



August 1, 2025

Dare County Commissioners
Dare County Administration Building
954 Marshall C Collins Drive
Manteo, NC 27954
c/o dcbooc@darenc.gov

Re: Buxton Woods “Zone of Interest” Ordinance

Dear Board of Commissioners,

We write in support of retaining and enforcing the “Zone of Influence” buffer ordinance amendment adopted in 1988 to protect the Buxton Woods maritime forest. We write specifically to address misconceptions that arose during the public hearing held on May 5, 2025.

Briefly, as the largest contiguous maritime forest on the Atlantic Coast, Buxton Woods is designated as nationally significant by the Natural Heritage Program and is the crown jewel of the state’s Coastal Reserve System. It stabilizes the barrier island, protects the local community from storms and flooding, and improves water quality in the underlying aquifer. The buffer protected by the Zone of Influence both preserves portions of the maritime forest contained within its own buffers and shields the core of the forest that is contained within the SED-1 zoning district.

As explained in more detail below, the Zone of Influence ordinance was adopted by this Commission in 1988 in accordance with all applicable laws. Though more detailed indexing might be useful, any issues with indexing do not undermine the propriety of that adoption or the validity and enforceability of the ordinance. The fact that the county planning department stopped enforcing the ordinance and has allowed two developments to exceed the limits of the Zone of Influence in the 37 years since its adoption (both in the last two years) does not render the ordinance unenforceable. The state relied on Dare County’s protective zoning ordinances when it refrained from designating Buxton Woods as an Area of Environmental Concern in 1988 and so Dare County can and must retain that protective zoning now.

We therefore urge you to retain the Zone of Influence ordinance, use your current authority to provide more detailed indexing if you so choose, and engage with local residents and stakeholders to consider improvements to the ordinance that can be made if and when the General Assembly restores your downzoning authority.

1. The Zone of Influence Buffer Is Enforceable as Codified.

The Zone of Influence ordinance¹ was duly adopted on September 19, 1988, in accordance with all applicable laws. While we understand the rationale for questioning the enforceability of the ordinance offered by county attorney Bobby Outten during the May 5th hearing and by John Leidy in a memorandum dated July 20, 2025, we disagree. Those two opinions mislead by conflating the concepts of adoption and enforceability with indexing.

A. The Board of Commissioners Properly Adopted the Zone of Influence.

Dare County can enforce the Zone of Influence now without taking any further legislative action. The Zone of Influence was properly adopted in 1988, was enforceable then, and remains enforceable now. The Board of Commissioners fully complied with the statute governing ordinance adoption at the time, N.C. Gen. Stat. § 153A-45, in adopting the Zone of Influence. The Board gave the public notice of the proposed amendment and the date and time of a public hearing. It held the public hearing on September 6, 1988, during which seventeen members of the community spoke in favor of the ordinance.² Two weeks later, at the next regular meeting of the Board, a majority of the commissioners approved a motion to adopt the Zone of Influence amendment.³ In sum, the Board acted in accordance with North Carolina law and Dare County's own procedural rules.

B. Unclear Indexing Does Not Render an Ordinance Unenforceable.

There is absolutely no legal support for the idea that a poorly or even improperly indexed ordinance is not enforceable. As Mr. Leidy pointed out in his legal opinion, ordinances that are not properly *adopted* are not enforceable. *See, e.g., Keiger v. Winston-Salem Bd. of Adjustment*, 281 N.C. 715, 720 (1972). However, as explained above, the ordinance was properly adopted in

¹The ordinance, found at Chapter XV, Appendix A, Article II, Section 22-27.3, reads as follows:

ZONING AMENDMENT - BUXTON WOODS

This zoning amendment was adopted by the Dare County Board of Commissioners on September 19, 1988.

All land located between the center line of the intersection of NC 12 and Billy Mitchell Airport Road, and the center line of the intersection of NC 12 and Cape Hatteras Lighthouse Road, for a distance of ½ mile north (meg. 1988) from an SED-1 District shall be subject to the following additional requirements:

Dwelling density within the zone of influence of the SED Ordinance: No multi-family development, townhouses, or condominium project located within ½ mile of any SED-1 zoning district shall exceed a dwelling density of three single family units (whether contained under one or more roofs) per acre or usable land area. Usable land shall be that land defined as "suitable" for septic tank/nitrification field wastewater disposal by the U.S. Department of Agriculture/Soil Conservation Service Soil Survey for Dare County and the Dare County Board of Health.

Vegetation Removal: All subdivision, and all development projects within ½ mile of an SED-1 zoning district which are subject to site plan review, shall conform to the land clearing provisions of the SED Zoning District, Section 22-27.3 (e) (1) - Site Alteration.

² Dare County Board of Commissioners meeting minutes from September 6, 1988.

³ Dare County Board of Commissioners meeting minutes from September 19, 1988.

1988. The question at issue here is not whether the ordinance was properly adopted, but whether it was properly *indexed*.

Section 153A-48 of the N.C. General Statutes requires that county ordinances be recorded in an ordinance book, which “shall be indexed and shall be available for public inspection in the office of the clerk,” but it does not specifically state that an ordinance cannot be enforced if those requirements are not precisely satisfied.⁴ Moreover, the General Statutes contain no definition of “indexing” or any directions for how to do it properly. North Carolina courts have never addressed this issue, though they have ruled that minor deviations from the requirements of N.C. Gen. Stat. § 153A-48 do not make an ordinance unenforceable, so long as the spirit of the statute is satisfied. In a case involving the statute’s requirement for the ordinance book to be available in the office of the clerk, the North Carolina Court of Appeals held that as long as the ordinance book was available for public inspection, it did not matter which county office housed it.⁵ Even though the county was violating the “letter of the ordinance” the Court did “not believe that the General Assembly intended to declare ordinances that were not in strict compliance with the requirement to be void.”⁶

Here, the Board did comply with the spirit of the law. The zoning code is indexed in the ordinance book, which is publicly available. When the Board adopted the Zone of Influence ordinance in 1988, there were only two zoning districts in the county, S-1 and SED-1. The Board styled the ordinance as an amendment to the SED-1 district, since it extended some of that district’s restrictions to a surrounding buffer area, and thus it did not create a heading separate from the SED-1 section. With such a small zoning code and only two zones, it was not unreasonable to assume that prospective property owners and developers in Buxton would check both zones. Any difficulties arose only later when the county was divided into many different zoning districts, and new ordinances failed to include language referring readers back to the SED-1 to determine whether their land was in the Zone of Influence. Had the Board added such language, we would not be here now. Nevertheless, the statutes contain no substantive requirement to cross-reference the ordinance book, just as there is no law governing the level of detail the index must include. Simply because an ordinance book is not user-friendly does not mean that the ordinances within it are unenforceable.

C. The State Relied on Dare County’s Ordinances in not Designating Buxton Woods as an Area of Environmental Concern.

The state of North Carolina began the process to designate the entire Buxton Woods as an Area of Environmental Concern (“AEC”) under the Coastal Area Management Act because it recognized that Buxton Woods was unique and an invaluable part of North Carolina’s natural heritage. It is designated as a nationally significant area by the Natural Heritage Program. It was

⁴ N.C. GEN. STAT. § 153A-48 (N.C. Leg. through S.L. 2024-58).

⁵ State v. Desperadoes, Inc., 671 S.E. 2d 598 (N.C. App. 2009).

⁶ *Id.*, at *2.

then, and is still, the largest and best-preserved maritime forest in North Carolina. Much of North Carolina's ancestral maritime forest has been lost to development, making it imperative to protect what remains. Yet Buxton Woods did not become an AEC because the Dare County Commissioners wanted to retain local control over its protection. By enacting the SED-1 zoning district and the Zone of Influence overlay, the Commissioners guaranteed that they would safeguard the Woods against inappropriate development without state involvement.

The N.C. Coastal Resources Commission ("CRC") deferred to the County because it believed that the SED-1 district and the Zone of Influence overlay together provided enough protection for the forest. The Dare County Commissioners in 1988 — most notably Thomas Gray — made a promise to the CRC that Dare County would protect Buxton Woods at least as well as the state could, and that it would do so in perpetuity. CRC Commissioner Reggie Caroon noted that "the CRC may want to reconsider AEC designation if local government efforts are not enough to protect the maritime forest." (Copies of relevant pages of CRC minutes from 1987 to 1988 are enclosed.)

Time and again, the state has emphasized its reliance on Dare County adopting and enforcing local zoning protections as supporting its decision not to designate an AEC for Buxton Woods and other maritime forests. After Dare County adopted both the SEC-1 district ordinance and the Zone of Influence buffer amendment, the state issued its final report of the Maritime Forest Working Group (a excerpt of which is enclosed), which states:

The Buxton Woods AEC nomination process was an example of this alternative [of relying on a local ordinance in place of AEC designation]. After finding that the maritime forest qualified for AEC designation as a "coastal complex natural area," the CRC developed a management strategy that included land acquisition and AEC use standards. *Only after Dare County adopted a strict maritime forest protection ordinance of its own* did the CRC elect not to proceed with AEC designation.⁷

In sum, the CRC relied on the County's ordinances when it refrained from designating Buxton Woods as an AEC, and Dare County must retain that protective zoning now.

D. The Planning Department Cannot Repeal an Ordinance by Action or Inaction.

Finally, as a matter of law, neither a planning director nor planning department staff can unilaterally revoke ordinances or otherwise change zoning ordinances, either through lack of enforcement, failure to accurately reflect ordinances on zoning maps, or otherwise. Under the

⁷ N.C. Div. Coastal Mgmt., Final Report of the Maritime Forest Working Group to the N.C. Coastal Resources Commission, 19 (May 1990) (emphasis added). *See also* N.C. Div. Coastal Mgmt, Final Management Plan for the Buxton Woods Component of the North Carolina (1996).

laws in effect in 1988 and in effect now, a “Planning Director [does] not have authority to unilaterally amend the zoning map” of a county.⁸

At the May 5, 2025, meeting of this Board, it was clear that *current* planning department staff were not aware of the Zone of Influence ordinance, had not been enforcing it, and had not reflected it on *current* zoning maps. It was, however, also clear that the general public was well aware of the ordinance and supported its enforcement, based on the public comments made during the hearing. And there is evidence that the planning department staff has properly enforced the Zone of Influence in the past. We received the following in response to a public records request sent to Dare County:

- Only two permits that were issued that allowed development that violates the Zone of Influence, one from 2023, one from 2024, and none from the period 1988 to 2022;
- No zoning maps at all from the early years of the ordinance (either with or without the Zone of Influence depicted), and
- Meeting minutes showing that the planning board specifically applied the Zone of Influence in early years.

Based on the foregoing, it appears that the Dare County planning department was indeed aware of the Zone of Influence and took it into consideration for at least a few years and possibly longer—we received planning board meeting minutes for 1988 to 1992 in response to our public records request but have not yet received any for 1993 to the present. The minutes we did receive show that the planning board discussed and applied the Zone of Influence during a meeting on Nov. 14, 1988, and possibly on Feb. 10, 1992, and March 9, 1992.⁹ Moreover, the minutes for 1988 to 1992 discussed only very few developments proposed for Buxton, none of which appeared to violate the Zone of Influence (except for one, which was grandfathered in 1988).

More importantly, regardless of when the planning department ceased enforcing the Zone of Influence, the fact that the ordinance has not been enforced for several years, or perhaps even for several decades, does not change anything. Laws can only be repealed by other laws, not by failure to enforce.¹⁰ Therefore, the ordinance remains enforceable now, despite the actions or inaction of current planning department staff.

With the benefit of hindsight, it is clear that a different indexing scheme would be beneficial. But the fact that the organization of the ordinance book was less than ideal does not

⁸ *Murdock v. Chatham Cty.*, 198 N.C. App. 309, 319, 679 S.E.2d 850, 857 (2009) (applying N.C. Gen. Stat. § 153A-345(c); current applicable statutes include N.C. Gen. Stat. §§ 160D-601, 602 (governing board must hold hearing to adopt, amend, or repeal any ordinance or development regulation or zoning map)).

⁹ The minutes from these 1992 dates include discussion of whether certain proposed cluster lots in Frisco that overlap the Cape Hatteras Wellfield Area of Environmental Concern, which itself overlaps the Zone of Influence, are consistent with an unidentified ordinance that governs multifamily housing.

¹⁰ The Supreme Court held as much in *Dist. of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 113 (1953) (“[F]ailure of the executive branch to enforce a law does not result in its modification or repeal. The repeal of laws is as much a legislative function as their enactment.”)

mean that the ordinance is not enforceable. The Zone of Influence ordinance was properly adopted by the Board of Commissioners and indexed as an overlay on the SED-1 zoning district, and it remains in place as an overlay on current zoning districts. Omitting one heading does not change the legal effect of the ordinance.

2. Speakers at the May 5th Hearing Wrongly Insinuated that the Planning Department Has Frequently Allowed Development that Violates the Zone of Influence

On May 5, some speakers suggested that so many developments of more than three units per acre had been built within the Zone of Influence that there was no longer any point in enforcing it and no substantial buffer left to protect. SELC was unable to find any evidence that this was the case. We sent a public records request seeking all documentation of any permits given to allow development that would have violated the Zone of Influence ordinance. In response, Dare County produced evidence of only two approved developments in the Zone of Influence for more than three units: one for four units in 2024 and one for seven units in 2023. While it is unfortunate that the planning department staff allowed this development to occur in violation of the Zone of Influence, this is hardly the kind of large-scale development that the ordinance was intended to prevent and shows only a very recent lack of enforcement.

There is still plenty of undeveloped or partially developed land to protect. Our analysis, as depicted in the enclosed map, shows that only 15.5 percent of the land within the Zone of Influence is developed and impervious, while the remaining 84.5 percent is still largely vegetated in some way, as trees, shrubs, grasslands, wetlands, etc., and is therefore providing the kind of buffer protection for the Buxton Woods maritime forest that it was intended to provide.

Throwing out the entire Zone of Influence because of two recent minor infractions would not serve the community well, and it would not serve Buxton Woods.

3. Speakers at the May 5th Hearing Wrongly Insinuated that the Zone of Influence Limits Only Multi-Family Development.

At the hearing held on May 5, Planning Director Noah Gillam and County Attorney Bobby Outten stated that the Zone of Influence prevents only four or more units under one roof and imposes no other restrictions on other forms of development, including clusters of single homes, hotels, golf courses, hospitals, university campuses, etc.¹¹ But in reality, the Zone of Influence prohibits much more: (1) it arguably prohibits construction of more than three homes per acre regardless of whether they are under one roof, (2) it imposes limits on what land may be considered usable for development, and (3) it imposes restrictions on land clearing and vegetation removal for all categories of construction. Moreover, when the General Assembly eliminates the unpopular ban on downzoning as expected, this Board of Commissioners will be able to update the Zone of Influence to add any other restrictions on other types of developments

¹¹ Public hearing held by the Dare County commissioners on May 5, 2025, at minute 1:38:40 to 1:47:40, available at https://www.youtube.com/watch?v=5Hm_51C8IC8.

that the Board deems appropriate under current conditions to remedy the gaps identified by Mr. Gillam and Mr. Outten.

The argument regarding number of roofs is simply incorrect. The Amendment addresses the issue directly: “No multi-family development, townhouses, or condominium project ... shall exceed a dwelling density of three single family units (*whether contained under one or more roofs*) per acre or usable land area.”¹² The focus on the number of roofs seems to stem from the use of the term “multi-family.” Mr. Gillam and Mr. Outten argued that the term refers only to apartments, condos, and other developments with multiple units under one roof, perhaps because it is included in the ordinance in a list along with “townhouses” and “condominium project.” Yet the fact that the three terms are included together in a list does not mean they are synonymous; indeed, logically they must have different meanings to all be included in the list. The Dare County code does not actually define the term “multi-family,” and the ordinance clarifies that a development may be “multi-family,” no matter “whether contained under one *or more* roofs.” A reasonable reading of the Zone of Influence’s prohibition would certainly include apartments and condos, but it could also therefore include cluster housing developments that exceed three separate houses per acre.

Second, the ordinance does place restrictions on all other forms of development. It restricts what land can be considered “usable land” for any type of development and incorporates by reference U.S. Department of Agriculture and Dare County Board of Health septic limitations. And it imposes restrictions on land clearing and vegetation removal. The ordinance requires, for example, that trees only be removed for the construction of the principal structure, driveway access and parking area, and septic tank. These limits apply regardless of whether the “principal structure” is a single-family home, cluster development, condo building, gas station, restaurant, or hotel. Since the Board was concerned with the possibility of clearcutting trees when it adopted the ordinance, the vegetation removal provisions are just as important as the density restrictions and provide important protection to Buxton Woods. The Board can enforce these vegetation removal provisions now and should continue to enforce them in the future.

4. The Zone of Influence Now, More than Ever, Provides Necessary Protections for a Threatened but Valuable Maritime Forest.

The Zone of Influence was intended as a half-mile buffer around the Special Environmental District (SED-1), which was itself “established in order to protect public health and welfare, to preserve the quality of the fresh water supply aquifer which lies beneath the Buxton Woods Forest, to provide an environmentally compatible setting for low density residential housing, and to preserve the economic, aesthetic, and unique and irreplaceable natural resource assets of the land, vegetation, surface waters, and underground waters of this district.”¹³

¹² See footnote 1.

¹³ Dare County Zoning Ordinance, ch. 15 § 22-27.3(a).

Since 1988, almost 40 years have passed. During that time, there has been an explosion in development in Buxton and the Outer Banks generally. There is now very little undeveloped land on Hatteras Island. This development has inched closer and closer to the maritime forest. So far, Buxton and Dare County have been lucky that there has not been a large condo or residential development proposed in the vicinity of the forest. It may not be so lucky in the future, especially if development rules are made less stringent. As shown on the enclosed map, the land in the Zone of Influence district is still largely vegetated, but repealing or refusing to enforce the zoning restrictions will jeopardize that condition and Buxton Woods itself.

In response to a line of questioning beginning an hour and 35 minutes into the May 5th hearing, Planning Director Noah Gillam responded that removing the Zone of Influence would not jeopardize or destroy the Buxton Woods maritime forest.¹⁴ He is wrong, as evidenced by letters submitted to this board by Dr. Alan Weakley (former North Carolina Natural Heritage Program director and current UNC herbarium director) and Dr. John Taggart (former Coastal Reserve and National Estuarine Reserve Manager), both of which emphasize the importance of the Zone of Influence. For one thing, the Zone of Influence itself contains portions of the Buxton Woods maritime forest that were not acquired by the state and incorporated into the Buxton Woods Coastal Reserve and are otherwise not located within the original SED-1 district.

Moreover, the Zone of Influence buffer serves an important role in protecting the core of Buxton Woods that is located within the original SED-1 district, both as a rare ecosystem in its own right and as habitat for many species both rare and common. It was enacted to prevent harsh winds and ocean spray from infiltrating the forest and damaging the trees. It did so by keeping development small and preventing excessive vegetation removal. Clearcutting in the Zone of Influence would have accelerated the infiltration of wind and salt water into the forest. If Buxton Woods is fragmented by development, or if the buffer area is clearcut and developed, infiltration of salt water and ocean spray could kill the fragile vegetation inside and devastate the ecosystem. The Zone of Influence also protects the forest, the aquifer, and the flora and fauna that live there from severe storms, pollutant runoff, and habitat disruption from traffic, noise, and trash.

Protecting Buxton Woods with the Zone of Influence buffer is also important to the larger community for myriad reasons. Maritime forests like Buxton Woods:

... provide important habitat for wildlife; they protect and recharge the freshwater aquifer; they conserve groundwater by reducing evaporation; they utilize and recycle scarce nutrients in a relatively sterile environment; they bind soil, thereby gradually elevating the island; they provide hurricane protection; and they serve as a major stabilizing component of the overall barrier island system.¹⁵

¹⁴ Public hearing held by the Dare County commissioners on May 5, 2025, at minute 1:34:20 to 1:38:40, available at https://www.youtube.com/watch?v=5Hm_51C8IC8.

¹⁵ N.C. Div. of Coastal Management, *A Guide to Protecting Maritime Forest Through Planning and Design* 7 (1990).

It is true that the Zone of Influence does not prevent all high-density development. It currently contains no provisions that bar large hotel developments, for instance — although most of the underlying zoning districts in the area would. The Board at the time did not explain why that is. Perhaps the commissioners could not imagine large hotel developments wanting to locate in that area in 1988. Or perhaps the Board was really only concerned with one particular proposed condo development and did not consider how the ordinance would be applied in the future.

These discussions are beside the point. If the Board agrees that high density development so close to Buxton Woods is problematic, it should retain the ordinance regardless of whether it covers all high-density development. Since the state legislature decided to revoke local governments' down-zoning authority, the Board has exactly one tool to prevent any high-density development from encroaching on the forest, and it is the Zone of Influence ordinance. It does not cover everything, and when the legislature returns down-zoning authority to the Board, it can amend the ordinance to cover other types of development as needed. In the meantime, the Board should not throw away the one tool it has to limit high-density developments in the buffer area around Buxton Woods.

5. The Zone of Influence Can Now Be Re-Indexed and Mapped for Clarity.

The Board is not now faced with a binary decision. The choices are not limited to whether to repeal the ordinance or to maintain it as it is now indexed. The Board has a third viable option that will allow the county to retain the Zone of Influence while providing better notice to property owners and developers: re-indexing and mapping the amendment now.

Commissioners voiced concern at the May 5th meeting that indexing the Zone of Influence properly could constitute down-zoning, which the Board is currently without the authority to do. Mr. Leidy took a similar position in his legal opinion, wherein he argued that “adopting” the Zone of Influence at this time would constitute down-zoning. That is wrong.

In 2024, the North Carolina General Assembly enacted N.C. Gen. Stat. § 160D-601(d), which revoked local governments' authority to “down-zone” property without the consent of all property owners whose property is affected. The statute defines down-zoning as any of three potential actions: (1) “decreasing the development density of the land to be less dense than was allowed under its previous usage”; (2) “reducing the permitted uses of the land... to fewer uses than were allowed under its previous usage”; or (3) “creating any type of nonconformity on land not in a residential zoning district.”¹⁶

However, since the Zone of Influence is currently the law in Dare County, retaining it would not constitute downzoning because it would not constitute one of those three actions. The ministerial or administrative act of re-numbering or re-indexing an ordinance is not the same as adopting a new ordinance or making a substantive change while amending one.

¹⁶ N.C. Sess. L. 2024-57 (S.B. 382).

The Board does not need to repeal and re-adopt the Zone of Influence ordinance because it was already adopted in 1988. Rather, to improve notice to landowners, the Board needs only to re-index it with its own section heading and re-map it. The General Assembly's downzoning bill did not limit or change the county's authority to reorganize and re-index its own zoning code. The statutory prohibition on downzoning proscribes only actual changes in legal status of land created by a change in zoning ordinances or zoning maps. Adding a heading to make the existing zoning ordinances easier to use has no legal effect on the land and is not down-zoning.

In conclusion, at the behest of citizens of Buxton, the Dare County Commissioners adopted zoning in 1988 to protect Buxton Woods maritime forest. The County should retain, re-index if it so chooses, and enforce the Zone of Influence buffer amendment and initiate a process with the citizens of Buxton to explore how any modifications to existing zoning can both protect Buxton Woods and reflect the collective vision of the residents.

Sincerely,

Derb S. Carter, Jr.

Julie F. Youngman

Southern Environmental Law Center

Braxton Davis

Alyson Flynn

North Carolina Coastal Federation

Heather Jennette

Brian Harris

Jeff Dawson

Wendi Munden

Brett Barley

Buxton Civic Association

Enclosures

cc:

Bobby Outten, Dare County Manager and Attorney

Noah Gillam, Dare County Planning Director

Attachment 1
Buxton Woods Zone of
Influence Land Cover

Buxton Woods Zone of Influence Land Cover

Buxton Woods Zone of Influence			
Land Cover Types	Square meters	Acres	Percent
Upland Tree (Forest) Canopy	2,744,519	678	52.0%
Scrub/shrub Canopy	204,707	51	3.9%
Impervious	817,221	202	15.5%
other (incl. wetlands, grasslands, etc.)	1,511,432	373	28.6%
Total Land Area	5,277,879	1,304	100.0%



Attachment 2

CRC minutes 1987-88

MINUTES

MEETING: North Carolina Coastal Resources Commission

LOCATION: Shell Island Resort - Wrightsville Beach, NC

DATE: September 24-25, 1987

PRESENT: Commission

Daniel Besse, Chairman

Reginald Caroon	Donald Bryan
Eugene Tomlinson	Mayme Davenport
John Wood	Ron Rose
Karen Gottovi	Art Cooper
James Hamilton	Charles Wells
Ronnie Watson	Erie Haste
Thomas Gray	

Council

Phillip Leeseberg, Chairman
Webb Fuller, Vice Chairman

Robert Benton	Al Calloway
Donald Davenport	Renee Gledhill-Earley
Doug Powell	Art Watson
Dick Leach	Larry Sams
Tom Ellis	Dave Weaver
Paul Denison	Bradley Nofzinger
Charles Hedgepeth	Cecil Sewell
Barry Jenkins	Robert Trost
Wanda Bell	William Bell
Robert Paciocco	Wade Horne
Lloyd Ballance	Donna Moffitt
Grace Evans	Don Flowers
Rosetta Short	Berry Jenkins
Chuck Wakild	

Thursday, September-25, 1987

Chairman Besse called the meeting to order at 9:00 a.m. and welcomed everyone to the Wrightsville Beach.

Approval of Minutes

Don Bryan moved to approve the minutes of the July 23-24, 1987 meeting. Art Cooper seconded the motion and it carried unanimously.

Executive Secretary's Report

David Owens gave an update and status report of the Division's personnel situation. He noted that George Wood will be leaving the Division the end of September. Joe Lassiter, a new staff member, previously with the Soil and Water Division has joined our Washington office as a Field Representative.

recommended that an ad hoc committee be formed to review the bylaws and make recommended changes for the CRC's consideration. Besse commented that if anyone would be interested in serving on this committee, please inform him after this meeting.

PLANNING AND SPECIAL ISSUES COMMITTEE REPORT

Review of land use plan updates

Art Cooper reported on land use plan updates presented by John Crew on Kill Devil Hills, Sunset Beach (P&SI 269); sketch plans for the Town of Atkinson and full certification for the Town of Surf City (P&SI 268) (see attached committee report). He stated that all four of these plans were reported satisfactory by the reviewers and that they were all recommended by the committee for CRC approval. The recommendations were unanimously approved by the CRC.

Cooper noted John Crew also advised the committee that 15 preliminary plans were reviewed at a special meeting held on September 2, 1987 and each have been referred to the local governments to provide revisions. (See attached committee report).

Revised Use Standards for the Buxton Woods AEC Nomination:

P&SI 267(a)(b)(c)(d)

Cooper reported on the detailed presentation given by Rich Shaw in committee (see attached committee report) on the draft use standards for the proposed Buxton Woods AEC and the revisions to these from the input that has been provided by the special scientific advisory panel created by staff at the request of the Commission. He noted that several issues were discussed in considerable detail by the committee. Most centered on the 80,000 sq. ft. minimum lot size and the rationale supporting this. Much concern was also expressed over the drainage of the ponds and wetland swales throughout the Woods. Cooper said after considerable additional discussion it was pointed out to the committee that the Commission had already voted in July to send the proposed Buxton Woods AEC to public hearing at the December 1987 CRC meeting in Dare County therefore the committee did not need to take further action on this item at this time. After considerable discussion and consideration of a letter received from the Dare County Commissioners expressing concern, the committee discussed whether the Commission should proceed with the hearing in December. As a result, the committee approved a recommendation that the Commission send the proposed set of use standards as presented to the committee for the Buxton Woods AEC to the public hearing previously scheduled for the December 3 CRC meeting to be held in Kill Devil Hills, and that staff investigate the need to control the draining of wetlands that may be reducing the capacity of the aquifer. Eugene Tomlinson seconded the motion and it was carried unanimously.

Review of AEC nomination/APA timetables

Cooper continued his report with the review of the AEC nomination/APA timetables presented by Ralph Cantral (see attached committee report) who reviewed P&SI-270. Cooper moved to approve the committee's recommendation in P&SI-270 that the a hearing be held to amend 7H .0503(f) and (g) to remove specific time limits on adoption of rules designating nominated areas of environmental concern and the deletion of the word "scientific" in 7H .0503(f). The Commission approved the recommendation unanimously.

MINUTES

MEETING: North Carolina Coastal Resources Commission

LOCATION: The Holiday Inn, Wrightsville Beach, N. C.

DATE: March 24-25, 1988

PRESENT: Commission
Daniel Besse, Chairman

Reginald Caroon	Donald Bryan
Eugene Tomlinson	John Wood
Ronnie Rose	Karen Gottovi
Art Cooper	James Hamilton
Ronnie Watson	Charles Wells
Page Ayres	Thomas Gray
Mayme Davenport	

Council
Phillip Leeseberg, Chairman
Webb Fuller, Vice Chairman

Paul Denison	Cecil Sewell
Wanda Bell	Al Calloway
Lynn Philips	Rosetta Short
Donald Davenport	Charles Hedgepeth
Robert Paciocco	Robert Benton
Donna Moffitt	William Bell
Tom Ellis	Dick Leach
Wade Horne	Lloyd Ballance
Grace Evans	Jean Crew-Klein (for Don Flowers)

Thursday, March 24, 1988

Chairman Besse called the meeting to order at 9:00 a.m. and welcomed everyone to Wrightsville Beach.

Approval of Minutes

Page Ayres requested that the minutes reflect that he was present at that meeting. Charles Wells moved to approve the minutes of the February 4-5, 1988 meeting as corrected. Don Bryan seconded the motion and it carried unanimously.

Chairman Besse announced several changes to the meeting agenda, including a request to hear the Musselwhite matter before the Gaylord restoration appeal variance.

Executive Secretary Report

David Owens gave an update on federal legislative issues. He indicated that the Federal Emergency Management Administration (FEMA) is considering delaying the development of rules that would put the recent amendment to the 1987 Housing Act into effect. FEMA prefers to develop the rules after a study is completed, which would mean that the full provisions of the Act would not be implemented for about 18 months. Owens said that North Carolina is requesting

- (3) All backfill material will be clean, free of any organic or unsightly debris and will be obtained from an upland source.

Gene Tomlinson moved to adopt the variance with the conditions recommended by staff. Charles Wells seconded the motion and it carried unanimously. (Ayers, Watson, Caroon, Wood, Gottovi, Hamilton, Bryan, Cooper, Wells, Tomlinson, Davenport, Gray and Rose.)

Canady Civil Penalty Remission Request (CRC-405)

Chairman Besse announced that the penalty for this case had been paid; therefore it had been removed from the agenda.

Friday, March 25, 1988

Chairman Besse welcomed Secretary Rhodes and Deputy Secretary Carl of the Department; also David Kaiser, Office of Ocean and Coastal Resources Management, NOAA, and Yvonne Bailey, Legal Specialist, Office of Legal Affairs, NRCD.

PLANNING AND SPECIAL ISSUES COMMITTEE REPORT

Discussion of Buxton Woods protection strategies/progress (P&SI-283a,b)

Art Cooper reported on Dare County's recent adoption of SED-1 zoning for Buxton Woods and the differences between SED-1 zoning standards and the AEC use standards. Cooper then read a motion passed by the P&SI committee and recommended for CRC adoption (see attached committee report).

Don Bryan pointed out some of the differences between the State (AEC) and County approaches to managing development in the woods with regard to grandfathering, project review, public notice/comments, tree/vegetation removal, and road alignment. Bryan suggested consideration be given to adoption of the Dare County standards as use standards for the AEC.

Karen Gottovi said that she supported the committee motion because SED-1 zoning more clearly states the kinds of allowable development in the woods. Moreover, ultimate build-out under SED-1 would not differ significantly from that under the AEC scenario, especially if public acquisition proceeds as planned. Gottovi recommended that a longer (30 day) project review and comment period and a citizens advisory committee be established to assist the County planning department.

Tommie Gray emphasized that the County will continue to work with the State and the public to make sure that all provisions of the ordinance are implemented and enforced. He added that Dare County has the most to lose if these resources are not protected.

Reggie Caroon asked how AEC adoption would prevent the County from implementing its ordinance and noted his concern that future county commissioners might not be interested in protecting the maritime forest. Art Cooper concurred, adding that periodic changes in the membership and goals of elected and appointed bodies is a reality that must be considered. Cooper stated that he felt the symbolism of the potential AEC designation had been overblown. He supported the motion because it provides good local resource

protection and considerable Commission oversight and review of future development activities.

Don Bryan noted that public acquisition will be a difficult and lengthy process. In the meantime, Bryan suggested that the Commission consider adopting the AEC and, in doing so, assist the County in protecting the maritime forest resources. Mayme Davenport asked how other large maritime forests were managed. Bryan then described the joint Nags Head, Kill Devil Hills, and the Nature Conservancy management of Nags Head Woods.

Page Ayers suggested that the continued CRC/DCM assistance to Dare County called for in #6 of the motion include monthly updates from the County on development activities and groundwater monitoring in Buxton Woods. Ayers then asked whether the County provided public notice and review of SED-1 variance requests. Tommie Gray said that that was required by law.

Art Cooper moved to amend #6 of the P&SI committee motion by inserting "including monthly reports on permit applications and groundwater monitoring" on line 5 after the word "woods,". Page Ayers seconded the motion.

Reggie Caroon asked why the AEC and SED-1 couldn't be implicated simultaneously. He also questioned the value of monthly monitoring reports without the AEC designation and concomitant CAMA permit jurisdiction. Art Cooper stated that monthly reports on water quality/quantity should help to identify significant adverse trends. He added that the CRC may want to reconsider AEC designation if local government efforts are not enough to protect the maritime forest.

The amendment to the motion was voted on and approved. The motion then passed by twelve yes votes (Ayers, Watson, Wood, Gottovi, Hamilton, Bryan, Cooper, Wells, Tomlinson, Davenport, Gray and Rose); and one negative vote (Caroon).

Dan Besse stated that all questions raised with regard to tree clearing limits, road alignments, public comment periods, citizen advisory board, sand mining, and review of variance requests would be referred to the P&SI committee for continuing discussion.

Gene Tomlinson then stated that while the results of these actions may not please everyone, the process to achieve these results is indicative of the democratic principles upon which our nation is based, and as long as the CRC follows this same due process North Carolina will remain in the forefront of environmental protection of its unique and fragile coastal ecosystem. Tomlinson then thanked everyone who had provided input and followed this issue so determinedly.

Review of Land Use Plan Updates: Burgaw; Murfreesboro; Craven County; and Indian Beach (P&SI-279)

Art Cooper reported that John Crew's review of the Town of Burgaw, Murfreesboro and Indian Beach land use plans indicated each was satisfactory and were recommended for full certification (see attached committee report). He moved to accept the recommendation. Ronnie Watson seconded the motion and it carried unanimously.

MINUTES

MEETING: North Carolina Coastal Resources Commission

LOCATION: Duke Marine Lab, Pivers Island, Beaufort, NC

DATE: July 28-29, 1988

PRESENT: Commission
Daniel Besse, Chairman

Charles Wells	Reginald Caroon
Erie Haste	Donald Bryan
Page Ayres	Mayme Davenport
Art Cooper	Ronnie Watson
John Wood	Gene Tomlinson
Jim Hamilton	

Council
Phillip Leeseberg, Chairman
Webb Fuller, Vice Chairman

Paul Denison	Cecil Sewell
Bob Trost	David Heath
Lloyd Ballance	Wade Horne
Preston Howard	Charles Hedgepeth
Art Watson	Grace Evans
Rosetta Short	William Bell
Wanda Bell	Libby Anderson
Al Calloway	Dave Weaver
William Kirby-Smith	Donna Moffitt
Don Flowers	Bob Benton
Dick Leach	Lynn Phillips

Thursday, July 28, 1988

Chairman Besse called the meeting to order at 9:20 a.m. and welcomed everyone to Beaufort. He announced that Tommy Gray was in Washington D. C. lobbying for money for Buxton Woods, Karen Gottovi was absent due to the death of her father, and that Ronnie Rose also would not be present because of a recent business fire.

Ronnie Watson read a prepared statement regarding perceived conflict of interest for the record. A copy is filed with the official minutes of this meeting.

Gene Tomlinson commented that the Commission accept Watson's statement.

Approval of Minutes 8807-01-CRC

Rosetta Short commented on the proposed amendment to 15 NCAC 7J .0409 and recommended further consideration to be addressed in the afternoon session of the I&S committee. Art Cooper moved to approve the minutes of the May 26-27, 1988 meeting. Don Bryan seconded the motion and it carried unanimously.

Update of Buxton Woods Activities (P&SI-291)

Cooper reported on Rich Shaw's update of the activities related to Buxton Woods (see attached committee report). He indicated that the land acquisition project is proceeding very well and that the Dare County planning board reviewed the first proposed subdivision, Hatteras Pines, to be built in the woods since the Special Environmental District zoning ordinance went into effect. Shaw reported that while staff has been getting monthly reports on the County's implementation of the SED zoning ordinance, water monitoring information is not yet available. He also reported that staff was working with the Corps in evaluating a wetland mitigation proposal for Hatteras Pines.

Water Quality Sampling P&SI-289

Cooper continued his report with a review given by Melissa McCullough on water quality sampling (see attached committee report). He then read a resolution prepared by McCullough (with deletion of the second "whereas". The committee recommended CRC adoption and it was passed unanimously by the CRC. Cooper requested staff to begin working actively on this topic with the EMC and DEM and to report back on the progress.

Ocean Mineral Mining Research

Cooper concluded his report with a review of Ocean Mineral Mining research presented by Evan Brunson (see attached committee report).

IMPLEMENTATION AND STANDARDS COMMITTEE REPORTDiscussion of comments from public hearingsPublic hearing comments on procedures for rule petition 7J .0604

Wells reported on the committee's further consideration given to the proposed rules for parties to follow when petitioning the CRC for rulemaking (see attached committee report for the amended rule). The committee discussed several suggestions to simplify the draft rule.

Public hearing comments on general permit for rip-rap 7H.1100.

Wells continued his report with a review of the comments on the proposed changes to the bulkhead/riprap general permit to make the placement of riprap a more feasible alternative to shoreline protection commensurate with the guidelines for general permit bulkhead construction. He indicated that the regulation changes to 7H .1105 necessary to make the placement of riprap a viable means of shoreline protection that can be authorized via the general permit process (changes are in the attached committee report).

Discussion of Erosion Rate/Grandfather clause comments (I&S 220)

Wells final report on the public hearing comments was a report on the discussion of the erosion rate/grandfather clause comments. He noted that Pres Pate initiated discussion of the issue by reading the public comments received. Melissa McCullough had then reviewed I&S-220, which outlined the setback exceptions adopted in the past. The committee discussed comments received (see attached committee report). The committee recommended the CRC adopt the proposed change to 7H .0306 which has the effect of adopting the updated erosion rates. The CRC passed the recommendation unanimously. (Wells, Haste, Ayres, Cooper, Wood, Hamilton, Caroon, Bryan, Davenport and Tomlinson.)

tract of land in a much larger area that is in a homogenous land classification. The plan amendment may give private advantage to the proposed development and thus has many similarities to spot zoning.

Crew also discussed that most amendments are considered only a procedural matter by many local governments and that they overlook the substance at issue; which is a serious initiative to change the official policy document of the community. Several suggestions for possible changes to 7B to address these issues were presented, including a "finding of fact" of the need for change, a review of how the proposed amendment achieves policy statements in the plan and time intervals in which the Commission might consider amendments.

Art Watson, Lloyd Ballance, Webb Fuller and others commented on how local government might respond to suggested changes. Art Cooper suggested the matter of changing 7B is important enough to merit much consideration and we ought consider a special meeting to focus on needed changes. Staff advised a working committee of local government and consulting planners and research planners can be created and suggested changes will be forthcoming to the committee over the next months.

Update of Buxton Woods Activities (P&SI-291) 8807-11 - P&SI-291
Rich Shaw provided the committee with an update on activities pertaining to the ongoing Buxton Woods protection issue. He outlined recent acquisition efforts, including the N. C. Council of State's approval of the proposed 178 acre purchase and the General Assembly's recent \$300,000 appropriation for future Buxton Woods acquisition. Shaw also summarized the Dare County planning board's recent preliminary approval of a proposed subdivision (Hatteras Pines West), the County's first consideration of a project proposed within the new SED zoning district. He stated that the planning board went to great lengths to see that the subdivision would be consistent with the density and groundwater monitoring provisions of the ordinance.

Webb Fuller asked how many lots would be in the proposed Hatteras Pines subdivision and how large would they be. Shaw explained that planning board approved eight 160,000 sq. ft. cluster lots, within which the density of development would have to be one unit per 40,000 square feet (approx. 1 acre). Lloyd Balance added that he was under the impression that most of these 140,000 sq. ft. lots would be developed with less than 4 units.

Dick Leach asked whether the County had been providing the staff with monthly reports on both development and water monitoring in Buxton Woods as had been requested by the CRC. Shaw said that while staff has been getting monthly reports on the County's implementation of the SED zoning ordinance, water monitoring information is not yet available. Roy Johnson added that the planning board was requiring the Hatteras Pines developers to set aside at least three groundwater quality monitoring sites. Shaw also mentioned that staff was working with the Corps in evaluating a wetland mitigation proposal for Hatteras Pines.

Attachment 3
Maritime Forest Work
Group Final Report 1990
(select pages)

MARITIME FOREST WORKING GROUP

Final Report
to the
North Carolina Coastal Resources Commission

May 1990

Division of Coastal Management
North Carolina Department of Environment, Health & Natural Resources

IV. MARITIME FOREST PROTECTION OPTIONS

A. Strategies for Resource Protection

1. Landowner Conservation

Some private landowners are aware of the functions and values of the forest resources, enough so that they might choose to protect all or portions of the natural area through voluntary action. Options that are available to private owners (while retaining ownership) include conservation easements, mutual covenants, lease agreements, management agreements, and natural area registration.

- a) **conservation easement** - landowner conveys to a qualified public or private organization the right to prevent certain uses of the land in the future. The owner may use, sell, lease, or convey the land subject to the explicit terms of the easement.
- b) **mutual covenant** - neighboring landowners enter into mutually restrictive agreements to limit the future uses of the land.
- c) **lease agreement** - landowner grants a long-term lease to a land management agency. Agency pays rent and takes temporary possession of the property in order to control its use.
- d) **management agreements** - landowner enters into legal contract with conservation organization, obligating landowner to manage property according to mutual agreement.
- e) **registration** - landowner voluntarily agrees to have property recognized as a protected natural area by the State (Dept. of EHNR) or by private land conservation organization, such as The Nature Conservancy or local land trust.

A problem with this option is that landowners are often reluctant to enter into binding agreements to protect their land from future development. Moreover, establishing voluntary agreements is often difficult and time consuming.

2. Local Policies and Regulations

All of the maritime forest sites are located in an area covered by locally-adopted (and State certified) land use plans which provide vehicles for establishing policies to control development in maritime forests. Any development projects needing state or federal approval must be consistent with the policies stated in the local plans. Dare County and Kitty Hawk are examples of local governments that have included maritime forest protection policies in their land use plans.

While land use plans can be used as effective planning tools, their policies are not considered to be enforceable regulations. In most cases, local governments cannot prohibit destructive land use activities in maritime forests without adopting zoning regulations to support its policies. Local

ordinances can be developed to protect forest resources for the health and welfare of the community. Special zoning ordinances have been adopted by Dare County, Nags Head, and Kitty Hawk which help to reduce the loss of fragile resources by controlling building density, vegetation clearing, and the alteration of wetlands and dune ridges. Unfortunately, some local ordinances are adopted with little or no understanding of the resources that they are intended to protect. Having an ordinance on the books can give a false sense of security that a maritime forest is protected. The vegetation and dune protection ordinance at Emerald Isle may be an example of this situation. Some of the best examples of local maritime forest protection ordinances are included in Appendix B.

3. State Regulation

The Coastal Resources Commission could establish a new Maritime Forest AEC category, and in doing so, adopt management objectives and general use standards for new development within the AEC. Such action could provide a minimum level of resource protection for some of the remaining forest sites. Minor permits for development would be administered at the local government level. Major project proposals would be circulated for state and federal agency review and comment. General use standards, however, would not protect unique features of a maritime forest natural area. A local ordinance or site-specific AEC designation and use standards may be necessary to protect essential maritime forest resources.

According to CRC Rules, a fragile coastal area which contains natural resources of more than local significance and is not otherwise protected under CAMA may be designated an AEC. For a nominated maritime forest site to be eligible for designation, the CRC must find that "...uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities" (15A NCAC .0501).

The Buxton Woods AEC nomination process was an example of this alternative. After finding that the maritime forest qualified for AEC designation as a "coastal complex natural area," the CRC developed a management strategy that included land acquisition and AEC use standards. Only after Dare County adopted a strict maritime forest protection ordinance of its own did the CRC elect not to proceed with AEC designation.

There are certain problems with AEC designation that might dissuade the CRC from considering this alternative unless it is shown to be absolutely necessary to protect essential natural areas. AEC designation of privately-owned lands would be highly controversial, as was the case in 1989 when maritime forest land owners were notified that the CRC was considering this option. While it is likely that many of the remaining maritime forest sites are eligible for AEC designation, site-by-site consideration of each area could be a long process, during which uncontrolled development could result in significant damage to each site. Finally, if use standards were adopted for a particular site, they would not be adequate to protect all of the functions and values of the maritime forest resources. Some of those natural values would be lost over time by attrition, depending on the location and intensity of the development.