

NC COASTAL RESOURCES COMMISSION

April 19, 2012

NOAA/NCNERR Administration Building

Beaufort, NC

The State Government Ethics Act mandates that at the beginning of any meeting the Chair remind all the members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or potential conflict, please state so at this time.

Thursday, April 19th

- 1:00 COMMISSION CALL TO ORDER (Auditorium)** Bob Emory, Chair
- Roll Call
 - Approval of February 8-9, 2012 Meeting Minutes
 - Executive Secretary's Report
 - Chairman's Comments
 - CRAC Report
- 1:30 CONTESTED CASES**
- Teague, Snead & Raynor v. DCM (*10EHR 4673, 74 & 89*) Christine Goebel
- VARIANCES**
- Duncan - (*CRC-VR-12-02*) Calabash, ¼ width rule Amanda Little
- 3:30 PUBLIC INPUT AND COMMENT** Bob Emory, Chair
- 3:45 PRESENTATIONS**
- Addendum to the N.C. Sea-Level Rise Assessment Report
 - Land Use Plan Implementation Report – Town of Oak Island (*CRC-12-11*)
- OLD/NEW BUSINESS** Bob Emory, Chair
- 5:30 ADJOURN**

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



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

Next Meeting:
June 20-21, 2012
Beaufort, NC

NC COASTAL RESOURCES COMMISSION (CRC)

February 8-9, 2012

Jennette's Pier

Nags Head, NC

Present CRC Members

Joan Weld, Vice Chair

Lee Wynns

Pat Joyce

Renee Cahoon

Charles Elam

David Webster

Veronica Carter

Melvin Shepard

Ed Mitchell

Bill Peele (absent 2/8/12)

Jerry Old

Present CRAC Members

Randell Woodruff

Bob Shupe

Charles Jones

Tim Tabak

Kristen Noble

Dave Weaver

Christine Mele

W.H. Weatherly

Bill Morrison

Wayne Howell

Carlton Davenport

Ray Sturza

Webb Fuller

J. Michael Moore

Harry Simmons

Rhett White

Debbie Smith

Judy Hills

Bryant Buck

Tracy Skrabal

Spencer Rogers

Phil Harris

Morgan Jethro

Present Attorney General's Office Members

Mary Lucasse

Amanda Little

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Bob Emory and Jamin Simmons were absent. No conflicts were reported by Commissioners. Based upon this roll call, Chairman Weld declared a quorum.

VARIANCES

Patrikios (CRC VR 11-11), Dare County, buffer Amanda Little

Amanda Little of the Attorney General's Office stated she represents the Division of Coastal Management staff in this variance request. Petitioner Patrikios is present at the meeting and will represent himself in the variance request. Mr. Patrikios is requesting relief from the 30-foot buffer requirements for property he owns in Avon. Petitioner proposes to construct a roof over an existing open deck. Petitioner proposes to enclose the deck for a physical therapy room equipped with a hot tub. On December 20, 2011, the Dare County Local Permit Officer denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 07H .0209(d)(10). Petitioner seeks a variance from this rule, specifically to allow construction of a roof over the portion of the existing open deck which lies within the 30-foot buffer of the Coastal Shoreline Area of Environmental Concern. Ms. Little reviewed the stipulated facts of the variance request. Staff disagrees with Petitioner that strict application of the 30-foot buffer causes Petitioner an unnecessary hardship because Petitioner has other alternatives which would not be inconsistent with the rule. Staff does agree that the Petitioner's property is irregularly shaped, however staff disagrees that Petitioner's hardship is caused by conditions peculiar to this property. Staff disagrees with Petitioner that any hardships are not a result from Petitioner's actions. The hardships do result from Petitioner's actions because the proposed development could be located outside the buffer and be in compliance with the CRC's rules. Staff agrees with Petitioner that the variance requested by Petitioner would be consistent with the spirit, purpose and intent of the rules; would secure public safety and welfare; and preserve substantial justice. Petitioner's existing stormwater collection system, consisting of gutter and a cistern, complies with the spirit, purpose and intent of the buffer within the AEC as well as public safety and welfare by reducing runoff pollution into the marine environment.

Robert Patrikios stated he disagrees when they say that he could move the room to the other end of the deck. The deck is very narrow due to the envelope of the building. He further stated that his health is deteriorating and he can't take the cold anymore. Mr. Patrikios stated he is a 100% disabled veteran. Every house on this canal is closer than 30 feet. The water is coming off their roofs and going into the canal. Mr. Patrikios stated his is the only one that far back, but since it doesn't meet the 30-foot criteria then it doesn't make a difference. A complete gutter system was put in and all of the rainwater is diverted away to the cistern.

Jerry Old made a motion to support Petitioner's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships. Pat Joyce seconded the motion. The motion passed with five votes in favor (Old, Joyce, Mitchell, Wynns, Elam) and four opposed (Webster, Shepard, Carter, Cahoon).

Melvin Shepard made a motion to support Staff's position that hardships do not result from conditions peculiar to the petitioner's property. David Webster seconded the motion. The motion passed with five votes in favor (Webster, Shepard, Carter, Cahoon, Elam) and four votes opposed (Old, Joyce, Mitchell, Wynns).

David Webster made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Melvin Shepard seconded the motion. The motion failed with four

votes in favor (Webster, Shepard, Carter, Cahoon) and five opposed (Old, Joyce, Mitchell, Wynns, Elam).

Jerry Old made a motion to support Petitioner's position that hardships do not result from actions taken by Petitioner. Lee Wynns seconded the motion. The motion failed with four votes in favor (Old, Joyce, Mitchell, Wynns) and five opposed (Webster, Shepard, Carter, Cahoon, Elam).

David Webster made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Veronica Carter seconded the motion. The motion failed with four votes in favor (Webster, Shepard, Carter, Cahoon) and five opposed (Old, Joyce, Mitchell, Wynns, Elam).

Jerry Old made a motion to support Petitioner's position that hardships do not result from actions taken by Petitioner. Ed Mitchell seconded the motion. The motion passed with five votes in favor (Old, Joyce, Mitchell, Wynns, Elam) and four opposed (Webster, Shepard, Carter, Cahoon).

David Webster made a motion to reject 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 the public safety and welfare; and preserve substantial justice. Veronica Carter seconded the motion. The motion failed with four votes in favor (Webster, Shepard, Carter, Cahoon) and five votes opposed (Old, Joyce, Mitchell, Wynns, Elam).

Ed Mitchell made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Charles Elam seconded the motion. The motion passed with five votes in favor (Old, Joyce, Mitchell, Wynns, Elam) and four opposed (Webster, Shepard, Carter, Cahoon).

This variance request was denied.

Follow up discussion on 02/09/12

Melvin Shepard made a motion that the CRC reconsider the second criteria vote and bring that vote back to the table. Charles Elam seconded the motion. The motion passed unanimously (Old, Joyce, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam) (Webster, Peele abstained).

Melvin Shepard made a motion to support the Petitioner's position that hardships result from conditions peculiar to the Petitioner's property. Jerry Old seconded the motion. The motion passed with seven votes in favor (Old, Joyce, Mitchell, Wynns, Shepard, Cahoon, Elam) and two opposed (Webster, Carter) (Peele abstained).

Jerry Old made a motion that the CRC reconsider the fourth criteria vote. Ed Mitchell seconded the motion. The motion passed with seven votes in favor (Old, Joyce, Mitchell, Wynns, Shepard, Cahoon, Elam) and two opposed (Webster, Carter). Bill Peele recused himself from voting.

Jerry Old made a motion to support 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; secure the public safety and welfare; and preserve substantial justice with the requirement that the DCM's standard buffer conditions for variances be added to the permit. Lee Wynns seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

This variance request was granted subject to the inclusion of the standard DCM buffer conditions for variances.

**Atlantic Telephone Membership Corp. (CRC VR 11-12) Caswell Beach, Oceanfront Setback
Amanda Little**

Amanda Little of the Attorney General's Office stated she represents the Division of Coastal Management. William Raney, of Wessell and Raney LLP, is present to represent Petitioners Atlantic Telephone Membership Corporation. Petitioner is a telephone company which services the Town of Caswell Beach and the Village of Bald Head Island in Brunswick County. Petitioner proposes to install a new buried fiber optic cable line within the right-of-way of Caswell Beach Road from eastern Oak Island to the eastern end of Caswell Beach where it would connect to an existing line under the Cape Fear River to Bald Head Island. On December 20, 2011, DCM denied Petitioner's CAMA Minor Permit application for the proposed work based on portions of the cable being inconsistent with the Commission's oceanfront erosion setbacks found in 15A NCAC 07H .0306(a)(2)(i). Ms. Little reviewed the stipulated facts of this variance request. Staff and Petitioners agree on all four statutory criteria which must be met in order to grant the variance.

Bill Raney represented Petitioners and stated the Petitioners agree with the Staff. Mr. Raney stated the only logical place to put this line is in the road right-of-way and there are spots where the entire road right-of-way encroaches within the ocean setback. If this service is to be provided then the only location this line can go would need a variance. It is probably just a matter of time that the updated erosion rates will be adopted and would make this variance unnecessary.

Melvin Shepard made a motion to support Petitioner's position that strict application of the applicable rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships. Ed Mitchell seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

Veronica Carter made a motion to support Petitioner's position that hardships result from conditions peculiar to the Petitioner's property. Jerry Old seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

Ed Mitchell made a motion to support Petitioner's position that that hardships do not result from actions taken by the Petitioner. Jerry Old seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

Jerry Old made a motion to support Petitioner's position that that variance requested by the Petitioner would be consistent with the spirit, purpose and intent of the rules, standards or orders issues by the Commission; would secure the public safety and welfare; and preserve substantial justice. Veronica Carter seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

This variance request was granted.

**Gardner (CRC VR 11-13) Emerald Isle, Oceanfront Setback
Amanda Little**

Amanda Little of the Attorney General's Office represented the Division of Coastal Management and stated that Mr. Kenneth Gardner is present and will represent himself in this variance request. Petitioner proposes to construct additions to his existing home located at 2311 Ocean Drive in Emerald Isle. They meet all of the requirements under the static line exception rule except that their proposed addition is further seaward than the landward-most adjacent house, which is a non-conforming structure. On December 20, 2011, the Town of Emerald Isle Local Permit Officer denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 07H .0306(a)(8)(D). Ms. Little reviewed the stipulated facts of this variance request. Staff and Petitioner agree on all four statutory criteria which must be met in order to grant the variance.

Mr. Kenneth Gardner stated we support the spirit of this particular rule as it tries to build a public corridor that protects the dune structure, the vegetation and public access to the ocean. In this particular case the hardship comes from the houses next to us. They are located so close to the street that when the Town came back and eased the setback, these homes were still not in compliance. We asked today that we be relieved of those non-conforming structures which are not in the spirit of what the Town wants to be built.

Ed Mitchell made a motion to support Petitioner's position that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardships. Jerry Old seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

Renee Cahoon made a motion to support Staff's position that hardships result from conditions peculiar to the Petitioner's property. Charles Elam seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

Renee Cahoon made a motion of support Staff's position that the hardships do not result from actions taken by Petitioner. Ed Mitchell seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Shepard, Carter, Cahoon, Elam).

Veronica Carter made a motion to support Petitioner'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; secure the public safety and welfare; and preserve substantial justice. Lee Wynns seconded the motion. The motion passed unanimously (Old, Joyce, Webster, Mitchell, Wynns, Melvin, Carter, Cahoon, Elam).

This variance was granted.

MINUTES

Veronica Carter made a motion to approve the minutes of the October 26-27, 2011 Coastal Resources Commission meeting. Ed Mitchell seconded the motion. The motion passed unanimously (Wynns, Joyce, Cahoon, Elam, Webster, Old, Peele, Carter, Shepard, Mitchell).

CHAIRMAN'S COMMENTS

Joan Weld welcomed and introduced Braxton Davis. Braxton grew up in Lynchburg, Virginia. His education is impressive. His Bachelor's is from the University of Virginia and his Master's is from Florida International University and his PhD is from Rhode Island in Marine Affairs. Braxton over the years ended up as research faculty at the University of South Carolina before he became the Director of Policy and Planning for the South Carolina Coastal Management Program in Charleston for six years. Since 2010, he has also served as Chair of the Coastal States Organization in Washington on coastal and ocean issues. He has also been reappointed to this by Governor Perdue and I know Braxton hopes to continue on some of these important coastal and ocean issues. He has a long list of very impressive peer reviewed publications and reports. He understands the need to get out and talk with folks and to listen. In addition to his impressive background, I think we have a person here with a fresh perspective.

Joan read remarks from Chairman Bob Emory:

I regret that I cannot join you for the meeting this week. Kill Devil Hills is one of my favorite meeting locations and I hate to miss it. For those that don't know, a couple of weeks ago I had surgery in Chapel Hill to remove a small cancerous mass from one of my kidneys. The surgeon took enough of the kidney to be sure that all the cancer was removed. I will not have to have chemo or radiation and there is a 95% chance that there will be no reoccurrence. I consider myself very fortunate. I returned to work, but still have some travel restrictions. I am not sure how much longer I can use my surgery as an excuse to avoid household chores. We have interesting times ahead of us with a new Director, different perspectives and experiences that he brings. Our continued work on sea level rise and all the challenges associated with it, a renewed focus on estuarine management, understanding the effects both positive and negative of hardened structures at inlets, and things we haven't thought about yet. We will work with all of our partners, especially local government, to ensure that coastal North Carolina continues to be the wonderful place that it is. Feel free to resolve our sandbag challenges at this meeting. I look forward to seeing you all in April.

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report.

Through my regional and national level work, I've had opportunities to work with NC DCM staff on a number of occasions, and even an opportunity to attend a few CRC meetings. I have been extremely impressed over the years with North Carolina's coastal management program and the approaches here. During my tenure in South Carolina, we were always following closely the developments in North Carolina, particularly in the beach management arena, looking to your leadership and experience in those issues in particular. I know that I have big shoes to fill in succeeding Jim Gregson as director of DCM. As you already know, staff really stepped up in the interim between Jim's departure and my start date back in December. They continue to take on additional roles under significant budget cuts and staff losses, and they continue to do an incredible job. They've also been very supportive in getting me up to speed on issues and regulations. It's a wonderful group of people who care deeply about the program and truly believe in delivering

exceptional customer service. I've also had the opportunity to meet one-on-one with some of you and look forward to meeting with the rest of the Commission and CRAC members as soon as I can get a meeting scheduled. That has been very helpful and again, thank you for your support in getting me up to speed.

CRC Membership

In recent months, Chuck Bisette and Jim Leutze have resigned from their seats on the CRC. DCM is currently working with the governor's office to solicit nominations for new commission members to fill the coastal engineering and At Large slots on the CRC. Letters went out to local governments soliciting nominations in early December with a 30-day clock. Should be in now, we've heard of a few. The Governor can also add nominees if they do not get nominees from local governments. We anticipate an update from the Governor's office soon on this. Also, a number of appointments expire this June, and are included in your packet. If your appointment expires in June and you are interested in being reappointed then you need to write a letter to the Governor's office and there is also an online application.

DCM Update

Staff Changes

DCM's budget officer, Arthur Stadiem, left the division at the end of October for a position with NCDOT's Ferry Division. We are currently hiring this position and hope to have it filled within the next month or two. The Raleigh DCM office was officially closed on December 3. Three of our policy positions were relocated to the Morehead City headquarters office. Those positions include the coastal hazards specialist, coastal engineer, and strategic planning coordinator. The three employees in those positions – Steve Underwood, Bonnie Bendell and Guy Stefanski – have elected not to move to Morehead City, and have resigned from DCM. Fortunately, we were able to hire Guy Stefanski in a temporary position to help us finish out this year's federal grant cycle. We are all sorry to see these good folks leave DCM and wish them the very best in their future endeavors.

Today's Agenda

There are a number of follow-up items from your October meeting.

- continuing progress on SLR, asking you at this point to consider releasing the draft policy for public hearing.
- continuing to monitor discussions of offshore energy development. Gary Perry will provide an update on the Governors Advisory Panel.
- based on prior variance requests, the CRC asked for a briefing on issues related to docking facilities in Primary Nursery Areas. Our Washington District Manager, David Moye is here to talk about these issues.
- Doug Huggett, Major Permits coordinator, will provide you with an update on the terminal groins permitting process based on input from the Science Panel.

We ran into a logistical issue and had to pull an item from the agenda. We had hoped to present a report back from the Science Panel on comments received on their Sea Level Rise Report.

Unfortunately, we couldn't get up with all the Science Panel members to make sure they had provided their input on the draft response. We will make the Panel's response available for review on our website as soon as it is complete. The CRC presentation has been rescheduled for April. Staff feels that you can still proceed with considering adopting the Draft SLR Policy for public hearing since these are two different things. In part, the Draft Policy calls for updating local governments on SLR information, and the Science Panel response would be part of that kind of ongoing effort.

Rule Hearings

The Rules Modification and Improvement Program (E.O. 70) expanded the administrative review of proposed rule changes. The Office of State Budget and Management must now review and approve all proposed rule changes and fiscal analyses before they can be published in the State Register. This has resulted in a significant increase in the length of time between when the Commission approves a rule for public hearing, and when public hearings can occur. Since the expanded process is still relatively new and each rule and fiscal analysis has its own level of complexity, it is difficult to predict a rulemaking timeline, except to say that we now expect the process to take at least an additional two months longer than the previous 6-9 month timeline.

Future CRC Meetings

The next two CRC meetings will be held in Beaufort. We want to move the CRC around to get public input, but also to get out and see different parts of the coast. We have run into budget constraints until we get into the new fiscal year. We hope for at least one meeting in a different location later this year and will try for even more.

Upcoming Meetings/Workshops

1) Research Symposium

Wednesday, February 22 to highlight research activities on Coastal Reserve sites

2) Funding Environmental Improvements in Your Community: Funding Agencies and Grant Writing Basics - March 28, 2012

CRAC REPORT

Ray Sturza stated the CRAC welcomed four new members to the Advisory Council. Christine Noble from Hyde County, Randall Woodruff from Beaufort County, Morgan Jethro from Gates County, and Boyd Devane our new representative from the Division of Water Resources. The first item on our agenda was a presentation from Mayor Bob Oakes and members of the Nags Head staff on their highly successful shoreline restoration program that they have done in South Nags Head. We are literally sitting atop that successful shoreline restoration program. Mayor Oakes went into detail about the way the Town put together the money to actually build the first non-federally funded shoreline restoration plan in coastal North Carolina. The federal funds that were promised back in the early part of 2001 were never forthcoming and the situation in Nags Head became critical. They moved forward on their own with non-federal money.

Then we had a discussion on which direction the Advisory Council wants to move. We have had a fragmented schedule due to budgetary constraints at the State level and we tried to put together some continuity to our Council. We honed in on two issues that we anticipate focusing on over the next few meetings. The first is public access. We want to see how we can further enhance opportunities for public access particularly with dwindling public monies being available. We are going to inventory what our access issues are in coastal North Carolina, what our success stories are, and where we need additional access. We also want to look at ways that we may be able to find funding from non-governmental agencies or from public monies to increase access to our estuarine, riverine and oceanfront water resources in coastal North Carolina. Secondly, we also talked about the important issue of structures on the beach and how we can use methodologies other than regulations to result in nuisance structures being removed by choice by the owners. For those of you who have been on the Commission for some time you know that this has always been a critical

issue when a structure finds itself in danger, in particular on our oceanfront. We then have to go to regulatory measures to remove it. There was a time when there were voluntary incentives for owners to choose to remove those structures of their own volition. We want to tackle the issue to see if we can find information on tax incentives and non-federal monies to work with our insurance agencies to find ways to remove the regulatory necessity for addressing nuisance structures and actually see some voluntary compliance.

Those of us who live here are familiar with this facility, but for those of you that are seeing it for the first time might also be pleased to know that there are proposals to build two additional similar public pier facilities in North Carolina (Carolina Beach and Carteret County). We think that would be a strong program to advocate. We also talked about the State's role in inlet dredging and a lot of our discussion was driven around the diminishing availability of federal funds and the need for state and local governments to try and pick up some of the slack where federal monies used to have a role. We also talked about the impact of wind farms on our coastal communities and our decision was to hear Mayor Perry's presentation today and see where we are with all of that. Finally, we talked about encouraging the CRC and using our own respective appointment bodies to encourage the State to continue to recognize the importance of the Coastal Resources Commission and the Advisory Council so we can have the necessary monies to meet on a regular basis. Budget restraints have made it questionable sometimes. We are trying to put together a strategy so that in the event that it isn't the case and some of our meetings have to be canceled or postponed then we can devise a strategy whereby a few of our members can attend and report back to the others or maybe we can look into some alternatives for streaming audio or video.

PRESENTATIONS

Governor's Scientific Advisory Panel on Offshore Energy – Recommendations (CRC 12-06) Gary Perry, Mayor Pro Tem Town of Kitty Hawk

Mike Lopazanski stated over the last couple of years I have updated you on various activities and groups involved in offshore energy issues and concerns. You have heard from the Legislative Research Commission Advisory Subcommittee on Offshore Energy. In the wake of the BP accident the CRC was charged with reviewing some of the state rules and federal regulations regarding oil spills and the possible effects spills could have on coastal North Carolina. The CRC was also asked to make some recommendations to the Legislature involved in the offshore wind issue by amending the rules to both allow the transmission of that energy to come ashore as well as coming up with some siting criteria for state waters and other criteria that we could use for federal consistency review. In making recommendations based on the CRC's last assignment from the Legislature, we thought it would be best to let all of these other groups run their course as well. The Legislative Advisory Subcommittee was still working on their issues when the Governor's Scientific Advisory Panel was formed, but they passed their findings and background information onto the Governor's Advisory Panel. The Governor's Advisory Panel was charged with taking a comprehensive evaluation of all the potential offshore energy resources that could be available off the North Carolina coast. They have since completed their report and delivered it to the Governor. The Governor put out a press release yesterday acknowledging the report and the recommendations in them. We asked Gary Perry to come and brief us on the recommendations and the work of the Panel.

Gary Perry stated this all started September 18, 2009. It really started because there was a move towards some offshore exploration for oil and gas off of the North Carolina coast. The Valdez spill,

which I was actually a part of as a Coast Guard inspector, made people realize that we needed energy in the form of oil and natural gas. The actual questions that were posed to the Committee were should there be wind turbines off of North Carolina's coast and should oil and natural gas drilling be permitted off of the coast? What were the limitations and conditions that should be put on these things? Should they be left to commerce alone or monitored and regulated by state or federal agencies or some other combination? This question actually recognizes the fact that exploration and associated production is very expensive. If industry is allowed to do the exploration then they have the reasonable expectation to be able to produce and profit from it. The only other option would be for government to do the exploration, find what might be there, and be able to control it. It is not likely that it will be government exploration so it will have to be done by industry. Wind became as much about job creation as it was concerning non-carbon production. We are in an economy where we need jobs. A lot of the folks that were looking at wind were thinking that wind would bring a lot of jobs to North Carolina. It may create some, but the question is how many are actually North Carolinians, how much of it is done here in North Carolina, and how much of it would be imported? The possibility of oil and gas exploration off the coast was under serious consideration, but the Gulf oil spill had a chilling effect. From the time we started until the time we finished, world events really took a lot of our considerations. Wind was to look for jobs. Oil, because of the Gulf spill, was impacted into the original thinking that got the Panel started and a lot people became adamant against oil off of our coast. There is a host of alternative energy producing devices. The University of North Carolina has been studying wind resource and they have identified a lot of areas off of our coast that would produce wind for a wind farm in amounts that would be worthwhile. The Panel found that there were few regulatory incentives for existing wind energy. Should government incentivize and promote wind farms off of our coast? The carbon emission reduction that was anticipated requires an offset of fossil fuel. There is a problem in that the reliability of all of these alternative forms is dependent upon wind or wave action but may not be continuous, where a fossil fuel plant will form electricity. There are a lot of impediments to wind resources. There are risks to birds and bats, conflicts with commercial fishing and recreation, risks to marine life, and conflicts with military training. North Carolina, as far as the Panel is concerned, feels that there should be some law and regulation that govern development. The laws are needed to provide a framework for federal consistency. Most of that is going to be outside three miles, if not all of it. We need to be consistent with the federal law and need to have an input into that. We need to review all applicable laws to ensure that we are covering gaps. Anything mechanical is subject to failure. Windmills, even on land, would be a difficult situation. The propellers are composite material and it will burn. Gears need grease and oil. If that fails and gears initiate a fire, then what are we going to do? In 2008 the Congressional moratorium expired for offshore fuel exploration. This is what prompted this Panel's discussion. Everyone was looking towards proceeding with offshore exploration. In 2010 it was ongoing. By December 2010 the Gulf oil spill stopped it. The only way we will ever know whether we should drill or not drill off of the North Carolina coast is to drill and see what is there. Until a hole is drilled you don't know what is there. Some of the Panel thought you could separate oil drilling from natural gas drilling. You cannot do that. If you drill for one you are likely to strike the other. The quantity may be different, but you cannot separate drilling. The Panel recommended that North Carolina needs a program of research and data collection to ensure adequate information exists to assess and mitigate any impact from all potential energy sources off the outer and inner coastal waters. North Carolina needs to establish and implement a strategy for ecosystem protection and restoration that is science based. We also need to build a relationship and dialogue with federal agencies because much of the effort would be in federal and not state waters. North Carolina should work to ensure revenue and royalty sharing from federal offshore projects. Socioeconomic and environmental infrastructure costs and benefits should be fully evaluated as part of an ocean energy resource management plan in

order to prevent more harm than good from offshore energy production. North Carolina academic institutions have initiated research efforts in areas of offshore energy. The Panel recommended the state support a consolidated, focused effort to assess the contribution of any offshore energy production to North Carolina and the USA overall future energy requirements. Eight Panel recommendations encourage continued study before any exploration to ensure protection of coastal economies, ecosystems, costs to local and state governments and revenue sharing. The Panel recommended the state promote wind development through statutes/regulation, co-op with developers, utilities, federal agencies, industrial wind suppliers and allow metrological towers for feasibility study. The unique nature of current convergence off of North Carolina implies an in-depth assessment of potential wave, thermal, methane hydrates and Gulf Stream/Labrador current energy sources should be undertaken. At the conclusion of Panel meetings, I noted academia support wind and oppose oil and gas. Oil interests want to retain the ability for future exploration. Environmentalists oppose oil and gas with misgivings regarding wind and other types. The Panel's report was released yesterday and is available at www.nccommerce.com.

Science Panel Guidance for Assessing Terminal Groin Adverse Impacts (CRC 12-01) Doug Huggett

Doug Huggett stated this is a continuing discussion of terminal groin structures in North Carolina. If you will remember, at the August meeting Jim Gregson and I both gave presentations on Senate Bill 110. SB110 modified CAMA to allow for the permitting of up to four terminal groins in coastal North Carolina. There were a lot of additional requirements that were placed into CAMA as a result of SB110. Some relatively unique requirements were placed on the Division as the regulatory agency that we have never had to deal with before in a permit process. With the CRC's permission we went to the Science Panel asking for some guidance on certain issues to help us figure out how to apply SB110 a little bit better. In developing our ideas about what we were going to ask the Science Panel, Staff developed a few assumptions. The first assumption was we believed that there is already within the existing permit process an expertise in a lot of the types of areas that we are going to have to deal with terminal groins. There was not universal consensus on this assumption that the expertise is doing an adequate job in all of the areas. We believe that we are doing what is necessary from a regulatory component, but this opinion was not shared by all of the members of the Science Panel. The next assumption is that because of the existing expertise, the expertise of the Science Panel is probably better served by answering issues specifically relating to the physical processes of a terminal groin. We wanted the guidance from the Science Panel to take the form of guidance that we can implement within our existing permit process that we have been using for inlet relocation projects and beach nourishment projects. Staff wanted the recommendations from the Science Panel to take the form of a set of tools that DCM could use to help us come up with how to deal with assessing the impacts from a terminal groin project. It was very important for us that the recommendations not be so specific that they would constitute ad-hoc rule making. The most critical part of SB110 changed CAMA to mandate that any project for a terminal groin has to develop an inlet management plan that will assess the impacts of the terminal groin. The management plan has to describe the post-construction activities that the applicant will undertake to monitor the impacts of coastal resources, define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated, provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan, and provide for modification or removal of the groin structure if the adverse impacts cannot be mitigated or modified. On October 6, 2011, the Science Panel met and discussed monitoring boundaries, pre-project monitoring, and post-construction monitoring. There was quite a bit of desirability to have an independent third party review on each potential terminal groin permit application. The

legislation did not require this provision for a mandatory third party review. We do not have the authority to require one. It is available to have one done if the applicant and the regulatory agency agree to do it voluntarily. The cost would be the responsibility of the applicant. DCM has committed to requesting and discussing it with each community to see if they are willing to do a third party review. There was also discussion of setting up a control beach to compare the beach that is under the influence of the groin. However, at the second meeting of the Science Panel there seemed to be a consensus that the idea of utilizing a control beach is likely not practicable since such a control beach would be difficult if not impossible to locate. There was discussion about groin design alternatives. Terminal groin design alternatives should include consideration of leaky or porous groins and groins that will allow for significant sand transport into the inlet system. It may be what is ultimately chosen, but we will have this discussion with the applicant. Whatever we do in setting up monitoring plans and pre-project baselines, the first thing you have to do is see what existing data is available for that beach. You don't want to tell a beach community that they have to start from scratch. Monitoring plans should be developed by determining what existing data can be utilized to develop a pre-project baseline. You may not see a monitoring plan be the same for any two beach communities because you are trying to develop off of the existing data, but that is the best way to go from a cost standpoint for the applicant. It is also the way to get us more data to help us make better decisions. The biggest challenge we are going to have as we try to setup impact thresholds is how to separate groin related erosion impacts from other types of impacts. We can potentially examine post-project changes to sediment volumes over pre-project or baseline sediment volumes on the study area beach. You can determine a volumetric loss over a certain stretch of beach that would be expected due to natural conditions and if you exceed that threshold then mitigation would kick in. Some other ideas were to examine post-project changes to shoreline position relative to pre-project or baseline shoreline positions and/or examine post-project changes to shoreline position relative to structures and their pre-project or baseline positions. You could also examine post-project changes to beach width, vegetation line and/or erosion rates relative to pre-project or baseline conditions. Our monitoring plans are going to use multiple components of all of these various ideas. Now that we have heard these ideas from the Science Panel, DCM staff will use these ideas and work with our other agencies at the state and federal level and the applicant to develop these project-specific inlet management plans. We can permit up to four of these structures and we have four communities that have started on the permit process.

Re-Assessment of Sandbag Enforcement Priorities (CRC 12-02) **Ted Tyndall**

Joan Weld advised the Commission that we do not need to focus on individual properties and that discussion should be limited to policy priorities.

Ted Tyndall stated this will focus on the big picture and update the CRC on where we are in sandbag enforcement and the priority list. The conversation should be very cautious as the Commission sits as a quasi-judicial board and will act on variances, contested cases and declaratory rulings. We do not want to prejudice any actions that may come forward in the future. The sandbag issue has been in front of the CRC for decades. It is an ongoing thing and it is a tool that the CRC uses to allow property owners to protect their property. Over the years there have been rules that have been tweaked, there have been variances granted and denied, and there have been actions taken by the Legislature. The critical thing on sandbags is that the environment is dynamic and is not a static situation. You have a set of conditions today that can change tomorrow. In 2008 we came up with a priority list of sandbags on the beach that were causing the most harm. In 2009 the Legislature passed Session Law 2009-479 that put a moratorium on sandbag removal based on time.

The biggest issue is harm and what damage is being done or impeding public access to the beach. We moved forward with enforcement with the most egregious and most of them were in South Nags Head. Staff took enforcement action by sending out letters asking for voluntary removal. We did get some voluntary compliance. What helped the situation in South Nags Head is that the moratorium allowed for the sandbags to be repaired back to their original condition. Then on September 1, 2010, the sunset of Session Law 2009-479 brought us back to enforcement for bags that had expired time periods. Nags Head was proposing a beach nourishment project and the permit addressed sandbags during the beach nourishment process. There was a condition on the Major Permit that said that the non-compliant sandbags could not be covered with sand. Staff worked with the Town and the property owners to ensure that these bags were not being covered during the beach nourishment. We had Staff out in front of the dredge marking the seaward toe of the sandbags. We didn't want to impact the integrity of the beach nourishment project and it was an excellent project. As the project completed, the sandbags were not covered. Then Hurricane Irene came through and wind-blown sand covered the bags up. We re-evaluated the priority list and had staff visit every structure. What we are seeing is that there are some sandbags that were in the middle of the priority list back in 2008-2009 that are still exposed and their time limits have expired. There are very few egregious structures. Our priority list no longer gives us a sequence to follow. Now we have 50 that are all ranked together. We may need to send this to the Ocean Hazards Subcommittee, but do we still want to make sandbags be covered with sand and stable, natural vegetation. Is there harm to sandbags that are in the base of an unvegetated dune? Or is there harm on the sandbags that are down on the toe of the face of the beach itself if they are not exposed and impeding public trust below the mean high water mark. That is one issue that is out there in trying to address the group of sandbags. The other issue is terminal groins. In 2008 and 2010 when we revisited the prioritization, terminal groins were not on the table. We didn't use them as a factor to tease out some of those that may have some factor that will come into play that will make them less harmful or that will facilitate their long-term survival. Is this something that we need to look at on our priority list to help us rank these structures?

Charles Elam said that some of these bags have been out of compliance for a long time. As we get storms like we did last year and people get new sandbag permits and they expire, are we in a mode where we are aggressively moving to get them out so they don't end up in the pile of bags that goes on and on? We can clean up the existing stuff, but I don't want the new stuff coming in to create the same monster we are trying to get our hands around now. Ted Tyndall responded that we are in litigation today on sandbags. This is a process that is long and drawn out. It is not a very good solution, but it is the only avenue we have to pursue. When you get into litigation it is a tough situation. Enforcement is only as good as the tools you have to get the enforcement done. With the resources as limited as they are, it is hard to make somebody do something.

Melvin Shepard stated the most egregious bags are the bags to be concentrated on. The bags that interfere with the public's use of the beach are something that we should consider to be changed. These should be at the very top of the list.

Renee Cahoon stated the memo to the CRC from staff talked about the Nags Head beach nourishment project. There were areas in the Town where sandbags were seaward of the mean high water mark and therefore not as much sand got placed in those areas because of condition on the permit said that the sand could not touch the bags. There are areas where we could not go as far on the beach nourishment width because of the sandbags. Ted Tyndall responded that he and Frank Jennings, Elizabeth City District Manager, went before the beach nourishment to these property owners and pleaded with them that they were not only in violation but they were also impacting the

public's quality and value of their beach. We told them that they were impacting the integrity of the beach nourishment project. Renee Cahoon stated there are areas where the highest erosion rates in Nags Head did not get as much sand as was called for in the beach nourishment project.

Lee Wynns stated that impeding access to the beach should be the biggest priority. The second biggest priority should be the aesthetics of the derelict bags.

Braxton Davis stated with this initial input we can go back and draft up a new set of priorities to bring back to the Commission as a specific proposal or discussion item at the next meeting.

PUBLIC INPUT AND COMMENT

Tom Thompson stated I am the Chairman of NC-20 and I am here to express some concerns. We are disappointed that the Science Panel did not attempt to answer our objections concerning the sea level rise projection of 39 inches by the year 2100. I have a presentation that was given in New Bern by a distinguished scientist and he did this with his partner from the Corps of Engineers. I would invite each of you to take a copy of this. In this presentation Dr. Dean states unequivocally that in a study of almost four hundred and some tide gauges around the world, including satellite gauges, that there is no acceleration in sea level rise in the 20th Century up to now from any of the data. He also lists a number of very valid studies of other researchers. It is our opinion that there is a substantial body of knowledge out there that essentially agrees with Dr. Dean that there is no acceleration. Our primary concern in objecting to a 39 inch sea level rise or any sea level projection that is based on computer models, rather than actual data, is that the economic consequences to the CAMA counties could be disastrous. Mr. Dorman will speak to you this afternoon and I have asked him the question, how many acres would be shown under a flood zone if in fact sea level rise is 39 inches? He said about 1.3 million acres. I am here to tell you that many of the towns in coastal North Carolina would be shown under a flood map. As an economic developer, I can tell you also that that would be disastrous from a marketing standpoint trying to get new homes and industries and to try to improve the economy of the East. I am here to suggest to you that we not go to public comment of any kind and my counterpart Larry Baldwin will speak to this in a minute, and that we go back and revisit this and allow some dialogue between NC-20 and the Science Panel before there is any further public discussion related to this. Thank you.

Geoff Gisler stated I am with the Southern Environmental Law Center. I just wanted to touch on a couple of points from Mr. Perry's presentation earlier. The first being the idea that you have to put a drill in the ground to really find out what is there. I just want to remind folks that exploration is not harmless. The Deepwater Horizon rig that exploded in the Gulf of Mexico was an exploration rig and so exploration is not something that can be done and it is certainly innocuous just to provide more information so there is some risk there. I also wanted to touch on Mr. Perry's comparison of the canyon off of Hatteras with Brazil and Nigeria. I just wanted to point out to the Commission that right now Brazil has shut down all of Chevron's operations in their waters because of spills there that have not been handles properly. In Nigeria late last year there was an oil spill from one of Shell's operations that covered 350 square miles. There is currently a Chevron rig that is on fire in Nigeria. There are upsides and downsides to all forms of energy. His presentation was right on that we think there are some concerns about places for wind energy and that some places it is appropriate and some places it's not. The pluses and minuses should be considered. I want to make sure that those few negatives of offshore oil and gas exploration and development were brought out just to complement the presentation. I haven't read the report yet since it came out yesterday when I was sitting in the crowd here. Those may be in the presentation. I am not sure, but wanted to

make sure that that type of information was before the Commission as you all go forward and consider policies related to offshore energy development.

Larry Baldwin stated I am also with NC-20. I think this is on your agenda to look at adopting or at least moving forward with the sea level rise policy. NC-20 would like for the CRC to at least consider delaying this until you get feedback from the Science Panel. We have sent the Science Panel a lot of information to try to complement their literature search that was not included and somehow got missed. The biggest problem with the current policy is the goal of the policy to establish a framework for planned adaptation and improved resilience to rising sea levels. When you go to a planned adaptation that means taking a proactive, delivered approach to promoting resiliency community ecosystems, identified hazards, and foreseeable hazards forces a response. Resilience is the ability to communities, economies and ecosystems to withstand, recover from, or adjust to disruptive influences without collapse. Naturally this is all dependent upon what the rate of sea level rise is and the science is a highly debatable topic, but until you know what these rates are I don't know how you can make a policy that can move forward on that. The other part of it is in (C) the Commission encourages coastal communities to consider regional projected rates of sea level rise in local land use and development planning and these types of things. If you don't know what the rate of sea level rise is or if it's in question then it is tough to be making policies and moving forward on that. Lastly, the Commission shall consider conservation and regulatory measures that can enhance the resilience of natural systems and habitats. There is a lot of broad language in the policy and until we know what the science is I think again the policy would probably want to be revisited. NC-20 would like for this to be put on hold until we can hear back from the Science Panel on what their findings actually are. Thank you very much.

Peregrine White stated I thought you would like to hear the thoughts of a citizen of Nags Head. I think I am probably the only one here to speak to you. First, our beach. I have been coming here for nearly three decades to Nags Head. Over two decades ago we started working on a replacement on a renourishment of our beach. I bought my place just over two decades ago. Over a decade ago I moved here. At that time Nags Head was beginning to start on a project to put sand on this beach and we knew then that the sandbags on our beach were going to impair the quality of the replacement of sand on our beach. I just sat here for the last hour and I am hearing more excuses than action. You are going to pull sandbags off the beach now. Where is the sand going to come from to fill in the hole? I am hoping you will ban beach pushes to do that because that will destroy what we have paid 37 million dollars for. That comes out of my taxes not yours. So, ban beach push. Get some real action on sandbags. I am hearing well we can recharge the list and we can recharge the list and we can recharge the list. Where have you been for over a decade? Terminal groins. They have been on other beaches where they have done renourishment. They have been put in. It's been over a year since three possible terminal groins were approved by the Legislature. What action have you taken? I haven't seen any in the press. Speaking of the press. I have over 260 people on my Facebook as friends. I have contacted almost all of them in the last week since I learned of this meeting. I asked them if they were going to come and make public comment. The usual answer is what meeting? As far as public comment goes, you gave us 15 minutes that means five speakers maximum. If we had had 10 speakers here what would you have done? If we had had 15 or 20 speakers come which we have had at county commission meetings what would you have done? I hope you can get me some of those answers. Commissioner Cahoon has my name, address and phone number and email.

PRESENTATIONS

NC Sea-Level Rise Impact Study

John Dorman, DEM

John Dorman stated I am in the North Carolina Division of Emergency Management. Emergency Management is about prevention, preparedness and protection. Everything we do is trying to do those functions for property and the people of North Carolina. Hurricane Irene was an event that the CRC had to deal with. We try to mitigate against that and we try to prevent damage and loss of lives. In our overall discussion of risk, it is in that context that we look at things. My office has been putting in place an infrastructure that will house the ability to look at risk. We have been collecting a significant amount of framework spatial data. We have been collecting, leveraging and generating all of the hazards that are in the state of North Carolina. When I say hazards I mean natural hazards. We are identifying those, but we are also identifying what is the living and built environment that would be impacted. From that, if we have probability and if we have consequences we can start defining what is a true risk to an infrastructure, a building or actually a group of individuals. We have a mitigation section in the Division that takes this information out and provides outreach and tries to work with the communities on mitigating or adapting to what the hazards or changes may be. We also take this information and apply it to real time. As Irene came into North Carolina we took the hazard data that we had and took the built environment and put it into our common operating system. Since 2008, we have been establishing projects inside our office. Our first one was funded at the federal level. This allows us to collect all of the hazards. We also have the flood risk information system that has been developing. We have also been collecting and working on the sea level rise impact study. All of this is in a digital environment that we are trying to display across the web to enable us to do improved risk management. www.irisk.nc.gov will be available within a few months that will display the hazards and convey the consequences for the hazards.

Sea level rise does not have probabilities. There is no statewide empirical impact assessment available for future flood losses that would come potentially from an increase in sea level. There is a lot of information out there about very broad, high level qualitative but there isn't much about quantitative. Another problem statement is there is no efficient methodology or framework in place to calculate and track the impacts of this. The final one is there is not efficient methodology or framework in place for assessing the cost effectiveness of specific loss avoidance strategies. These are three critical problem statements that we need to begin working towards. In 2009, working with our federal delegation this language was put into an appropriations bill and asked North Carolina to perform a risk assessment and mitigation strategy demonstration at the potential impacts of sea level rise in that state associated with long-term climate change. It also said it wanted to provide financial implications and look at the frequency and impacts of those natural disasters. With that in mind, we established a program and established a project. These are the four high level issues that we have been trying to answer for this study. What are the changes to coastal flood hazards between now and 2100 that may occur from an increase in sea level rise as well as storminess? We are also trying to answer the question of if that does occur, what built and living systems will be exposed from that? If they are exposed, what is going to be the financial implications or consequences to those systems? Finally, if that occurs, how do we have a short-term and long-term strategy for either preventing or alleviating those exposures? The study report will look at changes in sea level rise with scenarios between 0 and .40 meters between now and 2100. We will perform system-wide impact assessments for permanent flooding, for episodic flooding; we will also look at annualized damage, Hurricane Isabel, and Hurricane Fran. We will then take all of those different levels of water and apply it to four different points of development over time. What does the study

not include? We are not proving or disproving sea level rise. We are not getting into greenhouse gas emission discussions. We are not endorsing any sea level rise projection. We are not defining specific risks from sea level rise. We are not looking at inland rainfall. We are looking at winds, but only the winds that calculate into the storm surge. We are not looking at drought and heat waves. We are trying to leverage as much data that is out there as possible. This is a scenario based study. We are trying to be as impartial as possible. Whatever we do during this study has to be repeatable, defensible, quantitative, transferrable to other states, it needs to be scalable to a local level, and it has to be spatial. The source is sea level rise and storminess. Then we apply it to the coastal landscape and look at what the changes may be. The year 2050 is the first point where we will start actually seeing implications being assessed at .1 and .2. By 2075 we will apply .1, .2, and .3. By 2100 for the study purposes we will go up to .4. In the risk system we will run it up to 1.0 meters. For coastal land response at this point in time, we don't believe we are able to determine what the waters will be in 2025 and apply the same change for 2050, 2075 and 2100. Where we had shoreline change prediction we are keeping it as a static inundation. Where we had barrier island land evolution we are enforcing overtop in the model. Where we had inlet changes we are removing the relic features based on the increase in sea level. The flood projection is using what we are doing in our floodplain mapping program. That is utilizing the flood insurance study that is used for flood modeling. We are taking the twenty actual storms that have occurred over the last 67 years and are looking at the attributes associated with each storm and apply that to simulated tracks. We have been collecting a significant amount of data on structures, critical infrastructure, and the living environment. We have a lot of information about every building structure in the coastal plain. For emergency management purposes, if critical infrastructure goes down then the community has real problems. For the eighteen critical infrastructure sectors that the Department of Homeland Security sees as important we have been collecting those as well. Not all of those structures have been able to be collected, but we have done a good job on most of them. Utilizing data that we have from the Census and data at the local level we are trying to develop a personal vulnerability index, a community vulnerability index and an environmental vulnerability index in the future. There are a lot of parcels out there that are developable but have not received development. We have come up with a shadow parcel methodology and we take the house next door and apply those attributes to the parcel. We are looking at direct damages. There are models being used by FEMA and the Corps. We are using those models. We are also calculating the indirect economic impact if certain structures go down. We are taking a cost effective strategy. We will define strategies that could be implemented statewide and apply those against whether it is too costly to do. We are not producing policies or regulations from this study.

NC Coastal Reserve – Issues Update and Sea-Level Rise Activities

Rebecca Ellin

Rebecca Ellin stated the North Carolina Administrative Code directs the Division to establish a local advisory committee for each site within the Reserve program to advise Reserve staff. The Code also stipulates that the members are appointed by the Secretary of the Department of Environment and Natural Resources. The committees have operated very informally for a number of years and as the use of the Reserves has changed over time it has become apparent that a procedures document was needed to establish clear operating roles and procedures for the committees and outline committee composition. Staff reviewed how other advisory committees work and developed an operational procedures document with input from the existing advisory committees, Division staff and the Secretary's office. The focus of the committees is on their respective sites yet they may occasionally address issues that affect all Reserves across the reserve

system. We seek input from the advisory committees to recommend priority program needs, provide input on acquisition and boundary expansion, provide input on rule, policy and management plan updates, act as liaisons between staff and stakeholders, advise staff on policy matters, and identify opportunities for collaboration on future projects. The local advisory committees are comprised by three primary categories and we currently have committees for seven of the ten Reserve sites. This year we will be updating the makeup of the committees based on the new structure for the seven committees and will be creating the three remaining committees. Each committee will look different based on the individual needs of the site. We will be publishing our operating procedures later this month and it will be available on our website. For the community member and organization slots we will be hosting an application period in the month of March. The appointments need to be made by the Secretary by May. These newly revamped committees will meet in the fall to begin their work.

I came before the CRC in November 2010 and outlined the rules review process. We are still working on it. The goal is to look at our Reserve rules in the Administrative Code and seek revisions to them to accomplish promoting a more effective management of the sites, to provide clear and consistent rules for the public and to support enforcement by appropriate agencies. Our rules have been untouched for about 25 years and a lot of things have changed over the years in how the Reserves are used. We spent a significant amount of time in 2011 gathering information from other state and federal land management organizations. Draft language is under review within the Division. Our rules are Departmental rules and are not Commission rules. Our next step will be to take the language to the Department and go through a series of public input and meetings before we go through the formal rules process.

Based on our expertise and program capacities we are going to measure change in coastal habitats at reserve sites, lead by example utilizing the sites by developing and implementing adaptation strategies at reserve sites to inform protected land management, enhance coastal decision making, and to incorporate coastal hazards into education programming. The National Estuarine Research Reserve program is implementing a Sentinel Site initiative. A Sentinel Site is defined by NOAA as an area in a coastal environment that has the operational capacity for intensive study and sustained observations to detect and understand changes in the ecosystems they represent. Observational data are collected at discreet instrument and measurement stations within each site providing information and data that can be synthesized to provide an understanding of the ecological status and trends and physical and biological variables of interest. We are using these sites to address issues of concerns. The focus right now is on the impacts of sea level rise and inundation in coastal habitats. The habitats that we selected in North Carolina are marsh habitats. We are asking three questions. Is the marsh platform elevation increasing or decreasing? Is the marsh edge eroding or accreting? Is the inundation time changing? We currently have three of our reserve sites equipped with infrastructure to accomplish this. There are a number of requirements in place to meet the Sentinel Site criteria. These include marsh vegetation transects that evaluate the quantity and quality of the marsh habitats. We also measure the initial elevation and elevation change of marsh sediments through surface elevation tables. We also have groundwater wells to assess the water table dynamics. We also have water quality monitoring. We are monitoring these parameters over time and will be utilizing these data to answer these questions and to evaluate the condition of the Reserve as sea level changes and storms increase.

15A NCAC 07M .1300 Sea-Level Rise Policy – Draft for Public Hearing (CRC 12-04)

Tancred Miller

Tancred Miller stated we appreciate all of the input we have gotten from NC-20 over the course of this discussion. I would like to clarify that there is some misunderstanding in what the policy is and how it relates to the Science Panel's report. NC-20 was concerned about the use of the planning benchmark that came out of the Science Panel's report. As you recall, that was stripped out of the policy back in February of last year. There are no references to any of the Science Panel's numbers or data or findings in the draft policy. We feel comfortable recommending to the CRC to move forward with the public hearing process. This policy does not attempt to establish the science of sea level rise. It does not attempt to report the science of sea level rise. It does not attempt to communicate rates of sea level rise or projected amounts of sea level rise. It is more of a guidance and reference document and educational and outreach tool. It is not regulatory. The CRC stripped out all of the regulatory overtones that were in the original draft policy after hearing from local governments and other interested parties about their concerns. There have not been any changes to the draft policy since those changes were made. We have been taking this draft up and down the coast and we feel that we have reached a saturation point with getting feedback and comment from local governments and the public. Staff's interpretation of the Commission's intent on sea level rise was that we were to work with local governments and the public to understand the issue and potential impacts. The intent was to draw upon the best available science, but not to get ahead of the science by proposing things that the science does not justify. The intent was to focus on building awareness, understanding and building capacity internally within this program as well as at the local level.

Veronica Carter made a motion to send the draft sea level policy to public hearing. Melvin Shepard seconded the motion.

Bill Peele commented that some of the language could be softened. Renee Cahoon stated the CRC should wait until the Science Panel comes back with their responses. Lee Wynns stated there is still quite a bit in the draft policy that bothers him. There is a lot of gray area that could be misinterpreted down the line.

Renee Cahoon read a statement from Commissioner Jamin Simmons.

"I will be unable to attend the meetings, both on February 8 and 9, if you will please let the other members know that I am against taking any action on sea level rise until we have more definitive information. I have been following this debate and there is much controversy over if it is happening and if it is then at what rate. The controversies are being voiced by credible persons on both sides of the issue. Therefore, I would like to see steps taken to ensure that we are not perceived as taking a stance one way or the other. It could be detrimental to our coastal communities if non-conclusive information showing accelerated rise was adopted in any form and it was compiled with incorrect data."

Veronica Carter requested permission to withdraw her motion. The Commission voted unanimously to allow Commissioner Carter to withdraw her motion (Old, Mitchell, Wynns, Peele, Shepard, Carter, Cahoon, Elam).

Veronica Carter made a motion to direct Staff to take the draft policy and incorporate the comments received today by the Commission. No second was received.

Ed Mitchell made a motion to assign the draft sea level rise policy to a committee to look into it further. Renee Cahoon seconded the motion. The motion passed with six votes (Old, Mitchell, Wynns, Peele, Cahoon, Elam) and two opposed (Shepard, Carter).

Joan Weld delegated the authority to Braxton Davis to assign the draft sea level rise policy to a committee.

Docks and Deep Water Access in PNAs (CRC 12-05)

David Moye

David Moye stated if we go back to the beginning of the Dredge and Fill Law in 1969, it talked about excavation and fill in marsh lands or tide lands which we now refer to as marsh lands. It also talks about estuarine waters and state-owned waters. In 1974 the Coastal Area Management Act was adopted by the Legislature. In areas of environmental concern there is a description of primary nursery areas. That is in CAMA. This is the background within the legislation from which the CRC derives its rules. In 1974 we were the Office of Coastal Management housed within the Division of Marine Fisheries. The original implementation of the Dredge and Fill Law and the enforcement was done by the Marine Patrol officers. After CAMA, language was put in about AEC and we began to develop General Permits. Staff began to grow. Most of the original staff had a background in wildlife biology or marine fisheries. In today's Division of Coastal Management you have a lot more variation. Last year the CRC had a presentation from the Division of Marine Fisheries about primary nursery area designation. In the late 1970's when the first primary nursery areas were established, it became the standard for what all primary nursery areas are based on. A second round was done in the late 1980's. In the past year or so you have heard two variances that dealt with the issue of primary nursery areas and the water depth issue. During that same time frame we have issued hundreds of permits in primary nursery areas. The CRC didn't hear any of those because they fit the rules. What the CRC has heard are the anomalies that didn't fit in with the way the rule was written and the process is set up to then file a variance or an appeal for the applicant to come before the CRC. Do the CRC's rules allow docks and piers in primary nursery areas? Yes. There is specific language in 7H .1200 that addresses docking facilities in primary nursery areas, in submerged aquatic vegetation areas or in shellfish beds. This is a General Permit. As long as there is at least two feet of water then you can have a docking facility in a primary nursery area. If you have less than two feet of water under a General Permit then we simply confer with DMF personnel or with the Wildlife Resources Commission personnel to see if they have any outstanding issues with it. If they find that there is an issue in these areas then we elevate the proposed development to the Major Permit process. Most of these Major Permits, through meeting with the agencies and working on the project, are still issued. The next part would be pushing out the development to get to deeper water. Then we run into the quarter width of the water body rule. Years ago the distance out into the water body was allowed up to one-third. After the CRC modified its rules then it changed to one quarter. If you have a shallow water body and you need to move development out to get to deeper water then you may impact the quarter width rule. There is language in the CRC rules that talks about moving out. It is a requirement that you have to gain a foot of water depth in each 100-foot increment. If you aren't gaining any water depth then there isn't any reason to go farther out. There is also an established pier head alignment addressed in the rules. You cannot put a pier out in front of everyone else's because that could be a navigation issue. Right now the CRC rules refer to a minimum water depth for docking facilities in primary nursery areas. That appears to be working very well. We issue many permits in all the regions for structures within primary nursery areas and rarely does it get elevated to a point where the CRC will see it in an appeal or variance. The next issue that came up in the CRC's discussions was whether

dredging could be allowed in a primary nursery area. Yes. The CRC's rules discuss maintenance dredging in traditionally used areas that have been dug in the past. If they have been excavated over time then it can be allowed even in a primary nursery area. The implementation of the CHPP has had an effect on the permitting process. The agencies that comment on our CAMA Major Permit process can now comment on water quality or fisheries impacts, primary nursery areas and shellfish as a result of the CHPP. A goal of the CHPP is to protect existing fishery habitat and that includes PNA, SAV, oyster or shellfish resources. The CRC incorporated some of that language to give more protection to those areas. Many of the CRC's recent rule updates have been to try to bring some of the rules more in line with the goals of the CHPP. The end result from that is that agency comments have become much more focused on habitat issues since the CHPP was passed. The permit process works.

ACTION ITEMS

Pasquotank County/Elizabeth City Joint LUP Certification (CRC 12-07)

John Thayer

John Thayer stated there are two LUP items on the agenda. The first was an implementation report for the Town of Duck, Kitty Hawk, Camden County, Chowan County and Edenton. There is no action required from the CRC. The second item is the certification of the Pasquotank County/Elizabeth City Joint Land Use Plan. The memo that you received recommended a conditional certification, however we have received additional information from both the County and the City. Staff would like to change the recommendation to a certification of the Joint LUP. This Plan has met the substantive requirements of the 7B guidelines.

Veronica Carter made a motion to approve the certification of the Pasquotank County/Elizabeth City Joint Land Use Plan. Renee Cahoon seconded the motion. The motion passed with six votes in favor (Old, Wynns, Shepard, Carter, Cahoon, Elam) (Joyce, Webster, Mitchell, Peele absent for vote).

Fiscal Analysis Approval – 15A NCAC 07H .0304 AEC Within Ocean Hazard Areas (Erosion Rates) (CRC 12-08)

Ken Richardson

Ken Richardson stated this analysis has been approved by the Department and it has gone to the next level. The Community Rating System is what sped the review up when FEMA notified us that folks on the coast could lose points which could potentially increase their flood insurance premiums. In the fiscal analysis the focus was whether a 50 point difference would make a difference. There are two communities, based on the best available data from FEMA, Emerald Isle and Pine Knoll Shores where 50 points would reduce their class which would mean a five percent increase during the next evaluation for these communities. We ran numbers for the entire coast, but these two communities would be directly impacted so we focused on them.

Renee Cahoon made a motion to accept the fiscal analysis for 15A NCAC 07H .0303. Jerry Old seconded the motion. The motion passed unanimously (Old, Mitchell, Wynns, Peele, Shepard, Carter, Cahoon, Elam) (Joyce, Webster absent for vote).

OLD/NEW BUSINESS

Joan Weld stated the next meeting will be April 18-19 in Beaufort.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, DCM Director


Angela Willis, Recording Secretary

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

WILLIAM & KATHY TEAGUE)	
Petitioners,)	
)	
v.)	
NORTH CAROLINA DEPARTMENT)	10 EHR 4673
OF ENVIRONMENT AND NATURAL)	
RESOURCES, DIVISION OF)	
COASTAL MANAGEMENT,)	
Respondent.)	

JAMES & VICKY SNEAD,)	
Petitioners,)	
)	
v.)	
NORTH CAROLINA DEPARTMENT)	10 EHR 4674
OF ENVIRONMENT AND NATURAL)	
RESOURCES, DIVISION OF)	
COASTAL MANAGEMENT,)	
Respondent.)	

ALVIN RAYNOR,)	
Petitioner,)	
)	
v.)	
NORTH CAROLINA DEPARTMENT)	10 EHR 4689
OF ENVIRONMENT AND NATURAL)	
RESOURCES, DIVISION OF)	
COASTAL MANAGEMENT,)	
Respondent.)	

PETITIONERS' WRITTEN ARGUMENTS

Petitioners concur with the following statement of Respondent's as contained in section I. A. of Respondent's Written Arguments and Explanations About the ALJ's Decision: "Accordingly, DCM does not take exception to the ALJ's finding that DCM failed to use proper procedure in timely issuing its permit denials, and based on the ALJ's

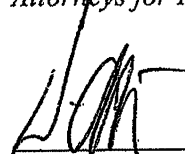
Findings and Conclusions, DCM agrees that these three CAMA permits should be issued to these Petitioners.” Since DCM concurs with ALJ’s decision reversing the decision of DCM to deny the permit applications, it is unnecessary to provide further argument on that ultimate issue in these cases.

Petitioners support all of the findings of fact of the ALJ and contend that the findings and conclusions are supported by the record. Petitioners pray of the Coastal Resources Commission to affirm in its entirety the Decision of Administrative Law Judge Donald W. Overby, dated December 19, 2011.

Respectfully submitted this the 29th day of March, 2012.

HARVELL AND COLLINS, P.A.
Attorneys for Petitioners

By:



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PETITIONERS' WRITTEN ARGUMENTS** was served on this day upon the named party below, via electronic mail, addressed as follows:

Christine A. Goebel
Assistant Attorney General
cgoebel@ncdoj.gov

Braxton C. Davis
CRC Executive Secretary
braxton.davis@ncdner.gov

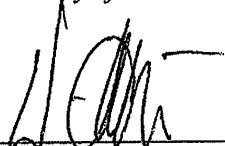
Mary L. Lucasse
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Angela Willis
Director's Assistant
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This the 29th day of March, 2012.

HARVELL AND COLLINS, P.A.
Attorneys for Petitioners

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STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

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March 15, 2012

Mr. Braxton C. Davis
Executive Secretary
NC Coastal Resources Commission
400 Commerce Avenue
Morehead City, NC 28557

Re: *Teague, Snead & Raynor v. DENR- DCM*; 10 EHR 4673, 4674, 4689

Dear Mr. Davis:

At the direction of Coastal Resources Commission Counsel Ms. Mary L. Lucasse, Respondent Division of Coastal Management hereby submits its Written Arguments and Explanations about the Administrative Law Judge's Decision in the above referenced cases, by the deadline of March 15, 2012 as directed. Respondent's arguments are included in the following document along with relevant record page and transcript page references for the Commission's ease of review. The document consists of: 1) A summary of the arguments, 2) arguments regarding the Findings of Fact, and 3) arguments regarding the Conclusions of Law. Respondent submits this for consideration at the Commission's April 19, 2012 meeting in Beaufort, and requests oral argument to address the Commission and to respond to any arguments that might be made by Petitioners.

Thank you for your attention to this matter. With best wishes, I am

Sincerely,

/S/ Christine A. Goebel

Christine A. Goebel
Assistant Attorney General

Enclosure

cc(w/enc.): Mary L. Lucasse, CRC Counsel, by email
Wes Collins, Counsel for Petitioner, by email
Angela Willis, Director's Assistant, by email

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

WILLIAM & KATHY TEAGUE)	
Petitioners,)	
)	
v.)	
NORTH CAROLINA DEPARTMENT)	10 EHR 4673
OF ENVIRONMENT AND NATURAL)	
RESOURCES, DIVISION OF)	
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NORTH CAROLINA DEPARTMENT)	10 EHR 4674
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ALVIN RAYNOR,)	
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NORTH CAROLINA DEPARTMENT)	10 EHR 4689
OF ENVIRONMENT AND NATURAL)	
RESOURCES, DIVISION OF)	
COASTAL MANAGEMENT,)	
Respondent.)	

**RESPONDENT'S WRITTEN ARGUMENTS AND
EXPLANATIONS ABOUT THE ALJ'S DECISION**

NOW COMES Respondent, North Carolina Department of Environment and Natural Resources (DENR), Division of Coastal Management (DCM or Staff), and files these Written Arguments and Explanations about the Administrative Law Judge's (ALJ) Decision primarily in favor of Petitioners (Petitioners collectively, or Teague, Snead or Raynor individually). The

ALJ's Decision is comprised of Findings of Fact (FOF) and Conclusions of Law (COL), and so this document will address the specific portions of the ALJ's Decision for which DCM makes arguments, will summarize the legal and factual basis for those arguments, and submits proposed changes for the Commission's consideration. The spacing is formatted to keep the "before" and "after" facts and conclusions on the same page for easier side-by-side comparisons of the language by the Commission.

I. SUMMARY OF DCM'S ARGUMENTS

A. The Issues Before the Commission

The issue now before the Coastal Resources Commission (CRC or Commission) is whether DCM staff failed to timely deny Petitioners' Coastal Area Management Act (CAMA) permit applications for boat slips with lifts. The ALJ found that DCM should not have relied on the Division of Water Quality's (DWQ) "request for more information/heading towards denial" letters as the basis for putting Teague's and Raynor's CAMA permit applications on hold because 1) no additional information was actually required from them; and 2) DWQ was actually requesting that they remove their request for slips and lifts altogether, which was all that they were proposing to develop. The ALJ further found an oral request to take the permit review process off of "hold" status by Teague and Snead during a site visit in the fall of 2009, and a written request by Raynor to DWQ requesting they resume 401 water quality certification permit review which was copied to DCM. The ALJ decided that the foregoing should have prompted DCM to resume review, and led to the ALJ's conclusion that DCM's permit denials were not timely.

Now before the Commission, DCM files these written arguments and explanations to clarify and present a more balanced set of Findings of Fact, more accurately reflecting the

testimony and evidence presented at the hearing, and suggests changes to the Conclusions of Law based on those facts proposed. DCM contends that the long-established processing procedures of the CRC were followed. These procedures, as set out in the CAMA, the State Dredge and Fill law, and the CRC's rules, require coordination with other resource agencies, and require that DCM consider all agency comments or concerns during the CAMA permit application review process. These procedures further provide guidance that additional information requests from other agencies may be made of the applicant through DCM if the additional information is necessary for a thorough review of the permit application. However, after review of the testimony regarding DWQ's letters to Petitioners, the content therein, and the fact that they requested unachievable actions by Petitioners, DCM agrees staff should not have relied on the letters in this case. Accordingly, DCM does not take exception to the ALJ's finding that DCM failed to use proper procedure in timely issuing its permit denials, and based on the ALJ's Findings and Conclusions, DCM agrees that these three CAMA permits should be issued to these Petitioners.

B. The Issue of Permit Review Timing

The primary issue before the Commission is whether DCM timely denied three CAMA Major Permits for the addition of boat slips with lifts to Petitioners' individual existing observation piers at their properties within the Public Trust Areas and Estuarine Waters Areas of Environmental Concern (AECs), and within the Primary Nursery Area (PNA) of Calico Creek in Morehead City, Carteret County, North Carolina. The ALJ agreed with Petitioners who contended the CAMA permits were not timely denied by DCM. This conclusion is based on the ALJ's findings that: 1) DCM should not have relied on DWQ's "additional information needed/heading towards denial" letters as a basis for putting Teague's and Raynor's CAMA

permit applications on hold, 2) Snead's and Teague's oral requests to remove their CAMA permit applications from "hold" status during the site visit in the fall of 2009 should have prompted DCM to resume permit review, and 3) Teague's October 11, 2009 written request to DWQ to remove the "hold" for his 401 water quality certification application should have prompted DCM staff to resume CAMA permit review as well. At hearing, DCM contended the permit denials were timely based on: 1) its reliance on the DWQ letters as the basis of its "hold" for Teague and Raynor, 2) no recollection of an oral hold request by Teague and Snead at the site visit, and 3) the understanding that Teague's October 11, 2009 request to DWQ to resume permit review was specific only to DWQ's 401 water quality certification review and not the CAMA review. The ALJ concluded DCM's permit denials on July 22, 2010 were not timely within 150 days of the application being accepted as complete and so should be issued as a matter of law per N.C.G.S. § 113A-122(c). This issue is addressed in the ALJ's Decision at FOF 23-59 and COL12-26.

C. Secondary Issues Considered at Hearing

Beyond the permit review timing issue, two secondary issues were also addressed at the hearing. First, Petitioners argued there were inconsistencies among Division of Marine Fisheries (DMF) staff from its Morehead City and Wilmington offices concerning the ability to permit boat slips with boat-lift stops in shallow water PNAs. Respondent contended that DMF's approval of boatlift stops in the Wilmington area were based on the unique characteristics of tidal creeks in the Wilmington area, which have significantly higher tidal ranges, and more narrowly defined channels compared to the Morehead City area. This issue was ultimately not ruled on by the ALJ, who indicated that he did not need to address this issue as the permits were not timely denied. This issue is addressed in the ALJ's Decision at FOF 60-61 and COL 27.

Second, Petitioners alleged that DCM staff delayed a determination that Petitioners' initial CAMA permit applications were complete, and that this delay alone forced Petitioners' application through the CAMA major permit review process instead of the CAMA general permit process. The ALJ decided, based in part on Petitioner Snead's admission that their consultant's delay in completing the CAMA permit applications was intentional and approved by the Petitioners. Additionally, the ALJ concluded that CAMA major permit review was proper for these applications. This issue is addressed in FOF 14-22 and COL 8-10 of the ALJ's decision.

II. SPECIFIC WRITTEN ARGUMENTS AND EXPLANATIONS ABOUT THE FINDINGS OF FACT

Respondent makes written arguments and explanations about the following Findings of Fact.

1. FOF 36 currently reads:

On October 5, 2009, Mr. Snead sent an email to Ian McMillian (DWQ) and Jonathan Howell (DCM), asking that his application be put on hold for 60 days as directed by Ian McMillian. (T p. 391) On October 5, 2009, Jonathan Howell sent a letter to Mr. Snead acknowledging his request for the abeyance. (Respondent's Exhibit 2D)

This fact should be changed to read:

On October 5, 2009, Mr. Snead sent an email to Ian McMillian (DWQ) and copied to Jonathan Howell (DCM), asking that his application be put on hold for 60 days as directed by Ian McMillian. (T p. 391) On October 5, 2009, Jonathan Howell sent a letter to Mr. Snead acknowledging **and granting** Mr. Snead's request **to place the processing of his CAMA permit application on hold, and informing Mr. Snead the hold would remain "until such time as a written request is received in this office requesting a resumption of application processing."** (R's Ex. 2D at Record Page 2893)

The second sentence should be changed to clarify that Mr. Snead requested holds for *both* his DWQ 401 application *and* his CAMA permit application, and to quote DCM's letter to note Snead was on notice of the need for a written request to remove the "hold" status.

2. FOF 39 currently reads:

On October 20, 2009, Daniel Govoni, Assistant DCM Major Permits Coordinator sent a letter to Mr. Teague and Dr. Raynor notifying them that their applications would be placed in “abeyance” because the NC Division of Water Quality had requested more information, and a water quality certification must be issued for the application to proceed.

This fact should be changed to read (changes in bold):

On October 20, 2009, Daniel Govoni, Assistant DCM Major Permits Coordinator sent a letter to Mr. Teague and **to** Dr. Raynor notifying them that their applications would be placed in “abeyance” because the NC Division of Water Quality had requested more information, and a water quality certification **usually should** be issued for the **CAMA permit** application to proceed. **(Record Pages 2877 and 2947)**

This FOF should be changed to replace the absolute term “must” to “usually should” so that it is factually accurate. As part of DCM’s review of CAMA permit applications, the Commission’s rules require that before CAMA permit issuance, DCM make a finding that “[d]evelopment shall comply with state and federal water and air quality” standards. (See 15A NCAC 07H .0208(a)(2)(B)). In most cases, DWQ will issue the 401 water quality certification and that will be the basis for DCM’s determination regarding water quality impacts. However, when DWQ indicates that they “are heading toward denial” of the 401 water quality certification application, DCM has to decide how to proceed with the CAMA permit review. DCM’s practice has been to discuss whether the applicant would like the CAMA review to be placed on “hold” status so that the applicant can work with DWQ or other agencies to resolve concerns. Such a “hold” will prevent DCM from having to timely deny a CAMA permit application while the applicant is still working to redesign or otherwise address issues with another agency, and is done for the benefit of an applicant and to prevent them from having to start over with a new application and permit fee. However, on some occasions where DWQ has not issued or formally denied a 401 water

quality certification, DCM, with the understanding of the applicant, will deny the CAMA permit application so that an applicant can proceed forward with an appeal of the CAMA permit denial. (See Transcript pages 793-99) So contrary to the ALJ's finding above, there are some instances when DWQ has not issued the 401 water quality certification, but DCM has proceeded with the CAMA permit denial.

3. FOF 40 now reads:

Mr. Govoni tells Mr. Teague and Dr. Raynor by this letter that they “will be given five working days” to provide the information requested by DWQ in order for DWQ to issue a water quality certification. (Respondents' Exhibit 1I) If the applicants were able to provide a water quality certification within the fide days then the clock would continue to run. The “information” requested by DWQ is to withdraw their applications. In actuality, a water quality certification was not going to be issued for these applications.

This fact should be changed to read (changes in bold):

Mr. Govoni tells Mr. Teague and Dr. Raynor by **these letters** that they “will be given five working days” to provide the information requested by DWQ in order for DWQ to issue a water quality certification. (**R pp. 2877 and 2947**) If the applicants were able to provide a water quality certification within the fide days then the clock would continue to run. The “information” requested by DWQ is to withdraw their applications, **not to provide more information as DWQ's letter, which requests an unachievable result in these situations, indicates.** In actuality, a water quality certification was not going to be issued for these applications **for boat slips with lifts in the locations proposed by Petitioners.**

The additions in bold offer a more complete view of the facts and, therefore, should be added. DWQ's letters (Record Pages 2869, 2909, and 2939) would have made sense if Petitioners had proposed other development in addition to slips with lifts. For example, if the request was for a pier and slips, “more information” could have been a new site plan for a pier only, and would have been approved by DWQ. (See Transcript pages 183-84 and 451-53) However, in this case where only boat slips with lifts were proposed, the letter for “more information” from Petitioners was not asking for more information and was therefore suggesting withdrawal of the 401

applications altogether due to DWQ's water quality concerns about impacts to shallow PNA habitat and harm to the existing PNA use. (See Transcript pages 170-84 and 451-54 for testimony regarding DWQ's letters)

4. FOF 41 now reads:

The Govoni letter goes on to say that failure to provide the "information" means that the application will be suspended until such time as that information is provided. In other words, unless the applications are withdrawn the process will NEVER end, which was acknowledged by Mr. Huggett. (T p. 797) (Emphasis added)

This fact should be changed to read (changes in bold):

The Govoni **letters go** on to say that failure to provide the "information" means that the application will be suspended until such time as that information is provided. **However, Mr. Huggett testified that in cases where an applicant understands that "there is just no way [DWQ] is going to issue a water quality certification" DCM "will entertain a request to resume processing of the [CAMA] application and move forward towards permit denial to give the applicants the opportunity to be able to utilize their appeal rights [as] in this case."** (T pp. 793-94; R pp. 2877 and 2947 for Govoni letters)

This FOF should be changed to note Mr. Huggett's testimony that there is not actually unending limbo as the fact currently states. (T p. 797) In fact, the ending described by Mr. Huggett is exactly how Petitioners in this case got their CAMA permit denials and the resulting ability to file this contested case. (T pp. 793-99) Mr. Huggett explained that if an applicant reaches an impasse with DWQ and understands no 401 water quality certification will be issued and that DCM will have to deny the CAMA permit application, DCM will remove its hold and deny so that an applicant can seek due process through an administrative appeal of the CAMA permit denial. (T pp. 793-99)

5. FOF 42 now reads:

By following the process in these applications, DWQ, a state agency and a part of this process, was allowed to put ridiculous conditions on issuance of water quality certifications without moving to deny the applications, which meant that the applications, which meant that these applications would be in limbo into perpetuity and the only option the applicants had to comply with DWQ was to withdraw their individual applications—completely and utterly illogical to equate with “additional information.”

This fact should be changed to read (with changes in bold):

By following the process in these applications, DWQ, a state agency and a part of this process, was allowed to **withhold a water quality certification decision based on “addition information” when no information was truly needed. However, Mr. Huggett testified that in cases where an applicant understands that “there is just no way [DWQ] is going to issue a water quality certification” DCM “will entertain a request to resume processing of the application and move forward towards permit denial to give the applicants the opportunity to be able to utilize their appeal rights [as] in this case.” (T pp. 793-94)**

As noted in the proposed changes to FOF 41 in Item 4 above, in some cases where it is clear the 401 water quality certification will not be issued but has not yet been denied by DWQ, DCM, with the understanding of the applicant, will remove holds and proceeded to permit denial so an applicant can appeal the CAMA permit denial. See Transcript pages 793-99 for testimony on this issue.

6. FOF 43 now reads:

15A NCAC 07J .0204 addresses processing CAMA major permit applications such as those at issue herein. 15A NCAC 07J .0204(d) sets forth the conditions upon which an application could be held in abeyance. “If the application is found to be incomplete or inaccurate after processing has begun” the application may be terminated until corrected. There is no indication that the applications were incomplete or inaccurate. Neither the Respondent nor any state or federal agency determined that the applications were incomplete or inaccurate.

This fact should be changed to make a statement specific to these cases and not generally, and should read (changes are in bold):

15A NCAC 07J .0204 addresses processing CAMA major permit applications such as those at issue herein. **15A NCAC 07J .0204(d) provides:**

If the application is found to be incomplete or inaccurate after processing has begun or if additional information from the applicant is necessary to adequately assess the project, the processing shall be terminated pending receipt of the necessary changes or necessary information from the applicant. During the pendency of any termination of processing, the permit processing period shall not run. If the changes or additional information significantly alters the project proposal, the application shall be considered new and the permit processing period will begin to run from that date.

Also, 15A NCAC 07J .0207(e) provides:

Each reviewing agency may request additional information (including Stormwater Management Plans) from the applicant through the Division of Coastal Management if such information is deemed necessary for a thorough and complete review of the application. The applicant will be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 7J .0204(d).

In this case, Petitioners’ applications were not incomplete or inaccurate, but were entirely the development of boat slips with lifts that would not receive a 401 water quality certification from DWQ as proposed. Therefore, in these cases where the Petitioners’ applications were not incomplete or inaccurate, and DWQ’s request was unachievable, DCM should not have placed the Teague and Raynor applications on hold based on DWQ’s letters.

This FOF should be changed to cite the whole rule and a related rule for completeness. Although the Petitioners' applications in these cases were not inaccurate or incomplete despite the statements made in the DWQ and Govoni letters, it is not the case for every kind of development application. Instead, there are some types of development projects such as those with stormwater impacts, where DCM relies on DWQ to make a determination on water quality so that DCM can then make a finding whether the development is in compliance "with state and federal water...quality" standards per 15A NCAC 07H .0208(a)(2)(B). In such cases, an otherwise complete application becomes incomplete until a response from DWQ, either directly to DCM or from the applicant, is received regarding impacts to water quality, based on 15A NCAC 07H .0207(e).

7. FOF 47 now reads:

The reason that DCM sent the Govoni letters to Petitioners was because the Division of Water Quality was ostensibly asking for more information in the Steenhuis letter. (T. p. 782). By sending the Govoni letter, Respondent was adopting DWQ's position as set out in the Steenhuis letter.

This fact should be changed to read (changes in bold):

The reason that DCM sent the Govoni letters to **Teague and Raynor** was because the Division of Water Quality was ostensibly asking for more information in the Steenhuis letter. **(T. p. 782; R pp. 2877 & 2947, contrasted with R p. 2893)** By sending the Govoni letter, Respondent was **deferring to** DWQ's position as set out in the Steenhuis letter.

This fact should be changed to reflect that the Govoni letters were only to Teague and Raynor and not Snead. (R pp. 2877 & 2947, contrasted with R p. 2893) Also, in the last sentence, the word "adopting" should be changed to "deferring to." This is based on the uncontested testimony of Mr. Huggett that DCM "defer[s] to their [DWQ's] expertise on needing that additional information," and based on Respondent's Exhibits 1I and 3K which also use the term "defer." (T p. 756; See also T p. 772 "deferring to") As explained by Mr. Huggett,

[B]efore we can issue a permit, we, the Division of Coastal Management, have to be able to make...several determinations on the proposed project. One of those determinations is that the project will not violate water quality standards. If the Division of Water Quality believes they need additional information for them to complete the review of the water quality certification, we have to defer to their expertise on needing that additional information.

(T p. 756)

8. FOF 50 now reads:

While no written request from Petitioners to re-start the processing of the Petitioners' applications was received until after Mr. Collins began to represent them, and sent a request by email to Mr. Huggett on July 9, 2010, none was required. (T pp. 771-78)

This fact should be changed to read (changes in bold):

Petitioners did not make any written request to remove the processing hold for Petitioners' CAMA applications until after Mr. Collins began to represent them, and sent a request by email to Mr. Huggett on July 9, 2010. **While the Commission's rules don't require an applicant to make such requests in writing, the longstanding practice of DCM is to require written requests for hold removals where the Commission's rules are silent on this point.** (See T pp. 781-89)

The conclusion that "none [written request to remove hold] was required" should be changed to note that the Commission's rules are silent about the form of a hold-related request, and that requiring written requests to remove a processing hold are a longstanding DCM procedure. This is discussed in Doug Huggett's testimony on pages 781-789 of the Transcript.

9. FOF 51 now reads:

Mr. Huggett indicated that DCM requires requests to take an application off hold in writing by the applicant or authorized agent to protect DCM legally and avoid confusion. (T pp. 785-86, 789) The Govoni letter, nor any other correspondent with petitioners, stated that Petitioners were required to request in writing that the abeyance be lifted and the process to continue. There is no statute, rule or written policy that requires such request to be in writing. The Petitioners were no on notice of any such requirement. Mr. Huggett was not aware of any such statute, rule or written policy.

This should be changed to read (changes in bold):

Mr. Huggett indicated that DCM requires requests to take an application off hold in writing by the applicant or authorized agent to protect DCM legally and avoid confusion. (T pp. 785-86, 789) **While the Govoni letters to Teague and Raynor did not specify the need for a written request to remove the processing hold, the October 5, 2009 letter from DCM to Snead did put Snead on notice that his requested hold would remain “until such time as a written request is received in this office requesting a resumption of application processing.” (R p. 2893)** There is no statute, rule or written policy that requires such request to be in writing, **though that is the longstanding practice of DCM. (T pp. 781-89)** Mr. Huggett was not aware of any such statute, rule or written policy.

The proposed changes are to reflect what the letters to the different Petitioners actually said and to note that while the letters to Teague and Raynor did not indicate written requests were needed, the letter sent to Snead did. The Snead letter is Record page 2893, and can be compared with the Govoni letters at Record pages 2877 & 2947.

10. FOF 52 now reads:

Petitioners Snead and Teague had verbally told Respondent to proceed with the process at the meeting in late November 2009 and Dr. Teague had told Respondent by correspondence October 11, 2009 to continue with the process.

This fact should be changed to read (changes in bold):

Petitioners Snead and Teague had verbally told Respondent to proceed with the process at the meeting in late November 2009. **Dr. Raynor copied DCM on correspondence to DWQ dated October 11, 2009, which stated “I do not wish to remove my application for a boat slip with lift, but instead, request that you give full consideration to my application which was acknowledged as complete in a letter to me from Heather Styron dated August 25, 2009. I am sending a copy of this letter to Heather Styron, and two copies to Ian McMillian (DWQ), as you required.”**

These changes correct the reference of Dr. Teague to Dr. Raynor, and also note that DCM was only copied on the letter to DWQ indicating the DWQ hold be removed. (See P’s Ex. 218 at Record Page 2788) Mr. Huggett testified that DCM viewed this letter as a request to DWQ and not to DCM regarding the Raynor application hold. (Transcript pages 783-85)

11. FOF 59 now reads:

The time from acceptance of the completed applications until they were ultimately denied far exceeds the maximum allowed of 150 days for each application, even giving latitude for any time administratively held in abeyance at the Petitioners’ request.

Instead of simply making this conclusion, DCM believes “showing the math” is prudent and necessary, and this fact should be changed to read:

DCM calculated the time as follows:

Teague:

Complete Application acknowledgement on 9/8/09 (R p. 2853)

Govoni letter starting DWQ-based hold on 10/20/09 (R p. 2877)

Petitioners counsel’s request to re-start processing on 7/9/10 (R p. 2836)

Permit denial on 7/22/10 (R p. 2887)

Total: 42 days active + 22 days active = 64 days active

Snead:

Complete Application on 8/10/09 (R p. 2892)

DCM letter acknowledging the hold on 10/5/09 (R p. 2893)

Petitioners counsel's request to re-start processing on 7/9/10 (R p. 2836)

Permit denial on 7/22/10 (R p. 2917)

Total: 56 days active + 22 days active = 78 days active

Raynor:

Complete Application acknowledgement on 8/24/09 (R p. 2923)

Govoni letter starting DWQ-based hold on 10/20/09 (R p. 2947)

Petitioners counsel's request to re-start processing on 7/9/10 (R p. 2836)

Permit denial on 7/22/10 (R p. 2948)

Total: 57 days active + 22 days active = 79 days active

However, this Court finds that Teague and Raynor never should have been put on hold, and Teague and Snead should have been taken off hold based on their claims of orally notifying DCM at the November 2009 site visit. Additionally, Raynor should have been taken off hold based on his 10/11/09 email to DWQ copying DCM. Accordingly, this Court finds the permits were denied in the following number of days:

Teague:

Complete Application acknowledgement on 9/8/09 (R p. 2853)

No DWQ-based hold

Petitioners oral request in late-fall or, at least 60 days after DWQ letter (late-Dec)

Permit denial on 7/22/10 (R p. 2887)

Total: Approximately 8 months

Snead:

Complete Application on 8/10/09 (R p. 2892)

DCM letter acknowledging the hold on 10/5/09 (R p. 2893)

Petitioners oral request in late-fall or, at least 60 days after DWQ letter (late-Dec)

Permit denial on 7/22/10 (R p. 2917)

Total: Approximately 7 months

Raynor:

Complete Application acknowledgement on 8/24/09 (R p. 2923)

No DWQ-based hold or, at least 10/11/09 email to DWQ and copying DCM requesting removal of "hold" (R p. 2788)

Permit denial on 7/22/10 (R p. 2948)

Total: Approximately 10 months

III. SPECIFIC WRITTEN ARGUMENTS AND EXPLANATIONS ABOUT THE CONCLUSIONS OF LAW

Respondent also makes written arguments and explanations about several of the Conclusions of Law (COL) made by the ALJ in this case for the reasons which follow.

12. COL 18 now reads:

Water quality certifications are provided by the Division of Water Quality, not applicants for CAMA permits; thus, the failure to provide a water quality certification did not constitute “additional or necessary information from the applicant,” and cannot serve as a basis for stopping the processing clock.

This conclusion should be changed to make it factually accurate:

When DWQ issues 401 water quality certifications, DCM is copied on them so that applicants do not have to provide them directly to DCM for a CAMA permit review. (T pp. 791-93) However, the responsibility to obtain a 401 water quality certification lies solely with the permit applicant. In this case where DWQ indicated it was “heading toward denial” of the Petitioners’ 401 applications for their boat slips with lifts, Petitioners’ failure to provide a water quality certification did not constitute “additional or necessary information from the applicant.” As DWQ’s request to Petitioners in this case was for an unachievable action, DCM should not have used DWQ’s letters as a basis to place these applications on hold.

The conclusion above, that the DWQ letters should not have been used as the basis for DCM placing the Petitioners’ applications on “hold,” does not change. However, because the ALJ’s conclusion about how 401 decisions are transmitted to DCM is not supported by the hearing testimony, the changes should be made to reflect the evidence in the record. (See Transcript pages 791-93)

13. COL 21 reads:

It was error as a matter of law for Respondent to blindly rely on DWQ's irrational request for "additional information: when in fact there was no further information Petitioners could provide short of withdrawing their respective applications.

It should be changed to read (changes in bold):

Based on Petitioners' applications for only boat slip with lifts, it was an error for DCM to rely on DWQ's request for "additional information" as the basis for the DCM hold for Teague and Raynor when no further information was needed and DWQ's request was unachievable. Instead, DCM should have continued to proceed with its permit processing despite receipt of DWQ's letters.

This conclusion should be changed to reflect why, in this case based on Petitioners' boat slips with lift requests, DCM should have responded differently after receiving the DWQ letters to Petitioners.

14. COL 22 now reads:

The conundrum created by DWQ was without end—the proverbial "Catch 22." Respondent cannot merely sit idly by while DWQ ties up these applications. In fact, Respondent admits that DWQ cannot hold up the process, and Respondent initiated the administrative hold by adopting as its own DWQ's position of the need for additional information.

This conclusion should be changed to read (changes in bold):

DCM's reliance on DWQ's "add info" letters in this case was misplaced. DCM's process of placing CAMA applications on hold once DWQ requests more information is well intentioned. It is aimed at providing applicants enough time "off the clock" to communicate with other agencies and to work with them to redesign problems out of their proposed development so that DCM doesn't run out of processing time and have to deny a project while the applicant is still working out possible solutions with resource agencies. (T pp. 771, 794, 798-99) However, in this case, DCM should have more closely examined DWQ's letters to determine if any "additional information" was actually needed before it relied on DWQ's letter as the basis for the DCM hold.

This conclusion unfairly ignores the testimony of Mr. Huggett explaining the reasoning for DCM holds following DWQ or other agency concerns. It further alleges that DCM "adopted" DWQ's

position as its own when the evidence is that DCM defers to DWQ, and has admitted that in this case, it was improper for DCM to do so. DCM generally defers to DWQ's expertise on needing additional information (Record pages 2877 & 2947 – Govoni letters; T pp. 756, 772)

15. COL 24 now reads:

The Respondent failed to offer any evidence or authority that would allow an applicant to voluntarily delay the processing of their respective application of major CAMA permit. Assuming *arguendo* that such a delay is allowed in the law, the terms of the delay were established by the correspondence from Petitioners Snead and Teague. As such, any voluntary abeyance of the processing clock was limited to 60 days, which expired no later than mid-December, 2009; leaving the processing period of the Snead and Teague applications well in excess of 75 or 150 days.

This conclusion should be changed to read (changed in bold):

DCM can place an application on “hold” if it “is found to be incomplete or inaccurate after processing has begun or if additional information from the applicant is necessary to adequately assess the project” per 15A NCAC 07J .0204(d). Also, 15A NCAC 07J .0207(e) provides that “Each reviewing agency may request additional information (including Stormwater Management Plans) from the applicant through the Division of Coastal Management if such information is deemed necessary for a thorough and complete review of the application. The applicant will be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 7J .0204(d).”

While these ruled do not speak directly about applicant-requested holds, if an applicant requests a hold (usually to redesign or otherwise address agency concerns) and DCM or another agency finds there in additional information needed, DCM can place the application on hold based on the rules cited above.

In these cases however, the terms of the delay were established by the correspondence from Petitioners. As such, any voluntary abeyance of the processing clock was limited to 60 days, which expired no later than mid-December, 2009; leaving the processing period of the Snead and Teague applications well in excess of 75 or 150 days. (See Record pages 2787-88 & 2893 for correspondence)

DCM believes that with or without an applicant request, if there is additional information needed by DCM or another resource agency to complete an application or make it accurate, the rules cited above give DCM the authority for a review “hold.” In this case however, any holds (applicant requested or not) were limited in time and/or were orally requested to end by Petitioners at points in time that result in the conclusion that the CAMA permit review was not completed within 75 or 150 days.

16. COL 25 now reads:

There is no authority that allows DCM to require a written request for removal of a voluntary stay of application processing.

This conclusion should be changed to add (changes are in bold):

There is no authority that allows DCM to require a written request for removal of a voluntary stay of application processing. **In fact, the relevant rules of the CRC on permit holds are silent as to a required form. The relevant rules regarding application holds include:**

15A NCAC 07J .0204(d): If the application is found to be incomplete or inaccurate after processing has begun or if additional information from the applicant is necessary to adequately assess the project, the processing shall be terminated pending receipt of the necessary changes or necessary information from the applicant. During the pendency of any termination of processing, the permit processing period shall not run. If the changes or additional information significantly alters the project proposal, the application shall be considered new and the permit processing period will begin to run from that date.

And

15A NCAC 07J .0207(e): Each reviewing agency may request additional information (including Stormwater Management Plans) from the applicant through the Division of Coastal Management if such information is deemed necessary for a thorough and complete review of the application. The applicant will be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 7J .0204(d).

Given the circumstances of these cases, DCM should have varied its usual process and relied on the oral requests to remove the processing “hold” made by Teague and Snead at the site visit, and review by DCM should have continued at that time.

While DCM acknowledges that in the facts of these cases, DCM should have relied on the Teague and Snead oral requests (T pp. 388-89, 408) to remove the processing hold made at the site visit, it is also relevant to acknowledge that the authority for permit holds is silent to the form required. DCM's Doug Huggett testified that it is DCM's longstanding practice to require them in writing. (See T p. 786)

17. COL 27 now reads:

This tribunal is extremely concerned about the potential for significant environmental impact but these applications; however, Respondent acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and failed to act as required by law or rule in denying Petitioners' respective CAMA major development permit applications.

This conclusion should be changed to read (the changes are in bold):

This tribunal is extremely concerned about the potential for significant environmental impact but these applications; **however, Respondent failed to use proper procedure in denying Petitioners' respective CAMA major development permit applications.**

Based on the proposed changes to the FOF and COL above, DCM acknowledges it failed to use proper procedure in denying Petitioners applications, but does not believe the facts demonstrate that DCM acted erroneously, arbitrarily or capriciously, or failed to act as required by law or rule. DCM witnesses testified that they followed the usual procedure in these cases, including relying on DWQ's letters as a basis for putting the applications on "hold" and by requiring CAMA-specific written requests from the applicants or their authorized agent to remove the "hold" status. While it turns out that the usual procedure did not fit the specific facts in these cases, DCM's adherence to its usual procedure was not erroneous, arbitrary, capricious, or acting contrary to a rule or law.

18. For the reasons stated in paragraph 17 above, the "Decision" section at the end should be changed to reflect that Respondents failed to use proper procedure in denying Petitioners' respective CAMA major development permit applications as the sole basis for error.

Respectfully submitted this the 15th day of March, 2012.

ROY COOPER
Attorney General

/S/ Christine A. Goebel

By: _____

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CERTIFICATE OF SERVICE

A copy of the foregoing was e-mailed to:

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This the 15th day of March, 2012.

/S/ Christine A. Goebel

Christine A. Goebel
Assistant Attorney General



STATE OF NORTH CAROLINA
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TO: The Coastal Resources Commission

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

DATE: April 3, 2012 (for the April 19, 2012 CRC Meeting)

RE: **Variance Request by Gail Duncan**

Petitioner owns property located at 1318 Harbour Watch SW in Calabash, Brunswick County, North Carolina. On 29 August 2011, Petitioner applied for a CAMA Major Permit to construct a pier, gazebo, boat lift and floating dock within her riparian corridor on the Atlantic Intracoastal Waterway (AIWW). On 2 December 2011, Petitioner's CAMA Major Permit application was denied on the basis that the proposed development is inconsistent with 15A NCAC 7H .0208(b)(6)(G)(iii), in that pier length shall not extend more than one-fourth the width of a natural water body. Petitioner filed this variance request seeking relief from strict application of the "one-quarter width rule" by allowing the increased pier length as proposed in her permit application.

The following additional information is attached to this memorandum:

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

cc: William A. Raney Jr., Counsel for Petitioner, electronically
Doug Huggett, DCM Major Permits Coordinator, electronically
Daniel Govoni, Assistant Major Permits Coordinator, electronically
Debbie Wilson, DCM Wilmington District Manager, electronically
Holley Snider, DCM Field Representative, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES**15A NCAC 7H .0205 Coastal Wetlands**

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this does not include hurricane or tropical storm tides.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere.

Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

15A NCAC 7H .0206 Estuarine Waters

(a) Description. Estuarine waters are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

(c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system.

(d) Use Standards. Suitable land/water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

15A NCAC 7H .0207 Public Trust Areas

(a) Description. Public trust areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used by the public for navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water quality standards, or cause degradation of shellfish waters are considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas.

15A NCAC 7H .0208 Use Standards

(a) General Use Standards

- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:

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

(b) Specific Use Standards

- (6) Piers and Docking Facilities.

- (G) Pier and docking facility length shall be limited by:

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

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

(iii) **not extending more than one-fourth the width of a natural water body, or human-made canal or basin.** Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.

(emphasis added)

STIPULATED FACTS

ATTACHMENT B

1. Petitioner, Gail Duncan owns a .87 acre lot located at 1318 Harbour Watch SW in the Ocean Harbor Estates subdivision in Calabash, Brunswick County, North Carolina.
2. Petitioner's property is located adjacent to the Atlantic Intracoastal Waterway (AIWW), about 1.25 miles east of the intersection of Little River Inlet Channel, with an approximate shoreline length of 140 feet.
3. On 28 March 2011, Petitioner was issued CAMA Minor Permit No. BC11-01 for upland development on the property including single-family residence with pool and a retaining wall, all of which have been constructed.
4. On 29 August 2011, Petitioner submitted a complete CAMA Major Permit application to construct a pier, gazebo, boat lift and floating dock within the riparian corridor of her property. The proposed elevated wooden pier will be 6 feet wide and approximately 515 feet long (measured from the existing retaining wall), of which 448 feet would extend waterward of mean high water. The proposed covered gazebo will measure 18 feet by 16 feet and a hinged ramp will connect the proposed floating dock to the gazebo. The proposed floating dock will be 10 feet by 16 feet with 3 boat slips, one as a boat lift, one wet slip and another on top of the floating dock (intended for small hand-launched watercraft).
5. The proposed development is located within the Coastal Wetlands, Estuarine Waters, Public Trust Waters Areas of Environmental Concern (AECs) as described in 15A NCAC 7H .0205, .0206 and .0207, respectively.
6. Adjacent to the proposed development, the U.S. Army Corps of Engineers has an 80-foot setback from the edge of the AIWW's channel.
7. The proposed development is within an area designated as a Primary Nursery Area (PNA) by the N.C. Marine Fisheries Commission and is open to the harvest of shellfish. The waters of the AIWW in this area are classified SA by the N.C. Environmental Management Commission.
8. The proposed development will not encroach into either adjacent riparian property owners' 15-foot setback.

9. CRC Rule 15A NCAC 7H.208(b)(6)(G)(iii) provides that pier length shall be limited by “not extending more than one-fourth the width of a natural water body... Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body ...”.
10. The width of the AIWW at the location of the proposed development is approximately 592 feet as measured from the waterward edge of the coastal wetlands on both sides of the AIWW.
11. The proposed development would extend approximately 185 feet into the AIWW as measured from the waterward edge of the coastal wetlands, approximately 37 feet beyond one-fourth width.
12. The proposed floating dock will extend to the Army Corps of Engineers 80-foot setback off the AIWW channel. At the 80-foot setback, water depths range from -3 feet at the landward side of the proposed floating dock to -4 feet at the waterward side of the floating dock relative to normal low water level. If the floating dock were to be located at the one-fourth width of the AIWW, the water depth would range from -1 foot at the landward edge of the floating dock to -2 feet at the waterward edge of the floating dock relative to normal low water level.
13. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers for docking facilities within 200 feet of the applicant’s property. However the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body. The Petitioner’s proposal does not meet the necessary criteria to extend to the one-third width because the adjacent facilities along the shoreline for similar use are not located within 200 feet of the applicant’s property.
14. The shoreline opposite the location of the proposed pier development consists of a narrow beach with an intermittent marsh fringe that separates the water of the Intracoastal Waterway AIWW from a large salt marsh complex that extends to New River Inlet. There are several small remnant undiked spoil disposal hummocks within the marsh complex, but none has access by land.
15. All of the commenting state resource agencies either had no comment or no objection to the proposed development.

16. On 25 October 2011, the proposed development received a Section 401 Water Quality Certification from the N.C. Division of Water Quality.
17. The Army Corps of Engineers found that the proposed development complied with their General Permit No. 197800056 (expiration date 12-31-16) in that it met the special condition (b.) which prohibits any construction across or into any natural or manmade channel or water body in any manner that may adversely affect navigation by the general public and the general condition (e.) that requires the proposed development not interfere with the public's right to free navigation on all navigable waters of the United States.
18. On 2 December 2011, Petitioner's CAMA Major Permit application was denied on the basis that the proposed development is inconsistent with CRC Rule 15A NCAC 7H.208(b)(6)(G)(iii) which states that pier length shall be limited by "not extending more than one-fourth the width of a natural water body...".¹
19. The proposed development would extend approximately 37 feet beyond one-fourth the width of the AIWW. The proposed development is 31.25% of the width of the AIWW.
20. On 6 February 2012, Petitioner filed this variance request seeking relief from application of the one-quarter width rule set forth in 15A NCAC 7H .0208(b)(6)(G)(iii). Petitioner seeks permission to build out to 185 feet, which is 31.25% across the width of the AIWW.
21. The parties stipulate that the 2 aerial photographs in Attachment D and at the hearing are admissible.

¹ In Attachment E of this packet, the denial letter issued by DCM dated December 2, 2011, states the "one-quarter width rule" as the basis of denial, but mistakenly cites 15A NCAC 7H .0208(b)(6)(J)(iii) as the "one-quarter width rule" instead of the correct rule citation which is 15A NCAC 7H .0208(b)(6)(G)(iii) (See Attachment A).

ATTACHMENT C

Petitioner and Staff Positions

- I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.

Petitioners' Position: Yes.

The rule limiting the length of a pier to one-fourth of the width of a body of water will result in a hardship due to the fact that the depth of the water at the end of the pier and dock facility will be only about -1' to -2' at normal low water thereby limiting the usefulness of the docking facility for several hours of the tidal cycle. The hardship is unnecessary because the area between the one-fourth distance and the one-third distance to which the Petitioner wishes to build the pier is not useful for public navigation due to the shallow depth of the water. Public navigation will not be unduly adversely affected by the docking facility as requested.

Staff's Position: Yes.

The limit on pier length provided in 15A NCAC 7H .0208(b)(6)(G)(iii) requires that Petitioner's pier not exceed one-fourth the width of the AIWW. In this case, one-fourth of the 592 foot water body allows Petitioner to build out to 185 feet. The low water depth at this distance out will certainly be impractical as well as inconvenient for Petitioner. There are no deeper options further landward, however, there would be adequate access if Petitioner's proposed development is allowed to go out to approximately one-third width of the water body. Staff agrees with Petitioner that the distance between one-fourth and one-third of the water body would have minimal impact on public navigation as supported by the U.S. Army Corps of Engineer's determination that Petitioner's project complied with their regulations regarding navigational concerns (See Stipulated Fact #17). The strict application of the "one-quarter width rule" in this case appears to rise to an unnecessary hardship on Petitioner given the issues of low water depth at one-fourth width coupled with the fact that there would be minimal impact on public navigation to allow Petitioner to extend out slightly beyond the one-fourth width.

- 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 shoreline where the Petitioner's lot is located has as an indentation in the marsh fringe that makes the measurement point for the one-fourth rule more landward than properties to the east and west. The opposite shoreline is in public ownership or control thereby eliminating the risk of any structure extending from the shoreline that is opposite of Petitioner's shoreline. There is an unusually wide expanse of mudflat between the marsh and the low water mark that

results in the measurement point on the Petitioner's side of the water body being unusually far from deep water. Only a slight extension to the one-third width is required for the Petitioner to reach adequate water depth for a docking facility that can be used at all times of the tidal cycle.

Staff's Position: No.

Staff contends that Petitioner's property is typical compared to other properties located along the shoreline of the AIWW, in that all properties within this area have very shallow water adjacent to the shore and are subject to the Army Corps of Engineers' 80-foot setback. Furthermore, the marsh fringe in front of Petitioner's property is similar to that of neighboring properties.

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

Petitioners' Position: No.

The lack of deep water at one-fourth the width of the water body is a condition over which the Petitioner has no control.

Staff's Position: No.

Some of the hardship is the result of Petitioner's proposed use, however, Staff acknowledges that the majority of it is caused by the natural conditions, such as the nearshore shallow waters along the AIWW, which are typical of the areas outside the federally maintained channel.

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

Petitioners' Position: Yes.

- Consistent with the spirit, purpose and intent of the rules.

Navigation

The purpose of the one-fourth rule is to assure that piers do not unduly interfere with public navigation and do not unreasonably allocate public trust areas to private use. Generally application of the rule assures that the middle one-half of any body of water remains available for public use while allocating up to one-fourth of the water body for traditional riparian rights by enabling riparian owners to extend wharfs out to deep water. Because the opposite shoreline is not suitable or available for water front development, two-thirds of the water body will remain open for public use. CRC Rule 15A NCAC 7H.0207(c) states that an objective of the Public Trust Area of Environmental Concern is being "to protect public rights for navigation and

recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. CRC Rule 15 A NCAC 7H .0207(d) sets out the general use standard for public trust areas. In part the Rule states:

“The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are example of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary”.

A slight extension of the pier will allow the Petitioner to gain access to keep water without unduly infringing on public use at the water.

Primary Nursery Area

Among the specific use standards set out in the CRC Rules is one that states:

“Navigation channels, canals and boat basins shall be designed or located so as to avoid primary nursery areas...”. 15A NCAC 7H.0208(b)(1).

CRC Rule 15A NCAC 7H.0208(b)(1)(I) states:

“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”.

These rules are designed to protect disturbance of primary nursery areas. If Petitioner’s pier is terminated at one-fourth the distance of the body of water, the depth at the docking facility will be -1’ to -2’ at normal low water and will result in the inevitable disturbance of the bottom of both the flowing dock and the boats utilizing the dock. A variance to allow the pier to be extended will avoid the adverse effect on a primary nursery area. The balancing act between preserving public navigation and primary nursery areas on one hand and allowing traditional riparian rights of access to deep water on the other hand is achieved by allowing a modest increase in pier length.

- Secure the public safety and welfare.

The Petitioner’s proposal will secure the public safety and welfare by allowing the docking facility to extend to the setback established by the Corps of Engineers to assure adequate area for navigation of the federally maintained Intracoastal Waterway. The existence of the pier to the point where the water depth is adequate for navigation actually serves as a beneficial navigation aid by preventing vessels from coming into water that is too shallow for safe operation at low tide.

- Preserve substantial justice.

Substantial justice will be preserved by allowing a riparian property owner to gain access to water deep enough to safely operate customary vessels at all times of the tidal cycle and by avoiding the adverse environmental impacts that would inevitably occur by terminating the pier in a shallow water PNA habitat. A variance would enable the Petitioner to construct a pier and

docking facility in alignment with neighboring piers to the east and west and to have access to the same depth of water as nearby property owners.

Staff's Position: Yes.

Staff agrees that the variance requested by Petitioner would be consistent with the spirit, purpose and intent of the rules; secure the public safety and welfare; and preserve substantial justice. The Commission amended its pier length rule in 1998 to change the one-third standard to a one-quarter width requirement with certain exceptions (none of which apply in this case) to preserve traditional navigation by assuring that the middle one-half of any water body remained available for public use. In this case, however, staff agrees with Petitioner that the requested extension of the proposed pier will allow the Petitioner to gain access to deeper water without unduly infringing on the public's rights of navigation along this shoreline. The proposed length of the pier appears to not be farther out relative to the 80-foot Army Corps of Engineers channel setback and right-of-way than those piers of the neighboring properties. Furthermore, if allowed the pier would span the shallow primary nursery area minimizing adverse impacts and would ensure the floating dock did not rest on the bottom habitat. As for public safety and welfare, Staff agrees with Petitioner that allowing the additional requested pier length would prevent possible navigational hazards that would occur if the pier ended in the shallow waters at the one-quarter width location. Substantial justice will be preserved by allowing Petitioner to construct the proposed development in deeper water, as requested, because it would be in-line with the established piers along this section of shoreline on the AIWW.

Attachment D

Stipulated Exhibits





Attachment E

Petitioner's Variance Request Materials

WESSELL & RANEY, L.L.P.
ATTORNEYS AT LAW
POST OFFICE BOX 1049
WILMINGTON, NORTH CAROLINA 28402-1049

JOHN C. WESSELL, III
WESSELL@BELLSOUTH.NET

WILLIAM A. RANEY, JR.
WARANEY@BELLSOUTH.NET

STREET ADDRESS:
107-B NORTH 2ND STREET
WILMINGTON, NC 28401

TELEPHONE: 910-762-7475
FACSIMILE: 910-762-7557

February 29, 2012

VIA U.S. MAIL & FAX 252-247-3330

Mr. Braxton C. Davis, Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

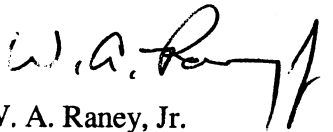
Re: Variance Petition – Gail Duncan – Brunswick County

Dear Mr. Davis:

Enclosed is a Variance Petition regarding the above-referenced project. Please schedule this variance for the April meeting of the Coastal Resources Commission. Thank you for your attention to this matter.

Sincerely,

WESSELL & RANEY, L.L.P.


W. A. Raney, Jr.

WAR:jn

WAR\Environ\RI2-009-C03

Enclosures

cc: Ms. Christy Goebel – Fax 919 716-6767

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.:

12-02

PETITIONER'S NAME Gail Duncan

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Brunswick

Pursuant to N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

VARIANCE HEARING PROCEDURES

A variance petition will be considered by the CRC at a regularly scheduled meeting, heard in chronological order based upon the date of receipt of a complete petition. 15A N.C.A.C. 07J .0701(e). A complete variance petition, as described below, must be *received* by the Division of Coastal Management (DCM) a minimum of six (6) weeks in advance of the first day of a regularly scheduled CRC meeting to be eligible for consideration by the CRC at that meeting. 15A N.C.A.C. 07J .0701(e). The final set of stipulated facts must be agreed to at least four (4) weeks prior to the first day of a regularly scheduled meeting. 15A N.C.A.C. 07J .0701(e). The dates of CRC meetings can be found at DCM's website: www.nccoastalmanagement.net

If there are controverted facts that are significant in determining the propriety of a variance, or if the Commission determines that more facts are necessary, the facts will be determined in an administrative hearing. 15A N.C.A.C. 07J .0701(b).

VARIANCE CRITERIA

The petitioner has the burden of convincing the CRC that it meets the following criteria:

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) 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.

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the

Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

For this variance request to be complete, the petitioner must provide the information listed below. The undersigned petitioner verifies that this variance request is complete and includes:

- The name and location of the development as identified on the permit application;
- A copy of the permit decision for the development in question;
- A copy of the deed to the property on which the proposed development would be located;
- A complete description of the proposed development including a site plan;
- A stipulation that the proposed development is inconsistent with the rule at issue;
- Proof that notice was sent to adjacent owners and objectors, as required by 15A N.C.A.C. 07J .0701(c)(7);
- Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

Due to the above information and pursuant to statute, the undersigned hereby requests a variance.

W.A. Raney Signature of Petitioner or Attorney February 29, 2012 Date

W. A. Raney, Jr. Printed Name of Petitioner or Attorney waraney@bellsouth.net Email address of Petitioner or Attorney

P. O. Box 1049 Mailing Address (910) 762-7475 Telephone Number of Petitioner or Attorney

Wilmington City NC State 28402 Zip (910) 762-7557 Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

This variance petition must be received by the Division of Coastal Management at least six (6) weeks before the first day of the regularly scheduled Commission meeting at which it is heard. A copy of this request must also be sent to the Attorney General's Office, Environmental Division, 15A N.C.A.C. 07J .0701(e).

Contact Information for DCM:

By mail, express mail or hand delivery:
Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Fax:
(252) 247-3330

By Email:
Check DCM website for the email address of the current DCM Director
www.nccoastalmanagement.net

Contact Information for Attorney General's Office:

By mail:
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By express mail:
Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Fax:
(919) 716-6767



North Carolina Department of Environment and Natural Resources

Division of Coastal Management

Braxton C. Davis

Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

December 2, 2011

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Ms. Gail Duncan
130 Edinburgh South Drive
Cary, NC 27511

Dear Ms. Duncan:

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 private pier with gazebo, floating dock, and boatlift adjacent to the Atlantic Intracoastal Waterway (AIWW), at 1318 SW Harbor Watch Drive, in Calabash, Brunswick County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Office on August 29, 2011, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The nearshore waters of the AIWW at this location are designated as a Primary Nursery Area by the N.C. Marine Fisheries Commission. Primary Nursery Areas are those areas in the estuarine and ocean system where initial postlarval development of finfish and crustaceans takes place.
- 2) The proposed docking facility would extend approximately 185 feet into the waters of the AIWW as measured from the waterward edge of the coastal wetlands at the project site. The width of the AIWW at this location is approximately 592 feet at the project location as measured from the waterward edge of the coastal wetlands on both sides of the AIWW.
- 3) The proposed docking facility would extend approximately 37 feet beyond one-fourth the width of the AIWW. Water depths in the area of the proposed slips range from -3 feet to -4 feet relative to the normal low water level. The water depths in the vicinity of the one-fourth the width of AIWW range from -1 foot to -2 feet relative to the normal low water level.

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)(6)(J)(iii), which states that pier length shall be limited by: "not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body..."

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.

Ms. Gail Duncan
December 2, 2011
Page 3

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 212.

Sincerely,

A handwritten signature in black ink, appearing to read 'Braxton C. Davis', with a long horizontal flourish extending to the right.

Braxton C. Davis

cc: Colonel Steven Baker – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD

Presenter RJY Ret: Box
 Total 17 Pay 1780 Int. MS
 2 1836 7394 Cash \$
 Refund: Finance
 Portions of document are not true to condition of original.
 Document contains seals verified by original instrument that cannot be reproduced or copied.

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 1,780.00
 Parcel Identifier No. 255QA001 Verified by _____ County _____ the _____ day of _____, 20
 By: _____

Mail/Box to: LILES & GODBEY, P.C., 6406 BEACH DRIVE SW, OCEAN ISLE BEACH, NC 28469

This instrument was prepared by: LILES & GODBEY, P.C., 6406 BEACH DRIVE SW, OCEAN ISLE BEACH, NC 28469

Brief description for the Index: LT 1, OCEAN HARBOUR ESTATES

THIS DEED made this 19th day of December, 2008, by and between

GRANTOR	GRANTEE
W. GLENN ADAMS and wife, SALLY M. ADAMS 110 PERTH COURT CARY, NC 27511	NOAH K. DUNCAN and wife, GAIL S. DUNCAN 130 EDINBURGH SOUTH DRIVE CARY, NC 27511

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of CALABASH Township, BRUNSWICK County, North Carolina and more particularly described as follows:
 BEING ALL OF LOT 1, TRACT A, SECTION ONE, OCEAN HARBOUR ESTATES AS SHOWN ON A PLAT DULY RECORDED IN PLAT BOOK Y, PAGE 207 OF THE BRUNSWICK COUNTY DEED AND PLAT REGISTRY.

The property hereinabove described was acquired by Grantor by instrument recorded in Book _____ page _____.

A map showing the above described property is recorded in Plat Book _____ page _____.

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.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions: All applicable zoning and land use ordinances, statutes and regulations; 2008 ad valorem taxes; applicable restrictive covenants and utility easements of record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

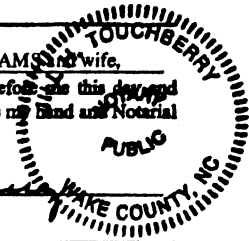
(Entity Name) _____ (SEAL)
W. GLENN ADAMS
By: _____ (SEAL)
SALLY M. ADAMS
By: _____ (SEAL)
By: _____ (SEAL)

State of North Carolina - County of BRUNSWICK

I, the undersigned Notary Public of the County and State aforesaid, certify that W. GLENN ADAMS and wife, SALLY M. ADAMS personally appeared before me as this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 19th day of December, 2008

My Commission Expires: 4/1/2012

Notary Public



State of North Carolina - County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20__.

My Commission Expires: _____

Notary Public

State of North Carolina - County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____

Witness my hand and Notarial stamp or seal, this _____ day of _____, 20__.

My Commission Expires: _____

Notary Public

The foregoing Certificate(s) of _____ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Register of Deeds for _____ County

By: _____ Deputy/Assistant - Register of Deeds

Project Narrative

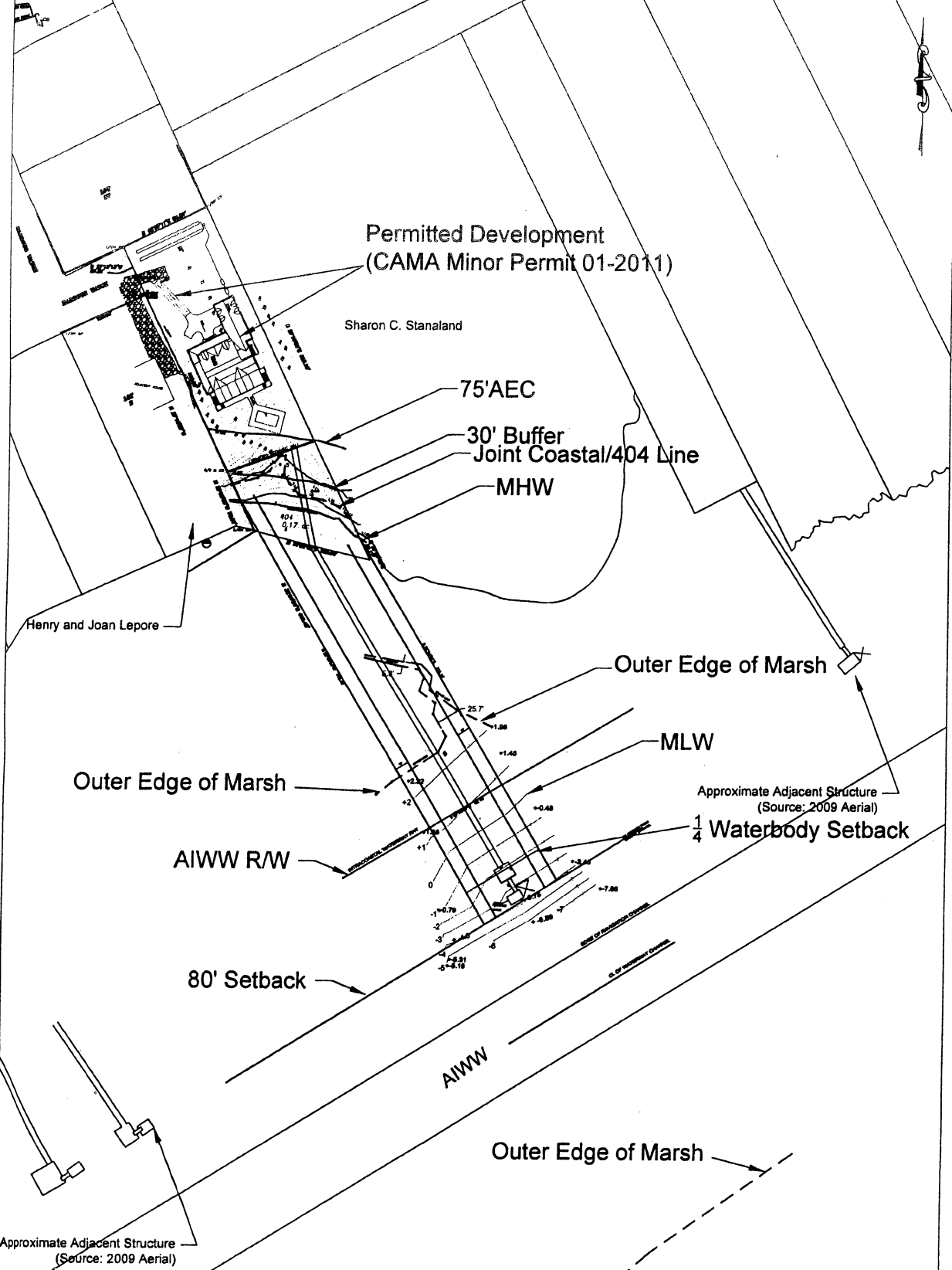
**Proposed Pier, Gazebo, Floating Dock, Boat Lift
Atlantic Intracoastal Waterway
Ocean Harbor Estates, Lot 1
Brunswick County, N.C.
Gail Duncan
Revised 9-01-11**

Gail Duncan is proposing to construct a private pier with a gazebo, floating dock and a boat lift at Lot 1, Ocean Harbor Estates in Brunswick County. A CAMA Minor Permit (Number 01-2011) was issued on March 28, 2011 for home site development on the upland portion of the property.

The proposed structures will provide a total of three boat slips, one as a boat lift, one wet slip along the face of the 10'x16' floating dock and another on top of the floating dock intended for a small hand-launched Jon boat. The elevated wooden pier will be 6' wide and the deck boards a minimum of 3' above the marsh substrate. For purposes of maintaining navigable access, the pier will be elevated to 6' above mean high water as it crosses a small tidal slough within the marsh. The walkway for the pier originates on top of the retaining wall. The overall length of the proposed pier from the origination point at the retaining wall is 515'. The length of the proposed pier from MHW is 448'. The covered gazebo will measure 18'x16' at the drip line. A hinged ramp will connect the gazebo with the floating dock. No dredging is proposed.

Standard construction methods will be used during construction of the proposed pier and boat slips including, but not limited to the use of a piling rig, water jet for piling installation, power and hand tools for marine carpentry, etc.

In order to reach water depths usable throughout the tidal range and avoid bottom impacts in this Primary Nursery Area (PNA), the outer edge of the floating dock will extend to the Corps of Engineers 80' setback off the AIW channel. Depths at the 80' AIW setback are approximately 3 to 4 feet at mean low water. Depths at one quarter of the waterbody width are approximately 1 to 2 feet at mean low water.



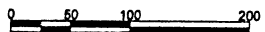
NOTE: Length of shoreline at MHW equals 140 linear ft.
 140 x 8 = 1,120 s.f.
 Residential Pier and Dock allotted 1,120 s.f. of shaded impact per 15A NCAC 07H.206.
 Proposed project represents 352 s.f. of shaded impact, excluding pier.

THIS MAP IS BASED ON ORIGINAL
 DRAWINGS AND/OR SURVEY
 INFORMATION FROM:
 Tompkins Land Surveying, P.A.
 201 Ash Lane Four Road NW
 Ash, NC 28402
 PHONE: (910) 879-9909
 and
 Shoreline Design Group, Inc.
 P.O. Box 108
 Leland, NC 28551
 PHONE: (910) 911-2204

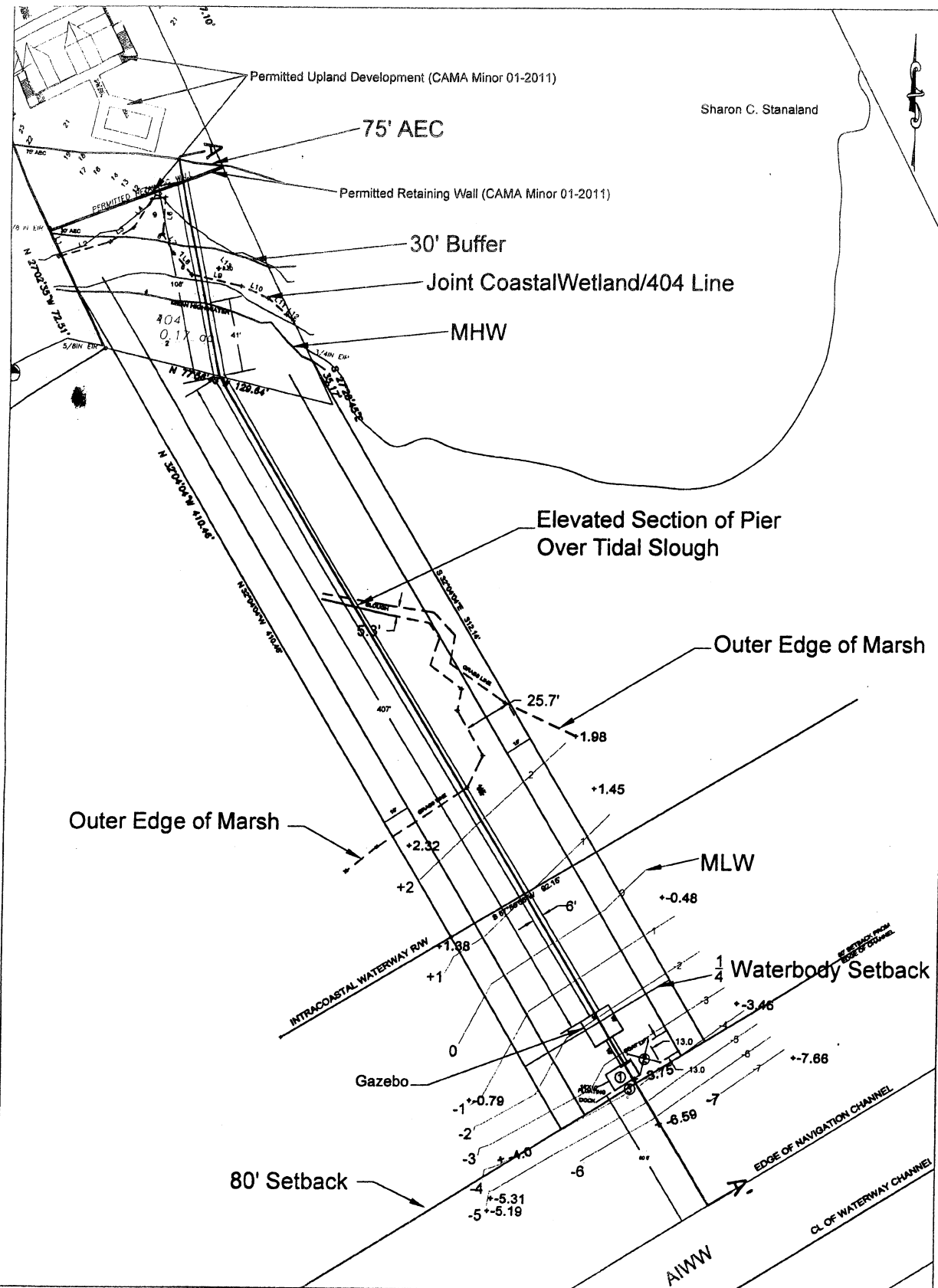
PRELIMINARY
 This Is Not An Engineered Or Surveyed Drawing.
 For Environmental Permitting Only.
 GIS Parcels From Brunswick County GIS.
 Water Depths Are Approximate And Relative To MLW.

LEGEND

- MHW _____
- 30' Buffer - - - - -
- 75' AEC _____
- Coastal Wetlands - - - - -



Project:	Ocean Harbor Estates, Lot 1	Date:	04/06/11	Revision Date:	08/15/11
Title:	Existing and Proposed Conditions	Scale:	1"=100'	Job Number:	02-10-155
		Drawn By:	GSF	Figure:	3 of 6



NOTE: Length of shoreline at MHW equals 140 linear ft.
 140 x 8 = 1,120 s.f.
 Residential Pier and Dock allotted 1,120 s.f. of shaded impact per 15A NCAC 07H.208.
 Proposed project represents 352 s.f. of shaded impact, excluding pier.

THE MAP IS BASED ON ORIGINAL DRAWINGS AND/OR SURVEY INFORMATION FROM:
 Tompkins Land Surveying, P.A.
 216 Ash Lane Four Road NW
 Raleigh, NC 27603
 PHONE: (919) 970-9906

and
 Shoreline Design Group, Inc.
 P.O. Office Box 115
 Wilmington, North Carolina 28402
 PHONE: (910) 971-2204

PRELIMINARY
 This is Not An Engineered Or Surveyed Drawing.
 For Environmental Permitting Only.
 GIS Parcels From Brunswick County GIS.
 Water Depths Are Approximate And Relative To MLW.

LEGEND

MHW	—————
10' Buffer	-----
75' AEC	- - - - -
Coastal Wetlands	~~~~~



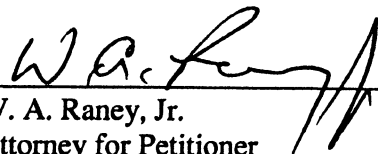
Project:	Ocean Harbor Estates, Lot 1	Date:	04/06/11	Revision Date:	08/15/11
Title:	Existing and Proposed Conditions Detail	Scale:	1"=50'	Job Number:	02-10-155
		Drawn By:	GSF	Figure:	4 of 6

CAMA VARIANCE PETITION
GAIL DUNCAN

Petitioner, Gail Duncan, through her Attorney, W. A. Raney, Jr., stipulates that the proposed development that is the subject of the Variance Petition is inconsistent with Coastal Resources Commission Rule 15A NCAC 7H.0208(b)(6)(J)(iii).

WESSELL & RANEY, L.L.P.

By:



W. A. Raney, Jr.
Attorney for Petitioner
107-B N. 2nd Street
P.O. Box 1049
Wilmington, NC 28402-1049
(910) 762-7475
NC Bar No. 5805

WESSELL & RANEY, L.L.P.
ATTORNEYS AT LAW
POST OFFICE BOX 1049
WILMINGTON, NORTH CAROLINA 28402-1049

JOHN C. WESSELL, III
WESSELL@BELLSOUTH.NET

WILLIAM A. RANEY, JR.
WARANEY@BELLSOUTH.NET

STREET ADDRESS:
107-B NORTH 2ND STREET
WILMINGTON, NC 28401

TELEPHONE: 910-762-7475
FACSIMILE: 910-762-7557

February 29, 2012

VIA CERTIFIED MAIL, RRR 7009 1680 0000 3437 7601

Henry and Joann Lepore
1325 Southwest Harbor Watch
Calabash, NC 28467

Re: Variance Request by Gail Duncan
Pier Ocean Harbor Estates Lot 1

Dear Property Owner:

This is to notify you that Gail Duncan is applying for a variance from the North Carolina Resources Commission to allow construction of a pier that extends approximately 37 feet beyond the length normally allowed under the rules of the Coastal Resources Commission. The variance is projected to be heard at the April 18/19, 2012 meeting of the Coastal Resources Commission. If you wish to receive further information concerning the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, North Carolina, 28405-3845. You may also contact a Division of Coastal Management representative at (910) 796-7215.

Sincerely,

WESSELL & RANEY, L.L.P.

W. A. Raney, Jr.
Attorney for Gail Duncan

WAR:jn

WAR\Environ\R12-009-CC2

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February 29, 2012

VIA CERTIFIED MAIL, RRR 7009 1680 0000 3437 7595

Sharon Stanaland
706 Norvell Street
North Myrtle Beach, SC 29585

**Re: Variance Request by Gail Duncan
Pier Ocean Harbor Estates Lot 1**

Dear Property Owner:

This is to notify you that Gail Duncan is applying for a variance from the North Carolina Resources Commission to allow construction of a pier that extends approximately 37 feet beyond the length normally allowed under the rules of the Coastal Resources Commission. The variance is projected to be heard at the April 18/19, 2012 meeting of the Coastal Resources Commission. If you wish to receive further information concerning the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, North Carolina, 28405-3845. You may also contact a Division of Coastal Management representative at (910) 796-7215.

Sincerely,

WESSELL & RANEY, L.L.P.

W. A. Raney, Jr.
Attorney for Gail Duncan

WAR:jn

WAR\Environ\RI2-009-C01

PETITIONER'S POSITION

ON

VARIANCE CRITERIA

- (1) **Will unnecessary hardships result from strict application of the rules, standards, or orders?**

Petitioner's position: Yes.

Petitioner's argument: The rule limiting the length of a pier to one-fourth of the width of a body of water will result in a hardship due to the fact that the depth of the water at the end of the pier and dock facility will be only about -1' to -2' at normal low water thereby limiting the usefulness of the docking facility for several hours of the tidal cycle. The hardship is unnecessary because the area between the one-fourth distance and the one-third distance to which the Petitioner wishes to build the pier is not useful for public navigation due to the shallow depth of the water. Public navigation will not be unduly adversely affected by the docking facility as requested.

- (2) **Do such hardships result from conditions peculiar to Petitioner's property such as the location, size, or topography of the property?**

Petitioner's position: Yes.

Petitioner's argument: The shoreline where the Petitioner's lot is located has as an indentation in the marsh fringe that makes the measurement point for the one-fourth rule more landward than properties to the east and west. The opposite shoreline is in public ownership or control thereby eliminating the risk of any structure extending from the shoreline that is opposite of Petitioner's shoreline. There is an unusually wide expanse of mudflat between the marsh and the low water mark that results in the measurement point on the Petitioner's side of the water body being unusually far from deep water. Only a slight extension to the one-third width is required for the Petitioner to reach adequate water depth for a docking facility that can be used at all times of the tidal cycle.

- (3) **Do the hardships result from actions taken by the Petitioner?**

Petitioner's position: No.

Petitioner's argument: The lack of deep water at one-fourth the width of the water body is a condition over which the Petitioner has no control.

- (4) 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?

Petitioner's position: Yes.

Petitioner's argument:

- Consistent with the spirit, purpose and intent of the rules.

Navigation

The purpose of the one-fourth rule is to assure that piers do not unduly interfere with public navigation and do not unreasonably allocate public trust areas to private use. Generally application of the rule assures that the middle one-half of any body of water remains available for public use while allocating up to one-fourth of the water body for traditional riparian rights by enabling riparian owners to extend wharfs out to deep water. Because the opposite shoreline is not suitable or available for waterfront development, two-thirds of the water body will remain open for public use. CRC Rule 15A NCAC 7H.0207(c) states that an objective of the Public Trust Area of Environmental Concern is being "to protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. CRC Rule 15A NCAC 7H.0207(d) sets out the general use standard for public trust areas. In part the Rule states:

"The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are example of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary".

A slight extension of the pier will allow the Petitioner to gain access to keep water without unduly infringing on public use at the water.

Primary Nursery Area

Among the specific use standards set out in the CRC Rules is one that states:

"Navigation channels, canals and boat basins shall be designed or located so as to avoid primary nursery areas...". 15A NCAC 7H.0208(b)(1).

CRC Rule 15A NCAC 7H.0208(b)(1)(I) states:

"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".

These rules are designed to protect disturbance of primary nursery areas. If Petitioner's pier is terminated at one-fourth the distance of the body of water, the depth at the docking facility will be -1' to -2' at normal low water and will result in the inevitable disturbance of the bottom of both the floating dock and the boats utilizing the dock. A variance to allow the pier to be extended will avoid the adverse effect on a primary nursery area.

The balancing act between preserving public navigation and primary nursery areas on one hand and allowing traditional riparian rights of access to deep water on the other hand is achieved by allowing a modest increase in pier length.

- **Secure the public safety and welfare.**

The Petitioner's proposal will secure the public safety and welfare by allowing the docking facility to extend to the setback established by the Corps of Engineers to assure adequate area for navigation of the federally maintained Intracoastal Waterway. The existence of the pier to the point where the water depth is adequate for navigation actually serves as a beneficial navigation aid by preventing vessels from coming into water that is too shallow for safe operation at low tide.

- **Preserve substantial justice.**

Substantial justice will be preserved by allowing a riparian property owned to gain access to water deep enough to safely operate customary vessels at all times of the tidal cycle and by avoiding the adverse environmental impacts that would inevitably occur by terminating the pier in a shallow water PNA habitat. A variance would enable the Petitioner to construct a pier and docking facility in alignment with neighboring piers to the east and west and to have access to the same depth of water as nearby property owners.

PROPOSED STIPULATED FACTS
VARIANCE PETITION
GAIL DUNCAN

- The Petitioner applied for a CAMA Major Permit to construct a pier, gazebo, boat lift and floating dock adjacent to her lot on the Intracoastal Waterway about 1.25 miles east of the intersection of Little River Inlet Channel with the Waterway.
- The Petitioner has constructed a residence on her lot pursuant to CAMA Minor Permit 01-2011.
- The area where the pier is proposed is designated as a Primary Nursery Area (PNA) of the North Carolina Division of Marine Fisheries and is open to the harvest of shellfish.
- The proposed pier project has received a Section 401 Water Quality Certification from the North Carolina Division of Water Quality.
- The proposed docking facility would extend approximately 185 feet into the waters of the Intracoastal Waterway as measured from the waterward edge of the coastal wetlands at the project site. The width of the Intracoastal Waterway at this location is approximately 592 feet as measured from the waterward edge of the coastal wetlands on both sides of the Waterway.
- The CAMA Major Permit application was denied on the basis that the proposed pier is inconsistent with CRC Rule 15A NCAC 7H.208(b)(6)(J)(iii) which states that pier length shall be limited by "not extending more than one-fourth the width of a natural water body...".
- The proposed docking facility would extend about 31.25% of the width of the body of water or approximately 37 feet beyond the one-fourth width of the Waterway.
- Water depths in the area of the proposed floating dock range from -3 feet at the landward side of the floating dock to -4 feet at the waterward side of the floating dock relative to normal low water level. If the floating dock were to be located at the one-fourth width of the Waterway, the water depth would range from -1 foot at the landward edge of the floating dock to -2 feet at the waterward edge of the floating dock relative to normal low water level.
- CAMA Rule 15A NCAC 7H.0208(b)(6)(G)(iii) provides that the "one-fourth length limitation shall not apply when the proposed pier is located between longer piers for docking facilities within 200 feet of the applicant's property. However the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body." The Petitioner's proposal does not meet the necessary criteria to extend to the one-third width

because the adjacent facilities along the shoreline for similar use are not located within 200 feet of the applicant's property.

- The shoreline opposite the location of the proposed pier consists of a narrow beach with an intermittent marsh fringe that separates the water of the Intracoastal Waterway from a large salt marsh complex that extends to New River Inlet. There are several small remnant undiked spoil disposal hummocks within the marsh complex, but none has access by land and none appears to be suitable for dredged material disposal under today's standards. A large diked dredged material disposal site exists less than one-half mile to the west.
- When the Wetlands and Storm Water Branch of the Division of Water Quality reviewed the application, it noted a possible violation of storm water rules in connection with construction of the residence on the lot. This issue was resolved and a Storm Water Permit was issued for the upland development.
- Other than the comments of the Wetlands and Storm Water Branch and the objection of the Division of Coastal Management concerning the one-fourth rule, none of the commenting agencies objected to the issuance of the permit.
- The parties stipulate that the photographs submitted with the petition and at the hearing are admissible.

(Aerial photo of site showing mainland to opposite side of Waterway).

(Aerial photo of site showing mainland to New River Inlet).

**ADDENDUM TO THE
NORTH CAROLINA SEA-LEVEL RISE ASSESSMENT REPORT (NCSLRAR) OF 2010
April 4, 2012**

Background

The North Carolina Sea-Level Rise Assessment Report was published in March 2010 and is available at <http://dcm2.enr.state.nc.us/news/2010%20Releases/slrreport.html>. The Science Panel on Coastal Hazards prepared the report in consultation with additional coastal scientists working in the State and invited by the Division of Coastal Management to participate in the process.

In the Fall of 2011, the Science Panel on Coastal Hazards was asked to review the initial report and answer the following questions:

- ***Why does the report apply the Duck gauge, which has the highest rate and shortest record, to the entire coast? Why not use Wilmington for the south?***
- ***Why is acceleration expected this century when past data shows none?***
- ***Why does the report accept the IPCC's AR4 emissions and temperature projections but not its SLR projections?***
- ***How does updated work by Rahmstorf, Church & White, and others affect the Panel's assessment?***

In the following sections, these questions are addressed individually.

Why does the report apply the Duck gauge, which has the highest rate and shortest record, to the entire coast? Why not use Wilmington for the south?

There are four long-term (period greater than 30 years) tide gauges currently operational along the North Carolina Atlantic coast: Duck (established 1977), Oregon Inlet Marina (established 1974), Beaufort (established 1964), and Wilmington (established 1908). NOAA reports sea level trends for Oregon Inlet, Beaufort, Wilmington, and Southport (established 1974, removed 2008). These stations (Oregon Inlet, Beaufort, Wilmington, and Southport) fit the stated criteria of consisting of data records longer than 30 years as of 2006 (<http://tidesandcurrents.noaa.gov/sltrends/index.shtml>).

The Duck gauge was chosen to evaluate sea level trends for three reasons: (1) because it is on the open coast, (2) it is the least disturbed by anthropogenic processes, and (3) it has a solid, well-documented installation and continuous operational history. The Duck gauge has never been abandoned and with time, will improve as a long-term source of relative SLR data.

The Wilmington, Beaufort and Oregon Inlet sites have undergone an increase in tidal range due to widening and deepening of nearby navigation channels (Zervas, 2003, 2004); thus the records have added uncertainties that have not been fully quantified. Additional research is needed to evaluate the effects of the channel modifications.

Relative sea-level rise reported by Zervas (2004) is 4.27 ± 0.74 mm/yr and 2.12 ± 0.23 mm/yr at Duck and Wilmington, respectively. The northeast NC coastal segment (north of Cape Lookout, approximately), exhibits relative SLR (RSLR) rates that are higher than those to the south due to several geological factors (underlying geologic framework, isostatic adjustments, etc.) (Peltier, 2004; Mallinson et al., 2005, 2008, 2010; Horton et al., 2009; Kemp et al., 2009). Kemp et al. (2011) incorporate a 1 mm/yr subsidence factor due to glacio-isostatic adjustment (GIA) in their work in North Carolina, to compute a detrended sea-level curve from salt marsh sedimentary sequences. This curve approximates global sea-level rise over the last 2000 years.

The rate that is used clearly impacts the lower estimate (assuming no acceleration) of sea-level rise in 2100 as reported in NCSLRAR. Since the Duck rate is approximately double that of the Wilmington rate, the rise in sea-level is also double for the same time period. The mid-range and upper curves are developed based on projections that assume increased temperature and ice sheet melt will cause an increase in the rise of sea-level to 1 m and 1.4 m by 2100, respectively. The initial rate influences the shape of the curve and thus intermediate (shorter time frame) projections. In future studies, local tide gauge data may be incorporated to establish regional gradients in the rate of relative sea-level rise with greater confidence. The panel may consider how best to present the variation in RSLR within the State's coastal system in a future revision of the NCSLRAR.

Why is acceleration expected this century when past data shows none?

The question of whether or not SLR is *currently* accelerating is a valid question that warrants continued research and is the primary reasoning behind the Science Panel's request to update the NC SLR Assessment Report every five years.

The current literature reports a range of global rates of sea-level rise and change in the rate of sea-level rise for different time periods using a variety of data sources and analysis techniques. These are summarized in Tables 1 and 2 below. Change of rate in sea-level rise from a smaller to a larger value in subsequent time periods supports the view that acceleration (positive acceleration) has taken place. Conversely, change in rate of sea level rise from a larger to a smaller value in subsequent time periods supports the view that deceleration (negative acceleration) has taken place.

The longer records (greater than 125 years) uniformly support a positive change in the rate (or acceleration) of sea-level rise. It is generally noted in the literature that an acceleration in the rate of sea level rise occurred between the nineteenth and twentieth centuries. It is also possible to break the tide record into decadal periods and observe a change in the rate of sea-level rise. Both acceleration and slight deceleration have been reported in the literature.

Further, it is important to separate the SLR record from the last century from the expectation of an increase in the rate of acceleration over the next century. Expectations of an increase in the rate of sea-level rise in this century are based primarily on projections of increases in temperature (IPCC 2007) and increasing rates of glacial ice melting (e.g., Wouters et al., 2008, Slobbe et al., 2009, Velicogna 2009, Cazenave and Llovel, 2010, Rignot 2011). Given that the contribution to SLR from land ice loss has increased since 1993, and the thermal models and observations indicate increasing temperatures in the future, it is reasonable to expect an acceleration in the rate of SLR over the next century. However, it is still unclear from the existing data if the expected acceleration has begun.

Table 1. Global Rates of Sea-Level Rise

Author	Data Source	Data Period	Rate, mm/yr	Uncertainty ± mm/yr
Gehrels et al., 2008	Foraminiferal	1500-1900	0.3	0.3
		1900-2000	2.8	0.5
Kemp et al., 2011	NC data: Salt marsh sedimentary sequences with GIA adjustment of 1.0 mm/yr	BC 100-AD 950	Stable (0.0 to 0.1)	
		950-1350	0.4 to 0.8	
		1350-1900	Stable to slightly falling (0.0 to -0.2)	
		1900-present	1.9 to 2.2	
Ablain et al., 2009	Satellite altimetry	1993-2008	3.11	0.6
Cazenave & Llovel, 2010	Tide gauge	1900-1930	1.8	0.3
		1993-2008	3.4	0.4
Merrifield et al., 2009	Tide gauge	1962-1990	1.5	0.5
		1993-2007	3.2	0.5
Holgate, 2007	Tide gauge	1904-1953	2.03	0.35
		1954-2003	1.45	0.34
IPCC, 2007	Tide gauge Satellite altimetry	1962-2003	1.8	0.5
		1993-2002	3.1	0.7

Table 2. Reported Acceleration of Global Sea Level Rise

Author	Data Source	Data Period	Acceleration mm/yr ²	Uncertainty ± mm/yr ²
Church & White, 2006	Tide gauge	1870-2004	0.13	0.006
Church & White, 2011	Tide gauge	1880-2009	0.009	0.003
		1900-2009	0.009	0.004
Jevrejeva et al., 2008	Tide gauge	Since 1800	0.01	
Douglas, 1992	Tide gauge	1905-1985	-0.011	0.012
Houston & Dean, 2011	Tide gauge	variable	-0.0014	0.0161
		1930 - 2010	-0.0123	0.0104

Why does the report accept the IPCC's AR4 emissions and temperature projections but not the SLR projections?

IPCC AR4 (2007) emissions and temperature projections have been shown to be relatively accurate, with observed temperature increase following the maximum rate of the projected increase (Rahmstorf et al., 2007; Horton et al., 2008). The IPCC decided not to include estimates of future land-based ice loss, primarily from the Greenland and Antarctic ice sheets, in the projections. In addition, the relatively simple treatment of land ice dynamics in the climate models precluded simulation of rapid dynamics. Ice sheets were treated as fixed geographic features that could gain and lose mass through

accumulation and ablation, but would not otherwise change size or undergo variations in flow. It has since been shown that the contribution of melting ice sheets (the cryosphere) to SLR is increasing and will likely be a significant contributor to SLR during the 21st century (Rignot et al., 2011). Thus, our understanding has evolved since 2007, and will continue to evolve as new data become available and vetted through the peer-review process.

How does updated work by Church & White, Rahmstorf, and others affect the Panel's assessment?

Church and White (2006) used a reconstruction of global mean sea level from 1870 through 2004 and found a twentieth century sea-level rise of 1.7 ± 0.3 mm/yr and an acceleration of 0.013 ± 0.006 mm/yr². In Church and White (2011) a variety of rates are computed using various sources and time frames. For example, satellite altimeter data for 1993-2009 yielded an estimated 3.2 ± 0.4 mm/yr rate while coastal and island sea-level measurements from 1880 to 2009 were used to compute a rate of 1.7 ± 0.2 mm/yr between 1900 and 2009 and 1.9 ± 0.4 mm/yr from 1961 to 2009. Acceleration from 1880 and 1900 to 2009 is found to be 0.009 ± 0.003 mm/yr² and 0.009 ± 0.004 mm/yr², respectively. Though the rates of sea-level rise are similar in the two papers, the 2011 estimate of acceleration is lower than the 2006 and is more in line with other investigators (Table 2). Further, in the discussion section of the 2011 paper the authors emphasize the importance of maintenance and continuation of the observing network and associated infrastructure needed to update and maintain datasets. They note the increasing importance of GPS measurements at tide-gauge location to provide vertical land motion estimates and the continued need for high quality satellite altimeter observations.

Rahmstorf (2007) developed a semi-empirical relation that connects global sea-level rise to global surface temperature. The rate of sea-level rise is determined to be proportional to temperature (3.4 mm/yr of sea-level rise per 1°C of temperature rise). Using this relationship and applying the IPCC future warming scenarios, 0.5 to 1.4 m of sea-level rise is projected in 2100 above the 1990 level. In Rahmstorf, Perrette and Vermeer (2011) the robustness of the projections is tested by 1) determining the parameters for the semi-empirical relationship between temperature and sea-level rise from a variety of datasets, equations and statistical techniques and 2) by comparing projections from the models for a moderate warming period (1.8°C) from 2000 to 2100. Over 20 different model versions were tested and nine different projections were made. Using a 1.8°C temperature scenario, approximately 1 m of sea-level rise is projected from 2000-2100. Two exceptions are noted. One is that disregarding the correction for water storage lowers the projections by 25 cm. (Note: building artificial reservoirs lowers sea level rise and pumping groundwater raises sea level). Two is the use of the Church and White (2011) data set lowers the projections 30 cm when compared to the use of other datasets (Church and White (2006) and Jevrejeva et al. (2008)).

Table 3 presents sea-level rise projections from the literature, including the IPCC (2007), Rahmstorf (2007) and Rahmstorf et al. (2011) as well as others. The Panel's assessment indicated a range of expected SLR projections over the next century. The updated information on detection of more modest rates of acceleration in the historical record and the updated information based on more refined projection models confirm the Panel's recommendation for the need to update on a 5 year basis. The analysis and synthesis of data and development of predictive models by the research community, as evidenced in the peer reviewed literature will continue and as a result our understanding of sea level rise and its prediction will improve. Further, comments in Church and White (2011) as well as in Woodworth et al. (2011) support the Panel's position that high quality data sets with good spatial and temporal coverage are needed to support sea-level rise studies.

Table 3. Projections of global sea level rise.

Author	Projected period	Range, cm
Rahmstorf, 2007	1990-2100	50 to 140
IPCC, 2007 (Six scenarios based on different temperature projections.)	1980-1999 to 2090-2099	18 to 38* 20 to 43* 21 to 48* 20 to 45* 23 to 51* 26 to 59*
Vermeer & Rahmstorf, 2009	1990-2100	75 to 190
Rahmstorf et al., 2011	2000-2100	80 to 120**
Jevrejeva et al., 2010	2000-2100	60 to 160
Horton et al., 2008	2000-2100	47 to 100
Grinsted et al., 2009	2000-2100	90 to 130
Jevrejeva et al., 2012	2000-2100	57 to 110

* If ice discharges were to scale up in the future, it would add 10 to 20 cm to the upper bound of sea-level rise in the IPCC projections (IPCC, 2007).

** Exceptions as noted from Rahmstorf et al. (2011) are described in the above paragraph.

Summary

It is helpful to put the North Carolina SLR Assessment Report into perspective. Many scientific organizations in the United States and worldwide have issued statements regarding the importance of global climate change. An acceleration in the rate of sea level rise is an explicit or implicit concern of all. These include 1) American Association for the Advancement of Science (AAAS, 2006); 2) Research Council of the National Academies (2011); 3) Geological Society of America (GSA, 2010); 4) American Geophysical Union (AGU) 2012; and 5) European Geosciences Union (EGU, 2005).

In addition, SLR assessments produced by expert panels in other states reference numbers very similar to those in the North Carolina SLR Assessment Report. Maine is establishing plans to deal with the impacts of a 0.5, 1.0 and 2.0 m rise by 2100 (EPA, 1995). Delaware is adopting management plans for sea-level rise scenarios of 0.5, 1.0 and 1.5 m by 2100 (DNREC, 2009). The Louisiana Applied Coastal Engineering and Science (LACES) Division produced a comprehensive report in which they recommend that Coastal Protection and Restoration Authority staff assume a SLR of 1 m by 2100 for the Gulf coast, with lower and upper bounds of 0.5 and 1.5 m (LACES, 2012). The California State Lands Commission is preparing for a projected sea-level rise of 1.4 m (55 inches) by 2100 (CSLC, 2009). Southeast Florida is projecting a 9 to 24 inch rise by 2060 (SEFRCCC, 2011). Further, the U.S. Army Corps of Engineers requires that potential sea level rise changes must be considered in all USACE coastal activities (USACE, 2011). These states and organizations are concerned with the implications of a rising sea level, even if the magnitude of the rise is uncertain.

This document is intended to clarify the questions asked about the Science Panel’s first SLR Assessment Report. Based on this review, the broad recommendations of the original report stand. As recommended, the next anticipated update is in 2015.

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http://www.seclimate.org/pdfpubs/201108mitchum_sealevel.pdf

<http://coastal.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=240>

http://www.lacpra.org/assets/docs/LACES/LACEStech02_06_12.pdf

<http://epa.gov/climatechange/effects/coastal/sap4-1.html>

http://epa.gov/climatechange/effects/coastal/pdfs/SAP_4-1_SynthesisandAssessmentProduct.pdf

Significant links:

<http://sealevel.colorado.edu/>

<http://ibis.grdl.noaa.gov/SAT/SeaLevelRise/>

<http://climate.nasa.gov/keyIndicators/index.cfm#seaLevel>

<http://rads.tudelft.nl/rads/rads.shtml>

<http://www.aviso.oceanobs.com/>

<http://www.cmar.csiro.au/sealevel/index.html>

http://www.cmar.csiro.au/sealevel/sl_data_cmar.html

<http://grace.jpl.nasa.gov/>

<http://www.psmsl.org/>

http://ibis.grdl.noaa.gov/SAT/SeaLevelRise/LSA_SLR_timeseries_global.php

<http://tidesandcurrents.noaa.gov/sltrends/index.shtml>



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

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

MEMORANDUM

CRC-12-11

To: Coastal Resources Commission

From: John A. Thayer Jr. AICP Manager, Planning & Public Access Programs

Date: April 04, 2012

Subject: Town of Oak Island Land Use Plan Implementation Status Report

Overview

A Land Use Plan (LUP) implementation status report is to be submitted by a local government every two (2) years following the date of LUP certification. Implementation status report for the Town of Oak Island Land Use Plan –certified on May 19, 2010 is not included within the CRC’s digital packet but available separately on DCM’s web page.

The implementation status report is based on the LUP Action Plan and identifies activities that the local government has undertaken in support of the LUP’s policies and implementation actions.

The following is required to be included in the report:

- All local, state, federal, and joint actions that have been undertaken successfully to implement its certified CAMA land use plan
- Any actions that have been delayed and the reasons for the delays
- Any unforeseen land use issues that have arisen since certification of the CAMA land use plan
- Consistency of existing land use and development ordinances with current CAMA land use plan policies
- Current policies that create desired land use patterns and protection of natural systems.

Discussion:

The implementation status report does not require approval by the CRC, but must be made available to the public and forwarded to DCM. Staff has reviewed the reports and finds that the Town has met the minimum requirements.



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

Beverly Eaves Perdue
Governor

Braxton C. Davis
Director

Dee Freeman
Secretary

April 3, 2012

MEMORANDUM

TO: Coastal Resources Commission
FROM: Braxton Davis
SUBJECT: DCM Update

Regulatory Update

Through the end of 2011, permit activity appears to have stabilized from the continued decrease and more recent indicators seem to reflect a slight increase in permitting. For the first two quarters of FY '11-'12 (July – December, 2011), the Division issued 80 major permit decisions with an average processing time of 87 days and issued 1065 general permits each within a few days of the request (of which 568 were emergency GPs associated with hurricane Irene). During the same time period, 354 minor permits were issued -- with DCM staff issuing 83 in those areas that do not have a local CAMA Implementation and Enforcement program. Permitting staff have begun a renewed emphasis on timeliness of permit decisions which, combined with new interagency policies and procedures, should begin to result in decreased major permit processing times.

Over the same time period, compliance and enforcement staff performed 985 inspections for permit monitoring, complaint investigation, violation investigations and/or restoration follow-up site visits, and compliance assistance. The compliance rate of permitted projects was 96%. Staff issued 31 new enforcement actions and closed out 33 total cases. A total of \$36,350 in penalties was assessed with over \$29,000 collected. Regulatory staff are continuing to implement the new tiered enforcement mandated by SB781 Regulatory Reform Law.

Policy and Planning

The Division recently submitted its annual application for federal funding to the National Oceanic and Atmospheric Administration – Office of Ocean and Coastal Resource Management for fiscal year 2012-2013. This NOAA Cooperative Agreement supports core DCM efforts as well as special projects, including the NC Clean Marina Program, Beach and Inlet Management Plan implementation, analysis of the Estuarine Shoreline Mapping Project, and co-sponsoring of a new digital coastal and ocean atlas for North Carolina.

Rule Development

Policy staff has continued to work with the Department and the Office of State Budget and Management on the fiscal analyses associated with several rules approved by the Commission for public hearing. Current status is as follows:

- 15A NCAC 7H .0308(a)(2) & 7H .1705 – Sandbags: Fiscal analysis approved by OSBM
- 15A NCAC 7H .0304 – Erosion Rates: Fiscal analysis approved by DENR, awaiting OSBM
- 15A NCAC 7H .0312 – Sediment Criteria: In process
- 15A NCAC 7K .0214 – Sign Rule: In process

Coastal Atlas for North Carolina

Data limitations and overlapping jurisdictions can complicate management decisions related to newly emerging and expanding coastal and ocean activities. As a result, several states are investing in coast-wide data synthesis efforts and tools for improved stakeholder engagement. These states are using various forms of online digital web atlases to facilitate decision-making and improve public awareness. DCM staff recently had discussions with East Carolina University and other partners on the proposed development of a “coastal atlas” for North Carolina. The development of a coastal atlas would leverage regional partnerships and increase the availability of existing datasets and GIS layers for coastal and ocean resources. DCM staff are also working with the Governor’s South Atlantic Alliance to develop a regional portal for ocean-based datasets.

Land Use Planning

Planning staff are working with local governments on land use plan updates in Pender and Camden Counties. Draft plans are also being reviewed for Cedar Point, Bertie County, Perquimans County, Southern Shores, Navassa and Leland. Land use plan amendments are in process for New Hanover County and Swansboro. Staff are in the process of developing a workshop aimed at providing improved guidance for land use plan amendments. The intent is to provide several ½ day sessions in late June, and staff are soliciting questions, topics and issues from local governments to be covered.

Waterfront Access

The 2012 CAMA Public Beach and Coastal Waterfront Access Grant Program RFP has been announced. Planners have been meeting with communities regarding potential access projects/sites as well as assisting them with the application process. Deadline for grant applications is April 19th. Staff also conducted site visits and monitored reports for eleven (11) projects currently under contract and finalized two other project contracts.

Coastal Reserves

In January, the Coastal Training Program (CTP) hosted a workshop with 45 attendees focused on “Managing Recreational Use of Publicly Accessible Protected Lands.” The goal of this workshop was to bring together protected land resource managers in coastal North Carolina to talk about issues related to visitor uses. The CTP also hosted a Reserve Research Symposium in February to highlight research activities occurring on all 10 Reserve sites. NC Sea Grant co-sponsored the symposium, which was attended by 61 people. Two “Estuarine Shorelines: Value, Regulation, and Stabilization” workshops are scheduled for Beaufort on April 24 and Wilmington on May 2. For more information please visit <http://www.nccoastaltraining.net/Scheduled-Workshops/92.aspx>

K-12 school field trips to the Rachel Carson Reserve began April 2 for the spring season. These trips are offered in the spring and fall to schools and address NC Standard Course of Study areas in science, social studies, and language arts. The Reserve will educate over 200 students in April alone. In addition, registrations for summer camps are currently being accepted. Summer camps are available for students as young as four and focus on estuaries, including a field trip to the Rachel Carson Reserve. The summer camp program is a partnership with the NC Maritime Museum.

A Local Advisory Committee Operating Procedures document was finalized in February and details the purpose, role and procedures for the committees. LAC meetings for Rachel Carson, Masonboro Island, Zeke's Island, and Bald Head Woods were held in March and April 2012. LAC meetings will be held later this spring at the northern sites. More information is available on the Reserve's website at <http://www.nccoastalreserve.net/Resources/-Accepting-Applications-for-LACs/203.aspx>.

A new research project will begin at the Rachel Carson Reserve this year with the goal of increasing the success of intertidal oyster reef restoration efforts in NC. This NC Sea Grant-funded project led by UNC-IMS researchers in collaboration with Reserve research staff will quantify oyster reef accretion rates and fauna inhabiting the reef structure across various landscape settings. A new Coastal Research Fellow, Teri O'Meara, also begins work this spring examining nitrogen recycling in the maritime forests and marshes of the Rachel Carson and Currituck Banks.

A number of Masonboro Island Reserve outreach activities are scheduled in the Wilmington area to target specific users of the Reserve, provide information to the general public about the Reserve program, and recruit volunteers to support field activities. These include the Masonboro Café, informal informational sessions to discuss activities on the Masonboro Reserve, camping workshops to promote low impact camping, and sessions focused on bird and turtle monitoring programs. More information is available on the Reserve's website.

Staff News

Paul Williams has joined the Elizabeth City office as the Division's new transportation projects field representative. Paul comes to DCM from the NC Wildlife Resources Commission.

Lori Davis is the new education coordinator for the Coastal Reserve Program. Lori has served as the reserves' education specialist for the past 10 years through a contract with UNC-Wilmington. In her new role, she will manage all K-12 student and teacher and general public programming.

Paula Gillikin is the new Coastal Reserve central sites manager. Paula has served as the Reserve's Rachel Carson Site Manager in a temporary capacity since 2007. She will continue to steward the Rachel Carson site in her new role and also will be responsible for our Permuda Island Reserve.

We are currently reviewing applications for two open positions: the DCM Budget Director and Shoreline Management Specialist – a position within the Policy and Planning Section that will assume lead responsibility for ocean and estuarine shoreline management and research efforts, as well as assistance to the Regulatory section on reviews of major beach projects and monitoring reports.

Robin V. Comer, Chair
Patrick "Pat" Joyce, Vice-Chair
William Holt Faircloth
Douglas W. Harris
John Gregory Lewis
Jonathan Robinson
Bill Smith



W. Russell Overman
Office: (252) 728-8450
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russello@carteretcountygov.org
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Clerk to the Board
Jeanette S. Deese, NCCCC

**RESOLUTION
CONCERNING NORTH CAROLINA'S SEA-LEVEL RISE
REPORTS, POLICIES, AND MONITORING EFFORTS**

WHEREAS, the N.C. Division of Coastal Management, under the auspices of the N.C. Department of Environment & Natural Resources is developing a sea-level rise policy predicated by a "Literature Search" issued in 2010 by the State Science Panel on Coastal Hazards entitled, "North Carolina Sea-Level Rise Assessment Report"; and

WHEREAS, the N.C. Division of Coastal Management, under the auspices of the N.C. Department of Environment & Natural Resources is developing a sea-level rise policy predicated by a report issued in 2010 by the State Science Panel on Coastal Hazards entitled, "*North Carolina Sea-Level Rise Assessment Report*"; and

WHEREAS, also the N.C. Division of Emergency Management, under the auspices of the N.C. Department of Crime Control & Public Safety, is preparing a separate study report entitled, "*North Carolina Sea Level Rise Impact Study*" under the directives of the federal 2009 Department of Homeland Security Appropriations Bill that furnished \$5 million for the study report; and

WHEREAS, the N.C. Division of Emergency Management is utilizing the Science Panel's 2010 *North Carolina Sea-Level Rise Assessment Report* as a basis for their study report; and

WHEREAS, there has been considerable controversy and widespread disagreement regarding the sea-level rise projections provided in the Science Panel's 2010 Report and the embellishment of sea-level rise data provided in the historical record; and

WHEREAS, Carteret County has previously gone on record with its concern to how exaggerated sea-level rise projections and resulting policy/rules can cause irreparable economic harm to the coastal plain of North Carolina by adversely changing land/property values, uses, insurances, and construction/maintenance costs of both private and public infrastructure; and

WHEREAS, the current draft of the N.C. Division of Coastal Management sea-level rise policy and draft materials for the N.C. Division of Emergency Management's study report both include directives calling for additional sea-level monitoring and the re-visitation/re-establishment of sea-level rise rates at periodic intervals, and

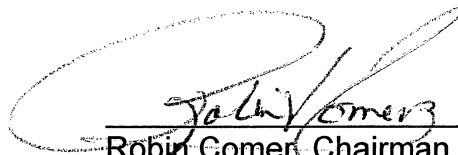
WHEREAS, considering the impacts to human health and economies in the region that are associated with understanding and reporting sea level, and the fact there continues to be a great deal of uncertainty regarding future sea-level rates.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners that Carteret County requests the development of protocols articulating the precise methodology to how sea level is to be measured, recorded, interpreted, and reported.

BE IT FURTHER RESOLVED, that these protocols must be developed and approved with the strong aid of local governments and other stakeholders.

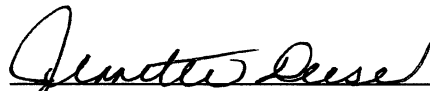
BE IT FURTHER RESOLVED, that the aforesaid State Agencies discontinue promotion, education, and implementation of any Sea-Level Rise policies, until there is verifiable scientific proof of the current rate of sea-level rise and an acceleration of this rate is observed by the methods agreed upon as stated immediately above, and are found to be hazardous to future uses of coastal property in North Carolina.

ADOPTED, this 19th day of March, 2012.

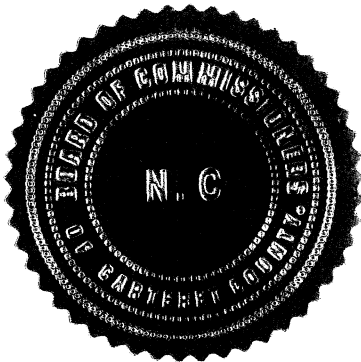


Robin Comer, Chairman
Carteret County Board of Commissioners

ATTEST:



Jeanette Deese, NCCCC
Clerk to the Board





MARY P. HUNNICUTT
CLERK TO BOARD
W. FRANK HEATH, III
COUNTY MANAGER

PERQUIMANS COUNTY BOARD OF COMMISSIONERS

P.O. BOX 45
HERTFORD, NORTH CAROLINA 27944
TELEPHONE: 1-252-426-7550

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W. HACKNEY HIGH, JR.
COUNTY ATTORNEY

RESOLUTION CONCERNING NORTH CAROLINA'S SEA-LEVEL RISE REPORTS, POLICIES, AND MONITORING EFFORTS

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WHEREAS, Perquimans County is concerned about how exaggerated sea-level rise projections and resulting policy/rules can cause irreparable economic harm to the coastal plain of North Carolina by adversely changing land/property values, uses, insurances, and construction/maintenance costs of both private and public infrastructure; and

WHEREAS, the current draft of the N.C. Division of Coastal Management sea-level rise policy and draft materials for the N.C. Division of Emergency Management's study report both include directives calling for additional sea-level monitoring and the re-visitation/re-establishment of sea-level rise rates at periodic intervals, and

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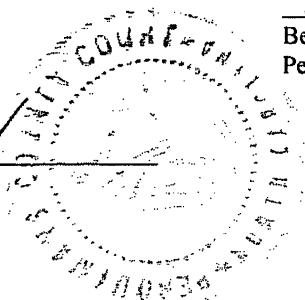
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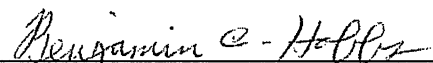
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ADOPTED, this 2nd day of April, 2012.

ATTEST:


Mary P. Hunnicutt, Clerk to the Board




Benjamin C. Hobbs, Chairman
Perquimans County Board of Commissioners



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

Beverly Eaves Perdue
Governor

Braxton C. Davis
Director

Dee Freeman
Secretary

April 5, 2012

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.0304 AECs Within Ocean Hazard Areas
Status: Going to public hearing.
The amendments will change the formula used to calculate the Ocean Erodible AEC to make it consistent with the CRC's new oceanfront setbacks, and remove the "unvegetated beach" designation for Hatteras Island that was adopted in 2004. Additional changes were approved in May to update long-term annual erosion rates for the oceanfront.
2. 15A NCAC 7H.0308 Specific Use Standards for Ocean Hazard Areas
Status: Going to public hearing
CRC approved changes to the sandbag rules and fiscal analysis for public hearing. Hearings being scheduled.
3. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas
Status: On hold.
The CRC directed staff to put further rule development on hold until after the oceanfront erosion rate update is complete.
4. 15A NCAC 7H.0312 Technical Standards for Beach Fill Projects
Status: Going to public hearing.
The Commission approved changes to sampling requirements be sent to public hearing. Hearings being scheduled.

5. 15A NCAC 7H.1705 General Permit for Emergency Work Requiring a CAMA and/or Dredge and Fill Permit: Specific Conditions
Status: Going to public hearing.
CRC approved changes to the sandbag rules and fiscal analysis for public hearing. Hearings being scheduled.
6. 15A NCAC 7H.0214 Installation and Maintenance of Regulatory Signs Exempted
Status: Staff recommending withdrawal.
The proposed adoption would exempt certain regulatory signs from permitting requirements. Staff will be recommending that this action be withdrawn.
7. 15A NCAC 7M.1300 Sea-Level Rise Policy
Status: To be assigned to subcommittee.
A draft policy on sea-level rise has been developed and presented to local governments for their feedback. At the February 2012 meeting the CRC indicated a desire to make additional changes to the draft language, and voted to return it to one of the standing subcommittees for further review.

COASTAL RESOURCES COMMISSION RULEMAKING STATUS - APRIL 2012

Item #	Rule Citation	Rule Title	April '12 Status	April Action Required?	Next Steps
1	15A NCAC 7H.0304	AECs Within Ocean Hazard Areas	Going to public hearing	No	Public hearings being scheduled.
2	15A NCAC 7H.0308	Specific Use Standards for Ocean Hazard Areas	Going to public hearing	No	Public hearings being scheduled.
3	15A NCAC 7H.0310	Use Standards for Inlet Hazard Areas	On hold	No	On hold until oceanfront erosion rates update is completed.
4	15A NCAC 7H.0312	Technical Standards for Beach Fill Projects	Going to public hearing	No	Public hearings being scheduled.
5	15A NCAC 7H.1705	General Permit for Emergency Work Requiring a CAMA and/or Dredge and Fill Permit: Specific Conditions	For review and approval	No	Public hearings being scheduled.
6	15A NCAC 7K.0214	Installation & Maintenance of Regulatory Signs Exempted	Approved for public hearing	No	Public hearings being scheduled.
7	15A NCAC 7M.1300	Sea-Level Rise Policy	Going to subcommittee	No	To be assigned to a subcommittee for discussion.

CHPP Steering Committee Meeting
July 28, 2011
Washington Regional Office
Washington, NC

Meeting Attendees: Bob Emory (CRC), Anna Beckwith (MFC), Chris Elkins (MFC), Pete Peterson (EMC), Tom Ellis (EMC), Ray White (WRC), Bobby Purcell (WRC), Anne Deaton (DMF), Katy West (DMF), Kevin Hart (DMF), Jessi O'Neal Baker (DMF), Christine Jensen (DMF), Dee Lupton (DMF), Jim Gregson (DCM), Mike Lopazanski (DCM), Rebecca Ellin (DCM-NERR), Bill Diuguid (DWQ), Matt Matthews (DWQ), Al Hodge (DWQ), Shannon Jenkins (DMF-SS), Jimmy Johnson (DENR), David Jones (NCFS), Stephanie Dolan (NCFS), Rob Breeding (EEP), Maria Dunn (WRC), Chad Thomas (WRC), Natalie Woolard (DSWC), Gloria Putnam (Sea Grant), Jennifer Weaver (NCSU)

Call to Order and Introductions:

Dr. Pete Peterson, chair, called the meeting to order at 10:00am.

Introductions of attendees took place. The agenda was reviewed and approved as submitted.

A motion to accept the minutes from the meeting on 1/24/2011 was made by Bob Emory and a second was provided by Anna Beckwith. The motion to accept the minutes as written passed unanimously.

Budget Discussion:

Director Gregson began a discussion about the implications of this year's budget cuts with regards to DCM and its operations. He noted that the division's budget had been cut by 20% or about \$400,000. This resulted in the loss of 6 positions, the most notable being an Assistant Director's position held by Steve Underwood. Also included in the position cuts were two permitting field staff and a Minor Permit Coordinator.

Gregson also talked about the implications behind SB781, The Regulatory Reform Act of 2011, and how the CHPP can be implemented without any rules. The Bill calls for a coordinated and tiered approach to enforcement and makes the Secretary of DENR responsible for coming up with the protocol behind the tiered approach. Gregson noted that the CHPP was responsible, in large part, for a significant decrease in civil penalties due to the addition of four enforcement positions called for in the Plan. Violations are down due to increased inspections and more people in the field.

Mike Lopazanski noted that SB781 will significantly slow down the rulemaking process and will increase the fiscal analysis and the scrutiny behind all rules with monetary issues. Mike stated that people will need to adjust their expectations accordingly. Anne Deaton asked about the Shoreline Survey work being and if there were any budget implications associated with that work being done. To date, 15 counties have been surveyed and five of the 15 have been through the QA/QC process. DCM still hopes to complete this project by the end of the year.

Dee Lupton, reported from DMF that over the past several years the division had lost about \$3.3 million dollars in appropriated funds. The division has been able to maintain the staff for the

Oyster Restoration Program but the funding has been lost for operations. This is the program that builds the oyster reefs in estuarine waters. Dee also noted that Scott Chappell's old position with the CHPP had been lost and 15 other positions within Marine Fisheries had been lost or fund shifted (9/6). The division was having to re-evaluate its priorities due to funding cuts and was focusing more on its core mission priorities. Dee also noted that rulemaking was a concern for DMF as well and that the division was very active in the Regional Office Study being carried out by the General Assembly staff.

Matt Matthews reported for DWQ and noted that the Regional Office Study was a big concern to that division. The concern they share with others is the impact that the RO's have on customer service and how that will change if they are closed. In the latest round of budget cuts, DWQ lost 31 positions including two Express Permitting positions – one in Wilmington and one in Washington. Matt reminded everyone that SB781 requires an annual review of each division's rules and that review will require unknown amounts of staff time. Matt also believed that each division will need an economist to be able to help with the fiscal impacts of any new rules.

Bill Diuguid added that there was the potential for an increase in "pushback" from those applying for permits and that every detail in the permit requirements now may be questioned. He noted that DWQ field staff was trying to "kinder and gentler" in their dealing with the public. Anne Deaton asked about the potential effect on the coastal stormwater rules since they were more stringent than the federal rules. The possibility exists that those rules could potentially change to the less stringent federal rules. Bobby Purcell asked if most of NC's rules were not more stringent than the federal rules. Bill's response was that NC tries to tailor rules to what is happening locally and he used the Confined Animal Feeding Operations (CAFO) as an example. Bobby also asked about potential litigation and the agreement was that the potential for litigation will increase.

Tom Ellis noted that rules are the result of state legislation in many instances. Pete stated that he saw difficult days ahead for CHPP accomplishments. He highlighted how the Oyster Restoration Program had been targeted by the General Assembly. He also noted that enforcement and monitoring were targeted as well. Pete suggested we focus on trying to rescue those things which bring us together through the CHPP process.

Chad Thomas reported for the WRC and stated that the General Assembly had changed the funding model of the agency. He noted that the budget for the WRC had been cut by \$3.5 million. The impacts to the program were still being examined. The WRC shifted their Aquatics Habitat Coordinator position to the coast.

Natalie Woolard reported that the Division of Soil and Water Conservation had been moved out of DENR and into the NC Department of Agriculture and Consumer Services. Soil and Water lost 12 positions in the move. The Agricultural Cost Share Program had seen a small decrease in their budget and the affect would be seen mostly at the District level. The Community Conservation Assistance Program (CCAP) did not see any funding change over last year's budget.

David Jones reported that the Division of Forest Resources had also been moved to NCDA&CS and was now called the North Carolina Forest Service. The General Assembly removed several of the Forest Service's planes from its fleet, but the division did not lose but a very few positions in the transfer.

Rob Breeding informed the committee that Bill Gilmore, the Director for EEP had retired. At this time he was unsure of any reorganizational plans. EEP has had to shift a lot of on the ground work to private contractors due to budget constraints. Their planning remained stable for the foreseeable future.

It was reported that the General assembly had done away with the Joint Legislative Commission on Seafood and Aquaculture as well as the Environmental Review Commission. Both commissions had oversight of the CHPP process. A new study group was formed through legislation to look at the makeup of the Marine Fisheries Commission, where the DMF should be housed permanently, what to do with HB353 – The Gamefish Bill, the issue of joint law enforcement capabilities and the advisory committee structure of the MFC. The study group will meet several times before the short session next year and make their recommendations to the General Assembly.

CHPP Implementation Plan: Christine Jensen and Anne Deaton

It was noted that this is the third two year Implementation Plan since the CHPP was formally adopted in late 2004. Initial discussion centered on the difficulty of implementing the CHPP over the next several years given the new direction of the General Assembly. Agencies will need to be more focused, committed and strategic in their efforts to protect NC's natural resources. It was decided that the main focus of the next two years of CHPP implementation would be on outreach, monitoring, restoration and the protection of existing resources. There was discussion about some specific wording in the Introduction to the IP and additional discussion regarding the focus of the IP. It was also decided that the Implementation Plan would be used as the required CHPP Annual Report with the addition of another page for historical purposes.

Each division reviewed specific goals and recommendations which they are responsible for. A few minor changes were made to the Draft Implementation Plan. Bob Emory made a motion to accept the 2011-2013 IP and have it presented to the respective commissions. The motion received a second from Bobby Purcell and the motion passed unanimously.

Lunch: 12:30pm – 1:30pm

Strategic Habitat Area 2: Anne Deaton

Anne gave a PowerPoint presentation representing the proposed areas for designation as Strategic Habitat Areas in the Pamlico Sound, Tar/Pam River and Neuse River Basins. She introduced Jenn Weaver who had done a large part of the designation work while working as a Fellow with the division. Anne and Jenn explained the designation process and how the boundaries for each of the SHA's were determined. There was some discussion focused on what was targeted by the MARXAN Program and how those targets were determined. Approximately 27% of the area will be designated as strategic habitat.

CHPP Progress Reports:

NCFS – David Jones

As mentioned previously, the division has moved from DENR to NCDA&CS and has officially changed its name to the North Carolina Forest Services. The move has gone fairly smoothly with no real operational difficulties to report. The Water Quality Forester's positions were saved with the move. The Non-Point Source Branch of the division which had been funded through 319 grant funds will still be eligible for those funds in spite of the move to Ag. The division has also introduced a web-based map to be used for harvest planning. David also noted that the stream restoration project at their Claridge Nursery was continuing. This two mile stream restoration effort is part of a DOT mitigation project. Gloria Putnam asked about the Urban Forestry Program and David said that since that program was funded by federal dollars, it was still safe.

MFC/DMF – Anne Deaton

Anne reported that the DMF was in the middle of their cultch planting season and that the division was continuing to utilize what funds are still available to build one new oyster sanctuary. She also noted that the DMF was continuing with their Spawning Surveys in the Albemarle Sound and its tributaries. Her staff, along with others, was currently ground truthing Area 1 Strategic Habitat Areas. Pete asked about the potential of “zoning” of the Pamlico Sound based on current use activities and habitat. The question was generated for the discussion regarding cultch planting. The cultch planting effort came about as an effort to supplement the harvest of shellfish with the intent being that the larvae dispersed will help populate oysters in adjacent areas for harvest.

CRC/DCM – Mike Lopazanski

Mike reported that DCM's shoreline mapping effort was coming to an end. They have contracted with ECU to quantify the findings from each of the 20 selected coastal counties. This is scheduled to be completed by the end of the year. Dr. John Fear has written a report based on the study of 27 permitted marsh sills. Mike touched on some of the general finding from the report that John presented to the CRC in May. The report is available on-line at the DCM website. Pete Peterson expressed some disappointment in that the report did not contain a stronger recommendation for the case of marsh sills. Mike noted that the specifics of the chosen sites were one of the primary reasons for their success. Jim Gregson noted also that the time factor for permitting and the need of additional agency coordination continues to make the option of marsh sills less attractive and not the conditions of the permit. A discussion around the other options ensued.

Rebecca Ellin reported the NERR locations were focusing a significant part of their efforts on shoreline education and sea level rise education. Included in this effort is education on the value of estuaries and the habitats within them. This education effort has been funded in part with a grant for the Albemarle Pamlico National Estuary Program (APNEP). The sea level rise education initiative is basically a marketing analysis. The reserve staff is trying to determine what other DENR agencies are doing with regards to SLR and how the NERR's can complement those ongoing efforts.

EMC/DWQ – Matt Matthews

Matt shared that DWQ has been working to encourage alternatives to spray field irrigation from Confined Animal Feeding Operations (CAFO). The division had been counting on money from the Clean Water Management Trust Fund to help determine some better alternatives, but with the CWMTF having had its budget cut by 88%, there is no money currently available. Matt also reported that the EPA has been pushing for water quality standards for Nitrogen and Phosphorous. North Carolina is ahead of the game with regards to instigating nutrient threshold rules. Because

of budget constraints recently, NC has not been able to make much headway recently, but the division already had a good beginning for what the EPA is looking for. This will also help DWQ n directing them as to how to look at nutrients in the estuaries. Tom Ellis made not of the fact that the division was monitoring selected animal operations for the next three years to determine if there are any water quality and air quality issues emanating from the farms. This is being done in conjunction with the USGS.

WRC – Chad Thomas

Chad reported that the WRC staff is currently reviewing the first draft of the Striped Bass Fishery Management Plan revision and update. He also noted that the WRC was participating in an effort to restore American Shad to the Roanoke River. The WRC will stock the Roanoke with 4.5 million shad fry this year to help in that restoration effort. As part of the effort to restore the American had populations, the WRC will be proposing a change in creel limits from 10 fish to one fish. The WRC rules in Inland Waters will now reference DMF rules for Red Drum, Weakfish, Spotted Sea Trout, and Southern Flounder. This will help keep their rules in sync with the DMF and will help eliminate confusion for anglers.

DSWC – Natalie Woolard

The division is currently undertaking a review of their Conservation Resource Enhancement Program (CREP) priority areas. Natalie reported that when the review is completed, the division will target their limited resources for education and outreach to those most responsive. The division's Swine Buyout Program, designed to buyout hog farms located in the 100 year flood plain, has enough money to complete just one more buyout to close any abandoned hog lagoons. The APNEP has awarded a grant to the DSWC for a Bookmark Contest for 5th and 6th graders in the northern coastal counties. The bookmarks will focus on estuary sustainability and tie in with soil and water conservation. Natalie told the committee that the division's Lagoon Conversion Program has lost much of its funding and that there are currently four farms in the process of converting their waste treatment lagoon systems to alternative ways of treating their animal waste.

EEP – Rob Breeding

The EEP's River Basin Restoration Priorities in clued the basins of the Neuse, Pamlico and White Oak Rivers. Rob indicated that the EEP was still working on their web portal which will give the general public access to the priority basin's restoration initiatives. Rob announced that the grant cycle for the River Basin Restoration Priorities will begin in the near future. No specific date was given.

Shellfish Sanitation – Shannon Jenkins

Shellfish Sanitation is working with DCM to help ground truth DCM's shoreline mapping project. They are also involved with some baseline monitoring for the Pivers Island Stormwater Project. Shannon stated that the monitoring will continue after the stormwater project is completed.

The meeting adjourned at 3:00pm.