have major inlets or new sources of sand coming into that system. There is big tourism and recreation there. From Georgetown down to Charleston (the central region) we have a lot of protective barriers. Across the beachfront in South Carolina we have about 42% of the beachfront protected by some type of federal, state or local protection. In this area you also have some significant human alterations of the system. The dam and the Charleston Harbor jetty have had significant implications. As you move from Folly down to Hilton Head it is dominated by large-scale estuaries and tidal inlets. Larger tidal ranges and large scale inlet processes dominate. There is also very low topography in this area as well. Since 1987 we have seen rapid development continuing. We count close to 1,500 habitable structures at this point in our setback area. That is about 39% of the total number

of beachfront habitable structures in the state. Most of our beaches are net erosional. The long-term erosion rate that we calculate for the standard beach zones are anywhere from zero to four feet per year. In the inlet zones, which are obviously more dynamic, we have long-term erosion rates of up to twenty feet per year. We count 25 renourishment projects in South Carolina since 1985. We have close to 25% of the developed beachfront that still has seawalls and revetments that were grandfathered into the Act. There are four proposals currently in house for groins. We do not distinguish terminal groins from groins. We have 165 groins in existence. Emergency orders are authorized for major events. We have had 111 emergency orders issued since 1985. We do not know nearly as much about the estuarine/sheltered shorelines. We have issued over 1,000 permits for traditional bulkheads and revetments along the estuarine shoreline since 2001. We do not have a cumulative assessment of changes in these shorelines or alterations in these shorelines in the coastal counties. Four or five years ago when we were developing our last five year strategy we were looking at the continuing conflicts and increasingly controversial permits along the beachfront and upcoming state and local beach plan updates and we developed a five year strategy to look back over the last 20 years and see what we have learned since the Blue Ribbon Committee. We are looking at monitoring associated with renourishment projects. We want to bring together federal, state and local experts to update us on where we stand on science and policy issues. This will include beachfront and estuarine shorelines. Our external advisory committee leans heavily on agency and academic experts in South Carolina. We also brought in stakeholders to make sure the discussion was rounded out. This was not a politically represented or appointed committee. This was a staff appointed committee. It had some of the best debates and discussions that we have seen in a long time. The committee members whittled down 13 general recommendations for the report. The committee had to develop a detailed rationale for why they were making the recommendation. There was a significant amount of public input during the process. There were public hearings and public comment periods at each committee meeting. The full public comments are included in the final report. The whole point of this report was a scoping document for higher level decision makers and policy makers to consider. The way the committee laid out the report is in four main sections. They wanted to minimize the focus on the term retreat and focus more on the idea of reducing risks to beachfront communities by limiting future exposure to losses. In the first chapter we examine the existing regulatory approaches to the retreat policy in the Act. We described confusion that we found in public hearings up and down the coast over what retreat means and the mechanisms for retreat. There are limited sources of funds for relocation of properties out of the setback area. Policies that we have don't encourage the active relocation now of structures outside of the setback area, although there are parts of the Statute that seem to indicate that we were shooting to have structures out of that area. Renourishment has kept pace with erosion in most places to date. The committee raised questions about the economic sustainability of renourishment and that this would be a community by community decision. Some communities can afford to do it longer. The South Carolina beachfront setback area still causes confusion for folks. It is called a setback area, and we require that folks locate their structures as far landward as possible for a new or rebuilt structure, but as you run out of room on lots we may not see a lot farther retreat. You can build within the setback up to 5,000 square feet. It is not a strict setback in the sense of a no-build zone. Our setback area is based only on long-term chronic erosion rates. It does not address storm-based risks. It limits exposure in the sense that 5,000 square feet is much smaller than a large hotel. It was not designed to protect the health of the dune system. It has some requirements for dune mitigation, but does not focus on that issue. Its main mechanism is the

restriction on erosion control devices. The committee redefined and reinforced the idea of retreat to be that if and when renourishment is no longer viable, strategies should be in place for structure relocation and abandonment over the long-term to reduce costs to coastal communities. The idea is to maximize space between beachfront development and the shoreline and five recommendations were laid out to minimize the risk. The first recommendation is to prevent the seaward expansion of development. The committee recommends that the State establish a line and hold existing regulatory lines from ever moving seaward. The second is strengthening our setback area. The minimum should go from twenty feet to fifty feet. The minimum setback applies now to close to half of our developed beachfront. You can drop in a seawall just behind twenty feet and develop right up to the line. The committee recommends expanding the area. They looked at public subsidies for development on the beachfront and recommended that the state adopt something like the Federal Coastal Barrier Resources Act system which is the barrier resource units. There are seventeen in South Carolina that prohibit new development from receiving federal flood insurance and other infrastructure type subsidies. The idea is that the State could adopt the same units and restrict future renourishment funding and subsidies for new development in those areas. It is a controversial idea. The State of Maine has established this under state law. This is the only example that we have been able to find. The fourth recommendation is the strategic acquisition of beachfront lands and easements. The last recommendation is to look at the role of local governments in beach planning. The one big difference between now and 1988 is that a lot of the capacities have grown in our local governments and beachfront and they have staff and GIS skills and zoning authorities that they didn't have back at that time. The incentive for this and a number of the other recommendations was the establishment of a Beach Management Trust Fund. We currently have a beach renourishment trust fund in South Carolina. The idea was to expand that and make it open to options other than renourishment. You could use this trust fund for competitive proposals for property acquisition, easements, relocation of structures, and other planning approaches in addition to renourishment. The recommendation for improved planning of renourishment recommends that our State partner with the Army Corps of Engineers to become involved in regional sediment management. We have begun those discussions and held a workshop. We need to look at regulatory decision making regarding nearshore alterations within one mile of the beachfront. We need to make sure that we have a substantial review process for anytime that you are borrowing sand within the close proximity of the beachfront. We also need to improve and standardize the monitoring requirements for renourishment projects. The committee wants to reinforce our existing prohibition of erosion control devices in the setback area and to improve regulatory guidance on emergency orders and groins and breakwaters. We have some restrictions on groins, but very few. The committee wants an ad hoc technical advisory committee to be formed to help guide us on additional recommendations for how we can make decisions on groins and breakwaters. The sandbag issue was probably the most complex and long-term effort that we undertook as a committee. I know you can sympathize with that. The committee also looked at expanding real estate disclosure. The current requirements lay out the erosion rates and the setback area. The enhanced management of our sheltered coastlines or estuarine shorelines follow on the work of what has been done by DCM staff. We are looking at mapping and monitoring the changes in erosion rates and the forces causing that and what type of erosion control approaches will work for different kinds of shorelines. We need improved regulatory decisions. We need to know a little bit more before we can make increased requirements for erosion control approaches, but in the meantime there are a number of things

that we can do to encourage alternatives to traditional bulkheads. Another controversial recommendation is the establishment of estuarine vegetative buffers by the State. The minimum would be 25 feet coast wide. This has already been adopted by several of the coastal communities. It is an attempt to provide the minimum but encourage coastal governments to do more. This would be for new developments and also provide tax incentives for existing developments to restore and certify vegetative buffers on already developed properties. All of the information that went into the development of this report can be found on our shoreline change initiative webpage. Last week we took this report to our South Carolina Department of Health and Environmental Control Board, which is the Board that oversees our part of the program. We asked them to approve the formation of a Blue Ribbon Committee. It would be a more politically appointed committee made up of a number of legislators and other politically connected folks and have them look at this detailed scoping document and develop the specifics for legislative language and regulatory language that they would like to see move forward. We anticipate a one year effort because the document that we have created will present the competing sides of the arguments and allow them to quickly move through the ideas and decide for themselves which way the State should be going. We are happy that they approved the formation of this Committee and we are going to move forward as quickly as possible in getting that Commission set up.

Oil Spill Response

Lt. Shannon Scaff, USCG

Lt. Shannon Scaff stated I will be discussing the Coast Guard's responsibilities and capabilities of pollution incidence in North Carolina. (*A map of the Coast Guard nationwide breakdown of districts was shown.*) There are two major areas, the Pacific area and the Atlantic area. It is further broken down into nine districts. North Carolina is part of the 5th Coast Guard District. Our Commanding Officer in North Carolina is Captain Anthony Popeil. He has a big job in North Carolina. He is the designated Captain of the Port. There is another one down in Wilmington, Commander McGee, at the Marine Safety Unit. He has oversight of all operations in and out of the Cape Fear River. Captain Popeil has the day to day operations here in Morehead City. If there was a significant event, i.e. a storm or a major pollution event in the Cape Fear River, Capt. Popeil could assume Captain of the Port Authority down in Wilmington as well and work closely with State partners and Commander McGee. Additionally, Capt. Popeil has responsibility for 519 folks across Base/Sector North Carolina, 9 multi-mission Boat Forces Units up and down the North Carolina coast, 2 Aids to Navigation teams, 4 Coast Guard cutters, and one Marine Safety Unit in Wilmington. A big job of the Captain of the Port is to work hand-in-hand with industry and commerce. There are three marine safety offices in North Carolina. One is in Wilmington, one in Morehead City, and one in Nags Head. There are pollution investigators located at each one of these units that are on call 24 hours per day 7 days per week. There are two 110 foot patrol boats located in Atlantic Beach. These are operational units that are capable of search and rescue, law enforcement, and to put eyes on the scene of a spill. One of our patrol boats in Atlantic Beach is scheduled to go to the Gulf to help with the efforts there. We have nine multi-mission boat forces units. One of which is a seasonal unit located at Ocracoke. It is manned by Station Hatteras Inlet between Memorial Day and Labor Day every year. Each unit in Sector NC has a pollution trailer located at the Unit that has a modest amount

of pollution gear. If we have an incident in a remote area we can connect the trailer to a government vehicle and drive it to the scene. There is a 47 foot motor lifeboat. There are two surf stations in North Carolina. The folks at these units are highly trained and are some of the best in the world at operating these vessels in the worst cases imaginable. They can withstand 30 foot breaking seas and 50 knot winds. A step down from that are the heavy weather stations which are trained to withstand some pretty serious conditions, but not quite the magnitude of the surf stations. We have four multi-mission stations. Oregon Inlet and Hatteras Inlet are the surf stations. Fort Macon and Oak Island are the heavy weather stations. Coast Guard cutter SMILAX is also located here at Atlantic Beach and is primarily an aid to navigation boat. There is a 100 foot tug and a 70 foot barge that could bring good capability with managing a moderate sized spill. We have another one just like it down at Oak Island. Coast Guard Air Station Elizabeth City has five HC-130J long range search aircraft which is some of the newest aircraft in the Coast Guard inventory. It is capable of focusing on the smallest target such as a car license tag. We also have the MH-60T medium range helicopters.

The federal classifications for the size of oil spills are minor, medium and major. Unless there is a spill 100,000 gallons or more coastal or 10,000 or more inland then it is not major. Discharge refers to oil spill. Release refers to a hazardous substance. There are several pollution laws that are enforced by the USCG. We have pollution investigators that are on board 24 hours per day 7 days per week ready to go out and take a look at the scene and see what we have to contend with. Some of our laws include the Federal Water Pollution Control Act, Clean Water Act, and the Oil Pollution Act of 1990 which was a direct result of Exxon Valdez. We also have the Comprehensive Environmental Response, Compensation, & Liability Act which is strictly used for hazardous material. The Superfund Amendment & Reauthorization Act can be used for oil and hazardous material. The Refuse Act and the Federal Water Pollution Control Act are the primary laws that we enforce as pollution investigators. The Coast Guard serves as the initial response and works as oversight for response efforts. We can go out to the scene and take a look at it. We can put out some boom, but a large majority of the response effort will come from commercial contractors. The Federal On Scene Coordinator (FOSC) is overall responsible for directing the response efforts of both commercial entities and federally. In a world class event, like what we have in the Gulf right now, you have seen Admiral Allen. He is the National Incident Commander and is the national level for what Captain Popeil is here at the state level. The FOSC ensures the effective removal of discharge of oil or hazardous substance into U.S. navigable waterways, adjoining shorelines or into/on the waters of the Exclusive Economic Zone, which is 200 miles out and further. The FOSC also has oversight of the development of the Area Contingency Plan. This is a living document that is constantly changing and we are constantly reevaluating it to make sure that we are ready for any and all hazards. Capt. Popeil will not go out to the scene of every single incident. The FOSC representative can go in his place. This would be a seasoned pollution investigator who is well versed in the laws and the Coast Guard's capabilities. They are the eyes and ears of the FOSC and they report to the scene and can access federal funding if required. If they need to access federal funding they have either not been able to identify a responsible party or the responsible party is not capable or not willing to pay for the spill. The Pollution Investigator is the "boots on the ground". They act on behalf of the FOSC. They conduct the preliminary investigation including the magnitude and severity, recoverability, and identifying potential responsible parties. They are responsible for evidence collection, interviewing folks at the scene, and taking oil samples. They can also make

recommendations and initiate courses of action including use of Coast Guard assets, personnel, consumables, hard boom, boats and aircraft or the use of contractors. They have the authority to issue a “NOFI” which is a notice of federal interest which tells individuals on the scene that we are interested in what happened and interested in knowing what you know about the incident and we want to let you know that if you are responsible for this incident then this is what we expect you to do. It is not a ticket. A step up from that is the “NOV” which is a notice of violation and is a monetary ticket based on the size and nature of the spill. Notification is the law. The number to the National Response Center which takes calls for spills is 1-800-424-8802. If you own a vessel or an offshore or onshore facility and you discharge oil or a hazardous substance you are required to call this number. If you don’t call the number and you are found liable, you will have civil penalties and you can go to jail.

Marinas, PNAs and Dredging

David Taylor, DMF

David Taylor stated many of our estuarine dependent species start out in the ocean and spawn. The eggs and larvae will travel up into the rivers and go to the upper most reaches of the rivers and creeks where there is salinity. Food availability and lack of predators make them ideal places to grow up and spend the initial phases of their life. It is absolutely necessary that this type of habitat be there and be protected because it is a limiting factor on the recruitment. If they aren’t there the proper food cannot be obtained and they are exposed to predators and the physical characteristics of salinity and water quality for their growth are impeded. After they spend that initial time in the estuaries and in the nursery areas they will come back down and a lot of species go back out the inlets into the ocean as adults. The majority of the recruitment period is during the early spring and through the fall, but most any time of year you will have something coming in the inlet. Nursery areas, in general, are defined by our Marine Fisheries Commission rules. They are defined as those areas for reasons such as food, cover, bottom type, salinity, temperature and other factors. This is where young finfish and crustaceans spend the major portion of their initial growing season. In North Carolina there are three types of nursery areas the primary, the secondary, and the special secondary. Primary nursery areas are defined as those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. The Marine Fisheries Commission’s purpose was taken out of the rule by the A.P.A. process, but it used to say the purpose was to maintain, as much as possible, in their natural state and allow juvenile populations to develop in a normal manner with as little interference from man as possible. The Wildlife Resources Commission in 1990 recognized the value of designating these inland nursery areas in their waters. The WRC rules define their nursery areas as those areas inhabited by the embryonic, larval or juvenile life stages of marine or estuarine fish or crustacean species due to favorable physical, chemical or biological factors. The WRC has approximately 10,000 acres of inland primary nursery area. The history of the designation started in 1970 when the early biologists at the Division began a trawl survey of the whole state. It was an inventory that began in the southern part of the state and worked its way north. By 1978 the whole state had been surveyed. The stated purpose of that survey was to delineate nursery areas of economically important species and protect them from bottom-disturbing gear. The first formal designation that resulted from the samples was in 1977. About 76,000 of the 80,000 acres of primary nursery area that we

have now were designated in that first designation. About 44% of the 80,000 acres of PNA is tidal wetlands. The designations are based on the catch per unit effort we get with the trawl of indicator species during the major recruitment period and the physical and environmental characteristics of the site. The latest update of our primary nursery area designation protocol was in 2002. We use a trawl and tow for one minute and calibrate for speed. The potential sites that we look at are sampled for three years in a row to allow for variability and to make sure we sample under all conditions. The site is compared to existing primary nursery areas to determine whether those areas are statistically different in terms of species abundance, size distribution and diversity. The criteria for designation include the abundance of selected recreationally and commercially important fish and shellfish species. The size composition and the presence of early juvenile states are what we look for. We also look at species diversity and the bottom type. Most primary nursery areas are in shallow water with a depth of usually six feet. We sample all 104 stations each year in May and June during the same two week period. Additional samples can be taken if we are examining something for potential designation or if coastal development is being proposed. The nursery areas are evaluated each year to determine whether they still meet the criteria for designation. Designations can be adjusted or dropped depending on results. Agencies have adopted rules to correspond with the protection of the primary nursery areas. The Marine Fisheries Commission prohibits the use of trawls, long haul seines, swipe nets and dredges in any primary nursery area. The Coastal Resources Commission's rules state dredging of channels, canals or boat basins must avoid primary nursery areas. The Environmental Management Commission has designated all primary nursery areas as High Quality Waters.

Anne Deaton, DMF, stated the impacts of marinas and dredging on nursery areas can be found in the Coastal Habitat Protection Plan (CHPP). The nursery areas are critical areas to protect. If you have successful recruitment in the nursery areas then you can really help a population. A primary nursery area is usually in shallow water and is usually where the bottom is very productive. If a marina goes in, one of the primary impacts is dredging because these boats need at least a three foot draft to get in and out. Sometimes the marina will require dredging through wetland or soft bottom. Either way it is deepening the bottom which is going to allow predators in and give it less protection. It also decreases productivity due to the decrease in wetlands. Also, when you dredge you remove the film of microalgae that is a food source for very small larvae. You reduce oxygen levels. It can attract larger fish, but it is attracting them to poor water quality in some cases. The other problem with dredging is it alters the sediment. It changes the benthic composition to pollution tolerant species. It can impact the diet of juvenile fish. In addition to dredging there are other impacts of marinas. The biggest one is the water quality impact. When pollutants are in the water they settle out into sediments. The sediment can be polluted over time as well as the water. The main things are heavy metals and hydrocarbons coming from boats and bottom paint. You can also have increases in bacteria. There can be a lot of toxins going into the water if the marina does work on boats. All of this will impact larval and juvenile fish because all of the pollutants can be toxic and slow down growth. Another impact is when shoreline configurations are done. If a basin is put in or groins are put in then the fish have to go out into deeper waters. It can also alter circulation in non-beneficial ways. There can also be reduced wetland productivity from the bulkheading that goes along with these marinas and shading from the dockage. The advantages of upland marinas are you are not on the public trust bottom as much and you have a much smaller footprint. There is less structure over the PNA, there would be less dredging in the PNA, and less shoreline

stabilization. There are some negatives with upland marinas. Usually they have poor circulation with worse water quality, you also have to dredge the access channel through the PNA, and you can cut out a pretty big basin in these uplands which will support a lot of boats and they have to come through the shallow PNA. Open marinas have better flushing which can help maintain water quality. Open marinas also have the option of piling which would avoid dredging. However, in open marinas dredging could be needed later if shoaling occurs. Open marinas will also take up more public trust bottom which can interfere with navigation and also fishing in some areas. Because it is out in the open it can also cause larger shellfish closure. Shellfish Sanitation has to calculate a buffer around marinas and it tends to be a larger buffer when it is in open waters. If you look at open versus upland marinas we know both have potential impacts to nursery habitat. DMF would recommend that there should be no new marinas in primary nursery areas. In other areas, open marinas would be preferred but DMF would defer to a case by case situation based upon the location, resources and the type of facility.

Rich Carpenter, DMF, stated he would like to answer some questions that were raised from the Bennett Brothers Yachts variance request. The Cape Fear was initially sampled in the 1970's and all that information was put together and the initial designations were made in 1977. In the Cape Fear, in addition to our regular monitoring, in 1997 we did a cooperative study with UNCW where we looked at some of the populations from the middle part of the river. At the mouth of Smith Creek there is a station that is the closest to the Bennett Brothers location. The Smith Creek site has been sampled since 1978. All of the indicator species are present in the list of top ten species at this site. One of the things about the southern part of the State is that we do see a different composition of species in our samples. During the study between UNCW and DMF we used the trawl and the electroshock method. You will see a difference in the number of species that you get when you use more than one method of sampling.

Inlet Hazard Area Discussion (CRC 10-28)

Jeff Warren

Jeff Warren, Division of Coastal Management Coastal Hazard Specialist, stated this study has been heavy with Science Panel involvement. One thing I would like to underscore is that there are no rules on the table right now. We originally came out with the boundary recommendations in the fall of 2007. At that time we were prepared to review and revise the policy of what you can do inside the boundaries. The boundaries have increased quite dramatically in some places. In July 2008 there was still concern by the Science Panel and the Commission that there were some outstanding issues that the Science Panel still wanted to consider, primarily how we would want to apply an erosion rate and setbacks in the inlet boxes. The Science Panel has done a thorough analysis and it has been very data intensive. At the last meeting you saw some of the Science Panel's work on recommendations for what you could do inside of the box based on a 30-year risk window. The boxes went out in the fall of 2007 and have created a lot of unrest with stakeholders. We would definitely benefit from marrying these two policies together and having a set of draft use standards for what you can do inside of the new boxes. The goal is to decide what to do inside of the boxes. The Commission has the ability to tweak the boundaries of the boxes, but the report represents a final set of recommendations from the Science Panel and the Division of Coastal Management. My interpretation of what development policy should be

addressing inside of an inlet is two fold. For the most part we have two types of inlets in the state. We have the migrating inlets and those are really not an issue with some of these one size fits all challenges. The others are oscillating inlets. One thing we have tried to take into account is to not go with a one size fits all scenario. I think what you will like about the boxes is that they are very inlet specific. When we start looking at what you can do inside the boxes and look at the erosion rates they are also very inlet specific. There are two governing principles that inlet management can do. The first is in the oscillating situations I would think that it is smart coastal policy to not allow people to build oceanward in a situation where the inlet has built out when you know over time that the inlet is going to come right back to where it was on a decadal scale. The second thing is that these boxes represent a different area of risk. They are inlet related risks and not oceanfront related risks. You can look at that as one way to diminish risk. Don't create an area where you cannot build. These are areas that recognize that they are under an inlet associated risk and you can limit size. That is what the current rules do by applying a 5,000 square foot limit to commercial and multi-family. If there is a size limit in the future then you should apply that to all structures to be in compliance with the current setback policy which is size and not use. Today we will talk about two different proposals with live GIS. The first will go back to the original coastal management proposal from the summer of 2008 which talks about still using the vegetation line and also looking at the erosion rate and a setback factor the same as the oceanfront (30 times the erosion rate). We are going to be updating our erosion rates at the same time that we are dealing with these rules. I will show you erosion rates today that will be very similar to the methods that we employ for the inlets in this update. We will also have a line that is the 30-year risk line. There are a couple of uses for such a risk line. The Science Panel looked very hard at shoreline change. They used a 30-year time window because that is a management window that is throughout our rules. They not only looked at erosion rate, but they also looked at the deviation of those shorelines. We will look at Shallotte Inlet, Lockwood Folly Inlet, and Bogue Inlet. We actually marked where the vegetation line is today. You are seeing very recent photography and you are also seeing the vegetation line as staked out and surveyed in the field. We can then run setback scenarios off of that. The goal for today is to put the DCM scenario back in front of you as far as what we can do to regulate setbacks and development location. The other scenario I would like you to consider is the Science Panel's 30-year risk line and what you might like to do with it. It would be a great goal to leave here with choosing one or the other. After we get something the Commission endorses then we can take it out to the communities and talk to the realtors, developers, and Town Councils. This is an AEC boundary change and would have to go to every effected county with an AEC change in it. There are a couple of things you could do with the Science Panel line. The first is to use it as a setback and only build behind it. The second would be to use it as a zone. You could say that anything oceanward of this would be a higher hazard than the area behind it and you could zone the inlet boxes. You could limit total floor area oceanward of the line. Lastly, the Science Panel line could merely be a line on a map that is out there for educational purposes. 7H .0304 defines the boundaries. 7H .0310 defines the use standards within the boundaries. These two rules need to move forward together.

Spencer Rogers stated that he has a specific suggestion on how the CRC might start their approach. It is important to keep it simple and just as important to keep it similar to the ocean hazard area methods. The CRC should look at a size limit on the inlet hazard area as a whole. The limit that is obvious is 5,000 square feet. Look at the 30-year risk line as an equivalent to

the 30-year setback line. You call it a setback line on the oceanfront, but it isn't because you have exceptions. It has been obvious to me that if the Science Panel is going to do its job of giving you good lines for these two purposes then there is going to have to be an exception system setup. In those areas one of the tools that Jeff has already thrown on the table is the existing building line, the existing vegetation line and the potential erosion setbacks that could be used seaward of the 30-year risk line or whatever you end up calling it as part of the exception system. That wouldn't necessarily prohibit construction on any single lot. That is the way the CRC has done it historically in the past. Usually the way that the CRC has done it in the past is you have pushed the setback first and the exception later. It makes sense to me to put them together this time and have the exception planned when whatever you do with these other lines is implemented.

Jeff Warren stated that what Spencer is describing is more of a zoned approach. I am afraid that it is all in marketing here. If you say that it is a setback line, even if you say we are going to have eight exceptions in place, people are going to stop listening at "setback line". With a zoned process you can achieve what Spencer is talking about. I would suggest after dealing with stakeholders for so many years that if you want to incorporate the risk line you should really think more of it as a zone and not a setback.

Spencer Rogers stated that public information is important on this issue. The public needs to understand that we believe that there is a very good risk that anything seaward of the 30-year line has an excellent chance of sitting on the beach. If you want to buy a place to get in trouble go seaward of the line. If you want to get a longer lifetime out of what you are purchasing then go on the other side of the line. That is good public information that needs to be implemented based on all the work that has been done.

Chairman Emory requested that Staff come back with a couple of different scenarios that would include development standards. The CRC could then make a decision based on those scenarios. This is still too much information.

Sandbag Overview/Update (CRC 10-29)

Mike Lopazanski

Chairman Emory stated everyone received the memo that gave the history of sandbags in North Carolina, how we got to where we are, the exceptions we have made for communities that are pursuing beach nourishment, the exceptions we have made for communities that are pursuing inlet relocation, and the Legislature's moratorium on sandbag enforcement. The moratorium runs out September 1, 2010. The Division would like some advice on what should happen after September 1.

Mike Lopazanski stated there have been 298 sand bag structures permitted since 1996. When you consider the bags permitted by local governments prior to 1996, there is a total of 359 sandbag structures. The Legislation prohibited the CRC from enforcing the sandbag rules in terms of expiration dates, but did not prevent us from enforcing other aspects of the rule. There were ten structures removed in Dare County because the structure was condemned or otherwise

removed from the beach so the sandbags were no longer necessary. This leaves us with about 150 sandbag structures that are eligible for removal. The moratorium comes to an end on September 1. DCM is looking for direction as to how the CRC intends the Division to implement the temporary erosion control policy.

Sandbags – Science Panel Recommendations Spencer Rogers

Spencer Rogers stated the theory behind the size limits on sandbag revetments relates back to seasonal fluctuations in the beach. The typical North Carolina beaches change from six to eight feet seasonally. They are normally narrower and lower in the winter season and wider in the summer. The idea behind the size limit was that once you erode the beach to the bottom of the seasonal fluctuations, when the seasonal beach returns then most of the structure will be buried. This is a distinct method to limit the effectiveness of the method, but to give some limit of protection for buildings that were either going to be moved or had temporary erosion that would get better. The problem with sandbags is the potential impacts to the neighbors and the beach, litter and debris, difficult orientation and enforcement. Sandbags were at one time mentioned as soft structures. They are not. There are a lot of structures out there that are way over six feet. Sandbags are also clearly a debris problem in some areas. The geotubes have performed much better in the state. Geotubes can be up to 300 feet long and are a variety of diameters. They are filled with bigger pumps with water and sand being pumped into the bags. One of the advantages of going with the single tube would be to reduce the footprint from twenty feet down to ten. There is 2/3 less fabric. There is the potential for a lower cost for property owners. The Science Panel has been asked to look at various sandbag issues over the years. One of our earliest short-term recommendations was to strictly enforce the regulations. That recommendation would have included the size limit and the time limit. The Panel was asked to look at whether time limits should be enforced on areas where pending beachfill projects were under design. We cannot find any of the records for that effort. The way the discussion went within the Panel was that there were a number of members who were against the sandbags. In the end the Panel reached a consensus that the most important issue for sandbags behind all projects was the size limit that is in place. The Panel didn't think time limits were necessary behind beachfill projects, but strongly recommended enforcement of the size limits that were in the regulations. Had we been asked the broader question, we would have recommended against time limits everywhere. There have been some changes in the Science Panel so I don't know if there would be a consensus now. If you keep the structures small, most of the bad impacts go away. It isn't a lot of protection, but it is a way to remove most of the problems that are being generated now. One thing to look at, if you do any changes to the sandbag regulations, is to look at including geotubes as an alternative.

Chairman Emory stated we spent a lot of time, effort, and some money on pursuing removal of sandbags whose time had expired. I don't think we removed any, but we put a lot of effort into it. We ended up having a declaratory ruling that we had to deal with as a partial result of it. The Legislature felt it necessary to intervene. I would like to suggest that the CRC focus our enforcement efforts on sandbag structures that are oversized as opposed to being over their time limit. If a structure is exposed or becomes exposed and we discover that it is larger than the

permitted size or if it is larger than the size that the CRC allowed in a variance for that structure then the property owners would have to restore it back to the permitted size.

Lee Wynns asked if the CRC should enforce orientation as well as size. Chairman Emory agreed. Renee Cahoon stated that she agrees, however in Nags Head they have to remove sandbags off the beach as well as ordering houses off the beach. When we remove the houses we find that there are sandbags twenty feet deep. While I have a hard time telling people to take their houses off of the beach because they don't have insurance, sandbags are their only options. The biggest issues are the sandbags that totally surround the house on all four sides. The idea of the one geotube bag versus many bags is better. We do not need to disturb 15 feet into the sand to get a sandbag out. The Towns will eventually deal with it when it comes to the surface, but you don't need to destabilize more sand than you have to. Melvin Shepard stated that if we focus our enforcement efforts to situations that are the worst then it would be a reasonable approach.

Jim Gregson stated if the CRC wants to not require bags to be removed but just wants to be concerned with the size limit then there should be a consideration that even though we allowed them to be taller than six feet, as of September 1 those bags have to come out. If they have to come out anyway then we can say keep them at six feet and if they are taller, then they have to be brought down to six feet. We could go through rulemaking that does not have a specified time limit for removal, but any bags that are existing that are over six feet would have to be brought into compliance with the size limit.

Chairman Emory asked the Division staff to bring back some potential rule changes that allows geotubes.

David Webster made a motion to give the CRC the time necessary to review the options at the September 16, 2010 meeting. The Division has sent notices but should delay enforcement of sandbag removal. Jamin Simmons seconded the motion. The motion passed with six votes (Webster, Simmons, Peele, Weld, Cahoon, Bissette) and one opposed (Shepard) (Leutze, Mitchell, Carter, Wynns absent for vote).

ACTION ITEMS

OLD/NEW Business

Renee Cahoon stated there seems to be some confusion as to the letter that the CRC sent to the General Assembly on terminal structures. I thought that we gave it a positive recommendation. I cannot speak for the other people that voted in the affirmative, but according to the Speaker of the House we didn't give them any direction. I take exception to that. We stated that terminal groins in conjunction with beach fill showed positive effects. I am paraphrasing from the document. I would like to see us revisit this. Chairman Emory stated that he does feel that the CRC gave direction. The CRC reported on the report that stated that terminal groins can be effective but if the General Assembly chooses to allow them then there are other risks. If the General Assembly saw fit to allow terminal groins then they should take several things under

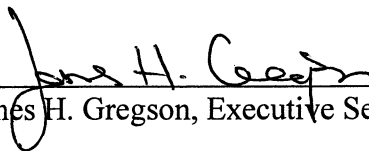
advisement. Renee Cahoon stated that she would like to see it come back before the Commission.

Chairman Emory stated that there are several items for the next agenda including the inlet hazard area, sandbags, and discussing the meaning of the CRC's report on terminal groins to the Legislature.

Chairman Emory stated the land use planning guideline team is working on an update of the rules and can provide an update at the next meeting. The CHPP Final Report should be ready to be reviewed by the CRC.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
WARD ZIMMERMAN
wzimmerman@ncdoj.gov

MEMORANDUM

TO: Coastal Resources Commission
FROM: Ward Zimmerman, Assistant Attorney General
DATE: August 31, 2010 (for the September 2010 CRC Meeting)
RE: Variance Request # 10-04 by John and Shirley Urbon

Petitioners own a single-family residence on an oceanfront lot in Ocean Isle Beach, Brunswick County, North Carolina. They propose to demolish their existing residence and to construct a new single-family residence in its place. Petitioners' proposed development does not meet the oceanfront erosion setback requirements set forth in 15A NCAC 7H.0306(a)(8)(D), which states, in applicable part, that "No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure." Petitioners seek a variance from the CRC's oceanfront setback rules.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules
Attachment B: Stipulated Facts
Attachment C: Petitioners' Position and Staff's Response to Criteria
Attachment D: Petitioners' Existing Property
Attachment E: Petitioners' Proposed Development
Attachment F: Petitioners' Variance Request and Other Exhibits
Attachment G: Petitioners' Town of Ocean Isle Beach Variance Request

cc: John and Shirley Urbon, Petitioners
Justin Whiteside, LPO, Town of Ocean Isle Beach
DCM Staff
Jennie Hauser, Special Deputy Attorney General & CRC Counsel

ATTACHMENT A
(Relevant Rules)

15A NCAC 7H.0306(a)(2):

[N]o development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

15A NCAC 7H.0306(a)(8) (emphasis added):

[D]evelopment setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H.0305 shall be measured landward from the *static vegetation line* as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraph (1) and (2)(A) of this Paragraph a local government or community may petition the Coastal Resources Commission for a “static line exception” in accordance with 15A NCAC 07J .1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. . . . If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
- (B) Total floor area of a building is no greater than 2,500 square feet;
- (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (D) **No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure.** When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less

than 30 times the shoreline erosion rate or 60 feet, whichever is greater; No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

ATTACHMENT B
(Stipulated Facts)

1. DCM is charged with enforcement of the Coastal Area Management Act (CAMA), N.C. Gen. Stat. § 113A-100 *et seq.*, the controlling statutes and regulations including the Administrative Procedure Act (APA), N.C. Gen. Stat. § 150B-1 *et seq.*, and the rules promulgated thereunder, and the rules of the Coastal Resources Commission (CRC) implementing CAMA, primarily found in Title 15A, Subchapter 7H of the North Carolina Administrative Code (NCAC). Among DCM's administrative responsibilities is oversight of the State's coastal development permitting.
2. Petitioners John and Shirley Urbon (Petitioners) own oceanfront real property located at 362 East Front Street, Ocean Isle Beach, Brunswick County, North Carolina. This property is rectangular and is approximately 50 feet in width along the Atlantic Ocean shoreline and 150 feet deep (7,500 square feet total). *See* Attachment D.
3. Petitioners purchased this property in 2002.
4. Petitioners' property is located within an "R-1" single-family residential district. R-1 districts are described by the Town of Ocean Isle Beach in Article II, Section 66-45 of its local ordinances.
5. Residential development in R-1 properties is subject to a 25-foot road right-of-way setback. Town of Ocean Isle Beach, Ordinances art. VIII, § 66-281.
6. Petitioners' property is located within the Ocean Hazard Area of Environmental Concern (AEC), as designated by the CRC in Rule 15A NCAC 7H.0304.
7. The Management Objective for the Ocean Hazard AEC states that "[t]he purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development." Rule 15A NCAC 7H.0303(b).
8. In 1979, the CRC adopted an erosion setback requirement that applies to structures along the oceanfront. The current iteration of this requirement is set forth in Rule 15A NCAC 7H.0306.
9. The general rule is that "[a] building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater." Rule 15A NCAC 7H.0306(a)(2)(A).
10. Petitioners' property has a shoreline annual long-term erosion rate of 2 feet. Thus, the erosion setback requirement on the lot is 60 feet, regardless of whether the 60-foot

minimum or the 30 times the shoreline erosion rate (30 times 2 feet equals 60 feet) is used.

11. The static line erosion setback rule was implemented in 1997, well before Petitioners purchased their property in 2002. Static vegetation line is identified and defined in Rule 15A NCAC 7H.0305(a)(6).
12. Effective April 2008, the CRC adopted a change in the static vegetation line at Ocean Isle Beach from the pre-construction vegetation line survey to the 1998 aerial-photographed vegetation line in order to mitigate the effect of recent hurricanes on the vegetation line.
13. Effective August 2009, the CRC adopted an exception to its general static line erosion setback requirements for “areas that have received large-scale beach fill.” Rule 15A NCAC 7H.0306(a)(8) states that “development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H.0305 shall be measured landward from the *static vegetation line* as defined in this Section.” (emphasis added).
14. The Town of Ocean Isle Beach has received “large-scale beach fill.”
15. Rule 15A NCAC 7H.0306(a)(8) further states that “a local government or community may petition the Coastal Resources Commission for a ‘static line exception’ in accordance with 15A NCAC 07J.1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project.”
16. At its January 13, 2010, meeting, the CRC granted the Town of Ocean Isle Beach a “static line exception” that became effective on January 25, 2010.
17. Petitioners’ property currently contains a one-story, single-family residence measuring roughly 850 square feet. *See* Attachment D. This structure was built in the 1960s.
18. Petitioners’ current residence is considered a “non-conforming” structure because it does not meet current “static line exception” setback requirements applicable for this area. However, Petitioners’ existing residence was built prior to the Rule’s 1979 adoption and is, thus, “grandfathered.”
19. At the time of purchase in 2002, Petitioners’ property was undevelopable under the 1997 static setback requirements.
20. Only after the January 25, 2010, CRC implementation of the static line exception did Petitioners’ lot become buildable.
21. On March 29, 2010, Petitioners applied for a CAMA development permit to demolish their existing residence and to construct a new two-story, single-family residence with a building footprint of 36 feet by 37.23 feet (1,340.28 square feet, per floor). *See* Attachment E.

22. Based upon the CRC's static line delineation of January 2010, nearly all of Petitioners' property would be undevelopable if it were not for the exception to the "static line exception" set forth in Rule 15A NCAC 7H.0306(a)(8), which states, in applicable part, that "the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
 - (B) Total floor area of a building is no greater than 2,500 square feet;
 - (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
 - (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure."
23. Petitioners' proposed development meets all of the conditions set forth in Rule 15A NCAC 7H.0306(a)(8), except for subsection (D): "No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure." *See* Attachment E.
24. Petitioners' direct neighbor to the west owns a single-family residence that is more landward than Petitioners' current residence. *See* Attachment D.
25. Rule 15A NCAC 7H.0306(a)(8)(D) limits Petitioners' development to a building footprint of 36 feet by 22.07 feet (794.52 square feet, per floor). The depth of this permissible-structure is 15.16 feet less than requested by Petitioners. *See* Attachment F.
26. On April 16, 2010, the Town of Ocean Isle Beach CAMA Local Permitting Officer (LPO), Justin Whiteside, denied Petitioners' development application because Petitioners' proposed development violates Rule 15A NCAC 7H.0306(a)(8)(D), in that it "extends oceanward of the landward-most adjacent building or structure." *See* Attachment F.
27. On April 21, 2010, Petitioners filed this variance request asking the CRC to set aside its erosion setback requirement in Rule 15A NCAC 7H.0306(a)(8)(D). *See* Attachment F.
28. Rule 15A NCAC 7J.0701(a) states, in applicable part: "Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property...."

29. On June 25, 2010, per 15A NCAC 7J.0701(a), Petitioners filed a variance request with the Town of Ocean Isle Beach Board of Adjustment asking it to set aside the 25-foot road right-of-way setback requirement set forth in its ordinances. *See* Attachment G.
30. In a July 2010 meeting, the Town of Ocean Isle Beach denied Petitioners variance request to set aside its 25-foot road right-of-way setback requirement.

ATTACHMENT C

(Petitioner's Position and Staff's Response to Criteria)

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

Petitioners' Position: Yes.

"The most important consideration above (reasonable use of the property) is the main reason for the variance request. Rule 15A NCAC 7H.0306(a)(8)(D) states that 'No portion of a building or structure. . . extends oceanward of the landward-most adjacent building or structure.' The home to the west of mine is non-conforming in that it is of odd shape, small depth, and is forward of the streetside setback line. The unnecessary hardship which would be caused by the denial of the variance request is that I would not be able to build a home of reasonable depth to make reasonable use of the property. I would only be allowed to build a home of 22 feet in depth. In addition, this would cause the other homes to face the same problem causing a domino effect."

Staff's Position: No.

Staff does not agree that strict application of the rules would create unnecessary hardship. While it is understandable that Petitioners want an even larger residence than the one that is allowed by the exceptions to the erosion setback rules, this does not create an "unnecessary hardship" that would warrant granting a variance. Application of these rules does not so severely limit development on the lot as to render it an exceptional situation. Instead, Rule 15A NCAC 7H.0306(a)(8) limits the maximum use of the lot for Petitioners' desired purpose and design. Applying this Rule yields a building depth of 22.07 feet. Thus, a residence that measures 22.07 feet by 36 feet (794.52 square feet, per floor) could be constructed. Petitioners propose to build a two-story house, resulting in a residence with 1,589.04 square feet of floor space. This is nearly double the size of Petitioners' existing 850 square-foot residence. While this may not be ideal in Petitioners' minds, a single family residence could be constructed on the lot. Thus, Petitioners have failed to show that unnecessary hardship results from not being allowed to ignore the "static line exception" conditions established by the CRC.

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

Petitioners' Position: Yes.

"The property is located at 362 East First Street in Ocean Isle Beach, N.C. approximately 2 miles east of the bridge. It is a 50 ft x 150 ft oceanfront lot with an existing home built in the 1960's along with all the homes along this area of East First Street. Many of these homes violate a front or side setback and are not in alignment on the streetside or oceanside. My home sits within the setbacks and is of average depth. The cause of my hardship is the size, shape and location of the home to the west of mine."

Staff's Position: No.

Staff does not agree that any hardship experienced by Petitioners results from conditions peculiar to his property. Petitioners state that “[t]he cause of my hardship is the size, shape and location of the home to the west of mine.” However, it is not unusual for residents along the oceanfront to be adjacent to houses not in alignment. These features are shared by a number of other lots in Ocean Isle Beach and elsewhere. Petitioners, themselves, assert as much: “Many of these homes violate a front or side setback and are not in alignment on the streetside or oceanside.” While the design standards set forth by Rule 15A NCAC 7H.0306(a)(8)(D) (i.e., that new development not “[extend] oceanward of the landward-most adjacent building or structure”) may be architecturally challenging, they are not peculiar to this particular property.

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

Petitioners' Position: No.

“I have owned 362 East First Street for eight years and have been a good custodian of this 45 year old property during this time. The hardship does not result from the actions I have taken because I had nothing to do with the design or construction of the house to my west.”

Staff's Position: Yes.

In 1979, the CRC first adopted an erosion setback requirement that applies to structures along the oceanfront. The 1997 erosion setback requirements were in place at the time that Petitioners purchased this property in 2002. At this time of purchase, nearly all of Petitioners' property was undevelopable under the static line setback requirements. *See* Attachment F. Thus, any alleged hardship was created by the Petitioners' own actions in purchasing a house in 2002 that was deemed “non-conforming” at the time of purchase. The Petitioners came to any perceived problem by purchasing a property with building restrictions.

Additionally, the CRC only granted the Town of Ocean Isle Beach a “static line exception” to the existing static line rule in January of 2010, well after Petitioners purchased their property in 2002. It was only after this action by the CRC that Petitioners' lot become potentially buildable. As noted above, the CRC has placed certain conditions on any development under this exception, including subsection (D): “No portion of a building or structure . . . extends oceanward of the landward-most adjacent building or structure.” Petitioners have chosen to ignore this condition in their current design proposal.

Although Petitioners cannot obtain a CAMA development permit based on their current proposed plans, a single-family, two-story residence could be constructed on the lot. This permissible structure would measure 22.07 feet by 36 feet (794.52 square feet, per floor), yielding 1,589.04 square feet of floor space for the proposed two-story residence. As noted above, this is nearly double the size of Petitioners' existing 850 square-foot residence. Therefore, it is the Petitioners that have chosen to bring any potential hardship upon themselves by submitting a proposed design that ignores the CRC's conditions for obtaining a “static line exception.”

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

Petitioners' Position: Yes.

“Thank you for rule 15A NCAC 7H.0306(a)(8). This rule allows for the re-buildable status of the homes in the area. The granting of this variance will allow for a reasonable structure, in line with most of the homes surrounding it, and not encroaching toward the ocean. I feel this is the intent and purpose of the CRC rule and the town of Ocean Isle Beach.”

Staff's Position: No.

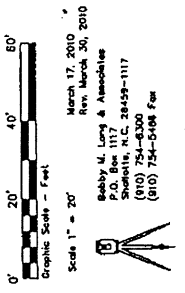
The spirit, purpose, and intent of Rule 15A NCAC 7H.0306(a) is “to protect life and property.” This is the underlying reason for the CRC adopting erosion setback requirements, including the static line requirements in Ocean Hazard AECs. The spirit, purpose, and intent of the “static line exception,” as set forth in subsection (8) of that Rule, is to allow property owners to build in previously unbuildable areas (so long as certain conditions are met) to protect the aesthetic and environmental value of our state’s coastal resources. Subsection (D) of that Rule specifically meets this charge by requiring that future develop stay in-line with existing, neighboring development. By choosing to not comply with the conditions set forth by the CRC’s “static line exception,” Petitioners are ignoring the spirit, purpose, and intent of this Rule. As noted above, Petitioners have the option of scaling-back their development proposal to meet the CRC’s requirements by moving their proposal in-line with the house to their west. Rule 15A NCAC 7H.0306(a)(8)(D) allows for Petitioners to build a residence measuring 22.07 feet by 36 feet (794.52 square feet, per floor). As noted above, Petitioners propose to build a two-story house, resulting in a residence with 1,589.04 square feet of floor space. Such a residence would be similar in size to the house to Petitioners’ west. Therefore, Petitioners’ variance request to construct a residence oceanward of their neighbor’s house to the west contravenes the CRC’s spirit, purpose, and intent in creating the “static line exception” to their general erosion setback rules.

Additionally, Staff believes that granting a variance in this instance will neither secure public safety and welfare, nor will it preserve substantial justice. Petitioners already have a residence on the lot. They are merely seeking a CAMA development permit to build a newer, bigger house. There are many other property owners on Ocean Isle Beach, and elsewhere, who would probably like for the conditions of the “static line exceptions” to be set aside. However, the CRC implemented these rules for the specific purposes enumerated above. Because Petitioners have not demonstrated that they have an unnecessary hardship that results from a condition peculiar to the lot that they did not bring upon themselves, neither public safety and welfare nor substantial justice requires that this variance be granted.

ATTACHMENT D
(Petitioners' Existing Property)

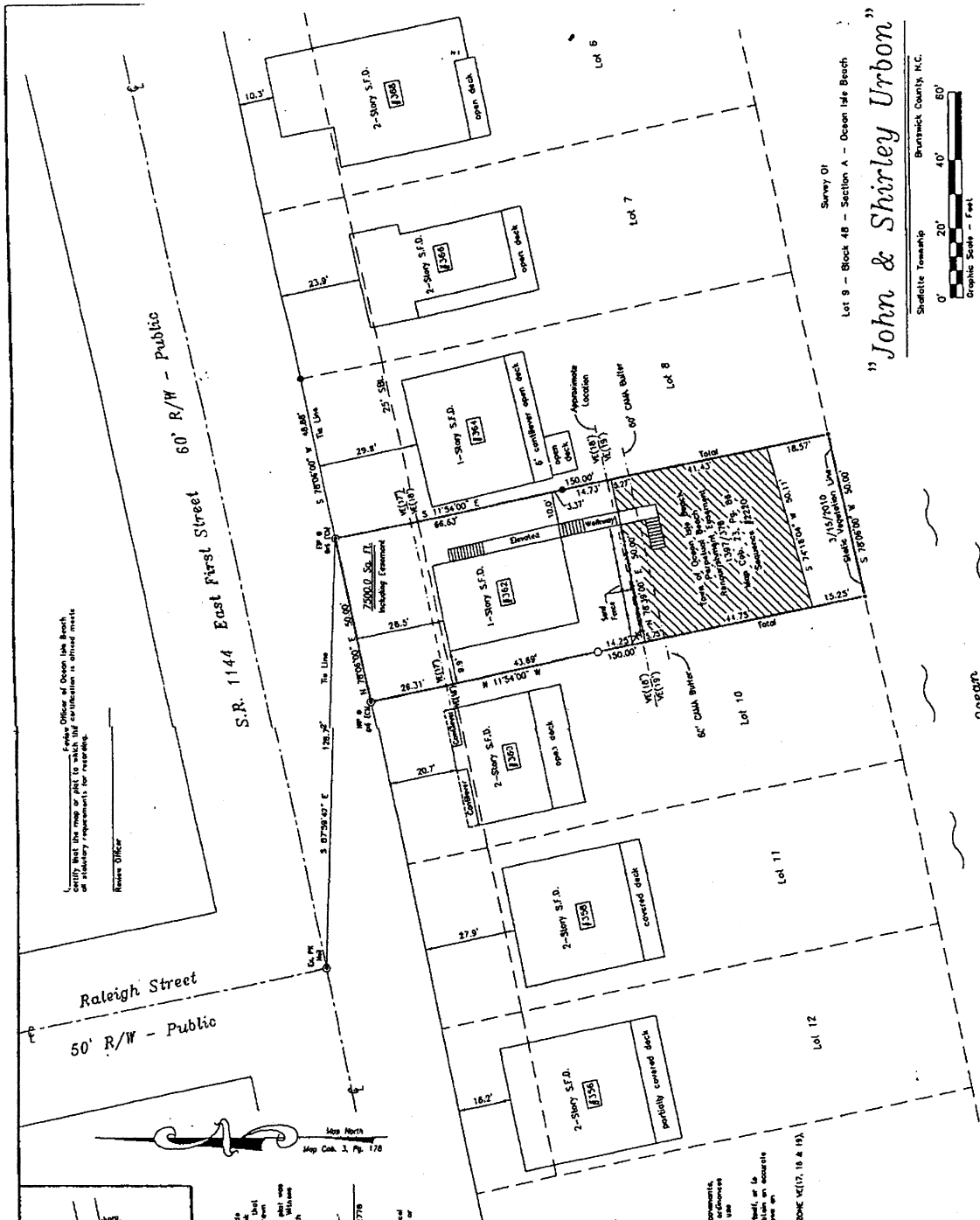


Survey Of
 Lot 9 - Block 48 - Section A - Ocean Life Beach
 "John & Shirley Urbon"
 Charlotte, Tennessee
 Brunswick County, N.C.

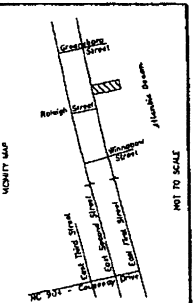


Bobby M. Long & Associates
 P.O. Box 1117
 Shelby, N.C. 28459-1117
 (910) 754-8300
 (910) 754-0068 Fax

WE SURVEY THE LAND AND EXHIBITS THEREON



Survey Officer of Ocean Life Beach
 certify that the map or plat to which this certification is affixed meets
 all statutory requirements for accuracy.
 Survey Officer



1. Surveyed 1. Surveyed I, Bobby M. Long, certify that this plat was
 prepared and executed in accordance with the provisions of the
 laws of North Carolina and that the same is a true and
 correct copy of the original as the same appears on the
 records of the Surveyor General's Office in the State of
 North Carolina. Witness my hand and the seal of the
 Surveyor General's Office at Raleigh, N.C., this 17th
 day of March, 2010.
 Surveyor Bobby M. Long License Number L-2778

I further certify that the survey is of an existing parcel
 or parcels of land and does not create a new street or
 change an existing street.



NOTES

1. Area Determined by D.M.D.
2. This property is subject to any and all easements, covenants,
 restrictions, right-of-way of record, governmental encumbrances
 and other matters which may affect the title to the
 property.
3. The survey shows and certifies that this is the best field, or is
 the best available, evidence of the location of the boundaries shown on
 this plat.
4. FEMA Flood Map effective for this is in FEMA ZONE VE(17, 18 & 19),
 Community Panel 375437 085 2, 07/2006.
5. Tax Map Parcel No. - 244N009
6. Zoning - Ocean Life Beach R-1
7. Subplots
 Front: 25'
 Rear: CMA Requirements
 Sides: SEC

REFERENCES

Deed Book 1186 - Page 258
 Deed Book 1187 - Page 318
 Map Cabinet 33 - Page 318

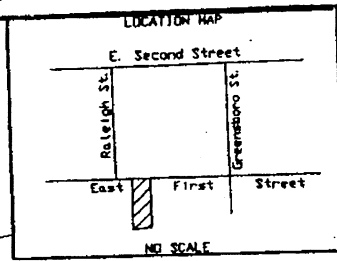
LEGEND

- Existing line or line plus
- Center line
- Property line
- MC DOT R/W Monument
- Concrete monument set
- Existing corner top nail
- Existing concrete mark.
- Old marked tin
- Center line
- Property line
- MC DOT R/W Monument
- Right of Way
- Geodetic mark.

ATTACHMENT E
(Petitioners' Proposed Development)

I, Samuel T. Luman, Professional Land Surveyor, certify that this map of precision is in 10,000 ft and meets the standards of practice for land surveying in North Carolina. Witness my hand and seal this 23rd day of March, 2010.

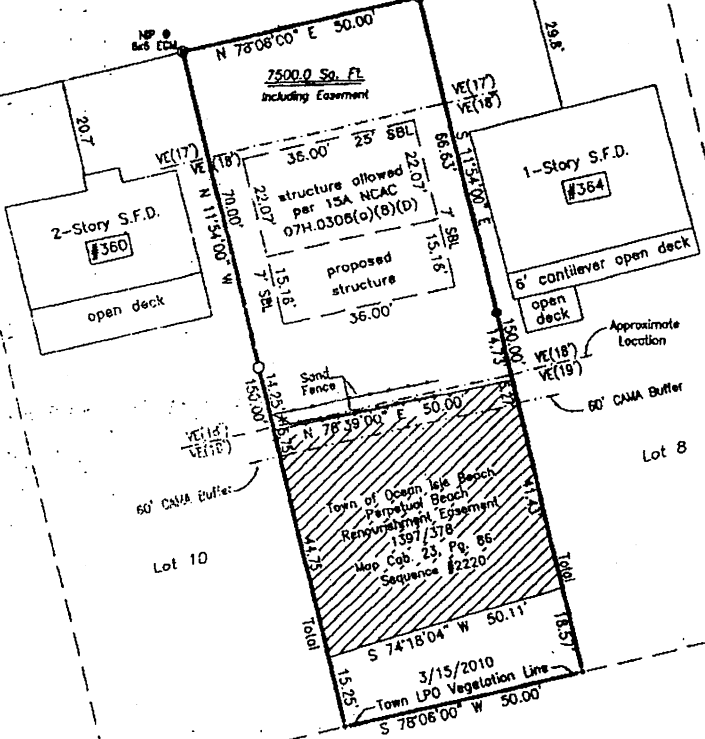
Samuel T. Luman
 Samuel T. Luman, P.L.S. L-2778



50' R/W - Public
 Raleigh Street

S.R. 1144 East First Street 60' R/W - Public

S 87°58'42" E 128.72' Tie Line
 EP # 645 ECU N 78°06'00" W 48.85' Tie Line



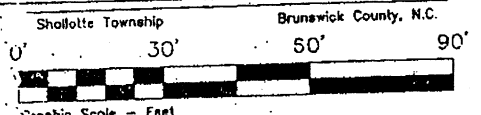
Atlantic Ocean

- LEGEND:**
- Existing Iron or Iron Pipe
 - - - New Iron Pipe Set
 - Existing Corner (Type Noted)

- REFERENCE:**
- Order Book 1088, Page 245
 - Map Book 1357, Page 378
 - Map Cabinet A, Page 178
 - Map Cabinet 23, Page 86

- NOTES:**
- Area by Coordinates
 - Fema Flood Map identifies parcel as being in Firm Zone VE 17', 18' & 19' Community Panel 375357 1095 J, 6/2/06.
 - Proposed Map 2009-0002

Proposed Building Envelop Survey Of
 Lot 9 - Block 48 - Section A - Ocean Isle Beach
 "John & Shirley Urbon"



Scale 1" = 30'

June 12, 2008
 Rev. March 15, 2010
 Rev. March 25, 2010



BOBBY M. LONG, P.L.S., & ASSOCIATES
 P.O. BOX 1117
 SHALLOTTE, N.C. 28459
 (910) 754-6300
 (910) 754-5486 Fax
 WE SURVEY THE EARTH AND EVERYTHING THEREON

ATTACHMENT F
(Petitioners' Variance Request and Other Exhibits)



RECEIVED

DCM FILE NO. APR 22 2010

Morehead City DCM

10-04

Petitioner supplies the following information:

Your Name John and Shirley Urbon
Address 706 West Main Street, Laurens, S.C., 29360
Telephone 864-923-6001
Fax and/or Email Fax: 864-984-2224 Email: johnpurbon@yahoo.com

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

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

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

What did you seek a permit to do?

Obtain a permit for a buildable footprint of reasonable size and shape (under 2500 SF heated space) to be an asset for the location, the town of Ocean Isle beach, and concur with the spirit and intent of CRC rule 15A NCAC 07H.0306(a)(8)(D)

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

15A NCAC 07H03.06(a)(8)(D)

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

The two story residence would only be 794 s.f. per floor included covered decks and stairways.

RECEIVED
APR 22 2010
Municipal
Wood City DCM

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

A total footprint of 794 square feet – which is not a reasonable size structure for this location.

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

I requested a permit for a building footprint of 36.0 x 37.23 feet which is 1,340.28 square feet per floor including covered decks, stairs and architectural design. This footprint is 4.5 feet more landward than the existing structure to line up with the house to the east. The permit denial moves the footprint back another 15.16 feet. This would only allow for a total structure depth of 22.07 feet.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

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

The most important consideration above (reasonable use of the property) is the main reason for the variance request. Rule 15A NCAC 07H.0306(a)(8)(D) states that “No portion of a building or structure ---extends oceanward of the landward-most adjacent building or structure”. The home to the west of mine is non-conforming in that it is of odd shape, small depth, and is forward of the streetside setback line. The unnecessary hardship which would be caused by the denial of the variance request is that I would not be able to build a home of reasonable depth to make reasonable use of the property. I would only be allowed to build a home of 22 feet in depth. In addition, this would cause the other homes to face the same problem causing a domino effect.

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

RECEIVED
APR 22 2010
Municipal City DCM

The property is located at 362 East First Street in Ocean Isle Beach, N.C. approximately 2 miles east of the bridge. It is a 50 ft x 150 ft. oceanfront lot with an existing home built in the 1960's along with all the homes along this area of East First Street. Many of these homes violate a front or side setback and are not in alignment on the streetside or oceanside. My home sits within the setbacks and is of average depth. The cause of my hardship is the size, shape and location of the home to the west of mine.

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

I have owned 362 East First Street for eight years and have been a good custodian of this 45 year old property during this time. The hardship does not result from the actions I have taken because I had nothing to do with the design or construction of the house to my west.

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

Thank you for rule 15A NCAC 07H.0306(a)(8)(D). This rule allows for the re-buildable status of the homes in this area. The granting of this variance will allow for a reasonable structure, in line with most of the homes surrounding it, and not encroaching toward the ocean. I feel this is the intent and purpose of the CRC rule and the town of Ocean Isle Beach.

Please attach copies of the following:

Permit Application and Denial documents

Site Drawing with Survey and Topographical Information

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

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

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

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

Date: 4/19/10

Signature: 

RECEIVED
APR 22 2010
Morehead City

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

RECEIVED
APR 22 2010
Morehead City DCM

5

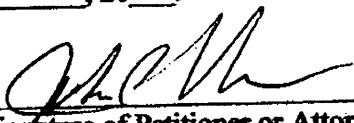
CERTIFICATE OF SERVICE

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

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

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

This the 21st day of APRIL, 2010.



Signature of Petitioner or Attorney

RECEIVED
APR 22 2010
Morehead City DCM

- (3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard setback, whichever is farthest from ~~vegetation line, static vegetation line~~ or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.
- (5) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (7) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraph (1) and (2)(A) of this Paragraph a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
 - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
 - (B) Total floor area of a building is no greater than 2,500 square feet;
 - (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
 - (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with



RECEIVED
APR 22 2010
Morehead City DCM

the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

- (E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and
- (F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

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

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

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

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

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

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

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

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

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

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

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

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

Locality _____ Permit Number _____

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

GENERAL INFORMATION

RECEIVED
APR 22 2010
Morehead City DCM

LAND OWNER

Name JOHN + Shirley Urban

Address 706 W. MAIN

City LAURENS State SC Zip 29360 Phone 864-923-6001

AUTHORIZED AGENT

Name JOHN Urban

Address 706 W. main ST.

City LAURENS State SC Zip 29360 Phone 864-923-6001

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 362 East First St., Ocean Isle Beach, N.C.

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.)
Single family Residence

SIZE OF LOT/PARCEL: 50' x 150' (7500 SF) square feet .172 acres

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

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

SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT-UPON SURFACES IN THE COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN (AEC): 1498 square feet
(Calculations includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc., that are within the applicable AEC. Attach your calculations with the project drawing.)

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

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?

YES _____ NO _____

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

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

RECEIVED
APR 22 2010
Morehead City DCM

STATEMENT OF OWNERSHIP:

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

an owner or record title, Title is vested in _____, see Deed Book 1688 + 1397
page 245 + 379 in the Brunswick County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

(Name)	(Address)
(1) Paul/Diane Ambroggio	1318 Sailing Way, Summerton, SC 29148
(2) Tony/Lisa Mosca	364 E. First St., Ocean Isle Beach, NC 28469
(3)	
(4)	

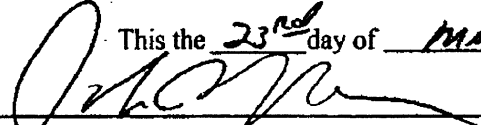
FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

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

PERMISSION TO ENTER ON LAND:

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

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

This the 23rd day of March, 2010


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



RECEIVED

APR 22 2010

Morehead City DCM

April 16, 2010

Hand Delivered

John and Shirley Urbon
706 West Main Street
Laurens, SC 29360

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- OIB 10-16
PROJECT ADDRESS- 362 East First Street

Dear Mr. Urbon:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to construct a new single-family dwelling which is inconsistent with 15 NCAC 7H .0306 (a)(8)(D), which states that: "No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure."

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

Respectfully yours,

Justin W. Whiteside, LPO
Town of Ocean Isle Beach
3 West Third Street
Ocean Isle Beach, NC 28469

cc: Debbie Wilson, DCM Field Representative

RECEIVED
APR 22 2010
Morehead City DCM

Property location: 362 East First Street, Ocean Isle Beach, N.C.

FOUR VARIANCE CRITERIA - list of relevant facts

I: Unnecessary hardship/reasonable use

- 1- Rule 15A NCAC 07H.0306(a)(8)(D) states that "No portion of a building or structure extends oceanward of the landward-most adjacent building or structure". The home to the west of mine is non-conforming in that it is of odd shape, small depth, and is forward of the streetside setback. The unnecessary hardship is that I would not be able to build a home of reasonable depth to make reasonable use of the property if the variance is not passed. I would only be allowed to build a home of 22 feet in depth. In addition, this would cause the other homes to face the same problem – causing a domino effect.

II: Conditions particular to my property

- 2- The property is located at 362 East First Street in Ocean Isle Beach, N.C. approximately 2 miles east of the bridge. It is a 50 ft. x 150 ft. oceanfront lot with an existing home built in the 1960's, along with all the homes along this area of East First street. Many of these homes violate a front or side setback and are not in alignment on the streetside or Oceanside of the homes. My home sits within the setbacks and is of average depth. The cause of my hardship is the size, shape and location of the home to the west of mine.

III: Why my hardship does not result from actions that I have taken

- 3- I have owned 362 East First Street for eight years and have been a good custodian of this 45 year old property during this time. The hardship does not result from actions that I have taken because I had nothing to do with the design or construction of the house to my west.

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

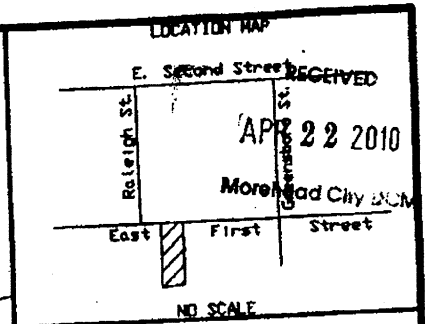
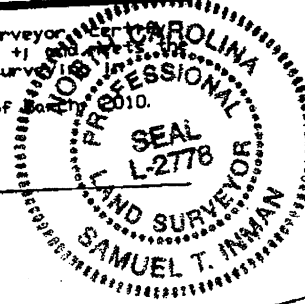
- 4- Thankyou for rule 15A NCAC 07h.0306(a)(8)(D) which allows for the re-buildable status of the homes in the area. The granting of this variance will allow for a reasonable, structure, in line with most of the homes surrounding it, and not encroaching toward the ocean. I feel this is consistant with the purpose and intent of the CRC rule and the town of Ocean Isle Beach.

I, Samuel T. Inman, Professional Land Surveyor
 that the ratio of precision is 1: 10,000 +1 and
 minimum standards of practice for land surveying.

Witness my hand and seal this 23rd day of

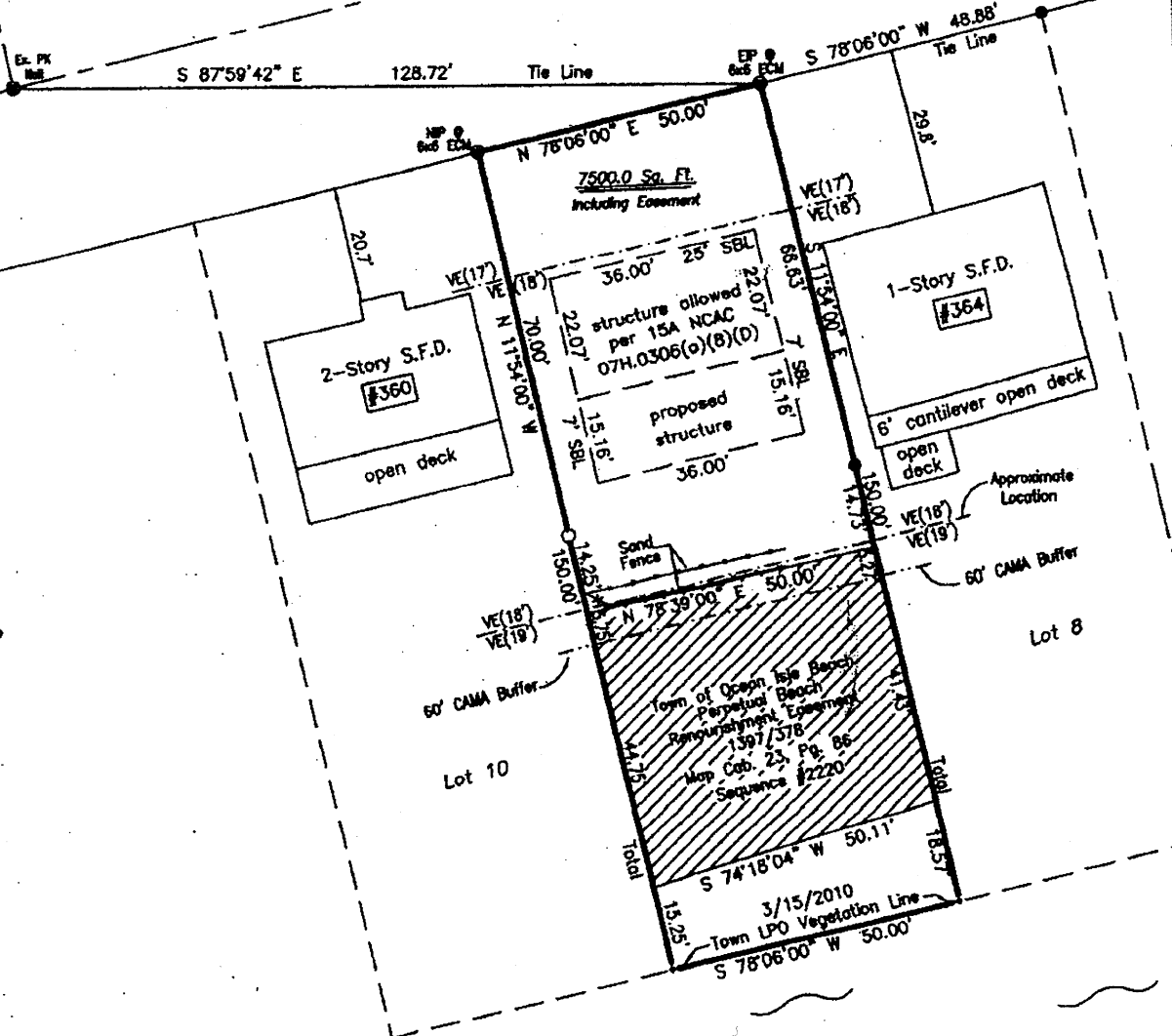
Samuel T. Inman
 Samuel T. Inman, P.L.S.

L-2778



50' R/W - Public
 Raleigh Street

S.R. 1144 East First Street 60' R/W - Public



Proposed Building Envelop Survey Of
 Block 4B - Section A - Ocean Isle Beach

LEGEND

ATTACHMENT G
(Petitioners' Town of Ocean Isle Beach Variance Request)

VARIANCE APPLICATION

G

TOWN OF OCEAN ISLE BEACH

STATE OF NORTH CAROLINA

DATE 6/23/10

CASE NO. _____

Completed Application and fee must be submitted by 4:00 p.m. on the submittal date listed on the Variance Application Schedule.

Applicant: JOHN URSON	Owner: JOHN URSON
Address: 706 W. MAIN ST. LAURENS, S.C. 29360 <small>City State Zip</small>	Address: _____ _____ <small>City State Zip</small>
Telephone: 864-923-6001	Telephone: _____
Fax: 864-984-2223	Fax: _____
E-mail: JOHN.PURBONE@phou.com	E-mail: _____

Legal relationship of applicant to property owner: SAME PERSON

Property location: 362 EAST FIRST STREET
Street address or intersection

PIN# 244NJ009

Lot size: 50 x 150

Square feet: 7500

Zoning classification: R1

Attach a plot plan or site plan to illustrate this request.

VARIANCE APPLICATION

TO THE OCEAN ISLE BEACH BOARD OF ADJUSTMENT:

I, JOHN URBON, hereby petition the Ocean Isle Beach Board of Adjustment for a VARIANCE from the literal provisions of the Ocean Isle Beach Zoning Ordinance because, under the interpretation given to me by the Zoning Enforcement Officer, I am prohibited from using the parcel of land described in this application in a manner shown by the plot/site plan attached to this form. I request a variance from the following provisions of the Town's Ordinance (cite the paragraph numbers):

Sec 66-45 (3) Table INSERT

Sec. 66-281 (g)

so that the above-mentioned property can be used in a manner indicated by the plot/site plan attached to this form or if the plot/site plan does not adequately reveal the nature of the variance, as more fully described herein: (If a variance is requested for a limited time only, specify duration requested).

That the streetside setback be reduced
from 25' to 11'

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Ocean Isle Beach Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. Under the State enabling act, the Board is required to reach three conclusions as a prerequisite to the issuance of a variance:

1. *That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.*
2. *That the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit.*
3. *That in the granting of the variance the public safety and welfare have been assured and substantial justice has been done.*

In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions.

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. The courts have developed three (3) rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

VARIANCE APPLICATION

- a) If applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his or her property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

Because of CAMA regulations, The depth of new home would be 22.07'. A depth of 37.23' is needed to build a new home suitable for this property and the neighborhood.

Staff Comment:

- (b) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships common to an entire neighborhood resulting from overly restrictive zoning regulations should be referred to the Town Planning Board. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

Per ISA N.E.C. 074.0306(a)(v)(5) My new home can only be constructed to the oceanside of the adjacent homes. The home to the west is nonconforming and caused the problem.

Staff Comment:

- (c) The hardship is not the result of the applicant's own actions.

The hardship is NOT A result of my actions because I did NOT build my neighbors house.

Staff Comment:

- (2) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

The size of the home (2500 SF living area over 2 floors) is needed on this property, neighborhood and town. The character will be greatly improved from its current state as if a 22' deep house were built.

Staff Comment:

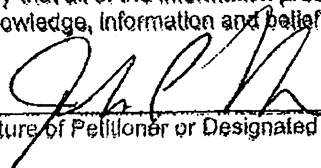
VARIANCE APPLICATION

- (3) The granting of the variance secures the public safety and welfare and does substantial justice. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

If the Variance is denied there will be no benefit to the public and the applicant will not be able to rebuild.

Staff Comment:

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.


Signature of Petitioner or Designated Representative

6/25/10
Date

If the title to the above mentioned property is not in the name of the petitioner, attach a notarized letter from the owner signifying his approval.

Application must be accompanied by a map drawn to scale not exceeding 11" x 17", showing the exact location of property with respect to existing streets, number and size lots, type building on such lots, and other important features within and contiguous to the property.

Sec. 66-45. R-1 single-family residential district.

The R-1 district is intended primarily for single-family dwellings. Certain nonresidential uses are permitted. Regulations for this district are designed to maintain a suitable environment for family living. Two-family dwellings were deleted as a permitted use in R-1 zoned areas effective February 9, 1999.

(1) *Permitted uses.* Single-family for short-term or long-term occupancy, accessory use structures, clubhouses 1, municipal or public utility stations and substations are permitted. Clubhouses are not permitted in the R-1 district.

(2) *Special uses.* The following uses shall be permitted if approved as a special use: Tennis courts, parks or playgrounds, churches, public or private schools, museums, municipally owned recreational facilities and fire stations. Nonconforming special uses will be allowed to continue as long as they are not structurally altered to increase the size or servitude of the structure and they uphold the requirements of their original special use permit.

(3) *Lots.* Minimum lot area, width and yard requirements are as follows:

TABLE INSET:

Use	Lot In Square Feet	Lot Width in Feet	Front Yard in Feet	Side Yard in Feet	Rear Yard in Feet	Max. Bldg. Height
Commercial Accommodations	10,000	100	25	7	25	31
Multifamily	10,000	100	25	7	25	31
Single-Family	5,000	50	25	7	25	31
Two-Family	7,500	75	25	7	25	31
Clubhouses 1	5,000	50	25	10*	25	31

ARTICLE VIII. SUPPLEMENTARY REGULATIONS

Sec. 66-281. Supplementary regulations in all districts.

Due to the specific nature of certain uses that require a more concise explanation of district regulations as they apply to each instance, the following supplemental regulations are established.

(a) All oceanfront lots shall have a minimum setback of 60 feet from the first line of stable natural vegetation unless higher CAMA erosion rates apply.

(b) No sanitary septic tank or no portion of a septic tank drain line shall be located closer than 50 feet from any mean high water line.

(c) Floating homes are expressly forbidden within the jurisdiction of this chapter.

(d) Structures and buildings for which a permit is issued after the effective date of the ordinance from which this chapter derives, shall be required to have as their foundation structural support piling, to be of treated wood, structural steel or concrete. This foundation piling shall be not less than eight inches square and placed in the ground not less than six feet. Piling are to be placed no more than eight feet apart for bearing wall support. All structures shall comply with the town flood prevention damage ordinance (chapter 30, Ocean Isle Beach Code of Ordinances).

(e) Those portions of structures built between the main dwelling area and the ground must be so constructed as to provide the so-called breakaway effect; i.e., in the event of flooding, the portion of the structure built on the ground shall give resistance to the floodwater separate from the resistance given by the main dwelling area.

(f) Commercial accommodations structures shall be permitted to house those customary accessory uses for the benefit of their customers only which would otherwise be permitted only in the C-2 district. Such uses as restaurants, sundry and novelty shops, barber and beauty shops and the like shall be considered customary accessory uses and permissible under this chapter.

→ (g) All single-family and two-family buildings built on the oceanfront shall be placed or constructed exactly 25 feet from the road right-of-way.

(h) All buildings built on Craven Street shall be placed 50 feet from the road right-of-way on the south side of Craven Street and 100 feet from the road right-of-way on the north side of Craven Street.

(i) Houses may be constructed within five feet of the road right-of-way on lots 1--21, block 32, section A, and lots 1--21, block 41, section A.

(j) On bulkheaded canals, any repairs to the existing bulkheading shall be of the same design and materials as the existing concrete structure.

(k) All telephone, power service and cable television lines from the utility poles to the building structures shall be installed underground.

(l) No person shall extend or otherwise cover with a hard surface not permeable to water the area between the edge of the road and road right-of-way unless approved by the planning director when the hard surface is a part of an engineered stormwater design plan that has been approved by the North Carolina Department of Environment, Health and Natural Resources and the town. The town shall not be responsible for the

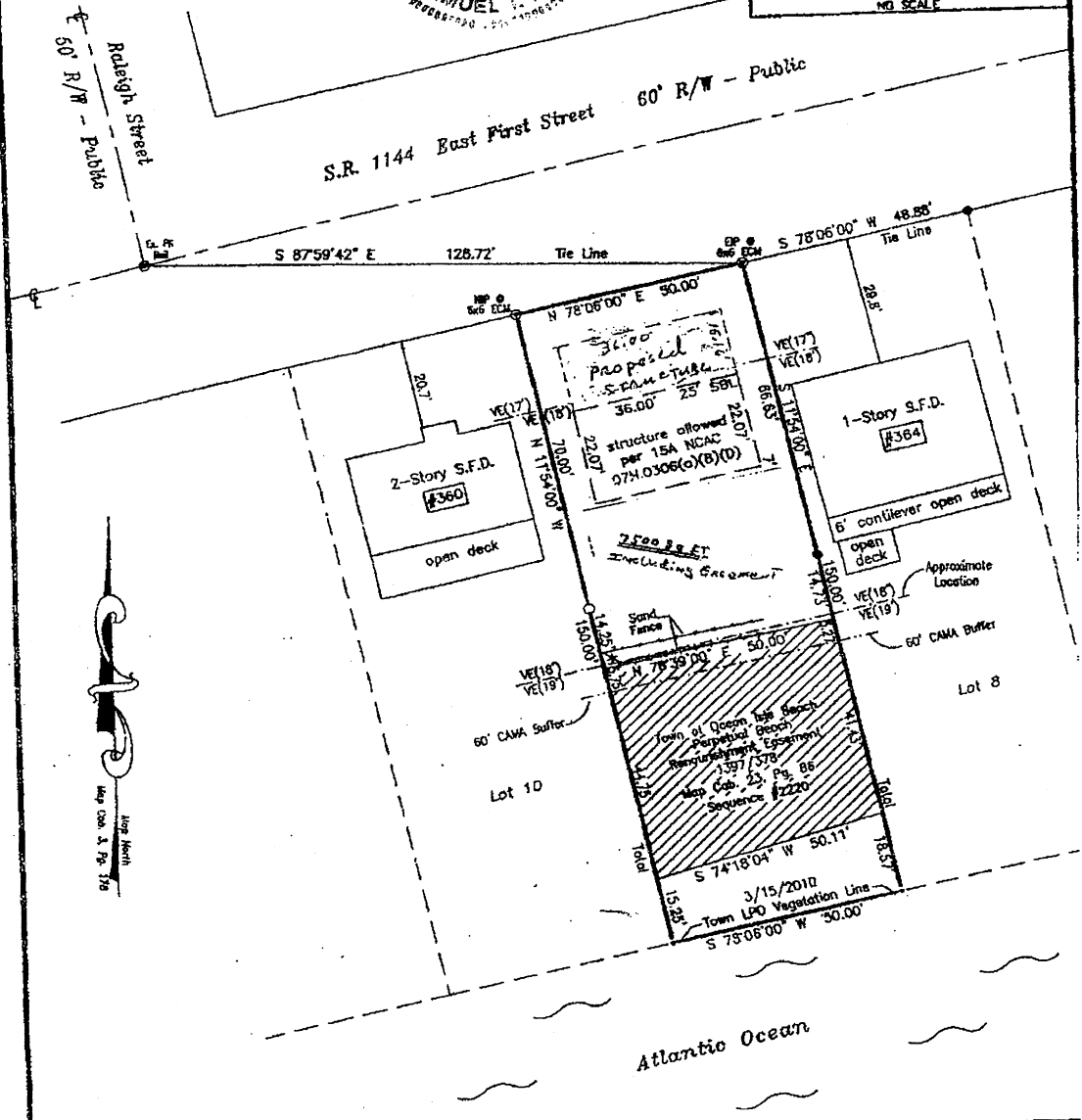
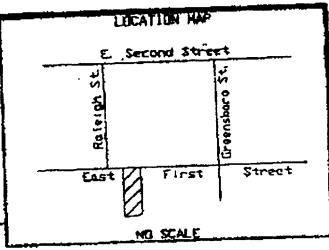
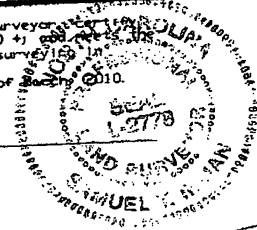
Variance Request
RE: 362 East First Street

STAFF RESPONSE SHEET

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.
 - a. If applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his or her property.
 - i. *A habitable structure can be constructed upon the applicant's property. The ordinance requires that a structure comply with a 25' setback from the front and that all oceanfront properties begin exactly 25' from the road right-of-way. If the applicant complies with the ordinance he could still construct a single-family dwelling 22' in depth and 36' wide. This could give him a heated square footage of approximately 1584. The existing structure appears to be approximately 850 square feet.*
 - b. The hardship of which the applicant complains results from unique circumstances related to the applicant's land.
 - ii. *The applicant's land is 50' x 150'. The majority of other oceanfront lots on Ocean Isle Beach are of the same dimension.*
 - c. The hardship is not the result of the applicant's own actions.
 - iii. *CAMA rules for the Static Line Exception require that homes built using the Exception not be constructed beyond the landward-most adjacent building or structure. The house at 360 East First Street was constructed 5' into the 25' street yard setback. Therefore, it was not constructed as far oceanward as adjacent structures.*
2. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.
 - a. *If permitted to make the modifications requested, the owner would be allowed to construct a structure contrary to the ordinance requirements. This could reduce the amount of parking area needed for the home and make it out of line with adjacent structures which is not the general purpose and intent of the ordinance. The variance would be in conflict with the spirit of the ordinance because it would be too far out of line with adjacent homes when they are reconstructed.*
3. The granting of the variance secures the public safety and welfare and does substantial justice.
 - a. *If the variance is granted, the home will be constructed closer to the street which would also cause cars to be parked closer to the street. There is no sidewalk on either side of the street in that area. This could cause a hazard to those who are walking or to bike traffic.*

I, Samuel T. Inman, Professional Land Surveyor, certify that the ratio of precision is 1:10,000 and that the minimum standards of practice for land surveying were followed. Witness my hand and seal this 23rd day of March 2010.

Samuel T. Inman
 Samuel T. Inman, P.L.S. L-2778



LEGEND :

- Existing Iron or Iron Pipe
- New Iron Pipe Set
- Existing Corner (Type Noted)

REFERENCE :

- Deed Book 1688, Page 245
- Deed Book 1397, Page 378
- Map Cabinet 3, Page 178
- Map Cabinet 23, Page 86

NOTES :

1. Area By Coordinates
2. Fema Flood Map identifies parcel as being in Firm Zone VE 17', 18' & 19' Community Panel 375357 1085 J, 6/2/06.
3. Tax Parcel No.: 244N1009

Proposed Building Envelop Survey Of
 Lot 9 - Block 48 - Section A - Ocean Isle Beach

John & Shirley Urbon

Shalotte Township Brunswick County, N.C.

0' 30' 60' 90'

Graphic Scale - Feet

Scale 1" = 30'

June 12, 2008
 Rev. March 15, 2010
 Rev. March 25, 2010

BOBBY M. LONG, P.L.S., & ASSOCIATES
 P.O. BOX 1117
 SHALLOTTE, N.C. 28459
 (910) 784-6300
 (910) 794-5406 Fax
 WE SURVEY THE EARTH AND EVERYTHING THEREON



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
WARD ZIMMERMAN
wzimmerman@ncdoj.gov

MEMORANDUM

TO: Coastal Resources Commission
FROM: Ward Zimmerman, Assistant Attorney General
DATE: August 31, 2010 (for the September 2010 CRC Meeting)
RE: Variance Request # 10-06 by Town of Sunset Beach c/o Gary Parker

The Town of Sunset Beach (Petitioner) owns real property along the Atlantic Intracoastal Waterway (AIWW) adjacent to the ongoing construction of a new high rise bridge that will span the AIWW at the future terminus of SR 1172 in Sunset Beach, Brunswick County, North Carolina. This property is located within a Primary Nursery Area (PNA), as designated by the North Carolina Marine Fisheries Commission (MFC). Petitioner, in partnership with the North Carolina Wildlife Resources Commission (NCWRC), proposes to construct a new public water access facility consisting of a boat ramp, two breakwaters, a floating boarding pier, and a walkway to a proposed fishing pier. This proposed development requires dredging a new access channel through a PNA; and, thus, is inconsistent with the Commission's specific use standards for estuarine shorelines set forth in 15A NCAC 7H.0208(b)(1), which states, in applicable part: "Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands." Petitioner now seeks a variance from the CRC's rules.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rule
Attachment B: Stipulated Facts
Attachment C: Petitioner's Position and Staff's Response to Criteria
Attachment D: Petitioner's Existing Property
Attachment E: Petitioner's CAMA Variance Request and Major Permit Application
Attachment F: Petitioner's Proposed Project
Attachment G: Petitioner's CAMA Major Development Permit Denial Letter

cc: Gary Parker, Town Administrator, Town of Sunset Beach, Petitioner
Michael Isenberg, Attorney for the Town of Sunset Beach
Tom Covington, North Carolina Wildlife Resources Commission
DCM Staff
Jennie Hauser, Special Deputy Attorney General & CRC Counsel

ATTACHMENT A
(Relevant Rule)

15A NCAC 7H.0208(b)(1):

Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

- (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
- (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
- (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10).
- (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation.
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters.
- (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners.
- (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics.

- (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

This Part does not affect restrictions placed on permits issued after March 1, 1991.

ATTACHMENT B
(Stipulated Facts)

1. The North Carolina Division of Coastal Management (DCM) is charged with enforcement of the Coastal Area Management Act (CAMA), N.C. Gen. Stat. § 113A-100 *et seq.*, the controlling statutes and regulations including the Administrative Procedure Act (APA), N.C. Gen. Stat. § 150B-1 *et seq.*, and the rules promulgated thereunder, and the rules of the Coastal Resources Commission (CRC) implementing the CAMA, primarily found in Title 15A, Subchapter 7H of the North Carolina Administrative Code (NCAC).
2. Petitioner is the Town of Sunset Beach, located in Brunswick County, North Carolina.
3. Petitioner owns property located at 101 Sunset Boulevard North, adjacent to the AIWW on the mainland of Sunset Beach, consisting of two parcels of land totaling approximately 1.77 acres. The first parcel consists of approximately 1.33 acres of vacant land which is currently being used as a lay down yard for the construction of the new neighboring high rise bridge. The second parcel consists of approximately 0.44 acres of the existing North Carolina Department of Transportation (DOT) Right of Way (ROW) and old swing bridge approach, which the application states will be turned over to Petitioner upon completion of the new high rise bridge. *See* Attachment D.
4. Petitioner's property is located within the Estuarine Waters, Public Trust Areas, and Estuarine Shoreline Areas of Environmental Concern (AECs).
5. The waters of the AIWW adjacent to the property are SA waters and are classified as a Primary Nursery Area (PNA) by the MFC and are closed to the harvest of shellfish.
6. The entire AIWW shoreline in the Town of Sunset Beach corporate limits is bounded by PNA waters.
7. One of only two public water accesses within the Town of Sunset Beach was an unimproved access ramp that was located on the causeway to the island and this has been removed by the State of North Carolina as a result of the new bridge construction.
8. There is currently no public boat ramp within the Town of Sunset Beach, with the exception of an old public water access at the end of Beach Drive SW adjacent to the Regency, a high-scale condominium complex.
9. In early 2010, Petitioner and the North Carolina Wildlife Resources Commission (NCWRC) agreed to jointly pursue the process of developing a new public water access facility on Petitioner's property. In this agreement, the NCWRC would provide design and construction assistance, while Petitioner would maintain ownership, control, and approve design specifics.

10. On January 19, 2010, Petitioner, through a NCWRC representative, submitted an application for a CAMA major development permit to construct a new public water access facility consisting of a boat ramp, two breakwaters, a floating boarding dock, and a walkway to a proposed fishing pier. *See* Attachments E and F.
11. Petitioner's proposed boat ramp would measure approximately 15 feet in width by 100 feet in length and would extend approximately 58 feet below Normal High Water (NHW). Adjacent to the west side of the ramp would be a concrete dock abutment measuring approximately 30 feet in length by 8 feet in width connecting to a wooden floating dock measuring approximately 80 feet in length by 8 feet in width to assist in the launching of vessels and a floating L-head is proposed at its terminus. The L-head would measure approximately 40 feet in length by 8 feet in width, extending in a westerly direction perpendicular to the shoreline and AIWW.
12. Petitioner's proposed development requires the removal of the existing road and swing bridge and the installation of a new single slab concrete boat ramp within the footprint of the existing bridge. *See* Attachment D. This swing bridge has been in its existing footprint for over 50 years.
13. Petitioner's proposed development requires the excavation of approximately 428 cubic yards (3,857 square feet) of sand and organic muck in an area measuring approximately 133 feet in length by 29 feet in width to a final depth of -4 feet at Normal Low Water (NLW) at the terminal end of the ramp. This would include an access channel that would extend approximately 60 feet waterward of the terminal end of the ramp. The proposed excavation would be accomplished by bucket and barge and would allow the ramp to be placed at a 14% grade.
14. Petitioner's proposed excavation occurs in waters designated as a PNA.
15. Rule 15A NCAC 7H.0208(b)(1) states, in applicable part: "Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands."
16. On July 6, 2010, DCM denied Petitioner's CAMA major development application because Petitioner's proposed development violates Rule 15A NCAC 7H.0208(b)(1). *See* Attachment G.
17. In its denial letter, DCM indicates that the North Carolina Division of Marine Fisheries (DMF) "stated that they did not oppose the proposed project as long as all excavation takes place within the footprint of the existing bridge." *See* Attachment G.
18. In its denial letter, DCM also indicates that the NCWRC stated "that they did not oppose the current proposal due to the disturbed nature of the project site." *See* Attachment G.

19. In a March 25, 2010, letter to the applicant, the Division of Water Quality determined that the project as originally proposed would have a significant impact to the surrounding Primary Nursery Areas (PNAs) and would violate Tidal Water Quality Standards for Class SA/HQW Waters (15A NCAC 02B.0221 (2)) and unless modifications to the proposal were made to alleviate their concerns, they would recommend denial and consequently placed the project on hold as incomplete. The project remains on DWQ hold.
20. DCM Staff received no comments from the public or adjacent riparian owners regarding this project.
21. On July 27, 2010, Petitioner filed this CAMA variance request asking the CRC to set aside its requirements set forth in Rule 15A NCAC 7H.0208(b)(1). *See Attachment E.*

ATTACHMENT C

(Petitioner's Position and Staff's Response to Criteria)

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

Petitioners' Position: Yes.

"The only public water access on the Intracoastal Waterway (AICW) within Sunset Beach is being lost due to the new bridge construction by the State of North Carolina. The current public water access located on the causeway to the island has been removed as part of that project. It is the policy of the State to promote the public water access which will benefit the public greatly. Strictly applying the Rule to this development project would constitute an unnecessary hardship because the ramp of the proposed public water access would be placed within the existing footprint of the old swing bridge."

Staff's Position: Yes.

Petitioner's inability to excavate an access channel at this location causes an unnecessary hardship. The proposed new excavation for a boatramp/water access project, which is considered a water-dependant use, is not allowed by the CRC rules within a Primary Nursery Area. However, the Division of Marine Fisheries "stated that they did not oppose the proposed project as long as all excavation takes place within the footprint of the existing bridge." Likewise, the North Carolina Wildlife Resources Commission stated "that they did not oppose the current proposal due to the disturbed nature of the project site." As Petitioner has noted, the only existing public water access has been removed during construction of the high rise bridge. Thus, staff agrees with the Petitioner that strict application of this Commission's rules would result in unnecessary hardships by limiting the Public's availability of water access sites in this area.

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

Petitioners' Position: Yes.

"The entire shoreline of the Intracoastal Waterway (see map 28, attached, DMF website, Fishery Nursery Areas) within Sunset Beach is designated as primary nursery area. If a variance is not granted, it will be impossible to provide a public water access within the town of Sunset Beach which would create a hardship to the public living in this area. The dredging for the ramp would be within the footprint of the old swing bridge and the ramp structure is only 29 feet in width."

Staff's Position: Yes.

The completion of the new high rise bridge spanning the AIWW, which is adjacent to the

proposed project site, will make the old swing bridge obsolete. The project has resulted in removal of the only previous public boatramp/water access used by the Public in the Town of Sunset Beach. As noted above, while the proposed project is located in a PNA, it would be located in the footprint of the old swing bridge and in a highly disturbed area as a result of the bridge's removal. The need for this proposed project is driven by its unique location adjacent to the AIWW, on state owned lands, with an exiting boating use already present.

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

Petitioners' Position: No.

“For the following two reasons: 1. The State of North Carolina has removed the only public water access within Sunset Beach during the construction of the new bridge. 2. The primary nursery area existing along the entire town AICW shoreline is a natural occurrence.”

Staff's Position: No.

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

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

Petitioners' Position: Yes.

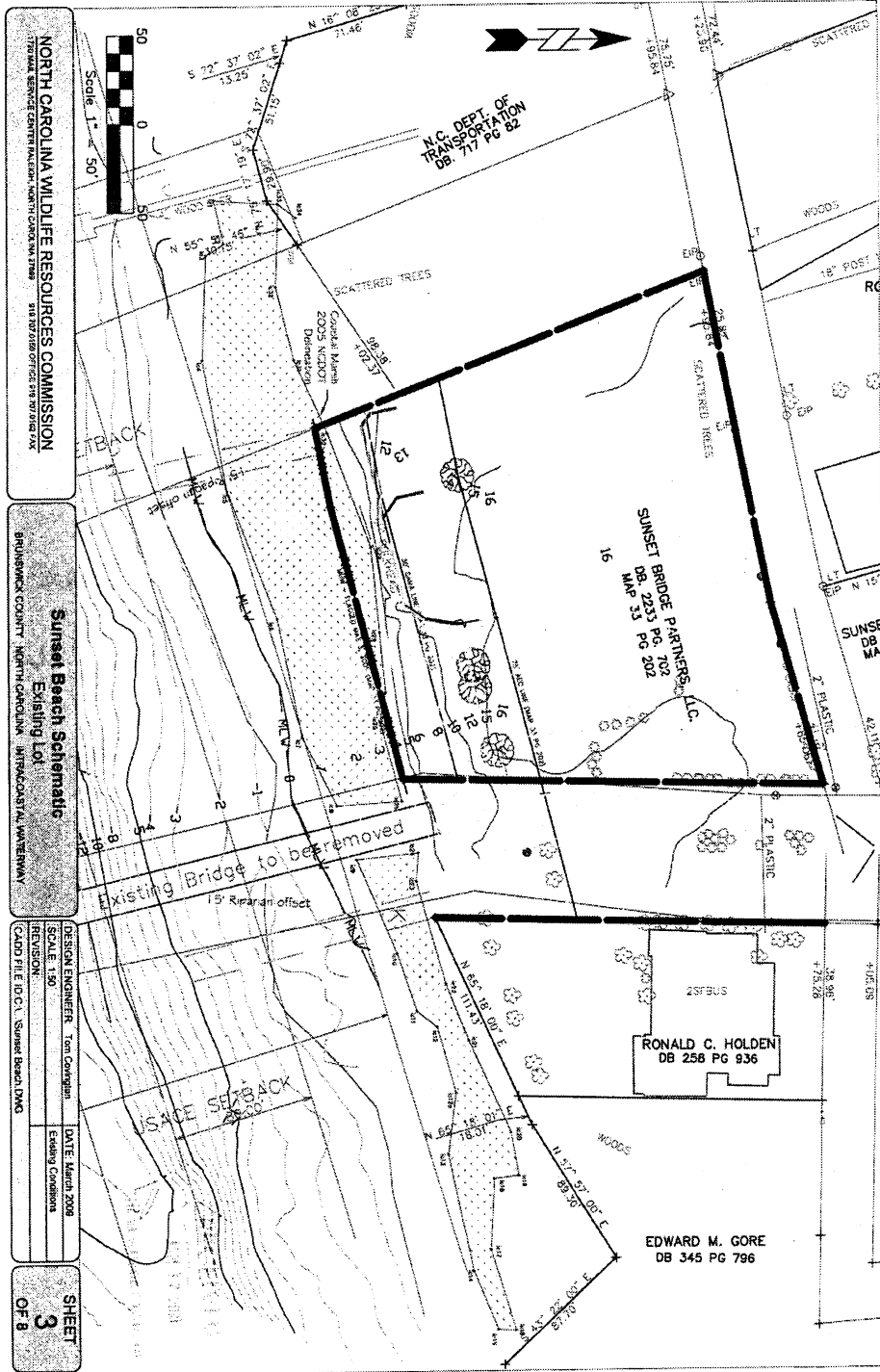
“By granting the Variance and allowing the public water access facility's ramp to be placed within the footprint of the old swing bridge, there will be no new disturbance of the primary nursery area. In addition, the granting of the Variance will promote the public water access goals of the Coastal Area Management Act and State of North Carolina and will benefit the public while not causing any additional or further detriment to the primary nursery area.”

Staff's Position: Yes.

The variance will be consistent with the spirit, purpose, and intent of the rules. The area proposed for the dredging of the access channel is a designated PNA. The MFC has established such PNAs in order to protect those fragile estuarine areas which support juvenile populations of important fish and shellfish species. The CRC's rules recognize the importance of PNAs by prohibiting new excavation within them. However, Petitioner's proposed boat ramp would be located in the footprint of the old swing bridge that has been in place for over 50 years. Excavation in an area already highly disturbed should minimize any impacts that the activity would have on the functions of the PNA. Staff notes that the Division of Marine Fisheries and the Wildlife Resources Commission both offered no opposition to the proposed project, so long as the excavation occurred within the footprint of the old swing bridge. Thus, granting a variance to allow the proposed excavation in this area for construction of the boatramp would be consistent with the spirit, purpose, and intent of the rules.

Likewise, staff notes that the project not only provides for a new concrete boatramp, but a public fishing pier and improved parking including both handicap parking for cars and trailers thus increasing the public's safety and welfare at the previously unimproved access site. Without the proposed project there would be reduced availability of public water access in this area; and, thus, a general reduction in public safety and welfare. Allowing a public water access facility would also preserve substantial justice in that the public, at large, would have greater access to the State's natural resources while minimizing the impacts to the fisheries resources in the area by utilizing such a highly disturbed site. The project also includes installation of an infiltration basin and associated grading that should minimize runoff and sedimentation into the adjacent waters also preserve substantial justice and in balancing the use of the public's resources.

ATTACHMENT D
(Petitioner's Existing Property)

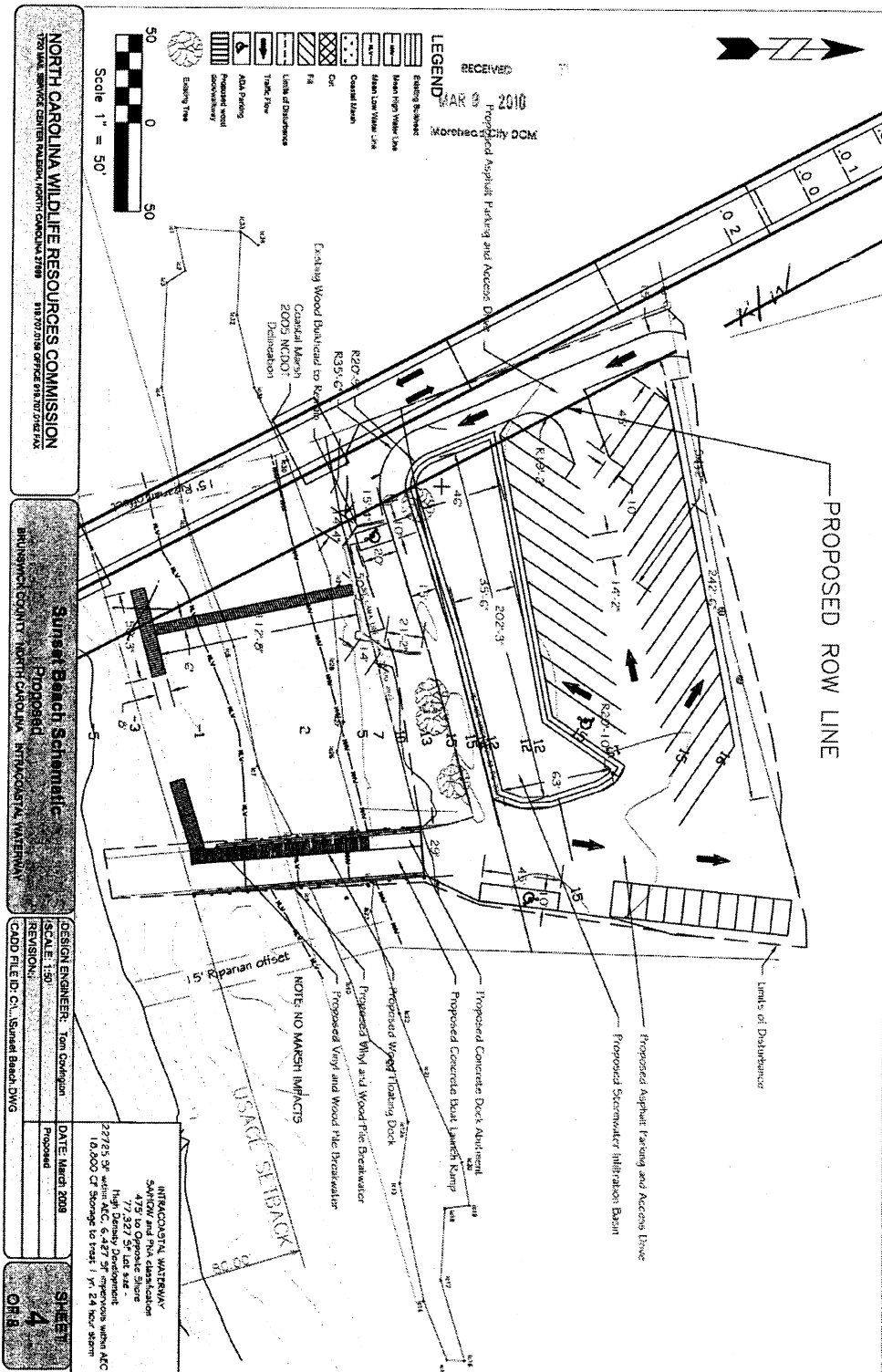


ATTACHMENT E

(Petitioner's CAMA Variance Request and Major Permit Application)

ATTACHMENT F

(Petitioner's Proposed Project)



RECEIVED
 2010
 PROJECTED ASPHALT PARKING AND ACCESS DRIVE
 MOREHEAD CITY DCM

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
 700 WILSON SERVICE CENTER (WALDEN) NORTH CAROLINA 27808 818.797.2018 OFFICE 818.707.9121 FAX 818.797.2019

Sunset Beach Schematic
 Proposed
 BRUNSWICK COUNTY, NORTH CAROLINA, NITKACOSTAL WATERWAY

DESIGN ENGINEER: Tom Conaghan
 SCALE: 1:50
 REVISIONS:
 CADD FILE ID: C:\Sunset Beach.dwg

DATE: March 2008
 PROPOSED
 5 NITKACOSTAL WATERWAY
 475 to Opposite Shore
 77,327 sq. lot. 442 -
 High Density Development
 22,775 sq. ft. with NCC
 6,477 sq. ft. impervious with NCC
 16,300 CF Storage to Inlet, 1 FT. 24' head storm

SHEET
4
OF 8

ATTACHMENT G

(Petitioner's CAMA Major Development Permit Denial Letter)



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

July 6, 2010

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Town of Sunset Beach
Mr. Gary Parker
700 Sunset Boulevard
Sunset Beach, NC 28468

Dear Mr. Parker:

This letter is in response to your application for a Major Permit under the Coastal Area Management Act (CAMA), in which authorization was requested to construct a new public boat ramp facility, floating dock, breakwater, fishing pier, parking lot and dredge a new access channel, in Brunswick County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Regional Office on January 19, 2010, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The subject property is located adjacent to the Atlantic Intracoastal Waterway (AIWW) and is located within a Primary Nursery Area (PNA), as designated by the North Carolina Marine Fisheries Commission.
- 2) The boat ramp and new access channel are proposed to take place within the footprint of the existing Sunset Beach Bridge. The existing bridge will be removed following completion of a new bridge to Sunset Beach.
- 3) The proposed project consists of new dredging in a Primary Nursery Area (133' long by 29' wide), resulting in the loss of 3,857 square feet of PNA habitat.
- 4) During the course of the joint State and Federal application review of the proposed project, the N.C. Division of Marine Fisheries (DMF) indicated that while their agency generally objects to the new dredging within a PNA, the DMF agrees that the proposed project provides for an opportunity for re-development within the PNA. The DMF further stated that they did not oppose the proposed project as long as all excavation takes place within the footprint of the existing bridge. The N.C. Wildlife Resources Commission also stated that they generally opposed new dredging within a PNA, but that they did not oppose the current proposal due to the disturbed nature of the project site.

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

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

Mr. Gary Parker
Town of Sunset Beach
July 6, 2010
Page 2

- 5) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following rule of the Coastal Resources Commission:
- a) 15A NCAC 07H.0208(b)(1), which states that "Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands

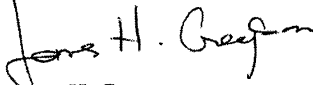
Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit under the Coastal Area Management Act be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the state guidelines for Areas of Environmental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

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

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

Members of my staff are available to assist you should you desire to modify your proposal in the future. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, extension 221.

Sincerely,



James H. Gregson

cc: Colonel Jefferson M. Ryscavage – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD
Dave Timpy, USACE
DCM – Wilmington

JUL 28 2010

Morehead City DCM

DCM FILE NO.

10-06

DCM FORM 11
(revised 6/26/06)

CAMA VARIANCE REQUEST

Petitioner supplies the following information:

Your Name Gary Parker
Address 700 Sunset Blvd, N.; Sunset Beach, NC; 28468
Telephone 910-579-6297
Fax and/or Email gparker@atmc.net

Name of Your Attorney (if applicable) Michael Isenberg
Address 109 E. Moore St; Southport, NC; 28461
Telephone 910-457-9506
Fax and/or Email misenberg@fjtlaw.net

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

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

What did you seek a permit to do?

Build a public water access with boat ramp.

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

15A NCAC 07H.0208(b)(1)

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

The project in order to provide public water access must have a dredged boat ramp and the entire project area and tract owned by the Town is bounded by PNA.

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

For the parking area and the fishing pier, but of course the boat ramp is the purpose of the

facility.

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

This is a proposed public water access facility with boat ramp. The denial will not allow us to dredge and construct the boat ramp structure.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

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

The only public water access on the Intracoastal Waterway (AICW) within Sunset Beach is being lost due to the new bridge construction by the State of North Carolina. The current public water access located on the causeway to the island has been removed as part of that project. It is the policy of the State to promote public water access which will benefit the public greatly. Strictly applying the Rule to this development project would constitute an unnecessary hardship because the ramp of the proposed public water access would be placed within the existing footprint of the old swing bridge.

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

The entire shoreline of the Intracoastal Waterway (see map 28, attached, DMF website, Fishery Nursery Areas) within Sunset Beach is designated as primary nursery area. If a variance is not granted, it will be impossible to provide a public water access within the Town of Sunset Beach which would create a hardship to the public living in this area. The dredging for the ramp would be within the footprint of the old swing bridge and the ramp structure is only 29 feet in width.

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

For the following two reasons: 1. The State of North Carolina has removed the only public water access within Sunset Beach during the construction of the new bridge. 2. The primary nursery area existing along the entire town AICW shoreline is a natural occurrence.

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

By granting the Variance and allowing the public water access facility's ramp to be placed within the footprint of the old swing bridge, there will be no new disturbance of the primary nursery area. In addition, the granting of the Variance will promote the public water access goals of the Coastal Area Management Act and State of North Carolina and will benefit the public while not causing any additional or further detriment to the primary nursery area.

Please attach copies of the following:

Permit Application and Denial documents

Site Drawing with Survey and Topographical Information

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

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

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

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

Date:

7-27-10

Signature:



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

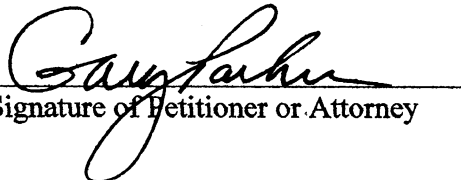
CERTIFICATE OF SERVICE

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

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

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

This the 27 day of July, 2010.


Signature of Petitioner or Attorney

APPLICATION for Major Development Permit

(last revised 12/27/06)



North Carolina DIVISION OF COASTAL MANAGEMENT

1. Primary Applicant/ Landowner Information				
Business Name Town Of Sunset Beach		Project Name (if applicable) Sunset Beach Boating Access Area		
Applicant 1: First Name Gary	MI	Last Name Parker,		
Applicant 2: First Name	MI	Last Name		
<i>If additional applicants, please attach an additional page(s) with names listed.</i>				
Mailing Address 700 Sunset Blvd. N		PO Box	City Sunset Beach	State NC
ZIP 28468	Country USA	Phone No. 910 - 579 - 6297 ext.		FAX No.
Street Address (if different from above)		City	State	ZIP
Email GParker [gparker@atmc.net]				

2. Agent/Contractor Information				
Business Name North Carolina Wildlife Resources Commission				
Agent/ Contractor 1: First Name Thomas	MI T	Last Name Covington		
Agent/ Contractor 2: First Name	MI	Last Name		
Mailing Address 1720 Mail Service Center		PO Box	City Raleigh	State NC
ZIP 27699 1720		Phone No. 1 919 - 707 - 0154 ext.		Phone No. 2 919 - 218 - 2064 ext.
FAX No. 919 707 0162	Contractor # N/A			
Street Address (if different from above)		City	State	ZIP
Email tom.covington@ncwildlife.org				

<Form continues on back>

3. Project Location				
County (can be multiple) Brunswick		Street Address 101 Sunset Blvd		State Rd. # 1172
Subdivision Name Twin Lakes		City Sunset Beach	State NC	Zip 28468 -
Phone No. - - ext.		Lot No.(s) (if many, attach additional page with list) 256HB001, , ,		
a. In which NC river basin is the project located? Lumber		b. Name of body of water nearest to proposed project Atlantic Intracoastal Waterway		
c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input checked="" type="checkbox"/> Manmade <input type="checkbox"/> Unknown		d. Name the closest major water body to the proposed project site. Atlantic Intracoastal Waterway		
e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Sunset Beach		

4. Site Description	
a. Total length of shoreline on the tract (ft.) 206'	b. Size of entire tract (sq.ft.) 48,787
c. Size of individual lot(s) 1.12 Acres, (if many lot sizes, please attach additional page with a list)	d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) 12 <input checked="" type="checkbox"/> NHW or <input type="checkbox"/> NWL
e. Vegetation on tract Several large live oaks, to be saved; grasses, bushes, and small trees typical of region, coastal marsh at waterline	
f. Man-made features and uses now on tract wooden bulkhead in place from prior owners, buried and abandoned plastic water line, State Road 1172, and bridge over the intercoastal waterway.	
g. Identify and describe the existing land uses adjacent to the proposed project site. New high rise bridge on DOT right of way on west side, small commercial ventures on north and east sides	
h. How does local government zone the tract? SB-MB1, SB-CR1	i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA if yes, by whom?	
l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA	

<Form continues on next page>

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

5. Activities and Impacts	
a. Will the project be for commercial, public, or private use?	<input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Public/Government <input type="checkbox"/> Private/Community
b. Give a brief description of purpose, use, and daily operations of the project when complete. Site is to be used as a public boatramp, available for use 24/7/365, operated and maintained by the Town of Sunset Beach. A paved parking lot with a stormwater infiltration basin, with a concrete launch ramp and a floating dock, with vinyl groins on either side of the ramp providing a dredged area deep enough to use at low water are proposed for use by the public, to be maintained by the town of Sunset Beach.	
c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored. Anticipated types of construction equipment include tracked excavators, bulldozers, tri-axle dump trucks, backhoes, and potentially barges, cranes, and pile drivers. All equipment will either be temporarily stored on site, on high ground outside the AEC, or in the case of waterbased equipment, moored on shore in an area that has construction planned, in order to minimize shoreline impacts.	
d. List all development activities you propose. installation of two vinyl breakwaters, a concrete boat launch ramp, a wooden boarding dock, a wooden fishing pier, a paved parking lot, a storwater infiltration basin, and dredging inbetween the breakwaters to allow sufficient depth for use at low water.	
e. Are the proposed activities maintenance of an existing project, new work, or both?	New work
f. What is the approximate total disturbed land area resulting from the proposed project?	1.2 <input type="checkbox"/> Sq.Ft or <input checked="" type="checkbox"/> Acres
g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
h. Describe location and type of existing and proposed discharges to waters of the state. Any and all current discharges are overland sheet flow due to unimproved site conditions. Proposed discharges would be from the ramp and apron, and a parking area with infiltration basin designed for 3.7" over the entire drainage area, except the ramp and apron. Any stormwater over this amount would flow through a 50' vegetated buffer before being discharged into waters of the state.	
i. Will wastewater or stormwater be discharged into a wetland?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
If yes, will this discharged water be of the same salinity as the receiving water?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
j. Is there any mitigation proposed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA
If yes, attach a mitigation proposal.	

<Form continues on back>

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

a. A project narrative.

b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed.

c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site.

d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties.

e. The appropriate application fee. Check or money order made payable to DENR.

f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management.

Name Ronald or Clarice Holden	Phone No. unlisted
Address 3852 HOLDEN RD SW, SHALLLOTTE, NC 28459	work phone 910.579.6373
Name Mason Hearndon, NC DOT	Phone No. 910-251-5724
Address 124 Division Dr. Wilmington, NC 28411	
Name	Phone No.
Address	

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

CAMA General Permit 42836-D, Jason Stegall, 09/28/05
CAMA Major Permit 22-07, NCDOT, 3/5/07

h. Signed consultant or agent authorization form, if applicable.

i. Wetland delineation, if necessary.

j. A signed AEC hazard notice for projects in oceanfront and inlet areas. *(Must be signed by property owner)*

k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act.

7. Certification and Permission to Enter on Land

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

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

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

Date 19 JAN 10 Print Name THOMAS T. COVINGTON, NEWRC

Signature Thomas T. Covington

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

EXCAVATION and FILL

(Except for bridges and culverts)

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

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

	Access Channel (NLW or NWL)	Canal	Boat Basin	Boat Ramp	Rock Groin	Rock Breakwater	Other (excluding shoreline stabilization)
Length	133			100'			
Width	29			15'			
Avg. Existing Depth	-1			4	NA	NA	
Final Project Depth	-4			-4	NA	NA	

1. EXCAVATION

This section not applicable

- a. Amount of material to be excavated from below NHW or NWL in cubic yards.
428 CY
- b. Type of material to be excavated.
sand and organic muck
- c. (i) Does the area to be excavated include coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW SAV SB WL None
- d. High-ground excavation in cubic yards.
957
- (ii) Describe the purpose of the excavation in these areas:

2. DISPOSAL OF EXCAVATED MATERIAL

This section not applicable

- a. Location of disposal area.
1261 Hale Swamp Rd, Shallotte, NC 28470
- b. Dimensions of disposal area.
To be determined, but will need a square area of approx 100' x 100'.
- c. (i) Do you claim title to disposal area?
 Yes No NA
- d. (i) Will a disposal area be available for future maintenance?
 Yes No NA
- (ii) If no, attach a letter granting permission from the owner.
- e. (i) Does the disposal area include any coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW SAV SB WL None
- f. (i) Does the disposal include any area in the water?
 Yes No NA
- (ii) If yes, how much water area is affected?
- (ii) Describe the purpose of disposal in these areas:
No waste material will be placed on low ground.

3. SHORELINE STABILIZATION

(If development is a wood groin, use MP-4 – Structures)

This section not applicable

- a. Type of shoreline stabilization:
 Bulkhead Riprap Breakwater/Sill Other: _____
- b. Length: _____
 Width: _____
- c. Average distance waterward of NHW or NWL:

- d. Maximum distance waterward of NHW or NWL:

- e. Type of stabilization material:

- f. (i) Has there been shoreline erosion during preceding 12 months?
 Yes No NA
 (ii) If yes, state amount of erosion and source of erosion amount information.

- g. Number of square feet of fill to be placed below water level.
 Bulkhead backfill _____ Riprap _____
 Breakwater/Sill _____ Other _____
- h. Type of fill material.

- i. Source of fill material.

4. OTHER FILL ACTIVITIES

(Excluding Shoreline Stabilization)

This section not applicable

- a. (i) Will fill material be brought to the site? Yes No NA
 If yes,
 (ii) Amount of material to be placed in the water 202 CY
 (iii) Dimensions of fill area approx 32x 78. 2578sf below MHW
 (iv) Purpose of fill
rock base for concrete ramp, and concrete ramp itself

- b. (i) Will fill material be placed in coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW _____ SAV _____ SB _____
 WL _____ None
 (ii) Describe the purpose of the fill in these areas:

5. GENERAL

- a. How will excavated or fill material be kept on site and erosion controlled?
material will be surrounded by silt fence until dry enough to transport, then will be taken to an approved waste site.

- b. What type of construction equipment will be used (e.g., dragline, backhoe, or hydraulic dredge)?
long reach trackhoe, and barge mounted trackhoe

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

- d. (i) Will wetlands be crossed in transporting equipment to project site? Yes No NA
 (ii) If yes, explain steps that will be taken to avoid or minimize environmental impacts.

19 JAN 10

Date

SUNSET BEACH PROPOSED BAA

Project Name

THOMAS T COVINGTON, NCWRC

Applicant Name

Thomas T Covington

Applicant Signature

UPLAND DEVELOPMENT

(Construction and/or land disturbing activities)

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

GENERAL UPLAND DEVELOPMENT

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

1 - parking lot with stormwater infiltration basin

b. Number of lots or parcels.

1

c. Density (give the number of residential units and the units per acre).

0

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

65,485 SF

e. If the proposed project will disturb more than one acre of land, the Division of Land Resources must receive an erosion and sedimentation control plan at least 30 days before land-disturbing activity begins.

(i) If applicable, has a sedimentation and erosion control plan been submitted to the Division of Land Resources?

Yes No NA

(ii) If yes, list the date submitted:

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

asphalt and concrete

g. Give the percentage of the tract within the coastal shoreline AEC to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.

22,725 SF total with 6,559 SF impervious proposed w/in AEC, so 28.9%

h. Projects that require a CAMA Major Development Permit may also require a Stormwater Certification.

(i) Has a site development plan been submitted to the Division of Water Quality for review?

Yes No NA

(ii) If yes, list the date submitted: _____

i. Give the percentage of the entire tract to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.

77,327 SF total with 40,648 SF impervious so 53%

k. Have the facilities described in Item (i) received state or local approval?

Yes No NA

If yes, attach appropriate documentation.

j. Describe proposed method of sewage disposal.

N/A

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

surface runoff after passing through a 50' vegetated filter

m. Does the proposed project include an innovative stormwater design?

Yes No NA

If yes, attach appropriate documentation.

Form DCIM MP-3 (Upland Development, Page 2 of 2)

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

N/A

n. (i) Will water be impounded? Yes No NA

(ii) If yes, how many acres? _____

o. When was the lot(s) platted and recorded?

deed - 9/19/2008, plat - 9/7/2005

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?

Yes No NA

19 JAN 10

Date

SUNSET BENCH DAA

Project Name

THOMAS T. COVINGTON, NCWRC

Applicant Name

Thomas J Covington IV

Applicant Signature

Form DCM MP-4

STRUCTURES

(Construction within Public Trust Areas)

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

1. DOCKING FACILITY/MARINA CHARACTERISTICS

This section not applicable

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

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

c. (i) Dock(s) and/or pier(s)
(ii) Number 2
(iii) Length 80' floating dock, 121' fixed fishing pier
(iv) Width 8' wide floating dock, 6' wide walkway fishing pier with 8' wide T.
(v) Floating Yes No

d. (i) Are Finger Piers included? Yes No
If yes:
(ii) Number 1
(iii) Length 40'
(iv) Width 8'
(v) Floating Yes No

e. (i) Are Platforms included? Yes No
If yes:
(ii) Number 1
(iii) Length 50'3"
(iv) Width 8
(v) Floating Yes No

f. (i) Are Boatlifts included? Yes No
If yes:
(ii) Number _____
(iii) Length _____
(iv) Width _____

Note: Roofed areas are calculated from dripline dimensions.

g. (i) Number of slips proposed
0
(ii) Number of slips existing
0

h. Check all the types of services to be provided.
 Full service, including travel lift and/or rail, repair or maintenance service
 Dockage, fuel, and marine supplies
 Dockage ("wet slips") only, number of slips: _____
 Dry storage; number of boats: _____
 Boat ramp(s); number of boat ramps: 2
 Other, please describe:

i. Check the proposed type of siting:
 Land cut and access channel
 Open water; dredging for basin and/or channel
 Open water; no dredging required
 Other; please describe:

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

k. Typical boat length: 18-25'

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

m. (i) Will the facility have tie pilings?
 Yes No
(ii) If yes number of tie pilings?

2. DOCKING FACILITY/MARINA OPERATIONS

This section not applicable

a. Check each of the following sanitary facilities that will be included in the proposed project.

Office Toilets

Toilets for patrons; Number: _____; Location: _____

Showers

Boatholding tank pumpout; Give type and location: _____

b. Describe treatment type and disposal location for all sanitary wastewater.

N/A

c. Describe the disposal of solid waste, fish offal and trash.

There may be trash receptacles placed on site, which will be serviced by the town of Sunset Beach. If these are not present, maintenance personell will police the area at a to be determined frequency to ensure cleanliness of the site.

d. How will overboard discharge of sewage from boats be controlled?

It will not be allowed on site, as most boats using the site will not have toilet facilities

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

N/A

(ii) Give the location and number of "Pumpout Available" signs proposed.

N/A

f. Describe the special design, if applicable, for containing industrial type pollutants, such as paint, sandblasting waste and petroleum products.

N/A, not allowed on site

g. Where will residue from vessel maintenance be disposed of?

N/A, not allowed on site

h. Give the number of channel markers and "No Wake" signs proposed. 1 No Wake buoy placed within 50 yards of the end of the breakwaters

i. Give the location of fuel-handling facilities, and describe the safety measures planned to protect area water quality.

N/A, none planned

j. What will be the marina policy on overnight and live-aboard dockage?

Not allowed

k. Describe design measures that promote boat basin flushing?

The vinyl groins will have 2" gaps every two feet, extending from MHW to existing bottom.

l. If this project is an expansion of an existing marina, what types of services are currently provided?

N/A

Form DCM MP-4 (Structures, Page 3 of 4)

- m. Is the marina/docking facility proposed within a primary or secondary nursery area?
 Yes No
- n. Is the marina/docking facility proposed within or adjacent to any shellfish harvesting area?
 Yes No
- o. Is the marina/docking facility proposed within or adjacent to coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW _____ SAV _____ SB _____
 WL _____ None
- p. Is the proposed marina/docking facility located within or within close proximity to any shellfish leases? Yes No
If yes, give the name and address of the leaseholder(s), and give the proximity to the lease.

3. BOATHOUSE (including covered lifts)

This section not applicable

- a. (i) Is the boathouse structure(s):
 Commercial Public/Government Private/Community
- (ii) Number _____
- (iii) Length _____
- (iv) Width _____

Note: Roofed areas are calculated from dripline dimensions.

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

This section not applicable

- a. (i) Number 2
- (ii) Length 130' on east side, 115' on west side
- (iii) Width 1.5'

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

This section not applicable

- a. Length _____
- b. Average distance from NHW, NWL, or wetlands _____
- c. Maximum distance beyond NHW, NWL or wetlands _____

6. MOORING PILINGS and BUOYS

This section not applicable

- a. Is the structure(s):
 Commercial Public/Government Private/Community
- b. Number _____
- c. Distance to be placed beyond shoreline _____
Note: This should be measured from marsh edge, if present.
- d. Description of buoy (color, inscription, size, anchor, etc.)

- e. Arc of the swing _____

7. GENERAL

Form DCM MP-4 (Structures, Page 4 of 4)

a. Proximity of structure(s) to adjacent riparian property lines
31' east side, 175' to closest portion on west side

b. Proximity of structure(s) to adjacent docking facilities.
approx 300' to private pier

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

c. Width of water body
400'

d. Water depth at waterward end of structure at NLW or NWL
-4.0 at NLW

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

8. OTHER

This section not applicable

a. Give complete description:

Site is to be used as a public boatramp, designed and built by the NC Wildlife Resources Commission, but operated and maintained by the Town of Sunset Beach. Construction proposals include a paved parking lot with a stormwater infiltration basin, and a concrete launch ramp with a floating dock, with vinyl groins on either side providing a dredged area deep enough to use at low water.

19 JAN 10
Date

SUNSET BEACH BAA
Project Name

THOMAS T. COVINGTON, NCWRC
Applicant Name

Thomas T. Covington III
Applicant Signature



☒ North Carolina Wildlife Resources Commission ☒

Narrative for the Town of Sunset Beach's proposed Boating Access Area

Existing Conditions:

The town of Sunset Beach purchased the lot that the proposed area is to be located on with the express purpose of providing more public access to the water. The DOT Right of Way east and adjacent to the property will be turned over to the town upon completion of the new high rise bridge. Currently, the site is predominantly an open lot, with a wooden bulkhead and several large trees left in place from when the lot was originally cleared. Its current use is as a lay down yard for the construction of the new high rise bridge. The lot size is approximately 58000SF, with the DOT ROW lending another 19000SF to the overall size of the tract. Wetlands were delineated by the COE for the high rise bridge project, and approval will be submitted with the permit application. Coastal marsh fairly well covers all areas along the lots shorelines from MLW to MHW except under the footprint of the existing bridge that is to be removed. Based on soil borings done at the site, the seasonal high water table is at approximately 9.0', using normal low water as elevation 0'.

Proposed:

Project Description

The North Carolina Wildlife Resources Commission (WRC) has partnered with the town of Sunset Beach to provide design and construction services for a new public access facility. The proposed boating access area will include a single slab concrete boat ramps with asphalt apron, two vinyl sheet pile breakwaters, one floating boarding pier, and a walkway to a proposed fishing pier. Also included will be a paved parking area with a stormwater infiltration basin sized to handle the one year 24 hours storm amount of 3.7 inches. Soil testing has already been performed and the site has been found excellent for infiltration, with rates from 23 to 47 in/hr. There will be 26 regular vehicle with trailer parking spaces and 2 ADA vehicle with trailer parking spaces. In addition, for the public fishing area, there will be a single ADA parking space, and 10 single vehicle parking spaces on site. The ramp dimension will be 15' x 100'. Both sheet pile walls are identical with dimensions of approximately 1.5' by 130'. The wood floating dock dimensions will be 8' x 80' with an 8' x 40' dogleg as a queuing location, with an 8' x 30' concrete abutment. Also proposed is a public fishing pier. The pier will be 6' by 110' to the T section, and the T section is proposed to be 8' x 50'. Entrance to the access area will be from Canal Drive. The project site is located at the landward terminus of SR

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720

Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162



☒ North Carolina Wildlife Resources Commission ☒

109/SR1172. Current land use surrounding the project area is heavily developed with residential dwellings to the west of the land used for a new DOT high rise bridge, and a commercial development to the east of the property. There is 21,864SF within the AEC, and 6,972SF is proposed impervious, which is 31%. There is a total of 75,619SF for the entire site and 39,294SF is proposed impervious, which is 52%. Current impervious comes from the existing roadway, and is 9961SF.

Need for the Proposed Project

Providing public access for recreational uses of wildlife and fisheries resources is important to accomplishing the WRC's overall management objectives. The Boating Safety Act (G. S. 75A-1 et seq.) contains provisions for funding and expenditures to purchase or lease areas for constructing boating access facilities [G. S. 75A-3(c)]. The Town of Sunset Beach used public funds in addition to grant monies to purchase the site, and the WRC will be expending public funds generated by license sales and taxes to fund the design and construction of the project. As of 2009, the WRC has constructed approximately 210 boating access areas across North Carolina. Requests for new access areas are received on a regular basis.

Improvement at the proposed project site will enhance public access to the AICW for anglers, recreational boaters and waterfowl hunters. The project site is currently undeveloped or is in use at a right of way for the road across the AICW.

The demand for new boating access areas statewide continues to increase. The popularity of boating access areas has lead to overcrowding, and long waits for loading and unloading boats are being experienced. Presently, the closest Wildlife boat ramp is the Ocean Isle Beach BAA, which is undersized pertaining to the amount of use it receives. A developed facility on Sunset Beach will help alleviate overcrowding at surrounding boat launches.

Alternatives Considered

The objective of the proposed project is to provide a facility that will enhance public access to the waters of the area. Alternatives to the proposed project were not considered, as none would accomplish the project objective. The original planned use for the site was to have the NCDOT leave a portion of the old bridge in place, and have it used as a public fishing structure. The project expands on this yet still includes the original need, but in a location where fishing and boating can take place on the same site, with a minimum of impacts and interference. Likewise, alternate site locations were not considered as proposed site and the private holdings adjacent to the site have all been

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720

Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162



☒ North Carolina Wildlife Resources Commission ☒

developed, thereby minimizing the impacts of the improved access area. Finally, there is very limited public access in the area, and the town of Sunset Beach purchased the property with the main intent of preserving public access to the water. The location of this site coupled with the intent of the town to provide water access serves an important public access need. The design was based on the towns request for adequate launch and retrieval methods that would cause a minimum of congestion and wait times. The proposed activities are intended to bring an existing vacant lot within acceptable design standards that all of the public can enjoy.

Cultural resources:--There are no known cultural or archaeological resources on the access area site; however, a formal archeological survey on this site has not been conducted. Until construction of the current community, the majority of the site was most likely part of a vast freshwater marsh complex. Prior to the site's current condition, a commercial enterprise was on the property.

Description of the Proposed Action

Boat ramp:--A single lane 100' x 15' reinforced concrete boat ramp will be constructed underneath the footprint of the existing bridge over the waterway. Approximately 315 yd³ of material below normal high water level (NHW) will be excavated during construction of the boat ramp in order to achieve proper boat launching depth. Maximum dredging depth will be reached at approximately 60' beyond the proposed end of ramp and it will not exceed 4' below NLW. Substrate beyond maximum dredging depth will be sloped to existing grade. All dredged material will be placed in a temporary dewatering area on site, surrounded by silt fence, until it is sufficiently dry to allow for transport in on-highway dump trucks to the high ground spoil site noted in the application. There is no fill other than construction materials and a portion of the dredge spoils proposed for this project.

Breakwaters and Bulkheads:--Two 130' x 1.5' vinyl walls will be constructed adjacent to the concrete ramp. The walls will act as bulkheads until they connect with the existing bulkhead, and then 2" slots will be cut from where the existing bottom meets the wall to above MHW to allow for fish and other animal passage.

Pier:--One 80' x 8' floating wooden pier will be constructed between the breakwaters, on the right side of the ramp, with an 8' x 40' dogleg extending past the western breakwater and running parallel, but outside of, the COE setback line. This dogleg will allow for people to que up to the ramp area and tie off, rather than drift and

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720

Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162



☒ North Carolina Wildlife Resources Commission ☒

cause confusion when retrieving their boats. The pier will be used to assist with the launching and retrieving of boats at the access area.

Fishing Pier:--A 6' x 110' with a 8' x 50' T shaped fixed type fishing pier is also proposed. The pier will be elevated as prescribed in the CAMA rules and also maintain ADA integrity.

Existing Bridge Removal:--The permitted NCDOT plans currently call for a portion of the bridge to remain in place after their work is complete, but a modification to their permit will need to be made to allow for complete removal if the proposed work is approved.

Environmental Impacts from the Proposed Action

Terrestrial:-- Because the majority of the project area is currently heavily developed, direct impacts to terrestrial species will be negligible, and no upland or riparian habitats will be altered. Currently, human activity in the proximity of the project area includes private boat docks, breakwaters, bulkhead shorelines and residential dwellings. The area is PNA, and as designed, WRC and the Town of Sunset Beach realizes that it will be denied a permit. We plan to go through the variance process. There is no coastal marsh impact for the current design. Locations of the proposed boat ramp, breakwaters, and pier were selected to minimize impacts to aquatic resources and associated habitat. Noise levels will increase as construction equipment (bulldozer, backhoe, and trackhoe) is used to improve the access area. However, such adverse impacts will be short-term and will not exceed levels currently found on construction sites utilizing similar equipment.

Socio-economic:--Socio-economic impacts of the project site are generally regarded as positive since availability of the access area will result in greater use of commercial businesses in the immediate vicinity. Due to the location of this project site within a residential community, improvement of the access area may increase property values in the surrounding area as a greater variety of boats will be able to gain access to Masonboro Sound and the AICW.

Mitigation for Unavoidable Environmental Impacts

Terrestrial and Aquatic Resources:--Due to the developed nature of the project site, direct environmental impacts from this project will be minimal landward, and have been minimized to the practical extent of the current design. WRC is open to mitigation concerning the proposed impacts to the coastal marsh as the site is currently designed

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720

Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162



☒ North Carolina Wildlife Resources Commission ☒

PNA. No increases in impervious surface or stormwater runoff are expected after the proposed facility is constructed.

The placement of erosion control stone beneath the boat ramp will provide hard substrate not presently available in the project area. These areas may be colonized to some extent by various aquatic organisms tolerant of the characteristics of the altered habitat. Small fish species may also utilize the stone rip-rap as cover from predators.

To minimize localized turbidity after project completion, a no-wake zone will be established within 50 yards of the access area.

Summary

The North Carolina Wildlife Resources Commission is proposing to build a boating access area located at the landward side of the future terminus of SR 1172. Due to the developed conditions of the surrounding community, very little upland habitat will be altered to accommodate the proposed access area. The majority of the surrounding area is currently heavily developed with private boat ramps, breakwaters and dwellings. Total area to be excavated during construction of a single lane concrete ramp, two vinyl breakwaters, one floating courtesy dock, and a public fishing pier include 315 yd³ below normal high water level. Locations of proposed boat ramp, breakwaters, and pier were selected to minimized impacts to aquatic habitat. There is no fill material proposed for this project except construction materials.

Benefits from the access area include increased public recreational opportunity on the AICW. A developed facility in Sunset Beach will help alleviate overcrowding at surrounding boat launches. It is anticipated that the boat ramp will receive increased utilization immediately after completion. Use of the access area will benefit the local economy as fishermen and recreational boaters patronize commercial businesses in the vicinity of the project area. There are impacts to the aquatic and terrestrial habitat that the WRC would like to ensure are minimal based on the requested schematics.

Tom Covington
Facilities Construction and Capital Projects Engineer
919-707-0154
tom.covington@ncwildlife.org

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720
Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

July 13, 2009

Gary Parker
Administrator, Town of Sunset Beach
700 Sunset Boulevard North
Sunset Beach, NC 28468

Dear Mr. Parker:

In response to your letter dated June 17, 2009, concerning a proposed boat ramp on the mainland side of SR 1172, the Department has the following comments:

NCDOT does plan to abandon the Right-of-Way on this portion of SR 1172 once the current project is complete. This process will go through our R/W abandonment committee.

Based on the sketch you provided from NCWRC, it appears that some of the parking or circulation road will encroach on the R/W of the new bridge to the west. If the proposed design does encroach on this new R/W, a Joint Use Agreement between NCDOT and the NCWRC will be required along with an encroachment agreement. The NCWRC will need to apply for an encroachment and provide a plan of the ramp. They may contact our District Engineer Anthony Law if they have any questions at (910) 251-2655.

Thank you for your interest in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Allen Pope".

H. Allen Pope
Division Engineer

HAP:jwp

Cc: Anthony Law, District Engineer
Wayne Currie, PE, Resident Engineer
NCWRC

124 Division Drive
Wilmington, NC 28401
Phone (910) 251-5724 Fax: (910) 251-5727

Sep 17, 2009 10:05:18 AM

OCP AP

DOCUMENT GENERAL INFORMATION

DGI

NEXT FUNCTION: _____ ACTION: _____ HISTORY: _____ 09/17/2009 10:05:08

=====

PAY ENTITY	:	17PT	VENDOR/EMP NUMBER:	566000372 40
VEND/EMP SHORT NAME:	:	DENR	DOCUMENT NUMBER :	SUNSET091509
DOCUMENT DATE	:	09/15/2009		

CONTROL NUMBER	:	0266	CONTROL DATE	:	09/15/2009
DOCUMENT TYPE	:	INVOICE	APPLICATION AREA	:	JS
DOCUMENT STATUS	:	PD-FULL	DATE ENTERED	:	09/15/2009
CURRENCY CODE	:		DATE LAST UPDATED:	:	09/15/2009
GROSS DOC AMOUNT	:	400.00	PROV ACCTG DATE	:	

AMOUNT PAID	:	400.00
COUNTY CDE/TRIP NBR:	:	
PO REFERENCE	:	

SIGN APPROVAL CODE :
DATES APPROVED :

REMIT MESSAGE: CAMA MAJOR PERMIT FOR SUNSET BEACH BAA

Sep 17. 2009 10:05:29 AM

OCF AP

DOCUMENT PAYMENT GENERAL INFORMATION

DPG

NEXT FUNCTION: _____ ACTION: _____ HISTORY: _ 09/17/2009 10:05:22
BROWSE: _

=====

PAY ENTITY	:	17PT	VEND/EMP NBR:	566000372 40
VEND/EMP SHORT NAME:	:	DENR	DOCUMENT NBR:	SUNSET091509
DOCUMENT DATE	:	09/15/2009	PAYMENT NBR:	001 PRTL PYMT NBR: 000

	IND	AMOUNT		
SALES TAX/VAT	:		VAT INCLUSIVE	: N
SALES TAX 2	:		EXPENSE IND	:
SALES TAX 3	:		GL EFFECTIVE DATE:	09/16/2009
FREIGHT	:		EXTRACT DATE	:
ADDITIONAL COST	:		ACCRUAL CANC DATE:	

GROSS INVOICE	:	400.00	CURRENCY CODE	:
PAYMENT AMOUNT	:	400.00	DISCOUNT TYPE	: NOT TAKEN
AMOUNT PAID	:	400.00	DISCOUNT TAKEN	: .00

			PAYMENT STATUS	: PAID
PAYMENT TERMS	:	NET PAY IMMEDIATELY	PAYMENT REF NBR	: 0000039507
PAYMENT DATE	:	09/16/2009	PAYMENT TYPE	: ELECTRONIC
PAYMENT ROUTE CD	:		HANDLING CODE	:
FACTOR NUMBER	:		ONE INVC PER PYMT:	YES
REASON CODE/DESC	:		BANK ACCT PYMT CD:	IGO

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Mr. Ronald Holden
 3852 Holden Rd SW
 Charlotte NC 28549

RECEIVED
 SEP 14 2009
 NCWRC ENGINEERING

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 Ronald Holden

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

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

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number 7000 1670 0002 3544 4722
 (Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Mason Hearndon, NCDOT
 124 Division Drive
 Wilmington NC 28411

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 Mason Hearndon 9-10-09

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

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

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number 7000 1670 0002 3544 5071
 (Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



Presenter: M. R. Isenberg et: ISS
Total: 17 Fee: 100
2 Ck \$ 3851 Cash \$ 1794.70
Refund: _____ Cash \$ _____ Finance _____
 Portions of this instrument are to be recorded in condition of original.
 Document contains a copy of the original instrument that cannot be reproduced or copied. HR

GIFT DEED

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

THIS DEED, made this 30th day of June, 2008, by and between SUNSET BEACH & TWIN LAKES, INC., a North Carolina corporation, hereinafter, whether one or more, referred to as "GRANTOR," and the TOWN OF SUNSET BEACH, a North Carolina municipal corporation, whose mailing address is 700 Sunset Blvd. North, Sunset Beach, NC 28468, hereinafter, whether one or more, referred to as "GRANTEE":

WITNESSETH:

THAT the Grantor, as a gift and charitable contribution to the Grantee, has and by these presents does grant, release and convey unto the Grantee in fee simple, all of its interest in that certain lot or parcel of land situated in Sunset Beach, Shallotte Township, Brunswick County, North Carolina, and more particularly described as follows:

BEING that certain parcel of property bounded on the north by the southern line of the property conveyed to Sunset Bridge Partners, LLC in Book 2233 at Pages 699 and 702 of the Brunswick County Registry, on the south by the channel of the Atlantic Intracoastal Waterway, and on the east and west by the eastern and western lines of the property conveyed to Sunset Bridge Partners above-described extended southerly to the channel of said waterway. This parcel is also part of tax parcel 256HB006.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land, and all privileges and appurtenances thereto belonging, to the Grantee in fee simple.

Prepared by: Michael R. Isenberg, Attorney at Law
P. O. Box 11028, Southport, NC 28461
Without Opinion on Title

IN WITNESS WHEREOF, the Grantor has hereunto executed this deed, the day and year first above written.

SUNSET BEACH & TWIN LAKES, INC.

By: Edward M. Gore, Jr. (SEAL)
Its President

 B2840 P0393 09-19-2008 12:15:34.002
Robert J. Robinson
Brunswick County, NC Register of Deeds page 2 of 2

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Kimberly H. Cochran, a Notary Public in and for the state and county aforesaid, do hereby certify that Edward M. Gore personally came before me this day and acknowledged that he is the President of Sunset Beach & Twin Lakes, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, he voluntarily signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and official seal this the 30th day of June, 2008.

Kimberly H. Cochran
Kimberly H. Cochran, Notary Public

My commission expires: Oct. 31, 2008





☒ North Carolina Wildlife Resources Commission ☒

Sept 4, 2009

CERTIFIED RETURN
RECEIPT REQUESTED

Mason Herndon, NCDOT Environmental Supervisor
124 Division Drive.
Wilmington, NC 28411

Dear Mason:

The North Carolina Wildlife Resources Commission is preparing to file a CAMA Major Development permit for proposed development of a public boating access facility on the southern landward side of the old bridge crossing the Intercoasted Waterway, on Hwy 1172. Our records show that you are an adjacent riparian landowner and under the provisions of General Statute 113-229 we are sending you copies of drawing(s) that illustrate proposed development. The enclosed form may be used if you desire to provide comments.

Sincerely,

Tom Covington

Tom Covington, Facility Engineer
Division of Engineering Services
919-707-0154
tom.covington@newwildlife.org

RECEIVED

SEP 10 2009

DIVISION 3 OFFICE

enclosures

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720
Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

I hereby certify that I own property adjacent to N.C. DEPT. OF TRANSPORTATION's
(Name of Property Owner)

property located at N/A
(Lot, Block, Road, etc.)

on ATLANTIC INTERCOASTAL WATERWAY, in SUNSET BEACH, N.C.
(Waterbody) (Town and/or County)

Applicant's phone #: 910-251-5724 Mailing Address: 124 DIVISION DRIVE
WILMINGTON, N.C. 28401

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

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

(Information for Property Owner Applying for Permit) (Riparian Property Owner Information)

Mailing Address _____ H.A. POPE / A.R.E. Signature
City/State/Zip _____ H.A. POPE / AL ENGLISH JR. Print or Type Name
Telephone Number _____ 910-251-5724 Telephone Number
Signature _____ 9/16/09 Date



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

Date SEPT. 28, 2009

Name of Property Owner Applying for Permit:

TOWN OF SUNSET BEACH

Mailing Address:

700 SUNSET BLVD

SUNSET BEACH, N.C. 28468

I certify that I have authorized (agent) Thomas J. Covington / NCWRC to act on my behalf, for the purpose of applying for and obtaining all CAMA Permits necessary to install or construct (activity) A PUBLIC BOATING & FISHING ACCESS AREA, at (my property located at) 101 SUNSET BLVD, SUNSET BEACH NC.

This certification is valid thru (date) 1 JAN 2015.

TOWN OF SUNSET BEACH-----Larry Crim

Property Owner Signature

9-28-09
Date



Fax: 910.754.5880
Office: 910.754.6023

5621 Beach Dr.
Ocean Isle, NC 28469

September 9, 2009

Town of Sunset
Attn: Mr. Larry Crimm
600 Pineview Dr Sunset Beach NC 28468

Subject: Disposing of bad fill

To whom it may concern:

The Town of Sunset has my permission to dispose of any dredging materials on JP Russ and Son's permitted borrow pit located on 1261 Hale Swamp Road, Shallotte NC 28470. If you have any questions give me a call at 910-443-1100. Thanks

Thank you,

A handwritten signature in black ink, appearing to read "D. Russ".

Daniel Russ
J. P. Russ & Son, Inc.
5621 Beach Dr. Sw
Ocean Isle Beach NC 28469



☒ North Carolina Wildlife Resources Commission ☒

Division of Engineering Services • 1720 Mail Service Center • Raleigh, NC 27699-1720

September 28, 2009

Ms. Debbie Wilson
NCDENR, Division of Coastal Management
127 Cardinal Drive Ext.
Wilmington, NC 28405-3845

Re: Major Permit Application, Proposed Sunset Beach Boating Access Area, Brunswick County

Dear Ms. Wilson:

Please find enclosed a major permit application for a proposed boating access area at 101 Sunset Blvd, in Sunset Beach, Brunswick County. Also included are the narrative, required copy of the plans, the deed, the Agent Authorization Letter, Riparian landowner notifications, and a receipt for electronic transfer of the funds required by the permit. The Commission has made an electronic funds transfer in the amount of \$400 to NCDNR to cover the permit fee (see attached Electronic Payment Ref. No. 0000039507). This amount was determined based on the requested fee shown on the website.

This project is based on a Memorandum of Agreement between the Town of Sunset Beach and the NCWRC, in response to public requests for improved fishing and boating opportunities, where the WRC would provide design and construction assistance, but the town would maintain ownership, control, and provide design specifications. The proposed site is on the AIWW, and is currently in use as an unimproved lot and construction lay down yard for the new high rise bride. The project will consist of placing two new concrete boat ramps, with a wooden floating dock in between for boat access. There will also be an elevated wooden fishing pier on site. Plans include an infiltration basin and grading so that stormwater flows to the basin. We feel that these improvements will greatly enhance the site, while minimizing the potential for decreasing stormwater runoff quality. There will be sediment fence installed and maintained between the excavation site and the water's edge during construction. Any disturbed earth will be stabilized by seeding and installation of coir erosion control matting.

Understanding that this project, by nature, will have to be denied and go through the CRC variance process, I would sincerely appreciate any help you may give. Also, although the town was made aware of opposition to the plans containing two ramps, they have requested that I submit the plans with a double ramp shown.

If you have any questions or comments regarding this project, please feel free to contact me at (919) 707-0154 or tom.covington@ncwildlife.org.

Sincerely,

Tom Covington
Facilities Construction and Capital Projects Engineer

enclosure



☒ North Carolina Wildlife Resources Commission ☒

16 Nov 09

North Carolina Department of Environment and Natural Resources
Division of Coastal Management
Debbie Wilson
127 Cardinal Drive Extension
Wilmington, NC 28405

RE: CAMA Major Permit Application, Sunset Beach Boating Access Area, Sunset Beach, Brunswick County

Dear Ms. Wilson:

Please find attached a modified set of plans and application documents, based on the changes you recommend below. A response in bold is indicated below your requested actions.

1. Form DCM MP-1, item 4f, should include the existing road and bridge.
The form has been modified to include the existing road and bridge.
2. Form DCM MP-1, item 4 must include all details and existing conditions on for the entire project area.
The form has been modified to include all details and existing conditions to the best of my knowledge.
3. Form DCM MP-1, item 6(g) must be completed. This must include all previous permits.
The form now includes a list of all previous permits to the best of my knowledge. Thank you for your assistance in locating them.
4. Form DCM MP-2, item 4(b) indicates 1790 sq. ft. of coastal wetlands to be filled. However, Sheet 4 of 8 indicates 1250 sq. ft. of coastal wetlands to be filled, please clarify. Also, the Project Name must be filled in on the bottom of the form.
Upon further review, both quantities were incorrect, and both the sheet and the form were changed to the correct number, 482 SF.
5. Form DCM MP-3, item (a) must include the parking lot. Also, items (e & h) indicate that no Stormwater plan nor Sedimentation and Erosion Control Plan has been submitted for approval. Please explain since more than an acre of disturbance is proposed and more than 30% impervious surface coverage is proposed within the 75' AEC.
The form has been modified to show the parking lot. No Stormwater or Sedimentation and Erosion Control Plan has been submitted due to the understanding that this project will have to undergo the variance process before approval. Both Stormwater and S&EC permit applications will be sent in upon confirmation of variance approval.
6. Form DCM MP-4, item 1(c) indicates that both docks are to be 8' in width however, Sheet 4 of 8

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720
Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162

indicates the fishing pier width is 6'. Also item 1(e) must include details of the proposed platform on the fishing pier.

Item 1(c) has been changed to reflect the accurate width of the fishing pier. Item 1(e) has been changed to reflect the details of the platform.

7. Must include a copy of a written agreement between the Town of Sunset Beach and the NC Dept. of Transportation for the transfer of the existing bridge site upon completion of the new bridge.

Attached is a letter from the NCDOT outlining that the abandonment of the ROW will take place after completion of the new bridge project, but that the process will have to go through their abandonment committee.

8. On Sheet 2 of 8, Most of the details are written upside down. Also, please show the width of the waterbody (waterward edge of marsh to waterward edge of marsh) and label the waterbody (A1WW).

The plans have been rotated to show the details right side up, and the width and name of the waterbody has been added.

9. The workplan drawings indicate a 50' CAMA line. CAMA does not have a 50' setback line, this may be a setback line for DWQ, If so, please label correctly.

The line has been removed from the plans.

10. Workplan drawings must indicate all existing Coastal and "404" wetlands (both upper and lower limits). I believe the Corps did a "404" delineation.

Workplans now show wetlands based on a delineation the NCDOT had performed.

11. Sheet 4 of 8 must include dimensions of the stormwater basins, as well as the handicap parking spaces and the existing bulkhead.

Sheet 4 of 8 has been changed to reflect the required dimensions.

12. Sheet 5 of 8 must be to scale and indicate the 80' Federal Channel Setback.

Sheet 5 of 8 has been modified to show the proper scale and the 80' USACE Setback.

13. Please indicate the location of the temporary spoil dewatering site as well as details of containment system i.e. silt fence, etc.

The location and details of containment are now indicated on Sheet 6 of the plans.

14. Sheet 8 of 8 indicates the overall width of the proposed fishing pier is 6' 8" however, Sheet 4 of 8 indicates 6' in width, please clarify.

Plans have been changed to indicate 6' of width.

Thank you for your time in reviewing and processing the application. Please let me know if there are any additional items I need to address.

Sincerely,

Tom

Tom Covington
Facilities Construction and Capital Projects Engineer
919-707-0154
tom.covington@ncwildlife.org



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

July 6, 2010

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Town of Sunset Beach
Mr. Gary Parker
700 Sunset Boulevard
Sunset Beach, NC 28468

Dear Mr. Parker:

This letter is in response to your application for a Major Permit under the Coastal Area Management Act (CAMA), in which authorization was requested to construct a new public boat ramp facility, floating dock, breakwater, fishing pier, parking lot and dredge a new access channel, in Brunswick County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Regional Office on January 19, 2010, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The subject property is located adjacent to the Atlantic Intracoastal Waterway (AIWW) and is located within a Primary Nursery Area (PNA), as designated by the North Carolina Marine Fisheries Commission.
- 2) The boat ramp and new access channel are proposed to take place within the footprint of the existing Sunset Beach Bridge. The existing bridge will be removed following completion of a new bridge to Sunset Beach.
- 3) The proposed project consists of new dredging in a Primary Nursery Area (133' long by 29' wide), resulting in the loss of 3,857 square feet of PNA habitat.
- 4) During the course of the joint State and Federal application review of the proposed project, the N.C. Division of Marine Fisheries (DMF) indicated that while their agency generally objects to the new dredging within a PNA, the DMF agrees that the proposed project provides for an opportunity for re-development within the PNA. The DMF further stated that they did not oppose the proposed project as long as all excavation takes place within the footprint of the existing bridge. The N.C. Wildlife Resources Commission also stated that they generally opposed new dredging within a PNA, but that they did not oppose the current proposal due to the disturbed nature of the project site.

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

Mr. Gary Parker
Town of Sunset Beach
July 6, 2010
Page 2

- 5) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following rule of the Coastal Resources Commission:
- a) 15A NCAC 07H.0208(b)(1), which states that "Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands

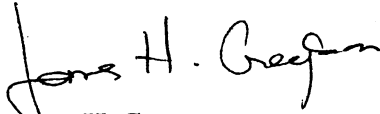
Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit under the Coastal Area Management Act be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the state guidelines for Areas of Environmental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

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

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

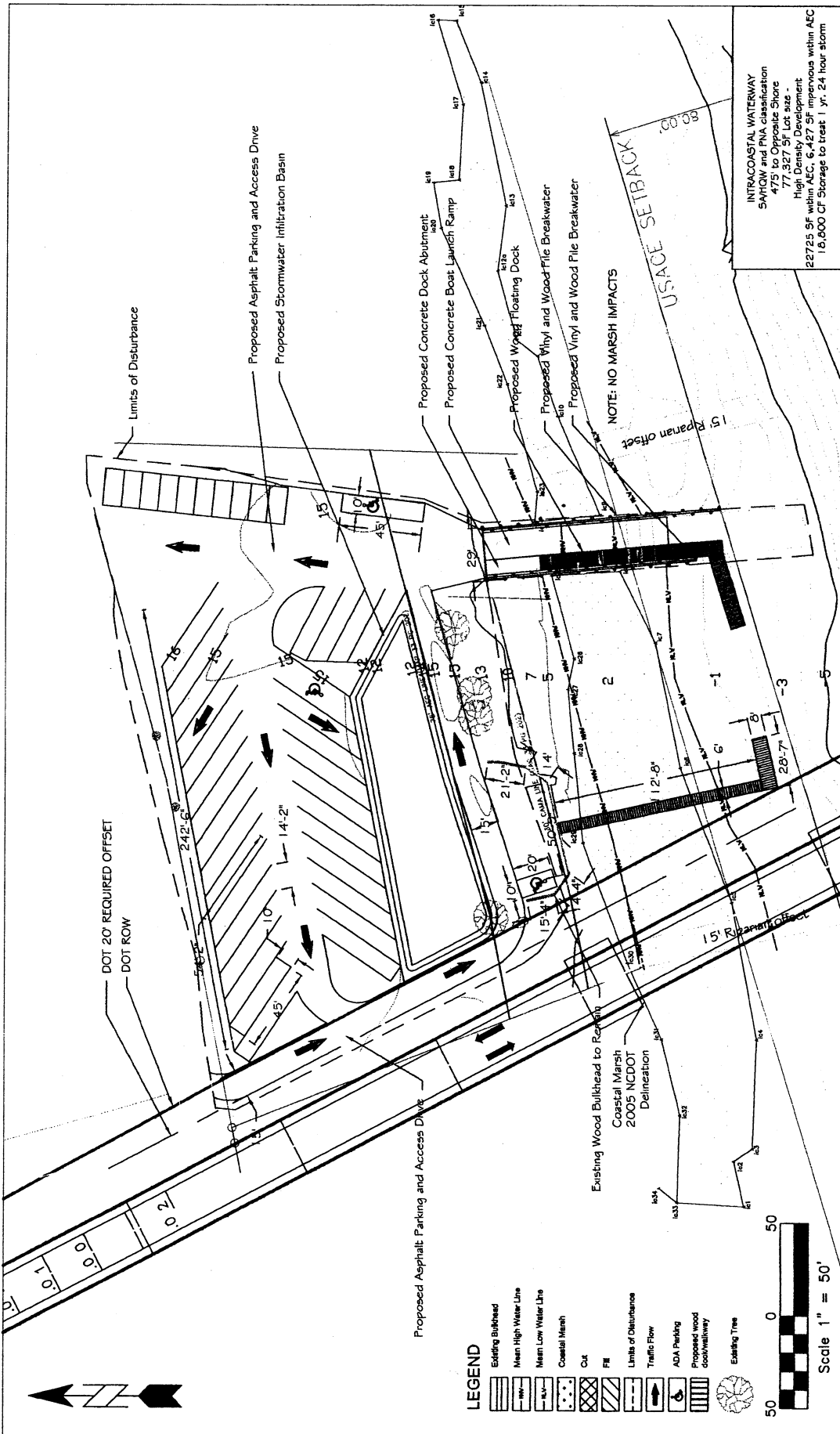
Members of my staff are available to assist you should you desire to modify your proposal in the future. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, extension ~~211~~ 212

Sincerely,



James H. Gregson

cc: Colonel Jefferson M. Ryscavage – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD
Dave Timpy, USACE
DCM – Wilmington



INTRACOASTAL WATERWAY
SAYBOW and PNA classification
475' to Opposite Shore
77,927.57' Lot size -
High Density Development
22725 SF within AEC, 6,427 SF impervious within AEC
18,800 CF Storage to treat 1 yr. 24 hour storm

DESIGN ENGINEER: Tom Conroy	DATE: March 2010
SCALE: 1/50	Proposed
REVISION	
CADD FILE ID: C:\Sunset Beach.DWG	

WILDLIFE RESOURCES COMMISSION
118.707.9166 OFFICE 818.707.8182 FAX
118.707.9168

March 2010



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

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

RECEIVED
FEB 25 2010
NCDENR ENGINEERING

February 16, 2010

Wildlife Resources Commission
Mr. Thomas Covington
1720 Mail Services Center
Raleigh, NC 27699-1720

Dear Mr. Covington,

The Division of Coastal Management hereby acknowledges receipt of your application, acting as agent for the Town of Sunset Beach, for State approval for development of property located at 101 Sunset Blvd., Sunset Beach, in Brunswick County. It was received complete on 1/19/10 and appears to be adequate for processing at this time. The projected deadline for making a decision is 4/4/10. An additional 75-day review period is provided by law when such time is necessary to complete the review. If you have not been notified of a final action by the initial deadline stated above, you should consider the review period extended. Under those circumstances, this letter will serve as your notice of an extended review. However, an additional letter will be provided on or about the 75th day.

If this agency does not render a permit decision within 70 days from 1/19/10, you may request a meeting with the Director of the Division of Coastal Management and permit staff to discuss the status of your project. Such a meeting will be held within five working days from the receipt of your written request and shall include the property owner, developer, and project designer/consultant.

NCGS 113A-119(b) requires that Notice of an application be posted at the location of the proposed development. Enclosed you will find a "Notice of Permit Filing" postcard which must be posted at the property of your proposed development. You should post this notice at a conspicuous point along your property where it can be observed from a public road. Some examples would be: Nailing the notice card to a telephone pole or tree along the road right-of-way fronting your property; or at a point along the road right-of-way where a private road would lead one into your property. Failure to post this notice could result in an incomplete application.

An onsite inspection will be made, and if additional information is required, you will be contacted by the appropriate State or Federal agency. Please contact me if you have any questions and notify me in writing if you wish to receive a copy of my field report and/or comments from reviewing agencies.

Sincerely,

Debra Wilson
Field Representative

cc: Doug Huggett & Ted Tyndall, DCM
Steven H. Everhart, DCM
Dave Timpy, COE
Randy Walters, LPO, Town of Sunset Beach



North Carolina Department of Environment and Natural Resources
 Division of Water Quality
 Coleen H. Sullins
 Director

Dee Freeman
 Secretary

Jeb Eaves Perdue
 Governor

May 25, 2010

Mr. Gary Parker
 Town of Sunset Beach
 700 Sunset Blvd. N
 Sunset Beach, NC 28468

Mr. Thomas Covington
 NC Wildlife Resources Commission
 1720 Mail Service Center
 Sunset Beach, NC 28468

JUN - 9 2010

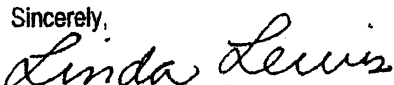
**Subject: Request for State Stormwater Management Permit Application
 Sunset Beach Boating Access Area
 Stormwater Project No. SWG 020005
 Brunswick County**

Dear Mr. Parker and Mr. Covington:

The Wilmington Regional Office received a copy of the CAMA Major Permit application for the subject project. The North Carolina Administrative Code requires any project that is part of a larger common plan of development, or that proposes more than 10,000 square feet of new built-upon area, or that must receive Sedimentation and Erosion Control Plan approval, or that must receive a CAMA Major permit, to apply for and receive a **Stormwater Management Permit** from the Division of Water Quality. Any construction on the subject site, prior to the receipt of the required permit will constitute a violation of 15A NCAC 2H.1000 and may result in appropriate enforcement action by this Office.

Either a **Stormwater Permit Application** package including 2 sets of plans, completed application form, fee, and supporting documentation, or a written response regarding the status of this project and the expected submittal date must be received in this Office no later than June 25, 2010. **Please include a copy of this letter with your submittal.** Failure to respond to this request may result in the initiation of enforcement action, and construction may experience a subsequent delay.

The NPDES 010000 Federal Stormwater Permit that accompanies the Erosion Control Plan approval letter must **NOT** be considered the Coastal Stormwater Management Permit, which will be signed by the Supervisor of the Surface Water Protection Section. **Please reference the Project Number above on all correspondence.** If you have any questions, please call me at (910) 796-7215.

Sincerely,

 Linda Lewis
 Environmental Engineer III

GDS/art: S:\WQS\STORMWATER\STORMSUB\2010\SWG020005.may10

cc: Brunswick County Building Inspections
 Division of Coastal Management
 Wilmington Regional Office
 Central Files

Wilmington Regional Office
 127 Cardinal Drive Extension, Wilmington, North Carolina 28405
 Phone: 910-796-7215 \ FAX: 910-350-2004 \ Customer Service: 1-877-623-6748
 Internet: www.ncwaterquality.org

An Equal Opportunity \ Affirmative Action Employer

One North Carolina
 Naturally



☒ North Carolina Wildlife Resources Commission ☒

14 June 2010

Ms. Linda Lewis
NCDENR, Division of Water Quality
127 Cardinal Drive Extension
Wilmington, NC 28405

**Subject: Request for State Stormwater Management Permit Application
Sunset Beach Boating Access Area
Stormwater Project No. SWG 020005
Brunswick County**

Dear Ms. Lewis:

This letter is in response to your attached letter dated 25 May, 2010, requesting either a Stormwater Permit Application or a written response regarding the status of the project.

With the NCWRC acting as the agent for the Town of Sunset Beach, the project was submitted to DCM, for a CAMA major permit. It was understood that the project would be denied due to the request to dredge in PNA waters, even though the dredging was underneath the existing bridge footprint. Once a formal denial is issued, the Town plans to move forward with the appeal process in the hopes of being granted a variance.

If the Town is awarded a variance by the CRC, then a complete stormwater permit application will be submitted before moving forward with any part of the project. The stormwater schematics and background research are complete, but due to scheduling and workload the actual design has been put on hold until a variance is received. If you have any questions or need further comment, please call or email me.

Sincerely,

Tom Covington

Tom Covington
Facilities Construction and Capital Projects Engineer
919-707-0154
tom.covington@ncwildlife.org

cc: Gary Parker, Town of Sunset Beach

DIVISION OF ENGINEERING SERVICES

Mailing Address: 1720 Mail Service Center • Raleigh, NC 27699-1720
Office Location: 1751 Varsity Dr. • Raleigh, NC 27606 • Telephone: (919) 707-0150 • Fax: (919) 707-0162



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

March 4, 2010

Regulatory Division

Action ID No. SAW-2009-01206

Gary Parker
Town of Sunset Beach
700 Sunset Blvd
Sunset Beach, North Carolina 28468

Dear Sir:

A review of your application dated January 19, 2010 and received by this office on February 26, 2010 for Department of the Army (DA) authorization to construct a new public boat ramp facility, floating dock, breakwaters, fishing pier, parking lot, and dredge an access channel at 101 Sunset Boulevard, adjacent to the AIWW, in Sunset Beach, Brunswick County, North Carolina as described in the CAMA application indicates it to be a candidate for Federal authorization pursuant to the CAMA-Corps Programmatic Permit process for construction activities that receive authorization from the State of North Carolina. Accordingly, the administrative processing of your application will be accomplished by the North Carolina Division of Coastal Management. Comments from Federal review agencies will be furnished to the State.

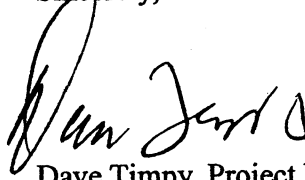
If your application must be withdrawn from this permit process for any reason, you will be informed regarding its further management. If there are no unresolved differences in State-Federal positions or policies, the final action taken on your application by the State will result in your receiving written notice from us that your application is consistent with the Federal permit and you may commence your activity. Only after receiving such confirmation should you begin work.

Your application, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, has been assigned Action ID No. SAW-2009-01206.

- 2 -

We will be coordinating your permit application with other Federal agencies. Please feel free to contact me at (910) 251-4634.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Timpy". The signature is written in a cursive style with a large initial "D".

Dave Timpy, Project Manager
Wilmington Regulatory Field Office

Copy Furnished:

Thomas Covington
North Carolina Wildlife Resources Commission
1720 Mail Service Center
Raleigh, North Carolina 27699 1720

NOTICE

CAMA PERMIT APPLIED FOR

TOWN OF SUNSET BEACH/NC WILDLIFE RESOURCES COMMISSION

PROJECT:

Applicant proposes to construct a new public boat
ramp facility, floating dock, breakwaters, fishing pier,
parking lot, and dredge the access channel at 101 Sunset
Blvd., adjacent to the AIWW, Sunset Beach in Brunswick
Co.

COMMENTS ACCEPTED THROUGH March 8, 2010

APPLICANT:

Wildlife Resources Commission
Attn: Tom Covington, Agent
1720 Mail Service Center
Raleigh, NC 27699-1720



FOR MORE DETAILS CONTACT
THE LOCAL PERMIT OFFICER BELOW:
NC Div. of Coastal Management
127 Cardinal Dr. Ext.
Wilmington, NC 28405
Debra Wilson - 910.796.7270

Petitioner's Statement of True Facts:

I. Unnecessary hardship:

1. Rule 15A NCAC 07H.0208 (b)(1) states that boat basins shall be located so as to avoid Primary Nursery Areas.
2. The entire AICW shoreline in the Sunset Beach corporate limits is bounded by Primary Nursery Areas which are a natural occurrence. (see attached Map 28 from the Division of Marine Fisheries website, Fishery Nursery Areas)
3. The only public water access within Sunset Beach which was located on the causeway to the island has been removed by the State of North Carolina as a result of the new bridge construction.
4. There is no public boat ramp within Sunset Beach and never can be if the rule is strictly applied.

II. Property's peculiar conditions:

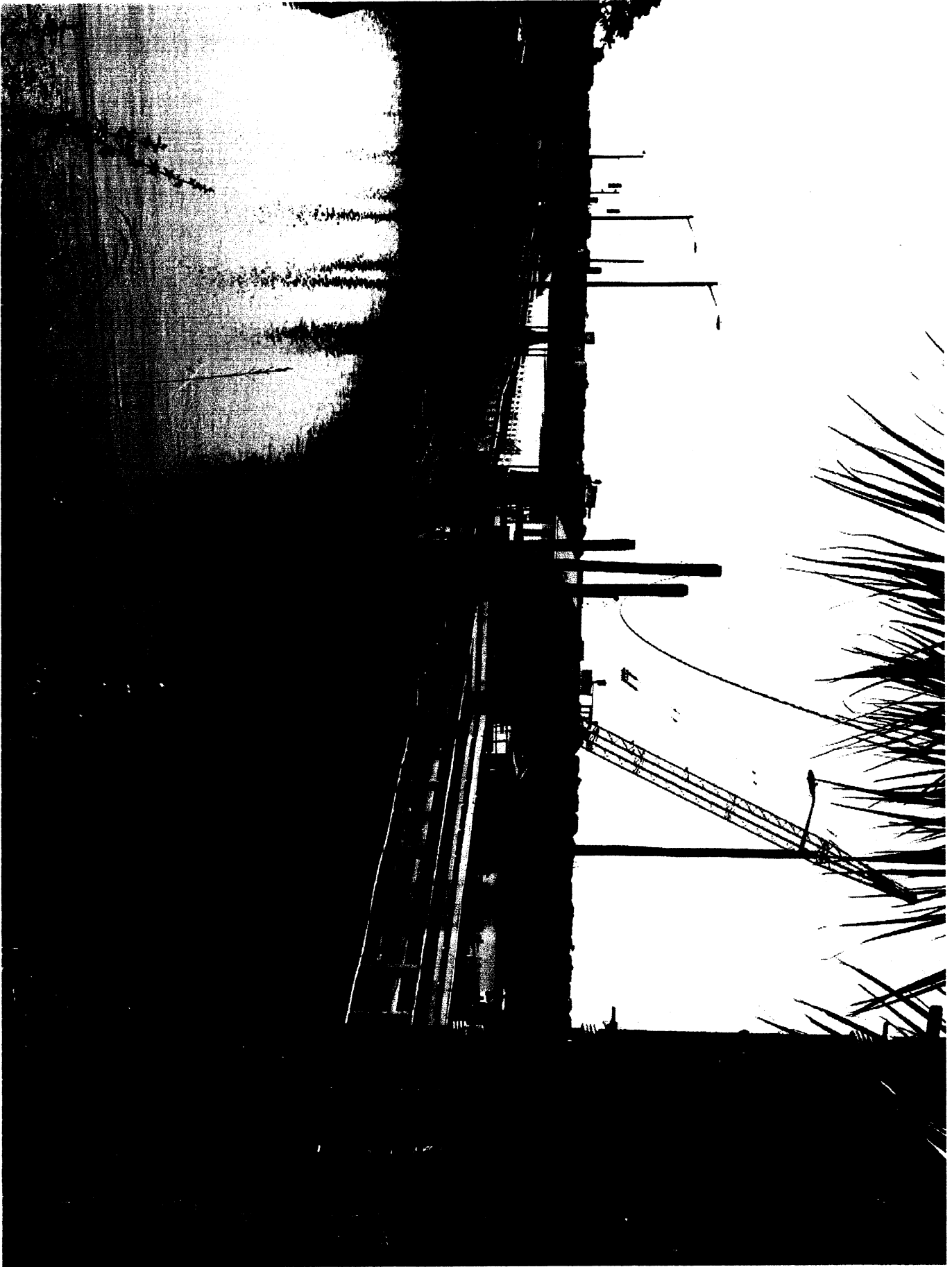
1. The entire AICW shoreline of this property is Primary Nursery Area.
2. The proposed new public boat ramp is located in the 31 feet wide footprint of the old swing bridge (see attached photo and site plan). The old bridge has been in this footprint for over fifty (50) years.
3. This proposed public water access facility would be located between and abut two State DOT ROW's.
4. If the Rule is strictly applied and the Town is not allowed a Variance, then the town would never have a public water access and boat ramp on the AICW given that its entire shoreline is bounded by PNA and the State removed the only public boat ramp.

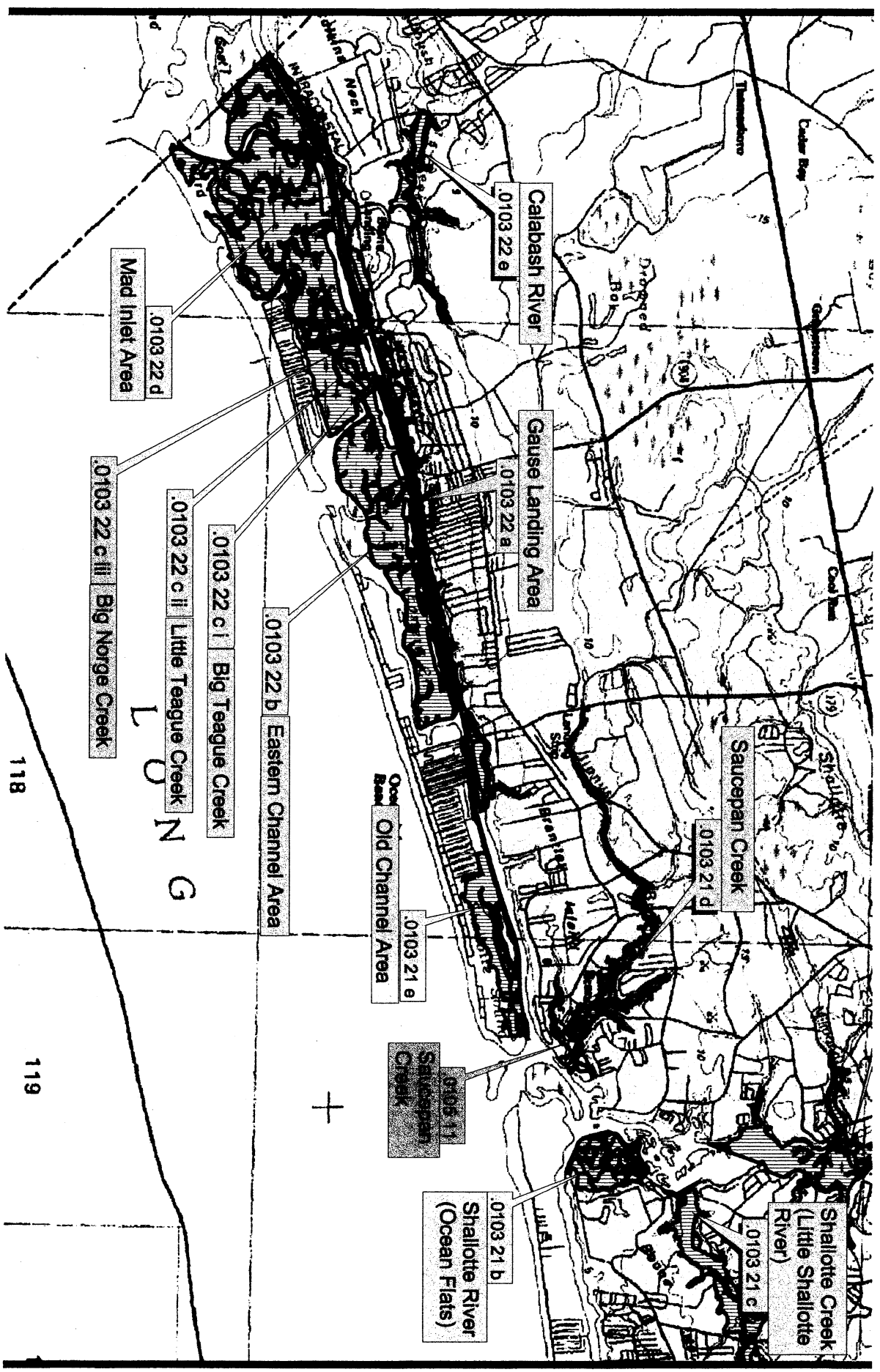
III. Doesn't result from own actions:

1. The entire AICW shoreline is PNA, which is a natural occurrence.
2. The only public boat ramp that the Town had at one time was removed by the State of North Carolina due to the construction of the State's new elevated bridge over the AICW.

IV. Granting Variance would be consistent:

1. More and more waterfront property is being acquired by private interests resulting in fewer opportunities for the public to access our public trust waters. More public water access is needed by the citizens and residents of the State.
2. The Coastal Area Management Act has as one of its goals the increase of the number of public water accesses in the State which would serve public purposes.
3. If the Variance is granted, this would provide at least one public water access within the corporate limits of Sunset Beach, and there will be no new disturbance of the Primary Nursery Area.
4. Rule 15A NCAC 07H.0208 (a)(3), General Use Standards, states that the CRC may approve the development if the applicant can demonstrate that the activity associated with the project will have public benefits that will clearly outweigh the long range adverse effects of the project.
5. The Town is having town-wide public sewer installed at a cost of 30 million dollars that will be completed in December, 2011.





**NC COASTAL RESOURCES COMMISSION
TERMINAL GROIN STUDY
RECOMMENDATIONS
APRIL 1, 2010**

The N.C. General Assembly enacted Session Law 2009-479 (House Bill 709) to direct the Coastal Resources Commission (CRC) in consultation with the Division of Coastal Management (DCM), the Division of Land Resources, and the Coastal Resources Advisory Commission (CRAC) to study the feasibility and advisability of the use of a terminal groin as an erosion control device. The Session Law also mandated that the CRC develop recommendations to be presented to the Environmental Review Commission and the General Assembly by April 1, 2010.

Specifically, the CRC was directed to consider six focus areas:

- (1) Scientific data regarding the effectiveness of terminal groins constructed in North Carolina and other states in controlling erosion. Such data will include consideration of the effect of terminal groins on adjacent areas of the coastline.
- (2) Scientific data regarding the impact of terminal groins on the environment and natural wildlife habitats.
- (3) Information regarding the engineering techniques used to construct terminal groins, including technological advances and techniques that minimize the impact on adjacent shorelines.
- (4) Information regarding the current and projected economic impact to the State, local governments, and the private sector from erosion caused by shifting inlets, including loss of property, public infrastructure, and tax base.
- (5) Information regarding the public and private monetary costs of the construction and maintenance of terminal groins.
- (6) Whether the potential use of terminal groins should be limited to navigable, dredged inlet channels.

The DENR has contracted with engineering firm Moffatt & Nichol to complete the study for the CRC at a cost of \$287,420. The project team members were:

- Moffatt & Nichol -Project Lead/ Coastal Engineering Analyses/Construction/Costs/Locations
- Dial Cordy and Associates, Inc.- Environmental Resource Assessment
- Dr. Duncan M. FitzGerald, Boston University - Coastal Geology
- Dr. Chris Dumas, UNC Wilmington - Socio-Economics

STUDY PROCESS

The Project Team was provided guidance by a Terminal Groin Study Steering Subcommittee comprised of CRC/CRAC members:

Bob Emory - CRC	Dara Royal – CRAC
Jim Leutze - CRC	Spencer Rogers - CRAC
Melvin Shepard - CRC	Anne Deaton - CRAC
Veronica Carter - CRC	Tracy Skrabal - CRAC
Charles “Boots” Elam - CRC	Bill Morrison – CRAC

The Commission also utilized the CRC’s Science Panel on Coastal Hazards to provide guidance on the proposed scope of work, the methodologies to be used for the various aspects of the study as well as the selection of study sites.

While House Bill 709 required the CRC to hold only three public hearings on the issues, the Commission held five public hearings including three at meetings of the full Commission. In addition to the public hearings, written comments could be submitted to the executive secretary of the CRC. The five meetings of the Science Panel were also publicized and the public was allowed to attend and hear the discussions, although public comment was not taken at those meetings. All meeting minutes, presentations and public comments have been posted on the Division of Coastal Management website (www.nccoastalmanagement.net/CRC/tgs/terminal%20groin%20study.html).

SELECTION OF INLETS

In consultation with the Science Panel, five sites were selected to be included in the study. These sites were selected based on three main criteria developed by the Science Panel. First, whether the structure at the site fit the definition of a terminal groin; second, whether the site had similarity to potential North Carolina scenarios; and third, whether there was a reasonable expectation that a suitable quality and quantity of data was available for the location. For the purposes of this study, a terminal groin was defined as a structure built with the primary purpose to retain sand and not for navigation (jetty). Therefore, a terminal groin is defined as a narrow, roughly shore-normal structure that generally extends only a short distance offshore.

Additionally, the sites were chosen to reflect a variety of structures, inlet size and characteristics. Most sites contain a single terminal groin, that is, a terminal groin not part of a groin field located adjacent to a tidal inlet. The general consensus and direction given by the Science Panel was to study only terminal groins adjacent to inlets. The House Bill had defined the study to include “the feasibility and advisability of the use of a terminal groin as an erosion control device at the end of a littoral cell or the side of an inlet” and defined a littoral cell as “any section of coastline that has its own sediment sources and is isolated from adjacent coastal reaches in terms of sediment movement.” The decision as to where a littoral cell begins or ends along a barrier island is extremely

difficult to pinpoint and can shift. An inlet provides a clearly defined location and is generally the location of a terminal groin.

The five sites selected for the study are the terminal groins at Oregon Inlet and Beaufort Inlets (Fort Macon) in North Carolina, and at Amelia Island, Captiva Island and John's Pass in Florida.

TIMELINE OF HARDENED STRUCTURES BAN IN NC

- June 1, 1979 – CRC limits the use of permanent erosion control methods to protect structures existing as of this date.
- 1984 - Outer Banks Erosion Task Force recommends prohibiting hardened structures unless strict criteria can be met.
- January 1985 - CRC bans hardened structures regardless of construction date.
- December 1989 - CRC amends rule to allow for the protection of the Bonner Bridge.
- August 1992 – Amendments to allow for the protection of nationally significant historic sites and existing commercial navigation channels.
- March 1995 – CRC grants a variance to allow a sand filled tube groin field on Bald Head Island.
- July 2003 – CAMA amended to prohibit permanent erosion control structures with limited exceptions.

DISCUSSION OF FINDINGS

As with any study of this nature that has schedule and budgetary constraints, there are limitations that should be noted with respect to the quantity and quality of available data and analysis procedures. No new data collection efforts were undertaken for this study. Rather, available data (shoreline changes, nourishment and dredging activities, natural resources, etc.) were collected from as many sources as possible. Additionally, most of the data originally were collected for purposes other than determining the potential impact of a terminal groin.

In the CRC's discussion of the findings of the study, specific issues stand out in considering the siting of terminal groins in NC. Some of the issues are clear, such as it being expensive to remove one of these structures. Other issues, including the most relevant ones regarding the effects of such structures are less clear, making it difficult to draw definitive conclusions. The Commission has concluded that the general impacts of the groins, as reported in this study, tend to be lost in the "noise" of other inlet management activities. The most substantial (longer, higher and/or less permeable) terminal groins were typically found in areas where the greatest amount of dredging activity occurs. It was found that the more significant the dredging activities, the potentially greater the impacts on adjacent shorelines. The impacts from these dredging activities may greatly overshadow any potential long-term shoreline changes resulting from the construction of a terminal groin. It is worth noting that at the majority of sites studied there were other stabilization structures present such multiple groins, and breakwaters.

While the groins do appear to hold the tip of the island in place, stabilizing the terminal groin side of the inlet, there can be other resultant impacts such as changes to the inlet cross-section – a general narrowing and deepening over time which may cause the channel to shift and potentially undermine the groin. The study also found that, in some cases, there were increases in beach volume on the terminal groin side of the inlet. In other cases there were decreases in beach volume on the terminal groin side after subtracting all beach nourishment volumes. The response of the beach did vary by distance from the groin. The permeability of the structure was found to have a significant impact on adjacent shorelines. The Amelia Island structure has allowed some material to bypass, limiting the effects on downdrift shorelines and volumes. However, the structure has also had a limited impact on the updrift shoreline (mainly within the first 0.5 miles). The other structures studied have impermeable cores and appear to hold more sand for a greater distance on their updrift shorelines.

In looking for commonalities between the sites studied, the CRC found that the structure side of the inlets were eroding prior to construction of the terminal groins; and after construction, the shorelines on the structure side were generally accreting. However the data for the shorelines on the opposite side of the inlets did not display a clear trend. Some were accreting and some were eroding. Generally, there is a reduction of erosion or increased accretion over the first mile of shoreline (except for Amelia Island as noted above). For the shorelines opposite of the terminal groin, a minor to moderate increase in erosion or decrease in accretion occurs over the first half to three-quarters of a mile. However, it is not possible to definitively conclude if this is the effect of terminal groin construction or other impacts such as increased dredging or migrating inlets. Making an assessment of the general effects on adjacent shorelines requires caveats and assumptions. As with nourishment, the influence of dredging material from the inlet system must be accounted for when attempting to assess the impact of the terminal groins.

Again the “noise” of other inlet management activities make identification of structure impacts on adjacent shorelines difficult to discern if they exist at all if located adjacent to a highly managed, deeper-draft navigable inlet. The relative impact of these structures on adjacent areas is likely increased when sited next to natural or minimally managed shallow-draft inlets. Should a structure be considered in these locations, additional care and study (geologic setting, sediment budgets, etc.) is warranted to be sure that the terminal groin’s impacts are acceptable or can be mitigated through minimal human activities (dredging and nourishment).

Dredging and nourishment were common and necessary activities associated with these structures. Terminal groins are typically constructed as part of a broader beach management plan and may make nourishment adjacent to inlets feasible, but they do not eliminate the need for ongoing beach nourishment. Initial project costs including construction of the terminal groin, initial beach nourishment and permitting and design fees may range from about \$3.5 million for a shorter groin to over \$10 million for a larger one. Annual project costs including structure maintenance/repair, annual beach

nourishment, and monitoring could be in the range of \$0.7 million to over \$2 million. While sea level rise is included in the above estimates, it is prudent to assume that these costs may increase over the life span of an individual project.

With regard to the effects of a terminal groin on wildlife and the environment, the study found that the environmental effects of a terminal groin structure alone could not be isolated from the effects of the associated beach nourishment activity. The potential effects of terminal groins in conjunction with shoreline management (i.e. beach nourishment) on natural resources, such as sea turtles and shorebirds, vary according to the type of construction equipment used, the nature and location of sediment discharges, the time period of construction and maintenance in relation to life cycles of organisms that could be potentially affected, and the nature of the interaction of a particular species.

The study indicated that the construction of a terminal groin, along with beach nourishment and dune construction prevents natural overwash and inlet migration from occurring. The interruption of these natural processes contributes to a loss of habitat for breeding and non-breeding shorebirds, including the endangered piping plover. The study also notes that groins are typically used in combination with a long-term shoreline protection program (beach fill), in areas where pre-project shoreline conditions are generally degraded and offer only limited potential for sea turtle nesting activity.

With respect to fish and bottom dwelling species, the placement of rock to construct a terminal groin would result in a temporary and footprint-specific loss of the existing benthic community. The placement of rock may also result in the permanent loss of intertidal and nearshore subtidal habitat, but this loss may be negligible when compared to the total amount of intertidal habitat within a specific project area. The loss of these habitats could also be replaced by rocky, "hardbottom" material that would add diversity to the bottom habitat, providing a new habitat type that can be utilized by certain groups of invertebrates, juvenile/larval fish, and birds. According to NC Division of Marine Fisheries, rocky habitat adjacent to an inlet is not natural to NC and therefore is not needed by the native fish or bird community. The addition of rocky habitat within a sandy intertidal area is not necessarily a positive benefit, but rather a habitat trade-off. It has also been suggested that creating rocky habitat has led to the introduction of non-native invasive species within the vicinity of the structure.

Due to a lack of historic natural resource data, it is difficult to draw conclusions on the effects of the construction and operation of the terminal groin on natural resources. Based upon the historical nature of the terminal groins at Beaufort Inlet (Fort Macon), John's Pass (northern groin), and Redfish Pass, discernible trends of the effects of these terminal groins on the natural resources are somewhat limited. The lack of preconstruction data makes an empirical determination of post-construction effects at these sites difficult if not impossible. Additionally, there were no pre-construction or post-construction data available for fish or benthic organisms.

In order to define an area considered for the economic values at risk, the study utilized a 30-year risk area developed by the Science Panel in their deliberations of Inlet Hazard Areas. The purpose was to provide a designation of risk that is approximately equal to the level of risk indicated by the setbacks in the adjacent oceanfront areas. The study found that the economic values within the 30 year risk areas for developed shorelines varies from about \$27 million at Ocean Isle to over \$320 million at Bald Head Island. The study further refined the economic value at current or imminent risk (as defined by the presence of sandbags for temporary protection) for developed shorelines from just under \$3 million at North Topsail Beach to about \$26 million at the north end of Figure Eight Island. It must be noted that a single terminal groin could not protect all properties identified as being "at risk" near any given inlet; a terminal groin on one side of an inlet will only stabilize the shoreline on that side of the inlet.

It is difficult to draw conclusions on the effects associated with a terminal groin on an unmanaged inlet since all of the structures considered for this study were located at inlets adjacent to navigable, dredged channels. It can be said that the structure will alter the natural inlet processes of a specific inlet. In what manner and to what degree can only be determined through specific study of the geologic setting, sediment budgets and hydrodynamics of the individual inlet.

RECOMMENDATIONS

Under Article 14, Section 5 of the North Carolina Constitution, it is the policy of the State to conserve and protect its lands and waters for the benefit of all its citizenry, and to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty. In G.S. 113A-102(b), the General Assembly identified one of the goals of the Coastal Area Management Act as follows:

- (1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values.

CAMA also specifically directed the Commission to develop standards capable of protecting the natural resources of the coastal area, including fish and wildlife, and maintaining public trust rights. CAMA recognized that the Commission would also need to consider economic development and impacts to private property.

As permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties, the Commission has relied on nonstructural approaches to coastal hazard mitigation. Those methods include:

- development standards for the ocean and inlet hazard areas, including building setbacks;
- land use planning and land classification ;

- relocation of threatened structures;
- subdivision regulations;
- management of vegetation to stabilize dunes;
- beach nourishment;
- use of sandbags for short-term stabilization; and
- inlet relocation.

The use of sand trapping devices, such as terminal groins, has not been allowed on ocean and inlet shorelines except in extraordinary circumstances (i.e., protection of important public infrastructure). The CRC has allowed exceptions for an erosion control structure that is necessary to:

1. protect a bridge that provides the only existing road access on a barrier island and is vital to public safety;
2. protect a state or federally registered historic site; or
3. maintain an existing commercial navigation channel of regional significance within federally authorized limits.

Current rules also allow renewal of a permit for a structure that was constructed pursuant to a variance granted by the Commission prior to 1 July 1995. In each case, the rules require measures to minimize adverse impacts on adjoining properties and on public access to and use of the beach.

It is imperative that activities in the coastal area reflect an awareness of the natural dynamics of the oceanfront. Government policies should not only address existing erosion problems, but should aim toward mitigating the public cost of erosion response. Actions required to deal with erosion problems are expensive and the direct costs of erosion abatement measures and other costs such as maintenance of projects, disaster relief and infrastructure repair will be borne by the public sector. Responses to erosion should be designed to limit these public costs.

The findings of the terminal groin study are inconclusive due to the individual nature of inlets. It also was not possible to entirely separate the effect of an individual terminal groin from the effects of other inlet management activities taking place at or near the site. Based on the results, the Commission can not make a determination that terminal groins would or would not cause adverse impacts on the environment or adjacent properties. The individuality of inlets necessitates case specific study and even then it may be difficult to accurately predict the impacts of a terminal groin in a particular location, the cost of maintaining the structure, and the effectiveness of measures necessary to minimize its impacts. It is within this context that the following recommendations are made.

The Commission has adopted rules that give preference to non-structural responses to erosion including relocation of threatened structures, beach nourishment, inlet relocation and the temporary use of sandbags for short-term shoreline stabilization. The Commission has recently amended its rules on the use of sandbags in Inlet Hazard

Areas to allow the extended use of these structures as well as the repetitive use of sandbags in conjunction with channel realignment projects.

Terminal groins have been shown to be able to anchor the ends of barrier islands adjacent to inlets if associated with long-term beach maintenance. They can likely protect some property at risk but not all properties. The construction and maintenance of terminal groins is very expensive and removing them, if necessary, would be both expensive and disruptive to natural resources. Inlets provide sediment to build up the backside of barrier islands, a vital function in the natural maintenance of these islands.

The General Assembly directed the CRC to conduct a study on the feasibility and advisability of the use of terminal groins as an erosion control device. The study determined that terminal groins, in combination with beach nourishment, can be effective at controlling erosion at the end of barrier islands. The individuality of inlets necessitates site-specific analysis. The study findings were mixed regarding the effects of terminal groins on wildlife habitat and marine resources. If it is the desire of the General Assembly to lift some of the limitations specific to terminal groins, due to the individual nature of inlets, the following factors must be effectively met:

- 1. In light of the current policy favoring a non-structural approach to erosion control, the use of a terminal groin, should be allowed only after all other non-structural erosion control responses, including relocation of threatened structures, are found to be impracticable.**
- 2. The effects of a terminal groin on adjacent beaches are variable and a primary concern. Any use of such a structure should include siting and construction that avoid interruption of the natural sand movement to downdrift beaches.**
- 3. The nature of terminal groins and the potential effects on coastal resources adjacent properties necessitate a full environmental review. Any proposal for the construction of a terminal groin should be accompanied by an environmental impact statement that meets the requirements of the NC Environmental Policy Act (NC G.S. 113-4).**
- 4. To ensure the adequacy of compliance with SEPA and the protection of the public interest, third-party review of all environmental documents should be required. The cost of third-party review should be borne by those responsible for the project. This third-party review should include all design, construction, maintenance and removal criteria.**
- 5. Since a terminal groin may impact properties well beyond those adjacent to the structure, notification of property owners in areas with the potential to be affected by the terminal groin should be required. This notification should include all aspects of the project likely to affect the adjacent**

shoreline, including construction, maintenance and mitigation activities as well as post-construction effects.

- 6. As the post-construction effects of a terminal groin on coastal resources and adjacent properties are difficult to predict, financial assurance in the form of a bond, insurance policy, escrow account or other financial instrument should be required to cover the cost of removing the terminal groin and any restoration of adjacent beaches. Financial assurance should also be required for the long-term maintenance of the structure including beach nourishment activities. (Legislative authorization for requiring financial assurance would be necessary).**
- 7. The use of a terminal groin would need an adequate monitoring program to ensure that the effects on coastal resources and adjacent properties do not exceed what would be anticipated in the environmental documents. All monitoring of impacts of a terminal groin on coastal resources and adjoining properties should be accomplished by a third-party with all cost borne by those responsible for the project.**
- 8. As terminal groins are typically used in combination with a long-term shoreline management program, any proposal for use of a terminal groin in NC should be part of a large-scale beach fill project, including subsequent maintenance necessary to achieve a design life of no less than 25 years.**



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

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

(CRC-10-29)

August 30, 2010

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Sandbag Overview and Update

1984-1985

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

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

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

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

1987

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

1990-1995

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

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

In 1995, the CRC amended the rules to address the size and physical location of sandbags, the types of structures that were eligible for protection, as well as the time they could remain in place if they were not covered by dunes with stable, natural vegetation. The rule was amended to allow a sandbag structure to remain in place up to two years if it was protecting a small structure (less than 5,000 square feet floor area) and up to five years for larger structures. The rule also allowed the sandbags to remain for five years if they were located in a community actively pursuing a beach nourishment project. Existing sandbags installed prior to May 1, 1995 were grandfathered and allowed the full time period prior to removal.

1996-1999

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

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

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

2000

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

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

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

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

2005

The majority of sandbag structures were located in areas included in beach nourishment projects or studies, however, some structures needed to be removed by their owners prior to the May of 2008 deadline. In North Topsail Beach, an area within the Coastal Barriers Resource Act (CoBRA) Zone containing a significant number of sandbag structures was dropped by the US Army Corps of Engineers from further study. North Topsail Beach applied for permits to conduct a privately funded

nourishment project to cover this area as was the case on the east end of Ocean Isle Beach and in the vicinity of The Point in Emerald Isle.

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

2006

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

2007

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

In addition to the current time limits and removal deadlines, the Commission discussed the possible utilization of degradable materials rather than polypropylene as a means of ensuring the eventual removal of sandbags from the oceanfront. DCM research revealed issues associated with the use of biodegradable textiles for sandbags, primarily concern over the length of time biodegradable bags can withstand the combination of elements present in the coastal environment. The complex nature of coastal beaches makes it difficult to predict how long a biodegradable sandbag would last, as a variety of assailants including; microorganisms, temperature, moisture,

humidity, seawater composition and wave energy act upon beaches. In addition, pathogenic viruses, bacteria, and fungi are present in stormwater runoff. The combination of these reactants leads to the increased degradability of natural fibers used in sandbag installations.

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

November 2007

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

March - 2008

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

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

May 2008

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

Variance Requests:

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

Comprehensive Beach Management Task Force Subcommittee Report:

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

July 2008

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

September 2008

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

October 2008

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

January 2009

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

August 2009

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

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

August 2010

While the imposition of the moratorium has stopped enforcement action on sandbag structures due to time limits, it has not prevented the removal of sandbags that were out of compliance with other provisions of rules, such as structure dimensions and lack of necessity. Due to the large number of sandbag structures with expiring permits, the Division developed a protocol for prioritizing structures for removal in a rational and orderly manner. Structures were prioritized based on whether or not they were covered, vegetated, or impeded public access, as well as their age and physical condition. Of the 19 structures with sandbags initially prioritized by the Division for removal (one of the 20 was a duplicate) prior to the moratorium:

- Five have been demolished.
- Two have been relocated.
- Nine are condemned.
- One is abandoned and condemned.
- Two are occupied.

While visible sandbags associated with the five demolished structures have been removed, some bags have continued to surface. The Division working with the local government on the timing of removal of recently surfaced as well as other buried sandbags.

In reviewing the development and evolution of the temporary erosion control rules, it has been clear that the CRC has maintained an understanding that coastal property owners want to protect their homes from erosion. The Commission's sandbag rules were written to allow property owners to temporarily protect imminently threatened oceanfront structures through the use of sandbags, while pursuing more permanent solutions, such as beach nourishment or relocation of the structure. It has also been clear that the CRC has attempted to achieve a balance between a homeowner's desire to protect private property and the public's right to use the state's beaches. Since 1985, sandbags have been intended to provide temporary protection to imminently threatened structures and the Commission did not envision them as a permanent protective measure for chronic oceanfront erosion.

There are approximately 352 temporary erosion control structures remaining, 149 of which have reached their time limits. With the removal moratorium expiring on September 1, 2010, the Division will be looking to the CRC for guidance on the issue.



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

September 1, 2010

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Use of Geotextile Tubes for Temporary Erosion Control

At your July meeting, Spencer Rogers presented to you about problems he perceived with enforcing your sandbag regulations, and proposed geotextile tubes as an alternative that he believes could resolve some of the problems. The challenges that Spencer identified with the existing rules were trouble enforcing the six-foot height limit, the large footprint created by a 20-foot base, the amount of debris created when bags are damaged, the cost to install multiple bags, and the difficulties in enforcing time limits.

Staff has discussed Spencer's concerns with the existing rules, and has researched the pros and cons of geotextile mono-tube structures. I have spoken with Spencer and have conveyed the Division's response to his concerns, and we intend to speak further following the September 2nd stakeholder meeting in New Bern. Spencer and I will then coordinate to prepare a follow up presentation detailing the pros and cons and comparing the existing multi-bag approach to the mono-tube alternative.

The Division does not anticipate the need for the Commission to take any action as a result of this discussion.



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

September 1, 2010

MEMORANDUM

CRC 10-31

TO: Coastal Resources Commission

FROM: Jeffrey Warren, PhD, CPG
Coastal Hazards Specialist

SUBJECT: Inlet Hazard Areas Rule Options and Discussion

The ongoing discussion of the Coastal Resource Commission's (CRC) Inlet Hazard Area (IHA) rules focuses on two issues: 1) updating the boundaries of the IHAs themselves (defined in 15A NCAC 07H.0304) and 2) revising the development rules for what can occur within those boundaries (defined in 15A NCAC 07H.0310). Division of Coastal Management (DCM) staff continue to recommend that these two rules move in tandem (i.e., do not approve new boundaries until the use standards for within the boundaries are determined). The final version of the joint CRC Science Panel and DCM report containing the revised IHA boundary recommendations was presented to the CRC in May 2010 (see memo CRC 10-26) and is available online at: <http://tinyurl.com/34z49t9>.

At the July CRC meeting (see memo CRC 10-28), I presented several development options based on setback scenarios using current vegetation lines, the locations of the most landward shorelines within the DCM aerial photo database (i.e., over the last 70-90 years), and creating a higher hazard zone based on the location of the Science Panel's 30-year risk line. To aid the discussion and assessment of the regulatory options, DCM staff have worked with CRC Chairman Emory to identify policy options and present them in draft rule language format (see attached). Table 1 in this memo provides a quick comparison to existing and proposed IHA rules.

1638 Mail Service Center, Raleigh, North Carolina 27699-1638
Phone: 919-733-2293 \ FAX: 919-733-1495 \ Internet: www.nccoastalmanagement.net

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

Table 1. Comparison of current development policies established by the Coastal Resources Commission in the Inlet Hazard Area (IHA) to proposed standards.

POLICY	Existing IHA rules	Proposed IHA rules
Size limits	No commercial or multi-family (4 units or greater) greater than 5,000 sq ft; no limit on single-family development	No structures greater than 10,000 sq ft (<i>excluding development related to public access such as parking lots</i>)
Linear infrastructure and pedestrian access size limits	Not greater than 5,000 sq ft	None
Density Limits	No more than 1 unit per 15,000 sq ft	None
Grandfathering for existing structures >10,000 sq ft	No	Yes (<i>can be replaced to pre-rule-change size on lots platted prior to effective date as long as current setbacks are met</i>)
Grandfathered exception for lots platted prior to 1979	No	Yes
Grandfathered exception for lots platted after 1979	Yes	Yes
Static Line Exception*	Yes	Yes
Erosion Rates Applied to Setback Determinations	Adjacent OEA	As defined in 07H.0304 (<i>inlet-specific erosion rates will be determined in erosion rate update currently underway</i>)
Setback Reference Point	Vegetation line	Vegetation line and landward most adjacent structure
Setback Factor	30 (commercial and multi-family) 30, 60 and graduated to 90 for single-family	30 or 60
Swimming pools oceanward of setback	Yes	No***
Sandbag Frequency**	Once	No limit (<i>so long as community has inlet management plan in place</i>)
Sandbag Time Limits**	Max of 5 years	Max of 8 years (<i>with planned inlet relocation project</i>)

* Static line exception and setback rules (15A NCAC 07H.0306) effective August 11, 2009.

** Although proposed sandbag rules are provided here for comparison, they are not part of the proposed IHA development policy and rules.

*** Swimming pools can be placed oceanward of the development line created by the landward-most adjacent structure but may not be placed oceanward of the relevant setback as measured from the first line of stable and natural vegetation or the static line, whichever is further landward.

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

Sections (1) dealing with the Ocean Erodeable Area, (2) the High Hazard Flood Area, and (4) the Unvegetated Beach Area have been omitted below for the sake of simplicity.

(3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area shall extend landward from the normal low water line a distance sufficient to encompass that area within which the inlet shall, based on statistical analysis, migrate or influence, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as ~~suggested Inlet Hazard Areas included~~ in the report entitled “Inlet Hazard Area Boundaries Update: Recommendations to the North Carolina Coastal Resources Commission” by J.D. Warren and K.R. Richardson and dated May 2010 (Report # CRC 10-26) INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference ~~without future changes~~ and are hereby designated as Inlet Hazard Areas ~~except that the Cape Fear Inlet Hazard Area as shown on said map shall not extend northeast of the Baldhead Island marina entrance channel. These areas shall be extensions of the adjacent ocean erodible areas and the width of the inlet hazard area shall not be less than the width of the adjacent ocean erodible area.~~ This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photocopies are available at no charge.

15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS

(a) Inlet Hazard Areas areas as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in the position of shorelines and the first line of stable and natural vegetation watercourses, flooding, and strong tides. Due to these extreme extremely conditions and the hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

(1) All Oceanfront development in an the inlet hazard area Inlet Hazard Area shall be set back landward from the first line of stable natural vegetation or the static vegetation line, whichever is the farthest landward. The oceanfront setback within the inlet hazard area shall follow the criteria set forth in 15A NCAC 07H.0306(a). Development setbacks along the oceanfront shoreline shall be calculated from the shoreline erosion rates defined in 15A NCAC 07H.0304 at the time of permit issuance a distance equal to the setback required in the adjacent ocean hazard area;

(2) Development in the Inlet Hazard Area along non-oceanfront shoreline that do not exhibit estuarine characteristics shall be set back landward from the first line of stable and natural vegetation a distance no less than 60 feet. Non-estuarine characteristics shall include a lack of wetland vegetation, the presence of higher wave energy, or the presence of higher erosion rates than the adjacent estuarine shoreline;

(3) Development in the Inlet Hazard Area immediately adjacent to the oceanfront shoreline shall not have any portion of the total floor area of a building or structure, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extend oceanward of the total floor area of the landward-most adjacent building or structure. When the geometry or orientation of a lot precludes the placement of a building or structure landward of the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine the oceanward limit of the inlet hazard setback;

(2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;

(34) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area Development within an Inlet Hazard Area shall be no greater than 10,000 square feet total floor area for structures and buildings or a total area of footprint for development other than structures and buildings, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed. Development greater than 10,000 square feet associated with beach or water access as well as infrastructure that is linear in nature, including pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer shall be allowed and does not have to meet the setback provisions defined in Part (3) of this Rule;

(5) Lots within the Inlet Hazard Area shall be eligible for the grandfather provisions set forth in 15A NCAC 07H.0104 and 07H.0309(b) so long as they meet the conditions set forth in Part (3) of this Rule. In addition, lots platted prior to January 1, 2011 with development larger than that allowable in Section (4) of this Rule may replace that development so long as it is no larger in total floor area for buildings and structures or

total area for all other development and also meets the applicable setback distance defined in 15A NCAC 07H.0306(a) using the erosion rates at the time of permit issuance as defined in 15A NCAC 07H.0304;

(46) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;

~~(5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.~~

(b) With the exception of swimming pools, the Inlet Hazard Area ~~The inlet hazard area~~ setback requirements shall not apply to the types of development ~~exempted~~ excepted from the ocean setback rules as defined in 15A NCAC 7H .0309(a) and (c)., ~~nor, to the types of development listed in 15A NCAC 7H .0309(c).~~

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential

development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the ~~adjacent Estuarine Shoreline adjoining Ocean Erodeable Area.~~ Such development shall be permitted under the standards set out in ~~Rule 15A NCAC 07H.0208 of this Subchapter.~~ For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 7H .1100, .1200 and 7K .0203.



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

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

August 31, 2010

CRC-10-32

MEMORANDUM

TO: Coastal Resources Commission
FROM: Scott Geis
SUBJECT: Estuarine Shoreline Mapping Project Update

Introduction:

A naturally occurring shoreline represents a line of contact between land and a body of water. Estuarine shorelines are particularly important as natural buffers along North Carolina's coast as they absorb physical energy from waves and currents, as well as provide a variety of habitats for a myriad of commercially important juvenile fish and shellfish species.

Climate change has drawn attention to sea-level rise and its potential impact on coastal systems, as the physical effects of sea-level rise can include increased shoreline erosion, marine submergence and inundation of low-lying coastal areas. In order to manage changes in these dynamic systems it is important to understand not only the movement of the estuarine shoreline, but also the effect coastal development has on the ability of the shoreline to move with sea-level rise.

Project Background

In December 2007, the Division of Coastal Management launched a multi-year initiative to delineate a contiguous digital estuarine shoreline for North Carolina. Prior to this initiative a complete and accurate digital shoreline did not exist, and State agencies and universities involved in estuarine resource management used a case-by case scenario where site specific shorelines were generated for individual research projects. DCM's intent is for the completed shoreline to be used for non-regulatory purposes, and can instead be used as a baseline dataset for examining existing policy language within the CRC's estuarine and ocean system areas of environmental concern (AEC).

DCM began working to understand statewide needs, and the importance of the estuarine shoreline to various stakeholders, by conducting a workshop entitled the "North Carolina Estuarine Shoreline Mapping Summit" (Summit) in December of 2007. The Summit's purpose was to discuss existing and future shoreline mapping initiatives and collaborate on methodology,

imagery, resources, efforts and needs. As a result of the Summit, participating agencies and stakeholder groups recommended that DCM proceed with developing a methodology for delineating the estuarine shoreline, and this directive is what was undertaken in the Estuarine Shoreline Mapping Project (ESMP). A draft delineation methodology was circulated through an estuarine shoreline working group (ESWG) in August 2008, to further the discussion of stakeholder expectations and requirements. As a result of this meeting, it was determined that a DCM shoreline will benefit the development of additional datasets such as:

- Geospatial data for shellfish growing areas maintained by the Environmental Health and Marine Fisheries Divisions;
- Division of Water Quality's stormwater Phase II implementation rules; NC Wildlife Resources Commission licenses;
- NC DOT road maintenance schedules and related shoreline interests; and
- Flood insurance rate maps for coastal areas maintained NC Floodplain Mapping Program.

Additionally, the shoreline has potentially shared boundaries with geospatial datasets such as county boundaries, river basins and watersheds, streams, municipal boundaries and tax parcel boundaries.

Project Goals

The end product of the ESMP will be a geospatial representation of the complete estuarine shoreline for the 20 coastal CAMA counties. This shoreline will be maintained by DCM and will enable DCM to better understand and quantify aspects of shoreline position and type. Specific research needs involved in the establishment of a detailed shoreline for non-regulatory purposes include;

1. Providing data needed to examine existing policy language within estuarine and ocean system AECs;
2. Studying ecosystem function and cumulative impacts, tied to DCM's 309 Enhancement Grant Strategy;
3. Using data to research shoreline change and erosion rates;
4. Quantifying the extent of various land/water, vegetation/water and structure/water interfaces; and
5. Understanding cumulative effects of hardening estuarine areas.

Lastly, updating shoreline data will help DCM keep pace with changes along barrier islands and adjacent estuarine shorelines. DCM is interested in understanding how the nature and frequency of shoreline structures along the estuarine shoreline may affect ecosystem function, water quality, fisheries, wetland habitats and other natural resources. It is apparent that an understanding of the statewide use of these structures along the estuarine shoreline, and of how these structures may impact state resources, is crucial for future resource protection and development planning initiatives. The methodology therefore includes a component for digitizing all structures including, erosion control structures (i.e. bulkheads and riprap revetments), recreational (i.e. docks and piers) and commercial structures along the estuarine shoreline.

Shoreline Progress

To date, the shoreline has been digitized for seven counties (Beaufort, Currituck, Dare, Hyde, Pasquotank, Perquimans and Tyrrell) with eleven additional counties anticipated to be delivered by June 30, 2011. These counties have been delineated through a contract with East Carolina University and in house by DCM staff. Upon delivery, shorelines go through a QA/QC process by DCM staff before being made available for download by the general public.

DCM's methodology focuses on delineating a statewide estuarine shoreline and shoreline associated structures using heads-up digitizing in ArcGIS[®], as this approach is widely used, accurate and affordable. The shoreline is digitized from geo-referenced, county-level aerial orthophotographs, and mapped in NAD 1983 state plane feet. Digitizing is performed on a county-by-county basis and each county shoreline is digitized using the most recent aerial imagery available/accessible for that county. While digitizing, technicians use visual cues, pre-established digitizing rules and DCM-generated wetlands vegetation land-cover polygons to assist in segmenting the shoreline into various shoreline types. The final estuarine shoreline delineation consists of three distinct shapefiles including a linear estuarine shoreline, and two structure shapefiles (one polyline and one polygon) for varying structure types. This effort is being conducted by DCM staff, and by faculty and students from contracted state universities.

Additional questions on the availability of shoreline data can be directed to:

Scott Geis
NC Division of Coastal Management
1638 Mail Service Center
Raleigh, NC 27699-1638
(919) 733-2293 ext. 234
Scott.Geis@ncdenr.gov



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

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

August 25, 2010

MEMORANDUM

CRC-10-33

TO: Coastal Resources Commission
FROM: Guy Stefanski, Strategic Planning Manager
SUBJECT: Draft Program Assessment and Five-Year Enhancement Strategy (FY 2011-2015)

Section 309 of the Coastal Zone Management Act (CZMA) provides for a voluntary Coastal Zone Enhancement Grants Program to encourage states to develop program changes in one of the following nine coastal zone enhancement areas:

- wetlands,
- coastal hazards,
- public access,
- marine debris,
- cumulative and secondary impacts,
- special area management plans,
- ocean resources,
- energy and government facility siting,
- aquaculture.

Under the Enhancement Grants Program, every five years coastal states conduct a detailed program assessment of the nine enhancement areas (above) and, as a result, identify high priority areas for inclusion in a five-year strategic plan.

Upon completion of a recent program assessment, the Division of Coastal Management has determined that two high priority enhancement areas (**COASTAL HAZARDS and OCEAN RESOURCES**) will form the basis of its next five-year strategic plan (FY 2011-2015). These program areas will be supported by four program changes (three in the Coastal Hazards Strategy and one in the Ocean Resources Strategy). Through this strategy, DCM will develop the information and tools necessary to provide for new and/or revised regulations, authorities, guidelines, procedures, policy documents and memoranda of agreement that will result in meaningful improvements in coastal resource management on three major fronts: oceanfront shoreline, estuarine shoreline and the coastal/ocean environment.

The Draft Program Assessment and Five-Year Enhancement Strategy is available at http://www.nccoastalmanagement.net/News/Program%20Assessment%20%20Strategy%20_DRAFT%206-30-10_.pdf.

The final document is due to NOAA by November 1, 2010.



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

September 1, 2010

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Sea Level Rise Policy Discussion

What we know about SLR

The Commission's Science Panel on Coastal Hazards prepared and presented you with a [North Carolina Sea Level Rise Assessment Report](#) in March 2010. The Assessment answered many of the Commission's questions about the mechanisms and magnitude of relative sea level rise in the state, and provided a projected range of 0.4-1.4 meters of rise above present by 2100. The Science Panel advised the Commission to adopt a rise of 1 meter by 2100 for planning purposes. The low end of the range, 0.4 m, is based upon a straight line extrapolation of the measured rate at the Duck tide gauge. 0.4 m was not recommended for planning because current evidence points towards an acceleration in the rate of sea level rise. The high end, 1.4 m, is based upon a review of the most widely accepted published literature. 1.4 m was not recommended for planning purposes because the Science Panel considers this to be the high end of plausible rise by 2100. The Science Panel selected 1 m because it accounts for accelerated rise, but is not at the upper limit of what they regard as the plausible range.

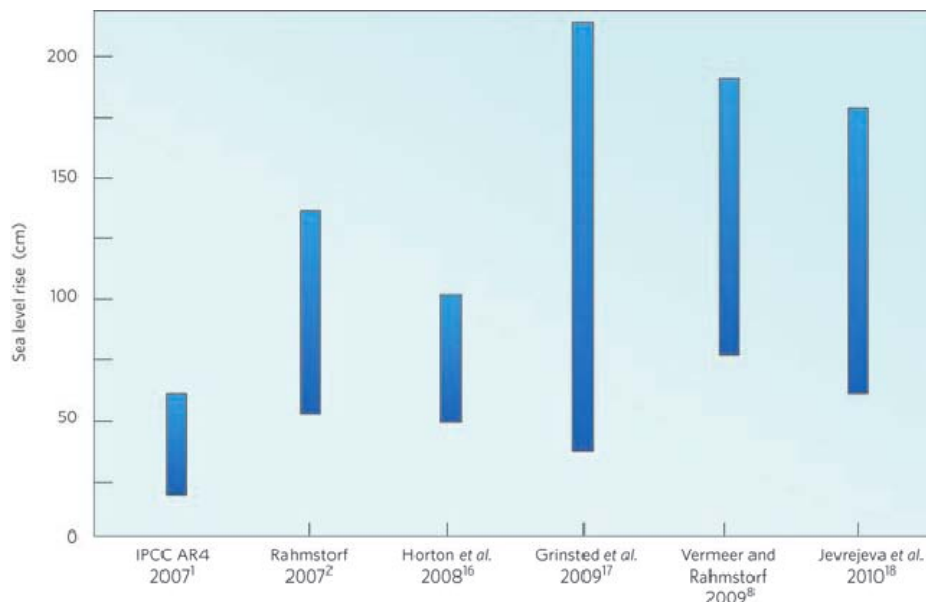


Figure 1. Range of sea level rise by 2100 as predicted by various studies (source: Stefan Rahmstorf, Nature.com, April 2010)

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

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

What we don't know about SLR

The Science Panel's report made it clear that there are gaps even in the best research we have to date on sea level rise projections. Sea level rise, even at the local scale, is intimately tied to global emissions. Temperature and climatic changes are also intimately and intricately tied to global emissions, and sea level rise in turn depends in large part on global average temperatures. Since the future levels of emissions is not known, we cannot know future global average temperatures, nor the rate and cumulative amount of sea level rise that we will experience in this century. The Commission had asked the Science Panel to provide estimates of sea level rise in 25-year time slices through 2100. The Science Panel concluded that because of the uncertainty and complexity associated with climate change and sea level rise there is not sufficient high resolution data and modeling capability to produce such precise projections.

CRC authority to act

In November 2007 I delivered a memo and presentation to the Commission entitled CRC Authority for Addressing Sea Level Rise (CRC-07-12). That memo described the common law, constitutional, and legislative framework under which the Commission can implement policies for addressing sea level rise. Sea level rise adaptation is now also a stated DENR priority, and making our coastal communities resilient to coastal disasters is a priority of the Governor's South Atlantic Alliance to which North Carolina is a party.

Why a CRC policy

North Carolina's coastal management program was created by the Coastal Area Management Act of 1974, enabled by the federal Coastal Zone Management Act of 1972. In order to implement CAMA, the Commission drafted and adopted a series of policies and regulations under Title 15A, Chapter 7 of the North Carolina Administrative Code. The Commission's general policy guidelines are contained within Subchapter 7M, whose stated purpose is "*to establish generally applicable objectives and policies to be followed in the public and private use of land and water areas within the coastal area of North Carolina.*" For example, Subchapter 7M contains policy guidelines for shoreline erosion response, shoreline access, and coastal energy. Staff believes that it is appropriate for the Commission to consider adopting a policy on sea level rise within Subchapter 7M. A formal policy will enable the Commission to codify a planning benchmark for the coastal counties, which is a necessary step towards guidance to local governments and other stakeholders. A policy would provide guidance to staff on what will necessarily be a long-term process of rule review and amendment to address this ubiquitous threat. Responding to sea level rise will require a comprehensive review of the Commission's rules, and a policy statement would reflect the Commission's commitment to do so. A formal sea level rise policy would also signal to the public at large that the Commission recognizes the threat of sea level rise and is actively engaged in guiding the state towards planned adaptation.

Staff has drafted a preliminary policy statement, which is intended to serve as a starting point for discussion. We will present the draft language to the Commission in September, with the sole intent of hearing the Commission's feedback and guidance on the content. Staff is not suggesting that this draft be revised and immediately sent out to public hearing. Rather, once we have received the Commission's feedback, we propose to circulate the draft language informally among interested parties, to ensure that the version ultimately sent to public hearing has been widely vetted by a variety of interests. The draft language follows, and we look forward to the conversation.

Draft statement

SECTION .1300 SEA LEVEL RISE POLICIES

15A NCAC 07M .1301 DECLARATION OF GENERAL POLICY

The Coastal Resources Commission (hereafter referred to as the “Commission”) is charged under the Coastal Area Management Act (CAMA) with the protection, preservation, orderly development, and management of the coastal area of North Carolina. To that end, the Commission is specifically charged with the protection of certain rights and values, which include ensuring the protection of public trust resources and access to those resources, preserving the quality and optimum use of water resources, managing land use and development to minimize environmental damage, and preserving private property rights. The Commission recognizes that global sea level rise is occurring as a natural hazard, and is predicted to continue and possibly accelerate during the next century. Sea level rise will intensify the challenges that the Commission faces in preserving and managing the natural ecological conditions of the estuarine system, barrier dune system and beaches, while perpetuating their natural productivity as well biological economic and aesthetic values.

Sea level rise is a coastal threat that magnifies other coastal hazards such as flooding, storm surge, shoreline erosion, and shoreline recession. Sea level rise is also a threat to the use of and access to public trust resources, water resources and quality, private property and development, and public property and infrastructure.

The Commission declares that sea level rise is a pervasive and persistent hazard that must be incorporated into all aspects of the coastal program. Incorporation is necessary in order to address the implications of the expected continuing rise in water levels, along with the resulting magnification of hazards, disruption and losses that such increases will bring.

The goal of this policy is to establish a framework for planned adaptation to rising sea levels. Planned adaptation will help to minimize economic, property and natural resource losses, minimize social disruption and losses to public trust areas and access, and minimize disaster recovery spending.

15A NCAC 07M .1302 DEFINITIONS

As used in this Section:

1. “Accommodate” means designing development and property uses such that their function is not eliminated as sea level rises.
2. “Planned adaptation” means taking a proactive and deliberate approach to designing and implementing measures to either live with, or retreat from, rising seas.
3. “Planning benchmark” means a scientifically-based amount of sea level rise that is expected to occur by a specified time.
4. “Relative sea level rise” means an increase in the average surface height of the oceans over a long period of time that may be caused by an absolute increase in the water level, by sinking of the land at the water’s edge, or by a combination of the two.
5. “Sea level rise” means an increase in the average surface height of the oceans over a long period of time.
6. “Shoreline erosion” refers to the chronic or episodic landward migration of a shoreline caused by the loss or displacement of sediment.
7. “Shoreline recession” means the long-term landward migration of the average position of a shoreline.

15A NCAC 07M .1303 POLICY STATEMENTS

(a) The Commission shall adopt planning benchmarks pursuant to the best available scientific information, recognizing that there is a measure of uncertainty involved in any projection of future conditions. The Commission's Science Panel on Coastal Hazards prepared a North Carolina Sea-Level Rise Assessment Report (March 2010) which projects a relative sea level rise range of 0.38 meters (15 inches) to 1.4 meters (55 inches) above present levels by the year 2100. This report, and any future updates, will be available from the Division of Coastal Management and posted on its website. Consistent with this report, the Commission adopts a planning benchmark of one meter (39 inches) of relative sea level rise above present by 2100, for the twenty coastal counties. The benchmark will be used for land use planning, and to assist in designing development and conservation projects. The planning benchmark shall be reviewed at least every five years, and adjusted if necessary.

(b) Relative sea level rise is not uniform across the State's coastal zone, and the differences are amplified by topographical variations. As a result, specific adaptation measures might not be appropriate for all communities in the coastal zone, or at the same time. Pursuant to available scientific data and justification, the Commission may apply regional benchmarks and adaptation measures as appropriate for different parts of the coast.

(c) CAMA directs the Coastal Resources Commission to protect coastal resources and their productivity. Sea level rise is altering the physical and chemical aspects of the coastal area, and increasing the susceptibility of upland areas to inundation, storm surge, and accelerated erosion. Intertidal areas are being flooded at greater frequency and to greater depths, spurring landward migration of coastal habitats. In order to maintain their ecological function, fisheries habitats such as nursery areas need to be able to migrate landward, keeping pace with rising waters. The Commission shall consider appropriate conservation and regulatory measures that can enable resources and habitats to migrate.

(d) The Commission has the responsibility to assist local governments with land use planning guidance and support. Due to the technical nature of sea level rise science and the need for a coordinated adaptation strategy, the Commission shall, to the best of its ability, provide local governments with scientific data and technical assistance with regard to adaptation planning and specific adaptation measures. Specific guidance and planning requirements will be incorporated into the Commission's Subchapter 7B Land Use Planning Guidelines. The Commission may provide financial assistance for local adaptation planning and implementation as available.

(e) It is in the State's interest to invest in long-term sea level rise research and monitoring, as such investments will contribute to in lowered future economic losses and disruption. The Commission will actively support efforts by the State to fund data collection, research, and monitoring.

(f) Private development should be designed and constructed to avoid sea level rise impacts within the structure's design life. Water dependent structures should be designed to accommodate projected sea level rise within their design life. The Commission may require additional development standards for new and replacement structures built within areas subject to sea level rise impacts.

(g) In order to minimize the magnification of hazards, disruption and losses associated with water levels, public infrastructure should be designed and constructed to avoid sea level rise impacts within the infrastructure's design life to maximum extent practicable, except in instances where the infrastructure is built to serve an adaptation purpose, or if the structure is water dependent and designed to accommodate projected sea level rise within its design life. The Commission may require additional development standards for new and replacement structures built within areas subject to sea level rise impacts.

(h) The Commission shall, on an ongoing basis, review and revise its Subchapter 7H State Guidelines for Areas of Environmental Concern to ensure that these rules account for the additive effects of sea level rise. The Commission shall also ensure that Procedures for Handling Major Development Permits; Variance Requests; Appeals from Minor Development Permit Decisions; and Declaratory Rulings account for the exacerbating effects of sea level rise.

(i) The Commission will promote public education of the hazards associated with rising sea levels and measures to cope with changing shorelines.

History note: Authority G.S. 113A-101; 113A-102; 113A-107; 113A-124(c)(8).



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

Beverly Eaves Purdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

TO: Coastal Resources Commission
FROM: Roy Brownlow, Compliance Coordinator
SUBJECT: 15A NCAC 07J .0210 Replacement of Existing Structures
DATE: September 17, 2010

Background

In March of 2006, staff was requested to review the CRC rules pertaining to the repair and replacement of non-conforming structures along the shoreline as a result of several contested cases involving such structures. Staff proposed draft rule language and after much discussion the CRC approved the current version of the rule which became effective August 1, 2007.

The rule divided structures into two categories: Non-Water Dependent Structures and Water Dependent Structures. The main reason for categorizing structures is that water dependent structures do not lend themselves to the typical market value, appraisal, or cost estimate type of value assessment that the non-water dependent structures such as homes and businesses do. The rule provides DCM regulatory staff the flexibility to make repair versus replacement determinations of those water dependent structures quickly and without the need to perform physical or market value appraisals and without the involvement of third parties such as the local inspections department and real estate appraisers.

A recent contested case involving the repair versus the replacement of a pier structure has raised questions about staff's interpretation or implementation of the current rule as it pertains to docks and piers. The purpose of this memo is to elucidate staff's interpretation of 15A NCAC 07J .0210 (2)(a) Water Dependent Structures.

Summary

The North Carolina General Statutes §113A-103(5)b.5 exempts maintenance and repair from CAMA permit requirements, excluding replacement. CRC rule 07J .0210 Replacement of Existing Structures is consistent with the General Statute with regards to replacement. The rule states that replacement of structures is considered 'development' and requires CAMA permits and then provides criteria used to determine whether proposed work is considered repair versus replacement. If the proposed work to rehabilitate structures that are non-conforming with current CRC rules is deemed to be 'replacement,' then the 'development' or proposed work on the structures, would have to comply with current CRC rules and the permit terms and

400 Commerce Avenue, Morehead City, North Carolina 28557

Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

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

One
North Carolina
Naturally

specifications. The rule may preclude a non-conforming structure from being replaced or rehabilitated if the proposed work is considered 'replacement' and if the proposed work or structure cannot comply with current rules.

Repair vs. Replacement of Docks, Piers, and Platforms

Pursuant to 07J .0210(2)(a), in the case of fixed docks, piers and platforms, the proposed work is considered replacement if it enlarges the existing structure, or if more than 50% of the framing and structural components are replaced in order to rehabilitate the structure to its 'pre-damage' condition. It is staff's interpretation that the rule lists common structural items found in typical pier and platform construction such as beams (i.e., collar beams), girders, joists, stringers, or pilings. These framing items are found on nearly every pier, dock, or platform constructed. Items not considered in the 50% determination would be components such as decking boards and bracing. These items may or may not occur in typical pier construction (i.e. concrete 'hog-slat' piers, cross bracing, handrails).

During the drafting of the rule in 2006, and after discussion with policy staff, the Attorney General's office, and field staff, it was decided to use a literal count of the actual framing members to make a 50% determination rather than the square feet area of the effected structural components of piers and docks. In part, the reason for using the actual number of framing and structural members is because staff does not consider replacement of the decking boards on piers, docks, and platforms as development. For example, if a pier owner replaced the decking boards on the entire area of an existing pier, it is considered repair of the structure. If the square feet area method was used, then that activity would likely be considered to be replacement in the example above. Under the current rule, decking boards are not included in the count of framing members because not all piers, docks, or platforms utilize wooden, or similar, slatted boards.

However, if a pier owner needs to replace more than 50% of the actual number of any of the structural members found in typical pier construction such as the beams, girders, joists, stringers, or pilings; then the proposed work would be considered 'replacement,' would require a CAMA permit, and would have to comply with current CRC rules.

If more than 50% of the square feet area of boat ramps and floating structures is rebuilt in order to rehabilitate the structures to their pre-damage condition, the work would be considered replacement, a CAMA permit would be required, and the proposed work would have to comply with current CRC rules.

Conclusion

DCM regulatory staff has been using the current 07J .0210 rule since March of 2007 to make repair versus replacement determinations on a regular, almost daily, basis without complication or issue. The recent issue involving a pier was atypical due to the location (Inlet Hazard AEC) and other circumstances involving the case. The rule language and intent became convoluted during the recent OAH legal proceedings. Using the current rule, with staff's interpretation as described herein, regulatory staff can make clear and efficient determinations of repair or replacement even in those instances where the repairs are in the marginal 40% to 60% range. The rule gives staff flexibility in unique and atypical circumstances. As always, staff looks forward to the Commission's discussion in this matter. Staff does not recommend any changes to the rule at this time.



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

September 1, 2010

MEMORANDUM

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

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

RULE DESCRIPTIONS

1. 15A NCAC 7H.0104 Development Initiated Prior to Effective Date of Revisions
Status: Effective August 1st.
 The proposed amendments are to clarify how erosion rate setback factors for oceanfront development are to be applied. The amendments also establish limitations for new development that cannot meet the current setback, but could meet the setback based on the rate in effect when the lot was created.
2. 15A NCAC 7H.0106 General Definitions (Wind Energy)
Status: Public hearing in September.
 The proposed amendment creates a definition for wind energy facilities.
3. 15A NCAC 7H.0208 Estuarine System Use Standards (Docks & Piers provisions, wind energy)
Status: Docks and piers changes effective; wind energy changes public hearing in September.
 This rule is being amended to make conforming changes to the CRC's shoreline stabilization and docks & piers rules. These changes are now effective. Additional changes proposed at the January meeting for wind energy facilities will be in public hearing in September.
4. 15A NCAC 7H.0304 AECs Within Ocean Hazard Areas
Status: Going to public hearing.
 The proposed amendment changes the formula used to calculate the Ocean Erodible AEC to make it consistent with the CRC's new oceanfront setbacks. The amendment would also remove the "unvegetated beach" designation for Hatteras Island that was adopted in 2004.
5. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas
Status: Under Science Panel review.
 The CRC has seen the new inlet hazard area delineations prepared by its Science Panel on

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

Coastal Hazards and had further discussion in July and November 2008. The CRC Science Panel and DCM staff continue to work on recommendations to bring to the CRC at a later meeting. Science panel work on this rule has been delayed by the Panel's focus on the terminal groin study and preparation of a sea level rise metrics report.

6. 15A NCAC 7M.0400

Status: Public hearing in September.

Amendments proposed in January to define policies for wind energy facilities were approved for public hearing, to be held in September 2010.

COASTAL RESOURCES COMMISSION RULEMAKING STATUS - SEPTEMBER 2010

Item #	Rule Citation	Rule Title	September '10 Status	September Action Required?	Next Steps
1	15A NCAC 7H.0104	Development Initiated Prior to Effective Date of Revisions	Effective August 1st	No	
2	15A NCAC 7H.0106	General Definitions	Public hearing	Yes	Public hearing in September, rule will be eligible for adoption in November.
3	15A NCAC 7H.0208	Estuarine System Use Standards	Public hearing	Yes	Public hearing in September, rule will be eligible for adoption in November.
4	15A NCAC 7H.0304	AECs Within Ocean Hazard Areas	Going to public hearing	No	Changes proposed to make the ocean erodible area calculation consistent with oceanfr calculations, and to remove "unvegetated beach" designation for Hatteras Island.
5	15A NCAC 7H.0310	Use Standards for Inlet Hazard Areas	Under Science Panel review	No	DCM and Science Panel continue to work on recommendations to CRC.
6	15A NCAC 7M.0400	Coastal Energy Policies	Public hearing	Yes	Public hearing in September, rule will be eligible for adoption in November.

NC COASTAL RESOURCES ADVISORY COUNCIL
September 15-17, 2010
NOAA/NCNERR Administration Building
Beaufort, 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, September 15th

- | | |
|---|-------------|
| 12:30 Council Call to Order (Auditorium) | Dara Royal |
| ▪ Roll Call | |
| ▪ Approval of March 2010 Minutes | |
| ▪ Announcements and Updates | |
| - Passing of Eddy Davis | |
| 12:45 CRC Meeting Format and CRAC Function | Frank Rush |
| 1:15 Sandbags Discussion | Dara Royal |
| 1:45 Inlet Hazard Areas Discussion | Jeff Warren |
| 2:15 Review of CRAC Priorities | Dara Royal |
| 2:30 Old/New Business | Dara Royal |
| ▪ Future agenda items | |
| Adjourn; join CRC Meeting in Auditorium | |

Thursday 16th and Friday 17th

Meet in session with CRC.

NEXT MEETING: November 18, 2010
NOAA/NCNERR Administration Building
Beaufort, NC



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



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

Beverly Eaves Perdue, Governor

James H. Gregson, Director

Dee Freeman, Secretary

September 1, 2010

MEMORANDUM

TO: Coastal Resources Advisory Council

FROM: Dara Royal

SUBJECT: September 2010 CRAC Meeting

Again it has been several months since the Advisory Council has been able to meet, so I hope to see you all at our September 15-17 meeting at the NOAA/NCNERR building on Piver's Island in Beaufort.

The infrequency of our meetings, coupled with the meeting format when we are in session with the CRC, has presented significant challenges in this body feeling a sense of meaningful participation and effectiveness. Although there remains no guarantee of future meeting frequency, Frank Rush and I feel that we should have a discussion and present the Commission with our recommendations about how to re-structure the meetings.

As you are aware, the Commission continues to deal with sandbag policy. Now that the legislative moratorium on enforcement has expired, the Commission is scheduled to make a decision on either enforcing or amending the current rules. We have the opportunity to discuss and recommend a course of action.

DCM and the CRC's Science Panel have been working together for a long time to recommend changes to inlet hazard area boundaries and use standards. Jeff Warren is scheduled to present those recommendations on the 16th. Jeff will lead a discussion with the Council on the 15th so that we can consider a joint recommendation for the Commission. Our discussion with Jeff will also prepare us to be more involved in the CRC's discussion.

Finally, we have addressed many of the priorities we laid out for ourselves three years ago. I will revisit the status of those priorities and invite your nominations for our future work.

I hope you all have survived relatively unscathed from the recent hurricanes. I look forward to seeing you in Beaufort.

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

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

NC Coastal Resources Advisory Council
March 24-26, 2010
Sea Trail Golf Resort & Convention Center, Sunset Beach, NC
Meeting Summary

Attendance

SEAT	MEMBER NAME	24th	25th	26th
CAMA Counties				
Beaufort	Paul Spruill			
Bertie	Traci White			
Brunswick	Bob Shupe	Y	Y	
Camden	William Wescott			
Carteret	Charles Jones			
Chowan	W. Burch Perry			
Craven	Tim Tabak			
Currituck	Gary McGee			
Dare	Ray Sturza			
Gates	<i>Vacant</i>			
Hertford	<i>Vacant</i>			
Hyde	Eugene Balance			
New Hanover	Dave Weaver	Y	Y	Y
Onslow	<i>Vacant</i>			
Pamlico	Christine Mele			
Pasquotank	W. H. Weatherly			
Pender	Bill Morrison	Y	Y	Y
Perquimans	Lester Simpson			
Tyrrell	Joe Beck			
Washington	Wayne Howell	Y	Y	Y
Coastal Cities				
Columbia	Rhett White			
Edenton	William Gardner, Jr			
Emerald Isle	Frank Rush (Vice Chair)	Y	Y	
Hertford	Carlton Davenport			
Nags Head	Webb Fuller	Y	Y	Y
Oak Island	Dara Royal (Chair)	Y	Y	Y
Caswell Beach	Harry Simmons	Y	Y	Y
Surf City	J. Michael Moore			
Lead Regional Planning Orgs				
Albemarle Regional Commission	Bert Banks	Y	Y	Y
Cape Fear Council of Governments	Debbie Smith	Y	Y	
Eastern Carolina Council	Judy Hills	Y	Y	Y
Mid-East Commission	Eddy Davis (Tim Ware)	Y		
Science & Technology				
NC Coastal Federation	Tracy Skrabal	Y	Y	
NC Sea Grant, Wilmington	Spencer Rogers	Y	Y	Y
Quible & Associates, Kitty Hawk	Joe Lassiter	Y	Y	
State Agencies				
Department of Administration	Joy Wayman			
Department of Agriculture	Maximilian Merrill			
Department of Commerce	Lee Padrick	Y		
Department of Cultural Resources	Renee Gledhill-Earley			
DENR, Division of Marine Fisheries	Anne Deaton (Michelle Duval)	Y	Y	
DENR, Division of Water Quality	Cyndi Karoly	Y	Y	
NCDOT	Phil Harris	Y	Y	Y
NCDOT	Travis Marshall	Y	Y	Y
State Health Director (Shellfish San.)	<i>Vacant</i>			
Local Health Director	Jerry Parks			

Wednesday 24th

Call to Order

Dara Royal called the meeting to order at 1:00 pm and the Council approved the February 2010 minutes with one amendment—Charles Jones noted that he had attended both days of the meeting.

Public Access at NCDOT Bridge Crossings

NC Department of Transportation's William Goodwin and Wildlife Resources Commission's name Daniel gave a presentation about new Memorandum of Agreement (MOA) between the agencies for providing public access at DOT bridge crossings. The MOA was signed in October 2009, and allows for DOT and WRC to consult at the scoping stage of bridge projects to evaluate the potential for preserving, upgrading, or adding public access facilities at future project locations. Mr. Goodwin and Mr. Daniel regard the agreement as a common-sense approach that allows the DOT and WRC to coordinate prior to letting bridge projects, so that public water access could be installed or preserved. The Advisory Council's local government members were very encouraged to see this MOA, and to have the opportunity to work with the agencies to preserve historical accesses, as well as to potentially add new facilities.

City of Wilmington Sea Level Rise A daptation Planning

Phil Prete, Senior Environmental Planner with the City of Wilmington, gave a presentation of some work that the city is engaged in to prepare for sea level rise. The city did a benchmark study of 26 other cities around the country to evaluate policy measures that those cities had adopted. The study ranked the efficacy, impacts, and political feasibility of the different policies. The City of Wilmington can use this analysis to consider policies of their own. According to Mr. Prete, local governments like the City of Wilmington need state technical assistance, data, and regulatory guidance in order to further prepare themselves to adapt to sea level rise.

Transfer of USACE Nourishment Authority

Doug Huggett reported the results of a meeting among representatives of the CRAC, the Corps of Engineers, and DCM staff. The meeting was requested by the CRAC for the purpose of evaluating whether it is administratively feasible for a local government to take over the responsibility for completing a beach nourishment project in situations if the Corps is unable to do so. The CRAC wished to avoid having local governments undertake the time and expense of preparing environmental review documents since the Corps had already done so, and wanted local governments to be able to use the Corps' environmental reviews in their permit applications. Doug explained that the federal Coastal Zone Management Act specifically exempts the Corps from having to obtain CAMA permits, but requires Corps projects to be consistent to the maximum extent practicable with the enforceable policies of the state's federally approved coastal management program. Non-federal agencies are required to comply fully with all requirements of the state's enforceable policies, even those that have not been federally approved.

Doug said that federal agencies have to prepare consistency determinations for proposed projects, and DCM is asked to concur. Consistency determinations can rise to the EIS level, and NEPA compliance is required. Doug said that even if DCM finds a proposed project to be inconsistent, federal agencies have the authority to ignore the state's finding and proceed with the project anyway. Non-federal applicants do not have this authority.

Doug explained that the differences in the federal versus non-federal processes make it difficult for a simple transfer of a consistency determination for a federal to a non-federal project. Doug said that DCM is offering two options for non-federal entities that wish to use the Corps' project authorization. One option is that local governments could either apply for an express permit, which is processed in 30-35 days versus 90-100 days for a major permit. Doug cautioned that 30-35 days may still be too long in cases where a Corps project falls through suddenly, without leaving enough time in the project season or the contractor's schedule.

The second option is for local governments to apply for what Doug called a “programmatic” major permit, which would in essence be a duplicate authorization for the Corps project. The permit application should be submitted to DCM concurrently with the Corps’ request for a consistency determination, so that the permit would be active should the local government unexpectedly need to use it. This permit would only be available to the few local governments with long-term Corps projects, namely Carolina Beach, Kure Beach, Ocean Isle Beach, and Wrightsville Beach.

Doug said that in either case, the local government work proposed would have to be identical to the proposed Corps project, and that local governments could probably rely on the Corps’ environmental documentation. Local governments would not have to do their own NEPA or SEPA analyses if they follow the approved Corps project design exactly; any desire to modify the Corps project could result in the need for a new environmental study. The details of the programmatic permit are yet to be worked out, but the CRAC feel that these options are a workable resolution to what has been a major administrative problem.

Spencer Rogers said that the subcommittee is thrilled at the outcome, and that the timing to implement either option is perfect since the next project cycles are a long way off. Rogers said that the local governments have ample time to get their permits in place before the next cycles are due to begin.

Steve Underwood asked whether the NC Beach, Inlet & Waterway Association could pay the Corps to complete projects if federal money is insufficient. Harry Simmons said that NCBIWA is concerned about the perception or reality that only the relatively richer beach communities would benefit under that approach. Simmons said that there already is a process for local governments to help fund federal dredging projects, but not shore protection projects, and that NCBIWA is working to get that changed.

CRAC Structure and Function

The Advisory Council had a discussion about DENR’s draft Boards and Commissions report. Dara Royal and Frank Rush, working with DCM staff, proposed a reduction in the size of the CRAC and changes to the composition and appointment method. Rush explained that the proposed changes would create a more meaningful role and interaction with the CRC, and asked the Council members whether they would support the proposal.

Harry Simmons said that since the current size and makeup was set under CAMA, did the members feel that the body was still relevant. Charles Jones said that the current CRAC gives each county the opportunity to appoint their own representative, and that the proposal could appear to be giving the CRC the ability to stack the deck with representatives who share the Commission members’ opinions. Royal said that the Commission would have to select from county nominees.

Simmons noted that some counties don’t care about representation on the CRAC. Simmons polled the attendees and found that 5 of 20 county reps were present, and 4 of 8 coastal cities reps were present. Simmons said these numbers suggest that we can do better. Royal said that the original CAMAC land use planning requirement was a strong reason to have all counties represented, but now 30+ years later it might not be essential since local governments are now familiar with the program and plans have been in place for decades.

Spencer Rogers said that the Council should remind DENR that current makeup was set out for good reason, but if DENR decides to make changes that they should follow the proposal under discussion. Webb Fuller offered to second if Rogers put that into a motion, which Rogers then did. Dave Weaver said that coastal counties will be unhappy if they have to comply with planning requirements but have no direct representation on the Council. Jones said that he can guarantee that they will be unhappy, particularly the smaller counties who already feel that they have no voice in what is required of them. Jones said that if county reps do not attend the counties can replace them at any time. Eddy Davis said that there would be some heartburn in his counties, even with those whose representatives do not attend meetings.

Fuller said that CAMA is more policy driven than science driven, which is why it is important to have full county representation. Fuller said that he thought the proposal was only prepared because DENR asked for a recommendation, which of itself is not a good enough reason to propose these changes.

Joe Lassiter said that reducing the size of the Council was a bad idea, and should only be done over the Council's objections. Rogers amended his motion to say that the current structure was set out for good reason, and should be retained. Fuller seconded and the motion passed unanimously. Simmons advised that the restructuring proposal be retained on file.

Adjourn

With no further business the Council adjourned at 3 pm.

Thursday 25th and Friday 26th

Advisory Council met in session with CRC.

##

Land Use Planning Guidelines Update
CRAC Subcommittee Discussion about Advisory Council Involvement
February 11th, 2010

Subcommittee Members: Dara Royal, Frank Rush, Tim Tabak, Christine Mele, Lee Padrick
DCM Staff: Steve Underwood, John Thayer, Mike Lopazanski, Tancred Miller

The subcommittee agreed for this call to focus more on a discussion of the process for updating the LUP guidelines than on content or specific amendments to the 7B rules. As a starting point the subcommittee agreed that the guidelines in general only need routine updates, and that a major overhaul as was done at the last update is not necessary. Local governments should not anticipate having to adopt new plans immediately, although some minor tweaks and amendments might be required.

The subcommittee discussed the following questions:

1. What's the appropriate composition for the CRC-appointed subcommittee that will review the guidelines? Should other stakeholders be appointed to the subcommittee or just invited to give their input at specific points along the way? Who from the CRAC?

The subcommittee should be kept small in order to be efficient, approximately 7-8 people. There should be representatives from the CRC and CRAC, along with DCM staff support. Roughly five members from the CRAC and three from the CRC. Dara Royal, Frank Rush, Tim Tabak, Christine Mele, Lee Padrick all indicated a desire to serve, which is a good cross-section of representation from county and municipal members, elected officials and staff, and state government. These volunteers can be considered as a starting point for CRAC discussion.

Additional members could be appropriate, such as Eddy Davis or other members who express a strong desire. CRAC members who have experience writing or developing local land use plans should be considered for appointment.

Following the February CRAC meeting Dara will make a recommendation to the CRC to convene the subcommittee, and recommend which CRAC members should be appointed.

2. What is an estimated and reasonable timeline for this task taking into account other factors, e.g. the development of a CRC sea level rise policy and the Emergency Management SLR study?

The process of drafting recommended revisions should take roughly one year.

There is a need to incorporate several external efforts into the update, such as sea level rise policy from the CRC and adaptation tools from the Division of Emergency Management Risk Management Study. These components will be incorporated as they become available, but the work on revising the existing guidelines should begin now.

3. How to identify stakeholders and begin collecting their input?

Consultants who draft local land use plans were identified as a necessary stakeholder group for soliciting input. It was decided that a brainstorm of potential stakeholders was not appropriate for this call. After the CRC appoints a subcommittee DCM staff will begin a stakeholders list and distribute it by email for input from subcommittee members.

At the March meeting the full CRAC will be asked to provide input on the stakeholder list and to offer ideas for how to engage the stakeholders.

4. How do we involve NOAA/OCRM in the process?

It is important to bring OCRM into the process as early as possible and to keep them involved throughout, perhaps as an ex officio member of the revisions subcommittee. An OCRM representative should be invited to attend a CRC meeting and explain from their perspective how the

federal-state-local partnership works, and what they look for in state guidelines and local land use plans. They should also explain how the process of federal approval of local land use plans, and how the process can be improved. DCM will initiate a conversation with OCRM.

5. How to tap the expertise of CRAC members who are not appointed to the subcommittee

CRAC members and external stakeholders should be invited in to share their expertise throughout the process. All subcommittee meetings will be open to the public, including interested CRAC members who may not be on the subcommittee.

6. How to function despite the uncertainty of regular CRC/CRAC meetings for the rest of the year

There is considerable uncertainty about the CRC's meeting schedule for the next year. After the March 2010 meeting there are no further meetings scheduled at this time, but DCM expects that regular, one-day meetings will continue. The subcommittee may be able to work at these meetings, but is also free to meet on their own, either in person or by conference call.

7. Thoughts about local government education

Elected officials need general education about CAMA land use planning, including the necessity, requirements, process, available assistance, and costs and benefits. It may be possible to offer some education through DCM's Coastal Training Program. The best way to reach them will be to attend their meetings and do brief, basic presentations. CRAC members can help if they're given a powerpoint or video presentation. The subcommittee should solicit feedback from the local governments about whether they think their local land use plans are useful and how they can be improved.

CAMA Land Use Planning Guidelines

http://www.nccoastalmanagement.net/Rules/Text/t15a_07b.pdf

Land Use Planning Technical Manual

<http://www.nccoastalmanagement.net/Planning/techmanual.pdf>