

NC COASTAL RESOURCES COMMISSION

May 21 - 23, 2008

Washington Civic Center

Washington, NC

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

Wednesday, May 21st

3:00 COMMISSION CALL TO ORDER

Bob Emory, Chair

- Roll Call

VARIANCES

- Stern – (CRC-CR-08-12) New Hanover County, Pier
- Stern - (CRC-CR-08-13) New Hanover County, Pier
- Town of Atlantic Beach – (CRC-VR-08-10) Atlantic Beach, Oceanfront setback

Tom Moffitt

Tom Moffitt

Amanda Little

6:30 Executive Committee Meeting (Civic Center Lobby)

Bob Emory, Chair

Thursday, May 22nd

8:00 COMMISSION CALL TO ORDER (Ballroom)

Bob Emory, Chair

- Roll Call
- Approval of March 27-28, 2008 Meeting Minutes
- Executive Secretary's Report
- Chairman's Comments

Jim Gregson

Bob Emory

8:30 PRESENTATIONS

- CRAC Report
- Coastal Reserve Education Program and Division Education Plan (CRC-08-25)
- Inlet Hazard Areas Update (CRC-08-18)
- Draft Amendments to 15A NCAC 7H .0309 Pier House Rules
And Single Family Exception (CRC-08-19)

Dara Royal

Jill Fegley

Whitney Jenkins

Jeff Warren

Tancred Miller

PETITION FOR RULE MAKING

- Kennedy Covington - 15A NCAC 7H .0308(a)(2) Temporary Erosion
Control Structures (CRC-08-24)

Mike Lopazanski

ACTION ITEMS

- Village of Bald Head Island Land Use Plan Certification (CRC-08-22)

Bob Emory

Mike Christenbury

12:15 LUNCH

1:30 PRESENTATIONS

- Interagency Coordination
- Proposed MFC SAV Definition & Application to CAMA Permits
- Draft Amendments to 15A NCAC 7H 0.308(a)(2)
Temporary Erosion Control Structures (CRC-08-21)

Robin Smith

Anne Deaton

DCM Staff

Mike Lopazanski

Friday, May 23rd

8:00 COMMISSION CALL TO ORDER (Ballroom)

Bob Emory, Chair

PRESENTATIONS

- Shellfish Waters
- Comprehensive Beach Management Task Force Subcommittee Report (*CRC-08-20*)
- Bulkhead Rules Update and Draft Amendments to 15A NCAC 7H .1100 Bulkhead GP (*CRC-08-23*)
- Review of CRC Priority Issues

Melvin Shepherd
Bob Emory

Bonnie Bendell

Bob Emory

11:00 PUBLIC INPUT AND COMMENT

ACTION ITEMS

Bob Emory

OLD/NEW BUSINESS

- Resolution Regarding EMC Stormwater Rules
- Resolution Regarding Future WAMI Funding
- Future Agenda Items

Bob Emory

12:00 ADJOURNMENT

NEXT MEETING:
July 23-25, 2008
Holiday Inn Brownstone
Raleigh, NC



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



CRC-VR-08-12
CRC-VR-08-13

State of North Carolina

ROY COOPER
ATTORNEY GENERAL

Department of Justice
P. O. Box 629
RALEIGH
27602-0629

TO: Coastal Resources Commission

FROM: Thomas F. Moffitt *Tm*
Special Deputy Attorney General

DATE: May 9, 2008

RE: Variance Requests by Susan G. Stern

Petitioner, Susan G. Stern, owns two undeveloped, waterfront lots located at 934 and 938 Santa Maria Ave., Wilmington, NC. These lots are situated on the north side of Pages Creek. She applied for general permits to construct a private pier, platform, floating dock and boatlift for each lot. On April 18, 2008, her applications were denied because the length of the proposed piers were unable to meet the one-fourth width of water body requirements as described in 15A NCAC 7H .1205 (n), 15A NCAC 7H .0208 (b)(6)(J)(iii) [use standards] and 15A NCAC 7H .0601 [rule violation]. Petitioner filed this request seeking a variance from application of the "one-quarter rule" for her piers, claiming that compliance with the rule would result in piers that would end in a sand flat that is dry or exposed to water that is only a few inches deep at mean low tide. DCM staff does not oppose Petitioner's variance requests.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules
Attachment B: Stipulated Facts
Attachment C: Summary of Petitioner's and Staff's Positions to Variance Criteria
Attachment D: Petitioner's Variance Request Materials
Attachment E: Other attachments

cc: Bill Raney, Attorney for Petitioner
James Gregson, DCM Director
Ted Tyndall, DCM Assistant Director, Permits and Enforcement
Robb Mairs, DCM Wilmington Regional Office
DCM Staff
James Gulick, Senior Deputy Attorney General

**ATTACHMENT A
RELEVANT STATUTES OR RULES**

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

15A NCAC 7H .0208 - USE STANDARDS

* * *

(b) Specific Use Standards

* * *

(6) Docks and Piers.

(J) Pier length shall be limited by:

(iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The one-fourth length limitation shall not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier cannot be longer than the pier head line established by the adjacent piers, nor longer than 1/3 the width of the water body.

15A NCAC 7H .0600 - DEVELOPMENT STANDARDS APPLICABLE TO ALL AECs

15A NCAC 7H .0601 NO VIOLATIONS OF ANY RULE - No development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations, or laws of the State of North Carolina or of any local government in which the development takes place.

**15A NCAC 7H .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS:
DOCKS: AND BOAT HOUSES IN ESTUARINE AND PUBLIC TRUST WATERS AND
OCEAN HAZARD AREAS**

15A NCAC 07H .1205 SPECIFIC CONDITIONS

* * *

(n) Piers, docks, and boat houses shall in no case extend more than $\frac{1}{4}$ the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The $\frac{1}{4}$ length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor, longer than $\frac{1}{3}$ the width of the water body.

**ATTACHMENT B
STIPULATED FACTS**

1. The petitioner, Susan G. Stern, is the owner of two undeveloped waterfront lots located at 934 and 938 Santa Maria Ave., Wilmington, North Carolina, and identified in her applications as Lots "A" and "B," respectively.
2. Petitioner is represented by attorney William A. Raney, Jr., from Wilmington, North Carolina.
3. Petitioner's lots are situated on the north side of Pages Creek, a tidal estuary extending from near Highway 17 on the west to the Intracoastal Waterway on the east.
4. Petitioner's property is located in the Estuarine Waters and Public Trust Area AECs.
5. Pages Creek is navigable by small boats from its intersection with the Intracoastal Waterway for about two miles upstream. The navigable channel of Page's Creek meanders within a wide area consisting of sand bars, sand flats, intertidal marshes, oyster beds and flats.
6. The waters of Pages Creek are classified as "SA" permanent secondary nursery areas and are open to shell fishing at the site of the proposed piers.
7. Petitioner's lots are located near the mouth of Pages Creek on an embayment that opens to the south.
8. There are four lots that border the embayment along the east and north sides with the west side of the embayment being an intertidal spit.
9. There is a dredged channel/basin on the eastern side of the embayment that provides deep water access to the two lots on the east and northeast side of the embayment. Petitioner's lots are on the north and west side of the embayment.
10. The water frontage on the Petitioner's lots is bordered by a fringe of intertidal marsh that translates into a sand flat that covers approximately two-thirds of the embayment and extends southward to an oyster rock bed and eastward to the dredged channel/basin.
11. The sand flat is shallower than one foot mean low water in depth from the edge of the marsh to the dredged channel/basin.

12. The water depth increases quickly at the edge of the dredged channel/basin.
13. The shortest distance from the Petitioner's lots to water that is deep enough to utilize a floating dock is reached by going southwestwardly from the Petitioner's waterfront to the dredged channel/basin.
14. A pier extending southwestwardly from the Petitioner's property to the minus three foot MLW contour exceeds one-fourth of the width of the water body when the width is measured along the axis formed by the line from the beginning point of the proposed piers to the outermost point of the proposed piers.
15. Application of the one-fourth rule would result in piers ending in a sand flat that is either dry or has only a few inches of water at low tide.
16. There is a riparian corridor agreement, dated May 21, 2007, by which the owners of the four lots on the embayment (Petitioner, Chris and Lisa Carlson, and Eric and Mary Calhoun) have agreed that each lot would have access to the dredged channel/basin within the embayment. The adjacent riparian property owners have consented to the construction of the piers.
17. The location of the proposed piers should not obstruct navigation by the public because the piers will be located in water that is too shallow for navigation at most stages of the tidal cycle, and the general public uses the dredged channels for navigation into and out of Pages Creek.
18. The measurements for the two proposed pier projects are as follows:

Lot A (934 Santa Maria Ave. – CRC-CV-08-12):

Running Length of Pier	311 ft.
Platform	12 ft. by 16 ft. (192 sq. ft.)
Floating Dock	24 ft. by 8 ft. (192 sq. ft.)
Boatlift	12 ft. by 12 ft.
Pier Length from Edge of Marsh	167 ft

Lot B (938 Santa Maria Ave. – CRC-CV-08-13):

Running Length of Pier	265 ft.
Platform	12 ft. by 16 ft. (192 sq. ft.)
Floating Dock	24 ft. by 8 ft. (192 sq. ft.)
Boatlift	12 ft. by 12 ft.
Pier Length from Edge of Marsh	86 ft.

19. The north arrow on the two site plans, identified in Exhibit D (2) and (4) as "diagram of proposed pier, platform, floating dock and boatlift," is incorrect and actually points south.

**ATTACHMENT C
SUMMARY OF PETITIONER AND STAFF POSITIONS**

- I. **Will practical difficulties or unnecessary hardships result from strict application of the guidelines, rules, standards or other restrictions applicable to the property?**

Petitioner's Position: Yes. (The following response is taken verbatim from the petitions, which were identical.)

The hardship will be the inability to construct a pier of sufficient length to reach water of adequate depths to dock small boats, i.e., -3' MLW. The application of the one-fourth rule would result in a pier ending in a sand flat that is either dry or has only a few inches of water at low tide.

Staff's Position: Yes. Staff agrees with the Petitioner that strict application of the rules and standards in her case would cause practical difficulties and unnecessary hardship. Strict application of the one-quarter rule would require construction of piers that would end on a sand flat and in an area inadequate for any reasonable use of the piers and floating docks for boating activities. Strict application of the rule would require this even though there is access to adequate deep water close by and impacts on navigation and the environment appear to be negligible. Staff agrees that strict application of the one-fourth rule under these circumstances would rise to the level of unnecessary hardship for the Petitioner.

- II. **Do such difficulties or hardships result from conditions which are peculiar to the property involved?**

Petitioner's Position: Yes. (The following response is taken verbatim from the petition, which were identical.)

The property is located on Pages Creek which is a tidal estuary extending from near Highway 17 on the west to the Intracoastal Waterway on the east. The property is located on an embayment on the north side of Pages Creek. Four residential lots have water frontage on the embayment. There is a dredged channel/basin providing deep water access to the two properties on the east and northeast side of the embayment. The applicant's property is on the north and west side of the embayment and is separated from the dredged channel/basin by a shallow sand flat that covers roughly 2/3rds of the embayment. The channel of Page's Creek is over 400' from the marsh at the applicant's waterfront but the dredged basin is less than 100' from the marsh on the applicant's waterfront. The hardship results because the applicant cannot construct a riparian access pier to the dredged channel/basin or to the main channel of Pages

Creek without exceeding the one-fourth rule.

Staff's Position: Yes. Staff believes the difficulties or hardships result from conditions that are somewhat peculiar to Petitioner's property. As the Petitioner stated in response to this criteria, the Petitioner's lots are located in an embayment that has only four waterfront lots that have access to deep water via a dredged channel that the four riparian owners have agreed to share. However, Petitioner's property is separated from the dredged channel/basin by a shallow sand flat that covers roughly two-thirds of the embayment. Consequently, the Petitioner cannot reach adequate deep water due to the unique physical characteristics of the embayment if the one-quarter rule is strictly applied even though all the owners of the lots on the embayment signed a riparian corridor agreement that would provide each lot with reasonable access to the channel. Under these circumstances, the shape of the embayment creates a technical inconsistency with the one-quarter rule as the piers extend into the water body.

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

Petitioner's Position: No. (The following response is taken verbatim from the petition, which were identical.)

The applicant had nothing to do with the shape of the shoreline or the presence of the sand flat adjacent to her lot.

Staff's Position: No. Staff agrees with the Petitioner on this factor as well. The Petitioner had nothing to do with the natural shape and configuration of the shallow embayment, sand flat, or the location of the existing dredged channel.

IV. Is the proposed development consistent with (1) 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. (The following response is taken verbatim from the petition, which were identical.)

- A. **Consistent with spirit, purpose or intent.** The spirit, purpose and intent of the one-fourth rule is to prevent private piers from occupying more than a fair share of public trust waters thereby hindering public navigation and other public uses of the water and submerged land.

The proposed pier will extend over a very shallow sand flat that extends from

the applicant's lot to a dredged channel/basin. The area across which the pier will extend is not a natural navigation area and is not an area used for navigation either by the general public or by property owners along Pages Creek. The only vessels that could use the area of the sand flat would be extremely small and shallow draft vessels such as canoes or kayaks which could navigate between and under the pier when the tide is sufficiently high for such vessels to use the area.

The proposed pier takes the shortest route to deep water. The use of this riparian corridor is made possible by a riparian corridor agreement with adjoining owners. This results in the shortest useful pier and the smallest occupation of public trust areas.

- B. **Preserve substantial justice.** The pier enable a waterfront property owner to gain access to deep enough water for boat docking without unduly occupying public trust areas or interfering with public navigation or other public uses. The location of the proposed pier is consistent with an agreement among the owners of four lots on the embayment who have property that is best served by the dredged channel/basin.
- C. **Secure public safety.** The public safety will not be affected by the proposed pier.

Staff's Position: Yes. First, staff agrees with the Petitioner that the proposed development is consistent with the spirit, purpose and intent of the one-quarter rule. This rule was intended to insure that there is no unreasonable interference with the rights of adjacent riparian owners or navigation for the boating public. By allowing the piers to extend beyond the one-quarter distance, the piers will span the shallow sand flat and allow for the construction of floating docks into adequate water depths along the dredged area. The four riparian property owners in the embayment have contractually agreed that they will share riparian access in the embayment and adjacent riparian owners have consented to the variance being granted. In addition, the piers will be built over the sand flat that is not ordinarily used the public for navigation. Given the limited type of navigation along the shallow embankment, the public's right to navigation should not be adversely affected. Consequently, the proposed development is consistent with the spirit, purpose and intent of the one-quarter rule.

Second, staff believes that granting the variances will secure public safety and welfare. As noted in the preceding paragraph, the effect of the proposed piers on navigation is negligible. In addition, allowing the structure to be located along the deep water access reduces any potential environmental impact.

Third, staff believes substantial justice would be preserved by enabling the Petitioner to make reasonable use of her riparian right to access to adequate water the same as the other riparian owners in the embayment without negatively impacting the public safety, navigation or the environment.

ATTACHMENT D
PETITIONER'S VARIANCE REQUEST MATERIALS

1. Cover letter from W.A. Raney, Jr. to Jim Gregson, dated April 23, 2008, for Variance Request for 934 Santa Maria Ave. (CRC-VR-08-12)
2. CAMA Variance Request (DCM Form 11) for 934 Santa Maria Ave. (CRC-VR-08-12) and attachments
 - Response to Four Statutory Variance Criteria
 - General permit denial letter, dated April 18, 2008
 - Diagram of proposed pier, platform, floating dock and boatlift
 - Map of recombination of previously divided lots, recorded in Map Book 47, Page 122 (January 4, 2005)
 - Petitioner's proposed stipulated facts
 - Riparian corridor agreement (April/May 2007), with survey of proposed riparian lines
3. Cover letter from W.A. Raney, Jr. to Jim Gregson, dated April 23, 2008, for Variance Request for 938 Santa Maria Ave. (CRC-VR-08-13)
4. CAMA Variance Request (DCM Form 11) for 938 Santa Maria Ave. (CRC-VR-08-13) and attachments
 - Response to Four Statutory Variance Criteria
 - General permit denial letter, dated April 18, 2008
 - Diagram of proposed pier, platform, floating dock and boatlift
 - Map of recombination of previously divided lots, recorded in Map Book 47, Page 122 (January 4, 2005)
 - Petitioner's proposed stipulated facts
 - Riparian corridor agreement (April/May 2007), with survey of proposed riparian lines

**ATTACHMENT E
OTHER ATTACHMENTS**

1. DCM PowerPoint slide presentation, including the following 8 slides:
 - a. Title page for slide presentation
 - b. 2006 DCM aerial photograph
 - c. 2006 DCM aerial photograph (more detailed)
 - d. View of Stern properties looking north (5/7/08)
 - e. View of Stern properties looking west (5/7/08)
 - f. View of Stern properties looking east (5/7/08)
 - g. Diagram of proposed pier, platform, floating dock and boatlift – 934 Santa Maria Ave.
 - h. Diagram of proposed pier, platform, floating dock and boatlift – 938 Santa Maria Ave.
2. Riparian Property Owner Notification/Waiver Forms – Christian deBeck (4/17/08) for 934 and 938 Santa Maria Ave.
3. Riparian Property Owner Notification/Waiver Form – Chris D. Carlson (4/17/08) for 934 and 938 Santa Maria Ave.

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

JOHN C. WESSELL, III
WESSILL@BELLSOUTH.NET

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

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

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

April 23, 2008

VIA FAX AND REGULAR MAIL (252-247-3330)

Mr. Jim Gregson, Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

RECEIVED

APR 23 2008

Morehead City DCM

Re: Variance Request Susan Stern
934 Santa Maria Avenue, Wilmington, NC

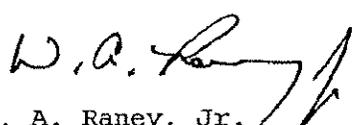
Dear Mr. Gregson:

Enclosed is a variance request for a pier proposed by Susan Stern for her lot at 934 Santa Maria Avenue, Wilmington, NC 28411. We would very much like to have this request heard at the May meeting of the Coastal Resources Commission. I look forward to working with your legal representative in developing stipulated facts.

I anticipate that this hearing can be consolidated with a hearing on the adjoining lot at 938 Santa Maria Drive.

Sincerely,

WESSELL & RANEY, L.L.P.


W. A. Raney, Jr.

WAR:ktw
Enclosures

WAR\ENVIRON\RO7-220-C01

DCM FORM 11
(revised 6/26/06)

CAMA VARIANCE REQUEST

DCM FILE NO.

08-12

Petitioner supplies the following information:

Your Name Susan G. Stern
Address 120 Coquina Drive, Wilmington, NC 28411
Telephone (910) 686-2757
Fax and/or Email

RECEIVED
APR 28 2008

Morehead City DCM

Name of Your Attorney (if applicable) William A. Raney, Jr.
Address P.O. Box 1049, Wilmington, NC 28402-1049
Telephone (910) 762-7475
Fax and/or Email (910) 762-7557 waraney@bellsouth.net

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

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

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

What did you seek a permit to do?

Construct a residential pier and dock for two boats.

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

15A NCAC 7H.1205(n) and 15A NCAC 7H.0208(b)(6)(J)(iii)
One-quarter rule

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

The design of the pier is the minimum length necessary to reach adequate water depth for a useful dock.

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

Compliance with the rule would result in docks being located in an area that is exposed or has only a few inches of water depth at low water. This would result in floating docks sitting on the bottom at mid-tide or lower, thereby making the docks not useful for the intended purpose.

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

The applicant would not be able to utilize her riparian property to gain access to nearby deep water for docking of small vessels.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

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

Please see Attachment A.

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

Please see Attachment A.

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

Please see Attachment A.

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

Please see Attachment A.

Please attach copies of the following:

Permit Application and Denial documents
Site Drawing with Survey and Topographical Information
Any letters filed with DCM or the LPO commenting on or objecting to your project

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

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

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

Date: 4-23-08

Signature: W.A. Raney Jr.
att. for Susan Stern

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

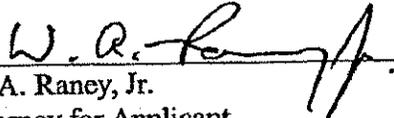
CERTIFICATE OF SERVICE

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

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

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

This the 23rd day of April, 2008.



W. A. Raney, Jr.
Attorney for Applicant
Wessell & Raney, L.L.P.
P.O. Box 1049
Wilmington, NC 28402

ATTACHMENT A TO CAMA VARIANCE REQUEST
RESPONSE TO FOUR STATUTORY VARIANCE CRITERIA

Susan Stern, Applicant
Lot A, 934 Santa Maria Avenue

- I. Identify the hardship(s) you will experience if you are not granted a variance and explain why you contend that the application of this rule to your property constitutes an unnecessary hardship.

The hardship will be the inability to construct a pier of sufficient length to reach water of adequate depths to dock small boats, i.e., -3' MLW. The application of the one-fourth rule would result in a pier ending in a sand flat that is either dry or has only a few inches of water at low tide.

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

The property is located on Pages Creek which is a tidal estuary extending from near Highway 17 on the west to the Intracoastal Waterway on the east. The property is located on an embayment on the north side of Pages Creek. Four residential lots have water frontage on the embayment. There is a dredged channel/basin providing deep water access to the two properties on the east and northeast side of the embayment. The applicant's property is on the north and west side of the embayment and is separated from the dredged channel/basin by a shallow sand flat that covers roughly the western 2/3rds of the embayment. The channel of Pages Creek is over 400' from the marsh at the applicant's waterfront but the dredged basin is less than 200' from the marsh on the applicant's waterfront. The hardship results because the applicant cannot construct a riparian access pier to the dredged channel/basin or to the main channel of Pages Creek without exceeding the one-fourth rule.

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

The applicant had nothing to do with the shape of the shoreline or the presence of the sand flat adjacent to her lot.

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

- A. Consistent with spirit, purpose and intent. The spirit, purpose and intent of the one-fourth rule is to prevent private piers from occupying more than a fair share of public trust waters thereby hindering public navigation and other public uses of the water and submerged land.

The proposed pier will extend over a very shallow sand flat that extends from the applicant's lot to a dredged channel/basin. The area across which the pier will extend is not a natural navigation area and is not an area used for navigation either by the general public or by property owners along Pages Creek. The only vessels that could use the area of the sand flat would be extremely small and shallow draft vessels such as canoes or kayaks which could navigate between and under the pier when the tide is sufficiently high for such vessels to use the area.

The proposed pier takes the shortest route to deep water. The use of this riparian corridor is made possible by a riparian corridor agreement with adjoining owners. This results in the shortest useful pier and the smallest occupation of public trust areas.

- B. Preserve substantial justice. The pier enables a waterfront property owner to gain access to deep enough water for boat docking without unduly occupying public trust areas or interfering with public navigation or other public uses. The location of the proposed pier is consistent with an agreement among the owners of four lots on the embayment who have property that is best served by the dredged channel/basin.
- C. Secure public safety. The public safety will not be affected by the proposed pier.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

April 18, 2008

Hand Delivered

Middle Sound Marine
C/o John King (Authorized agent)
130 East Brandywine Circle
Wilmington, N.C. 28411

Dear Mr. King:

The Division of Coastal Management has reviewed your proposal, acting as agent for Ms. Susan Stern, for the construction of a private pier, platform, floating dock and boatlift, located at 934 Santa Maria Ave., in Wilmington, N.C. Unfortunately, the Division of Coastal Management is not able to process your request for a pier and docking facility under a CAMA General Permit due to specific site conditions (i.e. unable to meet the ¼ width of waterbody rule requirements as described in 15A NCAC 07H .1205 (n), 15A NCAC 07H .0208 USE STANDARDS (b)(6)(J)(iii) and 15A NCAC 07H .0601 NO VIOLATION OF ANY RULE).

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

If you have any questions regarding this decision, please feel free to call me at (910) 796.7215.

Sincerely,

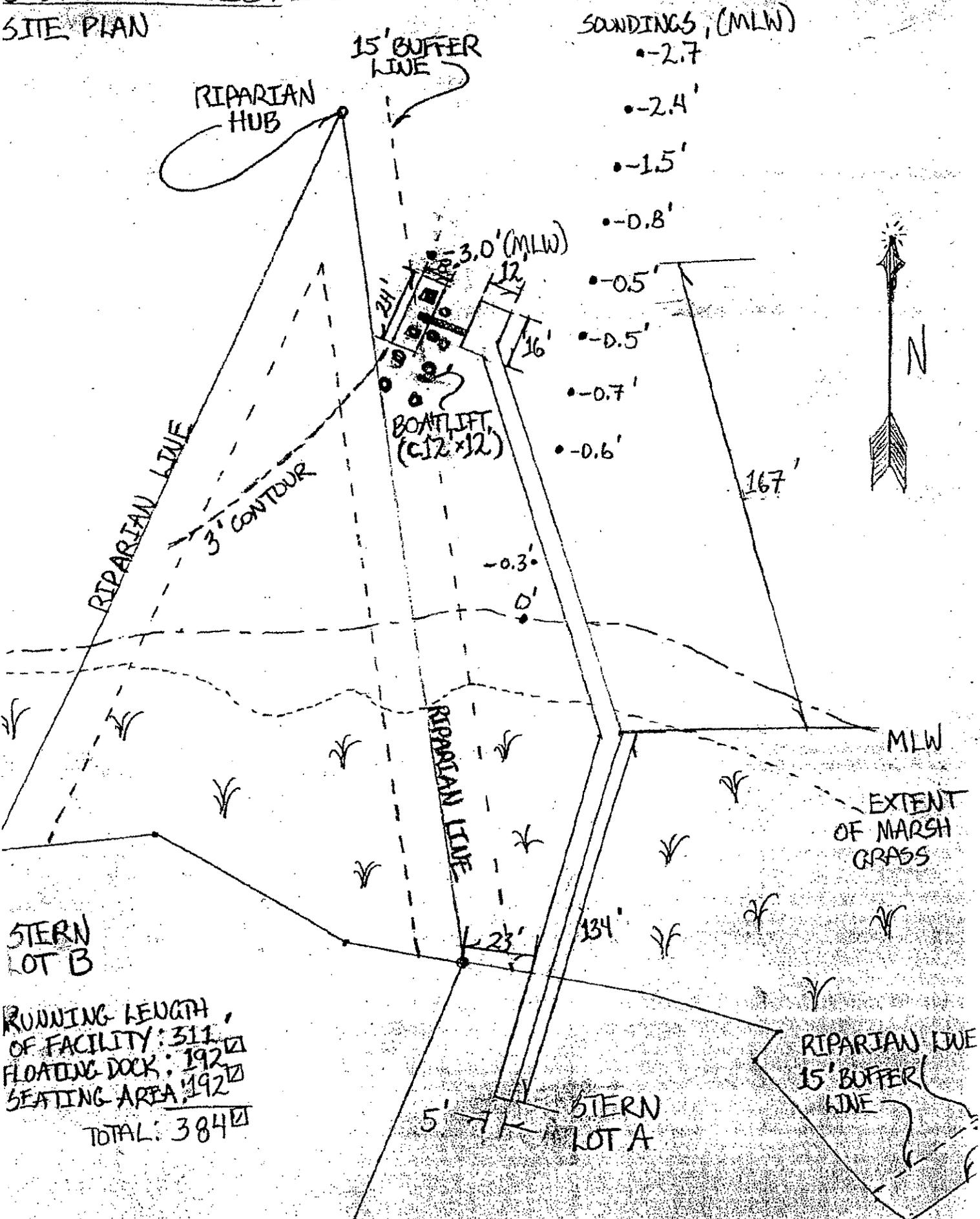
Robb Mairs
Field Representative

Cc: Ted Tyndall, DCM
Steven Everhart, DCM
Susan Stern, Applicant

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

STERN PROJECT I

SITE PLAN



SOUNDINGS, (MLW)

• -2.7'

• -2.4'

• -1.5'

• -0.8'

• -0.5'

• -0.5'

• -0.7'

• -0.6'

3.0' (MLW)

24'

12'

16'

167'

-0.3'

0'

MLW

EXTENT OF MARSH GRASS

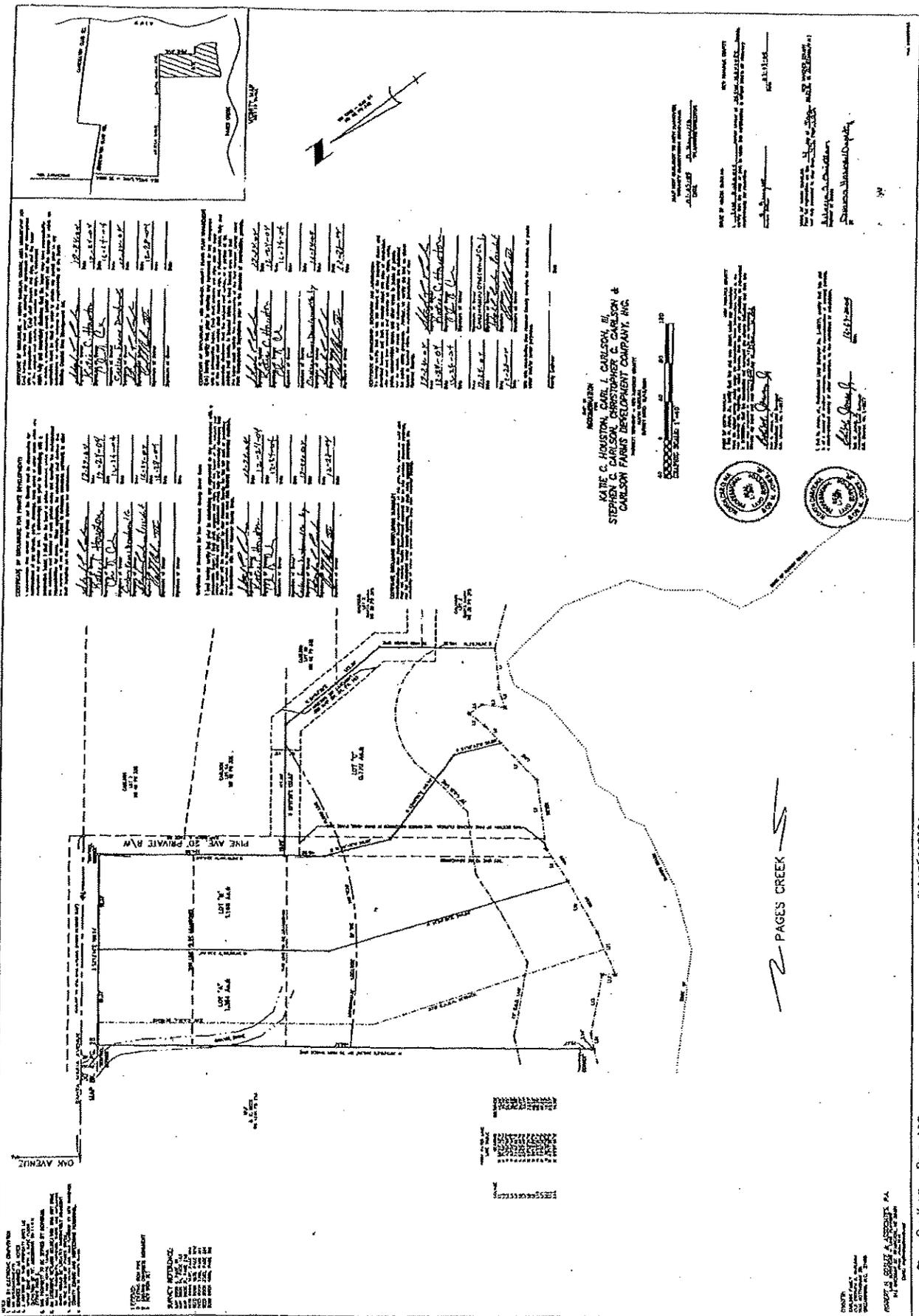
STERN LOT B

RUNNING LENGTH OF FACILITY: 311'
 FLOATING DOCK: 192'
 SEATING AREA: 192'

TOTAL: 384'

STERN LOT A

RIPARIAN LINE 15' BUFFER LINE



PROPERTY OF DEVELOPER FOR PRIVATE DEVELOPMENT

THIS PLAN IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
2. THE DEVELOPER SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
4. THE DEVELOPER SHALL MAINTAIN THE CREEK CHANNEL AND BANKS IN ACCORDANCE WITH ALL APPLICABLE REGULATIONS.
5. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL NECESSARY UTILITIES.
6. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING TREES AND VEGETATION.
7. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING HISTORIC STRUCTURES AND SITES.
8. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING CULTURAL RESOURCES.
9. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING ARCHAEOLGICAL RESOURCES.
10. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING GEOLOGICAL RESOURCES.
11. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING SOIL RESOURCES.
12. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING WATER RESOURCES.
13. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING AIR RESOURCES.
14. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING CLIMATE RESOURCES.
15. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING BIODIVERSITY RESOURCES.
16. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING SCIENTIFIC RESOURCES.
17. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING EDUCATIONAL RESOURCES.
18. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING CULTURAL RESOURCES.
19. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING HISTORIC RESOURCES.
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PROPERTY OF DEVELOPER FOR PRIVATE DEVELOPMENT

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20. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING ARCHAEOLGICAL RESOURCES.

REGISTERED PROFESSIONAL ENGINEER
KATE C. HANSTON, CARL J. CARLSON, III
STEPHEN J. CARLSON, COMPANY ENGINEERS & ARCHITECTS, INC.
 1000 W. BROADWAY, SUITE 1000
 TAMPA, FLORIDA 33606
 PHONE: 813.251.1111
 FAX: 813.251.1112
 WWW: WWW.KATECARLSON.COM

GRAPHIC SCALE 1"=40'



NOT TO SCALE
 THIS PLAN IS SUBJECT TO THE FOLLOWING CONDITIONS:
 1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
 2. THE DEVELOPER SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
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1005000380

Map Book 57 Page 182

DESIGNER: **STEPHEN J. CARLSON, COMPANY ENGINEERS & ARCHITECTS, INC.**
 1000 W. BROADWAY, SUITE 1000
 TAMPA, FLORIDA 33606
 PHONE: 813.251.1111
 FAX: 813.251.1112
 WWW: WWW.KATECARLSON.COM

Applicant's Proposed Stipulated Facts

Hardship

1. Unless the applicant can build a pier which exceeds one-fourth the width of the body of water, the applicant will be unable to reach water that is deep enough to have a pier and small boat dock that is useful for most of the tidal cycle.
2. Construction of a pier in compliance with the one-fourth rule would result in a pier that would terminate in an area that is only a few inches deep at mean low water.

Peculiar Conditions

3. The applicant's waterfront lot is located in New Hanover County on the north side of Pages Creek.
4. Pages Creek is a tidal creek which is navigable by small boats from its intersection with the Intracoastal Waterway for about two miles upstream.
5. The navigable channel of Pages Creek meanders within a wide area consisting of sand bars, sand flats, intertidal marshes, oyster beds and mud flats.
6. The applicant's lot is located in an embayment near the mouth of Pages Creek.
7. The embayment opens to the south.
8. There are four lots which border the embayment along the east and north sides with the west side of the embayment being an intertidal spit.
9. There is a dredged channel/basin on the eastern side of the embayment that borders two lots on the east and northeast side of the embayment.
10. The applicant owns the two lots on the northwest side of the embayment.
11. The water frontage on the applicant's lots is bordered by a fringe of intertidal marsh which transitions into a sand flat that extends southward to an oyster rock and eastward to the dredged channel/basin.

12. The sand flat is shallower than one foot mean low water in depth from the edge of the marsh to the dredged channel/basin.
13. The water depth increases quickly at the edge of the dredged channel/basin.
14. The shortest distance from the applicant's lot to water that is deep enough to utilize a floating dock is reached by going southeastwardly from the applicant's waterfront to the dredged channel/basin.
15. A pier extending southeastwardly from the applicant's property to the minus three foot MLW contour exceeds one-fourth of the width of the water body when the width is measured along the axis formed by the line from the beginning point of the proposed pier to the outermost point of the proposed pier.
16. There is a riparian corridor agreement by which the owners of the four lots on the embayment have agreed that each lot would have access to the dredged channel/basin within the embayment.

Hardships Not the Result of Action by Petitioner

17. The applicant had nothing to do with the presence of the sand flat or the location of the lots.

Spirit, Purchase and Intent; Substantial Justice; Public Safety

18. The location of the pier proposed by the applicant will not obstruct navigation by the public because the pier will be located in water that is too shallow for navigation at most stages of the tidal cycle and the general public uses the dredged channels or natural channels for navigation in to and out of Pages Creek. The applicant has oriented the proposed pier to go the minimal distance necessary to get to an area that is suitable for a floating dock and small boat dockage while remaining within the riparian area agreed to by the four lot owners on the embayment.
19. The adjoining property owners to the east have cooperated in establishing an agreed upon riparian corridor for the four lots on the embayment to allow each lot to gain access to waters of adequate depth for a small boat docking facility.
20. The existence and location of the piers does not adversely affect public safety.

General

The aerial photo submitted with the variance request is an accurate depiction of the project area, property lines and planned improvements.

WAR\ENVIRON\R07-220-003

XTW

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AGREEMENT

THIS AGREEMENT entered into this 21 day of May, 2007, by and between Eric R. Calhoun (hereinafter referred to as "Calhoun"), Chris Carlson and wife, Lisa Carlson (hereinafter referred to as "Carlsons"), and Susan G. Stern (hereinafter referred to as "Stern") All of the aforementioned persons, together, referred to herein as "the parties";

WITNESSETH:

WHEREAS Calhoun is the fee simple owner of those lots or Tracts of land described by deed in Book 4875, beginning at Page 484 of the New Hanover County Registry, said real property hereinafter referred to herein as "the Calhoun Property" (the entire interest of Calhoun to said Tracts is contained in various Deeds recorded heretofore in said Registry) said tracts more particularly described as:

TRACT ONE

Being all of Lot 3 as shown on that map entitled "Recombination of Previously Divided Lots of Lot 2 and 3 - Map Book 39, Page 375 - Santa Maria Harnett Township New Hanover County North Carolina for Eric Richardson Calhoun" dated August 2, 2002 and recorded in Map Book 42 at Page 371, New Hanover County Registry.

TRACT TWO

Being all of Lots 3 and 4 as shown on that map entitled "Redivision of Part of Lot 3 and all of Lots 4 and 5 Santa Maria for Eric Richardson Calhoun, et al" dated August 6, 1994 and recorded in Map Book 34 at Page 103, New Hanover County Registry; and

WHEREAS Carlsons are the fee simple owners of that Lot or Tract of land described by deed recorded in Book 4959, at Page 1913 of the New Hanover County Registry, said Lot more particularly described as:

Being all of Lot C as shown on a map entitled Map of Recombination for Katie C. Houston, Carl I Carlson, III, Stephen C. Carlson, Christopher C. Carlson and Carlson Farms Development Company, Inc. dated December 13, 2004 prepared by Bob M. Jones, Jr. RLS and recorded in Map Book 47, Page 122, New Hanover, NC Registry; and

WHEREAS Stern is the Fee Simple owner of those Lots or Tracts of land described by deed in Book 4671, at Page 581 of the New Hanover County Registry, said Lots more particularly described as:

BEING all of Lot A and Lot B as shown on the map entitled "Map of Recombination for Katie C. Houston, Carl I. Carlson, III, Stephen C. Carlson, Christopher C. Carlson and Carlson Farms Development Company, Inc." dated December 13, 2004 prepared by Bob M. Jones, Jr., RLS and recorded in Map Book 47 at Page 122 New Hanover County Registry, reference to which is hereby made for a more particular description.

Grantors further convey and release any and all rights they may have by virtue of that Agreement recorded in Book 1194 at Page 1730 in the Office of the Register of Deeds of New Hanover County; and

WHEREAS all of the aforescribed lots or tracts abut one to the other, said Tracts situate on the ground running roughly west to east from Lot A of the Stern property, (westernmost Tract) to Lot B of the Stern property, to Lot C of the Carlsons' property, to the Calhoun property (easternmost Tract); and

WHEREAS the southernmost line of each of the aforescribed tracts abut the marsh and waters of Pages Creek; and

WHEREAS Stern and Carlsons desire to construct docks or finger piers from each of their tracts and upon and over the waters of Pages Creek, to access the most favorable area of the Creek within their combined riparian areas for placing the finger piers or docks, and that a dock or finger pier currently exists on Calhoun's tract running upon and over the waters of Pages Creek and Calhoun desires that such pier remain in place and its location unaffected by this agreement; except to the extent provided hereinbelow; and

WHEREAS Stern and Carlsons desire and hereby intend to designate, for the construction, enjoyment, and maintenance of finger piers, three separate and defined areas designated for such, each riparian area to serve exclusively the Lot to which it abuts. Calhoun is entering this agreement for the sole purpose of memorializing his assent to the riparian line running between the Calhoun Tract and the Carlsons' Tract created hereby, which line runs from a point which is Calhoun's southwesternmost corner and Carlsons' southeasternmost corner; and

WHEREAS Calhoun's existing finger pier and dock is close to the aforementioned shared riparian line with the Carlsons', and may or may not encroach into the Carlsons' riparian area to be designated herein, and the parties herein agree that said pier and its location shall be considered "Grandfathered in" and allowed to remain in place unless it is more than fifty percent destroyed by storm, fire, wear and tear, age, or otherwise, or is improved by more than fifty percent over its current replacement value, at which time

said dock shall be relocated or constructed on Calhoun's side of the shared riparian line with the Carlsons', or at such other location required by applicable laws and regulations; and

WHEREAS the parties hereto intend for this agreement to run with the land, and for the provisions herein to bind and inure to the benefit of their heirs, assigns, and successors in interest, forever;

NOW, THEREFORE, in consideration of \$10.00 and other, valuable consideration and the mutual covenants and agreements set forth herein, the receipt of which is hereby acknowledged, the parties agree as follows:

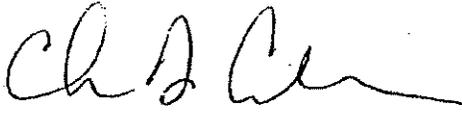
1. That the riparian lines for the construction, maintenance, and enjoyment of finger piers and / or docks For Stern's Lots A and B, Carlsons' Lot C, and the westernmost line of Calhoun's Lot which is shared with Carlson's easternmost line of Lot C, shall be as shown on the plat and survey thereof, entitled "Map of Proposed Riparian Lines for Katie C. Houston, Carl I. Carlson, III, Stephen C. Carlson, Christopher C. Carlson & Carlson Farms Development Company, Inc." which is attached hereto and incorporated herein by reference.
2. That, to the extent that the riparian lines described herein and on the map attached hereto differ from existing law, the new riparian lines provided for herein shall control

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the day and year first above written.

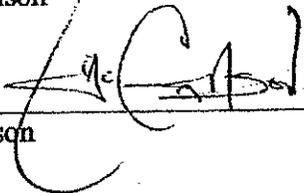
THIS SPACE INTENTIONALLY LEFT BLANK

SIGNATURE PAGES FOLLOW

Susan G. Stern (SEAL)



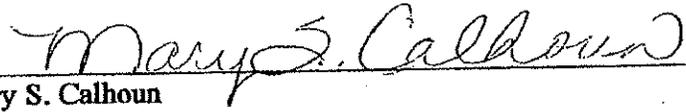
Chris Carlson (SEAL)



Lisa Carlson (SEAL)



Eric R. Calhoun (SEAL)



Mary S. Calhoun (SEAL)

**North Carolina
County**

I, _____, a Notary Public, do hereby certify that
SUSAN G. STERN personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this _____ day of _____ 2006.

Notary Public

My commission expires: _____

SEAL

North Carolina
Guilford County

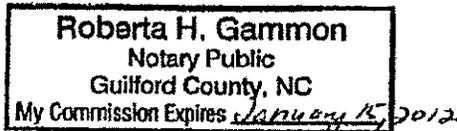
I, Roberta H. Gammon, a Notary Public, do hereby certify that CHRIS CARLSON personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 26 day of April 2008.⁷

Roberta H. Gammon
Notary Public Roberta H. Gammon

My commission expires: January 15, 2012

SEAL



North Carolina
Guilford County

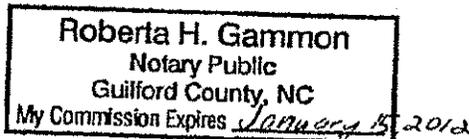
I, Roberta H. Gammon, a Notary Public, do hereby certify that LISA CARLSON personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 26 day of April 2008.⁷

Roberta H. Gammon
Notary Public Roberta H. Gammon

My commission expires: January 15, 2012

SEAL



North Carolina
County

I, Jeanne R Moore, a Notary Public, do hereby certify that
ERIC R. CALHOUN personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 3rd day of May 2008?

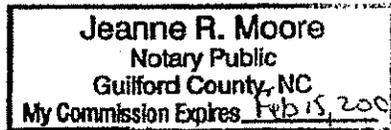
Jeanne R Moore

Notary Public

My commission expires: February 15, 2009

Jeanne R Moore

SEAL



North Carolina
County

I, Jeanne R Moore, a Notary Public, do hereby certify that
MARY S. CALHOUN personally appeared before me this day and acknowledged the
due execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 3rd day of May 2008?

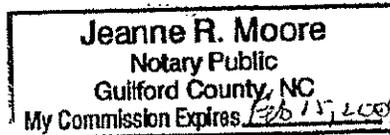
Jeanne R. Moore

Notary Public

My commission expires: February 15, 2009

Jeanne R. Moore

SEAL



Susan G. Stern
Susan G. Stern

(SEAL)

(SEAL)

Chris Carlson

(SEAL)

Lisa Carlson

(SEAL)

Eric R. Calhoun

(SEAL)

Mary S. Calhoun

North Carolina

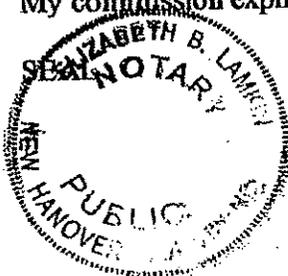
County

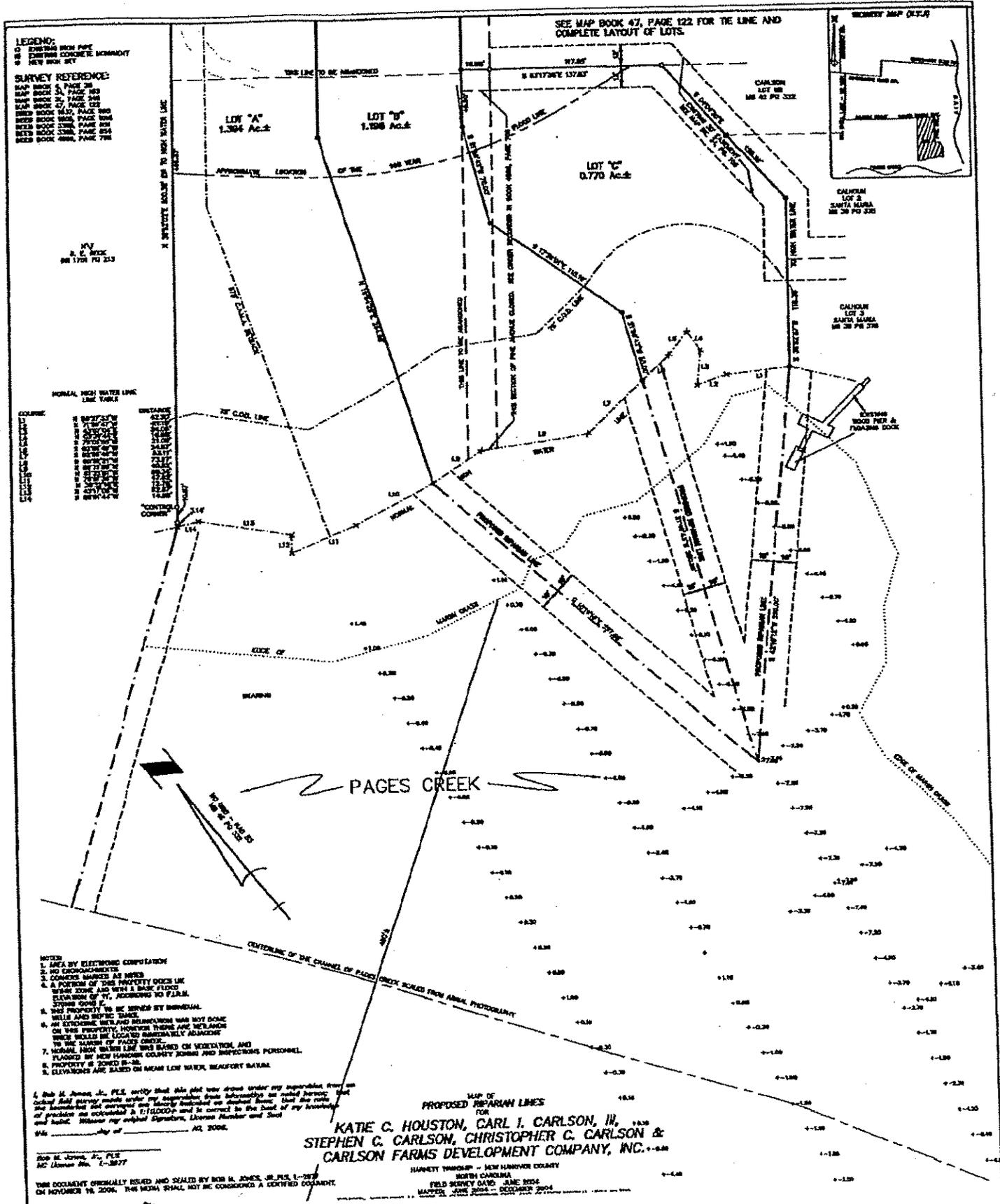
I, *Elizabeth B. Lemkin*, a Notary Public, do hereby certify that
SUSAN G. STERN personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this *21* day of *May* 2007.

Elizabeth B. Lemkin
Notary Public

My commission expires: *12/8/2010*





RECEIVED

APR 23 2008

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

Morehead City DCM

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

April 23, 2008

VIA FAX AND REGULAR MAIL (252-247-3330)

Mr. Jim Gregson, Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

RECEIVED

APR 24 2008

Morehead City DCM

Re: Variance Request Susan Stern
938 Santa Maria Avenue, Wilmington, NC

Dear Mr. Gregson:

Enclosed is a variance request for a pier proposed by Susan Stern for her lot at 938 Santa Maria Avenue, Wilmington, NC 28411. We would very much like to have this request heard at the May meeting of the Coastal Resources Commission. I look forward to working with your legal representative in developing stipulated facts.

I anticipate that this hearing can be consolidated with a hearing on the adjoining lot at 934 Santa Maria Avenue.

Sincerely,

WESSELL & RANEY, L.L.P.

W.A. Raney, Jr.
W. A. Raney, Jr.

WAR:ktw
Enclosures

WAR\ENVIRON\R07-220-C02

DCM FORM 11
(revised 6/26/06)

CAMA VARIANCE REQUEST

DCM FILE NO.

08-13

RECEIVED

APR 23 2008

Morehead City DCM

Petitioner supplies the following information:

Your Name Susan G. Stern
Address 120 Coquina Drive, Wilmington, NC 28411
Telephone (910) 686-2757
Fax and/or Email

Name of Your Attorney (if applicable) William A. Raney, Jr.
Address P.O. Box 1049, Wilmington, NC 28402-1049
Telephone (910) 762-7475
Fax and/or Email (910) 762-7557 waraney@bellsouth.net

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

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

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

What did you seek a permit to do?

Construct a residential pier and dock for two boats.

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

15A NCAC 7H.1205(n) and 15A NCAC 7H.0208(b)(6)(J)(iii)
One-quarter rule

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

The design of the pier is the minimum length necessary to reach adequate water depth for a useful dock.

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

Compliance with the rule would result in docks being located in an area that is exposed or has only a few inches of water depth at low water. This would result in floating docks sitting on the bottom at mid-tide or lower, thereby making the docks not useful for the intended purpose.

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

The applicant would not be able to utilize her riparian property to gain access to nearby deep water for docking of small vessels.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

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

Please see Attachment A.

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

Please see Attachment A.

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

Please see Attachment A.

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

Please see Attachment A.

Please attach copies of the following:

- Permit Application and Denial documents
- Site Drawing with Survey and Topographical Information
- Any letters filed with DCM or the LPO commenting on or objecting to your project

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

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

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

Date: 4-23-08

Signature: *W.A. [Signature]*
attorney for Susan [Signature]

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

1810/62/55/ # 5/22

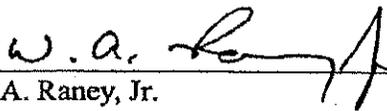
CERTIFICATE OF SERVICE

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

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

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

This the 23rd day of April, 2008.



W. A. Raney, Jr.
Attorney for Applicant
Wessell & Raney, L.L.P.
P.O. Box 1049
Wilmington, NC 28402

ATTACHMENT A TO CAMA VARIANCE REQUEST
RESPONSE TO FOUR STATUTORY VARIANCE CRITERIA

Susan Stern, Applicant
Lot B, 938 Santa Maria Avenue

- I. Identify the hardship(s) you will experience if you are not granted a variance and explain why you contend that the application of this rule to your property constitutes an unnecessary hardship.

The hardship will be the inability to construct a pier of sufficient length to reach water of adequate depths to dock small boats, i.e., -3' MLW. The application of the one-fourth rule would result in a pier ending in a sand flat that is either dry or has only a few inches of water at low tide.

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

The property is located on Pages Creek which is a tidal estuary extending from near Highway 17 on the west to the Intracoastal Waterway on the east. The property is located on an embayment on the north side of Pages Creek. Four residential lots have water frontage on the embayment. There is a dredged channel/basin providing deep water access to the two properties on the east and northeast side of the embayment. The applicant's property is on the north and west side of the embayment and is separated from the dredged channel/basin by a shallow sand flat that covers roughly the western 2/3rds of the embayment. The channel of Pages Creek is over 400' from the marsh at the applicant's waterfront but the dredged basin is less than 100' from the marsh on the applicant's waterfront. The hardship results because the applicant cannot construct a riparian access pier to the dredged channel/basin or to the main channel of Pages Creek without exceeding the one-fourth rule.

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

The applicant had nothing to do with the shape of the shoreline or the presence of the sand flat adjacent to her lot.

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

- A. Consistent with spirit, purpose and intent. The spirit, purpose and intent of the one-fourth rule is to prevent private piers from occupying more than a fair share of public trust waters thereby hindering public navigation and other public uses of the water and submerged land.

The proposed pier will extend over a very shallow sand flat that extends from the applicant's lot to a dredged channel/basin. The area across which the pier will extend is not a natural navigation area and is not an area used for navigation either by the general public or by property owners along Pages Creek. The only vessels that could use the area of the sand flat would be extremely small and shallow draft vessels such as canoes or kayaks which could navigate between and under the pier when the tide is sufficiently high for such vessels to use the area.

The proposed pier takes the shortest route to deep water. The use of this riparian corridor is made possible by a riparian corridor agreement with adjoining owners. This results in the shortest useful pier and the smallest occupation of public trust areas.

- B. Preserve substantial justice. The pier enables a waterfront property owner to gain access to deep enough water for boat docking without unduly occupying public trust areas or interfering with public navigation or other public uses. The location of the proposed pier is consistent with an agreement among the owners of four lots on the embayment who have property that is best served by the dredged channel/basin.
- C. Secure public safety. The public safety will not be affected by the proposed pier.



North Carolina Department of Environment and Natural Resources

Division of Coastal Management

James H. Gregson, Director

Michael F. Easley, Governor

William G. Ross Jr., Secretary

April 18, 2008

Hand Delivered

Middle Sound Marine
C/o John King (Authorized agent)
130 East Brandywine Circle
Wilmington, N.C. 28411

Dear Mr. King:

The Division of Coastal Management has reviewed your proposal, acting as agent for Ms. Susan Stern, for the construction of a private pier, platform, floating dock and boatlift, located at 938 Santa Maria Ave., in Wilmington, N.C. Unfortunately, the Division of Coastal Management is not able to process your request for a pier and docking facility under a CAMA General Permit due to specific site conditions (i.e. unable to meet the $\frac{1}{4}$ width of waterbody rule requirements as described in 15A NCAC 07H .1205 (n), 15A NCAC 07H .0208 USE STANDARDS (b)(6)(J)(iii) and 15A NCAC 07H .0601 NO VIOLATION OF ANY RULE).

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

If you have any questions regarding this decision, please feel free to call me at (910) 796.7215.

Sincerely,

Robb Mairs
Field Representative

Cc: Ted Tyndall, DCM
Steven Everhart, DCM
Susan Stern, Applicant

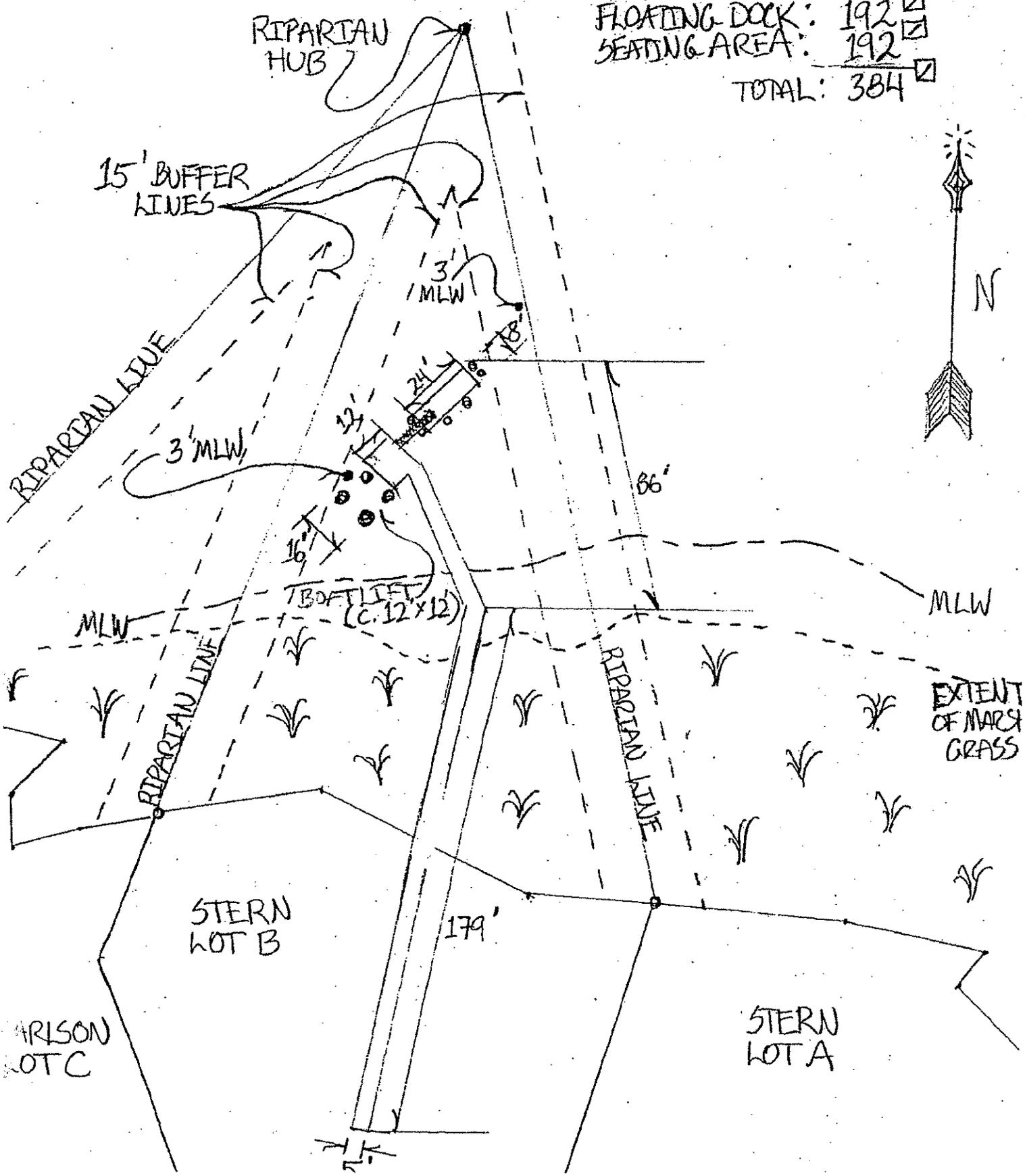
127 Cardinal Drive Extension, Wilmington, North Carolina 28405-3845
Phone: 910-796-7215 \ Fax: 910-395-3964 \ Internet: <http://www.nccoastalmanagement.net>

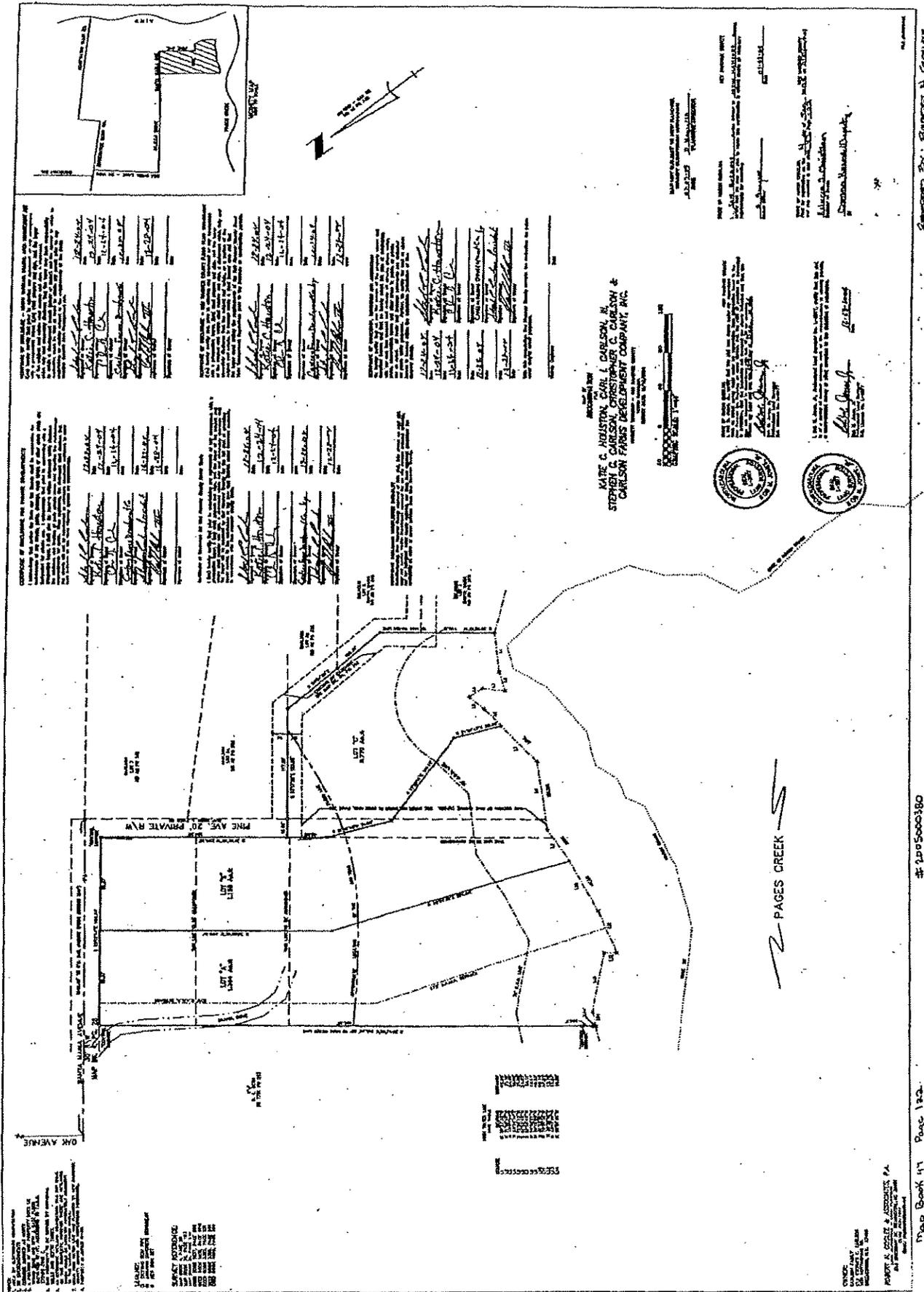
An Equal Opportunity \ Affirmative Action Employer - 50% Recycled \ 10% Post Consumer Paper

STERN PROJECT II

SITE PLAN

RUNNING LENGTH OF FACILITY: 26
FLOATING DOCK: 192
SEATING AREA: 192
TOTAL: 384





DATE: 12-12-01
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]

DATE: 12-12-01
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]

DATE: 12-12-01
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]

DATE: 12-12-01
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]

KATE C. HOUSTON, P.E.
 STEPHEN C. CARLSON, P.E.
 CARLSON FARM DEVELOPMENT COMPANY, INC.



ONCE
 UNIVERSITY PARK
 PENNSYLVANIA

Applicant's Proposed Stipulated Facts

Hardship

1. Unless the applicant can build a pier which exceeds one-fourth the width of the body of water, the applicant will be unable to reach water that is deep enough to have a pier and small boat dock that is useful for most of the tidal cycle.
2. Construction of a pier in compliance with the one-fourth rule would result in a pier that would terminate in an area that is only a few inches deep at mean low water.

Peculiar Conditions

3. The applicant's waterfront lot is located in New Hanover County on the north side of Pages Creek.
4. Pages Creek is a tidal creek which is navigable by small boats from its intersection with the Intracoastal Waterway for about two miles upstream.
5. The navigable channel of Pages Creek meanders within a wide area consisting of sand bars, sand flats, intertidal marshes, oyster beds and mud flats.
6. The applicant's lot is located in an embayment near the mouth of Pages Creek.
7. The embayment opens to the south.
8. There are four lots which border the embayment along the east and north sides with the west side of the embayment being an intertidal spit.
9. There is a dredged channel/basin on the eastern side of the embayment that borders two lots on the east and northeast side of the embayment.
10. The applicant owns the two lots on the northwest side of the embayment.
11. The water frontage on the applicant's lots is bordered by a fringe of intertidal marsh which transitions into a sand flat that extends southward to an oyster rock and eastward to the dredged channel/basin.

12. The sand flat is shallower than one foot mean low water in depth from the edge of the marsh to the dredged channel/basin.
13. The water depth increases quickly at the edge of the dredged channel/basin.
14. The shortest distance from the applicant's lot to water that is deep enough to utilize a floating dock is reached by going southeastwardly from the applicant's waterfront to the dredged channel/basin.
15. A pier extending southeastwardly from the applicant's property to the minus three foot MLW contour exceeds one-fourth of the width of the water body when the width is measured along the axis formed by the line from the beginning point of the proposed pier to the outermost point of the proposed pier.
16. There is a riparian corridor agreement by which the owners of the four lots on the embayment have agreed that each lot would have access to the dredged channel/basin within the embayment.

Hardships Not the Result of Action by Petitioner

17. The applicant had nothing to do with the presence of the sand flat or the location of the lots.

Spirit, Purchase and Intent; Substantial Justice; Public Safety

18. The location of the pier proposed by the applicant will not obstruct navigation by the public because the pier will be located in water that is too shallow for navigation at most stages of the tidal cycle and the general public uses the dredged channels or natural channels for navigation in to and out of Pages Creek. The applicant has oriented the proposed pier to go the minimal distance necessary to get to an area that is suitable for a floating dock and small boat dockage while remaining within the riparian area agreed to by the four lot owners on the embayment.
19. The adjoining property owners to the east have cooperated in establishing an agreed upon riparian corridor for the four lots on the embayment to allow each lot to gain access to waters of adequate depth for a small boat docking facility.
20. The existence and location of the piers does not adversely affect public safety.

General

The aerial photo submitted with the variance request is an accurate depiction of the project area, property lines and planned improvements.

WAR\ENVIRON\R07-220-003

KTW

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

AGREEMENT

THIS AGREEMENT entered into this 21 day of May, 2007, by and between Eric R. Calhoun (hereinafter referred to as "Calhoun"), Chris Carlson and wife, Lisa Carlson (hereinafter referred to as "Carlsons"), and Susan G. Stern (hereinafter referred to as "Stern") All of the aforementioned persons, together, referred to herein as "the parties";

WITNESSETH:

WHEREAS Calhoun is the fee simple owner of those lots or Tracts of land described by deed in Book 4875, beginning at Page 484 of the New Hanover County Registry, said real property hereinafter referred to herein as "the Calhoun Property" (the entire interest of Calhoun to said Tracts is contained in various Deeds recorded heretofore in said Registry) said tracts more particularly described as:

TRACT ONE

Being all of Lot 3 as shown on that map entitled "Recombination of Previously Divided Lots of Lot 2 and 3 - Map Book 39, Page 375 - Santa Maria Harnett Township New Hanover County North Carolina for Eric Richardson Calhoun" dated August 2, 2002 and recorded in Map Book 42 at Page 371, New Hanover County Registry.

TRACT TWO

Being all of Lots 3 and 4 as shown on that map entitled "Redivision of Part of Lot 3 and all of Lots 4 and 5 Santa Maria for Eric Richardson Calhoun, et al" dated August 6, 1994 and recorded in Map Book 34 at Page 103, New Hanover County Registry; and

WHEREAS Carlsons are the fee simple owners of that Lot or Tract of land described by deed recorded in Book 4959, at Page 1913 of the New Hanover County Registry, said Lot more particularly described as:

Being all of Lot C as shown on a map entitled Map of Recombination for Katie C. Houston, Carl I Carlson, III, Stephen C. Carlson, Christopher C. Carlson and Carlson Farms Development Company, Inc. dated December 13, 2004 prepared by Bob M. Jones, Jr. RLS and recorded in Map Book 47, Page 122, New Hanover, NC Registry; and

WHEREAS Stern is the Fee Simple owner of those Lots or Tracts of land described by deed in Book 4671, at Page 581 of the New Hanover County Registry, said Lots more particularly described as:

BEING all of Lot A and Lot B as shown on the map entitled "Map of Recombination for Katie C. Houston, Carl I. Carlson, III, Stephen C. Carlson, Christopher C. Carlson and Carlson Farms Development Company, Inc." dated December 13, 2004 prepared by Bob M. Jones, Jr., RLS and recorded in Map Book 47 at Page 122 New Hanover County Registry, reference to which is hereby made for a more particular description.

Grantors further convey and release any and all rights they may have by virtue of that Agreement recorded in Book 1194 at Page 1730 in the Office of the Register of Deeds of New Hanover County; and

WHEREAS all of the aforescribed lots or tracts abut one to the other, said Tracts situate on the ground running roughly west to east from Lot A of the Stern property, (westernmost Tract) to Lot B of the Stern property, to Lot C of the Carlsons' property, to the Calhoun property (easternmost Tract); and

WHEREAS the southernmost line of each of the aforescribed tracts abut the marsh and waters of Pages Creek; and

WHEREAS Stern and Carlsons desire to construct docks or finger piers from each of their tracts and upon and over the waters of Pages Creek, to access the most favorable area of the Creek within their combined riparian areas for placing the finger piers or docks, and that a dock or finger pier currently exists on Calhoun's tract running upon and over the waters of Pages Creek and Calhoun desires that such pier remain in place and its location unaffected by this agreement; except to the extent provided hereinbelow; and

WHEREAS Stern and Carlsons desire and hereby intend to designate, for the construction, enjoyment, and maintenance of finger piers, three separate and defined areas designated for such, each riparian area to serve exclusively the Lot to which it abuts. Calhoun is entering this agreement for the sole purpose of memorializing his assent to the riparian line running between the Calhoun Tract and the Carlsons' Tract created hereby, which line runs from a point which is Calhoun's southwesternmost corner and Carlsons' southeasternmost corner; and

WHEREAS Calhoun's existing finger pier and dock is close to the aforementioned shared riparian line with the Carlsons', and may or may not encroach into the Carlsons' riparian area to be designated herein, and the parties herein agree that said pier and its location shall be considered "Grandfathered in" and allowed to remain in place unless it is more than fifty percent destroyed by storm, fire, wear and tear, age, or otherwise, or is improved by more than fifty percent over its current replacement value, at which time

151027557 # 11/22

said dock shall be relocated or constructed on Calhoun's side of the shared riparian line with the Carlsons', or at such other location required by applicable laws and regulations; and

WHEREAS the parties hereto intend for this agreement to run with the land, and for the provisions herein to bind and inure to the benefit of their heirs, assigns, and successors in interest, forever;

NOW, THEREFORE, in consideration of \$10.00 and other, valuable consideration and the mutual covenants and agreements set forth herein, the receipt of which is hereby acknowledged, the parties agree as follows:

1. That the riparian lines for the construction, maintenance, and enjoyment of finger piers and / or docks For Stern's Lots A and B, Carlsons' Lot C, and the westernmost line of Calhoun's Lot which is shared with Carlson's easternmost line of Lot C, shall be as shown on the plat and survey thereof, entitled "Map of Proposed Riparian Lines for Katie C. Houston, Carl I. Carlson, III, Stephen C. Carlson, Christopher C. Carlson & Carlson Farms Development Company, Inc." which is attached hereto and incorporated herein by reference.
2. That, to the extent that the riparian lines described herein and on the map attached hereto differ from existing law, the new riparian lines provided for herein shall control

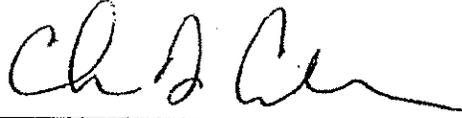
IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the day and year first above written.

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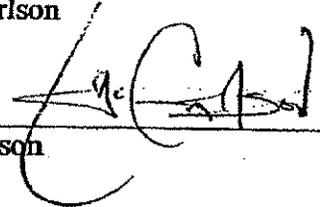
SIGNATURE PAGES FOLLOW

2025 RELEASE UNDER E.O. 14176

Susan G. Stern (SEAL)



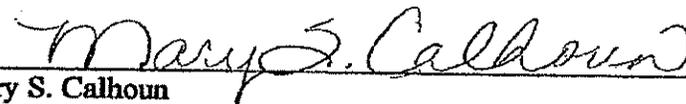
Chris Carlson (SEAL)



Lisa Carlson (SEAL)



Eric R. Calhoun (SEAL)



Mary S. Calhoun (SEAL)

North Carolina
County

I, _____, a Notary Public, do hereby certify that
SUSAN G. STERN personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this _____ day of _____ 2006.

Notary Public

My commission expires: _____

SEAL

North Carolina
Guilford County

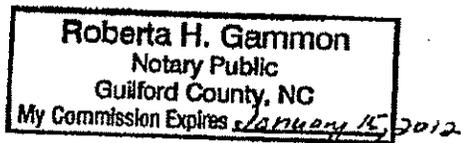
I, Roberta H. Gammon, a Notary Public, do hereby certify that
CHRIS CARLSON personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 26 day of April 2008.

Roberta H. Gammon
Notary Public Roberta H. Gammon

My commission expires: January 15, 2012

SEAL



North Carolina
Guilford County

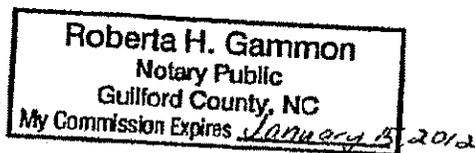
I, Roberta H. Gammon, a Notary Public, do hereby certify that
LISA CARLSON personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 26 day of April 2008.

Roberta H. Gammon
Notary Public Roberta H. Gammon

My commission expires: January 15, 2012

SEAL



North Carolina
County

I, Jeanne R Moore, a Notary Public, do hereby certify that
ERIC R. CALHOUN personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 3rd day of May 2006?

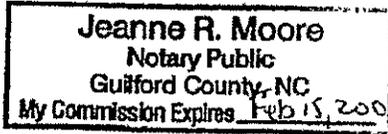
Jeanne R Moore

Notary Public

My commission expires: February 15, 2009

Jeanne R Moore

SEAL



North Carolina
County

I, Jeanne R Moore, a Notary Public, do hereby certify that
MARY S. CALHOUN personally appeared before me this day and acknowledged the
due execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this 3rd day of May 2006?

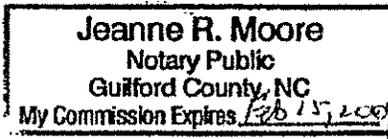
Jeanne R. Moore

Notary Public

My commission expires: February 15, 2009

Jeanne R. Moore

SEAL



Susan G. Stern
Susan G. Stern

(SEAL)

Chris Carlson

(SEAL)

Lisa Carlson

(SEAL)

Eric R. Calhoun

(SEAL)

Mary S. Calhoun

(SEAL)

North Carolina

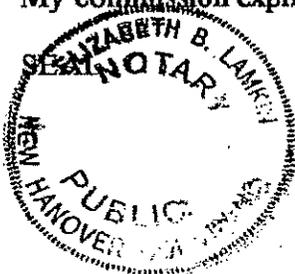
County

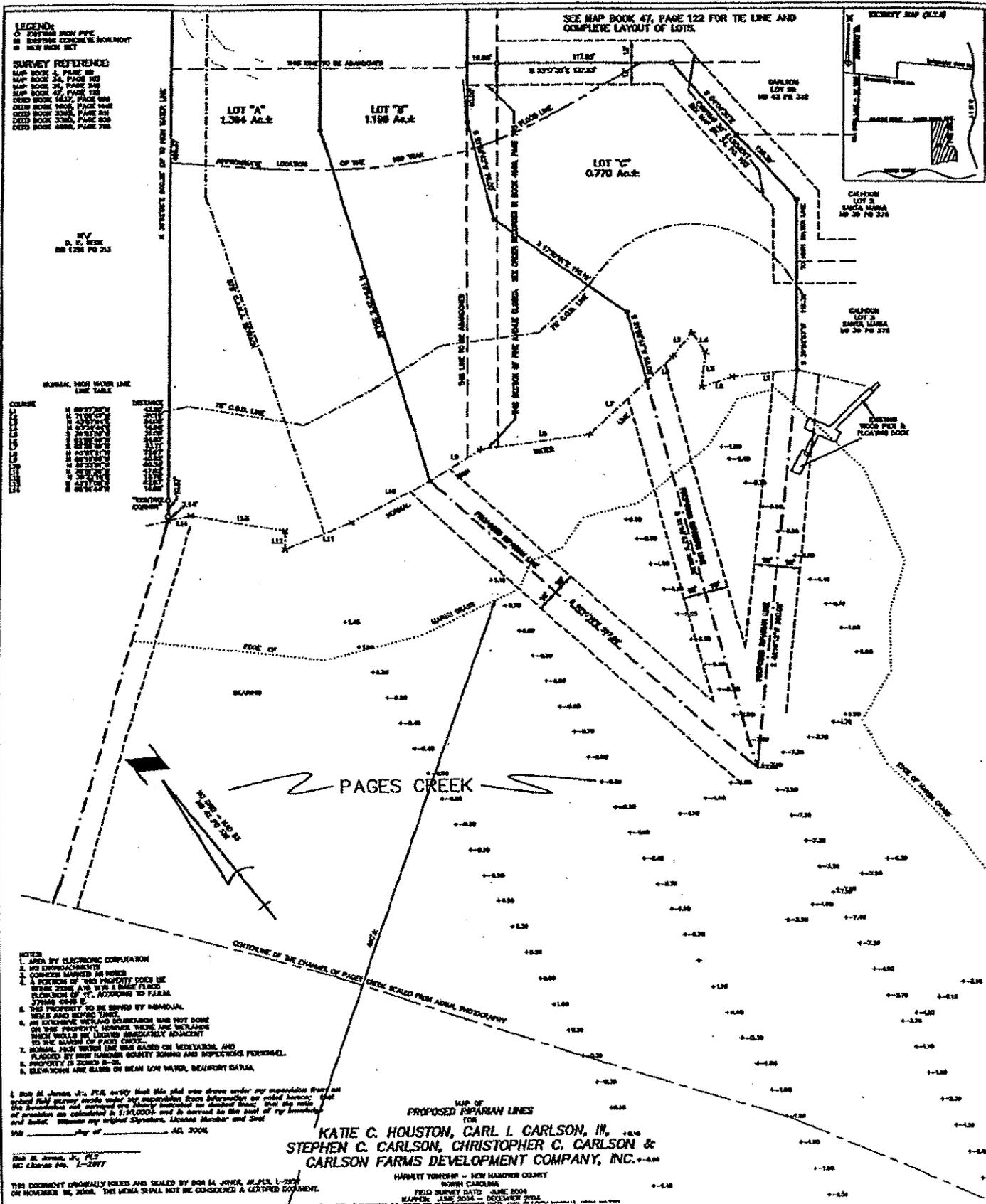
I, *Elizabeth B. Lanier*, a Notary Public, do hereby certify that
SUSAN G. STERN personally appeared before me this day and acknowledged the due
execution of the foregoing instrument for the purposes set forth therein.

Witness my hand and notarial seal, this *21* day of *May* 2007.

Elizabeth B. Lanier
Notary Public

My commission expires: *12/8/2010*





LEGEND:
 ○ IRON PIPE
 ■ CONCRETE MONUMENT
 ● IRON SET

SURVEY REFERENCE:
 MAP BOOK 3, PAGE 89
 MAP BOOK 24, PAGE 100
 MAP BOOK 27, PAGE 128
 DEED BOOK 1411, PAGE 98
 DEED BOOK 1800, PAGE 34
 DEED BOOK 2300, PAGE 34
 DEED BOOK 3200, PAGE 34
 DEED BOOK 4800, PAGE 78

NORMAL HIGH WATER LINE ELEVATION TABLE

STATION	ELEVATION
1+00	102.50
1+10	102.50
1+20	102.50
1+30	102.50
1+40	102.50
1+50	102.50
1+60	102.50
1+70	102.50
1+80	102.50
1+90	102.50
2+00	102.50
2+10	102.50
2+20	102.50
2+30	102.50
2+40	102.50
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2+60	102.50
2+70	102.50
2+80	102.50
2+90	102.50
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11+80	102.50
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17+80	102.50
17+90	102.50
18+00	102.50
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18+20	102.50
18+30	102.50
18+40	102.50
18+50	102.50
18+60	102.50
18+70	102.50
18+80	102.50
18+90	102.50
19+00	102.50
19+10	102.50
19+20	102.50
19+30	102.50
19+40	102.50
19+50	102.50
19+60	102.50
19+70	102.50
19+80	102.50
19+90	102.50
20+00	102.50

- NOTES:**
1. AREA BY ELECTRONIC COMPUTATION
 2. NO ENCUMBRANCES
 3. CORNERS MARKED AS SHOWN
 4. A PORTION OF THE PROPERTY DOES NOT BOUND THE LAKE WITH A BUILT FENCE ELEVATION OF 10', ACCORDING TO FARM SURVEY CODES
 5. THIS PROPERTY TO BE BOUND BY INDIVIDUAL WELLS AND SPRING TAPS
 6. AN EXTENSIVE WETLAND OCCURRENCE HAS NOT BEEN DONE ON THE PROPERTY, HOWEVER THERE ARE WETLANDS WHICH WOULD BE LIMITED IMMEDIATELY ADJACENT TO THE CHANNEL OF PAGES CREEK
 7. NORMAL HIGH WATER LINE WAS DETERMINED AND PLACED BY MISS HANCOCK SCIENTIFIC SURVEYS AND REFLECTS PERENNIAL
 8. PROPERTY IS ZONED R-3C
 9. ELEVATIONS ARE BASED ON MEAN LOW WATER, BEAUFORT SARVA

I, Rob M. Jones, Jr., PLS, certify that this plan was drawn under my supervision from an actual field survey made under my supervision from information or actual survey, that the boundaries and area thereon are correctly represented on this plan, that the area of a portion as calculated is 151,000.00 and is correct to the best of my knowledge and belief, witness my original Signature, License Number and Seal this _____ day of _____ AD, 2004.

Rob M. Jones, Jr., PLS
 NC License No. 1-2877

THIS DOCUMENT ORIGINALLY ISSUED AND SEALED BY ROB M. JONES, JR., PLS, 1-2877 ON NOVEMBER 16, 2004. THE SIGN SHALL NOT BE CONSIDERED A CERTIFIED DOCUMENT.

MAP OF
 PROPOSED RIPARIAN LINES
 FOR
**KATIE C. HOUSTON, CARL I. CARLSON, III,
 STEPHEN C. CARLSON, CHRISTOPHER C. CARLSON &
 CARLSON FARMS DEVELOPMENT COMPANY, INC.**

HARRETT TOWNSHIP - NEW HANCOCK COUNTY
 NORTH CAROLINA
 FIELD SURVEY DATE - JUNE 2004
 MAPPER - JUNE 2004 - DECEMBER 2004

DIVISION OF COASTAL MANAGEMENT
ADJACENT RIPARIAN PROPERTY OWNER NOTIFICATION/WAIVER FORM

Name of Individual Applying For Permit: SUSAN STERN

Address of Property: 934 SANTA MARTA
(Lot or Street #, Street or Road)

WILMINGTON, NC 28411
(City and County)

I hereby certify that I own property adjacent to the above-referenced property. The individual applying for this permit has described to me as shown on the attached drawing the development they are proposing. A description or drawing, with dimensions, should be provided with this letter.

SS I have no objections to this proposal. ✓ (INITIALS)

If you have objections to what is being proposed, please write the Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, NC 28405 or call 910-796-7215 within 10 days of receipt of this notice. No response is considered the same as no objection if you have been notified by Certified Mail.

WAIVER SECTION

I understand that a pier, dock, mooring pilings, breakwater, boat house or boat lift must be set back a minimum distance of 15' from my area of riparian access - unless waived by me. (If you wish to waive the setback, you must initial the appropriate blank below.)

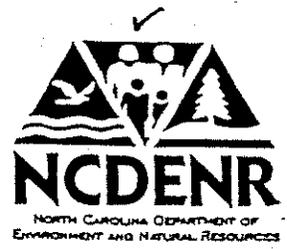
_____ I do wish to waive the 15' setback requirement.

SS I do not wish to waive the 15' setback requirement. ✓ (INITIALS)

SS 4/17/08
Sign Name Date

debeck christian
Print Name

910 465 1949
Telephone Number with Area Code



✓ RIPARIAN PROPERTY OWNER NOTIFICATION/WAIVER FORM

Individual Applying For Permit: SUSAN STERN

Address of Property: 938 SANTA MARIA
(Lot or Street #, Street or Road)

WILMINGTON, NC 28411
(City and County)

I hereby certify that I own property adjacent to the above-referenced property. The individual applying for this permit has described to me as shown on the attached drawing the development they are proposing. A description or drawing, with dimensions, should be provided with this letter.

[Signature] I have no objections to this proposal. ✓ (INITIALS)

If you have objections to what is being proposed, please write the Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, NC 28405 or call 910-796-7215 within 10 days of receipt of this notice. No response is considered the same as no objection if you have been notified by Certified Mail.

WAIVER SECTION

I understand that a pier, dock, mooring pilings, breakwater, boat house or boat lift must be setback a minimum distance of 15' from my area of riparian access - unless waived by me. (If you wish to waive the setback, you must initial the appropriate blank below.)

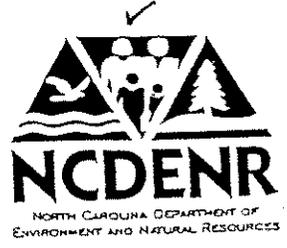
[Signature] I do wish to waive the 15' setback requirement.

[Signature] I do not wish to waive the 15' setback requirement. ✓ (INITIALS)

[Signature] _____
Sign Name Date

deBeck, Christian
Print Name

910 465 1949
Telephone Number with Area Code



Name of Individual Applying For Permit: SUSAN STERN

Address of Property: 938 SANTA MARTA
(Lot or Street #, Street or Road)

WILMINGTON, NC 28411
(City and County)

I hereby certify that I own property adjacent to the above-referenced property. The individual applying for this permit has described to me as shown on the attached drawing the development they are proposing. A description or drawing, with dimensions, should be provided with this letter.

CAC I have no objections to this proposal. ✓ (INITIALS)

If you have objections to what is being proposed, please write the Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, NC 28405 or call 910-796-7215 within 10 days of receipt of this notice. No response is considered the same as no objection if you have been notified by Certified Mail.

WAIVER SECTION

I understand that a pier, dock, mooring pilings, breakwater, boat house or boat lift must be set back a minimum distance of 15' from my area of riparian access - unless waived by me. (If you wish to waive the setback, you must initial the appropriate blank below.)

_____ I do wish to waive the 15' setback requirement.

CAC I do not wish to waive the 15' setback requirement. ✓ (INITIALS)

Chris D. Carlson 4/17/08
Signature Date

Chris D. Carlson
Print Name

336-273-1517
Telephone Number with Area Code



TO: Coastal Resources Commission

FROM: Amanda P. Little 
Assistant Attorney General

DATE: May 8, 2008 (for the May 21-23, 2008 CRC Meeting)

RE: **Variance Request by the Town of Atlantic Beach**

Petitioner applied for a CAMA Minor Permit to construct a beach access site with parking and a bathhouse with septic system at the Tom Doe Beach Access Site located on Ocean Boulevard in the Town of Atlantic Beach, Carteret County. Part of the proposed development including the bathhouse and associated septic system is seaward of the applicable ocean erosion setback, which at this location is 60 feet from the first line of stable natural vegetation. Petitioner applied for this variance seeking relief from strict application of the Commission's ocean hazard rules at 15A NCAC 7H .0306(a) and .0309.

The following additional information is attached to this memorandum:

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

cc: Derek Taylor, Town Attorney
Marc Schulze, Town Public Works Director
Pete Allen, Town Manager
Jim Gregson, DCM Director
Ted Tyndall, DCM Assistant Director
Tere Barrett, District Manager, Morehead City DCM Office
Heather Styron, CAMA Field Representative
James Gulick, Acting CRC Counsel

ATTACHMENT A

RELEVANT STATUTES OR RULES

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

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

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

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

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

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

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

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

ATTACHMENT B

STIPULATED FACTS

1. Petitioner, the Town of Atlantic Beach (“the Town”) owns property located at 100, 102 and 104 Ocean Boulevard (“the property”) in Carteret County.
2. The property was formerly a part of an asphalt parking lot for the Triple S pier. The pier and adjacent motel were demolished in 2006, subdivided and sold for residential development. The property was historically used by the public for fishing, sunbathing, swimming and surfing activities.
3. The Town acquired the property in 2007 and established the Tom Doe Beach Access Site which is located adjacent to the Atlantic Ocean.
4. The Town was awarded a \$400,000 beach access grant in 2006 from the Division of Coastal Management to assist in the acquisition of the property. Since part of the property was donated to the Town, the Town requested an amendment to the original grant contract to allow for the remaining grant monies to be used for site improvements. As of May 7, 2008, the requested amendment to the original grant contract has not been executed.
5. Petitioner applied for a CAMA Minor Development Permit to construct a covered gazebo (150 sq. ft.), bathhouse (240 sq. ft.), septic system, slatted deck (460 sq. ft.), emergency vehicle access, asphalt parking and landscaping on the property. The application was dated October 19, 2007.
6. A CAMA Field Representative issued Minor Permit #16-07 to the Town on November 14, 2007 authorizing construction of the covered gazebo, the slatted deck, an emergency vehicle access in a Hatteras Ramp design, maintenance of the existing parking area and for landscaping. The permit did not authorize construction of the proposed bathhouse and septic system because this development would not meet the applicable erosion setback from the first line of stable natural vegetation in violation of 15A NCAC 7H .0306(a)(1) and is not one of the exceptions provided in 15A NCAC 7H .0309.
7. The US Army Corps of Engineers periodically performs maintenance dredging of the Morehead City harbors and in some instances disposes of the dredged material on Brandt Island. Such dredged material was deposited on the beach in front of where the property is located in 1986 as a part of the Corps’ least-cost dredge disposal policy related to the Morehead City Harbor Project.
8. The disposal of dredged material as a result of these projects was a “large scale beach nourishment or spoil deposition project” as defined in 15A NCAC 7H .0305(f).

CRC-VR-08-10

9. The property is located within the boundaries of a large scale beach nourishment project.
10. The property is located within the Ocean Erodible Area of Environmental Concern (AEC), a subcategory of the Ocean Hazard AEC designated by the Coastal Resources Commission (CRC) in Rule 15A NCAC 7H .0304.
11. In September 1996, the CRC adopted an amendment to Rule 15A NCAC 7H .0305(f) which states in part: "In areas within the boundaries of a large scale beach nourishment or spoil deposition project, the vegetation line that existed prior to the onset of project construction shall be used as the vegetation line for determining ocean front setbacks after the project is complete..."
12. On this property, the existing pre-CAMA concrete bulkhead has been identified as the vegetation line which existed prior to the initial nourishment project in 1986.
13. Effective April 17, 1979, the CRC adopted an erosion setback requirement that applies to structures along the oceanfront. Rule 15A NCAC 7H .0306(a). The general rule is that development must be set back at a distance of 30 times the long-term annual erosion rate from the applicable vegetation line. Rule 15A NCAC 7H .0306(a)(1).
14. The annual long-term erosion rate at this property is 2 feet per year, making the erosion setback for the property 60 feet from the applicable vegetation line.
15. There is a very limited amount of vegetation in front of the existing bulkhead. The normal high water line is located approximately 250 feet from the existing bulkhead.
16. The depth of the property measured from the existing bulkhead to the right-of-way of Ocean Blvd is a minimum distance of 28 feet on the western side and maximum distance of 61 feet on the east side.
17. CRC rules prohibit any development on the property except for those listed as exceptions in 15A NCAC 7H .0309.
18. The Town proposes to construct a 12' x 20' bathhouse which will be located as close as 6 feet landward of the existing bulkhead. As indicated in Minor Permit #16-07 (see Attachment D) the proposed septic system, a required accessory to the bathhouse, is 0 feet landward from the bulkhead which is considered the vegetation line. If the variance is granted, however, Petitioner will locate the proposed septic tank field 2 feet landward of the bulkhead in accordance with the site plan for Improvement Permit A1364 issued by the Carteret County Health Department (see Attachment D).
19. The Town was issued an Improvement Permit on March 31, 2008 from the Carteret

County Health Department for new construction. Petitioner intends to remove an area of existing asphalt to accommodate the waste water treatment system.

20. The Town will be responsible for the maintenance and policing of the beach access area.
21. Petitioners filed this variance request on April 21, 2008 seeking relief from strict application of the Ocean Hazard AEC erosion setback rules and the exceptions to those rules in 15A NCAC 7H .0306(a)(1) and .0309.

SUMMARY OF PETITIONER AND STAFF POSITIONS

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

Petitioner's Position: Yes.

If the Town is not allowed to construct a 12' x 20' (240 square foot) bathhouse and septic tank system at this site, the public will shoulder the hardship of not having a suitable and sanitary place to use a restroom facility.

Historically, this site was the western most portion of the Triple S fishing pier's parking lot. The "Triple S" was a favorite location for locals and tourists to fish, sunbathe, swim and surf until it was torn down in 2006. The majority of the upland development was replaced with residential structures. The pier house property provided the only location in this section of the Town where one could use a restroom facility, park and gain access to the public beach.

Shortly after the pier closed, the Town quickly recognized the impacts cause by the loss of public access for this section of the Town. The Town began negotiations to acquire a portion of the old Triple S property for beach access which it did in 2007. It also became apparent that a modest restroom facility was sorely needed at this location.

Staff's Position: No.

Staff believes that strict application of the rules and standards will not cause any practical difficulties or hardships in this case. Petitioner can still construct the beach access with the associated parking, gazebo and deck. Attempting to put a bathhouse and associated septic system within the setback on a small beach access site is not an unnecessary hardship, rather in Staff's opinion is an unreasonable request for unsuitable development that is not compatible with the Commission's policies for oceanfront setback areas.

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

Petitioner's Position: Yes.

The property is located within the boundaries of large scale beach nourishment project according to CRC guidelines. This is because of the Corps' least-cost dredge disposal policy

related to the Morehead City Harbor Project. Sediment that is dredged from the inner harbor is stockpiled on Brandt Island (located northwest of Fort Macon) and then pumped out on the beaches of Atlantic Beach every eight to ten years. This is implemented at no cost to the County or to the Town of Atlantic Beach. Since the mid 1980's the US Army Corps of Engineers has disposed sand in this area on two different occasions. The first occasion was in 1986 which was before the CRC adopted the static vegetation rules. The most recent disposal occurred in 2005. It is anticipated that this method of disposal will continue as long as the Morehead City Port is in operation. Additionally, the Town's oceanfront is part of a larger 50 year federal beach nourishment/storm protection project for Bogue Banks. This project is currently in the feasibility study phase.

Since this project is located within a large scale beach nourishment project, the first line of vegetation was identified as the pre-nourishment one which existed prior to the beach disposal project. Since the beach in front of this property was used extensively by the public over many years, there was no vegetation existing seaward of a concrete bulkhead when the first line was identified. Consequently the vegetation line was identified at the face of the existing concrete bulkhead. Today the natural vegetation in front of this property and the other properties associated with the Triple S Pier is still scarce. However if the vegetation line from adjacent vegetated areas was extrapolated across this area, the first line of vegetation would be approximately 135' seaward of the bulkhead. The normal high water line is approximately 250' from the bulkhead. However, extrapolation is not an option since the CRC's rules prohibit the first line of stable natural vegetation from ever moving oceanward irregardless of how much vegetation may exist.

Another hardship peculiar to this property is that the depth of the site is very shallow. In fact, the whole site is basically located within the small structure setback. The acquisition of additional land to increase the width of the lot is unfeasible due the presence of a Town Street which provides access to residences on the north side of the road.

Staff's Position: No.

Staff believes there are no conditions peculiar to this property. Static vegetation lines are common along the North Carolina coastline including Atlantic Beach where large scale beach nourishment and spoil deposition projects have occurred. The application of the 60 foot setback measured from the vegetation line established prior to the beach nourishment in 1986 is not peculiar to Petitioner's property. It is shared by many other lots on Atlantic Beach, as well as other beach towns that have received large scale beach nourishment or spoil deposition projects.

Although there are only a few areas along the North Carolina coast that have an oceanfront seawall, that is not the condition that creates the difficulty rather it is the establishment of a static vegetation line along these engineered beaches where Staff believes the Commission has concerns over the life expectancy of such beaches and therefore is careful not to allow unnecessary

encroachment towards the ocean.

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

Petitioner's Position: No.

The Town's attempts to provide an adequate beach access facility at this location are a reaction to the loss of an important commercial business that not only provided access to the beach but to restrooms too.

Staff's Position: Yes.

Staff believes that the hardship is a direct result of actions taken by Petitioner in requesting new construction on this property that does not fall within the exceptions to the setback. Upon acquisition of the property in 2007, Petitioner was fully aware of the restrictions on oceanfront development including the setback requirements and where the vegetation line or measurement line was located on this property.

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

Petitioner's Position: Yes.

CAMA and the CRC have long recognized the importance of public access to the Atlantic Ocean and coastal waters in NC. The CAMA statute was amended in the early 1980's to establish a Public Beach and Coastal Waterfront Access Program. In amending the statute, the General Assembly found there was a "pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters" {NCGS 113A-134.1(b)}. The CRC was charged to establish such a public access program. The CRC did so and adopted Shoreline Access Policies (15A NCAC 07M.0300) which provides guidelines for public access and a criteria for financial assistance. Providing restrooms at access sites is consistent with providing improvements to these areas.

The fundamental policy for the CRC's setback requirement is to provide some safety zone which would protect permanent, substantial structures from the negative impacts of long term erosion by requiring development to be setback 30 times the annual erosion rate for small structures. The minimum setback is 60' which is typical for those areas that do not have a significant rate of erosion. Given the history of the existing and future nourishment efforts, the

location of the vegetation line if extrapolation was allowed, the approximately 250' of beach area which exist between the proposed bathhouse and the location of the existing high water line, the proposed bathhouse would be provided the protection envisioned by the CRC's setback rules.

Finally, providing the public with a clean and maintained restroom facility for this location will preserve substantial justice and secure public safety.

Staff's Position: No.

To allow construction of new structures, entirely within the 60 foot setback is inconsistent with the purposes of the CRC's Ocean Hazard rules. The CRC's management objectives provide that :

The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

Petitioner's proposed development is not consistent with these purposes. Permitting a septic system within the setback only 2 feet from the vegetation line that could potentially be overwashed during storms is not consistent with the spirit, purpose, and intent of the rules. Moreover, the CRC's policy is to ensure that the location and design of structures eliminates unreasonable damage to life and property. Structures that are allowed as exceptions are more of the type of innocuous projects such as a gazebo and/or sand fencing, but not projects using septic systems containing human waste. Petitioner has not demonstrated that the variance will secure public safety and welfare, nor that it will preserve substantial justice. Petitioner argues that this is a matter of public access and that providing restrooms is consistent with that purpose. Even though the proposed development is providing for public restrooms versus development for individual use, this does not justify a relaxation of the CRC's important policy of not allowing such new development within the setback.

PETITIONER'S VARIANCE REQUEST MATERIALS

- A. CAMA Variance Request form
- B. Application for CAMA Minor Development Permit (and site plans)
- C. Minor Permit #16-07
- D. Improvement Permit A1364 issued by the Carteret County Health Department and Site Plan

TOWN OF ATLANTIC BEACH



P. O. Box 10
125 West Fort Macon Road
Atlantic Beach, NC 28512

Phone: (252) 726-2121
Fax: (252) 726-5115
E-mail: tab@atlanticbeach-nc.com

April 18, 2008

RECEIVED
APR 18 2008

Morehead City DCM

Mr. Jim Gregson, Director
N. C. Division of Coastal Management
400 Commerce Avenue
Morehead City, North Carolina 28577

Dear Mr. Gregson:

Please find enclosed, a CAMA variance request submitted by the town of Atlantic Beach. The requested variance would allow the Town to construct a small bathhouse within the small structure setback at the Tom Doe Beach Access site located on Ocean Boulevard and adjacent to the Atlantic Ocean.

We would very much appreciate the opportunity to present this request to the Coastal Resources Commission at their May, 2008 meeting. If successful in obtaining the variance, the Town would immediately begin the process of having the structure manufactured so that it could be enjoyed this season.

Thank you in advance for your assistance. Any question or request for additional information should be directed to Mr. Marc Schulze, the Town's Public Works Director at the above address and telephone number.

Sincerely,

Pete Allen
Town Manager

Enclosures

Exhibit A

Petitioner supplies the following information:

Your Name **Town of Atlantic Beach**
Address **Post Office Box 10 · 125 West Fort Macon Road, Atlantic Beach, NC 28512**
Telephone **252-726-2121**
Fax and/or Email **252-726-5115**

RECEIVED
APR 18 2008

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

Morehead City DCM

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

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

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

What did you seek a permit to do?

Construct a public bathhouse with septic system in association with an existing beach access site.

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

15A NCAC 07H.0306(a)(1)

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

The entire property is located within the small structure setback area.

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

A permit was issued that allowed certain improvements to this access site. This included an emergency vehicle "Hatteras" ramp, a gazebo and an uncovered deck.

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

This is an unbuildable lot that the Town acquired specially for the purpose of providing a beach access site. Because the entire site is basically located within the small structure setback, only those uses identified as exceptions to the setback rules are allowed. A public bathhouse and attendant septic system are not listed as exceptions.

RECEIVED
APR 18 2008

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA: **Morehead City DCM**

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

If the Town is not allowed to construct a 12' x 20' (240 square foot) bathhouse and septic tank system at this site, the public will shoulder the hardship of not having a suitable and sanitary place to use a restroom facility.

Historically, this site was the western most portion of the Triple S fishing pier's parking lot. The "Triple S" was a favorite location for locals and tourists to fish, sunbathe, swim and surf until it was torn down in 2006. The majority of the upland development was replaced with residential structures. The pier house property provided the only location in this section of the Town where one could use a restroom facility, park and gain access to the public beach.

Shortly after the pier closed, the Town quickly recognized the impacts caused by the loss of public access for this section of the Town. The Town began negotiations to acquire a portion of the old Triple S property for beach access which it did in 2007. It also became apparent that a modest restroom facility was sorely needed at this location.

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

RECEIVED

APR 18 2008

The property is located within the boundaries of large scale beach nourishment project according to CRC guidelines. This is because of the Corps' least-cost dredge disposal policy related to the Morehead City Harbor Project. Sediment that is dredged from the inner harbor is stockpiled on Brandt Island (located northwest of Fort Macon) and then pumped out on the beaches of Atlantic Beach every eight to ten years. This is implemented at no cost to the County or to the Town of Atlantic Beach. Since the mid 1980's the US Army Corps of Engineers has disposed sand in this area on two different occasions. The first occasion was in 1986 which was before the CRC adopted the static vegetation rules. The most recent disposal occurred in 2005. It is anticipated that this method of disposal will continue as long as the Morehead City Port is in operation. Additionally, the Town's oceanfront is part of a larger 50 year federal beach nourishment/storm protection project for Bogue Banks. This project is currently in the feasibility study phase.

Since this project is located within a large scale beach nourishment project, the first line of vegetation was identified as the pre-nourishment one which existed prior to the beach disposal project. Since the beach in front of this property was used extensively by the public over many years, there was no vegetation existing seaward of a concrete bulkhead when the first line was identified. Consequently the vegetation line was identified at the face of the existing concrete bulkhead. Today the natural vegetation in front of this property and the other properties associated with the Triple S Pier is still scarce. However if the vegetation line from adjacent vegetated areas was extrapolated across this area, the first line of vegetation would be approximately 135' seaward of the bulkhead. The normal high water line is approximately 250' from the bulkhead. However, extrapolation is not an option since the CRC's rules prohibit the first line of stable natural vegetation from ever moving oceanward irregardless of how much vegetation may exist.

Another hardship peculiar to this property is that the depth of the site is very shallow. In fact, the whole site is basically located within the small structure setback. The acquisition of additional land to increase the width of the lot is unfeasible due to the presence of a Town Street which provides access to residences on the north side of the road.

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

The Town's attempts to provide an adequate beach access facility at this location are a reaction to the loss of an important commercial business that not only provided access to the beach but to restrooms too.

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

CAMA and the CRC have long recognized the importance of public access to the Atlantic Ocean and coastal waters in NC. The CAMA statute was amended in the early 1980's to

establish a Public Beach and Coastal Waterfront Access Program. In amending the statute, the General Assembly found there was a "pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters" {NCGS 113A-134.1(b)}. The CRC was charged to establish such a public access program. The CRC did so and adopted Shoreline Access Policies (15A NCAC 07M.0300) which provides guidelines for public access and a criteria for financial assistance. Providing restrooms at access sites is consistent with providing improvements to these areas.

The fundamental policy for the CRC's setback requirement is to provide some safety zone which would protect permanent, substantial structures from the negative impacts of long term erosion by requiring development to be setback 30 times the annual erosion rate for small structures. The minimum setback is 60' which is typical for those areas that do not have a significant rate of erosion. Given the history of the existing and future nourishment efforts, the location of the vegetation line if extrapolation was allowed, the approximately 250' of beach area which exist between the proposed bathhouse and the location of the existing high water line, the proposed bathhouse would be provided the protection envisioned by the CRC's setback rules.

Finally, providing the public with a clean and maintained restroom facility for this location will preserve substantial justice and secure public safety.

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Please attach copies of the following:

- Permit Application and Denial documents
- Site Drawing with Survey and Topographical Information

Morehead City DCM

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

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

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

Date: 4.18.08

Signature: [Handwritten Signature]

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

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Morehead City DCM

CERTIFICATE OF SERVICE

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

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

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

This the 18th day of APRIL, 2008.

Mark Allen, TM
Signature of Petitioner or Attorney

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APR 18 2008

Morehead City DCM

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APR 18 2008

GENERAL INFORMATION

AND OWNER

Name TOWN OF ATLANTIC BEACH Morehead City DCM
Address PO Box 10
City ATLANTIC BEACH State NC Zip 28512 Phone 726-1366

AUTHORIZED AGENT

Name MARC SCHULZE
Address PO Box 10
City ATLANTIC BEACH State NC Zip 28512 Phone 726-1366

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody?) LOTS 100, 102, 104 OCEAN BLVD, ATLANTIC BEACH
OCEAN FRONT

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) COVERED GAZEBO (150 sq ft),
BATHHOUSE (240 sq ft), SEPTIC SYSTEM, SLATED DECK (460 sq ft), EMERGENCY VEHICLE ACCESS
PARKING & LANDSCAPING (SEE ATTACHED PROJECT DRAWING)

SIZE OF LOT/PARCEL: 6,961.5 square feet .15 acres

PROPOSED USE: Residential (Single-family Multi-family) Commercial/Industrial
Other PUBLIC BEACH ACCESS

TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): 390 square feet (includes all floors and roof-covered decks)

SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT-UPON SURFACES IN THE COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN (AEC): 3628 sq. ft.

(Calculations include the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.) *NOTE, CURRENTLY

Choose the AEC area that applies to your property:

- (1) within 75 feet of Normal High Water for the Estuarine Shoreline AEC REMOVING IMPERVIOUS SURFACE AS
(2) within 575 feet of Normal High Water for the Estuarine Shoreline AEC, adjacent to Outstanding SHOWN ON PLAN,
Resource Waters
(3) within 30 feet of the Public Trust Shoreline AEC

(Contact your Local Permit Officer if you are not sure which AEC applies to your property.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a

State Stormwater Management Permit issued by the N.C. Division of Water Quality?

YES NO

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

APPLICATION:

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

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STATEMENT OF OWNERSHIP:

Morehead City DCM

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

an owner or record title. Title is vested in TOWN OF ATLANTIC BEACH, see Deed Book _____ page _____ in the _____ County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

- | (Name) | (Address) |
|---|---|
| (1) <u>CAROL STALLINGS</u> | <u>106 OCEAN BLVD, ATLANTIC BEACH NC</u> |
| (2) <u>TERRY BANER (PROPERTY MANAGER)</u> | <u>SANDS VILLAS RESORTS, ATLANTIC BEACH, NC</u> |
| (3) _____ | _____ |
| (4) _____ | _____ |

LOCALITY:

FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

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

PERMISSION TO ENTER ON LAND:

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

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

This the 19 day of OCT, 2007
Max Rupp

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

SITE DRAWING/APPLICATION CHECKLIST

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

PHYSICAL DIMENSIONS

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

PHYSICAL CHARACTERISTICS

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

If you will be working in the ocean hazard area:

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

If you will be working in an estuarine shoreline area:

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

DEVELOPMENT PLANS

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

NOTE TO APPLICANT

Have you:

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

FOR STAFF USE

Site Notice Posted _____ Final Inspection _____ Fee Received _____

Site Inspections

Date of Action: Issued _____ Exempted _____ Denied _____ Appeal Deadline (20 days) _____

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Morehead City DCM

Ocean Blvd

60 ft CAMA Setback

151 ft

63 ft

Existing Asphalt

156 ft

Existing Bulkhead

(first line of stable vegetation)

28 ft

Legend

-  Existing Asphalt
-  60 ft CAMA Setback
-  Existing Bulkhead

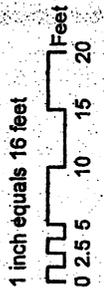
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Morehead City DCM

**Henderson Boulevard
Tom Doe Memorial
Public Beach Access**

**Cama Public Access
Funding Program**





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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

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October 29, 2007

Town of Atlantic Beach
PO BOX 10
Atlantic Beach, NC 28512

Morehead City OCM

RE: INCOMPLETE APPLICATION ADDITIONAL INFORMATION REQUIRED

APPLICATION NUMBER- 16-07

PROJECT ADDRESS- Lots 100,102 and 104 Ocean Blvd.

Dear Mr. Schulze:

We originally accepted your application under the impression that it was complete. On subsequent review, I have discovered that additional information is needed to complete the review process. Accordingly, I am requesting that you submit the following additional information to this office:

1. Drawing that shows what exists at this time. This will include the existing sea wall and the 60-foot Setback. Cross hatch or label any impervious that exists or anything pertinent. A legend can be used.
2. A drawing that shows what is being proposed and what will remain. The existing seawall must be shown on this also. This seawall is the 1st line of stabilization. A legend may be used for this too!

In accordance with the Department of Environment and Natural Resources regulations, we note that a certain time has passed while the application has remained in our office. Upon resubmission of a complete application, a local decision will be made in 15 days, provided this period is not extended as provided by law.

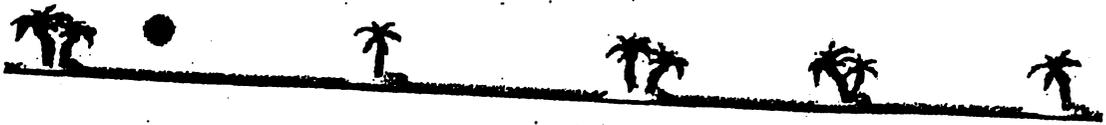
Please contact me at 252-808-2808 if you have any questions.

Respectfully yours,

Heather M. Styron, Field Representative
Morehead City CAMA Office
400 Commerce Avenue
Morehead City, NC 28557

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

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TOWN OF ATLANTIC BEACH PUBLIC WORKS
112 W BOGUE BLVD, ATLANTIC BEACH, NC 28512
(252)726-1366, FAX (252)726-

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Morehead City DCW

FAX:

TO: HEATHER STYRON

FAX #: 247-3330

DATE: 13 NOV 2007

FROM: MARC SCHULZE

PAGES: 2

INCLUDING COVER

REMARKS:

HEATHER, I INDICATED LOCATION OF
SEPTIC TANK ON PLAN IN LANDSCAPED AREA
ON WESTERN EDGE OF PROPERTY. IF YOU
NEED ANYTHING ELSE JUST ASK.

MARC



SEPIC Tank
Demolition

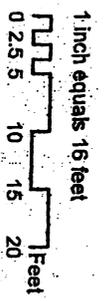
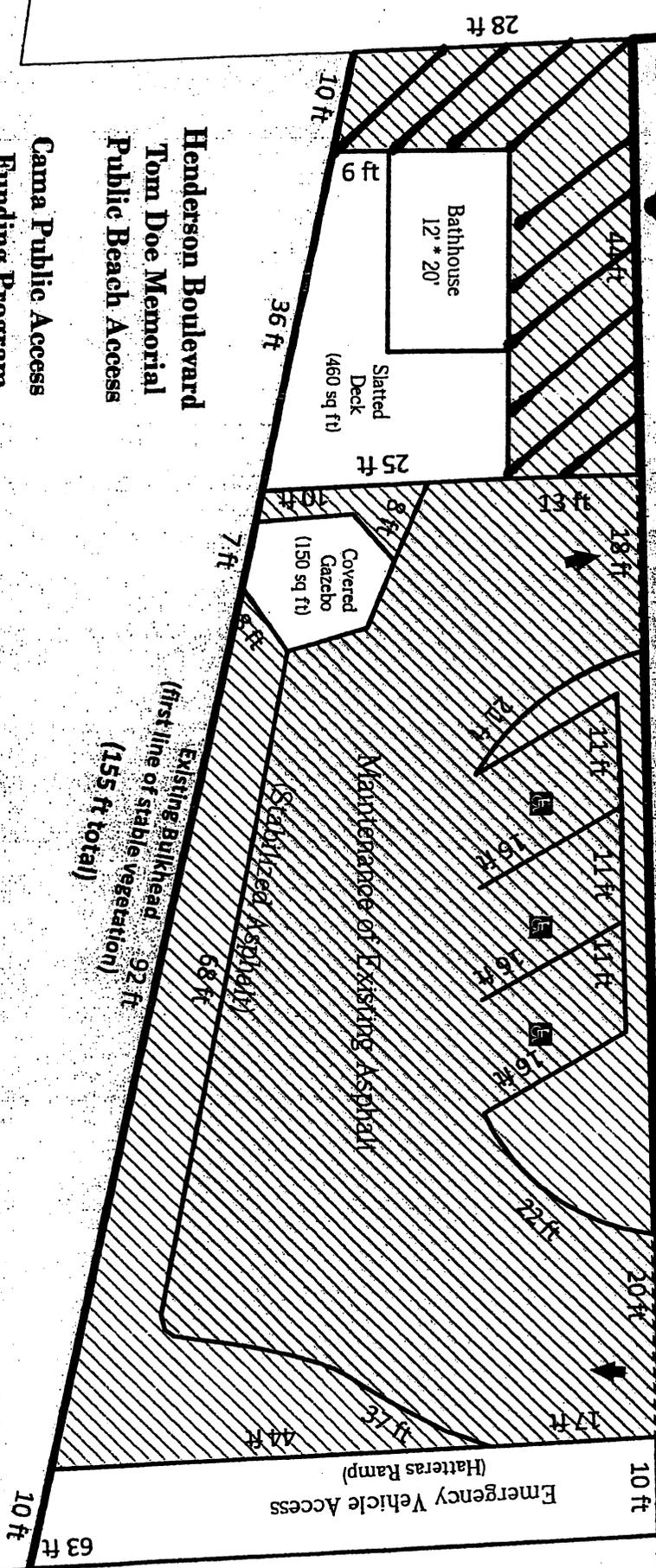
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Morehead City DCM

Ocean Blvd

Henderson Boulevard
 Tom Doe Memorial
 Public Beach Access
 Carma Public Access
 Funding Program



Legend

- Existing Bulkhead
- Existing Asphalt
- Vegetated Area

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Permit #
16-07

CAMA Morehead City DCM
MINOR DEVELOPMENT
PERMIT



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

Issued to The Town of Atlantic Beach authorizing development in the Ocean Hazard (AEC) at 100, 102 and 104 Ocean Blvd, in Atlantic Beach, as requested in the permittee's application, dated October 19, 2007 and plats dated November 1, 2007, and November 13, 2007. This permit, issued on November 14, 2007, is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

This permit authorizes: 150 sq. foot covered gazebo, 460 sq. foot slatted deck, emergency vehicle access in a Hatteras Ramp design, maintenance of existing parking area and landscaping for Public Beach Access. **The proposed Bathhouse and Septic System are not authorized by this permit.**

- (1) All proposed development and associated construction must be done in accordance with the permitted work plat drawings(s) dated received on November 1, 2007 and November 13, 2007.
- (2) All construction must conform to the N.C. Building Code requirements and all other local, State and Federal regulations, applicable local ordinances and FEMA Flood Regulations.
- (3) Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
- (4) A copy of this permit shall be posted or available on site. Contact this office at 252-808-2808 for a final inspection at completion of work.

(Additional Permit Conditions on Page 2)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. From the date of an appeal, any work conducted under this permit must cease until the appeal is resolved. This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. Any maintenance work or project modification not covered under this permit, require further written permit approval. All work must cease when this permit expires on:

DECEMBER 31, 2010

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances. This permit may not be transferred to another party without the written approval of the Division of Coastal Management.


Heather M. Styron
CAMA Field Representative
400 Commerce Ave
Morehead City, NC 28557


PERMITTEE

(above apply to permit)

Exhibit C

Name: Town of Atlantic Beach
Minor Permit # 16-07
Date: November 14, 2007
Page 2

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Morehead City DCM

- (5) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures. Disturbed areas shall be vegetatively stabilized (planted and mulched) within 14 days of construction completion.
- (6) The oceanfront, uncovered elevated deck within the setback area shall not exceed a footprint of 460 square feet as proposed.
- (7) The oceanfront, unenclosed, uninhabitable gazebo shall not have a footprint of more than 150 square feet as proposed.
- (8) The existing emergency vehicle access will be a 10'x 63' Hatteras Ramp.
- (9) Maintenance of the parking area is limited to the removal of existing asphalt, vegetating of uncovered areas, and resurfacing of existing asphalt areas. **In no case shall newly paved area be created.**

Note: The bathhouse and septic area are hereby denied for the following reasons:

- 1) In accordance with 15A NCAC .07H .0306(a) (1), all development not specifically excluded by rule must be located a minimum distance of the applicable erosion setback from the first line of stable natural vegetation. In this case, the existing bulkhead is considered the first line of stable vegetation, and the required setback is 60'. The proposed bathhouse is 6 feet to the bulkhead at its closest point.
- 2) The septic system as proposed is 0 feet from the bulkhead, which is considered the first line of stable vegetation, at its closest point. As stated above, this development must be located a minimum distance of 60' from the first line of stable natural vegetation per 15A NCAC 07H.0306(a) (1). Additionally, the proposed septic system is a required accessory to the bathhouse, which was deleted in #1 of this paragraph.

SIGNATURE: _____

PERMITTEE

DATE: _____

11/14/07

Name: Town of Atlantic Beach

A 1364

Location: Ocean Blvd

Environmental Health Division

Carteret County Health Department

Morehead City, NC 28557 • (252) 728-8499

A.B.

Bath house

Page 1 of 2

Improvement Permit

- * NO BUILDING PERMIT SHALL BE ISSUED UNTIL AUTHORIZATION TO CONSTRUCT IS ISSUED.
- * NO AUTHORIZATION TO CONSTRUCT SHALL BE ISSUED UNTIL MODIFICATION (IF REQUIRED) IS APPROVED.

G.S. 130a-336

Improvement Permit

Subject to revocation if site plans or if site is altered or intended use is changed.

Date: 3-31-08 M.E. Classification: IIa

Permit valid for 5 years from date of issue

- New Construction
- Repair
- Existing System

Improvements Permit by:

Christine M. Witt RS

Environmental Health Specialist

(Rev. 10/02) CW
IP

Accepted systems* may be substituted for conventional systems with gravel media if the accepted system can be placed in the permitted/authorized trench footprint and the installation is in accordance with the accepted system approval, without unauthorized product alteration. Permit modification, prior approval of the health department or separate owner sign-off is not required as long as no changes are necessary in the location of each nitrification line (except reduction in line length), trench depth, or effluent distribution method. There shall be no reductions in trench length for trenches installed in new or existing fill, or for bed systems.

***Accepted systems include:**

EZflow Drainage Systems:
EZ1203H

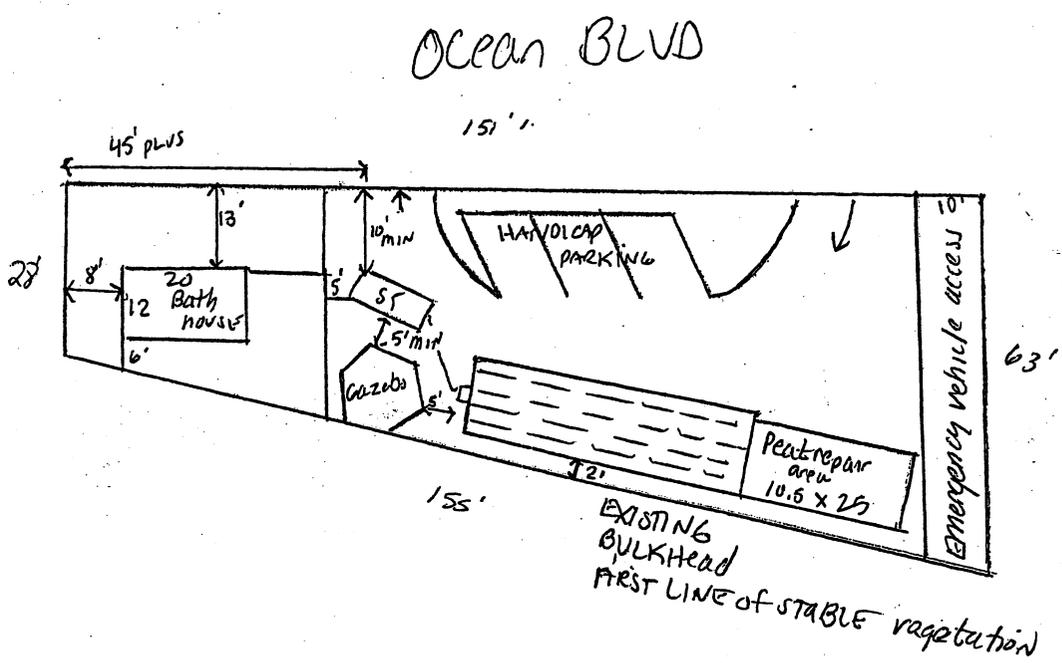
Infiltrator chambered sewage effluent subsurface disposal systems:

- Standard and Standard SideWinder (polyethylene) with 12 inch cover,
- High Capacity (polyethylene) with 12 inch cover
- Quick 4 Standard-W, Standard SC, and Standard SideWinder (polypropylene) models with 6 inch cover
- Contour Wedge
- Standard Contour Swivel

For additional information: <http://www.deh.enr.state.nc.us/o>

Exhibit D

SITE PLAN



PRE-CONSTRUCTION
 conference required.
 Bathhouse and
 Gazebo TO BE
 STAKED off.

ELECTRICAL PERMIT REQUIRED: YES () NO (X)
 OWNER: Town of Atlantic Beach
 ADDRESS: PO Box 10
Atlantic Beach PHONE 726 1366
 TAX PARCEL: 6385 20-72 6231
 PROPERTY LOCATION: Ocean Blvd
Atlantic Beach
 SUBDIVISION: _____
 LOT: _____ BLOCK: _____ SEC: _____
 TYPE STRUCTURE: BATH HOUSE
 NO. BEDROOMS: _____ NO. BATHS: _____
 NO. PEOPLE: _____ DESIGN FLOW: 350 Based on
 GARBAGE GRINDER: YES () NO () 35 parking spaces
 SEPTIC TANK: WOOD GAL. PUMP TANK: _____ GAL.
 NO. LINES: 4 LINES WIDTH: 12x44' BED
 TOTAL LENGTH: _____ FT. TOTAL 528 SQ. FT.
 WATER SOURCE: COMMUNITY

***SYSTEM SHALL NOT BE INSTALLED UNDER WET CONDITIONS**
 *Trench bottom depth to be no deeper than 24" below THE Asphalt naturally occurring surface.

Easement Required: _____ Yes _____ No
 Drainage Maintenance Req. Surface (✓) Subsurface ()
 Maintain Minimum 10' From Water Line
 Comments: _____

*Prior to any changes in system layout, approval must be obtained from Health Department.

Location: WARR BLVD

Bathhouse

Environmental Health Division

Carteret County Health Department
Morehead City, NC 28557 • (252) 728-8499

A136Y

Authorization for Wastewater System Construction

(NO CERTIFICATE OF OCCUPANCY SHALL BE ISSUED
UNTIL OPERATION PERMIT HAS BEEN ISSUED)

Page 1 of 2 I.P. A136Y

G.S. 130a-336

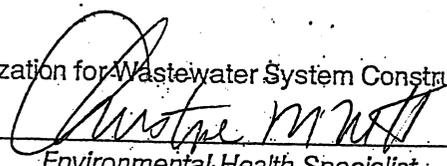
Valid for Five (5) years from date of issuance.

Subject to revocation if site plans or if
site is altered or intended use is changed.

Date: 3-31-08 M.E. Classification: TL2

- New Construction
- Repair
- Existing System

Authorization for Wastewater System Construction by:



Environmental Health Specialist

(Rev. 10/02) CW
IP

Accepted systems* may be substituted for conventional systems with gravel media if the accepted system can be placed in the permitted/authorized trench footprint and the installation is in accordance with the accepted system approval, without unauthorized product alteration. Permit modification, prior approval of the health department or separate owner sign-off is not required as long as no changes are necessary in the location of each nitrification line (except reduction in line length), trench depth, or effluent distribution method. There shall be no reductions in trench length for trenches installed in new or existing fill, or for bed systems.

***Accepted systems include:**

EZflow Drainage Systems:
EZ1203H

Infiltrator chambered sewage effluent subsurface disposal systems:
Standard and Standard SideWinder (polyethylene) with 12 inch cover,
High Capacity (polyethylene) with 12 inch cover
Quick 4 Standard-W, Standard SC, and Standard SideWinder (polypropylene) models with 6 inch cover
Contour Wedge
Standard Contour Swivel

For additional information: http://www.deh.enr.state.nc.us/osww_new/new1/appaccept.htm

STIPULATED EXHIBITS

- A. Relevant excerpts of 2006 CAMA Grant Contract. (The entire contract and attachments will be available at the meeting)

- B. Relevant excerpts of the Town of Atlantic Beach's request to amend the 2006 contract. (The entire amendment request will be available at the meeting)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

GRANTEE'S FEDERAL
IDENTIFICATION
NUMBER 56-6009928

CFDA CODE: N/A

This Contract is hereby made and entered into this **1st day of September, 2006**, by and between the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**, (the "Agency") and the Town of Atlantic Beach (the "Grantee") (referred to collectively as the "Parties").

1. **Contract Documents:** This Contract consists of the Grant Contract and its attachments, all of which are identified by name as follows:
 - (1) Grant Contract No. S07000
 - (2) General Terms and Conditions (Attachment A)
 - (3) Request for Proposal or Grant Application form (Attachment B)
 - (4) Scope of Work, description of services, or Grantee's proposal (Attachment C)
 - (5) GRANTEE's Proposal Narrative, Budget, Schedule and Activities Milestones (Attachment D)
 - (6) Assurances - Non-Federally Funded Contracts (Attachment E)

These documents constitute the entire agreement between the Parties and supersede all prior oral or written statements or agreements. The Parties may enter into Contract Amendments in accordance with the General Terms and Conditions as described in Attachment A.

2. **Precedence Among Contract Documents:** In the event of a conflict between terms of the Contract Documents, the term in the Contract Document with the highest relative precedence prevails. The order of precedence is established by the order of documents in Paragraph 1, above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment has the highest precedence and the oldest amendment has the lowest precedence.
3. **Contract Period:** This Contract shall be effective on 1st day of September, 2006 and shall terminate on 30th day of June, 2008.
4. **Grantee's Duties:** The Grantee provides the services for a project titled, " **Henderson Boulevard Acquisition and Parking Access**", as described in Attachments C, and D.
5. **Agency's Duties:** The Agency shall pay the Grantee in the manner and in the amounts specified in the Contract Documents. The total amount paid by the Agency to the Grantee under this Contract shall not exceed **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**.

Exhibit A

This amount consists of:

Dollars	Type of Funds	Funding Source	CFDA No.
\$400,000	State	PARTF	N/A

a. There are no matching requirements from the Grantee.

b. The Grantee's matching requirement is **\$135,000**, which shall consist of:

X	In-Kind non-cash	\$15,270
X	Cash	\$119,730
	Cash and In-Kind	\$
	Cash and/or In-Kind	\$
	Other / Specify:	\$

The contributions from the Grantee shall be sourced from non-federal funds. The total contract amount is **\$535,000**.

6. **Reversion of Unexpended Funds:** Any unexpended grant funds shall revert to the Agency upon termination of this Contract.
7. **Reporting Requirements:** Any Grantee receiving at least \$15,000 but less than \$500,000 in state funds from the Agency within any fiscal year is required to file with each funding state agency a sworn accounting of receipts and expenditures of state funds in the format approved by the State Auditor. This accounting must be attested to by the Grantee fiscal officer and one other authorizing officer of the Grantee. This accounting must be filed with each funding state agency within six months after the end of the Grantee's operating year. If the Grantee receives STATE funds of \$500,000 or more during its fiscal year, it must file with the State Auditor and each funding agency its audited financial statements in accordance with the standards and formats prescribed by the State Auditor in Memorandum NGO-2 "Grantee Audit Reports." If the Grantee receives \$500,000 or more in FEDERAL awards during its fiscal year from any source, including federal funds passed through the State or other grantors, it must obtain a single audit or program-specific audit conducted in accordance with the Federal Office of Management and Budget's Circular A-133 "Audits of States, Local Government and Non-Profit Organizations." If the above amounts are not met by one single funding agency, but rather any combination of funding agencies, then the appropriate reports shall be sent to the Office of the State Auditor and to the Agency. Also, a corrective action plan for any audit findings and recommendations must be submitted along with the audit report or within the period specified by the applicable OMB Circular or Memorandum.
8. **Payment Provisions:** The Agency reimburses the Grantee for allowable expenditures according to the amount specified per quarter in Attachment D up to ninety percent (90%) of the total Agency funds under this Contract. Allowable expenditures are defined as expenditures associated with work performed to meet the milestones for a specific reporting period. If work is completed subsequent to the quarter specified in Attachment D, the Agency may reimburse the Grantee at the end of the quarter in which the work is completed or in the next quarter that a payment is due. Work completed in a quarter subsequent to the time specified in Attachment D may be reimbursed up to the maximum allowable for the specific milestones completed. The Agency retains a minimum of ten percent (10%) of the total Agency funds under this contract until the end of the contract and all required activities are completed and reports/deliverables are received and accepted by the Agency, including a final report that describes in detail project accomplishments and expenditures. The Agency may withhold payment on invoices when the Grantee fails to accomplish the milestones stated in Attachment D.

9. **Invoices:** The Grantee submits invoices to the Contract Administrator at least quarterly. The final invoice must be received by the Agency within 30 days after the end of the contract period.

Amended or corrected invoices must be received by the Agency's Office of the Controller within six months after the end of the contract period. The Agency will not pay any invoice received more than 6 months after the end of the effective period.

10. **Contract Administrators:** Each Party submits notices, questions and correspondence to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party. Any changes in the scope of the contract, which increase or decrease the Grantee's compensation, are not effective until approved in writing by the Agency's Head or Authorized Agent.

For the Agency:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Maureen Will DENR-Division of Coastal Management 400 Commerce Avenue Morehead City, N.C. 28557 <u>Maureen.Will@ncmail.net</u>	Maureen Will DENR-Division of Coastal Management 400 Commerce Avenue Morehead City, N.C. 28557

For the Grantee:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Lee Smith, Planning Director P.O. Box 10 Atlantic Beach, N.C. 28512 Telephone: 252-726-4456 Fax: 252-726-7043 Email:planner@atlanticbeach-nc.com	Lee Smith, Planning Director 125 W Ft. Macon Rd. Atlantic Beach, N.C. 28512

11. **Supplementation of Expenditure of Public Funds:** The Grantee assures that funds received pursuant to this Contract shall be used only to supplement, not to supplant, the total amount of federal, state and local public funds that the Grantee otherwise expends for a project titled, "Henderson Boulevard Neighborhood Beach Access", and related programs. Funds received under this Contract shall be used to provide additional public funding for such services; the funds shall not be used to reduce the Grantee's total expenditure of other public funds for such services.
12. **Disbursements:** As a condition of this Contract, Grantee acknowledges and agrees to make disbursements in accordance with the following requirements:
- a. Implement adequate internal controls over disbursements;
 - b. Pre-audit all vouchers presented for payment to determine:
 - Validity and accuracy of payment

- Payment due date
 - Adequacy of documentation supporting payment
 - Legality of disbursement
- c. Assure adequate control of signature stamps/plates;
 d. Assure adequate control of negotiable instruments; and
 e. Implement procedures to insure that account balance is solvent and reconcile the account monthly.

13. **Outsourcing:** The Grantee certifies that it has identified to the Agency all jobs related to the Contract that have been outsourced to other countries, if any. Grantee further agrees that it will not outsource any such jobs during the term of this Contract without providing notice to the Agency and obtaining written approval from the Contract Administrator prior to outsourcing.

14. **Signature Warranty:** The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement.

IN WITNESS WHEREOF, the Grantee and the Agency execute this agreement in four (4) originals, one (1) of which is retained by the Grantee and three (3) of which are retained by the Agency, the day and year first above written.

TOWN OF ATLANTIC BEACH

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By *Chuck Cooper*

Grantee's Signature

William G. Ross, Jr., Secretary

Director/Division of Purchase & Services

 CHUCK COOPER

Typed Name

By *Debra Simmons*
 Agency Head's Signature or Authorized Agent

 Town Manager Title

WITNESS:

WITNESS:

 Sonice Simpson

Signature

 Pattie L. Howe

Signature

SCOPE OF WORK Public Beach & Waterfront Access Grant

INTRODUCTION

The Coastal Resources Commission and the Department of Environment and Natural Resources (AGENCY) have been charged with the responsibility of developing a comprehensive public beach access program, pursuant to Part 6 of Article 7 of Chapter 113A of the North Carolina General Statutes, entitled the Public Beach and Coastal Waterfront Access Program; and

The Division of Coastal Management, acting on behalf of the AGENCY, administers the Public Beach and Coastal Waterfront Access Program; and

The AGENCY has been designated as the recipient of funds provided by the North Carolina Parks and Recreation Trust Fund for the purpose of funding a public access program to assure acquisition, construction and maintenance of a system of pedestrian public access to ocean beaches, estuarine water beaches, and other public trust waters, and the AGENCY is authorized to award grants to local governments to accomplish more purposes.

BACKGROUND

The General Statutes empower the AGENCY to (1) provide funds to local government for the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters; and (2) to establish standards to ensure land acquisition funds will only be used to purchase interests in property that will be of benefit to the general public.

The primary objective of the public access grant program is to provide pedestrian access to public beaches and public trust waters in the 20 coastal counties. Grant funds may be used for land acquisition (including "unbuildable" lots) and site improvement projects that are consistent with the State guidelines for public access in coastal areas (15A NCAC 7M .0303). Any facility constructed with these grant funds must meet state and federal regulations for making the site accessible to people with disabilities.

Once property is purchased, the AGENCY may allow property, without charge, to be controlled and operated by the GRANTEE, subject to agreement requiring that the local government use and maintain the property for its intended public purpose. All grants for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the state if the GRANTEE uses the property for a purpose other than beach or coastal waters access.

PROJECT TIME PERIOD (note: Project cannot begin until grant contract has been fully executed.)

September 1, 2006 through June 30, 2008

GRANTEE CONDITIONS AND REQUIREMENTS

The GRANTEE hereby agrees to the following:

- (a) The project shall be completed consistent with 15A NCAC 7M SECTION .0303 (e), (f) and (g), as well as any other deliverables as outlined in Attachment D, " Project Schedule and Activities Chart".

- (b) Per 15A NCAC 07M SECTION .0307, these grant funds shall not be used as "local matching funds" for other state and federal grants, except as provided in Attachment D.
- (c) To satisfy the match requirement of this contract, the GRANTEE shall document for the AGENCY the expenditure of local cash match sum indicated in paragraph b, of document (1). The AGENCY shall withhold the initial payment of grant funds to the GRANTEE until the GRANTEE has documented the expenditure of the local cash match sum. The in-kind services match must be documented by the GRANTEE to the AGENCY by the end of the contract period.
- (d) Consistent with Attachment D, "Project Schedule & Activities Chart", the GRANTEE shall submit quarterly reports as to the status and progress of the project. A Final Completion Report shall be provided at the closeout of the contract. The Contract Administrator will provide the quarterly and final closeout report form templates.
- (e) No payments for planning activities will be made unless all local ordinances are consistent with the State Guidelines for Areas of Environmental Concern (15A NCAC 7H), as required in the Coastal Area Management Act (G.S. 113A-111). The AGENCY has the sole authority for determining whether local ordinances are consistent. Each project will be consistent with the North Carolina Coastal Management Program and the local Land Use Plan certified by the Coastal Resource Commission.
- (f) If any activity funded under this grant requires the preparation of an Environmental Impact Assessment (EIA) under G.S. 113A-4, it will be the responsibility of the GRANTEE to prepare any such document.
- (g) The AGENCY and/or the GRANTEE may, from time to time, request changes in the scope of the services of the GRANTEE to be performed under this contract. Such changes, including any increase or decrease in the amount of the GRANTEE'S compensation, which are mutually agreed upon by and between the GRANTEE and the AGENCY, shall be incorporated in written amendments to this contract processed through the formal contract amendment process.

Project execution/construction contracted for or performed by the GRANTEE:

- (h) No grant funds may be provided until a Title Opinion for the site has been submitted to and approved by the Contract Administrator.
- (i) No construction is to occur prior to the receipt of all required local, state, and federal permits. Coordination and consultation with permitting agency personnel shall occur so as to afford the least amount of impact on coastal resources.
- (j) Handicapped Compliance. All facilities constructed under the terms of this CONTRACT will be built in compliance with the Handicapped Persons Protection Act (N.C.G.S., Chapter 168A). The GRANTEE shall include certification of ADA compliance from the local chief building official with project closeout documentation submitted to the AGENCY.
- (k) If the GRANTEE subcontracts with a company engaged in another project(s) for the locality, all accounting and reporting specific to the project governed by this contract must be wholly separate from that of the other project(s).
- (l) Signage Requirement: The GRANTEE shall install CAMA public access signs at the project site(s). The AGENCY will provide these signs at no cost to the GRANTEE.

- (m) Future improvements, modifications, or changes to the project site will be subject to full review and approval by the AGENCY. This will include any changes that require permits or any modifications (reductions or additions) to recreational amenities. Unapproved changes to the project site are not allowed and can be cause for the AGENCY to seek repayment of previously granted funds for site acquisition and improvements.
- (x) Public building contracts shall comply with the requirements of Article 8 of Chapter 143 of the General Statutes, and all other requirements placed on local governments.
- (y) Amendments to contracts for construction shall be by written change order only. Such change orders shall be issued after approval of the AGENCY, shall be made a part of the project file, and shall be kept available for audit.
- (z) The GRANTEE agrees to incorporate, or cause to be incorporated into all construction contracts the following provisions:

"During the performance of this contract, the GRANTEE agrees to the following:

- (1) The GRANTEE will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The GRANTEE will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The GRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this non-discrimination clause.
 - (2) The GRANTEE will, in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin."
- (bb) The GRANTEE agrees to secure completion of the work in accordance with the approved construction plans and specifications, and shall secure compliance with all applicable federal, state, and local laws and regulations, including the State Building Code.
 - (cc) The GRANTEE agrees to permit inspection of property and facilities acquired or developed pursuant to this contract by the AGENCY to ensure work progress in accordance with the approved project, including a final inspection upon project completion.
 - (dd) In the event funds should not be available for future stages of the project, the GRANTEE agrees to complete the project to a degree of usefulness as a public water access agreed upon by the AGENCY.
 - (ee) Development plans and specifications shall be available for review by the AGENCY upon request. All significant deviations from the project proposal outlined in Attachment D shall be submitted to the AGENCY for prior approval.

- (ff) The acquisition cost or fair market value of real property, including interest in donated lands, shall be based upon the appraisal of a licensed appraiser. The appraisal reports shall be reviewed and approved by the AGENCY.
- (gg) If any tract or parcel of, or interest in, real property subject to being purchased under the provisions of this contract, but not identified herein, is found by the AGENCY for any reason not to be suitable, all obligations of the AGENCY hereunder shall cease as to such parcel, tract, or interest.

Reimbursement of project cost:

- (hh) Per paragraph #8, "Payment Provisions" and paragraph #9, "Invoices", the payment for services rendered under this contract will be paid upon receipt of a requisition for payment from the GRANTEE, specifying that the work under this contract has been performed and that the GRANTEE is entitled to receive the amount requisitioned under the terms of the contract. Actual payment authorization shall be based on the Contract Administrator's approval of the monitoring report, per paragraphs (c) and (d). Final requisitions and invoices for payment must be received by the AGENCY within 30 days after the end of the contract period. Upon acceptance of a complete closeout packet, the AGENCY will release the ten percent (10%) as provided for in paragraph #8.
- (ii) Authorized improvements and costs will comply with the grant application submitted to and approved by the AGENCY and are limited to the stated project location in Attachment D.
- (jj) The GRANTEE agrees to maintain and make available at proper times to the AGENCY all bid documents, and accurate records of all expenditures for costs applicable to this contract, and to submit properly certified billings for such costs on forms prescribed by the AGENCY and supported by detailed data sheets that will facilitate the audit of the GRANTEE'S records. Complete accounting records, including original invoices, payrolls, contracts, or other documents clearly showing the nature and property of all costs incurred under this contract, shall be retained by the GRANTEE for a period of three years following project completion, or until an audit has been completed, whichever is later. All accounting records and supporting documents will clearly show the number of the project to which they are applicable.
- (kk) The AGENCY agrees to reimburse to the GRANTEE only for costs actually incurred by the GRANTEE under the terms of this contract. Should the total costs of the project exceed the Project Cost stated in Attachment D, the AGENCY shall reimburse the GRANTEE only for the excess attributable to change orders approved by the AGENCY by subsequent contract amendment.
- (ll) The GRANTEE agrees to refund to the AGENCY, subsequent to audit of the project financial records by the AGENCY, any funds not expended in compliance with this contract.
- (mm) Project costs eligible for expenditure of state grant funds under this contract and any subsequent amendment shall be determined upon the basis of the criteria set forth by the AGENCY.

Retention, use and maintenance:

- (nn) The standards which apply to the retention, operation, maintenance, and use of properties and facilities acquired or developed with grant assistance are contained in this section; and these requirements shall survive the closeout of the contract.

ATTACHMENT C

- (oo) Retention of use: Property acquired or developed with grant assistance shall be retained and used for public access. The GRANTEE agrees to transfer title to any real property acquired with the grant funds to the AGENCY if the local government uses the property for a purpose other than public access.
- (pp) Operation and Maintenance. The GRANTEE agrees to operate and maintain solely at its own expense, insofar as it is legally empowered to do so, for as long as they exist, the facilities and areas covered by this contract. Property acquired or developed with grant assistance shall be operated and maintained as follows:
- (1) The property shall be maintained in such a manner that the AGENCY finds it to appear attractive and inviting to the public.
 - (2) Sanitation shall be kept at reasonable standards for public use. Fire protection and other similar services shall be maintained in accordance with applicable AGENCY and local public health standards.
 - (3) Properties shall be kept reasonably safe for public use. The GRANTEE shall determine the level of maintenance and supervision necessary to maintain the facility in a safe condition.
 - (4) Buildings, roads, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration and not discourage public use.
 - (5) Buildings, roads, and other structures and improvements shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
 - (6) Reasonable user fees may be assessed, as long as those fees are used exclusively for the operation and maintenance of the access facility and/or other public access facilities within the local jurisdiction with the written consent of the AGENCY.
- (qq) Availability to Users. Property acquired or developed with grant assistance shall be open to entry and use by all persons, regardless of race, color, creed, national origin, or residence who are otherwise eligible, according to reasonable published rules applicable to the property involved.
- (rr) Basic Changes in Recreational Use. The use of property acquired or developed with grant assistance may not be changed from that proposed and approved when assistance was obtained, unless approval is obtained from the AGENCY.
- (ss) Reasonable Use Limitations. The GRANTEE may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with grant assistance when such a limitation is necessary for maintenance or preservation. All limitations shall be in accord with the applicable grant contract and any subsequent amendments.
- (tt) Nondiscrimination. The GRANTEE shall not discriminate against any person on the basis of race, color, or national origin in the use of any property or facility acquired or developed pursuant to this contract. The GRANTEE shall not discriminate against any person on the basis of residence, except to the extent that reasonable difference in admission or other fees may be maintained on the basis of residence.
- (uu) Use of Proceeds of Sales of assisted areas and facilities. The proceeds of sale of assisted areas and facilities must be held by the AGENCY or the GRANTEE and be disposed of only in accordance with a plan approved by the AGENCY.

- (vv) Notice of Limitations of Use and Restrictions. The GRANTEE and/or owner of the real property acquired or improved with grant funds awarded under this contract shall file, in the office of the Register of Deeds in the county or counties where such property is situated, a Notice of Limitation of Use and Restrictions which sets forth the land-use restrictions contained in this contract and shall provide a copy to the AGENCY.

Other General:

- (ww) Conflict of Interest. No official or employee of the GRANTEE who is authorized in his official capacity to negotiate, make, accept, approve, or take part in such decisions regarding a contract or subcontract in connection with this project shall have any financial or other personal interest in any such contract or subcontract. No person performing services for the GRANTEE in connection with this project shall have a financial or other personal interest other than his employment or retention by the GRANTEE in any contract or subcontract in connection with this project. No officer or employee of such person retained by the GRANTEE shall have any financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed upon the public records of the GRANTEE, and such officer, employee or person has not participated in the acquisition for or on behalf of the GRANTEE. The GRANTEE shall be responsible for enforcing the above conflict of interest provisions.
- (xx) Flood Disaster Protection. The GRANTEE agrees to comply with the terms and intent of the Flood Disaster Protection Act of 1973 (Public Law 93-234) and all applicable regulations and procedures implementing that Act.
- (yy) Compliance. The GRANTEE shall be responsible for compliance with the terms of this contract by any other political subdivision or public agency to which funds are transferred pursuant to this contract. Failure by such political subdivision or public agency to comply shall be deemed failure by the responsible GRANTEE to comply with the terms of this contract.

RECEIVED

**HENDERSON BLVD # 2006
NEIGHBORHOOD BEACH ACCESS**

F/Y 2006-2007

Morehead City DCM



**PUBLIC BEACH AND
COASTAL WATERFRONT
ACCESS PROGRAM**

NC COASTAL MANAGEMENT PROGRAM

North Carolina Public Beach and Coastal Waterfront Access Program

Site Location/ Address: Intersection of Ocean Boulevard and Henderson Boulevard, Atlantic Beach, Carteret County, NC

Local Government: Town of Atlantic Beach

Federal ID #: 56-6009928

Local Administrator of this Project:

Lee Smith, Planning Director
PO Box 10, 125 W Ft. Macon Rd
Atlantic Beach, NC 28512
252-726-4456 (phone)
252-726-7043 (fax)
planner@atlanticbeach-nc.com (email)

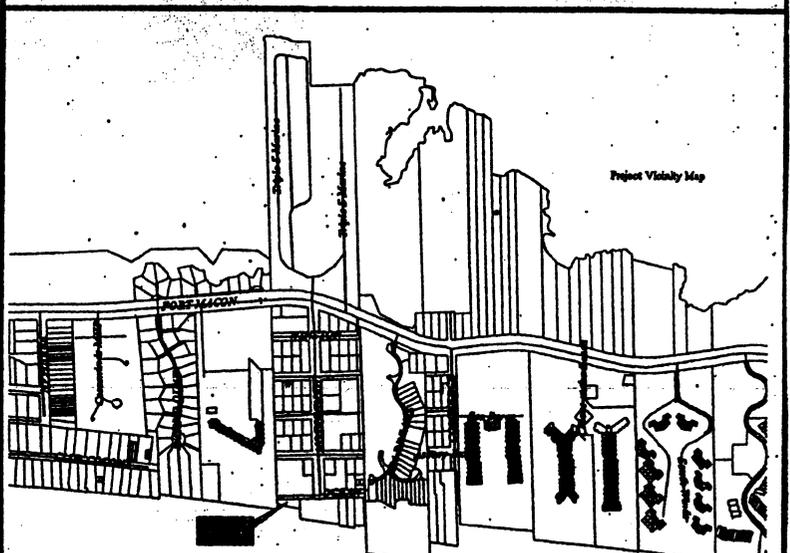
Project Description:

Acquisition of an oceanfront parcel of land

Site Description:

Vacant oceanfront property with approximate dimensions of 150'x27'x150'x62' just west of the former Triple S Pier location.

A. REGIONAL LOCATION MAP



Map 1: Regional Location Map

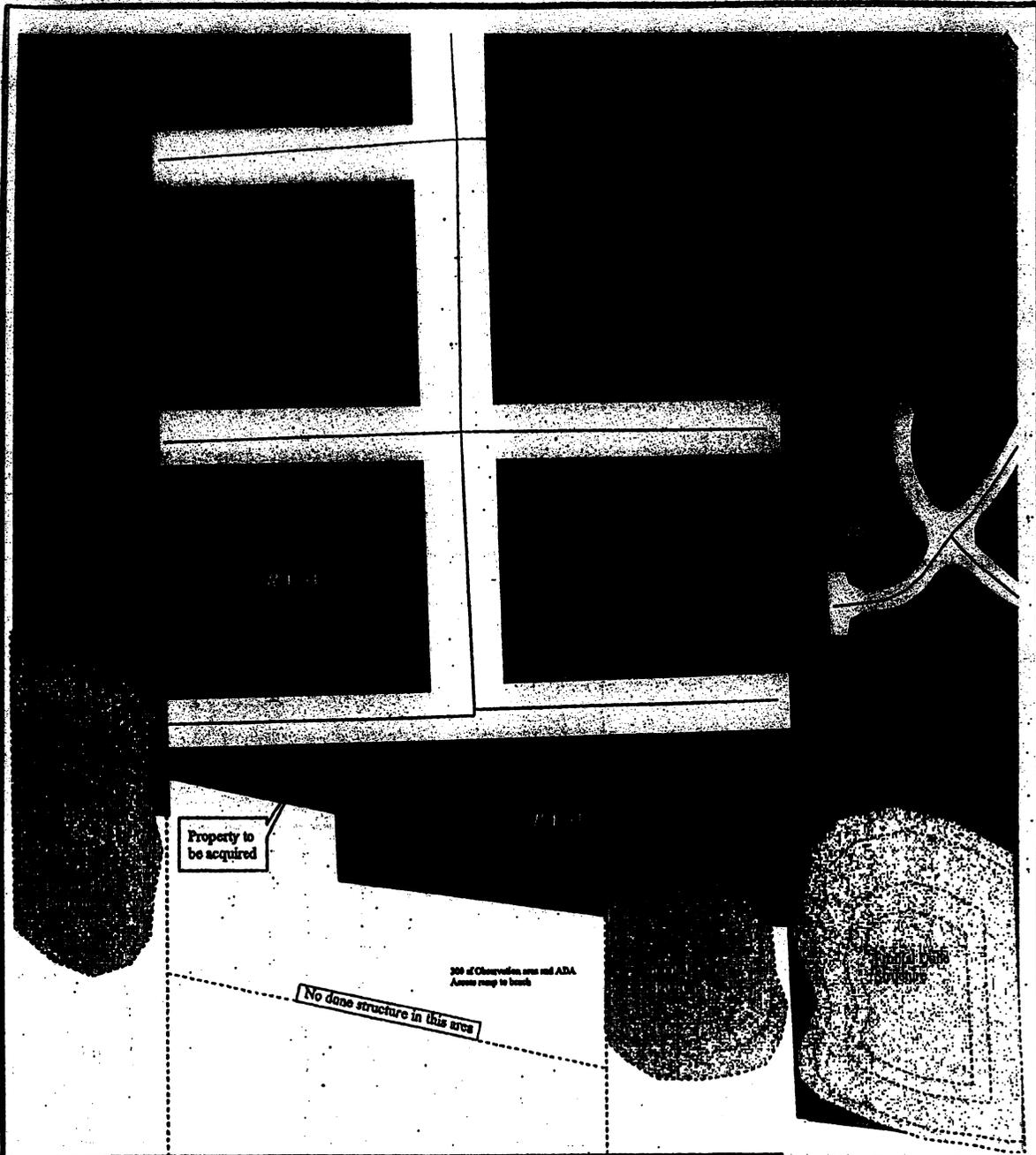
Nature of Request: CAMA Grant Final-Application request for land acquisition and beach access.

Applicant: Town of Atlantic Beach
Property Address: End of Henderson Blvd.
Parcel ID #: 6385.20-72-6231
Zoning District: RA-3V Residential

SCALE
1" = 100' (Not to Scale)
Map created by Atlantic Beach
Planning & Inspections Department

Date:
April 26, 2006

B. VICINITY MAP



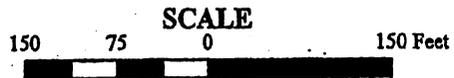
Map 2: Detailed Vicinity Map

Nature of Request: CAMA Grant Pre-Application request for land acquisition and beach access.

Applicant: Town of Atlantic Beach

Property Address: End of Henderson Blvd.

Parcel ID #: 6385.20-72-6231
Zoning District: RA-3V Residential



Map created by Atlantic Beach
Planning & Inspections Department



Date:
April 26, 2006

C. PROJECT SITE PLAN – N/A

D. PROJECT SUMMARY BUDGET Adjustments to the budget will require approval by the Contract Administrator.

	Grant Assistance Requested	Local Cash Contribution	Local In-Kind Contribution	TOTAL
Land Acquisition Costs	\$ 400,000	\$ 119,730		\$ 519,730
Permit and Design Fees:				
<i>Not Applicable</i>				
Site Improvement Costs:				
Materials				
<i>Not Applicable</i>				
Site Improvement Costs:				
Labor				
<i>Not applicable</i>				
Local Administrative Costs: In-kind				
Planning Director			\$3,960	\$3,960
Public Services Director			\$2,250	\$2,250
Town Manager			\$2,560	\$2,560
Town Attorney			\$6,500	\$6,500
TOTAL BUDGET	\$ 400,000	\$ 119,730	\$15,270	\$ 535,000

E. PROJECT TIMELINE

Below is the Project Timeline for improvements under the grant award. Progress monitoring will occur at 6 month intervals for the duration of the 18 month contract. Adjustments to the timeline will require approval by the Contract Administrator.

This form only illustrates grant and local cash match totals. Non-cash match is not illustrated or represented in this attachment, however it must still be reported

Note: The final quarter includes a holdback of 10% of the total grant award, which is retained until the Contract Administrator receives the closeout packet.

Grant: \$400,000	Cash Match: \$119,730	Total Cash: \$519,730
	Non-cash Match: \$15,270	Total Project: \$535,000

ACTIVITIES TO BE COMPLETED EACH QUARTER

<p><1/2% of total work to be completed</p> <hr/> <p>Grant funds to be spent</p> <p>\$0</p> <hr/> <p>Local funds to be spent</p> <p>\$0</p>	<p>Period 1</p>
<p>90% of total work to be completed</p> <hr/> <p>Grant funds to be spent</p> <p>\$348,027</p> <hr/> <p>Local funds to be spent</p> <p>\$119,730</p>	<p>Period 2</p> <ul style="list-style-type: none"> • Acquisition of property
<p>10% of total work to be completed</p> <hr/> <p>Grant funds to be spent</p> <p>\$51,973</p> <hr/> <p>Local funds to be spent</p> <p>\$0</p>	<p>Period 3</p> <ul style="list-style-type: none"> • Prepare and submit materials for closeout

F. SIGNATURE

Signature: Lee Smith
 Lee Smith, Planning Director

Date: June 27, 2006

DENR DIVISION: Division of Coastal Management SECTION: Morehead City office

TYPE OF ACTION REQUESTED: (Contact Division of Purchase & Services for assistance in completing this form - Main # 919-733-9746)

- REQUEST FOR PROPOSALS (Issued by PURCHASE & SERVICES)-ESTIMATED COST: \$ _____ (Scope of Work attached)
- SERVICE CONTRACT(competitive solicitation; services by federal/state/local govt. or state-funded university) (Scope of Work attached)
- MOA / MOU (exchange of services only - no payment for services) - Scope of Work attached
- GRANT CONTRACT (Grant application issued by DENR or grant awarded through DENR - Grant application & Responses attached)
- PERSONAL SERVICE (INDIVIDUAL ONLY) Form 319 / Vita or Resume / Unique Qualifications Statement & Scope of Work attached
- CONSULTANT CONTRACT (DPS solicits approval from GOVERNOR'S OFFICE & DOA P&C) - Scope of Work attached
- AMENDMENT (CONTRACT NO. required: S07000)
For increased funding amendments - Form 6000 & 6100 required) (For no cost time extensions - Form 6100 submitted to DPS only)

(Explanation required why increase in funding is necessary): Town has acquired proposed properties through donation and would like to use the extra monies previously needed for acquisition for improvements to the access site.

BRIEF TITLE / PURPOSE OF CONTRACT: Henderson Blvd. Access Acquisition and Parking

JUSTIFICATION OF NEED FOR CONTRACT: Provide funds to local government for creation of public beach access

WHY WORK CANNOT BE PERFORMED WITHIN DENR: N/A

STATE / LOCAL / FEDERAL AGENCY OR STATE-FUNDED UNIVERSITY CONTACTED BUT UNABLE TO PROVIDE SERVICE

AGENCY / UNIVERSITY: _____

CONTACT NAME: _____ PHONE NO: _____

AGENCY / UNIVERSITY: _____

CONTACT NAME: _____ PHONE NO: _____

FEDERAL AND/OR STATE REGULATIONS / CITATIONS APPLY: YES NO

LIST OR PROVIDE AS ATTACHMENT: _____

SOURCE OF FUNDS				PROPOSED ENCUMBRANCE FOR THIS REQUEST:					
Appropriations:	\$			FY	-- \$	Co:	Acct:	Center:	
Receipts:	\$	400,000		FY	06-07 -- \$	400,000.00	Co: 1604	Acct: 536993	Center:
Federal Grant:	\$			FY	-- \$		Co:	Acct:	Center:
Grant No:	S07000	CFDA No.		FY	-- \$		Co:	Acct:	Center:
Grant Expiration Date	31-Dec-08			FY	-- \$		Co:	Acct:	Center:
Original Funding Available	\$			FY	-- \$		Co:	Acct:	Center:
Obligated / Approved to Date:	\$			<u>Mandatory</u>					
Contractor	\$	119,730	(Cash)	Budget Officer's					
Match:	\$	15,270	(In-kind)	Signature: _____ DATE: _____					
Other:	\$		Specify:						

CONTRACT INFORMATION (check one):

- Contractor Known - Form 6100 Attached
- Contractor Unknown

Maureen Will Phone No: 252-808-2808
 Contract Administrator Signature Typed or Printed Name E-mail: Maureen.Will@ncmail.net

(Certifies above request & information is in compliance with all State / Federal / local requirements & policies & DENR's strategic goals.)

SUBMITTED TO CONTRACT COORDINATOR: 4/25/08 (date)

Returned to Contract Administrator / Date: _____ Comments: _____

Forwarded as checked (x) below / Date: _____

MANDATORY REVIEWS (Per Requirements Below)

DIVISION DIRECTOR [MUST REVIEW ALL REQUESTS]: *(Director certifies that the above request & information is in compliance with all State / Federal/ local requirements & policies & DENR's strategic goals.)*

DIRECTOR'S SIGNATURE: *Jane H. Grayson* Received Date: 04/25/08

APPROVED / Date: _____ Comments: _____

DENIED / Date: _____

FORWARDED TO: _____ Forwarded Date: _____

BPA: (Reviews: Personal Service contract requests; All Requests Over \$25K; Amendments to increase funding)

DIRECTOR'S SIGNATURE: _____ Received Date: _____

APPROVED / Date: _____ Comments: _____

DENIED / Date: _____

FORWARDED TO: _____ Forwarded Date: _____

HUMAN RESOURCES: (Reviews: Personal Service contract requests; hourly rate & for conflicts in personnel policy)

REVIEWER'S SIGNATURE: _____ Received Date: _____

HR - Check pertinent item (s) below:

<input type="checkbox"/>	Personal Service Contract Appropriate - Contract Request Approved
<input type="checkbox"/>	Dual Employment Required (Current State Employee) - Contract Request Denied
<input type="checkbox"/>	Temporary Position Required - Contract Request Denied

COMMENTS: _____

FORWARDED TO: _____ Forwarded Date: _____

DENR ITS: (Reviews: Requests pertaining to IT services; consistent with state / DENR policies.)

REVIEWER'S SIGNATURE: _____ Received Date: _____

APPROVED / Date: _____ Comments: _____

DENIED / Date: _____

FORWARDED TO: _____ Forwarded Date: _____

PURCHASE AND SERVICES: (Processes all requests for contractual-type services & executes all contractual documents)

SECTION CHIEF SIGNATURE: _____ Received Date: _____

FORWARDED TO: _____ Forwarded Date: _____

POLICY ANALYST SIGNATURE: _____ Received Date: _____

APPROVED / Date: _____ Comments: _____

DENIED / Date: _____

FORWARDED TO: _____ Forwarded Date: _____

DPS PURCHASING AGENT: _____ Received Date: _____



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

MEMORANDUM

TO: John Thayer, Manager of Planning and Public Access Grants
FROM: Maureen Meehan Will, Morehead City District Planner
DATE: April 24, 2008
RE: Town of Atlantic Beach Access Contract (S07000) Amendment Request

The Town of Atlantic Beach is requesting an amendment to their Henderson Boulevard Beach Access Grant Contract. Originally, the contract was for acquisition only. Since the execution of the contract, the town has received two (2) the proposed properties through donation, therefore there is \$136,748 in grant money remaining. The town has also requested an extension in time to complete the on site improvements.

The town is requesting to use the remaining grant monies to add improvements to the site. The improvements will include: a covered gazebo, handicap accessible deck and ramp to the beach, a bathhouse with a septic system (if permitted by variance), an emergency vehicle access way, and parking including landscaping (both on-site and along Henderson Blvd.).

Attached you will find a copy of a letter from Landin Holland, acting Town Planner, and Jessica Fiester, Planning Director, requesting the amendments outlined above. In addition, I have attached an updated 'Attachment D', with cross-out or underline where changes have been made to the original contract language.

I recommend that the following amendments be made to the Town of Atlantic Beach Access Contract S07000:

- **6 month time extension – Period 2 and Period 3 activities will be completed in this timeframe**
- Construction/Addition of the following amenities to the Henderson Boulevard Access site:
 - Covered Gazebo and Handicap Accessible Ramp and Deck (\$49,000)
 - Bathhouse including Septic System (\$62,000)
 - Parking and Landscaping (\$57,728)

Please direct this request to Jane Smith in the contracts office, she is familiar with the project and proposed amendment.

If you have any questions related to these amendments, please do not hesitate to contact me.

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



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APR 24 2008

Morehead City DCM

TOWN OF ATLANTIC BEACH

125 WEST FORT MACON ROAD
ATLANTIC BEACH, NORTH CAROLINA

April 24, 2008

Maureen Will, District Planner
NC Division of Coastal Management
400 Commerce Ave.
Morehead City, NC 28557

Dear Mrs. Will:

The Town of Atlantic Beach is formally requesting an extension to public access grant contract #SO7000 for Ocean Drive, also referred to as the Henderson Boulevard Beach access or the Tom Doe Memorial Beach Access.

This project has experienced several setbacks due to turnover in Town leadership, management and staff. Additionally, the project has been delayed due to the fact that the original grant was for land acquisition, and the Town was fortunate enough to have a portion of the land donated, leaving additional funding to be used for improvements that were not initially scheduled as part of the contract.

The Town made the decision to request funding to be used for improvements and requested a budget amendment. Approximately seven months time elapsed in the interim while waiting for notification to proceed. The most recently elected Town Council made a budget amendment allowing the Town to proceed. At this point in time, the Town has requested a variance to allow a public bathhouse in the CAMA setback. This variance will be heard by the Coastal Resources Commission and its quarterly meeting on May 22 and 23, 2008.

At this point the Town is waiting to hear the results of the variance before moving forward. If this should occur, the Town will be moving rapidly with the establishment of 50 public parking spaces, handicap accessibility, emergency access and the placement of both the planned bathhouse and gazebo. It is anticipated this work would be complete by December 31, 2008. The bathhouse could be completed as early as June 2008.

Please contact me if I can provide you with further information. My number is (252) 726-4456.

Best regards,

Jessica A. Fiester
Director of Planning and Zoning

Public Beach and Waterfront Access Grant Progress Report

Project Name: Tom Doe Memorial Beach Access **Contract Number:** SO7000
Locality: Town of Atlantic Beach **Local Address:** PO Box 10, Atlantic Beach, NC 28512
Total Project Cost: \$ 535,000 **Grant Amount:** \$400,000 **Local Cash Match:** \$ 133,750

Signature:  **Title:** Jessica Fiestler, Planning Director **Date:** April 23, 2008

Project Type & Description:	Work Completed (Description & %)	Remaining Work	Grant Amount Expended to Date	Local \$ Match Expended /Date	Other Amount Expended to Date
Land acquisition	Completed 100%	None	\$263,252	\$87,750	***\$688,991.50 donation
Bathroom	Pending Variance	Construction of bathroom			
Septic System	Pending Variance	Installation of septic system			
Gazebo/Handicap Access	Pending Variance	Installation of gazebo and handicap parking spaces			
Parking/Landscaping	Minor landscaping completed, plans for handicap parking completed, Hatteras ramp installed	Painting of parks and installation of additional landscaping			\$4,279.46



North Carolina Department of Environment and Natural Resources

DIVISION OF PURCHASE AND SERVICES

Michael F. Easley, Governor

Michael G. Bryant, Director

William G. Ross, Jr., Secretary

August 7, 2007

AMENDMENT NO. 1

AMENDMENT TO CONTRACT NUMBER S07000 BETWEEN TOWN OF ATLANTIC BEACH AND THE

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Pursuant to paragraph entitled "Amendment" under subheading "Miscellaneous" on page 4 of 5 in Attachment A of Contract Number S07000, the Department of Environment and Natural Resources would like to amend said contract to change Attachment D from a project description of "Acquisition of an oceanfront parcel of land" to "Acquisition and construction of improvements to an oceanfront parcel of land". Attachment A to this amendment replaces Attachment D of the original contract. This amendment is being issued to recognize the donation of property for this purpose, thereby allowing funding previously scheduled for acquisition, to be used for construction of improvements to the land.

It is the intent of this amendment to address the provision(s) noted only, and in no way should this amendment be construed to further modify this contract. All other terms and conditions remain the same.

Please indicate acceptance by your signature below.

Approved:

Town of Atlantic Beach

Michael G. Bryant, DENR

Return four (4) original-signed documents to the address specified below for execution by the Department:

DENR Division of Purchase & Services
Attn: Jane Q. Smith
1605 Mail Service Center
Raleigh NC 27699-1605

Amendment No. 1 when fully executed by all parties will be forwarded to the Contractor.

cc: Ronda Bennett, Division of Coastal Management
DENR Office of the Controller
Jane Smith

Enclosed: Amended Attachment D

ORIGINAL

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1605 Mail Service Center, Raleigh, North Carolina 27699-1605
Phone: 919-733-9746 \ FAX: 919-715-0684 \ Internet: www.admin.enr.state.nc.us/purchase/
An Equal Opportunity / Affirmative Action Employer - 50 % Recycled \ 10 % Post Consumer Paper

One
North Carolina
Naturally



PUBLIC BEACH AND
COASTAL WATERFRONT
ACCESS PROGRAM

NC COASTAL MANAGEMENT PROGRAM

HENDERSON BLVD NEIGHBORHOOD BEACH ACCESS

F/Y 2006-2007

North Carolina Public Beach and Coastal Waterfront Access Program

Site Location/ Address: Intersection of Ocean Boulevard and
Henderson Boulevard, Atlantic Beach, Carteret County, NC

Local Government: Town of Atlantic Beach

Federal ID #: 56-6009928

Local Administrator of this Project:

Landin Holland, Planner
PO Box 10, 125 W Ft. Macon Rd
Atlantic Beach, NC 28512
252-726-4456 (phone)
252-726-7043 (fax)
planner@atlanticbeach-nc.com (email)

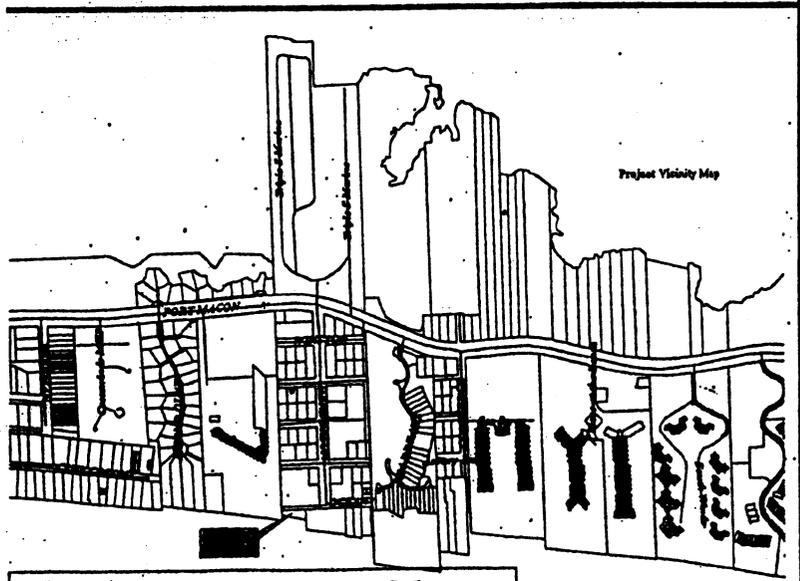
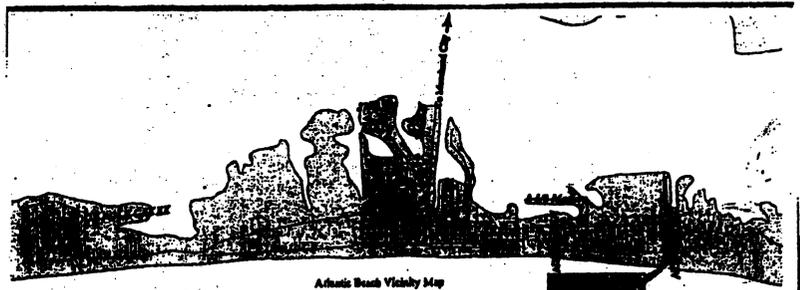
Project Description:

Acquisition and construction of improvements to
an oceanfront parcel of land.

Site Description:

Vacant oceanfront property with approximate
dimensions of 150'x27'x150'x62' just west of the
former Triple S Pier location.

A. REGIONAL LOCATION MAP



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Map 1: Regional Location Map

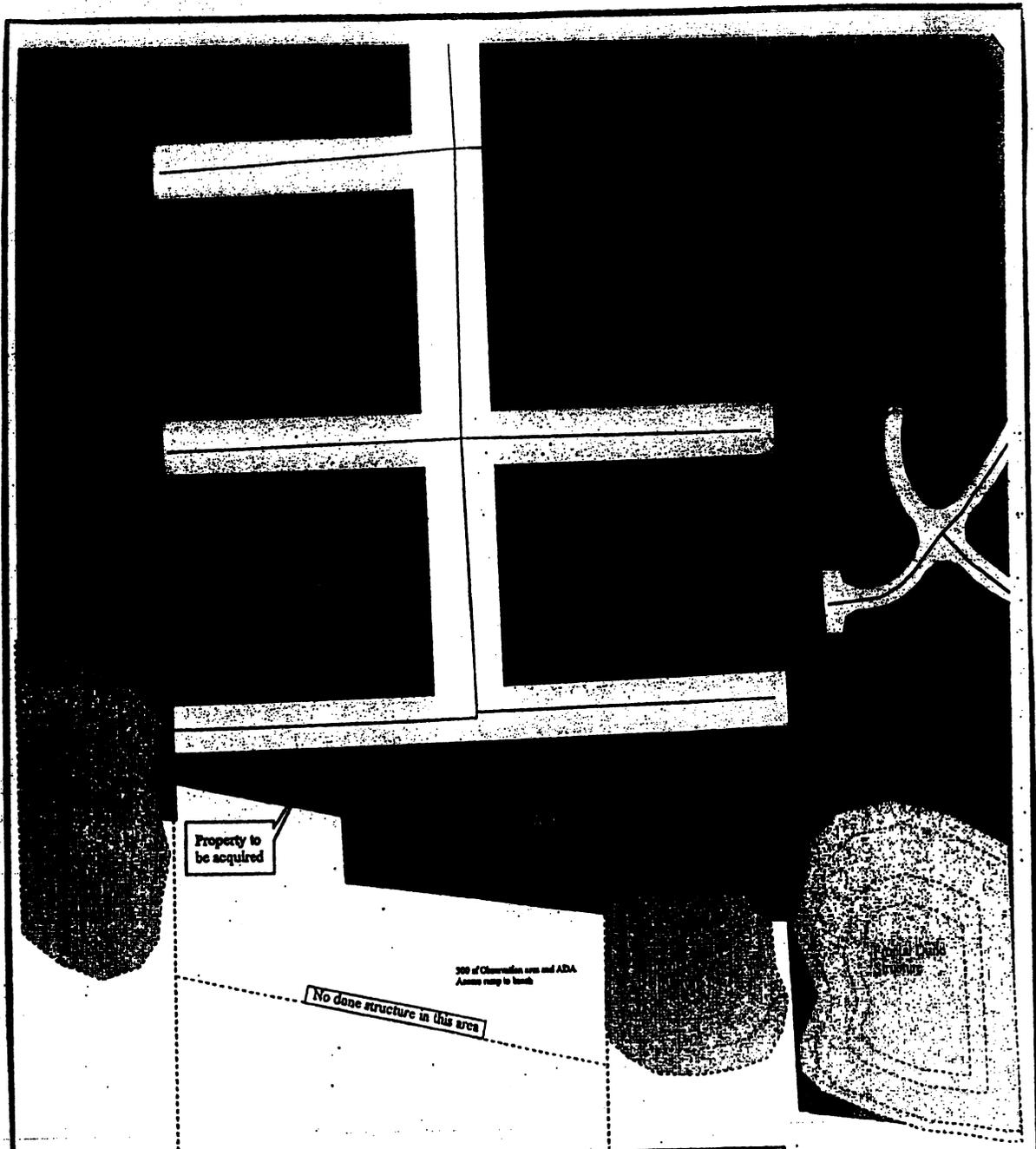
Nature of Request: CAMA Grant Final-Application request for land acquisition and beach access.

Applicant: Town of Atlantic Beach
Property Address: End of Henderson Blvd.
Parcel ID #: 08520-72-0231
Zoning District: RA-3V Residential

SCALE
1" = 1000'
Map created by Atlantic Beach
Planning & Inspections Department

Date:
April 24, 2006

B. VICINITY MAP



Map 2: Detailed Vicinity Map

Nature of Request: CAMA Grant Pre-Application request for land acquisition and beach access.

Applicant: Town of Atlantic Beach

Property Address: End of Henderson Blvd.

Parcel ID #: 6385 20-72-6231

Zoning District: RA-3V Residential

SCALE
150 75 0 150 Feet

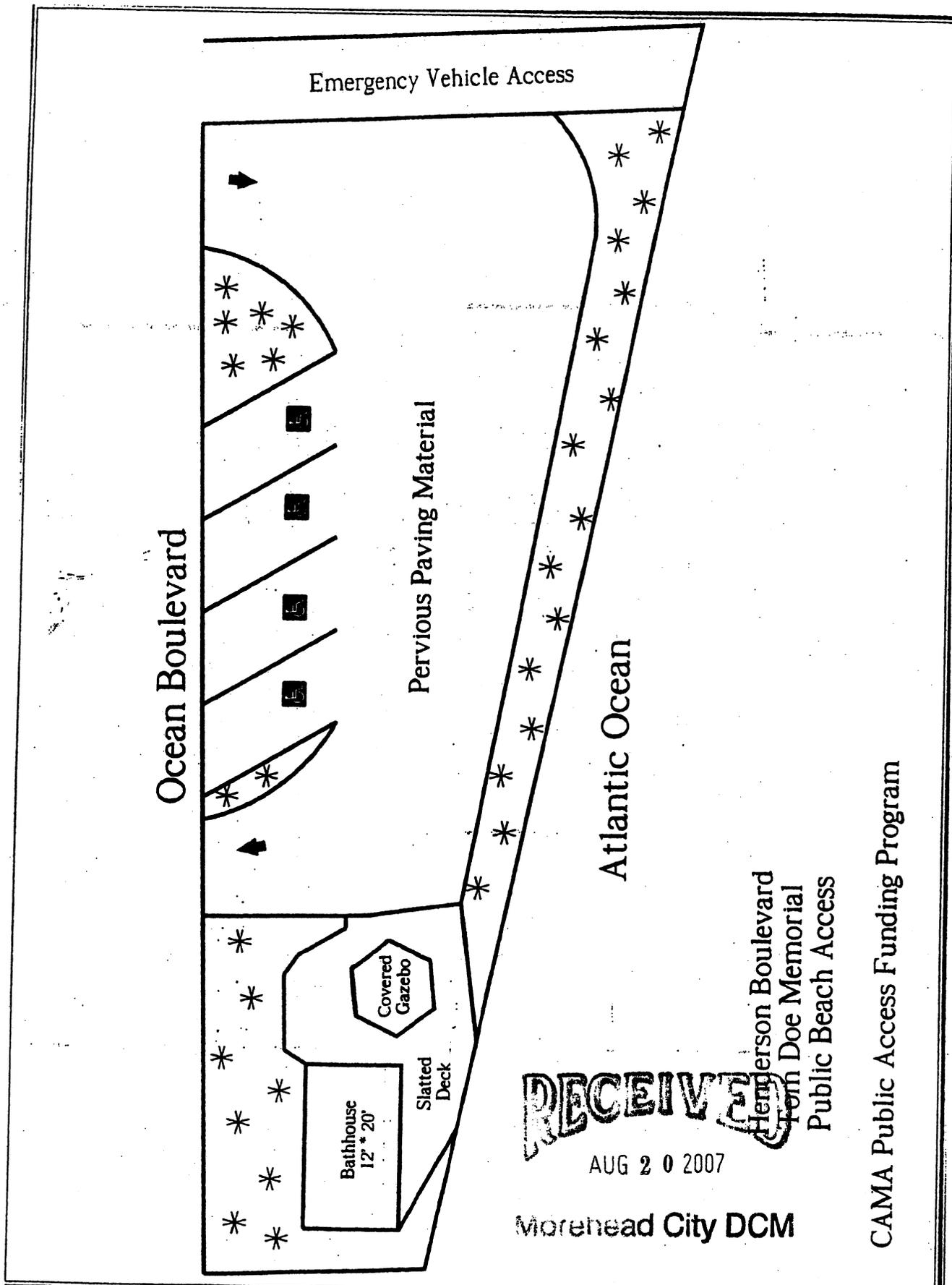


Map created by Atlantic Beach
Planning & Inspections Department



Date:
April 26, 2006

C. PROJECT SITE PLAN



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Hempherson Boulevard
Norm Doe Memorial
Public Beach Access

CAMA Public Access Funding Program

39486

48263

D. PROJECT SUMMARY BUDGET Adjustments to the budget will require approval by the Contract Administrator.

	Grant Assistance Requested	Local Cash Contribution	Local In-Kind Contribution	TOTAL
Land Acquisition Costs	\$ 263,252	\$ 87,751	→ 33%	\$ 351,003
Permit and Design Fees:				
<u>CAMA Permit</u>			<u>\$ 400</u>	<u>\$ 400</u>
Site Improvement Costs:				
Materials and Labor				
<u>Bathhouse with Septic</u>	<u>\$ 49,901</u>	<u>\$ 12,100</u>		<u>\$62,000</u>
<u>Gazebo, Deck, and Ramp</u>	<u>\$40,151</u>	<u>\$8,850</u>		<u>\$49,000</u>
<u>Parking with Landscaping</u>	<u>\$46,696</u>	<u>\$11,031</u>		<u>\$57,727</u>
Local Administrative Costs: In-kind				
Planning Director			\$3,860	\$3,860
Public Services Director			\$2,150	\$2,150
Town Manager			\$2,460	\$2,460
Town Attorney			\$6,400	\$6,400
TOTAL BUDGET	\$ 400,000	\$ 119,730	\$15,270	\$ 535,000

E. PROJECT TIMELINE

Below is the Project Timeline for improvements under the grant award. Progress monitoring will occur at 6 month intervals for the duration of the 18 month contract. Adjustments to the timeline will require approval by the Contract Administrator.

This form only illustrates grant and local cash match totals. Non-cash match is not illustrated or represented in this attachment, however it must still be reported

Note: The final quarter includes a holdback of 10% of the total grant award, which is retained until the Contract Administrator receives the closeout packet.

Grant: \$400,000

Cash Match: \$119,730

Total Cash: \$519,730

Non-cash Match: \$15,270

Total Project: \$535,000

ACTIVITIES TO BE COMPLETED EACH QUARTER

<p><1/2% of total work to be completed</p> <hr/> <p>Grant funds to be spent</p> <p>\$0</p> <hr/> <p>Local funds to be spent</p> <p>\$0</p>	<p>Period 1</p>
<p>75% of total work to be completed</p> <hr/> <p>Grant funds to be spent</p> <p>\$270,068</p> <hr/> <p>Local funds to be spent</p> <p>\$119,730</p>	<p>Period 2</p> <ul style="list-style-type: none"> • Acquisition of property • <u>Permitting</u> • <u>Construction of on-site improvements</u>
<p>25% of total work to be completed</p> <hr/> <p>Grant funds to be spent</p> <p>\$129,932</p> <hr/> <p>Local funds to be spent</p> <p>\$0</p>	<p>Period 3</p> <ul style="list-style-type: none"> • <u>Complete construction</u> • Prepare and submit materials for closeout

F. SIGNATURE

Signature: _____
Landin Holland, Planner

Date: _____

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TOWN OF ATLANTIC BEACH DEC 18 2006

125 WEST FORT MACON RD Morehead City DCM
ATLANTIC BEACH, NORTH CAROLINA
PHONE (252) 726-4456 FAX (252) 727-7043

December 14, 2006

Maureen Will, District Planner
NC Division of Coastal Management
400 Commerce Ave.
Morehead City, NC 28557

Dear Mrs. Will:

The Town of Atlantic Beach is moving forward with the establishment of the Henderson Boulevard Parking and Beach Access Project funded through NCDQM in FY06. Currently, the town has acquired all land outlined in the original grant application, and is now exploring opportunities regarding improvements to the property. Subsequent to establishing the current grant agreement, the town was informed that two of the properties targeted for acquisition would be donated to the town. This has resulted in a cost savings to the town in relation to the project budget outlined in the town's current grant agreement. Due to the donation of land, the town has \$164,727.50 in grant funds remaining.

In order to make use of the remaining funds the town would like to revise the project scope of work to include additional improvements. The proposed improvements will include: a covered gazebo, a bathhouse with septic system, a handicap accessible beach access, parking area with landscaping, an emergency vehicle access, and approximately fifty parking stalls (to be located along Henderson Boulevard). Upon completion of these improvements the town would like to establish the Henderson Street project as a CAMA Regional Public Access Site.

The town has established a revised the project budget that includes these additional improvements. The following provides a summary of all expenditures required to complete the project under the revised scope of work:

Land Acquisition:	\$351,002.50
Bathhouse:	\$ 42,400.00
Septic System:	\$ 10,000.00
Gazebo/Handicap Access:	\$ 44,000.00
<u>Parking/Landscaping:</u>	<u>\$ 72,327.50</u>
Total:	\$519,730.00
<u>In-Kind:</u>	<u>\$ 15,270.00</u>
Total Project Cost:	\$535,000.00

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for and secure a Major Variance from CAMA. This process can take up to four months to complete; therefore, the project is currently at a standstill. As noted above, the land has been acquired, and all documentation regarding this transaction has been attached. Additionally, I have attached the documentation required to requisition the grant funds expended by the town to acquire the Henderson Street Property.

We will be compiling the information necessary to submit a major variance application in January. Please review this request for a change in the existing scope of work to ensure that the proposed project will be eligible under this current grant. If you have any questions or concerns regarding this request, or the attached requisition please feel free to contact me.

Sincerely,



Chuck Cooper
Town Manager



Landin Holland
Planner

NC COASTAL RESOURCES COMMISSION (CRC)

March 27-28, 2008

Clarion Oceanfront

Kill Devil Hills, NC

Present CRC Members

Bob Emory, Chairman
Doug Langford, Vice Chair

James Leutze	Wayland Sermons
Chuck Bissette	Melvin Shepard
Renee Cahoon	Joan Weld
Charles Elam	Bob Wilson
Joseph Gore	Lee Wynns
Jerry Old	

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair
Penny Tysinger, Co-Chair

Deborah Anderson	Lee Padrick
Bert Banks	W. Burch Perry
Randy Cahoon	Spencer Rogers
Carlton Davenport	Frank Rush
Eddy Davis	Robert Shupe
Anne Deaton	Harry Simmons
William Gardner	Lester Simpson
Renee Gledhill-Earley	Ray Sturza
Judy Hills	Tim Tabak
Al Hodge	Joy Wayman
Joe Lassiter	Beans Weatherly
Travis Marshall	David Weaver
Gary McGee	William Wescott
Christine Mele	Rhett White
Wayne Mobley (Alan Saunders)	Traci White
J. Michael Moore	
William Morrison	

Present Attorney General's Office Members

Francis Crawley
Allen Jernigan
Christine Goebel
Amanda Little
Jill Weiss

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Bill Peele was absent. Renee Cahoon stated that she has one conflict. Based upon this roll call, Chairman Emory declared a Quorum.

MINUTES

Jim Leutze made a motion to approve the January 2008 CRC meeting minutes. Joseph Gore seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Sermons, Cahoon, Weld, Elam) (Wilson abstained) (Old absent for vote).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, gave the following report.

Sandbag update

We are rapidly approaching the May 1 deadline for removal of a number of sandbag structures on our coast. Beginning in late April or early May, DCM staff will begin to inventory sandbag structures, compare them with our database to see when they were installed, and begin to determine which ones will need to be removed. As a reminder, structures that are covered with sand and stable, natural vegetation will be allowed to remain in place until the sandbags are uncovered by a future storm event. Once staff determines which sandbags are subject to removal, we will begin to prioritize them based on how long they have been in place, condition of the bags, and whether they are an impediment to the public's use of the beach. We will use this prioritization to begin notifying property owners that their sandbags must be removed.

Rule updates

Hopefully you noticed the rule updates in your packets for this meeting. This is something we plan to include for you at every meeting, so each of you will have a summary of where we are with regard to rule changes.

CICEET grant

DCM and the North Carolina National Estuarine Research Reserve (NCNERR) in partnership with the NOAA Center for Coastal Fisheries and Habitat Research, UNC Institute of Marine Sciences, and UNC – Wilmington have recently been awarded a grant from the Cooperative Institute for Coastal and Estuarine Environmental Technology to further study estuarine shoreline stabilization and their consequences. The objectives of this project are to 1) conduct research to quantify ecosystem service tradeoffs as a consequence of habitat alteration, 2) design and install demonstration projects utilizing alternative shoreline stabilization approaches for research and education purposes, 3) develop an approach for evaluating ecological and socioeconomic costs and benefits of shoreline erosion and protection alternatives and 4) develop effective communication methods for exchanging information between scientists, regulatory

agencies, the business community, politicians and other relevant stakeholders in regard to short-term and long-term cost-benefits of shoreline stabilization plans. The project is planned to begin fall/winter 2008.

Walter B. Jones awards

Four North Carolinians were honored this year as recipients of the 2008 Walter B. Jones Awards and NOAA Awards for Excellence in Coastal and Ocean Management. These biennial awards recognize coastal stewards, graduate students, state and local government, and non-governmental organizations for their outstanding efforts in coastal and ocean management. The award is named for U.S. Rep. Walter B. Jones Sr. As chairman of the House Merchant Marine and Fisheries Committee; Rep. Jones supported the National Marine Fisheries Service and coastal zone management.

The winners from North Carolina are:

Walter B. Jones Awards:

- *Excellence in Local Government: Gregory "Rudi" Rudolph, Carteret County, N.C., Shore Protection Office* -- Under Rudi's leadership since 2001, the office has provided many services to constituents in Carteret County, and through its demonstration of innovative programs, the agency has been a resource for North Carolina and the nation. The county's beach fill projects are undertaken in a positive and professional manner, using environmentally sensitive methods. It is through the close coordination among all levels of government and Rudi's invaluable knowledge of coastal processes that so much has been accomplished in this county.
- *Excellence in Coastal and Marine Graduate Study: Anirudh Ullal, North Carolina State University.* -- Now a post-doctoral associate at Duke University, Ullal was nominated by Ed Noga of NC State for groundbreaking research into antibiotic properties in channel catfish. The findings suggest this hemoglobin antibiotic defense might be widespread in all vertebrates — from fish to mammals. Although this research is not traditionally associated with environmental based studies, these types of molecular approaches are important to the scientific community.
- *Heather Ward, East Carolina University* -- In the ECU Coastal Resource Management Program, Heather's studies include interpreting hurricane graffiti, emergency communication and risk perceptions, and media coverage of climate change research. She is researching how the public, scientists and policy-makers talk about the coast and its various challenges and opportunities. She is especially concerned with making sure that the views of those who live and work at the coast are heard by coastal managers and scientists.

NOAA Excellence Awards:

- *Excellence in Business Leadership: J&B Aquafood, North Carolina* -- Jim and Bonnie Swartzenberg of Onslow County were honored for their leadership in the aquaculture industry, as well as in research and conservation efforts, including founding the N.C. Shellfish Growers Association. Jim and Bonnie's innovative approach to their company is a great example of how a profitable business can be coupled with stewardship of important coastal resources.

A ceremony to honor the award winners was held Feb. 27 in Washington, D.C.

New CRAC member

Gary McGee is the new CRAC representative from Currituck County, replacing Ernie Bowden.

Staff news

Frank Crawley will fill in for Jill Hickey as CRC counsel for this meeting. Frank serves as counsel for the Marine Fisheries and Environmental Management Commissions.

Donna LeBlanc is the new Administrative Assistant for the Division in our Wilmington office. Previously, Donna was employed with Brunswick County's planning department.

Following a reorganization of the coastal reserve staff, Education Specialist Amy Sauls has left the Rachel Carson Coastal Reserve office in Beaufort.

Two new babies have been born to Raleigh office staff:

Coastal and Ocean Policy Analyst Scott Geis and wife Gina welcomed their son Aidan on March 4.

Coastal Hazards Specialist Jeff Warren and his wife Missy welcomed daughter Margaret Evelyn on March 12.

CHAIRMAN'S COMMENTS

Chairman Emory stated that there would be some guests arriving later in the morning from Indonesia. They are part of a program in Indonesia that is similar to the NC Sea Grant Program. They are in the United States looking at coastal programs and they wanted to come to the coast of North Carolina and observe how the Coastal Resources Commission operates.

Chairman Emory further stated that he attended the Coastal Resources Advisory Council meeting yesterday. At the last CRC meeting the Commissioners decided to delegate a number of things to the CRAC prior to them coming to the Commission. That process began yesterday and it was a lively meeting. He encouraged Commissioners that can arrive on Wednesday afternoon to attend the CRAC meeting, as this is where the initial discussion on a lot of issues will take place. The CRC room arrangement is also different for this meeting. One of the suggestions of the meeting format subcommittee was to place the CRAC members where they are in a better position to participate in discussions. Later in the meeting we will hear the recommendations from the meeting structure subcommittee, this will include the deactivation of the two standing committees. The CRAC will have a full voice on agenda items and discussions other than the variances and contested cases. The votes will be Commission's votes, but the CRAC has the opportunity to participate and this is different than what we have done in the past.

This will be the year of the sandbag. Jim Gregson described the step-wise approach that the Division of Coastal Management is taking on enforcement actions on sandbags.

CRAC Report

Dara Royal, CRAC Chair, gave the Coastal Resources Advisory Council Report. (See attached minutes).

The CRC took the following action:

Doug Langford made a motion to approve certification of the Hyde County Land Use Plan. Joseph Gore seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Renee Cahoon made a motion directing staff to develop rule language for the CRAC to review in May for the purpose of preserving public access through rules or permit conditions. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Jim Leutze made a motion directing staff to develop rule language amending the pier house rules to allow for vertical expansion for the CRC to review. Charles Elam seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

PRESENTATIONS

Coastal Stormwater Rules Update – Tom Reeder, DWQ

Tom Reeder gave an update of the EMC revision of the coastal stormwater rules. Mr. Reeder stated that the revisions were adopted by the EMC on January 10, 2008. These amendments went to Rules Review Commission on February 21. The RRC issued three minor objections dealing with ambiguity and terminology. The EMC adopted revisions to their adoptions and the rules went back to RRC on March 20 and were approved. These rules will now go forward for legislative review in the short session of 2008. There is nothing now that can deter these rules from being reviewed by the Legislature.

Mr. Reeder stated that G.S. §143-214.7 should be looked at if looking at this rule. This is a General Statute that the General Assembly adopted a number of years ago and basically regulates the EMC's stormwater programs. This Statute says that the EMC is supposed to continually monitor water quality and revise the stormwater rules as necessary to protect the water quality in North Carolina. In the next paragraph of the Statute they actually establish a priority order for protection of the waters of North Carolina. The number one priority waters in N.C. are classified shellfishing waters.

Mr. Reeder highlighted this rule change. If you are within a half of a mile of shellfishing waters, the low-density threshold would be lowered to twelve percent. This means if you go above twelve percent impervious surface density on your lot, you would have to implement structural stormwater controls on the lot. These are the same requirements that are already in place in three counties in N.C. (Brunswick, New Hanover and Onslow) as a result of Phase II requirements that went into place last July. If you are outside of the half of a mile of shellfishing waters, the low-density threshold is lowered to twenty-four percent and you have to treat and control the first inch and a half of rain. About ninety percent of the coast is outside a half of a mile of

shellfishing waters. A vast majority of the twenty CAMA counties would be under the low-density requirements.

The most controversial aspect of this rulemaking has been a proposal to expand the setback from thirty to fifty feet, the prohibition of wetlands from future impervious surface calculations, and lowering the threshold for a permit to 10,000 square feet. The compromise the EMC came up with on the setback issue was to leave the thirty-foot setback in place for redevelopment. If it is new development, the setback from surface waters will be expanded to fifty feet. Unless you are residential development of greater than an acre or non-residential development of greater than 10,000 square feet, this setback does not come into play. When the rules went out to public notice, the EMC proposed to lower the threshold for coverage from one acre to 10,000 square feet for all development in the twenty CAMA counties. The EMC lowered the threshold for coverage for a stormwater permit down to 10,000 square feet for non-residential development, but would leave the threshold at an acre for residential development. The EMC still wanted residential projects that disturb more than 10,000 square feet, but less than an acre to do something to try to control and treat their stormwater runoff on site. For these residential projects you do not have to get a stormwater permit, but you will be required to implement one of the following measures: (1) rain cisterns (collects rooftop runoff for reuse) and permeable pavement for patios; (2) construct a rain garden (direct rooftop runoff into the rain garden) and use permeable pavement; or (3) any other BMP (like on-site infiltration).

The fifty-foot buffer is not a “no touch” buffer. Nothing in these amendments limit what can be built. The low-density threshold is not a development cap. Rain cisterns are not mandatory; they are just an option to consider. NCDOT is not exempted from stormwater controls. There are thirteen full-time staff at DWQ that scrutinize and permit NCDOT activities. These amendments will not make lots unbuildable. Lots less than 10,000 square feet will not be affected. Lots in subdivisions with a permit will not be affected. Three vesting provisions cover all rules that are adopted by the EMC. (1) DWQ stormwater redevelopment provision that allows a home that is destroyed by a fire or hurricane to be rebuilt as it was previously. (2) Statutory vested rights and (3) “commons law” vested rights apply to everything that the EMC adopts. EMC does not go past these vesting provisions because the General Assembly has told the EMC they do not have the statutory authority to put exceptions and exclusions into their rules. Mr. Reeder stated that he fully expects a large number of exclusions, exemptions and vesting provisions to be added to these rules by the General Assembly. If local governments want to take over the stormwater program, they always have that option under the universal stormwater management program. A local government can adopt this program and take over the program that will allow them to not be affected by this rule change.

All information about this rule change is available at <http://h2o.enr.state.nc.us/su/coastal.htm>

Coastal Reserve Update (CRC 08-13)

Rebecca Ellin, Manager of the NC Coastal Reserve Program and NCNERR, stated this is one of the three sections within the Division of Coastal Management. The NC Coastal Reserve was formally established by the Legislature in 1989 in an effort to form a comprehensive Coastal Management program within North Carolina. Within the program there are 10 coastal reserves. Four of these components comprise the North Carolina Estuarine Research Reserve (NCNERR). This is one of 27 reserves within the system of protected areas located around the country. This program is set up as a state and federal partnership between NOAA and a state agency (DCM).

Ms. Ellin discussed the mission and objectives of the Reserve. She discussed staffing, organizational chart, and operating budget of the Coastal Reserve Program.

Ms. Ellin highlighted accomplishments of 2007. The system-wide monitoring program entered its thirteenth year. This is a water quality monitoring program that is implemented at our Zeke's and Masonboro Island Reserves in the South. We measure water quality parameters to make sure we can assess short-term variability and long-term change in the systems there. We recently completed mapping habitats at the four NCNERR components. With support from the Albemarle/Pamlico Natural Estuarine Program we were able to install a first in a series of tide gates at our Buckridge Coastal Reserve. The tide gates help restore the hydrologic function to the Reserve and help prevent salt water intrusion. We have recently submitted a grant to the Clean Water Management Trust Fund to get additional support to put nine more of these in. Another project we implemented this past year in conjunction with the University of North Carolina at Wilmington is a visitor use survey. We also celebrated the completion of the construction of the boardwalk at the Rachel Carson Reserve. We are hoping to showcase this to the CRC on one of the field trips we have planned. It is a green boardwalk which means that it incorporates composite materials in the decking and the railings. This was one of the opportunities to we are able to promote good environmental stewardship by using recycled materials. Ms. Ellin further stated that the education programs reached over 3,500 teachers, students, coastal decision makers, and general public members last year. The Reserve has also engaged in a variety of activities to support the CHPP. SAV was mapped at the Rachel Carson sight. Mapping was attempted at Masonboro, but none was located. There are a lot of CHPP principles and habitats into our education programs and a variety of CHPP related workshops have been conducted.

In 2008 we are going to continue a lot of the activities we accomplished a 2007, but we are also going to embark on new activities. Development and implementation of a visitor education plan is one of the first things we are going to do. This is underway and will entail increasing awareness of the Reserve (why the sites are protected and what the appropriate uses are). This will be done through a series of brochures, signage on the sites and presentations to the community. Also in 2008, research on estuarine shoreline stabilization. Comparative research will also be done between natural and restored salt marshes to determine the efficacy of restoration techniques and monitor the impacts of sea level rise. We will be offering new educational programming including redesigned teacher workshops, a junior naturalist program for middle school children and offer some pre-school and elementary school activities. We are excited about formalizing and expanding our volunteer program. The Reserve relies heavily on volunteers. A newly redesigned website as well as wide circulation of our newsletter "The Tidal Flat" will be used to raise the awareness of the Reserve. Finally, one of the remaining projects being worked on in 2008 will be acquiring a parcel at Masonboro Island.

At future Commission meetings, the Reserve Program Coordinators will be on the agenda to provide a more in depth look at our research, education and stewardship programs. Additionally, we will focus on specific projects that are relevant to the issues the CRC is discussing. The CRC and CRAC are an avenue to raise the visibility of the Reserve.

Recommendations from Variance Procedures Subcommittee (CRC 08-15)

Lee Wynns stated the Rules Review Commission had an objection to 07J .0701(Variance Petitions). This objection stated that this rule quotes the NC General Statutes concerning quasi-

judicial meetings. This rule now comes back to the CRC to re-start the rulemaking process. The subcommittee recommends the CRC remove the reference in the rule.

The Rules Review Commission approved 07J .0702 (Staff Review of Variance Petitions). However, more than ten members of the public wrote letters of objection to the RRC. We do not know what the objections are. Since these letters have been received, this rule must go through the legislative review process. The subcommittee recommends awaiting the outcome of the legislature's session in May.

The Rules Review Commission objected to 07J .0703 (Procedures for Deciding Variance Petitions). This objection stated that this rule also quotes the General Statutes. This rule also received ten letters of objection from the public. Staff requested the rule be returned to the CRC for further discussion. The subcommittee recommends deleting the language objected to by the RRC.

Mr. Wynns stated the subcommittee also discussed the proposal of when Staff and Petitioner agree on all four statutory criteria no oral presentation would be made. The subcommittee determined that there should not be anything to preclude oral presentations at the meeting. In the event Staff and Petitioner agree on all four criteria and agree to not make oral presentations, the CRC could vote on the variance if there were no questions.

Wayland Sermons made a motion to move forward with rulemaking on 7J .0701 and 7J .0703 adopting the recommendation of the Rules Review Commission to delete (g). Renee Cahoon seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Lee Wynns further stated the subcommittee was also asked to look at contested case proceedings. The subcommittee recommends (1) lessening the time allowed for presentations to ten minutes for the petitioner and for staff, (2) lessen the amount of time allowed for responses, (3) guide the Commissioners to be as succinct and direct as possible in their questions and comments and to consider limiting the number and length of comments from each Commissioner, (4) give the Commission a refresher on the typical components in a contested case file along with guidance on the most efficient ways to prepare for a contested case hearing and provide an index for easy reference, and (5) provide findings of fact and other summary documents in hard copy but all remaining documents electronically.

Bob Wilson asked about taking action on receiving the contested cases by CD or electronically. Chairman Emory stated that this would be discussed (paper versus electronic) more in depth later in the meeting. Bob Emory stated that the refresher course on contested cases would be at a future meeting as an agenda item.

Recommendations from Meetings Structure Subcommittee (CRC 08-16)

Jim Leutze stated the subcommittee was asked to look at changes to several procedures and some of these changes have been implemented at this meeting. Alternative meeting agendas, how to effectively incorporate the CRAC in the deliberations of the Commission, identify a process for developing CRC agendas, and explore the possibility of reducing the number of meetings per year.

A decision was made not to abolish the standing committees, however to keep them in case we need to go the committee structure we could do that. A problem arose as to what the other committee would do if only one committee was meeting. The option will be retained to use the committees when needed.

CRC agendas were discussed. At the January meeting there was recommendation to develop a process for adding future items to the agendas utilizing a set of criteria as well as a consensus of the Commission. The recommendation is the Executive Committee should meet at the conclusion of the CRC meeting to plan the next agenda. CRC members wishing to add items to future agendas should bring them to the Executive Committee meeting for their consideration.

We wanted to encourage and improve our ability to take advantage of the knowledge of the CRAC. The suggestion from the January planning session including having the CRAC screen issues before they come before the CRC and to have the CRAC hear the Land Use Plan reviews and make a recommendation regarding certification. The subcommittee's recommendation is to incorporate suggestions to have new issues initially run through CRAC. The Land Use Plans should be presented to the Advisory Council and the CRAC report will include a recommendation on certification. The layout of the CRC meeting room should be changed so the CRAC is seated at tables, jury-box style.

The subcommittee also discussed meeting frequency. As discussed in January, the amount of time spent on variances and contested cases was seen as impeding discussion on other substantive issues, however, it was recognized that the financial burden to the Division and workload placed on staff by meeting six times per year was too burdensome. Given the cost of CRC meetings and the amount of time needed to carry out the business of the Commission, there was not much difference between the costs associated with a one-day meeting and the usual 1 ½ days meetings. The recommendation of the subcommittee is to increase the efficiency by holding variance proceedings on Wednesday afternoon from 3:00 p.m. – 6:00 p.m. The CRAC can meet from 1:00 p.m. to 3:00 p.m. as to not be precluded from attending the variance hearings. It is recommended to decrease the number of CRC meetings to five per year by eliminating the January meeting. The option of a January meeting could be retained should a "called" meeting by the Chair be deemed necessary.

Wayland Sermons made a comment that the CRAC should screen issues prior to them coming to the CRC, however, as in the pier rules earlier in the meeting it seemed like the discussion had been done and the CRC was just asked to vote on having staff develop a presentation or rulemaking. The CRC will need to have discussion and presentations. The screening process will be done not to create the policy, but to decide whether it is important enough to bring before the CRC. After discussion, it was decided to try this format and see how it works for the Commission.

Renee Cahoon expressed concerns about having variances heard on Wednesday afternoons. She stated that her Board meets on Wednesday nights and she would not be able to be in attendance for Wednesday variances.

Doug Langford made a motion to accept the recommendations of the meeting structure subcommittee. Charles Elam seconded this motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Oceanfront Setbacks (CRC 08-06)

Jeff Warren stated 7H .0306 was approved for a second round of public hearings at the January 2008 meeting. This was stalled by Staff to correct a clerical error [removal of a sentence in .0306 (A)(6)] and let the CRC review this change. Other minor revisions have been made to this rule as a result of continued work with stakeholders.

In 7H .0306 (a)(1) minor changes were made to clarify total square footage. The intent of this is that anything that is heated or parking structures that are elevated, they would be considered total floor area. If you have anything that is load-bearing that could be enclosed for total floor area, it will also be included.

The next change Staff recommends is in 7H .0306(2)(K). When you apply a setback greater than 60 times the erosion rate for larger buildings (condos and hotels) there is a different management strategy on looking at beach-fill beaches (large-scale, long-term) versus non-beach-fill beaches. This promotes Town's to take on beach fill projects because soft shore protection does mitigate storm damage. It also provides an incentive for redevelopment in replacing 1950's and 1960's circa cottages and buildings with current materials and current building code which is in the spirit of CAMA. Lastly, it embraces the local-state partnership which makes CAMA so powerful. It tells the local government or community that if they are willing to reduce their risk by doing a beach fill project long-term, large-scale then we are willing to be more lenient on what you can do. If the Town's are not going to do beach fill then there would be ruling in place that allows us to mitigate the coastal hazards by moving the structures back. If a Town commits to beach-fill they can continue to use 60 times the erosion rate as their setback maximum. This would mean 60 times the erosion rate for any structure greater than 5,000 square feet.

The CRC received a letter from the Science panel and also received a letter from Spencer Rogers. The science panel endorses what DCM has done with this rule. They like basing setback on size and not use and they like the increased setback for larger structures. They do feel there should be an increased setback for smaller structures (less than 5,000 square feet). Staff did present a proposal for graduated setback for structures between 2,500 and 5,000 square feet. But it was visible early on that this was an unviable situation and that it would have far reaching ramifications on the coast. DCM Staff looked at the management objectives and determined that the small structures are o.k. A smaller structure is relatively easy to move (or disassemble) or in the event it is destroyed it is a limited amount of debris. The letter from Spencer Rogers focused on setting back the smaller homes also.

Spencer Rogers stated that as a member of the CRAC it is his responsibility to give the CRC the best advice that he can. The information provided in his letter had been received by the CRC on more than one occasion. He stated that he did not wish to add anything further than what was in the letter.

Jeff Warren stated that lastly there was a minor changed being made to (K). There was concern that (K) would be in conflict with other pieces in this section. Additions were added for clarity.

Jim Leutze made a motion to send 7H .0306 to public hearing to include the amendments presented by Staff. Charles Elam seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Elam) (Gore, Old absent for vote).

Jeff Warren stated that 7J .1200 had already been approved by the CRC for public hearing, but it has been on hold because it needs to go in tandem with 7H.0306 (because they reference each other). These rules are the procedures to receive a static line exception. DCM Staff would like to make a change to 7J .1203(a)(2) to add written or oral comments. This same change would be made to 7J.1203(a)(3).

Dara Royal made the comment that in 7J .1204(d)(3) the same change should be made for consistency (insert “written or oral” to first sentence in front of comments; insert “oral” in front of comments in second sentence). This was agreed upon for consistency.

Bob Wilson made the comment that a typo be corrected to change (d) to (c) in 7J .1203.

Wayland Sermons made a motion to send 7J .1200 to public hearing. Bob Wilson seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Elam) (Gore, Old absent for vote).

Jeff Warren stated this is the first time the proposed changes to 7H .0309 have been seen by the Commission. This rule has been referred to as the “single family exception rule”. The proposed changes are to make this rule consistent with the policies just sent for public hearing. There is a provision in the CRC’s rules currently that says if the lot was platted before June 1, 1979 and you cannot meet the setback based on the erosion rate, you can put a structure on the lot that is at least sixty-feet landward of the vegetation line and as far back as feasible as long as the footprint of that structure is not greater than 1,000 square feet or ten percent of the area of the lot whichever is greater. DCM Staff was concerned that if you have 1,000 square foot footprint and a local ordinance can limit it to one-story, another Town can limit it to two-stories and another Town can limit to three-stories. In some cases the total floor area would be 1,000 square feet and in another case it could be 3,000 square foot floor area. Because we have provided for a total floor area limit in the static line exception (7H .0306), DCM Staff thought it was appropriate to control the total size of the structure and provide a maximum total floor area of 2,500 square feet (consistent with 7H .0306). In addition DCM Staff suggests that this not be tied in as a ratio of the lot size. A 1,250 square foot footprint is the limit for a one-story structure. A provision was also put into 4(C) that would ensure that no cantilevering is ever used.

After discussion, it was decided to discuss this rule at the next meeting.

PETITION FOR RULEMAKING

Landmark Hotel Group (CRC 08-14)

Renee Cahoon recused herself from this issue as she has given advice on this issue and helped with suggested verbiage in the Petition. Chairman Emory allowed 15 minutes per party for presentation.

Ted Sampson, environmental consultant with Sampson and Company, represented Petitioner Landmark Hotel Group. Mr. Sampson stated that Michele Pharr, vice-president for regional operations for Landmark Hotel Group, is also in attendance. Landmark Hotel Group requests a change to soft-erosion control structures (sandbags). Mr. Sampson stated that he had received a copy of Staff’s response to the Petition and Staff opposed it on every count. Staff was being

responsive to guidance previously received from the Coastal Resources Commission. Mr. Sampson stated there was an alternative approach to time limits on sandbags. There were two points that were brought up on the Staff response that bare making a specific response to. The first is Staff oppose this Petition because we were treating commercial structures differently from non-commercial structures. Mr. Sampson pointed out to the Commission that the Petitioners are owners of commercial property and while they feel there are justifiable reasons why commercial properties could be treated differently than non-commercial properties. Some of the Petitioner's justification for this is that commercial properties have a greater economic input to the local area and region. More of the money that goes into this commercial structure is plowed back into it in the way of maintenance, salaries, and staff than to an out of state owner of a single family dwelling. Petitioners also feel that the owner of a commercial property has a vested interest in maintaining a sandbag alignment and will do a better job of maintaining it ensuring that it is aesthetically pleasing, well maintained and not a liability. Should the CRC feel they want to deal with both commercial and non-commercial owners in identical fashions, the Petitioner feels they can live with what has been provided in the Petition for both commercial and non-commercial entities. The second point to address from Staff's comments is they oppose the Petition because the Petitioner seeks indefinite maintenance of sandbag structures. This is simply a mischaracterization of what the Petition seeks. While it is true the Petitioners seek relief from a drop-dead, time-certain date where after sandbags would not be allowed to protect existing, viable structures they in great detail have provided a means whereby a structure shall no longer be protected tied to whether it is viable or not. That viability has been put forth in great detail, but it is not seeking an indefinite use of sandbags for the protection of these structures. In May, threatened oceanfront property owners must chose whether to comply with an order to remove their sandbags and watch their property rapidly be made non-viable by continuing erosion, or they must make a decision to defy that order in an effort to protect their private property and then face very expensive court battles. Neither of these options are pleasant options. If the stance of the CRC is to leave unchanged the current rules and let these time limits on sandbags expire, the CRC will be withdrawing the only erosion control protection measure that is offered by the State of North Carolina to property owners. Property owners have already made a compromise with the State by abiding by the State's decision that no hardened structures shall be used to protect property. Mr. Sampson requested that if the CRC cannot enact a new rule that gives some relief to property owners that they at least extend the deadline for the sandbags until the point the CRC could undertake a rulemaking that can provide for the relief that is needed for owners to protect their property.

Mike Lopazanski, Division of Coastal Management, stated the Staff's response to this Petition is a response to the overall strategy through CAMA and the CRC's rules for managing oceanfront development. The Division is opposed to this request because many of the provisions requested are redundant. There are several provisions that the CRC currently has no statutory authority. If the Petition were enacted it would place an additional administrative burden on the Division. It would also in the indefinite maintenance of sandbag structures. It is also contrary to the guidance the CRC has given Staff over the past two years. Over the past eight years, the CRC has allowed sandbag structures to remain, primarily to accommodate the local efforts to secure beach nourishment projects which is the Commission's primary priority response to chronic erosion along the oceanfront. Staff has also received guidance from the CRC on the general management of sandbag structures. Clarification has been provided on the structure's alignment and orientation and how the height is to be measured. After considering all of the various extensions, variance requests, and clarification given to the Staff over the past eight years the CRC decided in the fall of 2007 not make any changes to the rule, but to simply have DCM

enforce the existing provisions. Erosion control structures are permitted under 7H .0308(a)(2). This rule permits sandbags to imminently threatened structures. The Petitioner is requesting that the CRC create a distinction between commercial and non-commercial properties which would eliminate the time restriction for commercial properties provided they meet certain criteria (maintaining sandbags in the permitted alignment, the principal structure retains a certificate of occupancy, that the property owner signs an agreement for maintenance, and the property owner posts a performance bond for the eventual removal of sandbags if they do not meet these conditions). The Petitioner is also requesting that the current sandbag alignment be relaxed to allow the protection of pools, decks and gazebos. DCM is opposed to these provisions, as they are redundant, reflect existing permit conditions and agreements already required of property owners before they get their sandbags. The recent CRC discussions have centered on whether to consider the use of the structure or simply its size in determining the setback. We have policy direction in place and rules are being sent to public hearing where the CRC has found that the use of the structures are irrelevant to its position along the shoreline in terms of protection from the hazards of being on the oceanfront. Creating a distinction between commercial and non-commercial structures is contrary to this policy. The indefinite maintenance of sandbag structures for commercial structures is as much of an interference with the public's right to use the public beach as it would be for non-commercial structures. 7H .0306(k) requires a condition on all oceanfront development permits that an imminently threatened structure be moved or dismantled within two years of its designation. This is acknowledged by the applicant when he receives his permit and it clearly indicates that the CRC had anticipated that the oceanfront structures might need to be moved or demolished. The thirty-year setback the CRC has in place is also an indication that structures could eventually be claimed by the ocean. The use of the sandbags came out of the 1985 ban on hardened structures. Sandbags were an effort to give property owners a means of protecting their properties while they found a solution to their chronic erosion problem. There has never been an indication that the sandbags would be a long-term solution. Sandbag permit holders acknowledge this by signing an agreement when the sandbags are to be removed. They also acknowledge that they are responsible for the maintenance of the sandbags permitted alignment as well as for any misaligned or derelict bags that may find their way out onto the public beach. The Petitioner requests that a performance bond be put into place to ensure the removal of sandbag structures should they not stay in compliance with their permit conditions. The CRC currently has no statutory authority to require such a performance bond. The Petitioner would also use the certificate of occupancy as a justification for maintaining a sandbag structure indefinitely. The management strategy for the oceanfront differs from the estuarine shoreline in that the primary focus of this management strategy is on life and property. The strategy is centered on oceanfront development adapting to changes in shoreline configurations by conforming to concurrent CRC rules. The use of a certificate of occupancy as a determining factor in the continued presence of the sandbag structure is inconsistent with this management objective as well as the objective of preventing encroachment of structures on the public beach areas as stated in 7H .0303(b). As to the Petitioner's citing of the contribution of commercial properties to the Outer Banks economy, we don't dispute that the commercial structures on the oceanfront are contributing 10-20% of the total occupancy revenues. However, the CRC should note that cottages, bed and breakfasts, and campgrounds are contributing the remaining percentage. The study the Petitioners reference comes from the Outer Banks Visitor's Bureau survey 2006 study. It should also be noted that this same study cites the areas beautiful beaches as the primary area attribute which motivates trips to the Outer Banks. This data reinforces the fact that access to the State's beaches is important. The time limits the CRC has in place on sandbags are an essential component of the CRC's overall management objective to achieve a balance in the safety and financial and social

factors that are involved with hazard area development. The Petition also alludes to an ineffective management strategy for erosion control structures on the oceanfront. The perception of this ineffectiveness is a primary result of the CRC's attempt to balance the right of oceanfront property owners with its obligation to protect common-law and statutory public rights of access to, and use of, the lands and waters of the coastal area. The Division remains opposed to the use of sandbags for erosion control. If the CRC believes that other changes are warranted in the management of temporary erosion control structures, Staff recommends a thorough discussion of the rule and its consequences at a future Commission meeting.

After discussion, Melvin Shepard made a motion to deny the Petition for Rulemaking submitted by the Landmark Hotel Group. Joseph Gore seconded the motion. The motion passed with 10 votes (Shepard, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Weld, Elam, Old) and one opposed (Bissette).

PRESENTATIONS

Town of Kitty Hawk 2005 LUP Implementation & Status Report (CRC 08-11)

Joe Heard, Planning Director for the Town of Kitty Hawk, introduced Steven Smith, CAMA LPO officer for the Town of Kitty Hawk, and Holly White, planner. Mr. Heard summarized the accomplishments that Kitty Hawk has achieved in the year since the updated plan was completed. Mr. Heard discussed seven new beach access locations, new beach access parking areas, Phase I of Sandy Run Park, adoption of flood damage prevention ordinance/land disturbance permit, educational plans, and the Kitty Hawk Bay marsh restoration project which was partially funded by a DCM grant.

Melvin Shepard made a motion to accept the Town of Kitty Hawk Land Use Plan Implementation and Status Report. Doug Langford seconded the motion. The motion passed unanimously (Shepard, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) (Bissette, Leutze, Weld absent for vote).

Camden County 2005 LUP Implementation & Status Report (CRC 08-12)

Dan Porter, Planning Director for Camden County, stated that Camden County is a small county in the northeastern part of the state. Mr. Porter stated it is the second smallest county in the state with a population of under 10,000 people. There are no municipalities within the county, but there are three townships. Mr. Porter summarized the accomplishments of Camden County to include funding and building a school, funding and building a sewer system, initiate economic development activity, looking at drainage issues in the county, writing the first capital improvement plan, increasing the water capacity at the water treatment plant, established a community park expansion and the first county parks and recreation department, and beginning to look at the issues in the land use plan to determine what the growth and standards for development can be.

Melvin Shepard made a motion to accept the Camden County Land Use Plan Implementation and Status Report. Chuck Bissette seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Renee, Weld, Elam, Old).

Draft Marsh Alteration Rule Language (CRC 08-07)

Terry Moore, Division of Coastal Management, stated DCM is still interested in taking 7H .0205 to public hearing for rulemaking. Mr. Moore said the problem of marsh alteration has not grown but has intensified. It is not the interest of DCM to stop all mowing or cutting of coastal wetland vegetation. DCM also recognizes that burning the marsh is a tool for managing the marsh as well as other wetlands. However, the coastal wetlands are being manipulated intensely and then the Division is being asked to delineate the areas.

Renee Cahoon asked about property owners who did not want to shade the marsh by building a pier or walkway. She requested that a pathway be allowed for these property owners. Mr. Moore responded by saying that language was inserted which says that you can cut the marsh to a height of two feet as many times as you want. He further stated this would not alter the marsh or the State or Federal's ability to delineate such. After discussion, a provision will be added to allow mowing to a six-inch height with a restriction of the width to four feet for a pathway.

Chairman Emory stated that at this time there is no restriction or limitation on marsh cutting, mowing or burning. The intent of these rules is not to stop moderate, reasonable mowing. It is to target the limited number of individuals who are engaging in the activity of intentionally and repeatedly cutting the marsh to a very short height, planting grass seed, or fertilizing it to get a wetland delineation that expands their high-ground.

Jim Leutze asked why the CRC should allow any marsh alteration? Joseph Gore stated the grasses need to be there for juvenile fish and crustacean habitat. Harm is being done to this habitat. Melvin Shepard stated that he had not heard any convincing evidence that would convince him that coastal wetland alteration is not damaging.

Mr. Moore stated DCM has requested comment from the Wildlife Resources Commission and the Division of Marine Fisheries. The comments we received indicated that marsh cutting or burning does not hurt the resource. On the contrary, a prescribed program of burning on the marsh rejuvenates the marsh and isn't a bad thing. Marsh has not been lost from this activity.

Wayland Sermons stated language should be inserted as 2(G) which allows for a pathway of not more than four feet wide and not less than six inches in height if there is no pier access.

Joan Weld made a motion to send 7H .0205 to public hearing with the inclusion of language that permits a walking path with specific height and width for property that does not have a pier over the wetlands. Chuck Bissette seconded the motion. After the substitute motion failed (), this motion passed with eight votes in favor (Bissette, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Old) and four opposed (Shepard, Leutze, Gore, Elam).**

****Charles Elam made a substitute motion that there should not be any cutting allowed of marsh grasses. Jim Leutze seconded the motion. The motion failed with four votes in favor (Shepard, Leutze, Gore, Elam) and eight votes against (Bissette, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Old).**

Pier Rules Update (CRC 08-09)

David Moye, Division of Coastal Management, reviewed the history of the proposed changes to 7H .1200 and 7H .0208(b)(6). In January 2006, the CRC was asked for a declaratory ruling on floating docks. This ruling was denied, but the CRC did ask Staff to come back and provide information on floating drive-on jetdocks but also how to permit them within our current

permitting structure. In March 2006, Staff made a presentation of floating, drive-on docks and showed the different types of structures that were available. Staff also presented the idea of allowing development on the water and the shaded impact based upon the length of shoreline of the property. The CRC then asked Staff to come back at the next meeting with proposed language. In November 2006, Staff came back to the CRC with a presentation on pier and mooring facilities that was more in depth along with proposed rule language. A suggestion was made to change the six-foot pier width in the rule to four-foot width. At this point, after discussion, the CRC advised Staff to take the measurement for the access pier out. In January 2007, Staff returned with proposed rule language with the four-foot limitation on the pier and the 8-square feet per linear foot of shoreline for the shaded impact excluding the access pier. A series of contractor's workshops were held in February 2007. A lot of input was received from the contractors on the proposed rule language. Most of the input centered on their unhappiness with the four-foot pier width. In April 2007, rule language was presented to the CRC again with some changes. The issue of four-foot pier width was still a problem for the CRC, the Commission then directed Staff to go back and return with language that would allow piers up to six-feet wide, but continue with the idea of the impact and balance it out. (Allow a pier wider than four-feet but lose something in the end to balance out the shading impact). In May 2007, Staff presented rule language to the CRC that had graduated pier widths of 4, 5, and 6-feet. As the pier widths increased, the shaded impact would also be reduced by what is allowed. In July 2007, the CRC passed this rule language, however, this rule was not to go to public hearing until the Commission was satisfied with the definition of submerged aquatic vegetation (SAV). At that time, SAV was being redefined by the Marine Fisheries Commission and it tied in with our rules. In September 2007, a Committee request was given that asked Staff to come back with wording that would allow or promote shared piers under the General Permit. In November 2007, Staff came to the CRC with wording on shared piers to be added to what had already been approved for public hearing. This was still pending the approval of the SAV definition. Staff from Coastal Management, Marine Fisheries, Water Quality, Wildlife Resources Commission and the CHPP Coordinator have worked on the issue of SAV. Anne Deaton with the Marine Fisheries Commission, who now sits on the CRAC, has been in the forefront of working on this document.

Doug Langford suggested the rules we currently have work and have worked for a long time. Mr. Langford stated that three-feet above the wetland substrate is sufficient and adding the multiplier of the shoreline available. Mr. Langford also recommended deleting the varying pier widths and the heights that go with them. He stated this should be kept simple for permitting and for the public.

Charles Elam made a motion the send 7H .0208 and 7H .1200 to public hearing with the changes recommended by Doug Langford, subject to the CRC's approval of the SAV definition. Chuck Bisette seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Marine Fisheries Commission SAV Definition Update

Jimmy Johnson, Eastern Regional Field Officer for DENR, stated his primary responsibility is to coordinate the implementation of the CHPP. There is a new revised definition of SAV. A lot of new species have been added to the definition of SAV. The old definition of SAV beds primarily included just a few of the high salinity grasses. There was not a hard copy of the document available for the Commission's review. Mr. Johnson highlighted some of the changes.

Mr. Johnson stated that some of the wording that was objected to by the CRC (historical) has been removed. There has been an attempt to define in this document what “adjacent to” means as well as “conditions suitable for growth”. This technical document is primarily for field staff, therefore in the back of the technical document there are various scenarios of proposed activity and the action that should be taken in the permitting process considering impact. The rule as it is written now, as agreed upon by the interagency work group, has been sent before the Rules Review Commission for a preliminary first look. The RRC responded with nothing substantive with regards to the wording. Mr. Johnson stated that it is up to the CRC’s comfort level as to where we proceed. There is some question coming out of the Secretary’s office as to how specific we need to be in rule with some of the definitions (adjacent to, conditions suitable for growth). Mr. Johnson stated the next step was to await correspondence from the Secretary’s Office. The Marine Fisheries Commission is on hold waiting on the CRC to approve this technical document.

Concerns were raised by Deborah Anderson regarding the possible impacts and costs related to D.O.T. projects. Concerns were raised from the Commission that a hard copy document was not available for their review. Ted Tyndall, DCM Asst. Director, stated that following the final input from the Secretary’s office the document would be provided to the Commission.

Anne Deaton, Division of Marine Fisheries, stated she has an article entitled “A Global Crisis for Seagrass Ecosystems” published in 2006. She stated one of the reasons the CHPP is doing this is it has been documented that we are losing SAV habitat worldwide. We are hearing of reports of SAV in areas of North Carolina but there is no mapping or monitoring to say if we are increasing this habitat. The studies that have been done indicate that the major losses of SAV are from dredging, hydrological alteration, and shading on a small scale. On the larger scale from eutrophication, sediment deposition and sea level rise. Ms. Deaton stated that just because the definition is being expanded to be more accurate biologically does not mean that we are prohibiting activities.

Charles Elam questioned why the pier rules were held up as a result of the SAV definition. Chairman Emory stated that the SAV definition would play a role in the permit process. Jimmy Johnson stated this definition helps the field staff. Ted Tyndall concurred that the flow charts are helpful to determine when to consult with DMF. Jim Gregson stated that three years ago DCM was writing General Permits without regard to SAV, one year ago DCM was looking for beds of SAV and were consulting with DMF if we saw that the dock would be right on top of it, now DCM is a lot more cautious to the idea that there may be SAV in the area was are consulting with DMF. This document would specify at what point we should have consultation with DMF. Charles Elam stated that the CRC should not be holding up rules waiting on this definition when DCM is already enforcing the definition in the field.

Charles Elam stated that CAMA, Marine Fisheries, and a number of other groups had all agreed upon an internal memo of understanding as how they would look at SAV. Ted Tyndall stated that Anne Deaton was the chair of the committee for drafting the proposed SAC technical document. The CRC had concerns several months ago about all encompassing it was and the committee took that under advisement. Mr. Tyndall further stated that he gave a presentation to the CRC about the need for this definition to run parallel with our resource agencies and that we did not need for there to be an issue with a permit and DCM determine SAV to be one thing and the resource agencies determined it to be something else. If this happens and the permit gets appealed and we end up in court, we have agencies fighting over the definition. MFC placed the

definition on hold while the agencies worked on it and made DCM feel more comfortable that it could accomplish the goal of DMF and is something that will not stop development from taking place.

Charles Elam stated that the CRC wanted to study this new interpretation of SAV prior to it being put into a rule definition, but in the meantime (for the past six months) we are enforcing something that has never been adopted as a rule change definition and administering it as if it was. We are holding the dock and pier rules waiting on SAV interpretation.

Anne Deaton stated that when the committee starting meeting there was a different definition and through this process we have modified the definition based on input from DCM, DWQ, Wildlife Resources and the Department. We wanted to make sure the definition was biologically correct but wouldn't be problematic for the DCM rules.

Charles Elam asked Ms. Deaton if she would have a problem sending the proposed SAV definition to the CRC's science panel for their review. Ms. Deaton stated that this is a Division of Marine Fisheries definition based on our expertise with marine habitats and fishes.

Wayland Sermons asked if DMF has approved this definition. Ms. Deaton stated the MFC approved a different definition than this to go to public hearing. She stated that this rule is not going forward until this is worked out. Mr. Sermons asked Ms. Deaton if the CRC is giving the DMF and WRC carte blanche to approve piers? Ted Tyndall responded by saying if there was a disagreement with DMF over SAV, a General Permit request would be elevated to the Major Permit process. Mr. Sermons also stated that he would like a copy of the agreed upon language and the document that we have been referring to that we don't seem to be able to get a copy of. Chairman Emory stated that the entire Commission should have a copy of it. Chairman Emory asked if it was still the wish of the Commission to hold off on the pier rules. It was agreed upon to hold off.

Bob Wilson stated that our Agency chose to approve the CHPP, but our approval was somewhat guarded. We approved the CHPP as a guideline only for future policies. It seems that we are now looking at the CHPP as some sort of mandate for our rules and I don't think it was the original intent of this body that it be that way. My problem with SAV is and probably always will be a very unreliable barometer to make any concrete decision on. I don't feel we have gotten transparency from the Division of Marine Fisheries. I am led to believe that there have been considerable flyovers of eastern North Carolina to map this SAV. That has not been explained to us. There is a question as to what that means to future development or the lack of future development that Marine Fisheries would be able to block. I am not speaking for developers or contractors, I am speaking for the people of the State of North Carolina that pay property taxes to this State so they can enjoy the resources of this State. It is very important that the Coastal Resources Commission feels comfortable with these rules because we are charged with permitting docks. It is obvious that we are not comfortable. It has been obvious to our staff for months that we have been wrestling with this elusive thing called submerged aquatic vegetation and we are not comfortable as a board or we would have passed our rules. There has been a lot going on behind the scenes that we have not been privileged to. There is a document that we haven't seen.

Anne Deaton stated she apologies the document was not in the packet, but it was because of the late date that the final changes were made. We were waiting for a final approval from DENR so

we could tell you with confidence that all of these Divisions including the Department were alright with this definition. DMF has been transparent. Four of the CRC's staff are on the committee for this definition.

Lee Wynns stated that he supports the position of the rest of the Commission who have addressed their concerns. Jim Leutze stated that the CRC needs to be better informed, but he hopes this will not destroy the concept of coordination of all the agencies. Chairman Emory stated his perspective is things have not been done a great deal differently than it was two years ago. He further stated that he has no significant reservations about the two agencies working together and that he has no less confidence in our staff today than he did prior to today.

Draft Amendments to Shoreline Stabilization Rules (CRC 08-08)

Bonnie Bendell, Division of Coastal Management, stated we discussed this issue in November 2005. DCM recognizes that this is a controversial and complicated topic. We have run into some complications with the Division of Water Quality and the bulkhead placement. We are still working through those with DWQ and will be going before the CHPP steering committee on April 11, 2008. We will be asking the other Divisions to discuss it with us and ask for recommendations. DCM would like to come back to the CRC in May with those recommendations. In the meantime, DCM has done a lot of work that can still move forward. Over the past two years there are three other rules we have worked on that we would like to go to public hearing. These rules are the proposed changes for the general permit for groins (7H .1400), marsh enhancement breakwaters (7H .2100) and the general permit for riprap for wetland protection (7H .2400).

7H .1400 is the general permit for groin placement we have changed the spacing on how to place the groins. Spacing changes would be changed to two times the groin design length to a maximum of fifty feet apart. It will allow more flexibility in the rule; allow more flexibility in placement and more property owners would be allowed to apply for this permit. Clarifications were made on how to measure distances and lengths and to correct any ambiguous language.

7H .2100 is the general permit for marsh enhancement breakwaters we would like to do some terminology changes. Changes would entail changing "marsh enhancement breakwater" to "sheetpile sill". This was done at the request of the CRC to create a separate general permit for breakwaters without marsh enhancement. Ambiguous language was also corrected in this rule.

7H .2400 is the general permit for placement of riprap for wetland protection (riprap waterward of any marsh). The term "riprap" has been changed to "riprap revetment". A maximum distance waterward allowed has been added. This change allows extension to six feet because there are also slope requirements.

Chuck Bissette commented that the six-foot waterward requirement for riprap revetment is difficult to keep exact. The stone is substantial in size and you just physically cannot quite stack it perfectly. Ted Tyndall stated this is for lower wetland areas. The 7H .1200 general permit still allows the riprap protection to go out ten feet along non-wetland shorelines.

Renee Cahoon stated that after the CHPP steering committee meeting, she would like Staff to bring the proposed changes to bulkhead general permit and the comments received from the other agencies.

Doug Langford made a motion to accept the changes to the shoreline stabilization rules (7H .1400, 7H .2100, 7H .2400) and send them to public hearing. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Rule Interpretation – 15A NCAC 7H .0308(a)(2) Temporary Erosion Control Structures (CRC 08-17)

Jim Gregson, Director for Division of Coastal Management, stated that recently he has become more uncomfortable in the way DCM is authorizing some of the sandbag structures based on the rule. 7H .0308(a)(2)(B) requires that temporary erosion control structures be used to protect only imminently threatened road and associated right-of-ways, buildings or septic systems. A structure will be considered to be imminently threatened when its foundation, septic system or right-of-way in the case of roads is less than twenty feet away from the erosion scarp. Buildings and roads located more than twenty feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions such as a flat beach profile or accelerated erosion tend to increase the risk of imminent damage to the structure. 15A NCAC 07H .0308(a)(E) states that the landward side of sandbags shall not be located more than twenty feet seaward of the structure to be protected. More and more frequently, DCM is allowing sandbags to be placed along the seaward side of the erosion scarp when structures are determined to be imminently threatened due to accelerated erosion, even when the scarp is located more than twenty feet from the structure. In some cases, the landward side of the sandbags have been placed forty feet or more from the structure. (Photos were shown to illustrate these instances). In DCM's opinion, the rule is very clear but in all of the illustrated cases these structures are considered threatened but it is eroding so quickly we would not be able get sandbags in. We could issue permits to put sandbags within twenty feet of the house, but in some cases it would mean placing the sandbags in the swimming pool, taking a pool out, or in the case of the east end of Ocean Isle Beach the sandbags may be going between the road right-of-way and a house.

Wayland Sermons stated that the exception to the 20-foot based on flat beach profile or accelerated erosion is the correct interpretation and it can be more than 20-feet away if the Division determines these conditions exist. If it is imminently threatened, the Director can determine where the bags go even if it is more than 20-feet away. Continue the practice DCM is exercising. It is a common sense approach.

Melvin Shepard asked if the rule needed to be amended to allow for a permanent change. He stated that he fears the Commission will make a fatal step that in the legalities that are coming due to sandbags will put DCM in a bad position.

Frank Crawley, CRC Counsel, stated that buried in the APA under the definition of a rule there is an exception called an interpretive ruling. An interpretive ruling is different from engaging in rulemaking. This is what has been done. The DCM Director has asked for an interpretive ruling with respect to how to interpret this section in 7H .0308 and the CRC has accomplished this by voting for the motion.

Wayland Sermons made a motion to allow the current practice being exercised in the implementation of 7H .0308 to allow sandbags more than twenty feet away within the Director's interpretation based upon the imminently threatened language already in the rule. Renee Cahoon seconded the motion. The motion passed with eleven votes (Shepard,

Bissette, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old) and one opposed (Leutze).

Jim Leutze stated that we have very conflicting rules as far as these issues are concerned. We need to let the General Assembly know about this. He stated that he is convinced that by trying to be cooperative and working with people and giving sandbag extensions, we are setting ourselves up for a series of lawsuits. We have not in many instances, short of beach renourishment, managed to make sandbags a solution. The sandbags are going to be there for two or five years and then they are going to sue us. We either should allow terminal groins in inlets so the beaches do not erode or we should find a permanent way to have beach renourishment of the beaches that are threatened. Otherwise, we are using temporary solutions we know are temporary and are going to make people mad when they have to remove them.

Bob Wilson stated that we need to have a definition of temporary. He stated that he agrees with Commissioner Leutze. Chairman Emory stated that we have not failed to define temporary, but we have failed to enforce it.

Renee Cahoon stated that we have our hands tied behind our back by the General Assembly. A lot of municipalities and counties are getting ready to petition the State, this body should express its frustration to the State of North Carolina. Chairman Emory suggested putting together a subcommittee to prepare a position for the CRC to consider at the May meeting. Doug Langford requested that it be put on the May agenda to find the best way to approach the State of North Carolina on this issue.

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

VARIANCES

Midgett (CRC-VR-07-11) Dare County, Oceanfront Setback

Amanda Little of the Attorney General's Office, representing staff, stated that this variance was filed by Carroll and Donna Midgett and they are represented by Christopher Seawell. The property is located on Highway 12, north of Southgate Drive in Rodanthe, Dare County. Petitioners propose to construct an 8 bedroom, single-family residence with a pool. All of the proposed development is waterward of the applicable ocean erosion setback. The Petitioners seek a variance from the CRC's oceanfront setback rule 15A NCAC 7H .0306(a).

Ms. Little reviewed the stipulated facts for this variance and stated that Staff's position in this case is a variance is not warranted. Staff and Petitioners agree on the issue of hardship in this case, however, Petitioners have not met the remaining three criteria for granting the variance.

Chris Seawell, Attorney from Manteo spoke on behalf of Petitioners, Mr. Seawell reviewed the three criteria which he contends supports the granting of the variance. Mr. Seawell stated that this is the only lot which is not built upon and the structures could not be moved landward. Mr. Seawell further stated that this was an unbuildable lot when the land was purchased.

Doug Langford recused himself from this variance request. He stated there was no actual conflict, but stated there could be an appearance of conflict.

Melvin Shepard made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships. Jim Leutze seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Melvin Shepard made a motion to support Staff's position that hardships do not result from conditions peculiar to the petitioner's property. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Melvin Shepard made a motion to support Staff's position that hardships result from actions taken by the petitioner. Jim Leutze seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Melvin Shepard made a motion to support Staff's position that the variance request will not be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will not secure public safety and welfare; and will not preserve substantial justice. Joseph Gore seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

The variance was denied.

Emerald Isle et al. (CRC-VR-08-02 thru 08-07) Sandbag Time Extension

Chairman Emory allowed both Staff's Attorney and Petitioner's attorney ten minutes each for oral argument for these variance requests.

Christine Goebel of the Attorney General's Office, representing staff, stated one correction on the Staff Recommendation issued to the CRC. A correction sheet was provided for the official record. Ms. Goebel stated Attorney Glenn Dunn was present and would represent this group of petitioners. This variance request was filed on behalf of the Town of Emerald Isle and five adjacent property owners on the western tip of Emerald Isle (The Point) in Carteret County. Petitioners are requesting to keep the sandbag revetment in place for two additional years which is protecting the Town's right-of-way and five individual houses adjacent to Bogue Inlet. Petitioners seek a variance from 15A NCAC 7H .0308(a)(2)(F) as well as from the CRC's earlier variance orders which require the sandbags be removed at this time.

Ms. Goebel reviewed the stipulated facts of this variance and stated that Staff and Petitioners agree on all four statutory criteria necessary to grant the variance. She stated an inlet relocation project was completed on April 22, 2005. The project was designed and expected to result in significant, natural accretion in the area over a period of four to six years. The Town has acquired the accreted area in the past and has made it available for public access and remains committed to doing so in the future.

H. Glenn Dunn, attorney representing petitioners, reviewed the stipulated facts he contends support the granting of this variance. He further stated the petitioners are simply requesting an extension of time in order to allow the inlet relocation project to work. Mr. Dunn stated that this project is only halfway through the period that the engineers said would be necessary for the project to work.

Doug Langford made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships. Jim Leutze seconded the motion. The motion passed with eleven votes (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) and one opposed (Weld).

Doug Langford made a motion to support Staff's position that hardships result from conditions peculiar to the property. Jim Leutze seconded the motion. The motion passed with eleven votes (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) and one opposed (Weld).

Doug Langford made a motion to support Staff's position that hardships do not result from actions taken by the petitioner. Jim Leutze seconded the motion. The motion passed with nine votes (Shepard, Bisette, Leutze, Langford, Gore, Wilson, Cahoon, Elam, Old) and three opposed (Wynns, Sermons, Weld).

Jim Leutze 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; secure public safety and welfare; and preserve substantial justice. Charles Elam seconded the motion. The motion passed with ten votes (Shepard, Bisette, Leutze, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) and two opposed (Wynns, Weld).

The variance was granted.

CONTESTED CASES

Ward v. DCM and Carolina Marina 07 HER 0406

Christine Goebel of the Attorney General's Office, representing Staff, stated Mr. David Ward is present and will speak on behalf of Petitioners. At trial he and his mother, Mrs. Violet Ward, were represented by Bill Raney of Wessell and Raney. However, this morning Mr. Ward will speak on their own behalf. Matt Nichols of Shanklin & Nichols representing the Intervenor-Respondent (the permittee) is also present.

David Ward, Petitioner, stated his attorney Bill Raney has submitted exceptions to the decision of the Administrative Law Judge. Mr. Ward reviewed the exceptions submitted to the finding of fact and further stated that Petitioners do not disagree with the findings of fact, however feel they are incomplete. Mr. Ward stated that he feels DCM erred as a matter of law in not denying the permit issued to Carolina Marina and Yacht Club, LLC. Mr. Ward reviewed the reasons he contends DCM erred in issuing the permit. Mr. Ward stated that if the CRC feels that DCM erred on the issues regarding square footage of the structures or channels in primary nursery areas, the appropriate action would be to deny the permit. Mr. Ward further stated he and his mother have owned this property since 1994, next door to the permitted dock, and since they

have owned this property it has been undeveloped. Violet Ward, Petitioner, stated she agrees with the arguments made by her son, David Ward.

Christine Goebel reviewed the background of this case. David and Violet Ward are the Petitioners and own the property adjacent to the site of the proposed development. Carolina Marina and Yacht Club, LLC are the Intervenor-Respondents in this case and the primary member-manager is Tim Ward. The property is located on the intercoastal waterway just north of the Carolina Beach Inlet. The property has been used for a number of years as different variations of a marina and boat storage based on an old special use permit the County had handled. This case focuses on the CAMA permit issued in 2007 and whether it was properly issued or not. Petitioners noted the exceptions they filed are not exceptions as such, Petitioners characterize them as adding pertinent information to the findings of fact. Ms. Goebel reviewed the exceptions submitted by Petitioners and requested that the CRC not accept Petitioner's exceptions and changes as they are irrelevant, mischaracterizations of the testimony, or misinterpretations of law. The ALJ ruled in Staff's favor and found that DCM properly issued CAMA Major Permit #02-07. Ms. Goebel requested that the CRC uphold and adopt the ALJ's decision.

Matt Nichols concurred with the points Ms. Goebel had made. Mr. Nichols stated this was a three-day long hearing with extensive testimony and attorneys represented all parties. The ALJ issued an extensive twenty-plus page opinion which included ninety-one findings of fact. Mr. Nichols stated he would respectfully contend that substantial and significant testimony and exhibits in the record support these facts. The ALJ's decision should be upheld.

Wayland Sermons made a motion to adopt the Administrative Law Judge's decision. Lee Wynns seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

PUBLIC COMMENT AND INPUT

Willo Kelly, Government Affairs Director for the Outer Banks Home Builders Association/Outer Banks Association of Realtors, stated she has recently had several meetings on the coastal stormwater rules. I am speaking to the CRC in response to Tom Reeder's comments yesterday regarding the proposed coastal stormwater rules. I am concerned about several comments that were made and his response to certain questions. When Mr. Reeder was asked about why counties have hired a lobbyist to fight against these rules his response was "we expected counties to lobby against these rules regardless of what we do". Those comments are of great concern to me, I have worked very hard to educate myself on these rules as others in Dare County. Those comments just perpetuate the misconception that those that oppose the rules would oppose any rule changes. This is not so. His comments also give way to if you support the rules than you support the environment or if you don't support the rules then you don't care about the environment. Unfortunately, this portrayal of the building community has taken place over the last several years and the stormwater rules are being used to lead that charge that developers are bad. I found his presentation misleading in several aspects. First of all, in looking at what is the actual goal of the rules? If have been issuing subdivision permits for over twenty years and there is a problem with those permits, why are we trying to impose more restrictive rules on new development? There has been no monitoring or enforcement of those permits, is that not a problem? When Mr. Reeder said that based on lowering the high-density threshold excluding wetlands from built upon area calculation increasing the buffer to fifty-feet, he didn't say that all

post development stormwater would be required to be controlled and treated on site. When meeting the technical aspects of the rules, this would certainly restrict development and is that the overall purpose of these rules? These rules are actually more restrictive than Federal Phase II rules, Phase II rules are a model of stormwater management regulations based on urban development that is imposed on communities with small municipal separate storm sewer systems (MS4's). The buffer is less and you can include wetlands in your built upon area calculations under Federal Phase II. Three counties are currently designated Phase II, the more restrictive provisions will now be applied to twenty coastal counties. Why is an urban model for stormwater management being applied to all twenty coastal counties? The requirements also refer to provisions if you are disturbing over 10,000 square feet but less than an acre you do not need a stormwater permit. Why are we looking to adopt rules where there will no monitoring and enforcement of those provisions and if it falls on the local counties and municipalities this is actually an unfunded mandate. I questioned Mr. Reeder on several of these issues and in an e-mail (copy of e-mail provided) and he stated in it that I was correct and that this would have to be something that would have to be clarified during legislative review. These rules are flawed. They present the same problem that exists with the current rules. We need something better.

Doug Naismith, resident of Suffolk Virginia and property owner in South Nags Head for twenty years, stated he is the typical oceanfront homeowner. I had a beautiful high dune that obstructed my view of the ocean when I bought the house. I now have sandbags running under the house protecting my septic tank. If I am forced to remove the sandbags, that will doom my house and very shortly thereafter the house that sits immediately behind mine (50 feet to the West) will soon be threatened as well. This situation is not unique to me. It occurs up and down the coast of South Nags Head. I realize that the CRC's concerns much be for the broader policy issues and not for the individual homeowners who are going to suffer financially from this decision to remove the sandbags. Let me suggest three broader policy issues. The first is what we are dealing with here is a natural disaster. These are not homeowners who have willingly, intentionally violated the law. Usually in cases of natural disaster we look to our government for help. We are not asking for a handout, we are willing to pay. We just want to have the time for solutions to be found to address the problem in a long-term fashion and not a temporary fashion. (2) Times have changed. We are now dealing with a planet that is warmer, sea levels are rising, there is new technology that did not exist forty or fifty years ago when some of the rules you are trying to enforce now were formulated, and the houses that are placed on the beach now are really part of a development process that has been encouraged by the local communities not discouraged over the last forty or fifty years. (3) Impact on the local economy of this decision. Most of the homes that I am familiar with are really rental properties, they are economic generators, little businesses. Take those away and take away the affect of the renters on the local economy (the restaurants, gas stations, etc) and you have a tremendous economic impact.

Roc Sansotta, owns houses in South Nags Head, stated he was looking at some of the pictures earlier. Third Street in Emerald Isle looks a lot like Sea Gull Drive. Sea Gull Drive did not have to look like that because before the road was torn out at the end of it, I offered to put the bags in at my expense. These oceanfront homeowners and property owners have asked as Mr. Naismith said, for no handouts whatsoever. I have gone on everything that I bought, the first house in 1988. Yes it was misrepresented to me, it was built only five years before and it had some bags in it but they said it was there for added protection. The reason I bought the house next door was because they were going to tear it out. To tear it out would leave me completely unprotected. Then a couple of other ones on Sea Gull Drive I had to pick up because is that house was gone, the road is cut off, if the road is cut off you can't get to your house and it could be condemned.

So Sea Gull Drive could have stayed in a circular manner. Of course if my houses go on Sea Gull Drive, the road first and then the houses behind that will go. It is bad economic times now. The Town right now doesn't have to pay anything to keep these houses up, but they will have to pay for clean-up and the road to try to get another road in. I really believe the terminal groin is a wonderful way to go. I am not asking for a total extension, but lets get a groin in. Everyday you see down in the inlet the dredge is out there pumping all the sand that has just pushed itself right off of South Nags Head and into the inlet. If we could all agree on that, you said yesterday let's go for something else. A groin will buy us time to start some beach nourishment.

Richard Murphy, property owner in Nags Head and resident of Raleigh, stated he is more concerned about the beaches for the entire state. In 1974 this Commission was given the main objective of protecting our beaches. Our beaches are disappearing. Eventually we won't have beaches to protect. You guys are not in an envious position because there have been talks for the past two days about lawsuits. As an engineer, I always go back to the thing that when you are up to your tail in alligators and they are biting you, it is hard to remember that your original objective was to drain the swamp. I am elated at what I have heard in the last two days from the Commission. I think the Commission is actually recognizing the fact that you are hamstrung by rules and laws that are dictating that you carry things out that do not necessarily need to be carried out. If rules and laws are set and we are governed by those, but they are no longer functioning it is time to have them changed. Establishing a committee to make a presentation to the State Legislators to get some changes done is obviously the correct way to go about it. Renee has been given a copy of the Old Dominion University Report on beach renourishment in Virginia Beach. If I can share a few number because we were talking about alternatives yesterday. There are offshore fishing licenses that bring in millions of dollars for funding, lodging taxes, we can pay for it. The alternatives may be a combination of things: renourishment, groins, and even offshore reefs formed as breakwaters. Virginia Beach's renourishment project started back in 1994. It is economically feasible for Virginia Beach to actually foot the whole bill. Right now it is being split 65% by the federal government, 5% by the state and 30% by Virginia Beach. The state of Virginia is actually spending about a half of a million dollars, but their gain is 24 million dollars per year. Our main objective has got to be to protect our beaches and regain our beaches. I encourage the Commission to step forward with the Legislature.

Carol Alley, Resident of Moyock and homeowner in South Nags Head, stated she finds herself almost on the verge of tears because she was never told by anyone in the entire process that her sandbags that are under her house and protecting her house would ever have to be removed. I was quite shocked when I received the letter a few months ago. When I spoke with someone from your office they basically told me that I had a lawsuit. I don't want a lawsuit I want my home. I am very encouraged by the things I heard here today. I implore you to please take this on a case-by-case basis. If you are letting people put more sandbags in, it makes no sense for me or anyone else to have to take theirs out. I am pretty sure I meet the twenty-foot situation. I haven't been out there measuring; I am fully unprepared for any of this, even being here today. Just retiring from twenty-four years in law enforcement I do want to obey the laws and the rules and I do want to be a good property owner. I just want my property to be there for me to continue to own it.

Charles Baldwin, Attorney for the Village of Bald Head Island, stated he has enjoyed being here for two days. I told the Director that I would not offer any comments and was not planning to, but did want to by way of experience share a few things that might be relevant to the

subcommittee on sandbags that is being formed. Bald Head Island has two sandbag structures that have been critical to protecting key public infrastructure and many homes. One of those is a 16-geotextile tube groin field and the other is a sandbag wall protecting South Bald Head Road, which is one of the main roads and key routes from the island. The sandbags are completely covered due to beach renourishment, but Bald Head is affected by both the Corp's shipping channel and by hurricanes. I can envision circumstances in which those structures will be very important in the future to manage things on a temporary basis, which I think is consistent with the Commission's intent. By way of what might be a temporary use of such structure, I wanted to also suggest that if you have a Corps authorized dredging project and the funds are not readily available, as happened to Bald Head in 2004 where funding was delayed a year, these structures were very important. I would like to echo the comments of Mayor Harry Simmons that where you have an inlet area such as the Cape Fear entrance you have a shipping channel that some sort of environmental structure might be helpful to prevent these rapid swings in erosion and also to prevent the huge public expense of funds for these continual renourishment projects. In Bald Head it is approximately 15 million dollars per project. The last project in addition to Corps funding required 3.5 million dollars from the Division of Water Resources and 1.5 million dollars from the Village. It will certainly be a continual challenge to our island as well as to the communities up and down the coast.

Malcolm Fearing, native of Roanoke Island in Dare County, stated he was not before the Commission to talk about beach nourishment. I grew up on Roanoke Island and as many boys I swam in Shallow Back Bay. I learned to swim there, I fish there, and I shrimp there as many of the local people do. Why am I coming before you? I am coming before you with a compassionate plea of help. I am asking for your help for Shallow Back Bay. Shallow Back Bay has been classified as SC waters since 1961. Sewage has been pumped in that Bay since then. If I would have known that then I would not have swam in it. Knowing it now, I don't eat soft-crab out of it and I am going to give my shrimp net up. I am not trying to fault anybody for dumping the sewage in Shallow Back Bay but I want to bring this awareness to you, as you are the protectors of our coast. The operator of the wastewater treatment plant since June 6, 2007 has had 124 violations of dumping contaminants in the Bay. Some have been fecal chloroform bacteria, some have been chlorine. I am not a scientist but I don't think it is good. I especially don't think it is good for my daughter who has been teaching a sailing course for the past three years to put children in this water and to teach them how to ride a sailboat and how to put on a lifejacket and swim. I am going to leave for the record what SC water means, but quickly what I am going to tell you it is, what my layman's term is that you are not supposed to be in it. There is a triathlon scheduled for it next month. I doubt that the athletes know that they are not supposed to be in it. This is not a political issue, for no one in Manteo is running for political office this time, but I am pleading for you as you protect the birds, the crustaceans, and the beaches, I plead with you to form a study commission to protect the small children and the adults that consume the seafood out of that Bay from this event that is occurring. This is not a Roanoke Island issue as those waters go from Roanoke Island Sound over to the beaches from Kill Devil Hills to Colington maybe to Hatteras Island. What I plead with you to do for the health and safety of humans, to look at this issue seriously as it has not been since 1961.

ACTION ITEMS

Chairman Emory stated that a draft letter to Senator Dole was provided to each Commissioner to review. Steve Underwood stated that Dr. Stan Riggs had requested that this letter be presented to the CRC. This is a letter of support from the CRC for a proposal developed in part by ECU.

This is to assess the economic implications of climate change, sea level rise, and storms for both North and South Carolina.

Renee Cahoon commented on a section of the letter that gives an example about proposed deliverables. This specifically mentions Oregon Inlet Bridge and Highway 12. She stated she takes great exception in that this could be used to circumvent the process of building the new bridge given Dr. Riggs' position. Steve Underwood stated that we could strike out the reference to the bridge and Highway 12. Doug Langford requested that all universities in the University School System be copied on the letter. This was agreed to by all in attendance (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

OLD/NEW BUSINESS

Steve Underwood stated that the inlet hazard areas have been defined, but the rules have not been looked at in great detail yet. It is being scheduled to look at the rule language for the inlet hazard areas. Jim Leutze stated that he is aware that the map that has been drawn at Bald Head Island is having a significant financial impact on that island and the ability to sell property. Once these maps come out, there are rumors that some maps are not correct. We are going to have to move quickly and be careful when we put these maps out, that they will not have unintended consequences. Jim Gregson stated that DCM recognized that the uniqueness of Bald Head Island was going to be a problem. We have been to the Village and talked to them about the maps. In the old inlet hazard boundaries there was specific rule language put into place for Bald Head Island and Staff will certainly be presenting that type of thing when we get the rule language worked out.

Wayland Sermons stated it is obvious based on our discussions and the public's reaction to them that we are getting ready to go into a phase of increased variance filings, contested case matters and other things. Enforcement actions are necessary. Unfortunately due to the Division's appropriation for legal fees and allocation of attorneys, we are facing a shortage. We are facing a shortage of personnel because of State budget or internal budget. I would like to propose a resolution to be sent to Governor Easley and the General Assembly requesting that in this short session coming up in May, that the General Assembly allocate additional funds for legal services for Coastal Management issues. This will get our legal needs met and handled in the professional manner as they have always been done. This should be drafted for the Chairman's signature.

Wayland Sermons made a motion that a resolution to be sent to Governor Easley and the General Assembly requesting allocation of additional funds for legal services for Coastal Management issues. Bob Wilson seconded the motion. The motion passed unanimously (Shepard, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old) (Bissette absent for vote).

Members of the Comprehensive Beach Management Task Force Subcommittee will be as follows: Bob Emory, Jim Leutze, Wayland Sermons, Renee Cahoon, Harry Simmons, Spencer Rogers, Deborah Anderson, and William Morrison.

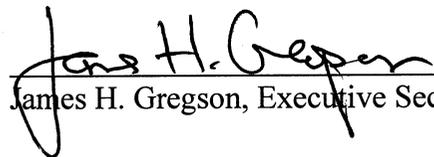
Jim Gregson stated that the Department has requested that the Division cut down on the amount of paper and postage being used for CRC meetings. CRC members were reminded of the public

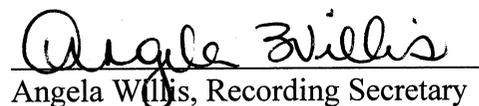
comments that were sent to each Commissioner for the setback rules. These comments took six boxes of paper. Mr. Gregson stated that he would mandate that paper use be cut back dramatically. The only way to do this is to go electronic. One suggestion would be the potential of sending a flash drive to each Commissioner. The Division will purchase the flash drives and at the end of the meeting we will gather them up and get them ready for the next meeting. The amount of money we spend on paper, we could buy one laptop per year. With the amount of postage we use, we could probably buy three or four laptops. It is incredible the amount of paper that is left of the Commission's table at the end of every meeting. Chairman Emory told the Commission if there is anyway they can, please try to cooperate with the request.

Joan Weld read a letter from Courtney Hackney, former CRC Chairman, to the Commission.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary

NC COASTAL RESOURCES COMMISSION (CRC)

March 27-28, 2008

Clarion Oceanfront

Kill Devil Hills, NC

Present CRC Members

Bob Emory, Chairman
Doug Langford, Vice Chair

James Leutze	Wayland Sermons
Chuck Bissette	Melvin Shepard
Renee Cahoon	Joan Weld
Charles Elam	Bob Wilson
Joseph Gore	Lee Wynns
Jerry Old	

Present Coastal Resources Advisory Council Members (CRAC)

Dara Royal, Chair
Penny Tysinger, Co-Chair

Deborah Anderson	Lee Padrick
Bert Banks	W. Burch Perry
Randy Cahoon	Spencer Rogers
Carlton Davenport	Frank Rush
Eddy Davis	Robert Shupe
Anne Deaton	Harry Simmons
William Gardner	Lester Simpson
Renee Gledhill-Earley	Ray Sturza
Judy Hills	Tim Tabak
Al Hodge	Joy Wayman
Joe Lassiter	Beans Weatherly
Travis Marshall	David Weaver
Gary McGee	William Wescott
Christine Mele	Rhett White
Wayne Mobley (Alan Saunders)	Traci White
J. Michael Moore	
William Morrison	

Present Attorney General's Office Members

Francis Crawley
Allen Jernigan
Christine Goebel
Amanda Little
Jill Weiss

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Bill Peele was absent. Renee Cahoon stated that she has one conflict. Based upon this roll call, Chairman Emory declared a Quorum.

MINUTES

Jim Leutze made a motion to approve the January 2008 CRC meeting minutes. Joseph Gore seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Sermons, Cahoon, Weld, Elam) (Wilson abstained) (Old absent for vote).

EXECUTIVE SECRETARY'S REPORT

Jim Gregson, DCM Director, gave the following report.

Sandbag update

We are rapidly approaching the May 1 deadline for removal of a number of sandbag structures on our coast. Beginning in late April or early May, DCM staff will begin to inventory sandbag structures, compare them with our database to see when they were installed, and begin to determine which ones will need to be removed. As a reminder, structures that are covered with sand and stable, natural vegetation will be allowed to remain in place until the sandbags are uncovered by a future storm event. Once staff determines which sandbags are subject to removal, we will begin to prioritize them based on how long they have been in place, condition of the bags, and whether they are an impediment to the public's use of the beach. We will use this prioritization to begin notifying property owners that their sandbags must be removed.

Rule updates

Hopefully you noticed the rule updates in your packets for this meeting. This is something we plan to include for you at every meeting, so each of you will have a summary of where we are with regard to rule changes.

CICEET grant

DCM and the North Carolina National Estuarine Research Reserve (NCNERR) in partnership with the NOAA Center for Coastal Fisheries and Habitat Research, UNC Institute of Marine Sciences, and UNC – Wilmington have recently been awarded a grant from the Cooperative Institute for Coastal and Estuarine Environmental Technology to further study estuarine shoreline stabilization and their consequences. The objectives of this project are to 1) conduct research to quantify ecosystem service tradeoffs as a consequence of habitat alteration, 2) design and install demonstration projects utilizing alternative shoreline stabilization approaches for research and education purposes, 3) develop an approach for evaluating ecological and socioeconomic costs and benefits of shoreline erosion and protection alternatives and 4) develop effective communication methods for exchanging information between scientists, regulatory

agencies, the business community, politicians and other relevant stakeholders in regard to short-term and long-term cost-benefits of shoreline stabilization plans. The project is planned to begin fall/winter 2008.

Walter B. Jones awards

Four North Carolinians were honored this year as recipients of the 2008 Walter B. Jones Awards and NOAA Awards for Excellence in Coastal and Ocean Management. These biennial awards recognize coastal stewards, graduate students, state and local government, and non-governmental organizations for their outstanding efforts in coastal and ocean management. The award is named for U.S. Rep. Walter B. Jones Sr. As chairman of the House Merchant Marine and Fisheries Committee; Rep. Jones supported the National Marine Fisheries Service and coastal zone management.

The winners from North Carolina are:

Walter B. Jones Awards:

- *Excellence in Local Government: Gregory "Rudi" Rudolph, Carteret County, N.C., Shore Protection Office* -- Under Rudi's leadership since 2001, the office has provided many services to constituents in Carteret County, and through its demonstration of innovative programs, the agency has been a resource for North Carolina and the nation. The county's beach fill projects are undertaken in a positive and professional manner, using environmentally sensitive methods. It is through the close coordination among all levels of government and Rudi's invaluable knowledge of coastal processes that so much has been accomplished in this county.
- *Excellence in Coastal and Marine Graduate Study: Anirudh Ullal, North Carolina State University.* -- Now a post-doctoral associate at Duke University, Ullal was nominated by Ed Noga of NC State for groundbreaking research into antibiotic properties in channel catfish. The findings suggest this hemoglobin antibiotic defense might be widespread in all vertebrates — from fish to mammals. Although this research is not traditionally associated with environmental based studies, these types of molecular approaches are important to the scientific community.
- *Heather Ward, East Carolina University* -- In the ECU Coastal Resource Management Program, Heather's studies include interpreting hurricane graffiti, emergency communication and risk perceptions, and media coverage of climate change research. She is researching how the public, scientists and policy-makers talk about the coast and its various challenges and opportunities. She is especially concerned with making sure that the views of those who live and work at the coast are heard by coastal managers and scientists.

NOAA Excellence Awards:

- *Excellence in Business Leadership: J&B Aquafood, North Carolina* -- Jim and Bonnie Swartzenberg of Onslow County were honored for their leadership in the aquaculture industry, as well as in research and conservation efforts, including founding the N.C. Shellfish Growers Association. Jim and Bonnie's innovative approach to their company is a great example of how a profitable business can be coupled with stewardship of important coastal resources.

A ceremony to honor the award winners was held Feb. 27 in Washington, D.C.

New CRAC member

Gary McGee is the new CRAC representative from Currituck County, replacing Ernie Bowden.

Staff news

Frank Crawley will fill in for Jill Hickey as CRC counsel for this meeting. Frank serves as counsel for the Marine Fisheries and Environmental Management Commissions.

Donna LeBlanc is the new Administrative Assistant for the Division in our Wilmington office. Previously, Donna was employed with Brunswick County's planning department.

Following a reorganization of the coastal reserve staff, Education Specialist Amy Sauls has left the Rachel Carson Coastal Reserve office in Beaufort.

Two new babies have been born to Raleigh office staff:

Coastal and Ocean Policy Analyst Scott Geis and wife Gina welcomed their son Aidan on March 4.

Coastal Hazards Specialist Jeff Warren and his wife Missy welcomed daughter Margaret Evelyn on March 12.

CHAIRMAN'S COMMENTS

Chairman Emory stated that there would be some guests arriving later in the morning from Indonesia. They are part of a program in Indonesia that is similar to the NC Sea Grant Program. They are in the United States looking at coastal programs and they wanted to come to the coast of North Carolina and observe how the Coastal Resources Commission operates.

Chairman Emory further stated that he attended the Coastal Resources Advisory Council meeting yesterday. At the last CRC meeting the Commissioners decided to delegate a number of things to the CRAC prior to them coming to the Commission. That process began yesterday and it was a lively meeting. He encouraged Commissioners that can arrive on Wednesday afternoon to attend the CRAC meeting, as this is where the initial discussion on a lot of issues will take place. The CRC room arrangement is also different for this meeting. One of the suggestions of the meeting format subcommittee was to place the CRAC members where they are in a better position to participate in discussions. Later in the meeting we will hear the recommendations from the meeting structure subcommittee, this will include the deactivation of the two standing committees. The CRAC will have a full voice on agenda items and discussions other than the variances and contested cases. The votes will be Commission's votes, but the CRAC has the opportunity to participate and this is different than what we have done in the past.

This will be the year of the sandbag. Jim Gregson described the step-wise approach that the Division of Coastal Management is taking on enforcement actions on sandbags.

CRAC Report

Dara Royal, CRAC Chair, gave the Coastal Resources Advisory Council Report. (See attached minutes).

The CRC took the following action:

Doug Langford made a motion to approve certification of the Hyde County Land Use Plan. Joseph Gore seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Renee Cahoon made a motion directing staff to develop rule language for the CRAC to review in May for the purpose of preserving public access through rules or permit conditions. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Jim Leutze made a motion directing staff to develop rule language amending the pier house rules to allow for vertical expansion for the CRC to review. Charles Elam seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

PRESENTATIONS

Coastal Stormwater Rules Update – Tom Reeder, DWQ

Tom Reeder gave an update of the EMC revision of the coastal stormwater rules. Mr. Reeder stated that the revisions were adopted by the EMC on January 10, 2008. These amendments went to Rules Review Commission on February 21. The RRC issued three minor objections dealing with ambiguity and terminology. The EMC adopted revisions to their adoptions and the rules went back to RRC on March 20 and were approved. These rules will now go forward for legislative review in the short session of 2008. There is nothing now that can deter these rules from being reviewed by the Legislature.

Mr. Reeder stated that G.S. §143-214.7 should be looked at if looking at this rule. This is a General Statute that the General Assembly adopted a number of years ago and basically regulates the EMC's stormwater programs. This Statute says that the EMC is supposed to continually monitor water quality and revise the stormwater rules as necessary to protect the water quality in North Carolina. In the next paragraph of the Statute they actually establish a priority order for protection of the waters of North Carolina. The number one priority waters in N.C. are classified shellfishing waters.

Mr. Reeder highlighted this rule change. If you are within a half of a mile of shellfishing waters, the low-density threshold would be lowered to twelve percent. This means if you go above twelve percent impervious surface density on your lot, you would have to implement structural stormwater controls on the lot. These are the same requirements that are already in place in three counties in N.C. (Brunswick, New Hanover and Onslow) as a result of Phase II requirements that went into place last July. If you are outside of the half of a mile of shellfishing waters, the low-density threshold is lowered to twenty-four percent and you have to treat and control the first inch and a half of rain. About ninety percent of the coast is outside a half of a mile of

shellfishing waters. A vast majority of the twenty CAMA counties would be under the low-density requirements.

The most controversial aspect of this rulemaking has been a proposal to expand the setback from thirty to fifty feet, the prohibition of wetlands from future impervious surface calculations, and lowering the threshold for a permit to 10,000 square feet. The compromise the EMC came up with on the setback issue was to leave the thirty-foot setback in place for redevelopment. If it is new development, the setback from surface waters will be expanded to fifty feet. Unless you are residential development of greater than an acre or non-residential development of greater than 10,000 square feet, this setback does not come into play. When the rules went out to public notice, the EMC proposed to lower the threshold for coverage from one acre to 10,000 square feet for all development in the twenty CAMA counties. The EMC lowered the threshold for coverage for a stormwater permit down to 10,000 square feet for non-residential development, but would leave the threshold at an acre for residential development. The EMC still wanted residential projects that disturb more than 10,000 square feet, but less than an acre to do something to try to control and treat their stormwater runoff on site. For these residential projects you do not have to get a stormwater permit, but you will be required to implement one of the following measures: (1) rain cisterns (collects rooftop runoff for reuse) and permeable pavement for patios; (2) construct a rain garden (direct rooftop runoff into the rain garden) and use permeable pavement; or (3) any other BMP (like on-site infiltration).

The fifty-foot buffer is not a “no touch” buffer. Nothing in these amendments limit what can be built. The low-density threshold is not a development cap. Rain cisterns are not mandatory; they are just an option to consider. NCDOT is not exempted from stormwater controls. There are thirteen full-time staff at DWQ that scrutinize and permit NCDOT activities. These amendments will not make lots unbuildable. Lots less than 10,000 square feet will not be affected. Lots in subdivisions with a permit will not be affected. Three vesting provisions cover all rules that are adopted by the EMC. (1) DWQ stormwater redevelopment provision that allows a home that is destroyed by a fire or hurricane to be rebuilt as it was previously. (2) Statutory vested rights and (3) “commons law” vested rights apply to everything that the EMC adopts. EMC does not go past these vesting provisions because the General Assembly has told the EMC they do not have the statutory authority to put exceptions and exclusions into their rules. Mr. Reeder stated that he fully expects a large number of exclusions, exemptions and vesting provisions to be added to these rules by the General Assembly. If local governments want to take over the stormwater program, they always have that option under the universal stormwater management program. A local government can adopt this program and take over the program that will allow them to not be affected by this rule change.

All information about this rule change is available at <http://h2o.enr.state.nc.us/su/coastal.htm>

Coastal Reserve Update (CRC 08-13)

Rebecca Ellin, Manager of the NC Coastal Reserve Program and NCNERR, stated this is one of the three sections within the Division of Coastal Management. The NC Coastal Reserve was formally established by the Legislature in 1989 in an effort to form a comprehensive Coastal Management program within North Carolina. Within the program there are 10 coastal reserves. Four of these components comprise the North Carolina Estuarine Research Reserve (NCNERR). This is one of 27 reserves within the system of protected areas located around the country. This program is set up as a state and federal partnership between NOAA and a state agency (DCM).

Ms. Ellin discussed the mission and objectives of the Reserve. She discussed staffing, organizational chart, and operating budget of the Coastal Reserve Program.

Ms. Ellin highlighted accomplishments of 2007. The system-wide monitoring program entered its thirteenth year. This is a water quality monitoring program that is implemented at our Zeke's and Masonboro Island Reserves in the South. We measure water quality parameters to make sure we can assess short-term variability and long-term change in the systems there. We recently completed mapping habitats at the four NCNERR components. With support from the Albemarle/Pamlico Natural Estuarine Program we were able to install a first in a series of tide gates at our Buckridge Coastal Reserve. The tide gates help restore the hydrologic function to the Reserve and help prevent salt water intrusion. We have recently submitted a grant to the Clean Water Management Trust Fund to get additional support to put nine more of these in. Another project we implemented this past year in conjunction with the University of North Carolina at Wilmington is a visitor use survey. We also celebrated the completion of the construction of the boardwalk at the Rachel Carson Reserve. We are hoping to showcase this to the CRC on one of the field trips we have planned. It is a green boardwalk which means that it incorporates composite materials in the decking and the railings. This was one of the opportunities to we are able to promote good environmental stewardship by using recycled materials. Ms. Ellin further stated that the education programs reached over 3,500 teachers, students, coastal decision makers, and general public members last year. The Reserve has also engaged in a variety of activities to support the CHPP. SAV was mapped at the Rachel Carson site. Mapping was attempted at Masonboro, but none was located. There are a lot of CHPP principles and habitats into our education programs and a variety of CHPP related workshops have been conducted.

In 2008 we are going to continue a lot of the activities we accomplished a 2007, but we are also going to embark on new activities. Development and implementation of a visitor education plan is one of the first things we are going to do. This is underway and will entail increasing awareness of the Reserve (why the sites are protected and what the appropriate uses are). This will be done through a series of brochures, signage on the sites and presentations to the community. Also in 2008, research on estuarine shoreline stabilization. Comparative research will also be done between natural and restored salt marshes to determine the efficacy of restoration techniques and monitor the impacts of sea level rise. We will be offering new educational programming including redesigned teacher workshops, a junior naturalist program for middle school children and offer some pre-school and elementary school activities. We are excited about formalizing and expanding our volunteer program. The Reserve relies heavily on volunteers. A newly redesigned website as well as wide circulation of our newsletter "The Tidal Flat" will be used to raise the awareness of the Reserve. Finally, one of the remaining projects being worked on in 2008 will be acquiring a parcel at Masonboro Island.

At future Commission meetings, the Reserve Program Coordinators will be on the agenda to provide a more in depth look at our research, education and stewardship programs. Additionally, we will focus on specific projects that are relevant to the issues the CRC is discussing. The CRC and CRAC are an avenue to raise the visibility of the Reserve.

Recommendations from Variance Procedures Subcommittee (CRC 08-15)

Lee Wynns stated the Rules Review Commission had an objection to 07J .0701(Variance Petitions). This objection stated that this rule quotes the NC General Statutes concerning quasi-

judicial meetings. This rule now comes back to the CRC to re-start the rulemaking process. The subcommittee recommends the CRC remove the reference in the rule.

The Rules Review Commission approved 07J .0702 (Staff Review of Variance Petitions). However, more than ten members of the public wrote letters of objection to the RRC. We do not know what the objections are. Since these letters have been received, this rule must go through the legislative review process. The subcommittee recommends awaiting the outcome of the legislature's session in May.

The Rules Review Commission objected to 07J .0703 (Procedures for Deciding Variance Petitions). This objection stated that this rule also quotes the General Statutes. This rule also received ten letters of objection from the public. Staff requested the rule be returned to the CRC for further discussion. The subcommittee recommends deleting the language objected to by the RRC.

Mr. Wynns stated the subcommittee also discussed the proposal of when Staff and Petitioner agree on all four statutory criteria no oral presentation would be made. The subcommittee determined that there should not be anything to preclude oral presentations at the meeting. In the event Staff and Petitioner agree on all four criteria and agree to not make oral presentations, the CRC could vote on the variance if there were no questions.

Wayland Sermons made a motion to move forward with rulemaking on 7J .0701 and 7J .0703 adopting the recommendation of the Rules Review Commission to delete (g). Renee Cahoon seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Lee Wynns further stated the subcommittee was also asked to look at contested case proceedings. The subcommittee recommends (1) lessening the time allowed for presentations to ten minutes for the petitioner and for staff, (2) lessen the amount of time allowed for responses, (3) guide the Commissioners to be as succinct and direct as possible in their questions and comments and to consider limiting the number and length of comments from each Commissioner, (4) give the Commission a refresher on the typical components in a contested case file along with guidance on the most efficient ways to prepare for a contested case hearing and provide an index for easy reference, and (5) provide findings of fact and other summary documents in hard copy but all remaining documents electronically.

Bob Wilson asked about taking action on receiving the contested cases by CD or electronically. Chairman Emory stated that this would be discussed (paper versus electronic) more in depth later in the meeting. Bob Emory stated that the refresher course on contested cases would be at a future meeting as an agenda item.

Recommendations from Meetings Structure Subcommittee (CRC 08-16)

Jim Leutze stated the subcommittee was asked to look at changes to several procedures and some of these changes have been implemented at this meeting. Alternative meeting agendas, how to effectively incorporate the CRAC in the deliberations of the Commission, identify a process for developing CRC agendas, and explore the possibility of reducing the number of meetings per year.

A decision was made not to abolish the standing committees, however to keep them in case we need to go the committee structure we could do that. A problem arose as to what the other committee would do if only one committee was meeting. The option will be retained to use the committees when needed.

CRC agendas were discussed. At the January meeting there was recommendation to develop a process for adding future items to the agendas utilizing a set of criteria as well as a consensus of the Commission. The recommendation is the Executive Committee should meet at the conclusion of the CRC meeting to plan the next agenda. CRC members wishing to add items to future agendas should bring them to the Executive Committee meeting for their consideration.

We wanted to encourage and improve our ability to take advantage of the knowledge of the CRAC. The suggestion from the January planning session including having the CRAC screen issues before they come before the CRC and to have the CRAC hear the Land Use Plan reviews and make a recommendation regarding certification. The subcommittee's recommendation is to incorporate suggestions to have new issues initially run through CRAC. The Land Use Plans should be presented to the Advisory Council and the CRAC report will include a recommendation on certification. The layout of the CRC meeting room should be changed so the CRAC is seated at tables, jury-box style.

The subcommittee also discussed meeting frequency. As discussed in January, the amount of time spent on variances and contested cases was seen as impeding discussion on other substantive issues, however, it was recognized that the financial burden to the Division and workload placed on staff by meeting six times per year was too burdensome. Given the cost of CRC meetings and the amount of time needed to carry out the business of the Commission, there was not much difference between the costs associated with a one-day meeting and the usual 1 ½ days meetings. The recommendation of the subcommittee is to increase the efficiency by holding variance proceedings on Wednesday afternoon from 3:00 p.m. – 6:00 p.m. The CRAC can meet from 1:00 p.m. to 3:00 p.m. as to not be precluded from attending the variance hearings. It is recommended to decrease the number of CRC meetings to five per year by eliminating the January meeting. The option of a January meeting could be retained should a "called" meeting by the Chair be deemed necessary.

Wayland Sermons made a comment that the CRAC should screen issues prior to them coming to the CRC, however, as in the pier rules earlier in the meeting it seemed like the discussion had been done and the CRC was just asked to vote on having staff develop a presentation or rulemaking. The CRC will need to have discussion and presentations. The screening process will be done not to create the policy, but to decide whether it is important enough to bring before the CRC. After discussion, it was decided to try this format and see how it works for the Commission.

Renee Cahoon expressed concerns about having variances heard on Wednesday afternoons. She stated that her Board meets on Wednesday nights and she would not be able to be in attendance for Wednesday variances.

Doug Langford made a motion to accept the recommendations of the meeting structure subcommittee. Charles Elam seconded this motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Oceanfront Setbacks (CRC 08-06)

Jeff Warren stated 7H .0306 was approved for a second round of public hearings at the January 2008 meeting. This was stalled by Staff to correct a clerical error [removal of a sentence in .0306 (A)(6)] and let the CRC review this change. Other minor revisions have been made to this rule as a result of continued work with stakeholders.

In 7H .0306 (a)(1) minor changes were made to clarify total square footage. The intent of this is that anything that is heated or parking structures that are elevated, they would be considered total floor area. If you have anything that is load-bearing that could be enclosed for total floor area, it will also be included.

The next change Staff recommends is in 7H .0306(2)(K). When you apply a setback greater than 60 times the erosion rate for larger buildings (condos and hotels) there is a different management strategy on looking at beach-fill beaches (large-scale, long-term) versus non-beach-fill beaches. This promotes Town's to take on beach fill projects because soft shore protection does mitigate storm damage. It also provides an incentive for redevelopment in replacing 1950's and 1960's circa cottages and buildings with current materials and current building code which is in the spirit of CAMA. Lastly, it embraces the local-state partnership which makes CAMA so powerful. It tells the local government or community that if they are willing to reduce their risk by doing a beach fill project long-term, large-scale then we are willing to be more lenient on what you can do. If the Town's are not going to do beach fill then there would be ruling in place that allows us to mitigate the coastal hazards by moving the structures back. If a Town commits to beach-fill they can continue to use 60 times the erosion rate as their setback maximum. This would mean 60 times the erosion rate for any structure greater than 5,000 square feet.

The CRC received a letter from the Science panel and also received a letter from Spencer Rogers. The science panel endorses what DCM has done with this rule. They like basing setback on size and not use and they like the increased setback for larger structures. They do feel there should be an increased setback for smaller structures (less than 5,000 square feet). Staff did present a proposal for graduated setback for structures between 2,500 and 5,000 square feet. But it was visible early on that this was an unviable situation and that it would have far reaching ramifications on the coast. DCM Staff looked at the management objectives and determined that the small structures are o.k. A smaller structure is relatively easy to move (or disassemble) or in the event it is destroyed it is a limited amount of debris. The letter from Spencer Rogers focused on setting back the smaller homes also.

Spencer Rogers stated that as a member of the CRAC it is his responsibility to give the CRC the best advice that he can. The information provided in his letter had been received by the CRC on more than one occasion. He stated that he did not wish to add anything further than what was in the letter.

Jeff Warren stated that lastly there was a minor changed being made to (K). There was concern that (K) would be in conflict with other pieces in this section. Additions were added for clarity.

Jim Leutze made a motion to send 7H .0306 to public hearing to include the amendments presented by Staff. Charles Elam seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Elam) (Gore, Old absent for vote).

Jeff Warren stated that 7J .1200 had already been approved by the CRC for public hearing, but it has been on hold because it needs to go in tandem with 7H.0306 (because they reference each other). These rules are the procedures to receive a static line exception. DCM Staff would like to make a change to 7J .1203(a)(2) to add written or oral comments. This same change would be made to 7J.1203(a)(3).

Dara Royal made the comment that in 7J .1204(d)(3) the same change should be made for consistency (insert “written or oral” to first sentence in front of comments; insert “oral” in front of comments in second sentence). This was agreed upon for consistency.

Bob Wilson made the comment that a typo be corrected to change (d) to (c) in 7J .1203.

Wayland Sermons made a motion to send 7J .1200 to public hearing. Bob Wilson seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Elam) (Gore, Old absent for vote).

Jeff Warren stated this is the first time the proposed changes to 7H .0309 have been seen by the Commission. This rule has been referred to as the “single family exception rule”. The proposed changes are to make this rule consistent with the policies just sent for public hearing. There is a provision in the CRC’s rules currently that says if the lot was platted before June 1, 1979 and you cannot meet the setback based on the erosion rate, you can put a structure on the lot that is at least sixty-feet landward of the vegetation line and as far back as feasible as long as the footprint of that structure is not greater than 1,000 square feet or ten percent of the area of the lot whichever is greater. DCM Staff was concerned that if you have 1,000 square foot footprint and a local ordinance can limit it to one-story, another Town can limit it to two-stories and another Town can limit to three-stories. In some cases the total floor area would be 1,000 square feet and in another case it could be 3,000 square foot floor area. Because we have provided for a total floor area limit in the static line exception (7H .0306), DCM Staff thought it was appropriate to control the total size of the structure and provide a maximum total floor area of 2,500 square feet (consistent with 7H .0306). In addition DCM Staff suggests that this not be tied in as a ratio of the lot size. A 1,250 square foot footprint is the limit for a one-story structure. A provision was also put into 4(C) that would ensure that no cantilevering is ever used.

After discussion, it was decided to discuss this rule at the next meeting.

PETITION FOR RULEMAKING

Landmark Hotel Group (CRC 08-14)

Renee Cahoon recused herself from this issue as she has given advice on this issue and helped with suggested verbiage in the Petition. Chairman Emory allowed 15 minutes per party for presentation.

Ted Sampson, environmental consultant with Sampson and Company, represented Petitioner Landmark Hotel Group. Mr. Sampson stated that Michele Pharr, vice-president for regional operations for Landmark Hotel Group, is also in attendance. Landmark Hotel Group requests a change to soft-erosion control structures (sandbags). Mr. Sampson stated that he had received a copy of Staff’s response to the Petition and Staff opposed it on every count. Staff was being

responsive to guidance previously received from the Coastal Resources Commission. Mr. Sampson stated there was an alternative approach to time limits on sandbags. There were two points that were brought up on the Staff response that bare making a specific response to. The first is Staff oppose this Petition because we were treating commercial structures differently from non-commercial structures. Mr. Sampson pointed out to the Commission that the Petitioners are owners of commercial property and while they feel there are justifiable reasons why commercial properties could be treated differently than non-commercial properties. Some of the Petitioner's justification for this is that commercial properties have a greater economic input to the local area and region. More of the money that goes into this commercial structure is plowed back into it in the way of maintenance, salaries, and staff than to an out of state owner of a single family dwelling. Petitioners also feel that the owner of a commercial property has a vested interest in maintaining a sandbag alignment and will do a better job of maintaining it ensuring that it is aesthetically pleasing, well maintained and not a liability. Should the CRC feel they want to deal with both commercial and non-commercial owners in identical fashions, the Petitioner feels they can live with what has been provided in the Petition for both commercial and non-commercial entities. The second point to address from Staff's comments is they oppose the Petition because the Petitioner seeks indefinite maintenance of sandbag structures. This is simply a mischaracterization of what the Petition seeks. While it is true the Petitioners seek relief from a drop-dead, time-certain date where after sandbags would not be allowed to protect existing, viable structures they in great detail have provided a means whereby a structure shall no longer be protected tied to whether it is viable or not. That viability has been put forth in great detail, but it is not seeking an indefinite use of sandbags for the protection of these structures. In May, threatened oceanfront property owners must chose whether to comply with an order to remove their sandbags and watch their property rapidly be made non-viable by continuing erosion, or they must make a decision to defy that order in an effort to protect their private property and then face very expensive court battles. Neither of these options are pleasant options. If the stance of the CRC is to leave unchanged the current rules and let these time limits on sandbags expire, the CRC will be withdrawing the only erosion control protection measure that is offered by the State of North Carolina to property owners. Property owners have already made a compromise with the State by abiding by the State's decision that no hardened structures shall be used to protect property. Mr. Sampson requested that if the CRC cannot enact a new rule that gives some relief to property owners that they at least extend the deadline for the sandbags until the point the CRC could undertake a rulemaking that can provide for the relief that is needed for owners to protect their property.

Mike Lopazanski, Division of Coastal Management, stated the Staff's response to this Petition is a response to the overall strategy through CAMA and the CRC's rules for managing oceanfront development. The Division is opposed to this request because many of the provisions requested are redundant. There are several provisions that the CRC currently has no statutory authority. If the Petition were enacted it would place an additional administrative burden on the Division. It would also in the indefinite maintenance of sandbag structures. It is also contrary to the guidance the CRC has given Staff over the past two years. Over the past eight years, the CRC has allowed sandbag structures to remain, primarily to accommodate the local efforts to secure beach nourishment projects which is the Commission's primary priority response to chronic erosion along the oceanfront. Staff has also received guidance from the CRC on the general management of sandbag structures. Clarification has been provided on the structure's alignment and orientation and how the height is to be measured. After considering all of the various extensions, variance requests, and clarification given to the Staff over the past eight years the CRC decided in the fall of 2007 not make any changes to the rule, but to simply have DCM

enforce the existing provisions. Erosion control structures are permitted under 7H .0308(a)(2). This rule permits sandbags to imminently threatened structures. The Petitioner is requesting that the CRC create a distinction between commercial and non-commercial properties which would eliminate the time restriction for commercial properties provided they meet certain criteria (maintaining sandbags in the permitted alignment, the principal structure retains a certificate of occupancy, that the property owner signs an agreement for maintenance, and the property owner posts a performance bond for the eventual removal of sandbags if they do not meet these conditions). The Petitioner is also requesting that the current sandbag alignment be relaxed to allow the protection of pools, decks and gazebos. DCM is opposed to these provisions, as they are redundant, reflect existing permit conditions and agreements already required of property owners before they get their sandbags. The recent CRC discussions have centered on whether to consider the use of the structure or simply its size in determining the setback. We have policy direction in place and rules are being sent to public hearing where the CRC has found that the use of the structures are irrelevant to its position along the shoreline in terms of protection from the hazards of being on the oceanfront. Creating a distinction between commercial and non-commercial structures is contrary to this policy. The indefinite maintenance of sandbag structures for commercial structures is as much of an interference with the public's right to use the public beach as it would be for non-commercial structures. 7H .0306(k) requires a condition on all oceanfront development permits that an imminently threatened structure be moved or dismantled within two years of its designation. This is acknowledged by the applicant when he receives his permit and it clearly indicates that the CRC had anticipated that the oceanfront structures might need to be moved or demolished. The thirty-year setback the CRC has in place is also an indication that structures could eventually be claimed by the ocean. The use of the sandbags came out of the 1985 ban on hardened structures. Sandbags were an effort to give property owners a means of protecting their properties while they found a solution to their chronic erosion problem. There has never been an indication that the sandbags would be a long-term solution. Sandbag permit holders acknowledge this by signing an agreement when the sandbags are to be removed. They also acknowledge that they are responsible for the maintenance of the sandbags permitted alignment as well as for any misaligned or derelict bags that may find their way out onto the public beach. The Petitioner requests that a performance bond be put into place to ensure the removal of sandbag structures should they not stay in compliance with their permit conditions. The CRC currently has no statutory authority to require such a performance bond. The Petitioner would also use the certificate of occupancy as a justification for maintaining a sandbag structure indefinitely. The management strategy for the oceanfront differs from the estuarine shoreline in that the primary focus of this management strategy is on life and property. The strategy is centered on oceanfront development adapting to changes in shoreline configurations by conforming to concurrent CRC rules. The use of a certificate of occupancy as a determining factor in the continued presence of the sandbag structure is inconsistent with this management objective as well as the objective of preventing encroachment of structures on the public beach areas as stated in 7H .0303(b). As to the Petitioner's citing of the contribution of commercial properties to the Outer Banks economy, we don't dispute that the commercial structures on the oceanfront are contributing 10-20% of the total occupancy revenues. However, the CRC should note that cottages, bed and breakfasts, and campgrounds are contributing the remaining percentage. The study the Petitioners reference comes from the Outer Banks Visitor's Bureau survey 2006 study. It should also be noted that this same study cites the areas beautiful beaches as the primary area attribute which motivates trips to the Outer Banks. This data reinforces the fact that access to the State's beaches is important. The time limits the CRC has in place on sandbags are an essential component of the CRC's overall management objective to achieve a balance in the safety and financial and social

factors that are involved with hazard area development. The Petition also alludes to an ineffective management strategy for erosion control structures on the oceanfront. The perception of this ineffectiveness is a primary result of the CRC's attempt to balance the right of oceanfront property owners with its obligation to protect common-law and statutory public rights of access to, and use of, the lands and waters of the coastal area. The Division remains opposed to the use of sandbags for erosion control. If the CRC believes that other changes are warranted in the management of temporary erosion control structures, Staff recommends a thorough discussion of the rule and its consequences at a future Commission meeting.

After discussion, Melvin Shepard made a motion to deny the Petition for Rulemaking submitted by the Landmark Hotel Group. Joseph Gore seconded the motion. The motion passed with 10 votes (Shepard, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Weld, Elam, Old) and one opposed (Bissette).

PRESENTATIONS

Town of Kitty Hawk 2005 LUP Implementation & Status Report (CRC 08-11)

Joe Heard, Planning Director for the Town of Kitty Hawk, introduced Steven Smith, CAMA LPO officer for the Town of Kitty Hawk, and Holly White, planner. Mr. Heard summarized the accomplishments that Kitty Hawk has achieved in the year since the updated plan was completed. Mr. Heard discussed seven new beach access locations, new beach access parking areas, Phase I of Sandy Run Park, adoption of flood damage prevention ordinance/land disturbance permit, educational plans, and the Kitty Hawk Bay marsh restoration project which was partially funded by a DCM grant.

Melvin Shepard made a motion to accept the Town of Kitty Hawk Land Use Plan Implementation and Status Report. Doug Langford seconded the motion. The motion passed unanimously (Shepard, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) (Bissette, Leutze, Weld absent for vote).

Camden County 2005 LUP Implementation & Status Report (CRC 08-12)

Dan Porter, Planning Director for Camden County, stated that Camden County is a small county in the northeastern part of the state. Mr. Porter stated it is the second smallest county in the state with a population of under 10,000 people. There are no municipalities within the county, but there are three townships. Mr. Porter summarized the accomplishments of Camden County to include funding and building a school, funding and building a sewer system, initiate economic development activity, looking at drainage issues in the county, writing the first capital improvement plan, increasing the water capacity at the water treatment plant, established a community park expansion and the first county parks and recreation department, and beginning to look at the issues in the land use plan to determine what the growth and standards for development can be.

Melvin Shepard made a motion to accept the Camden County Land Use Plan Implementation and Status Report. Chuck Bissette seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Renee, Weld, Elam, Old).

Draft Marsh Alteration Rule Language (CRC 08-07)

Terry Moore, Division of Coastal Management, stated DCM is still interested in taking 7H .0205 to public hearing for rulemaking. Mr. Moore said the problem of marsh alteration has not grown but has intensified. It is not the interest of DCM to stop all mowing or cutting of coastal wetland vegetation. DCM also recognizes that burning the marsh is a tool for managing the marsh as well as other wetlands. However, the coastal wetlands are being manipulated intensely and then the Division is being asked to delineate the areas.

Renee Cahoon asked about property owners who did not want to shade the marsh by building a pier or walkway. She requested that a pathway be allowed for these property owners. Mr. Moore responded by saying that language was inserted which says that you can cut the marsh to a height of two feet as many times as you want. He further stated this would not alter the marsh or the State or Federal's ability to delineate such. After discussion, a provision will be added to allow mowing to a six-inch height with a restriction of the width to four feet for a pathway.

Chairman Emory stated that at this time there is no restriction or limitation on marsh cutting, mowing or burning. The intent of these rules is not to stop moderate, reasonable mowing. It is to target the limited number of individuals who are engaging in the activity of intentionally and repeatedly cutting the marsh to a very short height, planting grass seed, or fertilizing it to get a wetland delineation that expands their high-ground.

Jim Leutze asked why the CRC should allow any marsh alteration? Joseph Gore stated the grasses need to be there for juvenile fish and crustacean habitat. Harm is being done to this habitat. Melvin Shepard stated that he had not heard any convincing evidence that would convince him that coastal wetland alteration is not damaging.

Mr. Moore stated DCM has requested comment from the Wildlife Resources Commission and the Division of Marine Fisheries. The comments we received indicated that marsh cutting or burning does not hurt the resource. On the contrary, a prescribed program of burning on the marsh rejuvenates the marsh and isn't a bad thing. Marsh has not been lost from this activity.

Wayland Sermons stated language should be inserted as 2(G) which allows for a pathway of not more than four feet wide and not less than six inches in height if there is no pier access.

Joan Weld made a motion to send 7H .0205 to public hearing with the inclusion of language that permits a walking path with specific height and width for property that does not have a pier over the wetlands. Chuck Bissette seconded the motion. After the substitute motion failed (), this motion passed with eight votes in favor (Bissette, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Old) and four opposed (Shepard, Leutze, Gore, Elam).**

****Charles Elam made a substitute motion that there should not be any cutting allowed of marsh grasses. Jim Leutze seconded the motion. The motion failed with four votes in favor (Shepard, Leutze, Gore, Elam) and eight votes against (Bissette, Wynns, Langford, Wilson, Sermons, Cahoon, Weld, Old).**

Pier Rules Update (CRC 08-09)

David Moye, Division of Coastal Management, reviewed the history of the proposed changes to 7H .1200 and 7H .0208(b)(6). In January 2006, the CRC was asked for a declaratory ruling on floating docks. This ruling was denied, but the CRC did ask Staff to come back and provide information on floating drive-on jetdocks but also how to permit them within our current

permitting structure. In March 2006, Staff made a presentation of floating, drive-on docks and showed the different types of structures that were available. Staff also presented the idea of allowing development on the water and the shaded impact based upon the length of shoreline of the property. The CRC then asked Staff to come back at the next meeting with proposed language. In November 2006, Staff came back to the CRC with a presentation on pier and mooring facilities that was more in depth along with proposed rule language. A suggestion was made to change the six-foot pier width in the rule to four-foot width. At this point, after discussion, the CRC advised Staff to take the measurement for the access pier out. In January 2007, Staff returned with proposed rule language with the four-foot limitation on the pier and the 8-square feet per linear foot of shoreline for the shaded impact excluding the access pier. A series of contractor's workshops were held in February 2007. A lot of input was received from the contractors on the proposed rule language. Most of the input centered on their unhappiness with the four-foot pier width. In April 2007, rule language was presented to the CRC again with some changes. The issue of four-foot pier width was still a problem for the CRC, the Commission then directed Staff to go back and return with language that would allow piers up to six-feet wide, but continue with the idea of the impact and balance it out. (Allow a pier wider than four-feet but lose something in the end to balance out the shading impact). In May 2007, Staff presented rule language to the CRC that had graduated pier widths of 4, 5, and 6-feet. As the pier widths increased, the shaded impact would also be reduced by what is allowed. In July 2007, the CRC passed this rule language, however, this rule was not to go to public hearing until the Commission was satisfied with the definition of submerged aquatic vegetation (SAV). At that time, SAV was being redefined by the Marine Fisheries Commission and it tied in with our rules. In September 2007, a Committee request was given that asked Staff to come back with wording that would allow or promote shared piers under the General Permit. In November 2007, Staff came to the CRC with wording on shared piers to be added to what had already been approved for public hearing. This was still pending the approval of the SAV definition. Staff from Coastal Management, Marine Fisheries, Water Quality, Wildlife Resources Commission and the CHPP Coordinator have worked on the issue of SAV. Anne Deaton with the Marine Fisheries Commission, who now sits on the CRAC, has been in the forefront of working on this document.

Doug Langford suggested the rules we currently have work and have worked for a long time. Mr. Langford stated that three-feet above the wetland substrate is sufficient and adding the multiplier of the shoreline available. Mr. Langford also recommended deleting the varying pier widths and the heights that go with them. He stated this should be kept simple for permitting and for the public.

Charles Elam made a motion the send 7H .0208 and 7H .1200 to public hearing with the changes recommended by Doug Langford, subject to the CRC's approval of the SAV definition. Chuck Bisette seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Marine Fisheries Commission SAV Definition Update

Jimmy Johnson, Eastern Regional Field Officer for DENR, stated his primary responsibility is to coordinate the implementation of the CHPP. There is a new revised definition of SAV. A lot of new species have been added to the definition of SAV. The old definition of SAV beds primarily included just a few of the high salinity grasses. There was not a hard copy of the document available for the Commission's review. Mr. Johnson highlighted some of the changes.

Mr. Johnson stated that some of the wording that was objected to by the CRC (historical) has been removed. There has been an attempt to define in this document what “adjacent to” means as well as “conditions suitable for growth”. This technical document is primarily for field staff, therefore in the back of the technical document there are various scenarios of proposed activity and the action that should be taken in the permitting process considering impact. The rule as it is written now, as agreed upon by the interagency work group, has been sent before the Rules Review Commission for a preliminary first look. The RRC responded with nothing substantive with regards to the wording. Mr. Johnson stated that it is up to the CRC’s comfort level as to where we proceed. There is some question coming out of the Secretary’s office as to how specific we need to be in rule with some of the definitions (adjacent to, conditions suitable for growth). Mr. Johnson stated the next step was to await correspondence from the Secretary’s Office. The Marine Fisheries Commission is on hold waiting on the CRC to approve this technical document.

Concerns were raised by Deborah Anderson regarding the possible impacts and costs related to D.O.T. projects. Concerns were raised from the Commission that a hard copy document was not available for their review. Ted Tyndall, DCM Asst. Director, stated that following the final input from the Secretary’s office the document would be provided to the Commission.

Anne Deaton, Division of Marine Fisheries, stated she has an article entitled “A Global Crisis for Seagrass Ecosystems” published in 2006. She stated one of the reasons the CHPP is doing this is it has been documented that we are losing SAV habitat worldwide. We are hearing of reports of SAV in areas of North Carolina but there is no mapping or monitoring to say if we are increasing this habitat. The studies that have been done indicate that the major losses of SAV are from dredging, hydrological alteration, and shading on a small scale. On the larger scale from eutrophication, sediment deposition and sea level rise. Ms. Deaton stated that just because the definition is being expanded to be more accurate biologically does not mean that we are prohibiting activities.

Charles Elam questioned why the pier rules were held up as a result of the SAV definition. Chairman Emory stated that the SAV definition would play a role in the permit process. Jimmy Johnson stated this definition helps the field staff. Ted Tyndall concurred that the flow charts are helpful to determine when to consult with DMF. Jim Gregson stated that three years ago DCM was writing General Permits without regard to SAV, one year ago DCM was looking for beds of SAV and were consulting with DMF if we saw that the dock would be right on top of it, now DCM is a lot more cautious to the idea that there may be SAV in the area was are consulting with DMF. This document would specify at what point we should have consultation with DMF. Charles Elam stated that the CRC should not be holding up rules waiting on this definition when DCM is already enforcing the definition in the field.

Charles Elam stated that CAMA, Marine Fisheries, and a number of other groups had all agreed upon an internal memo of understanding as how they would look at SAV. Ted Tyndall stated that Anne Deaton was the chair of the committee for drafting the proposed SAC technical document. The CRC had concerns several months ago about all encompassing it was and the committee took that under advisement. Mr. Tyndall further stated that he gave a presentation to the CRC about the need for this definition to run parallel with our resource agencies and that we did not need for there to be an issue with a permit and DCM determine SAV to be one thing and the resource agencies determined it to be something else. If this happens and the permit gets appealed and we end up in court, we have agencies fighting over the definition. MFC placed the

definition on hold while the agencies worked on it and made DCM feel more comfortable that it could accomplish the goal of DMF and is something that will not stop development from taking place.

Charles Elam stated that the CRC wanted to study this new interpretation of SAV prior to it being put into a rule definition, but in the meantime (for the past six months) we are enforcing something that has never been adopted as a rule change definition and administering it as if it was. We are holding the dock and pier rules waiting on SAV interpretation.

Anne Deaton stated that when the committee starting meeting there was a different definition and through this process we have modified the definition based on input from DCM, DWQ, Wildlife Resources and the Department. We wanted to make sure the definition was biologically correct but wouldn't be problematic for the DCM rules.

Charles Elam asked Ms. Deaton if she would have a problem sending the proposed SAV definition to the CRC's science panel for their review. Ms. Deaton stated that this is a Division of Marine Fisheries definition based on our expertise with marine habitats and fishes.

Wayland Sermons asked if DMF has approved this definition. Ms. Deaton stated the MFC approved a different definition than this to go to public hearing. She stated that this rule is not going forward until this is worked out. Mr. Sermons asked Ms. Deaton if the CRC is giving the DMF and WRC carte blanche to approve piers? Ted Tyndall responded by saying if there was a disagreement with DMF over SAV, a General Permit request would be elevated to the Major Permit process. Mr. Sermons also stated that he would like a copy of the agreed upon language and the document that we have been referring to that we don't seem to be able to get a copy of. Chairman Emory stated that the entire Commission should have a copy of it. Chairman Emory asked if it was still the wish of the Commission to hold off on the pier rules. It was agreed upon to hold off.

Bob Wilson stated that our Agency chose to approve the CHPP, but our approval was somewhat guarded. We approved the CHPP as a guideline only for future policies. It seems that we are now looking at the CHPP as some sort of mandate for our rules and I don't think it was the original intent of this body that it be that way. My problem with SAV is and probably always will be a very unreliable barometer to make any concrete decision on. I don't feel we have gotten transparency from the Division of Marine Fisheries. I am led to believe that there have been considerable flyovers of eastern North Carolina to map this SAV. That has not been explained to us. There is a question as to what that means to future development or the lack of future development that Marine Fisheries would be able to block. I am not speaking for developers or contractors, I am speaking for the people of the State of North Carolina that pay property taxes to this State so they can enjoy the resources of this State. It is very important that the Coastal Resources Commission feels comfortable with these rules because we are charged with permitting docks. It is obvious that we are not comfortable. It has been obvious to our staff for months that we have been wrestling with this elusive thing called submerged aquatic vegetation and we are not comfortable as a board or we would have passed our rules. There has been a lot going on behind the scenes that we have not been privileged to. There is a document that we haven't seen.

Anne Deaton stated she apologies the document was not in the packet, but it was because of the late date that the final changes were made. We were waiting for a final approval from DENR so

we could tell you with confidence that all of these Divisions including the Department were alright with this definition. DMF has been transparent. Four of the CRC's staff are on the committee for this definition.

Lee Wynns stated that he supports the position of the rest of the Commission who have addressed their concerns. Jim Leutze stated that the CRC needs to be better informed, but he hopes this will not destroy the concept of coordination of all the agencies. Chairman Emory stated his perspective is things have not been done a great deal differently than it was two years ago. He further stated that he has no significant reservations about the two agencies working together and that he has no less confidence in our staff today than he did prior to today.

Draft Amendments to Shoreline Stabilization Rules (CRC 08-08)

Bonnie Bendell, Division of Coastal Management, stated we discussed this issue in November 2005. DCM recognizes that this is a controversial and complicated topic. We have run into some complications with the Division of Water Quality and the bulkhead placement. We are still working through those with DWQ and will be going before the CHPP steering committee on April 11, 2008. We will be asking the other Divisions to discuss it with us and ask for recommendations. DCM would like to come back to the CRC in May with those recommendations. In the meantime, DCM has done a lot of work that can still move forward. Over the past two years there are three other rules we have worked on that we would like to go to public hearing. These rules are the proposed changes for the general permit for groins (7H .1400), marsh enhancement breakwaters (7H .2100) and the general permit for riprap for wetland protection (7H .2400).

7H .1400 is the general permit for groin placement we have changed the spacing on how to place the groins. Spacing changes would be changed to two times the groin design length to a maximum of fifty feet apart. It will allow more flexibility in the rule; allow more flexibility in placement and more property owners would be allowed to apply for this permit. Clarifications were made on how to measure distances and lengths and to correct any ambiguous language.

7H .2100 is the general permit for marsh enhancement breakwaters we would like to do some terminology changes. Changes would entail changing "marsh enhancement breakwater" to "sheetpile sill". This was done at the request of the CRC to create a separate general permit for breakwaters without marsh enhancement. Ambiguous language was also corrected in this rule.

7H .2400 is the general permit for placement of riprap for wetland protection (riprap waterward of any marsh). The term "riprap" has been changed to "riprap revetment". A maximum distance waterward allowed has been added. This change allows extension to six feet because there are also slope requirements.

Chuck Bissette commented that the six-foot waterward requirement for riprap revetment is difficult to keep exact. The stone is substantial in size and you just physically cannot quite stack it perfectly. Ted Tyndall stated this is for lower wetland areas. The 7H .1200 general permit still allows the riprap protection to go out ten feet along non-wetland shorelines.

Renee Cahoon stated that after the CHPP steering committee meeting, she would like Staff to bring the proposed changes to bulkhead general permit and the comments received from the other agencies.

Doug Langford made a motion to accept the changes to the shoreline stabilization rules (7H .1400, 7H .2100, 7H .2400) and send them to public hearing. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Rule Interpretation – 15A NCAC 7H .0308(a)(2) Temporary Erosion Control Structures (CRC 08-17)

Jim Gregson, Director for Division of Coastal Management, stated that recently he has become more uncomfortable in the way DCM is authorizing some of the sandbag structures based on the rule. 7H .0308(a)(2)(B) requires that temporary erosion control structures be used to protect only imminently threatened road and associated right-of-ways, buildings or septic systems. A structure will be considered to be imminently threatened when its foundation, septic system or right-of-way in the case of roads is less than twenty feet away from the erosion scarp. Buildings and roads located more than twenty feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions such as a flat beach profile or accelerated erosion tend to increase the risk of imminent damage to the structure. 15A NCAC 07H .0308(a)(E) states that the landward side of sandbags shall not be located more than twenty feet seaward of the structure to be protected. More and more frequently, DCM is allowing sandbags to be placed along the seaward side of the erosion scarp when structures are determined to be imminently threatened due to accelerated erosion, even when the scarp is located more than twenty feet from the structure. In some cases, the landward side of the sandbags have been placed forty feet or more from the structure. (Photos were shown to illustrate these instances). In DCM's opinion, the rule is very clear but in all of the illustrated cases these structures are considered threatened but it is eroding so quickly we would not be able get sandbags in. We could issue permits to put sandbags within twenty feet of the house, but in some cases it would mean placing the sandbags in the swimming pool, taking a pool out, or in the case of the east end of Ocean Isle Beach the sandbags may be going between the road right-of-way and a house.

Wayland Sermons stated that the exception to the 20-foot based on flat beach profile or accelerated erosion is the correct interpretation and it can be more than 20-feet away if the Division determines these conditions exist. If it is imminently threatened, the Director can determine where the bags go even if it is more than 20-feet away. Continue the practice DCM is exercising. It is a common sense approach.

Melvin Shepard asked if the rule needed to be amended to allow for a permanent change. He stated that he fears the Commission will make a fatal step that in the legalities that are coming due to sandbags will put DCM in a bad position.

Frank Crawley, CRC Counsel, stated that buried in the APA under the definition of a rule there is an exception called an interpretive ruling. An interpretive ruling is different from engaging in rulemaking. This is what has been done. The DCM Director has asked for an interpretive ruling with respect to how to interpret this section in 7H .0308 and the CRC has accomplished this by voting for the motion.

Wayland Sermons made a motion to allow the current practice being exercised in the implementation of 7H .0308 to allow sandbags more than twenty feet away within the Director's interpretation based upon the imminently threatened language already in the rule. Renee Cahoon seconded the motion. The motion passed with eleven votes (Shepard,

Bissette, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old) and one opposed (Leutze).

Jim Leutze stated that we have very conflicting rules as far as these issues are concerned. We need to let the General Assembly know about this. He stated that he is convinced that by trying to be cooperative and working with people and giving sandbag extensions, we are setting ourselves up for a series of lawsuits. We have not in many instances, short of beach renourishment, managed to make sandbags a solution. The sandbags are going to be there for two or five years and then they are going to sue us. We either should allow terminal groins in inlets so the beaches do not erode or we should find a permanent way to have beach renourishment of the beaches that are threatened. Otherwise, we are using temporary solutions we know are temporary and are going to make people mad when they have to remove them.

Bob Wilson stated that we need to have a definition of temporary. He stated that he agrees with Commissioner Leutze. Chairman Emory stated that we have not failed to define temporary, but we have failed to enforce it.

Renee Cahoon stated that we have our hands tied behind our back by the General Assembly. A lot of municipalities and counties are getting ready to petition the State, this body should express its frustration to the State of North Carolina. Chairman Emory suggested putting together a subcommittee to prepare a position for the CRC to consider at the May meeting. Doug Langford requested that it be put on the May agenda to find the best way to approach the State of North Carolina on this issue.

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

VARIANCES

Midgett (CRC-VR-07-11) Dare County, Oceanfront Setback

Amanda Little of the Attorney General's Office, representing staff, stated that this variance was filed by Carroll and Donna Midgett and they are represented by Christopher Seawell. The property is located on Highway 12, north of Southgate Drive in Rodanthe, Dare County. Petitioners propose to construct an 8 bedroom, single-family residence with a pool. All of the proposed development is waterward of the applicable ocean erosion setback. The Petitioners seek a variance from the CRC's oceanfront setback rule 15A NCAC 7H .0306(a).

Ms. Little reviewed the stipulated facts for this variance and stated that Staff's position in this case is a variance is not warranted. Staff and Petitioners agree on the issue of hardship in this case, however, Petitioners have not met the remaining three criteria for granting the variance.

Chris Seawell, Attorney from Manteo spoke on behalf of Petitioners, Mr. Seawell reviewed the three criteria which he contends supports the granting of the variance. Mr. Seawell stated that this is the only lot which is not built upon and the structures could not be moved landward. Mr. Seawell further stated that this was an unbuildable lot when the land was purchased.

Doug Langford recused himself from this variance request. He stated there was no actual conflict, but stated there could be an appearance of conflict.

Melvin Shepard made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships. Jim Leutze seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Melvin Shepard made a motion to support Staff's position that hardships do not result from conditions peculiar to the petitioner's property. Joan Weld seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Melvin Shepard made a motion to support Staff's position that hardships result from actions taken by the petitioner. Jim Leutze seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

Melvin Shepard made a motion to support Staff's position that the variance request will not be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will not secure public safety and welfare; and will not preserve substantial justice. Joseph Gore seconded the motion. The motion passed unanimously (Shepard, Bisette, Leutze, Wynns, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

The variance was denied.

Emerald Isle et al. (CRC-VR-08-02 thru 08-07) Sandbag Time Extension

Chairman Emory allowed both Staff's Attorney and Petitioner's attorney ten minutes each for oral argument for these variance requests.

Christine Goebel of the Attorney General's Office, representing staff, stated one correction on the Staff Recommendation issued to the CRC. A correction sheet was provided for the official record. Ms. Goebel stated Attorney Glenn Dunn was present and would represent this group of petitioners. This variance request was filed on behalf of the Town of Emerald Isle and five adjacent property owners on the western tip of Emerald Isle (The Point) in Carteret County. Petitioners are requesting to keep the sandbag revetment in place for two additional years which is protecting the Town's right-of-way and five individual houses adjacent to Bogue Inlet. Petitioners seek a variance from 15A NCAC 7H .0308(a)(2)(F) as well as from the CRC's earlier variance orders which require the sandbags be removed at this time.

Ms. Goebel reviewed the stipulated facts of this variance and stated that Staff and Petitioners agree on all four statutory criteria necessary to grant the variance. She stated an inlet relocation project was completed on April 22, 2005. The project was designed and expected to result in significant, natural accretion in the area over a period of four to six years. The Town has acquired the accreted area in the past and has made it available for public access and remains committed to doing so in the future.

H. Glenn Dunn, attorney representing petitioners, reviewed the stipulated facts he contends support the granting of this variance. He further stated the petitioners are simply requesting an extension of time in order to allow the inlet relocation project to work. Mr. Dunn stated that this project is only halfway through the period that the engineers said would be necessary for the project to work.

Doug Langford made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships. Jim Leutze seconded the motion. The motion passed with eleven votes (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) and one opposed (Weld).

Doug Langford made a motion to support Staff's position that hardships result from conditions peculiar to the property. Jim Leutze seconded the motion. The motion passed with eleven votes (Shepard, Bisette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) and one opposed (Weld).

Doug Langford made a motion to support Staff's position that hardships do not result from actions taken by the petitioner. Jim Leutze seconded the motion. The motion passed with nine votes (Shepard, Bisette, Leutze, Langford, Gore, Wilson, Cahoon, Elam, Old) and three opposed (Wynns, Sermons, Weld).

Jim Leutze 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; secure public safety and welfare; and preserve substantial justice. Charles Elam seconded the motion. The motion passed with ten votes (Shepard, Bisette, Leutze, Langford, Gore, Wilson, Sermons, Cahoon, Elam, Old) and two opposed (Wynns, Weld).

The variance was granted.

CONTESTED CASES

Ward v. DCM and Carolina Marina 07 HER 0406

Christine Goebel of the Attorney General's Office, representing Staff, stated Mr. David Ward is present and will speak on behalf of Petitioners. At trial he and his mother, Mrs. Violet Ward, were represented by Bill Raney of Wessell and Raney. However, this morning Mr. Ward will speak on their own behalf. Matt Nichols of Shanklin & Nichols representing the Intervenor-Respondent (the permittee) is also present.

David Ward, Petitioner, stated his attorney Bill Raney has submitted exceptions to the decision of the Administrative Law Judge. Mr. Ward reviewed the exceptions submitted to the finding of fact and further stated that Petitioners do not disagree with the findings of fact, however feel they are incomplete. Mr. Ward stated that he feels DCM erred as a matter of law in not denying the permit issued to Carolina Marina and Yacht Club, LLC. Mr. Ward reviewed the reasons he contends DCM erred in issuing the permit. Mr. Ward stated that if the CRC feels that DCM erred on the issues regarding square footage of the structures or channels in primary nursery areas, the appropriate action would be to deny the permit. Mr. Ward further stated he and his mother have owned this property since 1994, next door to the permitted dock, and since they

have owned this property it has been undeveloped. Violet Ward, Petitioner, stated she agrees with the arguments made by her son, David Ward.

Christine Goebel reviewed the background of this case. David and Violet Ward are the Petitioners and own the property adjacent to the site of the proposed development. Carolina Marina and Yacht Club, LLC are the Intervenor-Respondents in this case and the primary member-manager is Tim Ward. The property is located on the intercoastal waterway just north of the Carolina Beach Inlet. The property has been used for a number of years as different variations of a marina and boat storage based on an old special use permit the County had handled. This case focuses on the CAMA permit issued in 2007 and whether it was properly issued or not. Petitioners noted the exceptions they filed are not exceptions as such, Petitioners characterize them as adding pertinent information to the findings of fact. Ms. Goebel reviewed the exceptions submitted by Petitioners and requested that the CRC not accept Petitioner's exceptions and changes as they are irrelevant, mischaracterizations of the testimony, or misinterpretations of law. The ALJ ruled in Staff's favor and found that DCM properly issued CAMA Major Permit #02-07. Ms. Goebel requested that the CRC uphold and adopt the ALJ's decision.

Matt Nichols concurred with the points Ms. Goebel had made. Mr. Nichols stated this was a three-day long hearing with extensive testimony and attorneys represented all parties. The ALJ issued an extensive twenty-plus page opinion which included ninety-one findings of fact. Mr. Nichols stated he would respectfully contend that substantial and significant testimony and exhibits in the record support these facts. The ALJ's decision should be upheld.

Wayland Sermons made a motion to adopt the Administrative Law Judge's decision. Lee Wynns seconded the motion. The motion passed unanimously (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

PUBLIC COMMENT AND INPUT

Willo Kelly, Government Affairs Director for the Outer Banks Home Builders Association/Outer Banks Association of Realtors, stated she has recently had several meetings on the coastal stormwater rules. I am speaking to the CRC in response to Tom Reeder's comments yesterday regarding the proposed coastal stormwater rules. I am concerned about several comments that were made and his response to certain questions. When Mr. Reeder was asked about why counties have hired a lobbyist to fight against these rules his response was "we expected counties to lobby against these rules regardless of what we do". Those comments are of great concern to me, I have worked very hard to educate myself on these rules as others in Dare County. Those comments just perpetuate the misconception that those that oppose the rules would oppose any rule changes. This is not so. His comments also give way to if you support the rules than you support the environment or if you don't support the rules then you don't care about the environment. Unfortunately, this portrayal of the building community has taken place over the last several years and the stormwater rules are being used to lead that charge that developers are bad. I found his presentation misleading in several aspects. First of all, in looking at what is the actual goal of the rules? If have been issuing subdivision permits for over twenty years and there is a problem with those permits, why are we trying to impose more restrictive rules on new development? There has been no monitoring or enforcement of those permits, is that not a problem? When Mr. Reeder said that based on lowering the high-density threshold excluding wetlands from built upon area calculation increasing the buffer to fifty-feet, he didn't say that all

post development stormwater would be required to be controlled and treated on site. When meeting the technical aspects of the rules, this would certainly restrict development and is that the overall purpose of these rules? These rules are actually more restrictive than Federal Phase II rules, Phase II rules are a model of stormwater management regulations based on urban development that is imposed on communities with small municipal separate storm sewer systems (MS4's). The buffer is less and you can include wetlands in your built upon area calculations under Federal Phase II. Three counties are currently designated Phase II, the more restrictive provisions will now be applied to twenty coastal counties. Why is an urban model for stormwater management being applied to all twenty coastal counties? The requirements also refer to provisions if you are disturbing over 10,000 square feet but less than an acre you do not need a stormwater permit. Why are we looking to adopt rules where there will no monitoring and enforcement of those provisions and if it falls on the local counties and municipalities this is actually an unfunded mandate. I questioned Mr. Reeder on several of these issues and in an e-mail (copy of e-mail provided) and he stated in it that I was correct and that this would have to be something that would have to be clarified during legislative review. These rules are flawed. They present the same problem that exists with the current rules. We need something better.

Doug Naismith, resident of Suffolk Virginia and property owner in South Nags Head for twenty years, stated he is the typical oceanfront homeowner. I had a beautiful high dune that obstructed my view of the ocean when I bought the house. I now have sandbags running under the house protecting my septic tank. If I am forced to remove the sandbags, that will doom my house and very shortly thereafter the house that sits immediately behind mine (50 feet to the West) will soon be threatened as well. This situation is not unique to me. It occurs up and down the coast of South Nags Head. I realize that the CRC's concerns much be for the broader policy issues and not for the individual homeowners who are going to suffer financially from this decision to remove the sandbags. Let me suggest three broader policy issues. The first is what we are dealing with here is a natural disaster. These are not homeowners who have willingly, intentionally violated the law. Usually in cases of natural disaster we look to our government for help. We are not asking for a handout, we are willing to pay. We just want to have the time for solutions to be found to address the problem in a long-term fashion and not a temporary fashion. (2) Times have changed. We are now dealing with a planet that is warmer, sea levels are rising, there is new technology that did not exist forty or fifty years ago when some of the rules you are trying to enforce now were formulated, and the houses that are placed on the beach now are really part of a development process that has been encouraged by the local communities not discouraged over the last forty or fifty years. (3) Impact on the local economy of this decision. Most of the homes that I am familiar with are really rental properties, they are economic generators, little businesses. Take those away and take away the affect of the renters on the local economy (the restaurants, gas stations, etc) and you have a tremendous economic impact.

Roc Sansotta, owns houses in South Nags Head, stated he was looking at some of the pictures earlier. Third Street in Emerald Isle looks a lot like Sea Gull Drive. Sea Gull Drive did not have to look like that because before the road was torn out at the end of it, I offered to put the bags in at my expense. These oceanfront homeowners and property owners have asked as Mr. Naismith said, for no handouts whatsoever. I have gone on everything that I bought, the first house in 1988. Yes it was misrepresented to me, it was built only five years before and it had some bags in it but they said it was there for added protection. The reason I bought the house next door was because they were going to tear it out. To tear it out would leave me completely unprotected. Then a couple of other ones on Sea Gull Drive I had to pick up because is that house was gone, the road is cut off, if the road is cut off you can't get to your house and it could be condemned.

So Sea Gull Drive could have stayed in a circular manner. Of course if my houses go on Sea Gull Drive, the road first and then the houses behind that will go. It is bad economic times now. The Town right now doesn't have to pay anything to keep these houses up, but they will have to pay for clean-up and the road to try to get another road in. I really believe the terminal groin is a wonderful way to go. I am not asking for a total extension, but lets get a groin in. Everyday you see down in the inlet the dredge is out there pumping all the sand that has just pushed itself right off of South Nags Head and into the inlet. If we could all agree on that, you said yesterday let's go for something else. A groin will buy us time to start some beach nourishment.

Richard Murphy, property owner in Nags Head and resident of Raleigh, stated he is more concerned about the beaches for the entire state. In 1974 this Commission was given the main objective of protecting our beaches. Our beaches are disappearing. Eventually we won't have beaches to protect. You guys are not in an envious position because there have been talks for the past two days about lawsuits. As an engineer, I always go back to the thing that when you are up to your tail in alligators and they are biting you, it is hard to remember that your original objective was to drain the swamp. I am elated at what I have heard in the last two days from the Commission. I think the Commission is actually recognizing the fact that you are hamstrung by rules and laws that are dictating that you carry things out that do not necessarily need to be carried out. If rules and laws are set and we are governed by those, but they are no longer functioning it is time to have them changed. Establishing a committee to make a presentation to the State Legislators to get some changes done is obviously the correct way to go about it. Renee has been given a copy of the Old Dominion University Report on beach renourishment in Virginia Beach. If I can share a few number because we were talking about alternatives yesterday. There are offshore fishing licenses that bring in millions of dollars for funding, lodging taxes, we can pay for it. The alternatives may be a combination of things: renourishment, groins, and even offshore reefs formed as breakwaters. Virginia Beach's renourishment project started back in 1994. It is economically feasible for Virginia Beach to actually foot the whole bill. Right now it is being split 65% by the federal government, 5% by the state and 30% by Virginia Beach. The state of Virginia is actually spending about a half of a million dollars, but their gain is 24 million dollars per year. Our main objective has got to be to protect our beaches and regain our beaches. I encourage the Commission to step forward with the Legislature.

Carol Alley, Resident of Moyock and homeowner in South Nags Head, stated she finds herself almost on the verge of tears because she was never told by anyone in the entire process that her sandbags that are under her house and protecting her house would ever have to be removed. I was quite shocked when I received the letter a few months ago. When I spoke with someone from your office they basically told me that I had a lawsuit. I don't want a lawsuit I want my home. I am very encouraged by the things I heard here today. I implore you to please take this on a case-by-case basis. If you are letting people put more sandbags in, it makes no sense for me or anyone else to have to take theirs out. I am pretty sure I meet the twenty-foot situation. I haven't been out there measuring; I am fully unprepared for any of this, even being here today. Just retiring from twenty-four years in law enforcement I do want to obey the laws and the rules and I do want to be a good property owner. I just want my property to be there for me to continue to own it.

Charles Baldwin, Attorney for the Village of Bald Head Island, stated he has enjoyed being here for two days. I told the Director that I would not offer any comments and was not planning to, but did want to by way of experience share a few things that might be relevant to the

subcommittee on sandbags that is being formed. Bald Head Island has two sandbag structures that have been critical to protecting key public infrastructure and many homes. One of those is a 16-geotextile tube groin field and the other is a sandbag wall protecting South Bald Head Road, which is one of the main roads and key routes from the island. The sandbags are completely covered due to beach renourishment, but Bald Head is affected by both the Corp's shipping channel and by hurricanes. I can envision circumstances in which those structures will be very important in the future to manage things on a temporary basis, which I think is consistent with the Commission's intent. By way of what might be a temporary use of such structure, I wanted to also suggest that if you have a Corps authorized dredging project and the funds are not readily available, as happened to Bald Head in 2004 where funding was delayed a year, these structures were very important. I would like to echo the comments of Mayor Harry Simmons that where you have an inlet area such as the Cape Fear entrance you have a shipping channel that some sort of environmental structure might be helpful to prevent these rapid swings in erosion and also to prevent the huge public expense of funds for these continual renourishment projects. In Bald Head it is approximately 15 million dollars per project. The last project in addition to Corps funding required 3.5 million dollars from the Division of Water Resources and 1.5 million dollars from the Village. It will certainly be a continual challenge to our island as well as to the communities up and down the coast.

Malcolm Fearing, native of Roanoke Island in Dare County, stated he was not before the Commission to talk about beach nourishment. I grew up on Roanoke Island and as many boys I swam in Shallow Back Bay. I learned to swim there, I fish there, and I shrimp there as many of the local people do. Why am I coming before you? I am coming before you with a compassionate plea of help. I am asking for your help for Shallow Back Bay. Shallow Back Bay has been classified as SC waters since 1961. Sewage has been pumped in that Bay since then. If I would have known that then I would not have swam in it. Knowing it now, I don't eat soft-crab out of it and I am going to give my shrimp net up. I am not trying to fault anybody for dumping the sewage in Shallow Back Bay but I want to bring this awareness to you, as you are the protectors of our coast. The operator of the wastewater treatment plant since June 6, 2007 has had 124 violations of dumping contaminants in the Bay. Some have been fecal chloroform bacteria, some have been chlorine. I am not a scientist but I don't think it is good. I especially don't think it is good for my daughter who has been teaching a sailing course for the past three years to put children in this water and to teach them how to ride a sailboat and how to put on a lifejacket and swim. I am going to leave for the record what SC water means, but quickly what I am going to tell you it is, what my layman's term is that you are not supposed to be in it. There is a triathlon scheduled for it next month. I doubt that the athletes know that they are not supposed to be in it. This is not a political issue, for no one in Manteo is running for political office this time, but I am pleading for you as you protect the birds, the crustaceans, and the beaches, I plead with you to form a study commission to protect the small children and the adults that consume the seafood out of that Bay from this event that is occurring. This is not a Roanoke Island issue as those waters go from Roanoke Island Sound over to the beaches from Kill Devil Hills to Colington maybe to Hatteras Island. What I plead with you to do for the health and safety of humans, to look at this issue seriously as it has not been since 1961.

ACTION ITEMS

Chairman Emory stated that a draft letter to Senator Dole was provided to each Commissioner to review. Steve Underwood stated that Dr. Stan Riggs had requested that this letter be presented to the CRC. This is a letter of support from the CRC for a proposal developed in part by ECU.

This is to assess the economic implications of climate change, sea level rise, and storms for both North and South Carolina.

Renee Cahoon commented on a section of the letter that gives an example about proposed deliverables. This specifically mentions Oregon Inlet Bridge and Highway 12. She stated she takes great exception in that this could be used to circumvent the process of building the new bridge given Dr. Riggs' position. Steve Underwood stated that we could strike out the reference to the bridge and Highway 12. Doug Langford requested that all universities in the University School System be copied on the letter. This was agreed to by all in attendance (Shepard, Bissette, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old).

OLD/NEW BUSINESS

Steve Underwood stated that the inlet hazard areas have been defined, but the rules have not been looked at in great detail yet. It is being scheduled to look at the rule language for the inlet hazard areas. Jim Leutze stated that he is aware that the map that has been drawn at Bald Head Island is having a significant financial impact on that island and the ability to sell property. Once these maps come out, there are rumors that some maps are not correct. We are going to have to move quickly and be careful when we put these maps out, that they will not have unintended consequences. Jim Gregson stated that DCM recognized that the uniqueness of Bald Head Island was going to be a problem. We have been to the Village and talked to them about the maps. In the old inlet hazard boundaries there was specific rule language put into place for Bald Head Island and Staff will certainly be presenting that type of thing when we get the rule language worked out.

Wayland Sermons stated it is obvious based on our discussions and the public's reaction to them that we are getting ready to go into a phase of increased variance filings, contested case matters and other things. Enforcement actions are necessary. Unfortunately due to the Division's appropriation for legal fees and allocation of attorneys, we are facing a shortage. We are facing a shortage of personnel because of State budget or internal budget. I would like to propose a resolution to be sent to Governor Easley and the General Assembly requesting that in this short session coming up in May, that the General Assembly allocate additional funds for legal services for Coastal Management issues. This will get our legal needs met and handled in the professional manner as they have always been done. This should be drafted for the Chairman's signature.

Wayland Sermons made a motion that a resolution to be sent to Governor Easley and the General Assembly requesting allocation of additional funds for legal services for Coastal Management issues. Bob Wilson seconded the motion. The motion passed unanimously (Shepard, Leutze, Wynns, Langford, Gore, Wilson, Sermons, Cahoon, Weld, Elam, Old) (Bissette absent for vote).

Members of the Comprehensive Beach Management Task Force Subcommittee will be as follows: Bob Emory, Jim Leutze, Wayland Sermons, Renee Cahoon, Harry Simmons, Spencer Rogers, Deborah Anderson, and William Morrison.

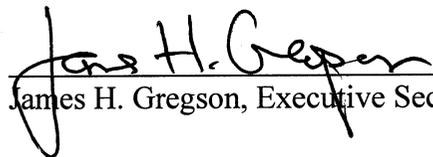
Jim Gregson stated that the Department has requested that the Division cut down on the amount of paper and postage being used for CRC meetings. CRC members were reminded of the public

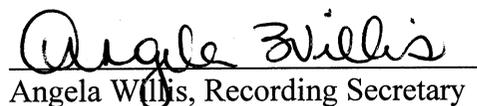
comments that were sent to each Commissioner for the setback rules. These comments took six boxes of paper. Mr. Gregson stated that he would mandate that paper use be cut back dramatically. The only way to do this is to go electronic. One suggestion would be the potential of sending a flash drive to each Commissioner. The Division will purchase the flash drives and at the end of the meeting we will gather them up and get them ready for the next meeting. The amount of money we spend on paper, we could buy one laptop per year. With the amount of postage we use, we could probably buy three or four laptops. It is incredible the amount of paper that is left of the Commission's table at the end of every meeting. Chairman Emory told the Commission if there is anyway they can, please try to cooperate with the request.

Joan Weld read a letter from Courtney Hackney, former CRC Chairman, to the Commission.

With no further business, the CRC adjourned.

Respectfully submitted,


James H. Gregson, Executive Secretary


Angela Willis, Recording Secretary

Draft

**NC Coastal Resources Advisory Council
Clarion Hotel
Kill Devil Hills, NC
March 26, 2008
Meeting Summary**

Attendance

Dara Royal, Chair	Y	Wayne Mobley (Alan Saunders)	Y
Penny Tysinger, Vice Chair	Y	J. Michael Moore	Y
Deborah Anderson	Y	William Morrison	Y
Eugene Ballance		Elwood Padrick	Y
Bert Banks	Y	W. Burch Perry	Y
Joe Beck		Spencer Rogers	Y
Randy Cahoon	Y	Frank Rush	Y
Carlton Davenport	Y	Robert Shupe	Y
Eddy Davis	Y	Harry Simmons	Y
Anne Deaton	Y	Lester Simpson	Y
Christine Mele	Y	Paul Spruill	
Webb Fuller		Ray Sturza	Y
William Gardner, Jr.		Tim Tabak	Y
Renee Gledhill-Earley	Y	Reid Thomas	
Gary Greene		Joy Wayman	Y
Judy Hills	Y	Beans Weatherly	Y
Al Hodge	Y	David Weaver	Y
Maximilian Merrill		William Wescott	Y
Joe Lassiter	Y	Traci White	Y
Travis Marshall	Y	Rhett White	Y
Gary McGee		Don Yousey (David Stanley)	
Gary Mercer			

Wednesday 26th

Call to Order

Dara Royal called the meeting to order at 2 pm and the Council approved the January 2008 minutes. Royal announced that the Town of Wrightsville Beach had purchased Beach Access #33 with help from the Surfrider Foundation. The Advisory Council had supported action to preserve the access. Spencer Rogers added that the Surfrider Foundation would probably welcome donations to help with the costs.

Changes to CRC & CRAC Meeting Structure

Royal reported that a joint CRC-CRAC made several recommendations to the meeting structure. One meeting (January) will probably be eliminated to reduce the total number of meetings for the year to five. Depending upon caseload, the CRC may on occasion hear some variance requests on Wednesday afternoons, with the CRAC meeting slightly earlier to accommodate that. Bob Emory

Draft

said that the advantage would be to allow more time for other work on Thursday and Friday. The Advisory Council approved a motion to support the recommendation, scheduling CRAC meetings so that they do not conflict with variance proceedings, and retaining flexibility on start and end times.

Royal said the subcommittee will recommend a seating change to integrate the CRC and CRAC during committee meetings. They will recommend that I&S and P&SI only meet as needed and that Thursday afternoon meetings generally be run as a committee of the whole. In meetings as a committee of the whole the CRAC will be invited to participate in discussions, but will not be allowed to vote. The Advisory Council approved a motion to support these recommendations.

Royal said that the subcommittee will recommend that land use plans be reviewed by the Advisory Council, who would issue a recommendation to the CRC on whether to certify the plans. The Advisory Council approved a motion to support this recommendation.

Royal said that the subcommittee will recommend that the CRC Executive Committee meet at the conclusion of the regular business meeting on Friday to frame the next meeting's agenda. They will also recommend that I&S and P&SI committee chairs remain on the Executive Committee. The Advisory Council approved a motion to support these recommendations.

CRAC Guidebook Revisions

Dara Royal, Penny Tysinger, Harry Simmons, Bob Shupe and Tim Tabak volunteered to serve on a subcommittee to update the CRAC Guidebook.

Hyde County Land Use Plan Review

John Thayer presented background on Hyde County and a summary of their Core Land Use Plan. Thayer noted that Hyde County is one of the oldest counties in the state and the second least populated. The County has less than 5,800 persons and no incorporated communities. Over 78% of the County is either in federal or state ownership, commercial forestlands, or wetlands.

This Land Use Plan is a substantial update of their approved 1998 plan and most notable is the plan's attempt to point to the future development of countywide zoning and other development related ordinances. There are no notable policy statements that are more stringent than the State's CAMA rules "Minimum Use Standards".

Thayer said that the new plan includes disclosure statements recognizing that some of the stated policies may be unenforceable and/or rejected by NOAA for consistency purposes. Thayer stated that DCM staff believes that the plan meets the substantive requirements of the 7B Land Use Planning guidelines and there are no conflicts with other State or Federal rules or the State Coastal Management Program. Staff recommended that the plan be brought forward to the full CRC for certification.

Frank Rush questioned why a local government could not include a statement saying, for example, that they would not allow an outlying landing field (OLF). Thayer replied that NOAA usually rejects statements that are that specific because they may be counter to the national interest. DCM typically recommends more generic language, such as not allowing large airports. Thayer said that communities can be very broad in their discussion sections, but there is a higher threshold for approving policy statements. Rush asked what if a community did not want a new bridge or a widened highway? Thayer said that those policies could be enforceable, but in those cases it is a good idea to do early coordination with NCDOT. Travis Marshall added that NCDOT reviews draft land use plans to see if they conflict with existing NCDOT comprehensive transportation plans, and NCDOT also reviews certified land use plans before they develop a new transportation improvement program (TIP) plan.

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Harry Simmons requested a follow up discussion about land use plans in the context of the CZMA and CAMA consistency, particularly as it relates to dredged material disposal.

Penny Tysinger asked whether NOAA has certified any of NC's local land use plans. Thayer responded that since the new 7B rules took effect DCM has submitted one set of certified land use plans to NOAA as a routine program change (RPC). NOAA is requiring a higher standard of analysis of the changes than previously, so the plans are still under review.

Dave Weaver noted that the CRC was split on certifying the City of Wilmington's land use plan in January, and questioned what the standards are for denying certification. Thayer said that certification can be denied if there are any conflicts with the state's coastal program, or possibly with other agencies, but the CRC has to be very clear about what the conflicts are or why the plan is otherwise inadequate. Spencer Rogers recalled that the issue with the City of Wilmington's plan was not the CRC's preference on building height or size, but the fact that some of the proposed large new structures were to be built inside of a designated flood plain. Thayer offered to write a memo to the CRC reiterating the standards for non-certification. Bob Emory asked Thayer to review the standards with the CRC before they vote on the Hyde County plan.

Eddy Davis offered that the three counties that he works with are all in the process of revising their plans, and all three county governments are strongly opposed to the new coastal stormwater rules. Spencer Rogers made a motion to recommend certification. The motion was seconded and unanimously approved.

Enhancing Public Access through CAMA Permitting

Jim Gregson introduced the subject by saying that public boating access is oftentimes lost when a marina is privatized. Gregson said that CAMA permits could possibly be conditioned to preserve some public access. Ted Tyndall said that privatization is increasingly common, and pointed out troubling instances where developers promised public access during the environmental review process, but reneged on that promise later on. Joe Lassiter added that retaining public access is often a point of negotiation during the permitting process, but is not currently a requirement. Gregson said that while staff supports the use of incentives and negotiated agreements, staff feels that if public access is not preserved by rule it will ultimately be lost. Penny Tysinger suggested that another possibility would be to require public access through subdivision ordinances or land use plan policies.

Gregson posed two core questions:

1. Does the CRAC think it is appropriate, when a public marina is privatized, to attach permit conditions requiring that some percentage of the slips, or launching and parking facilities, be made available to the public at reasonable rates?
2. Should the State consider Army Corps type access requirements on beaches that are nourished entirely with local funds?

The Advisory Council discussed the tradeoffs between loss of public trust versus private property rights. Joe Lassiter pointed out a functional conflict in the State's efforts to preserve access. Lassiter said the State's written policy is to preserve and expand public access, but in practice it facilitates privatization through simple and inexpensive general permitting. Lassiter said that a better policy would be to cluster private and commercial development and preserve other areas for public access.

Frank Rush said that Emerald Isle has created incentives for public access in zoning districts where they are likely to see redevelopment activity. A developer can negotiate to provide public access in exchange for a higher density allowance. The developer would also have to mitigate for the higher density.

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Al Hodge said that we can separate short-term and long-term issues. In the short term, if a developer commits to preserving public access, DCM and DWQ can condition the permits to ensure that promise is kept. In the long term, Hodge suggests it is necessary to address the conflict that Joe Lassiter identified.

Tim Tabak asked what would trigger DCM or other agencies to re-open a permit, which might then allow the agency to attach new conditions for access. Joy Wayman said that a simple change in ownership would not be sufficient. The State Property Office would ask DCM to look into transferring the permit once the title and submerged lands easement transfer, but that alone would not enable regulatory agencies to add permit conditions. Ted Tyndall added that permit transfers usually require just a transfer of existing operational conditions, so it would take a application to modify the permit, or a new permit application, to allow agencies to attach conditions.

Bob Shupe asked whether this push to preserve access was a CRAC initiative. Gregson replied that it is a response to the Waterfront Access Steering Committee's recommendations to protect and reclaim some public boat slips and ramps.

Judy Hills asked whether the conditions to provide access would include adequate parking. Al Hodge wondered if regulatory agencies could offer incentives to NCDOT (such as mitigation credits) if they provide parking. Hodge noted that this would require regulatory changes. Doug Huggett noted that DCM cannot require that NCDOT provide access facilities if there was no existing or traditional access at the site; if there were, then NCDOT could not take it away.

Christine Mele asked who would be liable for public losses in a privately owned and maintained marina, and who would be responsible for maintenance and repair of the public access portion. Mele said that the ideas seemed to be all regulatory in nature, and that more incentives are needed. Gregson asked whether it is reasonable, when a developer wants to turn a marina from 100% public to 100% private, to require that developer to set aside a percentage for public access, possibly leased at a reasonable rate.

Spencer Rogers said that if regulations get too onerous then developers will be more inclined to avoid complications and simply build condos, as is often the case with ocean fishing piers. Gregson disagreed, saying that the water is the more important feature, therefore building condos without providing slips and access is not a likely scenario.

Dave Weaver asked why the state does not charge private interests for usurping public trust waters. Mike Lopazanski replied that the CRC debated this question extensively in the 90s, and made a request too the General Assembly to take action, but only received token response. Frank Rush asked if the state were to begin charging marinas for leases, should it also charge homeowners for their private piers. Dara Royal felt it would be fair to do so.

Tim Tabak asked whether marine pumpouts could also be privatized. Mike Lopazanski said that if a pumpout is funded using a DCM grant then it has to remain available to the public for at least five years, but could be privatized after that.

Penny Tysinger suggested a study of how to preserve access through permitting, looking at other state agencies' limitations. Tysinger asked if it's possible to survey in public access rights of way. Joe Lassiter asked whether it is feasible to trade impacts for access. Gregson replied no, that state agencies had already looked into this, and still gets those types of requests from developers. Gregson said that the agencies concluded that it is not a viable approach.

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The CRAC expressed a strong consensus that where a public marina is privatized, particularly in public trust waters, the private owners should be required to reserve some portion of the facilities for public use. The Advisory Council acknowledged that there will be additional issues to work out, such as liability for public facilities within a private marina, providing consistent pumpout service, and compliance monitoring, but felt that these issues can be resolved.

Gregson asked for the Advisory Council's thoughts on access requirements associated with locally funded nourishment projects. Harry Simmons asked if access can be clustered, i.e. fewer number of accesses with more space and better amenities per facility. Gregson asked whether it is worthwhile to look at using the Army Corps' access guidelines when permitting locally funded nourishment projects. Simmons cautioned that the Corps' program is not perfect, and might not be a good model. Steve Underwood added that DCM has in the past looked into recommending specific requirements for access density and spacing, but concluded that a one size fit all approach was not feasible. Frank Rush acknowledged the importance of the goal, but told members to remember private property rights and be wary of takings and exactions. Rush said that incentives would be preferable.

The Advisory Council passed a motion to ask the CRC to direct staff to return as soon as possible with a suite of ideas, including permit conditions and incentives, for preserving and reclaiming some public access. The Advisory Council agreed to hold off on further discussion about oceanfront access for the time being.

Pier House Rules

Tancred Miller said that at the January meeting Commissioner Renee Cahoon mentioned that Jennette's Pier in Nags Head, which is owned by the NC Aquariums, would like to replace its existing pier house with a two-story structure that would be able to accommodate aquarium exhibits, classrooms, and research space. That development would not be permissible under the CRC's current rules, so the Aquariums would only be allowed to do this via a variance or changes to the rules.

Aquariums Director David Griffin was in attendance and explained that the Aquariums would like to replace the pier house in its existing location. The Commission's rules allow existing pier houses to be replaced under certain conditions, including the new structure having the same dimensions as the one being replaced. Vertical expansion is therefore not currently permissible. Another potential complication is that the existing pier house is oceanward of the high water line, and therefore stands over public trust waters. The CRC's rules do not currently allow for non-water dependent structures to be built over public trust waters.

Despite the potential challenges, the Advisory Council supported allowing two-story replacements, but was not unanimous about whether they should be handled through variances or rule amendments.

This request from the Aquariums came in their effort to fulfill the Waterfront Access Study Committee recommendation that the State own and operate three oceanfront fishing piers, one near each of the three aquariums. The State acquired Jennette's Pier for \$5 million in 2002, including the pier house and several adjacent bungalows that are rented out. In addition to replacing and expanding the pier house, the State proposes to build a new concrete and steel pier, 100 feet long, and elevated 25 feet over the water. The expected project cost is \$13 million, which would come entirely from door receipts.

Given the configuration of the high ground, the Advisory Council agreed with Mr. Griffin that it would be difficult for a new pier house to be built onshore and provide the same educational experience

Draft

and access opportunities as the house being replaced and expanded in its current location. Moving the house onshore would also create problems with providing adequate parking and septic disposal.

Spencer Rogers cautioned that the safest place for any structure is as far back on the beach as possible. Spencer said that at \$13 million the pier and house might be storm resistant but will not be storm proof, and even the much touted Johnnie Mercer's Pier had structural failures prior even to its completion.

The Advisory Council debated the pros and cons of restricting the vertical expansion ability to state-owned pier houses, since it seems more certain that State-owned properties would be maintained for the public benefit. Another way to ensure access would be in regulating structures by use, rather than by ownership. A majority of the CRAC felt that it would be equitable to allow vertical expansion regardless of ownership, as long as the piers and pier houses are for the public use and benefit. Staff concurred with this position, and felt that the added space could help make privately owned fishing piers more economically viable and increase their prospects for survival. The Advisory Council thought that the provision should be available to all piers, and we agreed that a rule change would be more efficient than a multitude of variance requests.

A motion was made and seconded to recommend that the CRC amend its rules as necessary to allow all pier houses, whether new or existing, and whether publicly or privately owned, the option to expand vertically to a maximum of two stories. The rules should allow vertical expansion whether the pier house is over land or over public trust waters. The motion carried by a vote of 17-6.

New Business/Old Business

With no further business the Council adjourned at 5 pm.

Thursday 27th & Friday 28th

Advisory Council met in session with CRC.

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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-25

MEMORANDUM

TO: Coastal Resources Commission

FROM: Jill Fegley, Reserve Education Coordinator
Whitney Jenkins, Coastal Training Program Coordinator

DATE: May 6, 2008

RE: Reserve Education Program and Draft Division Education Plan

North Carolina Coastal Reserve Education Program

The North Carolina Coastal Reserve has an active education program comprised of four major focus areas: K-12 student education, teacher professional development, community outreach and the Coastal Training Program. The goal of the N.C. Coastal Reserve Education Program is to promote environmental literacy by increasing our understanding of natural systems, our connections to them, and the benefits derived from them.

The **K-12 student education program** provides students with hands-on, inquiry-based learning opportunities where the content is focused on estuarine habitats, organisms or coastal issues. Teachers can bring their classes to the Reserve for interpretive nature hikes or hands-on learning activities such as seining for fish, conducting a shore profile or testing the water quality. Alternatively, for those schools that cannot travel, we offer a variety of classroom-based programs led by Reserve education staff on estuarine-related topics. We also provide teachers with written curricular material for both classroom and field-based activities. In addition to the curriculum, we also produce educational posters, activity books, Newspapers in Education (NIE) inserts, DVDs and a variety of estuarine-based informational brochures. All Reserve education programs and materials are based on the North Carolina Standard Course of Study.

The Reserve education program is also actively involved in **Teacher Professional Development** programs. In 2007 we held 12 different programs for North Carolina teachers to learn about estuaries and their importance. In the past we have held these workshops with numerous partners including the N.C. Wildlife Resources Commission, the Bald Head Island Conservancy, the Southeast Center for Ocean Sciences & Education Excellence, the Mid-Atlantic Marine Educators Association, Carteret County Schools, and the Environmental Education Institute. The purpose of our Teacher Professional Development program is to increase the number of teachers trained to teach students about estuaries and coastal ecosystems thus increasing environmental

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literacy in both teachers and students. This is accomplished through workshops and by providing supplementary curricular materials.

The **Community Outreach** component of the Reserve's education program targets the general public. Each summer we offer free, public field trips twice a week to the Rachel Carson Reserve. We also give public presentations year-round to garden clubs, Boy Scout troops, church groups, preschools, boys and girls clubs and other interested organizations. This year we will be offering four different summer programs: Preschool Storytime and Arts & Crafts (ages 3-5); Adventures in the Estuary summer camp (grades 1-3); Junior Naturalist summer camp (grades 4-8); and Saltwater Science summer camp (grades 2-5). As part of our community outreach we produce a Reserve newsletter, *The Tidal Flat*, three times a year and we also produce brochures, pamphlets and DVDs on various coastal topics.

The **Coastal Training Program (CTP)** promotes informed coastal decisions through science-based training for professionals. Decisions made by coastal communities can have profound, long-term consequences for estuarine and coastal environments. Elected officials, land use planners, regulatory personnel, and coastal managers are key decision-makers who need relevant science-based information, training, and access to emerging technology to make informed decisions regarding our coastal resources.

The North Carolina Coastal Training Program consists of workshops, seminars, distance learning, technology applications, and demonstrations. Opportunities for information exchange, skill training, and networking will improve local understanding of the environmental, social, and economic consequences of human activity along the North Carolina coast. Assessments of audience needs, emerging coastal research, and changes to coastal management policy determine the critical issues on which training is offered. Some recent CTP workshops include: Coastal Community Planning and Development, Coastal Growth Strategies, Estuarine Shoreline Mapping, Clean Marina, and On-site Wastewater Treatment and Disposal System Basics.

Draft Division of Coastal Management Education Plan

Last fall a draft Division-wide education plan was developed to articulate the education needs of the Division so that they could be prioritized and implemented as funding and resources allow. The two primary goals of the plan are to (1) increase public awareness of the mission and goals of the Division of Coastal Management, and (2) enhance public knowledge of the ecological impact of development on our shorelines. In order to accomplish the first goal we need to inform the public as to why regulations are needed and we need to educate them about specific regulations. The plan outlines eight suggested education action items to accomplish the first goal. To increase public knowledge on the ecological impact of development on our shorelines we need to provide information to the general public on coastal processes and estuarine ecology and the interaction between these and development. We also need to provide professional development opportunities for DCM and Reserve staff, CRC/CRAC members and LPOs. Specific strategies for accomplishing this goal are outlined in the draft plan. The Division Education Plan is a working document that will be prioritized and funding sought based on the needs of the Division.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

May 12, 2008

MEMORANDUM

CRC 08-18

TO: Coastal Resources Commission

FROM: Jeffrey Warren, PhD
Coastal Hazards Specialist

SUBJECT: Inlet Hazard Areas update

At the September 2007 CRC meeting, the CRC Science Panel presented its recommended amendments to the Inlet Hazard Area (IHA) boundaries at the state's 12 developed inlets. The proposed boundaries, presented by Science Panel Chair Dr. Margery Overton and myself, represented numerous years of data collection and analysis as well as extended discussions amongst Panel members and DCM staff.

Although the IHA boundaries and development standards are addressed in separate rules (15A NCAC 07H.0304 and .0310, respectively), the relationship between the IHA boundaries and the standards for development within those boundaries merits concurrent consideration. Due to this relationship, DCM staff recommended in September that the CRC postpone adoption of the revised IHA boundaries until a thorough review of the development policies in 7H.0310 could be completed.

While the proposed IHA boundary expansions are more representative of the unique hazards associated with development in the vicinity of inlets, there are challenges associated with simply extending the existing IHA development standards to developed areas that are not currently within an IHA. At the upcoming meeting, staff will brief the Commission on issues including differences in development densities and application of erosion rates. DCM plans to continue to work through these issues and to develop policy recommendations and draft rule language for consideration at the CRC's July meeting in Raleigh. I look forward to our discussion at the upcoming meeting in Washington.

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CRC-08-19

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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

May 7, 2008

MEMORANDUM

TO: Coastal Resources Commission

FROM: Tancred Miller

SUBJECT: Proposed Changes to Pier House and Single Family Exception Provisions in 7H.0309

At the CRC's January meeting Commissioner Cahoon made a request on behalf of the NC Aquariums that the Commission consider revising its rules to facilitate the reconstruction of Jennette's Pier and pier house in Nags Head. The Commission tasked the CRAC to consider changes and make recommendations. The CRAC met with Aquariums Director David Griffin in March and recommended that the Commission amend its rules not just for the benefit of the Aquariums, but for the benefit of all oceanfront pier owners on the coast.

At the Commission's direction, staff has drafted changes to 7H.0309 for consideration at this meeting. The primary purposes of the proposed changes are to:

1. Allow new and existing pier houses to be located oceanward of the setback line if necessary;
2. Allow pier houses to be maximum of two stories high;
3. Limit a pier house's footprint to 5,000 square feet; and
4. Limit commercial, non-water dependent uses to restaurants and retail services, similar to the restrictions in the Commission's urban waterfront rule.

Staff feels that the proposed changes will help oceanfront fishing piers and their associated pier houses to regain some of their economic viability so that they can continue to provide much needed public access and recreation.

At the March meeting, staff presented changes to 7H.0309 that are needed to make this rule consistent with pending changes to the setback rules in 7H.0306. Those proposed changes (with minor modifications) are attached for further discussion. Once the Commission approves the proposed changes the two sets of changes will be combined into a single rulemaking action.

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Proposed Changes for Pier Houses

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

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

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

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

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

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet or 10 percent of the lot size, whichever is greater.
 - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used.

(5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;

- (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences; and
- (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule shall meet the requirements of Paragraphs (1) through (5) of that Paragraph.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

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

- (1) piers providing public access; ~~access (excluding any pier house, office, or other enclosed areas);~~ and
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude replacement or construction of a pier house associated with an existing ocean pier, replacement or construction of the pier house shall be permitted if each of the following conditions are met:

- (1) The ~~associated~~ ocean pier provides public access for fishing or other recreational purposes whether on a commercial, public, or nonprofit basis;
- (2) Commercial, non-water dependent uses of the pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited; The pier house is set back from the ocean the maximum feasible distance while maintaining existing parking and sewage treatment facilities and is designed to reduce encroachment into the setback area;
- (3) The pier house shall be limited to a maximum of two stories; not be enlarged beyond its original dimensions as of January 1, 1996;
- (4) The pier house shall not exceed a footprint of 5,000 square feet;
- (5) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (6)(5) If the ~~associated~~ pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is ~~also being rebuilt, replaced and returned to its original function.~~

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural ocean front processes, shall be permitted on those nonoceanfront portions of shoreline that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981; Amended Eff. February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987.

Proposed Changes for Consistency with 7H.0306

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

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

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

In all cases, this development shall be permitted only if it is landward of the vegetation line [or static vegetation line, whichever is applicable](#); involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

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

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area; [and](#)
- (2) The development is at least 60 feet landward of the vegetation line [or static vegetation line, whichever is applicable; and](#)
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune; [and](#)
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than [1,000 square feet, and the total floor area of the structure shall be no more than 2,000](#)~~1,000~~ square feet. [For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint; or 10 percent of the lot size, whichever is greater.](#)
 - (C) [No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;](#)
 - (D) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean ~~and or~~ is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used; [and](#)
 - (E) [Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance.](#)

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) Reconfiguration of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:
 - (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
 - (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences; and
 - (3) Development on lots qualifying for the exception in Paragraph (b) of this Rule shall meet the requirements of Paragraphs (1) through (5) of that Paragraph.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

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

- (1) piers providing public access (excluding any pier house, office, or other enclosed areas); and
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude replacement of a pier house associated with an existing ocean pier, replacement of the pier house shall be permitted if each of the following conditions are met:

- (1) The associated ocean pier provides public access for fishing or other recreational purposes whether on a commercial, public, or nonprofit basis;
- (2) The pier house is set back from the ocean the maximum feasible distance while maintaining existing parking and sewage treatment facilities and is designed to reduce encroachment into the setback area;
- (3) The pier house shall not be enlarged beyond its original dimensions as of January 1, 1996;
- (4) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (5) If the associated pier has been destroyed or rendered unusable, replacement of the pier house shall be permitted only if the pier is also being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural ocean front processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981; Amended Eff. February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-24

May 6, 2008

MEMORANDUM

TO: Coastal Resources Commission
FROM: Jim Gregson
SUBJECT: Petition for Rulemaking by Kennedy Covington, L.L.P.

The CRC's rules governing review of a petition for rulemaking [15A NCAC 7J .0605(b)] provide that the Director shall prepare a recommended response to the petition for the CRC's consideration. As discussed below, the Director hereby recommends that the CRC deny Petitioner's request to amend the CRC's rules regarding temporary erosion control measures. However, there are aspects of the Petition that the Division would support if the Commission were inclined to pursue amendments to the Temporary Erosion Control Structures rule at a future meeting.

The Petition requests that the rule governing the use of sandbags as a temporary erosion control measure be amended primarily by changing the criteria by which sandbag structures are afforded the extended five-year time frame. DCM currently issues permits for temporary erosion control structures under 15A NCAC 7H .0308(a)(2), which are limited to sandbags used to protect imminently threatened structures (buildings, roads and septic systems). Sandbag structures may remain in place for up to two years if protecting a structure that is less than 5,000 square feet or five years for larger structures. Sandbag structures may also remain in place for up to five years, regardless of structure size, if the structure is located in a community that is considered to be actively pursuing a beach nourishment project.

The Petitioner requests that the finite time limits on sandbags be removed and the "actively pursuing beach nourishment" provision be changed to pursuing a "long-term erosion response plan" modeled after the Static Line Exception criteria currently being considered by the Commission. The Division is opposed to the request as the Static Line Exception criteria is more restrictive than the current beach nourishment requirement and the reliance on implementation of a long-term erosion response plan as described in the Petition, could result in the maintenance of sandbag structures for 30 years. A central tenet of the Commission's management objective for Ocean Hazard Areas has been requiring oceanfront development to adapt to changes in shoreline configurations. Following the ban on hard structures, the Commission permitted use of sandbags as a temporary measure to afford property owners time to relocate or remove the structure or to allow the beach time to recover after a short-term erosion event. As beach nourishment can provide protection to threatened structures,

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the Commission has provided for an extended period of time that sandbags may remain in place to allow for such a project to take place. In the most recent extension, the CRC responded to local government requests for a five-year extension by providing an additional three years for a total of eight years in which to pursue beach nourishment. The Petitioner states that the rationale for the requested rule change is to establish clear and realistic expectations for circumstances and timeframes under which sandbags are permitted. The expectation that sandbags are a temporary measure has been clear since 1995 when the Commission amended the rule to include the two- and five-year time limits. Sandbag permits themselves have included a removal date that is also acknowledged in the Sandbag Removal Notice signed by the applicant. Furthermore, since 1993, the Commission has required that permits for oceanfront development include the condition for relocating or dismantling the structure within two years of an imminently threatened designation.

The Division is supportive of the Petitioner's request to create a new management strategy for imminently threatened structures inside Inlet Hazard Areas. These areas have generally been omitted from beach nourishment projects due to the limited effectiveness of nourishment in inlet areas. However, channel maintenance, and in specific cases, channel relocation projects have added some stability in these highly dynamic areas. Allowing an extended period of time for sandbags in connection with a community pursuing an inlet relocation project would be consistent with the Commission's extended time period associated with beach nourishment projects on the oceanfront. Such a strategy is also consistent with recent Commission actions and willingness to allow time extensions in connection with the completion of inlet relocation projects. The Division would support a maximum of eight years for completion of relocation or monitoring projects provided that existing limitations on sandbags be maintained, as well as an extremely high threshold for possible, if any, future extension. In order to comply with the long-standing policy on the temporary nature of sandbag structures there must be a stipulation that as soon as the structure is no longer threatened [as defined in 15A NCAC 7H .0308(a)(2)(B)], the sandbags would need to be removed regardless of the initial time frame unless they are cover with sand and stable and natural vegetation.

Other aspects of the new strategy for Inlet Hazard Areas related to the "optimal position" of the inlet dictating the continued presence of sandbags cannot be supported as the Division believes any position or alignment is likely to be ephemeral without continued maintenance. Situations exist whereby erosion is taking place not through positional changes of the inlet throat, but due to oscillations of the ebb or flood channel. An optimal position or alignment would also be highly subjective depending upon which side of an inlet development is located and in what direction the channel is moving.

The Division is opposed to any provision relying on the "implementation" of a plan that does not provide a finite time limit on sandbags. In addition, the Petitioner does not provide any procedures in the requested rule language for determining how progress on a long-term shoreline erosion response plan would be monitored and evaluated, or when a shoreline erosion control plan is considered fully implemented.

In justifying the requested rule change, the petitioner cites the Commission's policy statements, in particular 15A NCAC 7M .0202(h) regarding government policies not only addressing existing erosion problems but also minimizing future erosion problems. It

should be noted that 7M .0202(h) also states that local, state and federal government activity should reflect an awareness of the natural dynamics of the oceanfront.

The requested rule change would also remove the limitation that a structure may only be protected once, provided the structure is located in an Inlet Hazard Area. The Division is opposed to this request as it is as it is counter to long-term management strategy for development in the Ocean Hazard Area. To require sandbag structures to be removed and then allow them again at a future date would constitute a piecemeal approach that is contrary to the management objective of preventing encroachment of permanent structures on public beach areas.

The Petitioner states that the Commission's temporary erosion control policy does not reflect the reality that long-term response plans to shoreline erosion can take years and should be revised to be consistent with its current long-term shoreline management policies.

The Commission's policies for erosion response measures require that they be designed to minimize the loss of private and public resources and should be economically, socially and environmentally justified. The CRC's preferred responses include AEC rules, land use planning, building setbacks, building relocation, subdivision regulations and vegetation management [7M .0202(b)]. The replenishment of ocean beaches is also recognized as an appropriate response to erosion. Since 1995, the Commission has allowed sandbags to remain in place when a community is actively pursuing beach nourishment. The criteria for determining whether a community is actively pursuing a nourishment project are relatively broad and the Commission has extended the time limit several times to account for these activities. The Commission has also granted individual variances to allow other options to be pursued that have resulted in some sandbag structures remaining for over 20 years. The CRC has made numerous attempts to work with communities and individuals to balance the immediate needs of oceanfront property owners with that of public trust rights. However, reasonable time limits for temporary erosion control structures are necessary to achieve the management objectives of the Ocean Hazard Area, which are:

- (1) Minimize loss of life and property resulting from storms and long-term erosion;*
- (2) Prevent encroachment of permanent structures on public beach areas;*
- (3) Preserve the natural ecological conditions of the barrier dune and beach systems;*
- (4) Reduce the public costs of inappropriately sited development;*
- (5) Protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.*

The Commission's policies were developed in accordance with Section 5, Article 14 of the N.C. Constitution in order to avoid losses of the State's natural heritage. As such, erosion response measures are developed so as not to adversely affect estuarine and marine productivity and to protect traditional uses of the ocean beaches (walking, swimming, surf fishing, sunbathing, commercial fishing and emergency access for beach rescue services).

The Petitioner's request regarding management of sandbags in Inlet Hazard Areas is consistent with that of the oceanfront. However, the Division remains opposed to the indefinite use of sandbags or the repetitive permitting of sandbags. If the CRC believes that changes are warranted in the management of temporary erosion control structures in Inlet Hazard Areas, Staff recommends a discussion of such provisions at a future Commission meeting.

Attached is the Petitioner's Petition for Rulemaking, the Director's Response, and the relevant rules of the CRC governing temporary erosion control structures.

cc: Ted Tyndall, DCM Assistant Director
Jim Gulick, Senior Deputy Attorney General
Mack A. Paul, Kennedy Covington Lobdell & Hickman

DIRECTOR’S RESPONSE TO PETITION FOR RULEMAKING
Petition is Reproduced Verbatim with Staff Response Provided in Italics

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

BEFORE THE NORTH CAROLINA
COASTAL RESOURCES COMMISSION

In the Matter of)	
KENNEDY COVINGTON’S PETITION)	
FOR RULEMAKING)	PETITION FOR RULEMAKING
)	

Kennedy Covington Lobdell & Hickman, L.L.P. (Petitioner) representing a number of oceanfront property owners, has submitted a Petition for Rulemaking (Petition) pursuant to N.C. G.S150B-20 and 15A NCAC 7J .0605 requesting repeal and/or revision of certain provisions contained in 15A NCAC 7H .0308(a)(2) Temporary Erosion Control Structures.

DCM currently issues permits for temporary erosion control structures under 15A NCAC 7H .0308(a)(2), which are limited to sandbags used to protect imminently threatened structures (buildings, roads and septic systems). The Petitioner requests the Commission to amend the Specific Use Standards for Ocean Hazard Areas as they pertain to the use of Temporary Erosion Control Measures.

PETITIONER’S PROPOSED RULE

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

- (a)(2) Temporary Erosion Control Structures:
 - (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems.
 - (C) A structure shall be determined to be imminently threatened based on conditions specific to the site of the structure.** A structure shall be considered to be imminently threatened if its the structure's foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

Staff Response: The Petitioner’s proposed rule changes to 7H .0308(a)(2)(C) are clarifying in nature, splitting the uses of temporary erosion control structures from the definition of imminently threatened. While the first sentence does not add substantively to the rule, the Division does not object to clarifying that it is the foundation of the structure that is less than 20 feet from the erosion scarp or splitting the uses from the definition.

- (~~C~~D) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (~~D~~E) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (~~E~~F) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (F) AG(1) The allowable time period during which a sandbag may remain in place shall be based on whether the community in which the imminently threatened structure is located is pursuing a long-term shoreline erosion response plan. A community shall be considered to be actively pursuing a long-term shoreline erosion response plan if the community has:
 - (i) plans for design, construction and maintenance of a beach fill project designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work and designed for a period of at least 30 years; and
 - (ii) documentation by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work of the location of compatible sand necessary to construct and maintain the beach fill project over its design life; and
 - (iii) identification of the financial resources or funding bases necessary to fully fund the beach fill project or inlet relocation project over its design life.

Staff Response: The Petitioner’s proposed language 7H .0308(a)(2)“(G(1))” alters the Commission’s rules which establish the criteria by which a community is determined to be actively pursuing a beach nourishment project. Since 1995, the CRC has allowed a temporary erosion control structure to remain for five years, regardless of the size of the threatened structure, if it is located in a community that is actively pursuing beach nourishment. Criteria were established defining “actively pursuing” as having received a CAMA permit, being the subject of U.S. Army Corps of Engineers studies and having a commitment of local money or having received a favorable economic evaluation report by the U.S. Army Corps of Engineers. The Petitioner proposes to substitute these provisions with the more restrictive provisions currently being considered by the Commission for the proposed Static Line Exception. Under the CRC’s proposed Static Line Exception, a community needs to document a commitment to a 30-year nourishment project in terms of design, sand source and financial resources. The Division does not support the Petitioner’s rule change in this section, as it is in conflict with a condition by which temporary erosion control structures are determined to no longer be necessary. The Static Line Exception criteria results in a beach nourishment project which, under 7H .0308(a)(2)(G), would require removal of sandbags since the structure would no longer be imminently threatened. There is no provision in the Petitioner’s request that once beach nourishment occurs, sandbags need to be removed. Allowing sandbags to remain for the duration of a 30-year project is also contrary to the Commission’s management strategy for oceanfront development, which is intended to have development adapt to changes in shoreline configurations by conforming to current CRC rules.

- (G)(2) The Division shall determine an imminently threatened property located in an Inlet Hazard AEC to be in a community actively pursuing a long-term shoreline erosion response plan if the community has:
 - (i) plans for design, construction and maintenance of an inlet relocation and/or beach fill project designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(ii) identification of the financial resources or funding bases necessary to fully fund the inlet relocation and/or beach fill project over its design life;
or
(iii) as an alternative to (i) and (ii) the community develops a plan designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work that relies on historical aerial photographs to monitor the extent of the natural migration of the channel through the inlet.

The CRC shall review the progress of each community's long-term shoreline erosion response plan at regular intervals. A community shall be determined to be no longer actively pursuing a long-term shoreline erosion response plan if the Coastal Resources Commission determines that any of the required conditions set forth above no longer exist.

Staff Response: The Petitioner's proposed language 7H .0308“(a)(G)(2)” creates a new management strategy for imminently threatened structures inside Inlet Hazard Areas. In this case, the Petitioner is adapting from the Commission's proposed Static Line Exception rule to Inlet Hazard Areas, proposing criteria for determining whether a community is actively pursuing an inlet relocation or nourishment project for the Inlet Hazard Area. While nourishment projects in inlet areas have been shown to be of limited effectiveness, channel maintenance, and in specific cases, channel relocation projects have been shown to provide some stability in these highly dynamic areas.

The Division does not support the Petitioner's proposed language as written but believes that some accommodation can be made to allow an extended timeframe for the maintenance of temporary erosion control structures in Inlet Hazard Areas, provided that the community is determined to be actively pursuing a channel maintenance or relocation project. A provision of this sort would be consistent with the allowance of an extended timeframe (five years) for the maintenance of temporary erosion control structures located in communities actively pursuing beach nourishment projects, as is current rule. Within the Inlet Hazard Area, the Commission has shown a willingness to allow time extension for sandbags in connection with the completion of inlet relocation projects. The Division would support an increase in the time allowance to a maximum of eight years in order to allow for the completion of relocation or “monitoring” projects. However, staff recommends that an extension of the time allowance be tied to an extremely high threshold for possible, if any, future extension. In order to comply with the Commission's long-standing policy on the use of sandbags as a temporary erosion control measure, such a time limit should include the stipulation that as soon as the structure is no longer threatened [as defined in 15A NCAC 7H .0308(a)(2)(B)], the sandbags would need to be removed regardless of the initial time frame. As with the proposed monitoring of communities with a Static Line Exception, criteria would need to be developed that detail the reporting criteria by which the Commission could make its determination.

The Petitioner also provides for an option to wait out the natural migrations of the inlet channel by establishing provisions for a monitoring program. The Division supports an extended maintenance period for temporary erosion control structures as described above, provided that such a monitoring program is in place. This change in policy would be consistent with a number of actions on the part of the Commission when variances from current rule have been granted in connection with channel relocation and monitoring projects.

(H) The allowable time period for a temporary erosion control structure:

(i) If a temporary erosion control structure is protecting an imminently

threatened structure located in a community actively pursuing a long-term shoreline erosion response plan, the temporary erosion control structure may remain in place until such plan has been implemented and given time to function as planned. In the event the imminently threatened structure is located in an Inlet Hazard AEC and the community's long-term shoreline erosion response plan involves monitoring the natural migration of the channel as described in (G)(Z)(iii) above, the temporary erosion control structure may remain in place as long as the channel is migrating away from its optimum position toward an alignment that causes the erosion that threatens the structure being protected and the channel has not, based on historical aerial photographs, migrated to its fullest extent. In such case, the temporary erosion control structure must be removed once the channel has migrated back to its optimum position.

Staff Response: The Petitioner proposes that temporary erosion control structures be maintained until the community in which they are located implements its “long-term shoreline erosion response plan” or, in the case of inlets, while the channel is migrating “away from its optimum position.” The Division opposes this requested amendment. As stated above, the Commission allows sandbags as a temporary measure to afford property owners time to make arrangements for the relocation or removal of the threatened structure, to provide protection following storms and other short-term erosional events or to allow for completion of a beach nourishment project. The Petitioner does not provide any procedures in the requested rule language for determining how progress on a long-term shoreline erosion response plan would be monitored and evaluated, or when a shoreline erosion control plan is considered implemented. Modeling the language after the Commission’s proposed Static Line Exception provisions could result in sandbag structures being maintained on the ocean beach for the entire 30-year project, a prospect the Division is opposed to. Since 1985, the use of sandbags has only been allowed while a structure is considered to be imminently threatened. The Commission’s policy has been clear that once a structure is no longer threatened, due to relocation, removal or beach nourishment, the sandbags are to be removed within 30 days of notification by the Division.

The Division is also opposed to the requested rule change regarding the maintenance of sandbag structures while the channel is migrating away from its “optimal position.” Given the dynamic nature of inlets, the Division believes any position or alignment is likely to be ephemeral without continued maintenance. Situations exist whereby erosion is taking place not through positional changes of the inlet throat, but due to oscillations of the ebb or flood channel. An optimal position or alignment would also be highly subjective depending upon which side of an inlet development is located and in what direction the channel is moving. Such a subjective provision would be open to legal challenge.

(ii) If a community is determined to be no longer actively pursuing a long-term shoreline erosion response plan, the allowable time period shall be that set forth in (H)(iii) below. The time period shall commence as of the date the community is determined to be no longer actively pursuing a long-term shoreline erosion response plan. The property owner must agree to remove the imminently threatened structure at the end of the allowable time period.

(iii) If a temporary erosion control structure is protecting an imminently threatened structure located in a community not actively pursuing a long-term shoreline erosion response plan, the temporary erosion control structure may remain in place for up to two (2) years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five (5) years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five (5) years if it is protecting a bridge or a road. However, a temporary

erosion control structure shall not be permitted in a community that is not actively pursuing a long-term shoreline erosion response plan unless the property owner agrees to remove the imminently threatened structure at the end of the allowable time period.

Staff Response: The Petitioner requests that the time limits on temporary erosion control structures only be imposed beginning when the Commission determines that the community is no longer pursuing a long-term shoreline erosion response plan. The Division opposes this provision. Sandbag structures are permitted to be maintained for the extended five-year period in cases where the community is actively pursuing a beach nourishment project. The Commission's intent since 1995 has been to allow sufficient time for this option to be explored by a community, with most communities having already been afforded the recent eight-year extension (2000 through May 2008). By allowing sandbag structures for erosion control, the Commission has acknowledged that there will be an inconvenience to the public in the use of the beach. However, the time limits imposed ensure that this inconvenience is temporary and justified as an attempt to balance public trust rights with the financial concerns of oceanfront property owners. Once a community abandons its beach nourishment efforts, the continued presence of a temporary erosion control structure would be contrary to the Commission's management objectives for the Ocean Hazard Area as described in 15A NCAC 7H .0303(b) which includes preventing the encroachment of permanent structures on public beach areas. This policy is supported by the requirement that sandbags be removed once the community has abandoned beach nourishment efforts.

The Petitioner also requests that sandbags not be permitted in a community that is not actively pursuing a long-term shoreline erosion response plan unless the property owner agrees to remove the imminently threatened structure at the end of the allowable time period. The Division is opposed to the requested amendment as it duplicates existing rule requirements [15A NCAC 7H .0308a)(2)(F)] in which specific criteria are listed in making the determination of actively seeking beach nourishment: 1) a CAMA permit; 2) USACE Reconnaissance or feasibility study and commitment of local money; or 3) a favorable economic evaluation report for a federal project.

- (I) The property owner shall be responsible for removal of the temporary erosion control structure within 30 days of the end of the allowable time period. ~~A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:~~
- ~~(i) been issued a CAMA permit, where necessary, approving such project; or~~
 - ~~(ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility Study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or~~
 - ~~(iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags the subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension; otherwise they shall be removed by May 1, 2000~~

pursuant to Part (N) of this Subparagraph. ~~(G)~~ Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment **implementation of the long-term shoreline erosion response plan**, it shall be removed by the property owner within 30 days of official notification from the Division.

- ~~(H)~~**(K)** Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- ~~(I)~~**(L)** The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(J)~~**(M)** Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- ~~(K)~~**(N)** Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- ~~(L)~~**(O)** An imminently threatened structure may be protected only once, regardless of ownership, **except where the imminently threatened structure is located in community actively pursuing a long-term shoreline erosion response plan pursuant to (G)(Z)(iii) above. A permit issued pursuant to 15A NCAC 7H.1700 that allows the use of sandbags to protect an imminently threatened structure shall be recorded within thirty (30) days of issuance with the Register of Deeds of the county in which the imminently threatened structure is located.** In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part ~~(F)~~**(H)** of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
- (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part ~~(F)~~**(H)** of this Subparagraph.

Staff Response: The Petitioner requests that temporary erosion control structures be permitted more than once per structure if it is located in a community with a long-term shoreline erosion response plan. The Division opposes the Petitioner's proposal to allow multiple permits for temporary erosion control structures, as it is counter to the Commission's long-term management strategy for development in the Ocean Hazard Area. The long-standing policy of the Commission has been to require the removal or relocation of structures within two or five years of an imminently threatened designation depending on structure size. The intent of the Ocean Hazard Area rules is to have development adapt to changes in shoreline configurations by conforming to current CRC rules. To require sandbag structures to be removed and then allow them again at a future date would constitute a piecemeal approach that is contrary to the management objective of preventing encroachment of permanent structures on public beach areas.

The Petitioner requests that permits authorizing the use of sandbags for temporary erosion control be recorded with the Register of Deeds. There is currently no authority for the Commission to require recording of the permit or notice of the permit with deed. This provision would require legislative action and amendment to statute. There have been several attempts to have such information made readily available to potential buyers, most notably in the form a Coastal Hazards Disclosure Statement (e.g., HB 1512) during the 2005 Legislative Session. However, such attempts have been met with significant resistance and have not yet been successful. The Division is supportive of a grant of authority for notice to be required in the chain of title disclosing sandbags and other coastal hazards by a seller to a buyer.



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April 23, 2008

VIA HAND DELIVERY

Mr. Bob Emory
Chairman
Coastal Resources Commission

Mr. James Gregson
Director
Division of Coastal Management
Department of Environment and Natural Resources

400 Commerce Ave.
Morehead City, NC 28557

Re: Petition for Rulemaking (the "Petition")

Dear Mr. Emory and Mr. Gregson:

Our firm represents a number of oceanfront property owners with respect to matters associated with erosion control structures. This Petition is submitted pursuant to N.C. Gen. Stat. § 150B-20 and in accordance with 15A N.C. Admin. Code 7J.0605 to request the repeal and/or revision of certain provisions contained in 15A N.C. Admin. Code 7H.0308 in order to accomplish the approach set forth below in detail.

We ask that the Petition be placed on the agenda for the next regularly scheduled meeting of the Coastal Resources Commission ("CRC"), which is currently scheduled for May 21-23, 2008 in accordance with 15A N.C. Admin. Code 7J.0605(b). Pursuant to 7J.0605(a), we offer the following description of the changes to 7H.0308 (the "Proposed Rule"):

(1) Summary of Proposed Rule

The Proposed Rule seeks to address several concerns related to sandbags. The current rules do not adequately promote clarity on the purpose being served by sandbag structures, acknowledge the distinct and different erosion causes along the coast, encourage long-term community planning to negate the need for sandbags, or set realistic owner expectations on the

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and duration of sandbags. To address these issues, the Proposed Rule makes several changes to the current approach. First, it expands the criteria for permitting sandbags from the individual structure to consider the level of planning and implementation of a long-term shoreline erosion response plan by the community in which the structure is located. Second, it recognizes differences in timeframes for sandbags used to protect structures located in Inlet Hazard Areas of Environmental Concern ("AEC") and structures located elsewhere in the Ocean Hazard area. Third, it clarifies the purpose for which sandbags are being permitted (i.e., to provide time to remove the structure or complete a project).

In particular, the Proposed Rule contains two levels of review when permitting sandbags. It maintains the site specific requirement of imminent threat to a structure and adds a level of review by determining whether the structure is in or out of a community with a long-term shoreline erosion response plan. If the structure is not situated in a community with a long-term shoreline erosion response plan, the rule makes clear that sandbags are only permitted for sufficient time to remove the threatened structure. If the structure is located in a community with a long-term shoreline erosion response plan, the rule recognizes that timeframes and plans differ depending on whether the property is in an Inlet Hazard AEC or other Ocean Hazard Area.

Additionally, the Proposed Rule builds off the CRC's current policy of allowing the sandbags to counteract erosion but removes the finite time limits on the use of sandbags, currently established in 7H.1705(a)(7). The Proposed Rule recognizes that long-term responses to the problems caused by shoreline erosion take years to plan, permit and implement, such that instead of requiring that sandbags be removed at the end of an arbitrary time period, the Proposed Rule allows sandbags to remain in place until the community has planned, permitted and implemented its long-term shoreline erosion response plan and ample time has passed to allow the plan to function as designed. In order to be considered to be actively pursuing a long-term shoreline erosion response plan, the community must provide evidence of its plan, a funding source for the plan and adequate sand resources, if applicable.

The Proposed Rule requires that the CRC review the status of each community's long-term shoreline erosion response plan at regular intervals for confirmation that the community continues to be actively pursuing and/or implementing its plan. If the CRC determines that the community is no longer actively pursuing its plan, then the sandbags permitted in that community must be removed by the property owner in accordance with the requirement for properties situated in communities not actively pursuing a long-term erosion control plan.

Finally, the Proposed Rule requires the property owner to acknowledge that, if his or her property is not located in a community with a long-term shoreline erosion response plan, the threatened structure must be removed upon the expiration of the applicable time period. Thus, the Proposed Rule emphasizes both property-specific conditions, which provide the trigger for sandbag permit eligibility, and community-wide conditions, which dictate the length of time the sandbags may remain in place. The goal of the Proposed Rule is to establish clear and realistic expectations for the circumstances and timeframes under which sandbags are permitted to

improve public access, to eliminate arbitrary deadlines and piece-meal time extensions, and to promote long-range planning.

Text of the Proposed Rule is attached hereto as Exhibit A.

(2) Reasons for Adoption of Proposed Rule

(a) Background

The current policy related to the use of sandbags, as set forth in 15A N.C. Admin. Code 7H.0308(a)(2), 7H.1700 et seq., and 7M.0201 et seq., requires the removal of sandbags after a finite period of time, depending on the size of the structure being protected and/or whether the structure is located in a community that is actively pursuing a beach nourishment project as of October 1, 2001. The time limitation on which sandbags may remain in place is in furtherance of the CRC's current prohibition of the permanent stabilization of the ocean shoreline with seawalls, shoreline hardening, sand-trapping or similar protection devices. In addition, when the rule was amended to provide for the time limit, the length of time was presumed to be sufficient to allow for the relocation of the threatened structure or the reversal of a short-term erosion event. The rule has been amended several times in an effort to accommodate attempts by local governments and communities to secure beach nourishment projects. In addition, the CRC has approved variances to extend timeframes for individual properties in a number of instances.

History indicates that relocation is not a practical alternative, as few threatened structures have actually been relocated since the sandbag rule was initially enacted. Additionally, the time limit does not provide a realistic length of time for a local government or community to plan and implement a beach nourishment project. However, pursuant to the current rule, sandbags must be removed from some 150 threatened properties along the coast as of May of this year. In many cases, removing the sandbags from these properties will result in the loss of the structure and will deprive property owners of the reasonable use of their oceanfront property. Worth noting is that the properties at stake are not solely residential property; commercial property and public property are at stake as well.

Removing the sandbags from these properties does not address the larger issue of shoreline erosion response. Instead, removing the bags from these properties passes the threat of erosion from one property owner to the next, as property that was once located inland becomes oceanfront. As an example, conditions on the north end of Figure Eight Island and the east end of Ocean Isle Beach suggest that erosion will immediately threaten private property and public infrastructure if the existing sandbag line is removed. Therefore, public access is not necessarily enhanced by removal of sandbags. It is in the interest of the public for North Carolina's coastal resources to be protected and its development along the oceanfront to continue in a measured fashion. The economic stakes are high not only for individual property owners but for coastal communities, which depend on the economic stimulus from tourism and a strong property tax base.

(b) Justification

The Proposed Rule attempts to re-focus the CRC's temporary erosion control response provisions by relating them to the larger objective of long-term shoreline erosion response. Along these lines, the Proposed Rule replaces the retrospective, micro-perspective of the current sandbag rule, which focuses on erosion threat to individual property, with a prospective, macro-perspective that focuses on a community's long-term response to shoreline erosion and its efforts to mitigate the landward migration of the shoreline, the degradation public beaches, and the loss of public facilities and private property. The goal of the Proposed Rule is to allow for temporary protection of threatened structures until a long-term response plan can be implemented and perform as designed or the inlet channel begins to migrate toward its optimum position effectively decelerating erosion (and causing accretion) on the shoreline in question. Refocusing the rule governing sandbags in this manner is consistent with the CRC's stated policies that "government policies should not only address existing erosion problems but should aim toward minimizing future erosion problems" 7M.0202(h).

Consistent with the CRC's stated policy that temporary erosion control measures must be "compatible with public use and enjoyment of the beach" 7M.0202(e), the Proposed Rule proposes no change with respect to the time limit imposed on the use of sandbags that are protecting structures located in communities that are not pursuing long-term shoreline erosion response plans.

Long-term response plans to shoreline erosion take years to implement. The CRC has declared that the "replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and private property." 7M.0202(c). Further, the CRC has declared that "beach restoration projects can present a feasible alternative to the loss or massive relocation of oceanfront development." 7M.0202(c). Thus, the CRC has recognized that beach nourishment and beach restoration can be viable responses to the problems caused by shoreline erosion. Similarly, DCM has permitted and overseen inlet relocation projects in response to shoreline erosion problems. Additionally, the CRC has declared that "innovative institutional programs and scientific research that will provide for effective management of coastal shorelines" will be considered by DCM and the CRC, effectively recognizing that certain conditions or circumstances along North Carolina's coastline may require innovative approaches and methodologies for meeting the CRC's policy objectives related to minimizing the losses caused by shoreline erosion.

Beach nourishment projects, inlet relocation projects, and innovative solutions to shoreline erosion take many years to plan, design, fund, permit and implement. The CRC's temporary erosion control policy currently does not reflect the reality that long-term response plans to shoreline erosion can take years and should be revised to be consistent with its current long-term shoreline management policies.

The current rule and practice do not improve public access to the beach. The current rule, which requires that sandbags be removed after two (2) years in some cases and five (5) years in others does not have the effect of improving public access to the beach. In addition, the practice of granting time extensions to owners of threatened property perpetuates the public access impediment posed by sandbags. And, in many cases, removing the sandbags will result in the loss of beach, such that there will be no beach for the public to access.

The nature and severity of problems caused by erosion vary in the Ocean Hazard System. The Ocean Hazard System is made up of oceanfront lands and the inlets that connect the ocean to the sounds. Consequently, the CRC has designated three ocean hazard AECs: the Ocean Erodible AEC; the High Hazard Flood AEC; and the Inlet Hazard AEC. The Inlet Hazard AEC covers the lands next to ocean inlets. The CRC has recognized that inlet shorelines are especially vulnerable to erosion and flooding and can shift suddenly and dramatically. The distance the Inlet Hazard AEC extends inland is estimated to be large enough to encompass those lands where the inlet can be expected to migrate. The current sandbag rules do not recognize the varying degree of erosion problems that exist within the Ocean Hazard System. Specifically, the current sandbag rules make no allowance for mitigating the dramatic and rapid erosion problems that are characteristic of the Inlet Hazard AEC and which may persist and recur with frequency.

In most cases, relocation of the threatened structure is not a practical alternative. As property values at the coast continue to rise, the relocation of threatened structures is not a practical alternative for most property owners. In fact, history indicates that most property owners opt for demolition of the threatened structure as opposed to relocation of the threatened structure. In addition, much of the coastal area, particularly beach communities, have built out so that empty lots are scarce. Certainly, the reality has shifted dramatically from that of 30 years ago when owners could move their cottage inland as erosion occurred.

The loss of oceanfront property equals a reduction in tax base. Whether the structure is relocated or demolished, the loss of oceanfront property results in a reduction, and quite possibly a dramatic reduction, in the local tax base.

Permits are not recorded in the chain of title. The current rules provide that an imminently threatened structure may be protected only once, regardless of ownership. 7H.0308(a)(2)(L). Sandbag permits are not recorded with the register of deeds and, therefore, are not in the property's chain of title. Some unsuspecting oceanfront property owners may have purchased their property unaware of the fact that the structure on the property been previously permitted. Unless the permit was provided by the seller of the property to the subsequent purchaser, the purchaser has no choice but to rely on the records kept by DCM or the local government, as the case may be. Thus, the possibility exists that a property owner may have purchased the property unaware that the structure had been previously permitted, even despite reasonable due diligence efforts.

The current policy will continue to consume staff time and resources. Given these realities, the number of variance requests for the extension of time limits on sandbag permits will

rise. Moreover, application of the current sandbag rules arguably results in an unconstitutional taking with respect to that property that is lost to erosion, thereby exposing the State of North Carolina to serious litigation risk.

(3) Effect of Proposed Rule on Existing Rules

For communities that are actively pursuing a long-term response plan for shoreline erosion, the Proposed Rule allows sandbags to remain in place while the community plans and implements its long-term response plan for shoreline erosion and until the plan has had ample time to function as designed. Thus, the Proposed Rule deletes the criteria by which a community is considered to be actively pursuing a beach nourishment project and includes criteria by which a community shall be considered to be actively pursuing a long-term shoreline erosion response plan, which include a plan, sand resources, if applicable, and funding sources. The Proposed Rule affords the CRC the right to review the status of the community's plan at regular intervals, and if the CRC no longer considers the community to be actively pursuing its plan, then the sandbags in such community become subject to the time periods prescribed for communities with no plan. All property owners in such a community must agree to remove the imminently threatened structure at the end of the period.

The Proposed Rule modifies the current limitation that a structure may be protected only once to allow property owners of structures located in an Inlet Hazard AEC for which the community has adopted a "natural" long-term shoreline erosion response plan to apply for a permit, regardless of whether the structure to be protected has been previously permitted.

Finally, the Proposed Rule requires that a sandbag permit be recorded in the chain of title with the Register of Deeds of the county in which the property is located.

(4) Data in Support of Proposed Rule

DCM estimates that one hundred and fifty (150) oceanfront properties are subject to the May 2008 removal deadline. These properties that are currently protected by sandbags include roads, residential and commercial buildings. Removing the sandbags from those properties could, and in many cases will, result in the structure being condemned and lost entirely. In many cases, removing the structures will deny property owners the reasonable use of their oceanfront property.

When the current sandbag rule was first enacted, North Carolina's coastal areas were not experiencing the development boom cycle that has been occurring over the past decades. Given the rate of development that has occurred along the coast over the last several years, undeveloped land is scarce, posing an impediment to the relocation of threatened structures. In addition, given the dramatic increase in coastal property values that has accompanied the development boom, relocation may not always be a cost-effective option for the property owner.

(5) Effect of Proposed Rule on Existing Practice

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The Proposed Rule incentivizes the development of a long-term shoreline erosion response plan. The current practice of granting variances to work with the owners of threatened property (both public and private) in the aftermath of active storm periods and efforts to secure beach nourishment projects has had the effect of allowing sandbags to remain on the shoreline for indefinite periods of time, impeding public access and impairing the public's ability and right to move freely along the shoreline. In this regard, the Proposed Rule will provide a much greater degree of certainty to the owners of threatened property and to the public as to when and under what conditions sandbags must be removed.

(6) **Name and Address of Petitioner**

Mack A. Paul, IV, Esq.
Kennedy Covington Lobdell & Hickman, L.L.P.
P.O. Box 17047
Raleigh, North Carolina 27619-7047

Sincerely,

A handwritten signature in black ink that reads "Mack Paul". The signature is written in a cursive, slightly stylized font.

Mack A. Paul IV
For the Firm

MAP/

Attachments

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

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

- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
- (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
- (F) Project construction shall be timed to minimize adverse effects on biological activity.
- (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule; and
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
 - (iv) the structure shall not adversely impact fisheries or other public trust resources; and

- (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
 - (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems.
 - ~~(C)~~ **A structure shall be determined to be imminently threatened based on conditions specific to the site of the structure.** A structure shall be considered to be imminently threatened if ~~its~~**the structure's** foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - ~~(D)~~ Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
 - ~~(E)~~ Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - ~~(F)~~ Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
 - ~~(G)~~**(1) The allowable time period during which a sandbag may remain in place shall be based on whether the community in which the imminently threatened structure is located is pursuing a long-term shoreline erosion response plan. A community shall be considered to be actively pursuing a long-term shoreline erosion response plan if the community has:**
 - (i) plans for design, construction and maintenance of a beach fill project designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work and designed for a period of at least 30 years; and**
 - (ii) documentation by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work of the location of compatible sand necessary to construct and maintain the beach fill project over its design life; and**
 - (iii) identification of the financial resources or funding bases necessary to fully fund the beach fill project or inlet relocation project over its design life.**
 - (2) The Division shall determine an imminently threatened property located in an Inlet Hazard AEC to be in a community actively pursuing a long-term shoreline erosion response plan if the community has:**
 - (i) plans for design, construction and maintenance of an inlet relocation and/or beach fill project designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and**

- (ii) identification of the financial resources or funding bases necessary to fully fund the inlet relocation and/or beach fill project over its design life;
or
(iii) as an alternative to (i) and (ii) the community develops a plan designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work that relies on historical aerial photographs to monitor the extent of the natural migration of the channel through the inlet.

The CRC shall review the progress of each community's long-term shoreline erosion response plan at regular intervals. A community shall be determined to be no longer actively pursuing a long-term shoreline erosion response plan if the Coastal Resources Commission determines that any of the required conditions set forth above no longer exist.

(H) The allowable time period for a temporary erosion control structure:

(i) If a temporary erosion control structure is protecting an imminently threatened structure located in a community actively pursuing a long-term shoreline erosion response plan, the temporary erosion control structure may remain in place until such plan has been implemented and given time to function as planned. In the event the imminently threatened structure is located in an Inlet Hazard AEC and the community's long-term shoreline erosion response plan involves monitoring the natural migration of the channel as described in (G)(2)(iii) above, the temporary erosion control structure may remain in place as long as the channel is migrating away from its optimum position toward an alignment that causes the erosion that threatens the structure being protected and the channel has not, based on historical aerial photographs, migrated to its fullest extent. In such case, the temporary erosion control structure must be removed once the channel has migrated back to its optimum position.

(ii) If a community is determined to be no longer actively pursuing a long-term shoreline erosion response plan, the allowable time period shall be that set forth in (H)(iii) below. The time period shall commence as of the date the community is determine to be no longer actively pursuing a long-term shoreline erosion response plan. The property owner must agree to remove the imminently threatened structure at the end of the allowable time period.

(iii) If a temporary erosion control structure is protecting an imminently threatened structure located in a community not actively pursuing a long-term shoreline erosion response plan, the temporary erosion control structure may remain in place for up to two (2) years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five (5) years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five (5) years if it is protecting a bridge or a road. **However, a temporary erosion control structure shall not be permitted in a community that is not actively pursuing a long-term shoreline erosion response plan unless the property owner agrees to remove the imminently threatened structure at the end of the allowable time period.**

(I) The property owner shall be responsible for removal of the temporary erosion control structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of

this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

- ~~(i)~~ been issued a CAMA permit, where necessary, approving such project; or
 - ~~(ii)~~ been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or
 - ~~(iii)~~ received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20-foot base width and 6-foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension; otherwise they shall be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph. ~~(GJ)~~ Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment implementation of the long-term shoreline erosion response plan, it shall be removed by the property owner within 30 days of official notification from the Division.
- ~~(HK)~~ Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- ~~(HL)~~ The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(JM)~~ Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- ~~(KN)~~ Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- ~~(LO)~~ An imminently threatened structure may be protected only once, regardless of ownership, except where the imminently threatened structure is located in community actively pursuing a long-term shoreline erosion response plan pursuant to (G)(2)(iii) above. A permit issued pursuant to 15A NCAC 7H.1700 that allows the use of sandbags to protect an imminently threatened structure shall be recorded within thirty (30) days of issuance with the Register of Deeds of the county in which the imminently threatened structure is located. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part ~~(FH)~~ of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
- (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part ~~(FH)~~ of this Subparagraph.
- ~~(MP)~~ Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part ~~(FH)~~ of this Subparagraph.
- ~~(NQ)~~ Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts ~~(FH)~~, ~~(GI)~~ and ~~(HJ)~~ of this Subparagraph with the pertinent time periods beginning on May 1, 1995.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to

obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary: dune provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is less than six feet in width;
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.
- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

PETITION FOR RULEMAKING CRC-08-24
15A NCAC 7H .0308(A)(2) TEMPORARY EROSION CONTROL STRUCTURES
CURRENT LANGUAGE

(2) Temporary Erosion Control Structures:

- (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure shall be considered to be imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures shall be used to protect only the principal structure—and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:
 - (i) been issued a CAMA permit, where necessary, approving such project; or
 - (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or
 - (iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be

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

- (G) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure or beach nourishment, it shall be removed by the property owner within 30 days of official notification from the Division.
- (H) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- (I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (L) An imminently threatened structure may be protected only once, regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) of this Subparagraph.
- (M) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) of this Subparagraph.
- (N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

MEMORANDUM

CRC-08-22

To: The Coastal Resources Advisory Council
From: Michael Christenbury, Wilmington District Planner
Date: May 7, 2008
Subject: Village of Bald Head Island Core Land Use Plan (May 22, 2008 CRC Meeting)

The Village of Bald Head Island is requesting certification of their 2008 Core Land Use Plan (LUP).

Note: There is not separate P&SI sub-committee report memos or meetings. As such this LUP certification request for Bald Head Island will first go through the CRAC on Wednesday for comment and recommendation for action by the CRC on Thursday morning instead of Friday.

Overview

The Village of Bald Head Island is located in southeastern Brunswick County, at the mouth of the Cape Fear River. The Village of Bald Head Island is North Carolina's southern most cape barrier island and has a year-round population of approximately 205 residents and an estimated peak seasonal population of 4,005.

The Village at Bald Head Island may be best described as an architecturally integrated planned unit development or a planned resort destination community. The Village is a very unique location in that no automobiles are permitted on the island for personal transportation. Travel to and from the Village is provided by a private ferry system that operates year round. The ferry system is operated by the primary developer on the island, Bald Head Island Limited, and provides residents and visitors with round trip service originating from Indigo Plantation located in Southport, NC. The road network present throughout the Village does support passenger vehicles and full size vehicles are allowed in the Village by permit only. These vehicles are generally present on the island to support construction activity. The vehicles are transported to the island by barge. There are several trucks that remain on the island year round to support municipal operations, including emergency management and police operations.

According to the Village's mission statement within the plan, Bald Head Island is a residential, family oriented community and major family vacation destination committed to living in harmony with nature while being supportive of activities and services necessary to enhance the quality of life on the Island.

The Village of Bald Head Island Village Council held a duly advertised public hearing and voted by resolution to adopt the land use plan on April 11, 2008. The plan was prepared through a facilitated process utilizing workshops with citizens, the Village Council, and the Land Use Planning Committee. The goals and policies in the plan are a result of detailed analysis and discussion of key issues identified in the workshops.

The public had the opportunity to provide written comments up to fifteen (15) business days (excluding holidays) prior to the CRAC meeting. April 30th was the deadline date. No comments were received.

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

DCM staff recommends that the CRAC forward the Village of Bald Head Island Land Use Plan to the CRC for certification.

As a reminder, please bring the pre-circulation packet (you received during the first week in May) to the CRAC/CRC meeting including: memo, LUP outline, executive summary, policy and implementation statements. If you have any questions please do not hesitate to contact me (Mike Christenbury) at 910-796-7426.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-21

April 24, 2008
MEMORANDUM

TO:Coastal Resources Commission

FROM:Mike Lopazanski

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

A March 2008 Interpretive Ruling by the Commission regarding the siting of sandbag structures in cases of accelerated erosion has necessitated amendments to 15A NCAC 7H 0.308(a)(2) Temporary Erosion Control Structures. Division of Coastal Management (DCM) staff requested clarification of the rule and whether it allowed sandbags to be placed more than 20 feet seaward from the structure being threatened by accelerated oceanfront erosion. The CRC found that temporary erosion control structures permitted by 15A NCAC 7H 0.308(a)(2) may be placed farther seaward than 20 feet from a structure when: 1) the DCM staff finds that the structure is imminently threatened due to site conditions that increase the risk of imminent damage to the structure to be protected, and 2) the site conditions warrant placement of the temporary erosion control structures farther seaward of the structure than 20 feet.

7H 0.308(a)(2)(E) has been amended to clarify that the sandbags may be permitted more than 20 feet from the structure in such cases. The rule has been further amended to elevate the designation of being at increased risk of imminent damage to the DCM Director or designee.

With the approaching May 2008 deadline under the Commission's 2000 extension on sandbag structures, it is also necessary to remove references to specific dates associated with the eight year extension for communities seeking beach nourishment projects. Reference to the requirement that sandbag structures be in compliance with size limitations in order to be eligible for the extension has also been deleted.

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

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

15A NCAC 7H 0.308(a)(2)

(2) Temporary Erosion Control Structures:

- (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and associated septic systems. A structure shall be considered to be imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not such appurtenances as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, a temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee.
- (F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building or associated septic system, with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building or associated septic system, has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (G) A temporary sandbag erosion control structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may remain in place for up to five years from the date of approval or until May 2008, whichever is later regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project. project as of October 1, 2001. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:
 - (i) been issued a CAMA permit, where necessary, approving such project; or
 - (ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local money, when necessary; or
 - (iii) received a favorable economic evaluation report on a federal project approved prior to 1986. If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures within nourishment project areas that exceed the 20 foot base width and 6 foot height limitation may be reconstructed to meet the size limitation and be eligible for this time extension; otherwise they shall be removed by May 1, 2000 pursuant to Part (N) of this Subparagraph.

If beach nourishment is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void and existing sandbags are subject to all applicable time limits set forth in Parts (A) through (N) of this Subparagraph.

- ~~(G)~~(H) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers or a large-scale beach nourishment, nourishment project involving any volume of sediment greater than 300,000 cubic yards, it shall be removed by the property owner within 30 days of official notification from the Division. Division regardless of the time limit place on the temporary erosion control structure.
- ~~(H)~~(I) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.
- ~~(I)~~(J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(J)~~(K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- ~~(K)~~(L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- ~~(L)~~(M) An imminently threatened structure may be protected only once, regardless of ownership. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
- (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.
- ~~(M)~~(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- ~~(N)~~(O) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

May 1, 2008

MEMORANDUM

CRC-08-23

TO: Coastal Resources Commission

FROM: Bonnie Bendell

SUBJECT: Draft Amendments to the General Permit for Bulkheads and Riprap

At the March CRC meeting, staff presented draft rule changes for three (3) General Permits: Groins (15A NCAC 7H .1400), Marsh Enhancement Breakwaters (15A NCAC 7H .2100), and Riprap for Wetland Protection (15A NCAC 7H .2400). The CRC elected to send all three to public hearing. The intent of these changes to the estuarine shoreline stabilization rules are to be a “first step” in the “many-step process” to help encourage alternatives to vertical structures (i.e. bulkheads). The GP (15A NCAC 7H .1100) for placement of bulkheads and riprap was put on hold until issues raised by the Division of Water Quality (DWQ) were resolved.

The CHPP Steering Committee discussed the estuarine shoreline rules at their meeting on April 11th in Washington. DCM staff reviewed the CRC’s efforts to revise the estuarine shoreline stabilization rules. Dr. Carolyn Currin (NOAA Center for Coastal Fisheries and Habitat Research) presented a summary of recent studies on the response of fringing salt marshes to stone sills and oyster reefs, and provided an introduction to a recently-funded joint NOAA/NERR/DCM project to study the effects of different shoreline stabilization methods and the effects those methods have on different CHPP habitats. This new research project will support DCM’s efforts to develop and implement a sustainable estuarine shoreline stabilization policy for North Carolina.

After a great deal of discussion concerning shoreline stabilization techniques relative to shoreline types, an ad hoc committee was formed to discuss the topic further and present recommendations to the CHPP Steering Committee. The members of that committee will be Bob Emory (committee chair) (CRC), Chuck Bisette (CRC), Ted Tyndall (DCM), Bonnie Bendell (DCM), Jess Hawkins (MFC), Pete Peterson (EMC), and Al Hodge (DWQ). The committee will consider the North Carolina Biological and Physical Processes Work Group Recommendations for Appropriate Shoreline Stabilization for Specific Shoreline Types as well as incentives for non-vertical shoreline stabilization techniques. DCM staff will present an update of the ad hoc committee’s discussions and any CHPP Steering Committee recommendations at future CRC

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meetings. The minutes to the April 11th meeting of the CHPP Steering Committee are included as part of the meeting reference materials.

Attached is the latest draft of proposed changes to the GP for Bulkheads and Riprap (15A NCAC 7H .1100) for further consideration. This version of the proposed rule changes was presented at the September 2007 CRC meeting (I&S-07-18) and did not have any interagency objections to it. While the ad hoc committee formed by the CHPP Steering Committee discusses the “big picture” issues with bulkheads, staff feel that these proposed changes can be made to help encourage alternatives to the vertical structure in the mean time. As stated before, this will be a “single step” in the “many-step process.” Therefore, staff is recommending approval of the proposed changes (attached) for public hearing with one additional change, which is detailed below.

The following is a summary of all the proposed rule changes:

- *(NEW Change)* Permit fees for bulkheads have been changed from \$200 sited at or above normal high water or normal water level and \$400 sited below normal high water or normal water level to \$400 regardless of location.
- “Riprap” has been changed to “riprap revetment” to be consistent with other rules.
- On non-wetland shorelines, new bulkheads shall approximate normal high water or normal water level instead of an average of 2 feet with a maximum of 5 feet waterward of normal high water or normal water level.
- On non-wetland shorelines, new bulkheads on manmade shorelines shall not exceed an average of 2 feet with a maximum of 5 feet waterward of the normal high water or normal water level instead of an average of 5 feet with a maximum of 10 feet waterward of the normal high water or normal water level.
- On non-wetland shorelines, replacement bulkheads shall not exceed an average of 2 feet waterward of the original alignment instead of average of 2 feet with a maximum of 5 feet waterward of normal high water or normal water level.
- On non-wetland shorelines, riprap placement shall not exceed a maximum of 10 feet waterward of normal high water or normal water level instead of only 10 feet maximum when placed in front of a bulkhead
- Slope of riprap shall have a maximum flatness of 3H: 1V which is changed from a of 2H:1V. This was the number one request from the marine contractors meetings held February 2006.
- The additional changes are to be consistent with other rules, to correct ambiguous language, or due to rearranging of rules.

**SECTION .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND ~~THE~~
~~PLACEMENT OF RIPRAP~~ REVETMENTS FOR SHORELINE PROTECTION IN ESTUARINE AND
PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

15A NCAC 07H .1101 PURPOSE

A permit under this Section shall allow the construction of bulkheads and ~~the placement of riprap~~ riprap revetments for shoreline protection in the public trust waters and estuarine waters AECs according to authority provided in Subchapter 07J .1100 and according to the Rules in this Section. This permit shall not apply to shoreline protection along the oceanfront or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy and lower erosion rates than the adjoining Ocean Erodible Area.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. April 1, 2003.

15A NCAC 07H .1102 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and ~~his~~ the applicant's name and address.

(b) The applicant shall provide:

- (1) ~~confirmation~~ that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) ~~confirmation~~ that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within ten (10) days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. ~~DCM staff~~ The Division of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If ~~DCM staff~~ the Division of Coastal Management determines that the project exceeds the guidelines established by the General Permit Process, the applicant shall be notified that ~~he must submit~~ an application for a major development permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and appropriate Division of Coastal Management representatives so that the proposed ~~bulkhead~~ alignment can be ~~appropriately~~ marked. Written authorization to proceed with the proposed development may be issued during this visit. Construction of the bulkhead or riprap ~~structure~~ revetment shall be completed within ~~90~~ 120 days of ~~this visit~~ issuance of the permit or the general authorization shall expire and it shall be necessary to re-examine the alignment to determine if the general authorization can be reissued.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. September 1, 2006; January 1, 1990; December 1, 1987.

15A NCAC 07H .1103 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars (\$200.00) for riprap ~~revetments and bulkheads~~ structures sited at or above normal high water or normal water level, or a permit fee of four hundred dollars (\$400.00) for ~~bulkhead and riprap~~ revetments structures sited below normal high water or normal water level. The applicant shall pay a permit fee of four hundred dollars (\$400.00) for bulkheads. Permit fees shall be paid by check or money order payable to the Department.

History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991.

15A NCAC 07H .1104 GENERAL CONDITIONS

- (a) This permit authorizes only the construction of bulkheads and ~~the placement of riprap~~ revetments conforming to the standards herein.
- (b) Individuals shall allow authorized representatives of the Department of Environment, ~~Health,~~ and Natural Resources to make periodic inspections at any time deemed necessary in order to ~~be sure ensure~~ that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (c) There shall be no ~~significant~~ interference with ~~the navigation or~~ use of the waters by the public by the existence of the bulkhead or the riprap revetment authorized herein. Bulkheads and riprap revetments authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit ~~will shall~~ not be applicable to proposed construction where the ~~Department~~Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.
- (e) This permit ~~does shall~~ not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit ~~must shall~~ be consistent with all local requirements, AEC rules, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. May 1, 1990; December 1, 1987;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994.

15A NCAC 07H .1105 SPECIFIC CONDITIONS

- ~~(a) This general permit is applicable only along shorelines void of wetland vegetation including marsh grass and wooded swamp, or where all construction is to be accomplished landward of such vegetation.~~
- ~~(b) Bulkheads and riprap material shall be positioned as follows:~~
- ~~(1) Bulkheads shall be positioned so as not to exceed more than an average distance of 2 feet waterward of the normal high water mark, or the normal water level contour, whichever is applicable. In no case shall the bulkhead be positioned more than 5 feet waterward of the normal high water or normal water level contour at any point along its alignment.~~
 - ~~(2) Riprap shall be positioned so as not to exceed a maximum of 5 feet waterward of the mean high water mark or normal water level contour at any point along its alignment. Where there is an existing bulkhead structure, riprap shall be allowed to extend a maximum of 10 feet offshore. This location standard shall take into consideration the height of the area to be protected (i.e. bulkhead height, water depth) and the alignment shall allow for a slope no flatter than 2 feet horizontal per 1 foot vertical and no steeper than 1½ feet horizontal per 1 foot vertical.~~
- ~~(c) Along shorelines within upland basins, canals, and ditches, bulkheads or riprap material must be positioned so as not to exceed more than an average distance of 5 feet waterward of the normal high water mark or the normal water level contour, whichever is applicable. In no case shall the bulkhead or riprap be positioned more than 10 feet waterward of the normal high water or normal water level contour at any point along its alignment. For the purpose of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline and development shall occur as described in 07H .1105(b).~~
- ~~(d) Construction authorized by this general permit shall be limited to a maximum shoreline length of 500 feet.~~
- ~~(e) All backfill material shall be obtained from an upland source.~~
- ~~(f) The bulkhead shall be constructed, or the riprap shall be in place prior to any backfilling activities.~~
- ~~(g) The bulkhead or riprap shall be structurally tight so as to prevent seepage of backfill materials through the structure.~~
- ~~(h) Riprap material shall be free from loose dirt or any other pollutant. It shall be of a size sufficient to prevent its movement from the site by wave or current action.~~
- ~~(i) Riprap material shall consist of clean rock or masonry materials such as but not limited to granite or broken concrete. Materials such as tires, car bodies, scrap metal, paper products, tree limbs, wood debris, organic material or similar material, are not considered riprap.~~

~~(j) The bulkhead shall be solid and constructed of treated wood, concrete slabs, metal sheet piles or other suitable materials approved by department personnel. No excavation is permitted except for that which may be required for the construction of the bulkhead wall, riprap, deadmen cables, etc. This permit does not authorize any excavation waterward of the approved alignment.~~

~~(k) Bulkheads or riprap shall not extend beyond established alignments nor restrict the original width of the canal or basin.~~

~~(l) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Land Resources, Land Quality Section, or appropriate local government having jurisdiction. This plan shall be approved prior to commencing the land-disturbing activity.~~

~~(a) Along shorelines void of wetland vegetation:~~

~~(1) New bulkheads shall have an average approximation of normal high water or normal water level. The bulkhead position shall not exceed a distance of 5 feet waterward of normal high water or normal water level at any point along its alignment.~~

~~(2) New bulkheads or riprap revetments on shorelines within manmade upland basins, canals, and ditches, shall be positioned so as not to exceed an average distance of two (2) feet and maximum distance of five (5) feet waterward of normal high water or normal water level.~~

~~(3) When replacing an existing bulkhead, the new alignment shall be positioned so as not to exceed a maximum distance of two (2) feet waterward of the current bulkhead alignment. To tie into a like structure on the adjacent property, replacement bulkhead position shall not exceed a maximum distance of five (5) feet waterward of the current bulkhead alignment. When replacing a bulkhead where lands landward of the bulkhead were lost in the last year, bulkheads shall be positioned a maximum of two (2) feet waterward of the original/existing alignment.~~

~~(4) Riprap revetments shall be positioned so as not to exceed a maximum distance of 10 feet waterward of the normal high water or normal water level at any point along its alignment~~

~~(b) Along shorelines with wetland vegetation, bulkheads and riprap revetments shall be positioned so that all construction is to be accomplished landward of such vegetation.~~

~~(c) Bulkheads shall be constructed of vinyl, or steel sheet pile, concrete, stone, timber, or other suitable materials approved by the Division of Coastal Management.~~

~~(d) Riprap revetments shall be constructed of granite, marl, concrete without exposed rebar, or other suitable materials approved by the Division of Coastal Management.~~

~~(e) Revetment material shall be free from loose dirt or other pollutants~~

~~(f) Revetment material shall be of sufficient size to prevent movement from the site by wave action or currents.~~

~~(g) Construction design for riprap revetments shall take into consideration the height of the area to be protected (i.e. bulkhead height, escarpment height, water depth) and the alignment shall allow for a slope no flatter than three (3) feet horizontal per one (1) foot vertical and no steeper than 1 ½ feet horizontal per one (1) foot vertical.~~

~~(h) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead or riprap revetment shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.~~

~~(i) No excavation, grading or fill shall be permitted except for that which may be required for the construction of the bulkhead and/or riprap revetment. This permit shall not authorize any excavation waterward of the approved alignment.~~

~~(j) Runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters. Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, sand fence, etc.).~~

~~(k) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Land Resources, Land Quality Section, or appropriate local government having jurisdiction. This plan shall be approved prior to commencing the land-disturbing activity.~~

~~(l) For the purpose of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline.~~

~~(m) Construction authorized by this general permit shall be limited to a maximum shoreline length of 500 feet.~~

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. April 1, 2005; December 1, 1991; January 1, 1989; December 1, 1987.*

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**NORTH CAROLINA COASTAL RESOURCES COMMISSION RESOLUTION
SUPPORTING THE ENVIRONMENTAL MANAGEMENT COMMISSION AMENDMENTS
TO THE COASTAL STORMWATER PROGRAM**

WHEREAS, in response to a N.C. Division of Water Quality comprehensive review of the effectiveness of the existing Coastal Stormwater Rule, the N.C. Environmental Management Commission concluded that the existing Rule was outdated and ineffective in providing an adequate level of environmental protection to the coastal ecosystem, and;

WHEREAS, more than 56,000 acres of North Carolina's shellfishing waters have been permanently closed to commercial shellfish harvesting, with more than 90 percent of these closures attributable to stormwater run-off, and;

WHEREAS, the Environmental Management Commission is proposing to alter the low-density threshold, amount of stormwater controlled and treated by best management practices, the threshold for coverage and the vegetative setback, particularly in areas located within a half-mile of waters designated for shellfish harvesting, and;

WHEREAS, while these changes to the rule are broad and far reaching, the Environmental Management Commission is confident that these types of amendments are necessary to protect our vital coastal waters, and;

WHEREAS, most of North Carolina outside the 20 coastal counties is already covered by a stormwater control program that is more stringent than the controls currently in place in most of the coastal counties, and;

WHEREAS, the proposed amendments exempt redevelopment of existing lots, provided there is no net increase in impervious surface and the redevelopment incorporates equal or better stormwater controls than the previous development, and;

WHEREAS, the recently adopted Phase II Stormwater Rules and Universal Stormwater Management Program do not cover all coastal areas or shellfishing waters (surface waters rated SA and SB), depend at least in part on voluntary participation, and are not designed to include rural areas potentially targeted for development, and;

WHEREAS, the Coastal Habitat Protection Plan Steering Committee recognizes that stormwater runoff is the primary cause of water quality degradation and shellfish harvest area closures and that the link between increased impervious surfaces, pollutants washed into rivers, bays, and estuaries, and unsafe levels of fecal contaminants in shellfish waters, is scientifically documented.

THEREFORE, IT IS HEREBY RESOLVED THAT, the North Carolina Coastal Resources Commission supports the amendments to the Environmental Management Commission's Coastal Stormwater Rules.

Robert R. Emory, Jr.
Chair, N.C. Coastal Resources Commission

May 23, 2008

Date

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**NORTH CAROLINA COASTAL RESOURCES COMMISSION RESOLUTION
SUPPORTING CONTINUED FUNDING OF THE
WATERFRONT ACCESS AND MARINE INDUSTRY FUND**

WHEREAS, the Waterfront Access Study Committee reported to the Joint Legislative Commission on Seafood and Aquaculture that rapid development along the coast has brought higher property values and taxes that have resulted in the loss of traditional maritime industries and public access, and;

WHEREAS, the Waterfront Access Study Committee developed 27 recommendations addressing the loss of access along the coast including items for the General Assembly to address, such as establishing a trust fund to assist in the retention and enhancement of working waterfronts, as well as initiatives for state agencies and local governments, and;

WHEREAS, the General Assembly felt state intervention was needed to ensure existing and future waterfront-dependent uses and continued access to the state's public trust waters, creating and allocating \$20 million to the Waterfront Access and Marine Industry Fund in 2007 to acquire waterfront properties or develop facilities to provide, improve or develop public and commercial waterfront access, and;

WHEREAS, thirteen sites were selected for funding to provide waterfront access to a variety of user groups, including commercial and recreational fishermen, pier fishermen, recreational boaters and marine industry as well as several sites in strategic locations for important state research and habitat enhancement efforts, and;

WHEREAS, the Waterfront Access and Marine Industry Fund was successful in leveraging the \$20 million appropriation drawing additional sources of financial support in excess of \$71 million, and;

WHEREAS, the projects funded are judged based on multi-purpose and multi-use benefits that include ocean and coastal waters access, CHPP implementation, fishing and boating access, mitigation and habitat enhancement.

THEREFORE, IT IS HEREBY RESOLVED THAT, the North Carolina Coastal Resources Commission encourages the N.C. General Assembly to support future and continued funding of the Waterfront Access and Marine Industry Fund as it will be a benefit to many of the State's joint interests and goals. Continued funding of the Waterfront Access and Marine Industry Fund will ensure public access to harbors, beaches, estuarine and ocean waters, and inlets and maintain the cultural integrity and character of eastern North Carolina.

Robert R. Emory, Jr.
Chair, N.C. Coastal Resources Commission

May 23, 2008
Date

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DENR Technical Guidance Document for Protection of Submerged Aquatic Vegetation Habitat

March 10, 2008 version
Modified text Apr 29, 2008 Deaton, West
Modified text May 7, 2008 per DENR workgroup, and RAT

INTRODUCTION

The North Carolina Coastal Habitat Protection Plan (CHPP) describes in detail how submerged aquatic vegetation (SAV) provides important structural fish habitat and serves many other important ecosystem functions in estuarine and riverine systems, and often form what can be called seagrass meadows in coastal North Carolina. Many federal and state agencies recognize SAV as an essential fish habitat because of five interrelated features of these seagrass meadows - primary production, structural complexity, modification of energy regimes, sediment and shoreline stabilization, and nutrient cycling. It has been shown that water quality enhancement by seagrasses, and fish utilization of SAV habitat for spawning, nursery and foraging areas, are especially important functions relevant to the enhancement of coastal fisheries.

Atlantic Coastal States Management Policies

North Carolina's acknowledgement of the high ecological value of SAV habitat and its objective to provide clear guidelines on how to best protect existing, historically occurring, and adjacent SAV habitat is not unprecedented. The global and nationwide trend of declining SAV habitat (Orth et al. 2006), coupled with recognition of its ecological importance, has led several regional and state resource management agencies to develop protective management policies for SAV habitat, including Atlantic States Marine Fisheries Commission, South Atlantic Fishery Management Council, Chesapeake Bay Program, and Rhode Island Coastal Resources Management Program. Virginia and Maryland, through the Chesapeake Bay program, developed a guidance document for SAV (EPA 1995) and Rhode Island Coastal Resources Management Program has definitions, findings, policies, and standards regarding activities that can impact SAV (Rhode Island CRMP 2007). Both documents address identification and protection of both existing and historically occurring SAV habitat, recommend SAV mapping, require surveys of the SAV habitat during appropriate growing seasons, require buffers around identified grass beds, and restrict certain specific activities from occurring in or over SAV habitat. Chesapeake Bay implements a tiered approach in SAV habitat protection, based on the documented bottom information available. Appendix 1 summarizes guidelines used by federal commenting agencies and Chesapeake Bay states to protect and manage SAV.

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The North Carolina Marine Fisheries Commission, cognizant of the importance of SAVs, adopted the following policy in May 2004:

NC MFC Policy Statement for Protection of SAV Habitat North Carolina Marine Fisheries Commission (Adopted May 12, 2004*)

Submerged aquatic vegetation (SAV) serves as the basis for premium habitat for many coastal fish and invertebrates. The SAV habitat is so important that special efforts are required to protect and enhance water quality and physical conditions for its propagation and distribution.

The purpose of this statement is to provide guidance for management needs to protect SAV habitat in the development of fisheries management plans and habitat protection plans. The following is a summary of the special quality of SAV as habitat and the attendant water quality/physical conditions necessary for its maintenance. Details and additional information can be found in the SAV chapter in the Coastal Habitat Protection Plan (CHPP) and background scientific references.

The Role of SAV as Habitat

- *Submerged aquatic vegetation, which consists of plants having growing roots (rhizomes) in the sediment, serves as physical hiding places for important fish and shellfish species, as well as a food base for essential food chains. Aquatic productivity in waters with SAV beds is significantly higher than in coastal waters without SAV.*
- *SAV supports a vast array of epiphytes and attached invertebrates that serve as a source of food for many important fish and shellfish.*
- *The major criterion limiting distribution and propagation of SAV is the amount of light reaching the bottom. Suspended solids and proliferation of algae in the water column are significant causes of reduced light penetration in coastal waters. Water-column clarity, therefore, should be a significant water-quality criterion. SAV, in turn, can also improve water quality through its baffling effects on currents and through its filtering of water by attached epiphytes and invertebrates.*
- *SAV serves as important habitat for species such as scallops, shrimp, blue crabs and some species of fish.*

*Management Guidelines**

- *In order to delineate and assess the distribution and health of SAV habitat, SAV beds need to be mapped and monitored. The saltwater end of coastal waters supports eelgrass, widgeongrass and shoalgrass, and the freshwater end supports several species of freshwater SAV.*
- *Minimize nutrient and sediment loading to coastal waters that support existing SAV to protect adequate water quality as defined by water-column clarity in standard measurement units.*
- *All SAV needs to be protected from all bottom-disturbing fishing and recreational gear. Sufficient buffer zones surrounding SAV beds should also be protected from disturbance to prevent impacts of sediments on growing SAV.*
- *Provide adequate safeguards to prevent direct (or indirect) impacts from development projects adjacent to or connected to SAV.*

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- *Assess cumulative impacts of land use and development changes in the watershed affecting SAV to identify the potential impact. Require identification of cumulative impacts as a condition of development of permit applications.*
- *Require compensatory mitigation where impacts are unavoidable. Initiate restoration programs to recoup an/or enhance lost SAV habitat.*
- *Educate landowners adjacent to SAV, boaters, and other potential interested parties about the value of SAV as a habitat for many coastal fishes and invertebrates.*

*Note - This 2004 MFC policy pre-dates the completion of the CHPP and the shift to using the terminology of SAV habitat rather than SAV beds.

EXPANDING PROTECTION FROM SAV BEDS TO SAV HABITAT

The purpose of this DENR document is to provide technical guidance to DENR regulatory and review agencies on managing SAV habitat in a manner that “provides adequate safeguards to prevent direct (or indirect) impacts from development”, as specified in the above MFC policy.

NC DENR Tenets for Management of SAV Habitat

In order to “provide adequate safeguards to prevent direct (or indirect) impacts from development” and foster the protection of SAV from further losses due to increased degradation of water quality, physical damage to the plants, or disruption to the local sedimentary environment the following principles are acknowledged:

- SAV habitat is “highly valuable fish habitat that is to be protected and enhanced where possible and restored where necessary”. All species provide similar ecological value and should be protected equally.
- Cooperative efforts are needed to determine distribution, status and trends of SAV habitat in North Carolina, for the purpose of improving our understanding and management of this habitat.
- Activities in public trust waters shall avoid impacts to SAV habitat wherever possible or minimize to the greatest extent practicable. Where impacts are significant and cannot be avoided or minimized, proposed projects can be modified or denied.
- Field reps and permit reviewers should consider the potential impacts of proposed activities to SAV habitat on a case-by-case basis. Reviewers should consider the level of impact of the specific proposed activity on SAV habitat and the level of scientific documentation supporting the habitat determination (currently exists, existed in recent past, documented to exist since 1980s at some frequency, suitable habitat conditions).
- Establishing appropriate undisturbed buffers between SAV and water dependent structures/activities helps minimize direct and indirect impacts to SAV habitat and allows for some seasonal growth and shifts in distribution.
- Dredging directly alters the bottom to conditions unfavorable for SAV growth or recolonization and should be avoided in existing and historical SAV habitat.

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- Piers and docking facilities can potentially impact SAV through construction impacts, shading, and indirect impacts from boat wakes and prop dredging. Floating docks block more sunlight due to the solid surface and lower position over the bottom and in shallow water may rest on top of the vegetation. The design, size, and location of the docking facility will determine the level of impact to SAV habitat.
- Shoreline stabilization practices that result in increased wave energy regimes, turbidity, or sedimentation can potentially impact SAV habitat. Shoreline stabilization methods should utilize the method that would cause the least expected impact to SAV habitat if possible.

Objectives

Goal 2 of the CHPP requires mapping of all SAV habitat. The CHPP includes detailed information regarding the characteristics and environmental requirements of SAV habitat. The current MFC definition of submerged aquatic vegetation “beds” is more limited than what actually comprises submerged aquatic vegetation “habitat”, based on information provided in the CHPP (Street et al. 2005). Because of this, MFC proposed a modification of the rulebook definition to more accurately describe SAV habitat and aid in SAV habitat determination.

Objectives of this DENR policy document are to clarify: 1) interpretation of the proposed modified definition of SAV habitat, 2) how to determine SAV habitat as defined by MFC rule, 3) the permit process for activities occurring in or over SAV habitat, and 4) the rules that would be affected by this definition change (Appendix 2).

Background

The current MFC definition of submerged aquatic vegetation only mentions a few high salinity SAV species, but SAV habitat can also support numerous low salinity species as well. In addition, the definition of SAV is based on the presence of some vegetative structure. Because the presence of SAV leaves varies seasonally and inter-annually in North Carolina, a one-time visual inspection of the bottom that fails to detect SAV does not necessarily mean that the bottom in that area does not support SAV. Visual inspections must be conducted during the active growing season, generally between early spring and late fall, although the time of maximum biomass varies with species. Furthermore, it is not uncommon for grass beds to be present one year, but not the next. Aerial photos or sampling data may indicate that an area regularly or irregularly supports SAV growth. The frequency of SAV occurrence at a given area should be taken into account when determining if an area is “SAV habitat”. This approach is particularly important since some activities that are requested through the permit process, such as dredging or placing a floating dock over shallow bottom, alter the bottom in such a way that it prevents the area from re-colonizing with SAV. A revised definition as proposed would improve identification of SAV habitat.

The changes to the SAV definition are needed to adequately include low salinity species and address difficulties in identification of SAV habitat. Street et al. (2005) and ASFMC (1997) provide detailed descriptions of SAV habitat. Because Virginia and Maryland conduct comprehensive annual mapping of all seagrass, proper SAV identification in Chesapeake Bay is easily determined. In Florida, SAV is less seasonally variable than in North Carolina, also simplifying identification. Florida resource managers require any applicant for a proposed habitat alteration activity to determine if a site is SAV habitat utilizing existing data or photos, or if unavailable, by conducting a survey at the appropriate time of year (L. Morris, St. John’s Water Mgmt. Dist., pers. com.).

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In North Carolina, a statewide effort is underway to obtain coastwide maps depicting SAV distribution. Coordinated and funded by APNEP, and also including funding and participation from DMF, DCM, DWQ, NOAA, NCDOT, and several universities, digital aerial photographs were taken of all high salinity and low salinity beds of SAV in fall 2007, and will be completed in spring 2008. Once maps are produced from the imagery, a comprehensive map of SAV habitat present during this time period will be available. Until maps from this imagery have been completed, other previously existing site-specific mapping and monitoring information can be used to identify general locations of SAV habitat. In addition to maps, DMF has collected point data on the occurrence of SAV at fish sampling sites throughout the coast. This information can be used as an initial tool in evaluating bottom habitat, which should be augmented by on-site field visits.

In North Carolina it can be difficult to visually detect SAV from a land-based site inspection due to turbidity. Careful observation below the water's surface or sampling is often required to determine if SAV is present or not. It therefore appears that North Carolina's situation in identifying SAV habitat is complicated by many factors. Modifying the definition should help clarify what encompasses SAV habitat and how to identify it. This is consistent with the goals and recommendations of the CHPP.

Proposed Marine Fisheries Commission SAV habitat definition (03I .0101 20 (A))

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

15A NCAC 03I .0101 DEFINITIONS

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

(b) The following additional terms are hereby defined:

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

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

(i) are vegetated with one or more species of submerged aquatic vegetation such as including eelgrass (Zostera marina), shoalgrass (Halodule wrightii) and widgeongrass (Ruppia maritima). bushy pondweed or southern naiad (Najas

guadalupensis), coontail (Ceratophyllum demersum), eelgrass (Zostera marina), horned pondweed (Zannichellia palustris), naiads (Najas spp.), redhead grass (Potamogeton perfoliatus), sago pondweed (Stuckenia pectinata, formerly Potamogeton pectinatus), shoalgrass (Halodule wrightii), slender pondweed (Potamogeton pusillus), water stargrass (Heteranthera dubia), water starwort (Callitriche heterophylla.), waterweeds (Elodea sp.), widgeongrass (Ruppia maritima) and wild celery (Vallisneria americana). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas:

- (ii) have been vegetated by one or more of the species identified in Subparagraph (i) within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), sediment type (unconsolidated sandy sediment with silt-clay content not to exceed 35 percent), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.

~~These vegetation beds occur~~ This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. ~~In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow.~~ In defining ~~beds of submerged aquatic vegetation,~~ SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the

submerged aquatic vegetation definition, or rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.

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

Clarification of terms within the SAV definition

Subparagraph 1 - Refers to those areas where SAV leaves, rhizomes, or reproductive structures are present during the active growing season, where the peak growing season for low-salinity SAV habitat is June to August, and the peak growing season for high-salinity SAV habitat is April to October (Figure 1 in Appendix 3).

Subparagraph 2 - Allows consideration of SAV occurrence within the past 10 annual growing seasons since distribution and abundance varies interannually with environmental conditions. Ten years only approximates possible cycles of abundance, which may follow longer cycles as a result of discrete weather events and other habitat impacts. Under conditions of low rainfall and runoff, such as during droughts, improved water clarity and less fluctuating salinity patterns can enhance conditions for SAV growth. Conversely, in years of frequent storm events, the increased rainfall and wave energy can reduce SAV presence and deter conditions for SAV growth. Drought cycles vary in length, but may last 5 to 10 years, or more (<http://www.ncdc.noaa.gov/paleo/drought>), while cycles of heightened tropical storm activity in the Atlantic basin are believed to occur in multidecadal oscillations, lasting 20-30 years or longer (Burgess et al. 2007). Thus SAV distribution may vary on multi-year cycles. By considering SAV occurrence for the preceding ten annual growing seasons, these cycles can be taken into consideration so that areas of SAV habitat are not improperly excluded from protection due to recent large-scale weather events. In addition, it is not highly probable that SAV habitat could be remapped more frequently than once every 10 years, given the expense and effort required.

Past occurrence of SAV habitat can be determined from maps, agency photographs, surveys, or other documentation. Documentation with the greatest certainty of accuracy should be given preference, such as detailed field surveys and ground-truthed aerial photography. Maps depicting where SAV has been documented through various mapping efforts are included in Appendix 4.

Subparagraph 2 – “The average physical requirements that characterize the environment suitable for SAV growth” were derived from Ferguson and Wood (1994), and Street (pers. comm. 2007). These criteria represent only average conditions needed to support SAV. It is important to note that water depth, sediment substrate, light availability, and wave exposure are interacting factors that can affect SAV survival and growth at a specific location. Environmental thresholds vary by location and combination of occurring factors. Refer to the CHPP (Street et al. 2005) for a more thorough discussion of suitable conditions. Additional research would enable more specific identification of suitable SAV habitat conditions.

The modifications to the SAV definition may affect several EMC, CRC, and MFC rules. Formerly this habitat was mostly referenced in rule as submerged aquatic vegetation or beds of submerged aquatic vegetation. The new definition broadens this to SAV habitat to correspond with the CHPP and to take into account the seasonal and dynamic nature of this habitat.

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Existing rules that reference SAV habitat or beds of SAV are included in Appendix 2. Each Commission will need to ensure that its rules related to SAV are compatible with the MFC definition.

Specific guidance for habitat determination and permit review process

The MFC SAV policy guideline includes: “provide adequate safeguards to prevent direct or indirect impacts from development projects adjacent to or connected to SAV”. To achieve this, the permit review process should assess the level of impact of various proposed activities. Table 1 describes the potential impact of different development activities on SAV habitat. In addition, the permit review process should consider the amount and type of SAV that is potentially affected as well as the potential severity of the specific activity on SAV habitat.

Permits to impact Public Trust Areas and Estuarine Waters Areas of Environmental Concern (AECs) that may include SAV habitat are issued via the CAMA Major Permit by the Division of Coastal Management (DCM). Major permits are necessary for activities that require other state or federal authorizations. Applications for Major Permits are reviewed by 10 state and four federal agencies before a decision is made.

Table 1. Potential impact of development located in or over SAV habitat.

Proposed Activity	Potential Impact
Fixed individual docking facility (<=2 slips)	Shading, bottom damage from boat use if shallow
Fixed multi-slip docking facility (3-10 slips)	More shading and potential bottom damage from boat use
Fixed docking facility with boat lift	Shading, but less than in-water slip
Floating dock	Complete shading, smothering if shallow
Boathouse	Complete shading
Access pier	Shading
Observation pier	Shading, no boat issues
Boat ramp	Removing SAV, deepening shallow edge, boat activity increasing turbidity and chance of prop dredging
New channel dredging	Removes SAV, increases turbidity, alters conditions, boat traffic
Maintenance dredging	Damage is already done but prevents natural recolonization of bottom
Marina (no dredging)	Prop dredging, shading, increased wave energy & turbidity from boat activity
Marina (with dredging)	Removes SAV, alters conditions to prevent SAV colonization, increased wave energy & turbidity from boat activity, shading

General Permit Process

General Permits are expedited forms of the CAMA Major Permit and may be issued for certain types of projects that are frequently carried out, require minimal onsite overview, need little

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public review and comment, and are of a size of development with minimal impact on the AEC. The DCM normally issues General Permits within a few days of the request by the applicant. Most General Permits are issued at the site of the proposed development. General permits may contain site-specific conditions as to proposed structure(s) size, alignment, length, location, etc. The most common General Permit issued that affects SAV habitat is 15A NCAC 07H .1200 – General Permit for Construction or Piers: Docks: and Boat Houses in Estuarine and Public Trust Waters and Ocean Hazard Areas. The Coastal Resources Commission (CRC) adopts specific rule language for General Permits after receiving input by the DCM staff, State and Federal agencies and the regulated public. General Permits typically contain specific use standards that are more restrictive than those found in 15A NCAC 07H .0208(b) – Specific Use Standards that are used for full review Major Permit applications.

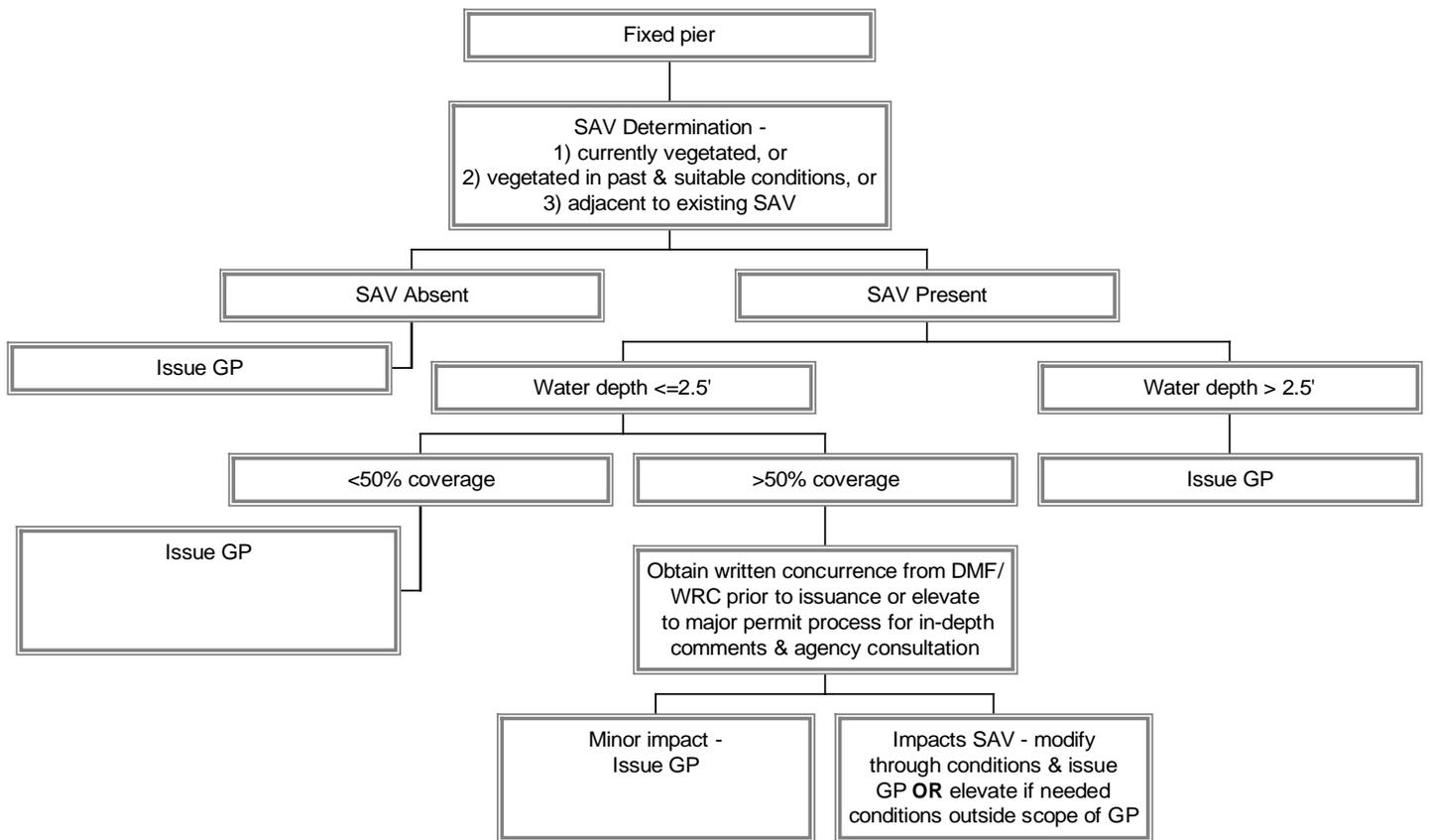
The CRC is currently working on changes to General Permit 15A NCAC 07H .1200 and the proposed wording as it impacts SAV habitat reads as follows:

(h) Piers and docking facilities shall not be constructed over existing shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).

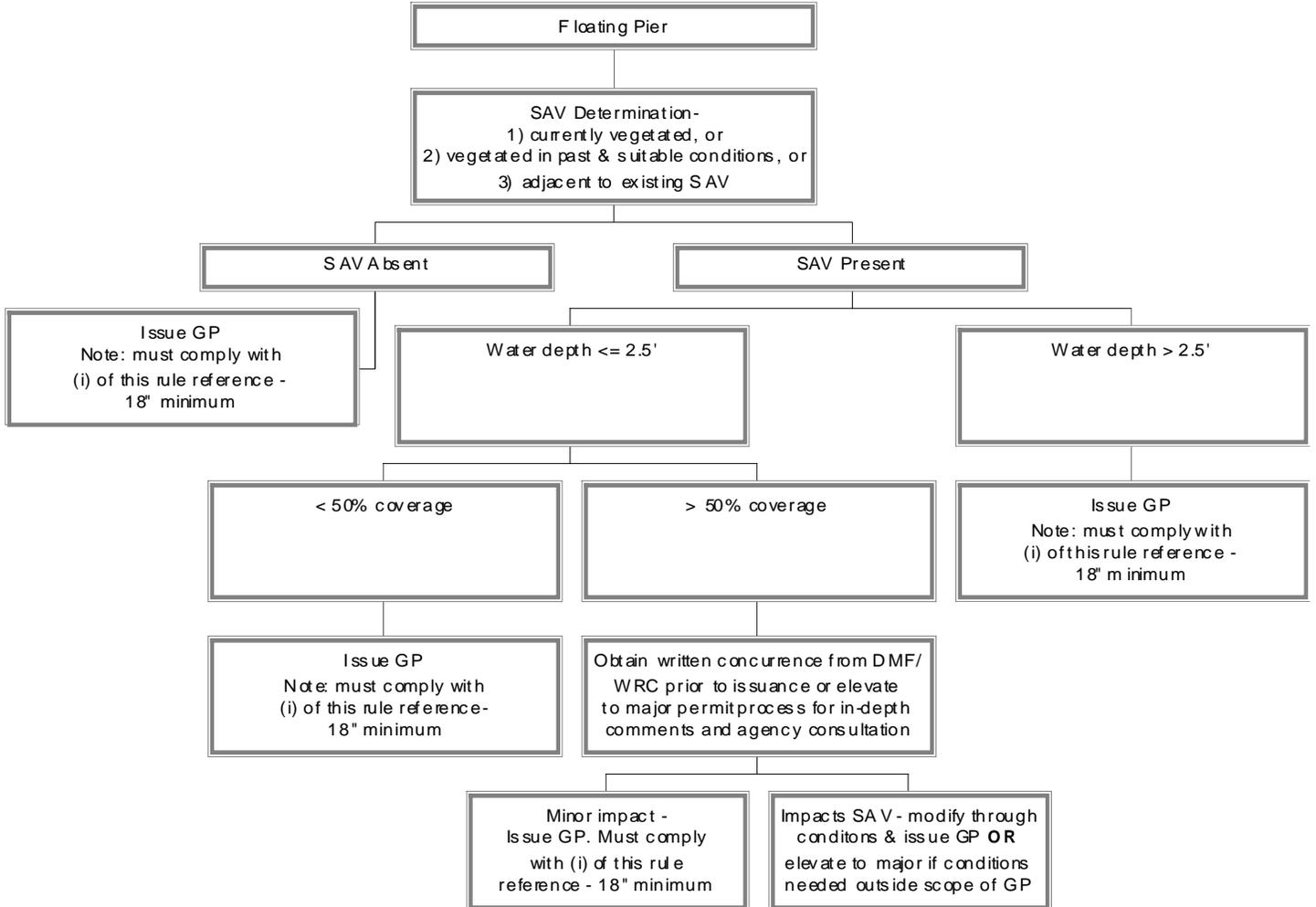
With respect to 'prior approval' as stated in the aforementioned proposed rule, the following guidelines (Figure 1) should be used by the DCM when issuing the proposed General Permit 15A NCAC 07H .1200 – General Permit for Construction or Piers and Docking Facilities: in Estuarine and Public Trust Waters and Ocean Hazard Areas. These guidelines for general permits take into account whether SAV is present, the water depth at the proposed docking facility, and the extent of cover. Boats using docking facilities located where water depth is 2.5 ft or less are highly likely to cause bottom disturbance and damage to SAV plants. Therefore sites with water depth 2.5 ft deep or less and having significant SAV coverage (>50%) require further evaluation by permit reviewers.

Figure 1. Guidelines for complying with the proposed GP 15A NCAC 07H .1200 (piers and docking facilities) where there are SAV concerns are illustrated in the following decision flow chart for: a) fixed piers, b) pier with floating docks, c) fixed docking facilities, and d) floating docking facilities. For the purposes of this document, coverage is defined as present upon visual observation at the time of the permit decision within the area to be directly impacted by the proposed development; minor impact is defined as those impacts that the DMF/WRC determine do not warrant additional permit conditions or elevated review; vegetated in past is defined as site documented to support SAV within the past 10 annual growing seasons.

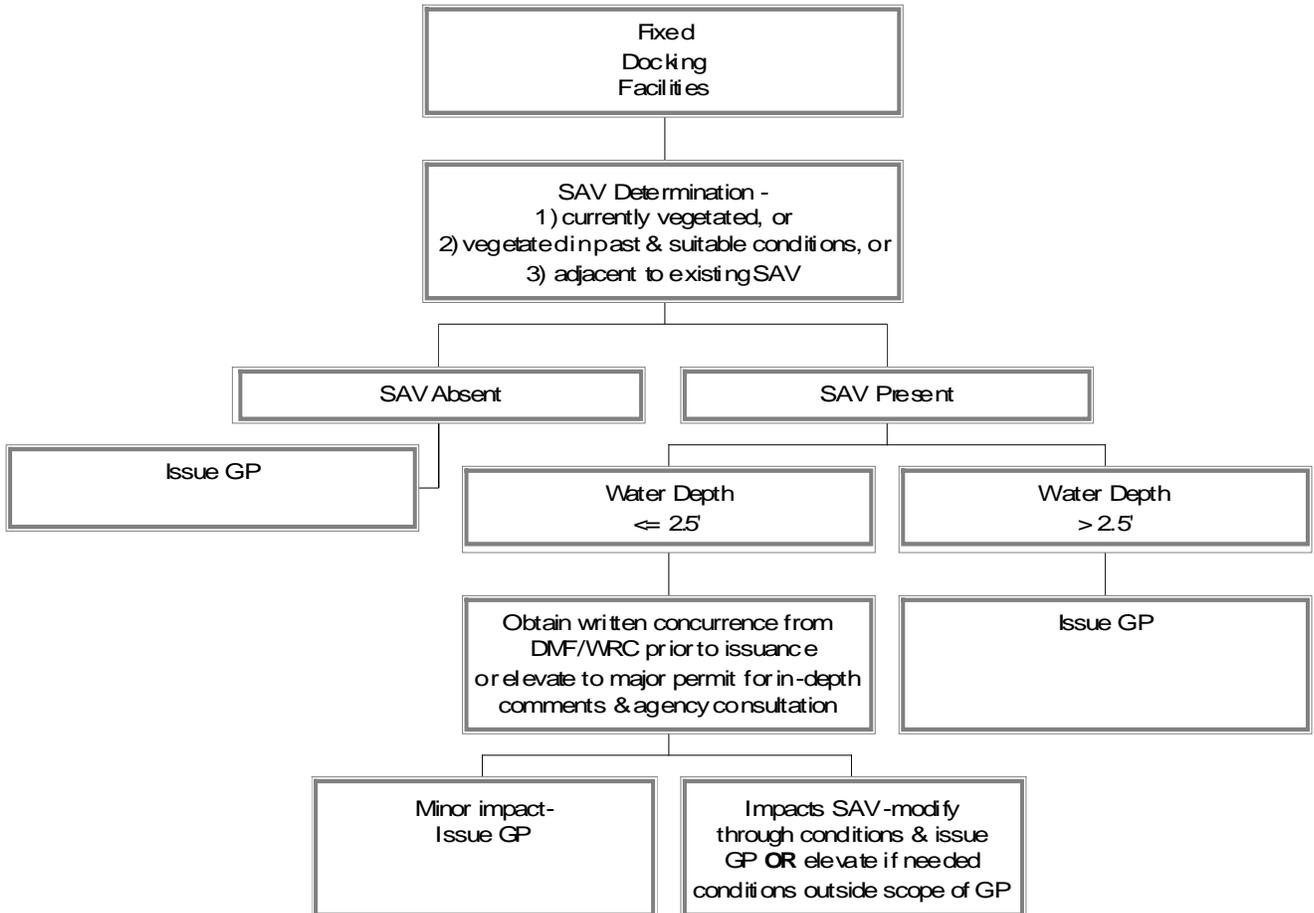
a)



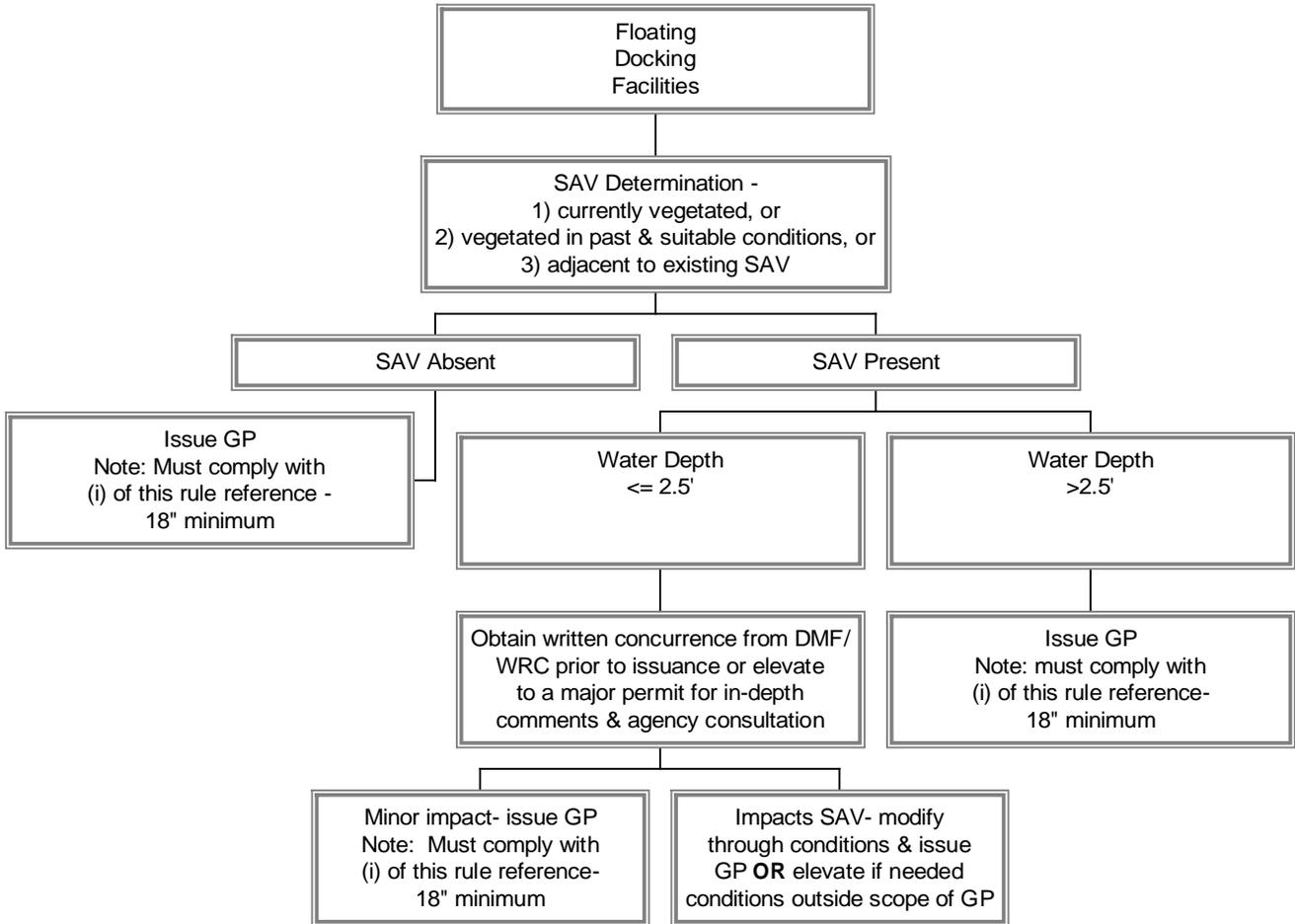
b)



c)



d)



Major Permit Process

As previously stated, Major Permits are necessary for activities that require other state or federal authorizations. Applications for Major Permits are reviewed by 10 state and four federal agencies. The process typically takes between 60 and 90 days to reach a permit decision. During the review process for projects that have potential SAV habitat issues, these agencies routinely request information on SAV in regard to presence or absence, the specific location, abundance, and anticipated impacts. This information is normally provided by applicants through surveys with an agreed upon sampling protocol as outlined in Appendix 2.

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Coordination between the agencies and the DCM often results in outcomes that include realignment of proposed structure(s) to avoid or minimize encroachment into SAV habitat, involve the reduction or elimination of structure(s) or parts thereof that impact SAV habitat, or the permit application is denied based on significant adverse impacts to SAVs.

The current Major Permit review process is thorough and deemed sufficient by the agencies in affording protection to existing SAVs, and no changes to this process are proposed by this document.

CONCLUSION

The intent of this document is to clarify how to identify SAV habitat and improve coordination between DENR agencies when reviewing permit applications that may affect SAV habitat. In acknowledging that SAV habitat includes not only existing plants, but sediment between grass patches and areas recently or historically vegetated with SAV, agencies can take a more comprehensive approach at managing this critical habitat. The changes described will allow greater consideration of impacts to SAV habitat, while still allowing the process for issuing general and major permits to continue. This DENR document will enhance CHPP implementation by protecting SAV habitat from physical impacts and improving permit coordination between agencies. This issue has highlighted the importance of regularly mapping SAV habitat throughout the coast on a regular basis, as well as the need for additional monitoring of the habitat to improve our understanding of the dynamics driving its distribution changes over time.

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This document was compiled with assistance by:
DCM – Ted Tyndall, David Moye, Mike Lopazanski, Tancred Miller
DWQ – Kyle Barnes, WRC – Maria Dunn, DENR – Jimmy Johnson
DMF – Katy West, Anne Deaton

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APPENDIX 1

Summary of guidelines for SAV protection used by the federal regulatory and commenting agencies, as well as the state agencies of Maryland and Virginia (Source: Orth et al. 2002)

Categories	Maryland	Virginia	US Army Corps of Engineers (Baltimore District)	US Environmental Protection Agency	US Fish and Wildlife Service	National Marine Fisheries Service
Dredging of new channels	Not allowed in water \leq 3 ft. at MLW.	Limit channels to minimum dimensions necessary; avoid SAV.	Not allowed in waters \leq 2 ft. MLW in main channel. \leq 1.5 ft. MLW in spurs; presence of SAV overrides these parameters	Generally, no new dredging except in historic channels.	Avoid shallow water habitats; not recommended in areas without piers & historical deepwater access.	Not recommended within existing SAV beds or adjacent shallows with potential for bed expansion
Dredging in SAV beds	Allowed in areas where there were historic channels	Usually not allowed.	Prohibited upstream of 1.5-2 ft. contour and in existing beds (see text for exceptions); channel dimensions may be restricted where slumping occurs.	Allowed in channels or historic channels only; not recommended otherwise.	Not recommended.	Not recommended.
Timing restrictions on dredging	Prohibited within 500 yards of SAV beds, April 15- October 15.	Restrictions may be placed if in proximity to living resources.	April 1- June 30; April 15- October 15 (species with two growing seasons).	March 31-June 15.	March-June	Species-dependent; April-October 15 for most species; April 1- June 30 for horned pondweed.
Dredging in areas that historically supported SAV	Not recommended where SAV occurred during the previous growing season.	Considered during the application review process.	Depends on depths and why SAV disappeared. Check soils.	Not recommended	Not recommended	Not recommended where SAV has been documented during the past 2-3 growing seasons.
Dredging near SAV beds/buffer zones	See timing restrictions on dredging above.	Considered during the application review process.	3 ft. buffer/1 ft. dredged below existing bottom; 15 ft. buffer from MHW & for SAV w. dense tuber mats.	3 ft. buffer/1 ft. dredged	3 ft. buffer/1 ft. dredged below existing bottom.	Recommend buffers around existing beds; no dredging in areas with potential bed expansion.
Depositing dredged material on SAV	Prohibited	Locate to minimize impacts	Recommend against		Recommend against	Recommend against
Pier Construction	Pier out to avoid dredging of SAV beds; minimize pier dimensions.	Limit to minimum necessary for water access, locate to avoid SAV.	Pier out, construct community piers or mooring piles to avoid dredging of SAV beds; maintain suitable pier height above SAV.		Pier out to avoid dredging of SAV beds; construct community rather than multiple individual piers.	Maintain 1:1 ratio of deck width to deck height above MLW.
Marina development near SAV	Prohibited in areas \leq 4.5 ft. unless dredged from upland and adverse impacts to SAV are minimized.	Undesirable near SAV, or in waters less than 3 ft. at MLW.	Avoid historical SAV beds for new marina construction; maintain buffer for marina expansion.	Avoidance of SAV recommended	Avoid	Recommend against new marinas or expansion in existing beds or adjacent shallows with potential for bed expansion.
SAV harvest	Permit required.	Permit required.				Limited harvest of hydrilla in the Potomac.
Fishing activity	No hydraulic clam dredging in existing SAV.	No clamming in water depths < 4 ft.				
Aquaculture activities		No new permits in existing SAV.				

APPENDIX 2

Rules that reference submerged aquatic vegetation or beds of submerged aquatic vegetation

Affected CRC rules (proposed dock rules at end)

7H.0206(b) – Description of AECs/Estuarine Waters (All rule citations should be in caps, change all below)

(b) Significance. Estuarine waters are the dominant component and bonding element of the entire estuarine and ocean system, integrating aquatic influences from both the land and the sea. Estuaries are among the most productive natural environments of North Carolina. They support the valuable commercial and sports fisheries of the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and reproduce. Of the 10 leading species in the commercial catch, all but one are dependent on the estuary. This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy, fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The circulation of estuarine waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish, flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats, **eel grass beds**, salt marshes, **submerged vegetation flats**, clam and oyster beds, and important nursery areas. Secondary benefits include the stimulation of the coastal economy from the spin off operations required to service commercial and sports fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations, and tourist related industries. In addition, there is considerable nonmonetary value associated with aesthetics, recreation, and education.

7H.0208 (a)(2)(B) – General Use Standards

Before receiving approval for location of a use or development within these AECs, the permit-letting authority shall find that no suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, **beds of submerged aquatic vegetation**, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).

7H.0208 (a)(6) – General Use Standards/SAV Definition

Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of **submergent vegetation**. These **vegetation beds** occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules. In defining **SAVs**, the CRC recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the **SAV definition** and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.

7H.0208 (b)(1) – Specific Use Standards

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

7H.0208 (b)(1)(J)(iii)

Maintenance excavation in canals, channels and boat basins within primary nursery areas **and beds of submerged aquatic vegetation** shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991.

(iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and **beds of submerged aquatic vegetation**.

7H.0208 (b)(3)(D) – Drainage Ditches

Drainage ditches shall not have a significant adverse effect on primary nursery areas, productive shellfish beds, **beds of submerged aquatic vegetation**, or other documented important estuarine habitat. Particular attention shall be placed on the effects of freshwater inflows, sediment, and nutrient introduction. Settling basins, water gates, retention structures are examples of design alternatives that may be used to minimize sediment introduction.

7H.0208 (b)(5)(A) – Marina Siting

Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, **submerged aquatic vegetation**, and wetland habitats, except for dredging necessary for access to high-ground sites.

7H.0208 (b)(8)(G) – Beach Nourishment

Material shall not be placed on any coastal wetlands or beds of **submerged aquatic vegetation**.

7H.0208 (b)(11)(C) – Filling of Canals, Basins and Ditches

Notwithstanding the general use standards for estuarine systems as set out in 7H .0208(a) of this Rule, filling canals, basins and ditches shall be allowed if:

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, **bed of submerged aquatic vegetation**, coastal wetlands other than a narrow fringe around the shoreline, recognized public trust right or established public trust usage; and

7H.0209(d)(4)- Coastal Shorelines/Use Standards/Significant Adverse Impacts

Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts shall include but not be limited to development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or **Submerged Aquatic Vegetation (SAV)**, deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.

7H.0209 (g)(4)(B)(IX)- Urban Waterfronts/Use Standards/ Non-Water Dependent Uses

Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or **Submerged Aquatic Vegetation (SAV)**, deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;

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7H.1505(7)- GP for Excavation Within or Connecting to Existing Canals, Channels, Basins, or Ditches

Proposed maintenance excavation must meet each of the following specific conditions to be eligible for authorization by this general permit.

(7) The proposed project must not involve the excavation of any marsh, **submerged aquatic vegetation**, or other wetlands.

7H.1905(3) – GP to Allow for Temporary Structures within Coastal Shorelines and Ocean Hazard AECs/Specific Conditions

Proposed temporary structures must meet each of the following specific conditions to be eligible for authorization by the general permit:

(3) The proposed project shall not involve the disturbance of any marsh, **submerged aquatic vegetation**, or other wetlands including excavation and/or filling of these areas.

7H.2405(h)- GP for Placement of Riprap for Wetland Protection in Estuarine or Public Trust Waters.

No backfill or any other fill of wetlands, **submerged aquatic vegetation**, estuarine waters, public trust areas, or highground areas is authorized by this general permit.

7H.2604 (a) – GP for Construction of Wetland, Stream and Buffer Mitigation Sites by the NC EEP or the NC Wetlands Restoration Program

This permit authorizes only the following activities associated with the construction of wetland, stream or buffer restoration: creation or enhancement projects conforming to the standards herein; the removal of accumulated sediments; the installation, removal and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the placement of in-stream habitat structures; modifications of the stream bed or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; the planting of **submerged aquatic vegetation**; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive exotic or nuisance vegetation; and other related activities.

7H.2605(b)- GP for Mitigation by EEP or WRP/Specific Conditions

No excavation or filling of any **submerged aquatic vegetation** shall be authorized by this general permit.

7H.2705(u) GP for Construction of Riprap Sills for Wetland Enhancement

No excavation or filling of any native **submerged aquatic vegetation** is authorized by this general permit.

7J.0409 (*Civil Penalties rule, effective 2/1/2008*)

7M.0403((f)(10)(A)- Coastal Energy Policies

In the siting of energy facilities and related structures, the following areas shall be avoided:

(A) areas of high biological significance, including offshore reefs, rock outcrops and hard bottom areas, sea turtle nesting beaches, freshwater and saltwater wetlands, primary or secondary nursery areas and essential fish habitat-habitat areas of particular concern as designated by the appropriate fisheries management agency, **submerged aquatic vegetation beds**, shellfish beds, anadromous fish spawning and nursery areas, and colonial bird nesting colonies;

Affected EMC rules

15A NCAC 02B .0225 (c) (2) – Water Quality Standards for ORW/Saltwater

No dredge or fill activities shall be allowed if those activities would result in a reduction of the **beds of submerged aquatic vegetation** or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture.

15A NCAC 02B .0227 (b) (5)- Water Quality Management Plans to Protect Existing Uses/Lockwood Folly River Area

No dredge or fill activities shall be allowed where significant shellfish or **submerged aquatic vegetation bed resources** occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.

Affected MFC rules

3I .0101 (b) (20) (a) – Definitions

Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of **submerged vegetation** such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the **bed** is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In **defining beds of submerged aquatic vegetation**, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the **submerged aquatic vegetation** definition, or rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.

3K .0304 (a)(2) – Prohibited Taking of Clams

it is unlawful to take clams by any method:

- (1) other than hand tongs, hand rakes as described in 15A NCAC 03K .0102, or by hand in any live oyster bed, or
- (2) by hand rakes as described in 15A NCAC 03K .0102, or by hand in any established bed of **submerged aquatic vegetation** as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately.

3K .0404 (2) – Dredges/Mechanical Methods Prohibited and Open Season

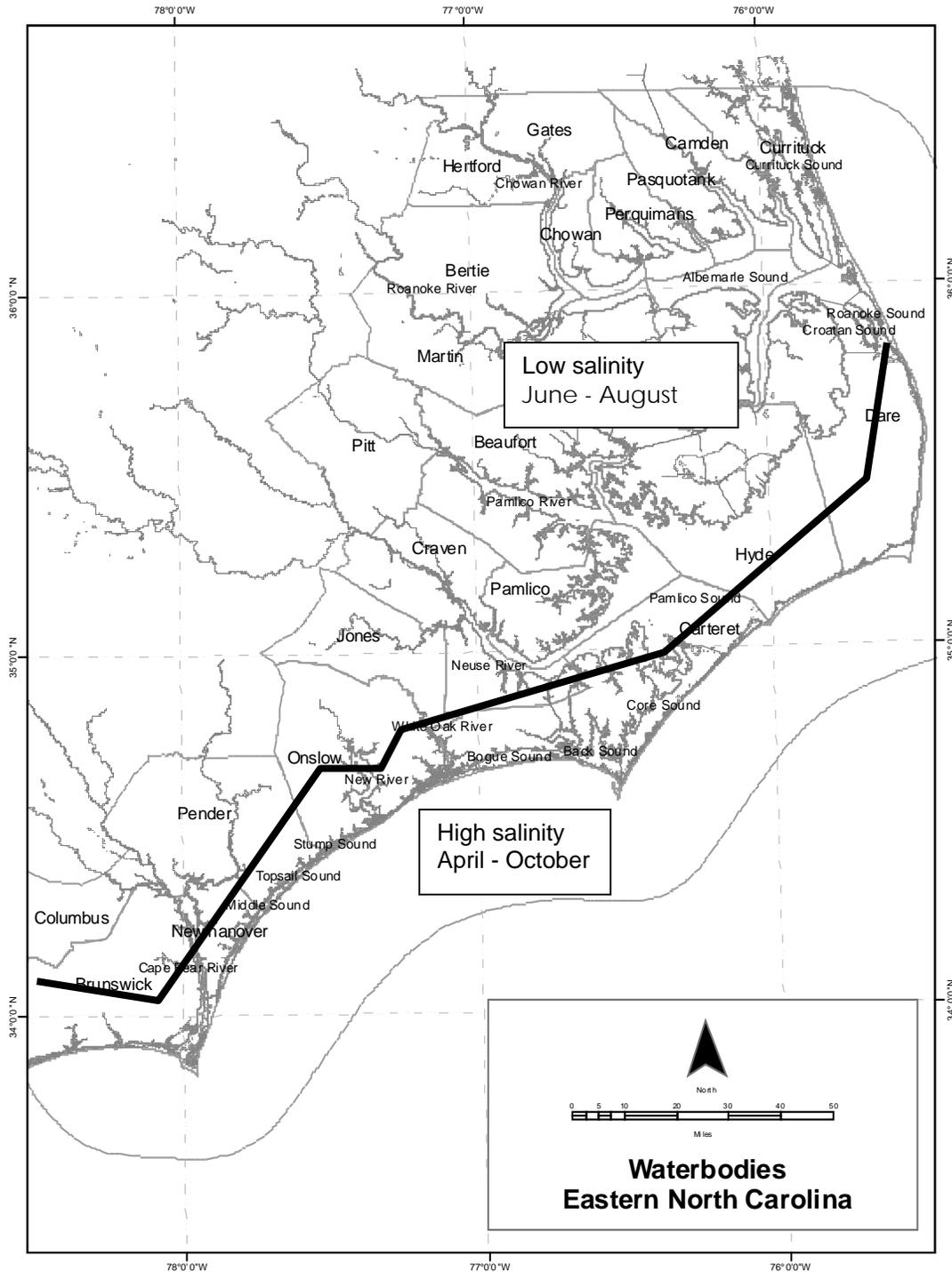
It is unlawful to use mechanical methods for oystering or clamming to take *Rangia* clams or their shells:

- (2) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately.

**Appendix 3.
SAV Sampling Protocol**

- Conduct survey for SAV during the approximate time periods (periods of high SAV biomass in a given area) shown on the attached map (Figure 1) for the desired location (low salinity: June-Aug; high salinity: Apr-Oct.)
- Survey on transects spaced evenly to cover the entire area to be affected by the proposed project and associated activities.
- Visual surveying should include the area along the transect as well as on both sides of the transect such that the entire area in which the bottom is visible is surveyed.
- For areas where the bottom is not visible, transects should be evenly spaced and sampled with a rake at evenly spaced distances along the transect sufficient to cover the entire site
- Surveys should include at least the following data:
 - Location for all identified SAV on a map of the site
 - Date and approximate local time of survey work
 - Depth (and lunar tide stage where applicable)
 - Bottom salinity and water temperature; Secchi depth
 - For each survey:
 - General bottom type (estimate: mud, sandy mud, muddy sand, sand, shell, SAV, macroalgae)
- When the bottom and/or SAV is visible without raking, estimate coverage as shown below and in the attached figure:
 - Dense: >70% coverage
 - Moderate: >40% but less than 70% coverage
 - Sparse: 10 – 40% coverage
 - Very sparse: > 0 – 10% coverage
 - Absent: None
- When SAV is not evident at the sediment surface, rake meter square sample sites throughout the site to search for rhizomes and other buried SAV structures
- Report presence of rhizomes and other buried SAV structures found per sample
- Identify any SAV, including rhizomes and other structures present, to species when feasible
- Optional data: Other pertinent observations (such as shellfish presence)

Figure 1. Preferred sampling periods for high salinity and low salinity submerged aquatic vegetation in coastal North Carolina.



APPENDIX 4

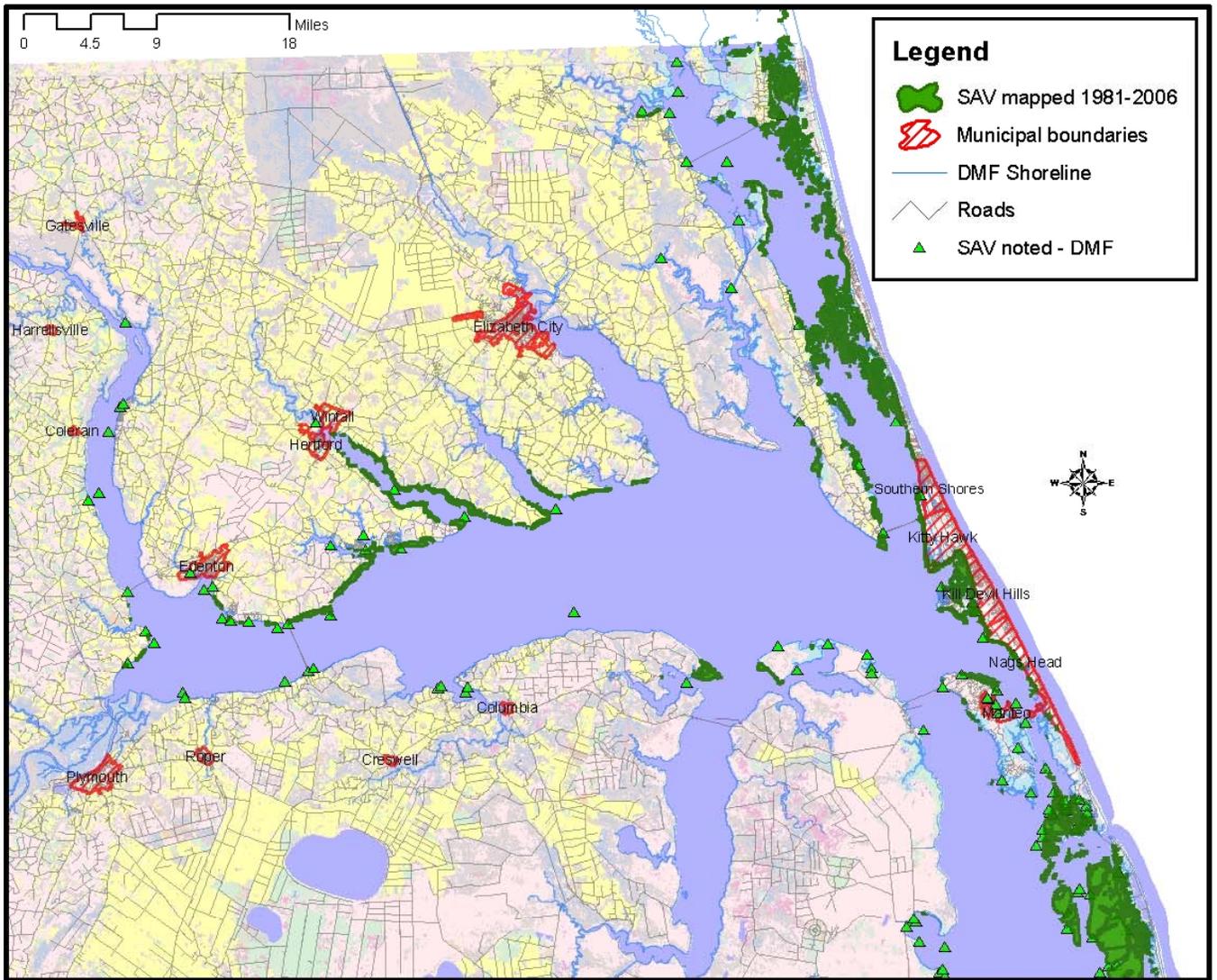
MAPPED DISTRIBUTION OF SUBMERGED AQUATIC VEGETATION IN COASTAL NORTH CAROLINA, 1981-2006

The following maps depict the specific location of submerged aquatic vegetation (SAV) based on mapping efforts from 1981 to 2006. The maps also show locations where SAV was noted by Division of Marine Fisheries (DMF) staff at biological sampling stations. The mapping data suggest the geographic extent of SAV to a certain degree of both spatial and classification accuracy. The point data from DMF do not suggest the geographic extent of SAV, and the degree of spatial and classification accuracy is unknown. There is also no means to distinguish among points based on frequency of occurrence. Care should be taken in the use of this data.

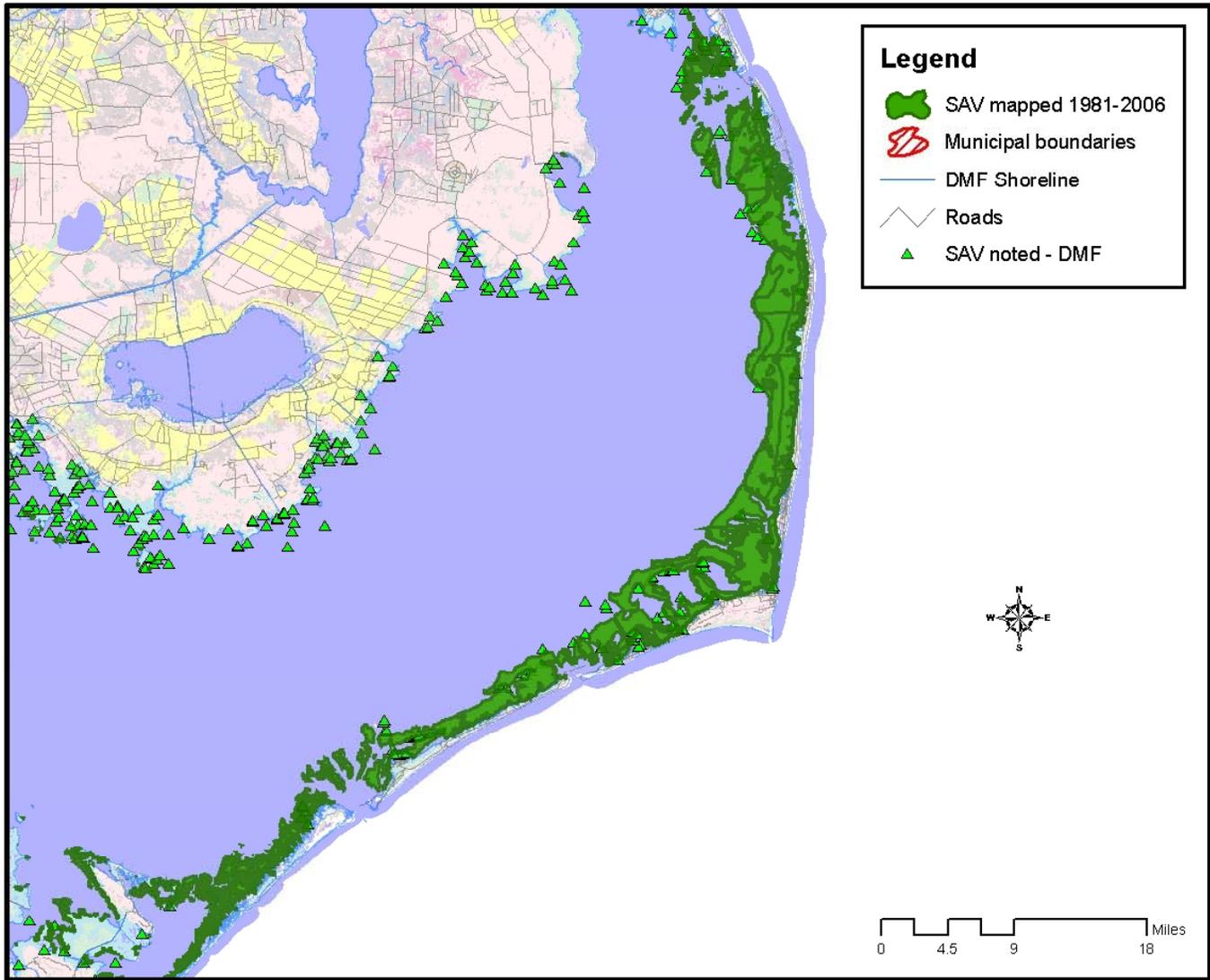
The method used by each mapping effort is listed after each citation in the, "List of Maps Included," below. The actual maps are displayed on the following pages. Contact Scott Chappell or Anne Deaton with specific questions. As additional imagery and maps of SAV become available in the future, they will be added into this documentation.

LIST OF MAPS INCLUDED

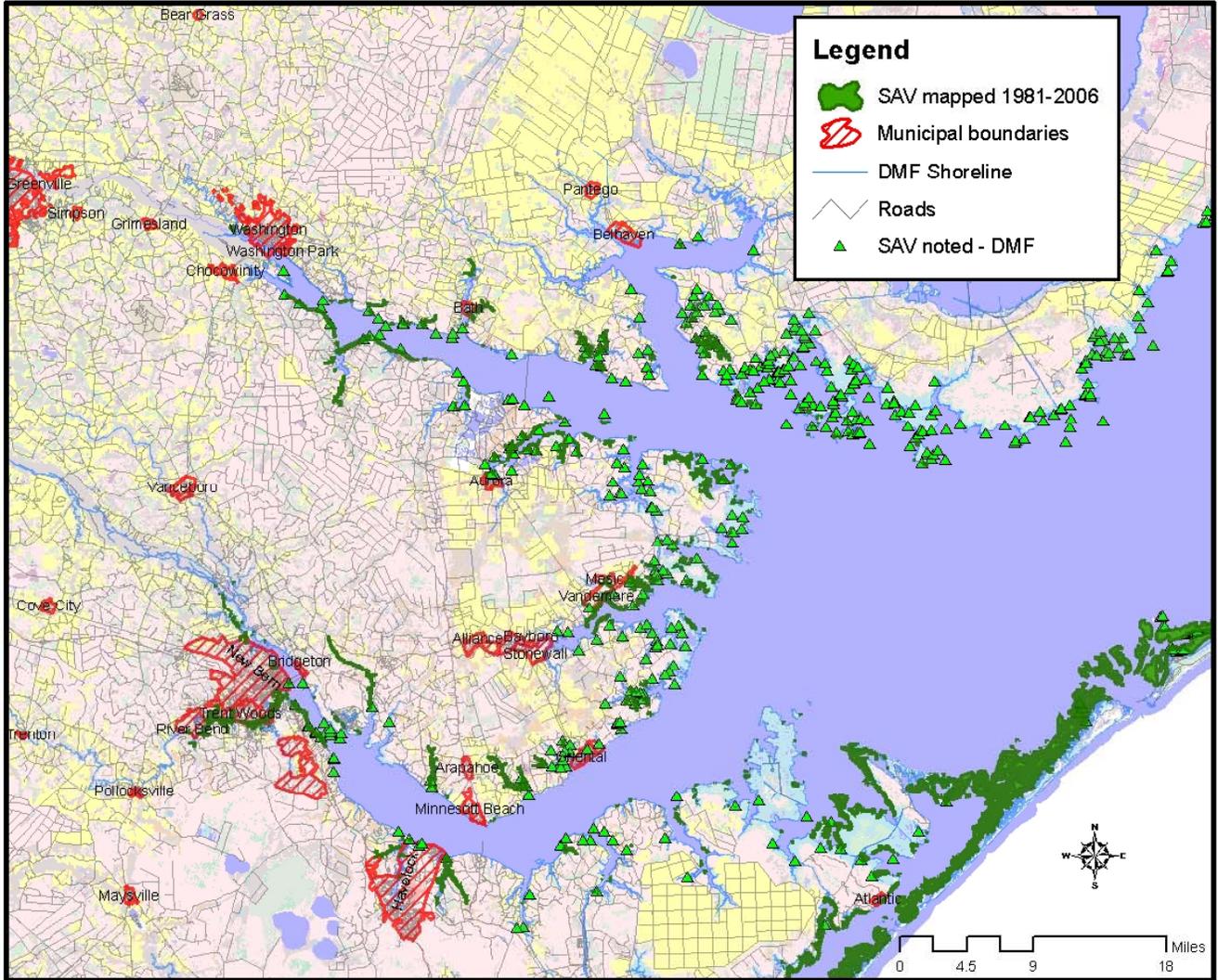
- Carroway and Priddy 1983 = Carroway, R.J., and L.J. Priddy. 1983. Mapping of submerged grass beds in Core and Bogue Sounds, Cartaret County, North Carolina, by conventional aerial photography. CEIP Report No. 20, 88p. **Maps based on aerial photography taken in 1981.*
- Ferguson and Wood 1994 = Ferguson, R. L. and L.L. Wood. 1994. Rooted vascular aquatic beds in the Albemarle-Pamlico estuarine system. NMFS, NOAA, Beaufort, NC, Project No. 94-02, 103 p. **Maps based on aerial photography taken from 1983-1992.*
- DWQ 1998 = DWQ (North Carolina Division of Water Quality). 1998. Neuse River estuary SAV ground-truthing study. DWQ, Unpub. Rep. 11p. **Maps based on aerial photography taken in 1998.*
- DMF (North Carolina Division of Marine Fisheries) Bottom Mapping Program - <http://www.ncdmf.net/habitat/shellmap.htm> **Maps based on interpolated transect data collected from 1989-2006.*
- ECSU (Elizabeth City State University) Mapping Program - <http://www.ecsu.edu/ECSU/AcadDept/Geology/GEMSNewHomePageS05/index.htm> **Maps based on aerial photography taken in 2002, 2003, and 2006.*
- NCSU (North Carolina State University) – D. Eggleston (<http://www4.ncsu.edu/~dbeggles/>) **Maps based on aerial photography taken in 2004.*
- DWQ Rapid Response Teams - <http://www.esb.enr.state.nc.us/prrt.html> **Maps based on interpolated transect data collected in 2005 and 2006 in the Neuse and Pamlico rivers.*



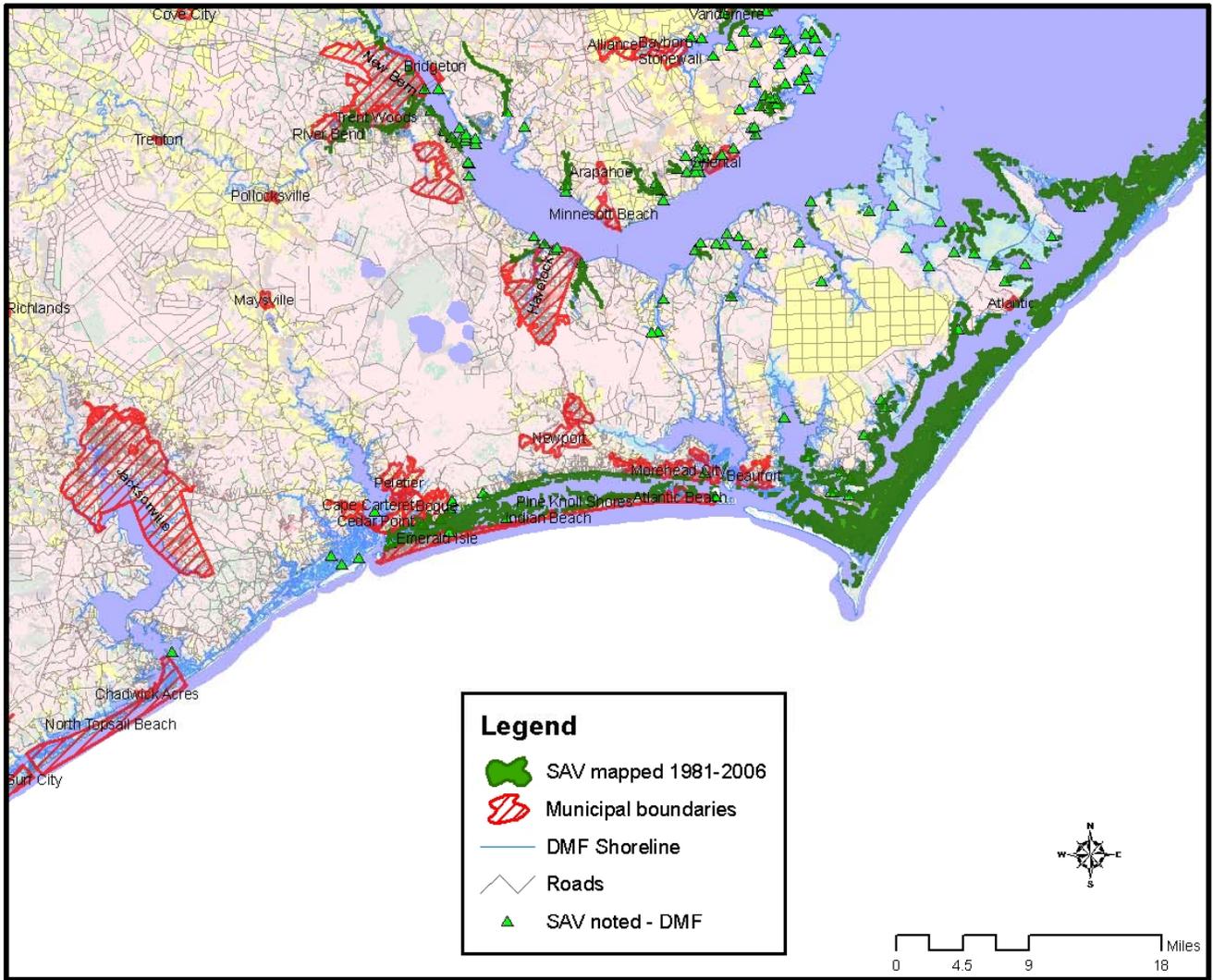
Northern Region



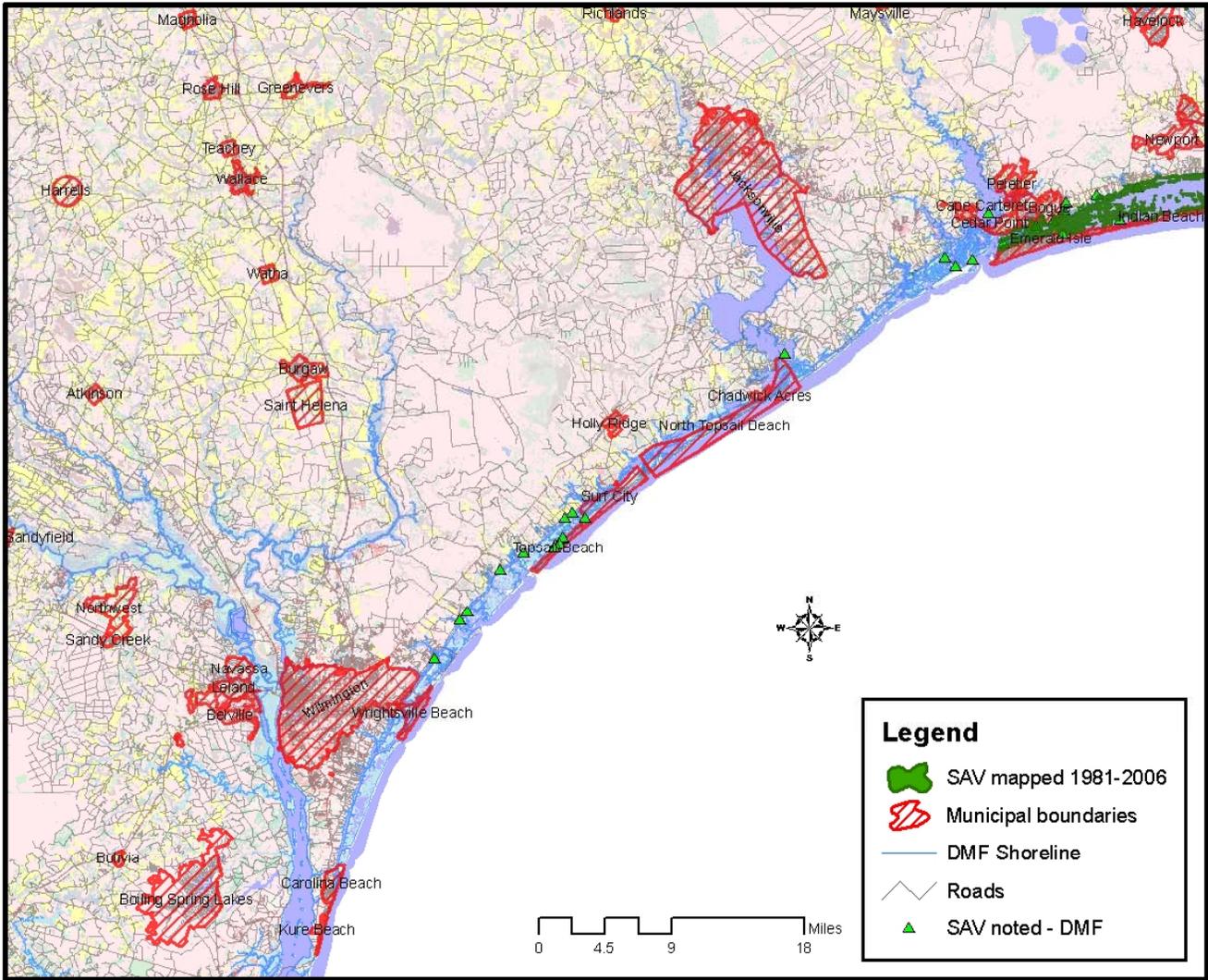
Pamlico Sound region



Central western region



Central eastern coast



Southern coast

1 15A NCAC 03I .0101 is proposed for amendment as follows:
2

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

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

5 (b) The following additional terms are hereby defined:
6

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

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

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

28 (ii) have been vegetated by one or more of the species identified in Subparagraph (i)
29 within the past 10 annual growing seasons and that meet the average physical
30 requirements of water depth (six feet or less), sediment type (unconsolidated
31 sandy sediment with silt-clay content not to exceed 35 percent), average light
32 availability (secchi depth of one foot or more), and limited wave exposure that
33 characterize the environment suitable for growth of SAV. The past presence of
34 SAV may be demonstrated by aerial photography, SAV survey, map, or other
35 documentation. An extension of the past 10 annual growing seasons criteria
36 may be considered when average environmental conditions are altered by
37 drought, rainfall, or storm force winds.

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

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

CHPP Steering Committee Meeting

April 11, 2008

Washington, NC

Meeting Attendees: BJ Copeland (MFC), Jess Hawkins (MFC), Pete Peterson (EMC), Chuck Bissett (CRC), Bob Emory (CRC), Steve Wall (DENR), Louis Daniel (DMF), Jeanne Hardy (DMF), Scott Chappell (DMF), Anne Deaton (DMF), Michelle Duval (MFC), Trish Murphey (DMF), Patti Fowler (Shellfish Sanitation), Jim Gregson (DCM), Ted Tyndall (DCM), Bonnie Bendell (DCM), Steve Underwood (DCM), Mike Lopazanski (DCM), Rebecca Ellin (DCM-NERR), Coleen Sullins (DWQ), Bill Diuguid (DWQ), Al Hodge (DWQ), Melvin Shepard (CRC), Wayland Sermons (CRC), Jimmy Johnson (DENR), Bill Swartley (DFR), Maria Dunn (WRC), Tracy Skrabal (NCCF), Carolyn Currin (NOAA), Katherine McGlade (Duke University), Rep. Alice Underhill (NC House of Representatives)

Call to Order and Introductions:

Pete Peterson called the meeting to order at 10:05am. Introductions of all attendees took place. Chuck Bissett was named by Bob Emory as the second CRC voting member at this meeting. A permanent replacement to fill Courtney Hackney's seat on the Steering Committee has yet to be named. Some minor adjustments were made to the afternoon portion of the meeting agenda.

CHPP Update

Jimmy Johnson gave a quick report on the status of the CHPP Implementation Plan publication. The MFC approved spending \$10,000 from the Commission's Conservation Fund to help get the report printed and distributed. Work on the publication is underway with help from several agencies and the NC Coastal Federation. Delivery of 100,000 copies should occur sometime around May 15th. Jimmy mentioned that he has given, or will be giving several CHPP presentations. Recently he spoke to the NCBIWA in Pine Knoll Shores. On April 16th, he will speak to Soil and Water district representatives from the 20 coastal counties at Hammocks Beach State Park.

Implementation Updates:

CRC – Steve Underwood

- A comprehensive digital shoreline mapping process is in its initial stages. Currently a 'white paper' is being reviewed in house regarding the methodology to be used in the mapping process. DCM is working closely with several of ECU's geological survey personnel to determine erosion rates along the estuarine shoreline. In June, a small working group will be convened to finalize the methodology. The idea at this point is to delineate the shoreline, across the entire estuarine system, on a county by county basis.

Pete asked if some state hasn't already mapped their shoreline and why we didn't utilize what they had learned. Steve's response was that the uniqueness of NC's coastline and the lack of money caused DCM to initiate a new methodology. ECU was asked to participate in order to try and utilize anything done before by others that might be appropriate for NC. DCM is trying to use whatever is available wherever possible and practical. DCM is looking at an overall timeframe of 5 years for this project.

- Steve provided a handout of the Beach and Inlet Management Plan timeline. DCM is currently putting together a needs assessment utilizing input from local governments and a Coastal Services Center Fellow.

- Rebecca Ellin reported that the NERR had been awarded a CICEET Grant to study the effects of different shoreline stabilization methods and the effects those methods have on different CHPP habitats. They will have a couple of demonstration projects at one or two of the reserves.

DWQ – Coleen Sullins/Bill Diuguid

- Coleen reported that Tom Reeder has accepted the position as Deputy Director of the Division of Water Resources. Tom will begin his new duties around the first of May. However, Tom will continue to work with the coastal stormwater rules through the upcoming legislative session. Several committee members again acknowledged the tremendous job Tom has done in getting the stormwater rules to this point and it was noted by all, that he will be missed as a member of the CHPP Team.
- Bill Diuguid reported on the status of the coastal stormwater rules. They have been before the Rules Review Commission on two separate occasions and have been agreed to by the RRC. The rules now will be before the General Assembly in the upcoming short session as more than ten letters in opposition to the rules have been received. Bill described four scenarios:
 1. The rules can be left just as they are now proposed
 2. They can be sent back to DWQ for further financial analysis
 3. It may be proposed that the coastal stormwater rules “back off” to the Phase II level and exclude the wetlands portion of the proposed rules
 4. Completely rewrite the rules in a holistic manner statewide

There was a lot of discussion regarding the proposed coastal stormwater rules. Pete noted that the financial benefits of the rules have been ignored in all of the economic analysis. To date, only the costs of the rules have been reported, without any of the benefits. He wants to be sure that DENR emphasizes the fairness of the rules and the economic benefits of clean water. Pete also noted that many of the objections were based on a misrepresentation of the proposed rules and he questioned whether this was out of misunderstanding or if it was intentional. Pete reminded all present that stormwater rules were a top priority of the CHPP.

Jess Hawkins asked if there was a DENR/DWQ strategy in place to help educate the legislature and the public regarding the coastal stormwater rules. Coleen responded that the DWQ staff has met with Dare County mayors and numerous other local government representatives and remained available to meet with any interested group. She also noted that a brochure was done specifically to address the stormwater issue and it was available to help educate the general public. Coleen acknowledged that there appeared to be a “huge misinformation campaign” regarding the rules and asked for the help of those present to do all they can do to help set the record straight. There was discussion regarding the need for another handout correcting false misinformation and addressing frequently asked questions. DWQ agreed to work on this, and those present offered to help distribute once available.

Tracy Skrabal announced that there was to be a rally in Raleigh on June 4th regarding the coastal stormwater rules. The NCCF has chartered three buses and wanted to get at least 150 people to Raleigh that day to help lobby for the rules. Melvin Shepard reminded

everyone of the continuing closures of shellfish waters and he emphasized the failure of the current rules to protect the waters of the state. Melvin noted that section 143 of the stormwater legislation recognizes that shellfish waters are of primary importance. Patti Fowler noted that even the figures provided by DEH/Shellfish Sanitation were being misrepresented by those in opposition to the rules. Steve Wall noted that DENR was working with legislators every day to help clarify the rules and what is true and what is not true.

Melvin reminded the attendees that citizen contact was more influential than anything the agencies could accomplish with the General Assembly. BJ Copeland urged those in attendance to utilize local civic clubs as a means to help get the word out. All that needs to be done is to simply explain to them what the problem is and why it needs to be fixed. BJ also noted that the MFC's Habitat and Water Quality Committee was recommending to the MFC to send a letter to Senator Basnight and Representative Hackney in support of the rules. The committee decided, by consensus, to reconstruct the letter of support it sent to the EMC during the public hearing phase of the rules process and send it to Sen. Basnight and Rep. Hackney as quickly as possible.

DMF – Anne Deaton

- The Strategic Habitat Area work continues in the Albemarle region. The SHA Region 1 Group has met several times and is about ready to make recommendations identifying areas as Strategic Habitat Areas. The workgroup continues to look at major alteration factors and they are making final modifications to the maps and its inputs. Anne noted that it is time to form a “management workgroup”. She suggested using the CHPP Team with a few additional people who are most familiar with the area. This group needs to look at the regulatory needs as well as the financial needs of acquisition and restoration.
- APNEP and DMF are currently waiting for the photographs from the SAV mapping project. DMF has a technician ready to begin delineating the photographs. APNEP may be able to provide some additional funds for more help in this phase of the work. It is anticipated that this will take about 12-18 months for completion.
- The mapping of the estuarine shell bottom continues. DMF estimates it will take another 3 or more years to complete this work.
- Anne noted that the WRC approved the Anadromous Fish Spawning Area rules at its last meeting. An interagency workgroup should be formed to discuss what additional protection is needed in these newly designated areas.
- Louis Daniel reported that the MFC and WRC had agreed that the Coastal Recreational Fishing License Fund would provide funds for a new 30 acre oyster sanctuary in Pamlico Sound. They also had agreed to buy a shallow draft barge primarily so that shell could be placed in the shallow shoreline waters along the western side of the Pamlico Sound.
- The oyster hatchery concept has evolved again and will be an item discussed by the legislature this summer. Currently it is being proposed that instead of three hatcheries there will now be one centrally located facility. The operation of the hatchery will be the responsibility of the DMF instead of the aquariums under the anticipated new proposal. (?? I know this is true but didn't recall him saying it at this meeting)

DENR – Steve Wall

- The General Assembly will return to Raleigh for its short session in mid May. They hope to adjourn by the end of July. The major DENR initiatives for this short session are: the coastal stormwater rules, a drought package and the Figure 8 terminal groin issue. The Governor's budget will probably be released just prior to the legislature convening. CHPP items in the DENR budget request to the Governor include: a BIMP Coordinator (DCM), a Wetlands Specialist (DCM) and 3 Permit Reviewers (DMF).
- Steve noted that the EMC has formed a Renewable Energy Committee. The first issue they will begin to look into is wind energy. The first meeting of the committee will be on May 7th. Both Tom Ellis and Pete Peterson are on this committee.

DEH/Shellfish Sanitation – Patti Fowler

- Shellfish Sanitation is beginning to expand its shoreline survey work. They have completed their surveys of the shellfish areas and now will begin detailed surveys of shorelines not associated with shellfish areas. They plan to start a workgroup to discuss how to design additional shoreline surveys to enhance compliance with existing rules, per the CHPP recommendation.

Estuarine Shoreline Stabilization:

Bonnie Bendell, from DCM, and Carolyn Currin, from NOAA, gave power point presentations regarding the estuarine shoreline issue. Bonnie's presentation summarized the recommendations found in DCM's Shoreline Stabilization Work Group Report. She looked at the suitability of different types of stabilization methods on specific shoreline types. Bonnie also noted that DCM held Marine Contractor workshops. Comments from contractors included 1) they would much prefer to avoid the major permit process if possible; 2) sills were good but not a guarantee that they will work; 3) homeowners were scared of hazards associated with riprap; 4) modifications to bulkhead rules such as moving back doesn't impact their business, but removing the option completely does. Carolyn's presentation was on specific projects she was working on, regarding the effects on estuarine habitat by different types of stabilization methods. She looked at sediment accretion and stem density behind sills vs. in natural marsh, and compared the edge vs. interior of marsh vegetation. Negative aspects of sills are that they appear to have higher accretion rates and take up a greater footprint of shallow soft bottom. However, they can provide more protection for wetland habitat in the long run than bulkheads and have less erosion impacts to adjacent property than bulkheads.

Bulkhead/Buffer Rule:

After lunch, Pete opened a discussion regarding the proposed bulkhead rules by DCM and the compromise between DCM and DWQ regarding those rules. Jim Gregson related to the committee the outcome of the joint meeting between the staffs of DCM and DWQ. It was decided that DCM and the CRC would move forward with the General Permit for stabilization method other than vertical structures. Jim will send a policy memo to his field staff regarding the General Permits and how they are to be approached with regards to placement and mean high water. Only projects under the major permit with specific justification as to why may be placed waterward of MHW. The justification must demonstrate a significant need such as a high erosion rate.

Al Hodge noted that many residents were currently getting permits for bulkheads for the primary purpose of decimating the buffer. Al also noted the difficulties in dealing with the inconsistencies between DCM's rules and the rules of DWQ. Everyone agreed that DWQ needed to address how to determine if an erosion problem exists and how severe. Bob Emory informed the committee

that the more desirable stabilization methods are oftentimes harder to get permitted through DCM than bulkheads. The CRC is working to remove those disincentives. Tracy Skrabal stated that the CRC must look at rule changes in order to get vertical structures out of the general permit category. Carolyn Currin suggested putting the bulkhead rules on the table and start the process of getting them out of the general permits. Bonnie Bendell stated that there was current proposed legislation in Maryland that would require homeowners to utilize living shoreline stabilization options if possible before they could use other hardened structures.

It was agreed upon that Pete would form a subgroup of the committee to address these issues and bring to the CHPP Steering Committee a list of available options. Included in their report will be whether or not it requires a change in policy or a change in rule. The members of the subgroup will be: Bob Emory (chair), Pete Peterson, Jess Hawkins, Ted Tyndall, Al Hodge, Bonnie Bendell, and Chuck Bissett. Bob will also call on any others that the group feels need to be a part of the discussion. Others mentioned were: Tracey Skrabal, Carolyn Currin and Spencer Rogers. Coleen mentioned that the divisions need to sit down together and determine how to make these things happen. It was also noted that this could be used to inform and educate the public with regards to better alternatives to hardened structures. Anne reminded the group that Carolyn's and Rebecca's CICEET grant has a large public outreach component to it and that should be utilized within this effort as well.

DCM and DWQ have an agreement on how to issue bulkheads when in a Neuse or Tar-Pamlico river basin where buffer rules apply. DCM will give a BMP sheet to the applicant that explains what they can do in the buffer to install a bulkhead and what BMPs they can select. If they sign it, it will be attached to the GP and DCM will send copy to DWQ. However, they can not force an applicant to sign it. Ted Tyndall and Al Hodge will be working on this.

Minutes

Jess Hawkins made a motion that the minutes from the January meeting be approved as written. The motion was seconded by BJ Copeland and passed without corrections or dissent.

Endocrine Disruptors

A committee to look at endocrine disruptors has been formed since the last CHPP Steering Committee meeting. The members of the Emerging Contaminants Workgroup are: BJ Copeland (NC Marine Fisheries Commission - Chair), Mary Giorgino and Jerad Bales (USGS), Sara Mirabilio (Sea Grant), Connie Brower (DWQ), Barbara Grimes (DEH), Bob Roer (UNC-W), Larry Gabriel (Dept. of Ag), Damian Shea (NCSU), Pat McClellan-Green (NCSU), Lynn Henry (DMF), Katy West and Anne Deaton (DMF staff support).

The first meeting of the workgroup was held on March 10th. The initial action will be to develop a working white paper. The group heard a report from the USGS regarding their sampling protocol for contaminants in all 50 states. They have 3 sampling sites in NC. They reported that 47% of all sites sampled had elevated levels of pharmaceuticals. There is currently a graduate student at UNC-CH who is working on how to remove pharmaceuticals from the water. The student has two methods already approved. Duke University and NCSU have been working on the effects of pharmaceuticals on specific fisheries, most notably the blue crab. Their next meeting will be on May 7th in Washington.

Responsibilities of CHPP Steering Committee Members

Pete concluded the meeting by leading a discussion regarding the role and responsibilities of the members of the CSC. He noted that the purpose of the CSC is to discuss issues we can move forward with that will facilitate ecosystem protection and enhancement. CSC members, being more informed on these issues, need to clarify and support CHPP initiatives to their fellow commission members. It was asked that there be a specific time set aside at each CSC meeting to discuss any concerns, disagreements and alerts among the membership. It was noted with regard to the SAV issue that Robin Smith has been asked to attend the next CRC meeting and lead discussion regarding the need for interagency cooperation and the roles of each agency specified in the CAMA legislation.

The next meeting will be held on August 4th, unless an urgent need to meet arises.

The meeting adjourned at 2:45pm.



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

CRC-08-20

May 12, 2008

MEMORANDUM

TO: CRC & CRAC

FROM: Mike Lopazanski

SUBJECT: CRC Comprehensive Beach Management Subcommittee Report

Committee members present:

Bob Emory (CRC, Subcommittee Chair)	Spencer Rogers (CRAC)
Jim Leutze (CRC)	Wayland Sermons (CRC)
Renee Cahoon (CRC, by phone)	Bill Morrison (CRAC)
Harry Simmons (CRAC)	Joan Weld (CRC)
Phil Harris (for Deborah Anderson CRAC, by phone)	

Meeting Context

The CRC Comprehensive Beach Management Subcommittee met May 9, 2008 to discuss several of the Commission's policies regarding the management of oceanfront development. The subcommittee reviewed the current status of several issues; including the difficulty communities have in raising local funds to support beach nourishment projects, and the recent experience with the sandbag removal deadline. The Subcommittee also discussed the Commission's current authorities and that the current "erosion response policy" is centered on the hardened structures ban with retreat, relocation and beach nourishment being the preferred options. It was decided that the discussion should remain within this context and the any recommendations would be directed toward a coast-wide policy rather than any individual project.

Beach and Inlet Management Plan

The Subcommittee was briefed on progress of the Beach and Inlet Management Plan (BIMP) being developed by DCM, DWR and USACE. As the primary focus of the BIMP is on data collection that will provide the information needed for beach nourishment and inlet relocation project permits, there was discussion of "post-BIMP" needs. There was general discussion of how the initial BIMP product was not going to provide statewide coordination and larger regional

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sediment management guidance unless the General Assembly also funds the utilization of BIMP data. Since the BIMP is a long-term process, there is a critical need for an investment in additional resources to use the tools being developed. The Subcommittee was advised that the Department has requested a new position associated with the BIMP to act as a liaison with local governments and serve on Project Delivery Team.

Commissioner Leutze informed the Subcommittee that a letter confirming North Carolina's participation in the South Atlantic Coastal Alliance was to be presented to Governor Easley on May 9th for his signature. Commissioner Leutze will verify whether the letter was signed and recommended that the Commission consider action in support of the state's participation.

Sandbags

The current policies regarding the use of sandbags for temporary erosion control was discussed in some detail including the history of use, structure specifications, the numerous extensions as well as examples of where structures have been relocated in keeping with the Commission's management strategy. The subcommittee also discussed the CRC Science Panel's recommendation to limit structure size, and heard of an alternative design involving a single tube that would only use 30-40% of the fabric of standard sandbags. However, there was concern expressed as that there was not much information regarding their performance on steep slopes. There was mention of a Petition for Rulemaking that will be considered at the upcoming CRC meeting as well as some amendments to the sandbag rule being proposed by DCM staff. In light of the pending meeting, no recommendations were made to alter the Commission's policies regarding temporary erosion control structures.

Coastal Hazards

The Subcommittee discussed how to increase the level of coastal hazards awareness in current and prospective oceanfront property owners. Past efforts such as the Coastal Hazards Disclosure Bill were discussed as well as possible rulemaking that would limit the ability of property owners utilizing the single-family exception to get a sandbag permit.

Following the discussions, a list of recommendations was developed for discussion at the upcoming CRC meeting in Washington.

Recommendations

1. Resolution to the General Assembly supporting additional funding to accelerate development of the BIMP. Request additional resources and personnel act as a liaison with local governments and to serve on the Project Delivery Team.

2. Statement or letter to General Assembly supporting a stable and dedicated source of funding for beach nourishment to include:
 - Beaches as critical infrastructure
 - Maintenance of federal participation
 - Support for current federal funding formula
 - Use of BIMP data in justification
3. Creation of a committee to develop a beach education plan
 - Target coastal and inland communities
 - Include the protective value to non-project areas
 - Committee to also include non-CRC/CRAC members
4. Coastal Hazards Disclosure Efforts
 - Creative initiatives such as utilizing DCM Beach Access signs
 - Additional data on DCM website (sandbag locations)
 - Utilize Coastal Reserve Realtor workshops
 - Update Sea Grant publication *Answers on Purchasing Coastal Real Estate in NC*
 - Engage coastal realtors
5. Condition certain CAMA permits to preclude the use of sandbags (single family exception)
6. Consideration of amendments to sandbag rule
7. Consideration of alternative sandbag structure design (geo-textile tube)
8. Letter to Governor endorsing NC involvement in Southeast Alliance
9. Presentation to CRC on innovative funding strategies for beach nourishment projects
10. Consideration of beach management and oceanfront development strategies consistent with the CRC's current authority.

North Carolina Coastal Resources Commission

April 1, 2008



The Honorable Elizabeth Dole
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

This letter is in support of a proposal developed in large part by East Carolina University (ECU) to assess the economic implications of climate change, sea level rise and storms for both North and South Carolina. The investigation, entitled **“Coastal Hazards in the Carolinas: Economic Implications of Climate Change, Sea-Level Rise, and Storms,”** is particularly important to the mission and goals of the North Carolina Coastal Resources Commission. Two key federal agencies, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Geological Survey (USGS), are integral to this effort, and a multi-agency, state-federal approach to understanding and planning for coastal change is consistent with the President’s Ocean Research Priorities Plan (ORPP).

Although the President has requested \$11 million in fiscal year 2009 for NOAA and the USGS to improve forecasting, planning for and responding to extreme coastal events, initial activities are anticipated to focus only on the northern Gulf of Mexico and Great Lakes regions. Therefore, additional funds are needed for the ORPP to provide reliable geologic, biologic, economic and socioeconomic data upon which to base informed coastal hazards management decisions for North Carolina.

Large portions of North Carolina’s oceanfront counties, several of which have experienced population increases from 75 to 150 percent between 1980 and 2003, are less than 18 inches above sea level. Furthermore, NOAA reports that North Carolina is second only to Florida in the number of “billion dollar climate and weather disasters” that occurred between 1980 and 2007. Unfortunately, sea level is rising at about 20 inches/century, and North Carolina’s coastal communities are increasingly vulnerable to hurricanes and more than 120 miles of shoreline are currently in need of beach nourishment.

The N.C. Coastal Resources Commission establishes policies for the N.C. Coastal Management Program and adopts implementing rules for both the N.C. Coastal Area Management Act and the N.C. Dredge and Fill Law. The commission designates areas of environmental concern, adopts rules and policies for coastal development within those areas, and certifies local land-use plans. The Commission is beginning to develop the State’s response to sea level rise and it is imperative that rules and policies are based on sound data that incorporates the regional context of coastal processes.

Division of Coastal Management
Department of Environment and Natural Resources
400 Commerce Ave., Morehead City, North Carolina 28557
Phone 252-808-2808 FAX 919-733-1495

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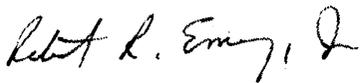
JAMES H. GREGSON
EXECUTIVE SECRETARY



Of particular interest to the Commission is the ECU/NOAA/USGS study's goal to more quantitatively define the critical geologic and oceanographic processes as well as the socio-economic consequences these processes have on North Carolina's extensive coastal resources. For example, proposed deliverables include the following: 1) identification of potential and probable location of future inlets and how they might affect critical transportation corridors, 2) trend analysis and prediction of erosion and land loss on ocean and estuarine shorelines, 3) calculation of sediment budgets for barrier islands and beaches, and 4) identification of offshore sand resources suitable for beach nourishment. The Commission and the State's coastal program have supported the seven-year effort of Phase I of the N.C. Coastal Geology Cooperative - East Carolina University (ECU), USGS, and the North Carolina Geological Survey (NCGS) project which provided critical geologic information for coastal management. Phase 2 of this project helps determine the economic effects of coastal hazards in the Carolinas and gives coastal managers and decision makers the ability to mitigate impacts.

Thank you for your continued support of critical issues affecting North Carolina's coastal resources. Please contact the **Coastal Hazards in the Carolinas** project leaders with comments or questions: Drs. Stephen Culver and Stanley Riggs (Dept. of Geological Sciences, ECU, Greenville, NC 27858, 252-328-6360) and Mr. James Simons (State Geologist, North Carolina Geological Survey, 1612 Main Service Center, Raleigh, NC 27699-1612, 919-733-3833).

Sincerely,

A handwritten signature in cursive script that reads "Robert R. Emory, Jr." followed by a small flourish.

Robert R. Emory, Jr.
Chair, N.C. Coastal Resources Commission



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

April 14, 2008

The Honorable Elizabeth Dole
United States Senate
Washington, DC 20510
Via fax: 202-224-1100

Dear Senator Dole:

This letter is in support of a proposal developed in large part by East Carolina University (ECU) to assess the economic implications of climate change, sea level rise and storms for both North and South Carolina. The investigation, entitled **“Coastal Hazards in the Carolinas: Economic Implications of Climate Change, Sea-Level Rise, and Storms”**, is particularly important to the mission and goals of the North Carolina Division of Coastal Management. Two key federal agencies, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Geological Survey (USGS), are integral to this effort, and a multi-agency, state-federal approach to understanding and planning for coastal change is consistent with the President’s Ocean Research Priorities Plan (ORPP).

Although the President has requested \$11 million in fiscal year 2009 for NOAA and the USGS to improve forecasting, planning for and responding to extreme coastal events, initial activities are anticipated to focus only on the northern Gulf of Mexico and Great Lakes regions. Therefore, additional funds are needed for the ORPP to provide reliable geologic, biologic, economic and socioeconomic data upon which to base informed coastal hazards management decisions for North Carolina.

Large portions of North Carolina’s oceanfront counties, several of which have experienced population increases from 75 to 150% between 1980 and 2003, are less than 18 inches above sea level. Furthermore, NOAA reports that North Carolina is second only to Florida in the number of “billion dollar climate and weather disasters” that occurred between 1980 and 2007. Unfortunately, sea level is rising at about 20 inches/century, and North Carolina’s coastal communities are increasingly vulnerable to hurricanes and more than 120 miles of shoreline are currently in need of beach nourishment.

In the face of these challenges, the ECU-led project dovetails well with the development of North Carolina’s first comprehensive beach and inlet management plan. In collaboration with the N.C. Division of Water Resources, our agency is managing this \$1 million-plus project that, like the ECU-led team, is reliant on multi-agency, state-federal participation. A critical piece of

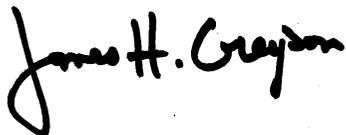
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additional funding for this project was the result of North Carolina's congressional delegation supporting a \$590,000 earmark to the U.S. Army Corps of Engineers -Wilmington District. Together, we are developing a systems-wide approach incorporating the regional context of coastal processes (as opposed to taking a beach-by-beach or inlet-by-inlet approach). A direct result of this approach should be more cost-effective management of North Carolina's oceanfront beaches and inlets, a reduction in life cycle costs and environmental impacts, and a prioritization of these projects based on risk and vulnerability.

Of particular interest to our agency is the ECU/NOAA/USGS study's goal to more quantitatively define the critical geologic and oceanographic processes as well as the socio-economic consequences these processes have on North Carolina's extensive coastal resources. For example, proposed deliverables include the following: 1) identification of potential and probable location of future inlets and how they might affect critical transportation corridors, 2) trend analysis and prediction of erosion and land loss on ocean and estuarine shorelines, 3) calculation of sediment budgets for barrier islands and beaches, and 4) identification of offshore sand resources suitable for beach nourishment.

Thank you for your continued support of critical issues affecting North Carolina's coastal resources. Please contact the **Coastal Hazards in the Carolinas** project leaders with comments or questions: Drs. Stephen Culver and Stanley Riggs (Dept. of Geological Sciences, ECU, Greenville, NC 27858, 252-328-6360) and Mr. James Simons (State Geologist, North Carolina Geological Survey, 1612 Main Service Center, Raleigh, NC 27699-1612, 919-733-3833).

Sincerely,

A handwritten signature in black ink that reads "James H. Gregson". The signature is written in a cursive, slightly slanted style.

James H. Gregson

COASTAL RESOURCES COMMISSION RULEMAKING STATUS - MAY 2008

Item #	Rule Citation	Rule Title	May '08 Status	CRC Action 1/1/2008	CRC Action 3/1/2008	CRC Action 5/1/2008	CRC Action 7/1/2008	CRC Action 9/1/2008	CRC Action 11/1/2008
1	15A NCAC 7B.0802	Presentation of CAMA Land Use Plans for Certification	Approved by RRC, Effective 4/1/08	Adopted		No further action necessary			
2	15A NCAC 7H.0205	Coastal Wetlands	Going to Public Hearing		Approved for Hearing		Public Hearing		
3	15A NCAC 7H.0208	Estuarine System Use Standards	On hold for SAV Definition			Discussion of SAV Definition			
4	15A NCAC 7H.0209	Estuarine Shorelines	Approved by RRC, Effective 4/1/08	Adopted		No further action necessary			
5	15A NCAC 7H.0305	General Identification and Description of Landforms	Approved by RRC, Effective 4/1/08	Adopted		No further action necessary			
6	15A NCAC 7H.0306	General Use Standards for Ocean Hazard Areas	Going to Public Hearings		Approved for Hearing		Public Hearings		
7	15A NCAC 7H.0308	Specific Use Standards for Ocean Hazard Areas	Approved by RRC, Effective 4/1/08	Adopted		No further action necessary			
8	15A NCAC 7H.0309	Use Standards for Ocean Hazard Areas: Exceptions	Scheduled for discussion		Discussed changes	Can approve for Hearing			
9	15A NCAC 7H.0310	Use Standards for Inlet Hazard Areas	Scheduled for discussion			Scheduled for Discussion			
10	15A NCAC 7H.0312	Technical Standards for Beach Fill Projects	Pending RRC	Adopted		No further action necessary			
11	15A NCAC 7H.1100	GP, Constr. of Bulkheads & Placement of Riprap	Scheduled for discussion			Scheduled for Discussion			
12	15A NCAC 7H.1200	GP for Construction of Piers, Docks & Boat Houses	On hold for SAV Definition			Discussion of SAV Definition			
13	15A NCAC 7H.1400	GP for Construction of Groins in Estuarine & PT Waters	Going to Public Hearing		Approved for Hearing		Public Hearing		
14	15A NCAC 7H.2100	GP for Marsh Enhancement Breakwaters	Going to Public Hearing		Approved for Hearing		Public Hearing		
15	15A NCAC 7H.2400	GP for Placement of Riprap for Wetland Protection	Going to Public Hearing		Approved for Hearing		Public Hearing		
16	15A NCAC 7J.0701	Variance Petitions	Going to Public Hearing		Approved for Hearing		Public Hearing		
17	15A NCAC 7J.0702	Staff Review of Variance Petitions	Pending at Legislature						
18	15A NCAC 7J.0703	Procedures for Deciding Variance Petitions	Going to Public Hearing		Approved for Hearing		Public Hearing		
19	15A NCAC 7J.1200	Static Line Exception Procedures	Going to Public Hearings		Approved for Hearings		Public Hearings		
20	15A NCAC 7M.0300	Shorefront Access Policies	Approved for Hearing				Public Hearing		



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

Michael F. Easley, Governor

James H. Gregson, Director

William G. Ross Jr., Secretary

May 7, 2008

MEMORANDUM

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

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

RULE DESCRIPTIONS

1. 15A NCAC 7B.0802 Presentation of CAMA Land Use Plans for Certification
Status: Approved by the Rules Review Commission for 4/01/08 effective date. Purposes for this rule change are 1) to establish that the summary reports that DCM submits to the CRC's designated committee shall be in writing, 2) to clarify that local governments need simply to submit their draft land use plans to the CRC's designated committee, and to relieve local government representatives of the burden of appearing in person before the committee and the CRC if they choose not to, and 3) to clarify that public comments to the CRC's designated committee shall be made in writing.
2. 15A NCAC 7H.0205 Coastal Wetlands (Marsh Alteration)
Status: CRC approved draft rule language in March for July public hearing. The purpose of the proposed amendments to this rule is to begin regulating certain types of marsh alteration, primarily mowing and burning. The CRC has received two Attorney General Opinions asserting the Commission's authority to regulate marsh alteration as development. Staff does not feel that alteration is a ubiquitous problem, and has scientific evidence that most mowing and burning seen in NC is not detrimental to the marsh.
3. 15A NCAC 7H.0208 Estuarine System Use Standards (Docks & Piers)
Status: Conditionally approved for public hearing. Review of the Marine Fisheries Commission's proposed definition of SAV habitat scheduled for the CRC's May meeting. The CRC approved this rule for public hearing in July 2007, conditional on review and approval of the MFC's new definition of SAV habitat and satisfactory permitting coordination with DCM. Staff will report at this meeting on the new SAV habitat definition and on the interagency coordination agreement that has been developed.

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4. 15A NCAC 7H.0209 Estuarine Shorelines (Urban Waterfronts)
Status: Approved by the Rules Review Commission for 4/01/08 effective date.
The amendments clarify the description of urban waterfront areas by adding a central business or similar zoning classification requirement to be consistent with the existing industrial zoned area requirement, and make it clear that existing structures over public trust waters may be replaced once vertical expansion is limited to one additional story. The amendments limit non-water dependent uses to restaurants and retail services.
5. 15A NCAC 7H.0305 General Identification and Description of Landforms (Static Line)
Status: Approved by the Rules Review Commission for 4/01/08 effective date.
The primary changes are to the descriptions of the vegetation line, the static vegetation line, the alternate vegetation line, and the definition of a large-scale beach fill project. The rule also creates a new methodology for establishing static vegetation lines for the towns of Oak Island and Ocean Isle Beach.
6. 15A NCAC 7H.0306 General Use Standards for Ocean Hazard Areas (Setbacks)
Status: CRC approved draft rule language in March for a series of July public hearings. CRC sent this rule through public comment in November 2007, and due to the volume and nature of comments submitted the Commission opted to amend the rule and send it out for another round of public hearing. The amendments to 7H.0306 tie beachfront building setbacks to the size of the structure, not the use. The revisions include graduated setback factors for buildings greater than 5,000 square feet, and do not allow for cantilevering oceanward of the setback line. For a description of changes since the November hearing see Jeff Warren's March 2008 memo, CRC-08-06.
7. 15A NCAC 7H.0308 Specific Use Standards for Ocean Hazard Areas
Status: Approved by the Rules Review Commission for 4/01/08 effective date.
The purpose of this action was to add language to 07H.0308(a)(1), which codifies the Commission's authority to renew permits for erosion control structures issued pursuant to a variance granted by the Commission prior to July 1, 1995. In addition, the rule was amended to reflect that the Commission may authorize the replacement of permanent erosion control structures permitted pursuant to a variance granted by the Commission prior to July 1, 1995.
8. 15A NCAC 7H.0309 Use Standards for Ocean Hazard Areas: Exceptions
Status: On CRC's May agenda for discussion of draft changes to pier house section, to allow construction and expansion of pier houses oceanward of the setback. CRC approved draft changes in March to make the development limitations in this rule conform with pending changes to 7H.0306. Proposed conforming changes base setbacks on size instead of use, limit structure size and footprint, and clarify that the setback shall be measured from the more landward of the static line (where one exists) or the natural vegetation line. For a full description of proposed changes see Jeff Warren's March 2008 memo, CRC-08-06.
9. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas
Status: Scheduled for discussion in May 2008.
The CRC has seen the new inlet hazard area delineations prepared by its Science Panel on Coastal Hazards. Staff will present potential use standard changes to the CRC in May 2008. Staff anticipates sending the rule changes, along with the new delineations, through a series of public hearings in the fall, for an effective date in early 2009.

10. 15A NCAC 7H.0312 Technical Standards for Beach Fill Projects
Status: Approved by the Rules Review Commission for 4/01/08 effective date.
This rule has been through public hearing and the changes were subsequently approved by the CRC. The two primary purposes for this rule change were:
 - (i) To clarify how deep below mean high water and how far offshore permittees are required to sample for the purpose of characterizing the native beach.
 - (ii) To allow for the use of alternate sampling and imaging methods of shallow-water borrow areas.

11. 15A NCAC 7H.1100 GP for Construction of Bulkheads & Placement of Riprap
Status: On hold pending discussions between CRC/DCM and EMC/DWQ.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. The Division of Water Quality has raised objections to the previously proposed draft changes to this rule. The agencies had further discussions on the rule with the CHPP Steering Committee on April 11th. Staff will present a status update to the CRC in May.

12. 15A NCAC 7H.1200 GP for Construction of Piers, Docks & Boat Houses
Status: On hold pending review of SAV habitat definition.
The CRC approved proposed amendments to 7H.1200 in July 2007, conditional on review of the Marine Fisheries Commission's new definition of SAV habitat and satisfactory coordination between DMF and DCM. DCM and DMF staff will report at this meeting on the SAV habitat definition and on the interagency coordination agreement that has been drafted.

13. 15A NCAC 7H.1400 GP for Construction of Groins in Estuarine & Public Trust Waters
Status: CRC approved draft rule language in March for July public hearing.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes include allowing materials other than wood, prescribing a maximum spacing and frequency, and clarifying how structures are measured. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.

14. 15A NCAC 7H.2100 GP for Marsh Enhancement Breakwaters
Status: CRC approved draft rule language in March for July public hearing.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes are primarily definitional and to ensure consistency with other shoreline stabilization rules. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.

15. 15A NCAC 7H.2400 GP for Placement of Riprap for Wetland Protection
Status: CRC approved draft rule language in March for July public hearing.
Proposed changes to this rule result from the CHPP recommendation that the CRC encourage alternatives to vertical stabilization structures on estuarine shorelines. Proposed changes include a definitional clarification and changes to the dimensions and geometry of structures. See Bonnie Bendell's March memo CRC-08-08 for a complete discussion of the proposed changes.

16. 15A NCAC 7J.0701 Variance Petitions

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

17. 15A NCAC 7J.0702 Staff Review of Variance Petitions

Status: Pending legislative review. CRC adopted amendments to 7J.0702 that outline procedures for staff review, including the timing and preparation of stipulated facts and staff recommendations. More than 10 individuals objected to the proposed rule after it had been approved by the RRC. Under the APA, the rule is now subject to legislative review. If approved by the Legislature, the rule will become effective in June 2008. If disapproved by the Legislature, the rule will be returned to the CRC.

18. 15A NCAC 7J.0703 Procedures for Deciding Variance Petitions

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

19. 15A NCAC 7J.1200 Static Line Exception Procedures

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

20. 15A NCAC 7M.0300 Shorefront Access Policies

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

CRC/CRAC PRIORITIES
FROM JANUARY 17-18, 2008 STRATEGIC PLANNING SESSION

Possible Focus Issues (with first round votes)

Climate change & sea level rise (15)
Public access (11)
Shoreline stabilization (9)
7B land use planning guidelines review (6)
Estuarine management (6)
Public education about CRC & DCM (5)
Energy: wind farms, offshore drilling, etc (4)
Compliance & enforcement (3)
Marsh islands (2)
Stormwater (2)
Hardened structures (1)
Partnerships with local governments (1)
CRC's education (1)
Desalinization/reverse osmosis (0)
Urban waterfronts (0)
Growth management (0)
Working waterfronts (0)

Focus Issues (with second round votes)

Shoreline stabilization (18)
Public access (13)
Climate change & sea level rise (10)
Energy production (8)
Public education about CRC & DCM (7)
7B land use planning guidelines review (5) ****mandated****
Estuarine management (4)