

COMMENTS

BY

BRUNSWICK ENVIRONMENTAL ACTION TEAM

SEPTEMBER 22, 2002

SCJ#03E60300057

OLD SOUND CREEK DREDGING PROJECT

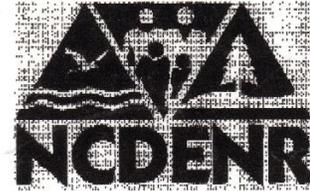
BEACH NOURISHMENT

OCEAN ISLE BEACH



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

Michael F. Easley, Governor
William G. Ross Jr., Secretary
Donna D. Moffitt, Director



October 21, 2002

MEMO TO: Chrys Baggett, Director
State Clearinghouse

FROM: Doug Huggett *Doug Huggett*
Major Permits Processing Coordinator

SUBJECT: EA/FONSI review, Old Sound Creek (Tubbs Inlet)
dredging project, Brunswick County

The Division of Coastal Management has thoroughly reviewed the public comments resulting from the most recent State Clearinghouse review of the referenced project document. While I found that many of the comments were not substantiated or not appropriate for consideration during the SEPA review process, I did determine that several of the comments raised valid concerns. After weighing the significance of these concerns, the Division of Coastal Management has determined that we can no longer concur with a Finding of No Significant Impact for the project. Therefore, we hereby wish to withdraw the EA/FONSI from the Clearinghouse review process. The Division has informed the applicants that should they wish to proceed forward with this project, the preparation of an Environmental Impact Statement will be required.

Thank you for your continued attention to this matter. I will keep you informed of any future developments concerning this project. Please feel free to contact me if you have any questions.

cc: Melba McGee
DCM - Wilmington
DCM - Morehead City
Chris Gibson
Ken Shanklin

BRUNSWICK ENVIRONMENTAL ACTION TEAM

P. O. Box 6877
South Brunswick, North Carolina 28470

September 22, 2002

Chrys Baggett
State Clearing House
N.C. Department of Administration
1302 Mail Service Center
Raleigh, North Carolina 27699-1302

**Re: SCH# 03E60300057
Old Sound Creek Dredging Project
Ocean Isle Beach**

Dear Ms. Baggett:

The enclosed document is the Brunswick County Environmental Action Team's comments on the Environmental Assessment to Dredge Old Sound Creek and Nourish the ocean front and inlet shoulder at Tubbs Inlet on Ocean Isle Beach.

Our research on this project has revealed a plethora of errors and misrepresentations as our comments will reveal.

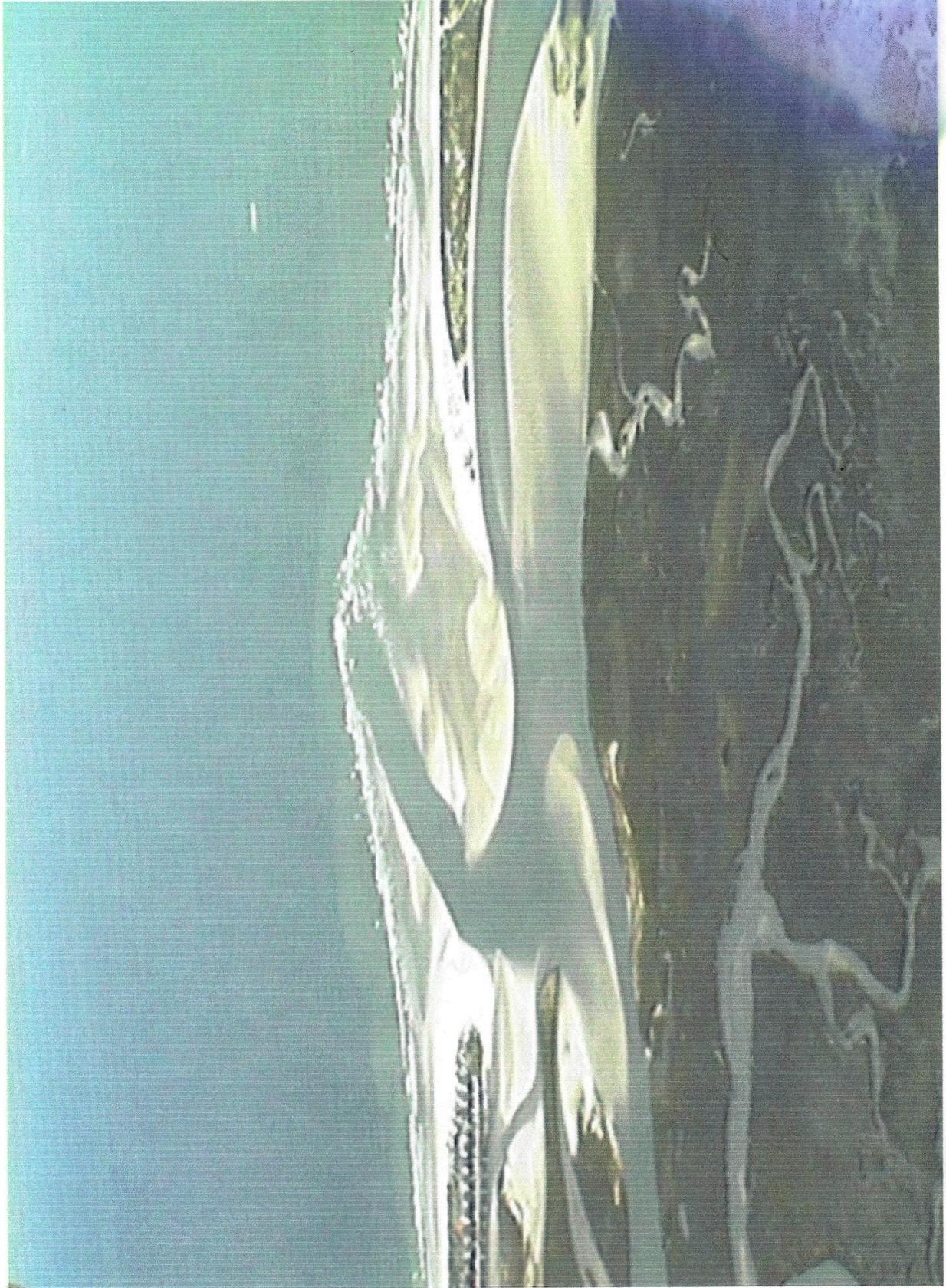
Attached to this letter is an aerial photo that was taken at Tubbs Inlet on September 20, 2002 at 2:20 pm with low tide at Tubbs Inlet at 1:55 pm. The amount of sand on the beach in front of the houses appears to already cover most, if not all, of the "dredge area expansion" that is shown in the EA. It looks like the inlet channel is already moving west toward Sunset Beach. Thus, it seems from this photo that nature has already done what the permit application is proposing. If the area is accreting, why the project?

We respectfully request a denial of the permit for the Old Sound Creek Dredging Project.

Sincerely,

Jan Harris, Pres.
Brunswick Environmental Action Team

Cc: Doug Huggett



file://C:\WINDOWS\temp\Tubbs Inlet 9-20-02 d.jpg

BRUNSWICK ENVIRONMENTAL ACTION TEAM

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SCH# 03E60300057

OLD SOUND CREEK DREDGING PROJECT ENVIRONMENTAL ASSESSMENT COMMENTS

The Brunswick County Environmental Action Team (BEAT) would like to comment on the Environmental Assessment for the Old Sound Creek Dredging Project (EA): a project proposed by the Tubbs Inlet Preservation and Management Group, Inc., a small number of private property owners in the gated west end of Ocean Isle Beach (OIB) at Tubbs Inlet.

The title of the EA is misleading. The primary purpose of this project is not to provide navigational access but rather to mine sand from the tidal creeks to: "restore the eroded beaches and provide erosion control for properties situated along the western end of Ocean Isle Beach." (EA, Page 1-2). Enhancement of navigation through Old Sound Creek/Eastern Channel would be a secondary project feature.

The Brunswick Environmental Action Team opposes the granting of this permit for the following reasons:

1. The project has a very high potential to bring erosion to Sunset Beach.

The EA attempts to prove that this was an inlet and tidal system either man created or maintained. The EA then draws the conclusion that since there were no detrimental effects to Sunset Beach because of these past projects, there will be no detrimental impacts to Sunset Beach because of this proposed project.

It is evident from our research that it is totally untrue that the tidal systems were man created or maintained. Therefore, the conclusions drawn by the EA are without any value or merit. Below we provide documentation to this effect either by rebutting information provided by the EA regarding various permits or by introducing information on relevant permits that were not covered in the EA.

- **Permit 55-67** -- The EA says that a new channel was "blasted" in Tubbs Inlet sometime around 1970. What it fails to mention is that on September 19, 1967 a permit was granted to the Town of Sunset Beach to: "relocate Tubbs Inlet by first dredging a new inlet and then fill in the old inlet." (*Attachment 1*) The EA does not mention the existence of this permit although it was readily available in the Corps of Engineers records.
- **Permit 155-70** -- In 1970 this permit was granted to Odell Williamson to dredge a 60 to 65 foot wide channel behind OIB and parallel to Eastern Channel from a deep

water Connection at Old Sound Creek 3000' eastward to a connection with Eastern Channel. The drawing attached to the permit clearly shows that the 3000 foot channel was to take a shallow u-shaped jog off of Old Sound Creek/Eastern Channel cutting through salt marsh area to bring boating access to approximately 3000 feet of land between where the Island Park Subdivision currently exists eastward 3000 feet. (Attachment 3 – Permit & Drawing) The conditions of the permit support the fact that the channel was cut through salt marsh as condition No. 5 of the permit states: "That approximately 18" of the sand pan areas north of the proposed channel be scooped off with a dragline. The purpose of such excavation to be the creation of approximately 10 acres of new salt marsh area."

A 12/20/01 letter to DCM from Applied Technology & Management that provides the Addendum to EA/FONSI, Old Sound Creek Dredging Project states "the enclosed sections of Chapter 5 provides supplemental information (shown in italics) to be added to Section 5.6.3 of the EA to further demonstrate that reversal of the Tubbs Inlet migration is not probable. (Attachment 3) Referring to Permit 155-70, the Addendum EA states: "This permit was issued to dredge the southern shoreline of eastern channel from the western limit of what is now the Island Park Condominiums, east to the Ocean Isle Beach Bridge.....The western extent of this channel tied into, the existing deep water of Old Sound Creek, with the eastern end tying into the channel paralleling the western shoreline of the Ocean Isle Beach Bridge Causeway." This statement is totally ludicrous as the Permit drawing clearly shows a 3,000 linear foot u-shaped cut thru tidal marsh. Another example of how this firm manipulates the truth to suit its clients needs.

- **CAMA Permit 133-80** -- Granted to Odell Williamson to bulkhead land along Old Sound Creek in January of 1981. The EA states that only the one page of Permit 133-80 exists. However our research has revealed the permit and its conditions as well as a drawing of the permitted project. (Attachment 4) Not only did this permit not allow for dredging, it specifically prohibited it by permit condition: "The bulkhead will not be positioned farther than 2 feet waterward from the mean high water contour at any point along its alignment." And "All backfill material will be obtained from an upland source and confined landward of the permitted bulkhead." and "No marshland will be excavated or filled." No dredging at all was allowed with this permit. By using the scale on the drawing, the proposed area of development with Permit 133-80 was 2,000 linear feet of rip rap bulkheading along the southern shoreline of Eastern Channel.

This is the permit that is listed in the application and included in the EA in an attempt to argue that Old Sound Creek had maintenance dredging in 1980. **The argument that this permit was for maintenance dredging and is similar in scope to the present proposed project is totally irresponsible and without any factual basis as demonstrated above.**

- **CAMA Permit 114-80** This permit was for a project that was virtually identical to the proposed project. However, **even though it was vitally important to the decision to grant a permit on the proposed project, it was not included in the**

EA. The permit was to dredge Old Sound Creek/Eastern Channel 4,300 linear feet, 4 feet deep and with a width of 150 feet. The permit was granted but was challenged by the Town of Sunset Beach. The Coastal Resources Commission at their March 13, 1981 meeting revoked the permit. (*Attachment 5*)

- **Jinks Creek Dredging:** The EA provides absolutely no evidence that Jinks Creek from the Intracoastal Waterway to the Atlantic Ocean has ever been dredged or deepened. After researching the Corps and DCM records, we understand why they failed to produce any documentation to support their statement that Jinks Creek is dredged and maintained. There is none. The only dredging project in Jinks Creek took place in 1966 (*Attachment 6*). This was to dredge Jinks Creek **from the Intracoastal Waterway landward** to provide boating access to some mainland homes along the Intracoastal Waterway. In recent years homeowners along this area of Jinks Creek have on several occasions attempted to obtain a permit to repeat this dredging. DCM has repeatedly denied the permit application request because the area has become a highly productive Primary Nursery Area (PNA) and dredging will cause significant adverse impacts to the PNA.

2. The conditions requested by OIB that DCM indicated must be met in order to approve the project have not been met.

- Town of Ocean Isle (*Attachment 7*) CAMA/DREDGE & FILL Permit Application Review form from the Town of OIB, dated 11/15/01 “approves of the project only if the recommended changes are incorporated.” The recommended changes:
 - (1) Long term maintenance dredging should be addressed and responsible agency for such maintenance should be identified.
 - (2) Consideration of Tubbs Inlet and Jinks Creek Maintenance Dredging should be addressed, and responsible agency for such should be identified.
 - (3) Spoil areas for unsuitable materials should be provided for before approval of application approval.

No agencies have been identified for any part of the inlet management. The Town of Sunset Beach and the Town of Ocean Isle both have publicly stated that they will **not** commit public monies to this project.

The EA (5.20.2)(Page 5-36) describes only that negotiations are currently underway for an upland site to store material that is not beach-compatible. The Project Description describes the project involving dredging 4000 linear feet of Eastern Channel to remove 205,000 cubic yards of material. Newspaper articles (*Attachment 8*) describe the project as dredging 190,000 cubic yards of sand from Old Sound Creek/Eastern Channel. The project would place 115,000 cubic yards of sand in front of the residents’ homes. The homeowners would sell the remaining sand to the town of OIB or private groups for \$8 per cubic yard. The EA also states: (4.3.3 Project Scheduling and Duration) “.....there is the possibility of using a portion of the dredged material for erosion relief at areas further east on Ocean Isle. Should private or public entities be interested in the use of

beach quality sand made available by this project, the quantity of sand contracted for sale would be dewatered and stockpiled at the eastern end of the nourishment area.....”

The upshot is there is no spoils area identified for the extra sand dredged. **We believe the permit should be required to meet the requirements of the Mining Permit process in order to mine the inlet sand for nourishment. Once private property owners go into the business of selling the public's sand, there can be no reasonable doubt that a mining permit is required.**

3. The environmental impacts have not been adequately addressed. A number of the Commenting Agencies have raised serious concerns about the project. Most importantly, the comments by the Commenting Agencies are either based on a mistaken belief that the tidal creeks involved are man-made or are routinely maintained. To wit:

• **Comments from Habitat Conservation Program:** (*Attachment 9*):

Mr. Wynne in his comments says: “As proposed, the project would convert 17.6 acres of intertidal and subtidal sand flats to dredged, deep-water habitat. Of this total acreage, an undetermined quantity of intertidal sand flats would be outside **Old Sound Creek in areas that have not been previously dredged.**” (*Note: Our research has revealed that dredging has never occurred in Old Sound Creek.*) “The particular sand flats of concern appear to be part of the inlet flood tide delta. As we stressed in our comments regarding the proposed Masons Inlet Relocation in New Hanover County, intertidal sand flats of the inlet flood tide delta provide important foraging and loafing habitats for many species of water birds. The delta’s intertidal sand flats may be critical to the continuing success of the nesting colony on the Sunset Beach side of Tubbs Inlet. Dredging the delta’s previously-unexcavated intertidal sand flats would provide no navigational benefit to Old Sound Creek, provide minimal inlet migration benefit, and result in the loss of important water bird foraging and loafing habitats.....Based on these concerns, we recommend the following project modifications.

1. Excavation of intertidal sand flats will be limited to Old Sound Creek and those areas of the inlet flood tide delta that have been previously dredged. Previously-unexcavated intertidal sand flats of the inlet flood tide delta will be avoided.”

• **Comments from Marine Fisheries:** (*Attachment 10*)

Fritz Rohde in his comments states: “The Division strongly recommends that the proposed dredging be restricted to the width (65’) and depth (6’MLW) originally permitted”... “The shallow areas, such as the flats in Eastern Channel, Still Creek, and Jinks Creek, provide feeding areas, refuge areas, etc. for a variety of marine organisms. **These areas should not be dredged just to provide sand for beach placement** (emphasis ours).”

Obviously, comments from the state and federal commenting agencies may change drastically once they learn there has never been dredging in Old Sound Creek/Eastern Channel. If this project goes forward, it is imperative that the commenting agencies be provided truthful information and an opportunity to revise their comments based on the facts.

- **RED DRUM**

Mr. Rohde goes on to say: "To use Table 5-1 as a reference for fishes and crustaceans in the area is ludicrous. Probably only **red drum** (emphasis ours), bluefish, summer flounder, and the three species of shrimp are valid ones from that list. **This sloppiness makes me question the accuracy of the rest of the report** (emphasis ours)."

The Red Drum (*Sciaenops ocellatus*) is the North Carolina saltwater fish. North Carolina has produced 10 out of 16 current world records for red drum. Red drum live in coastal and estuarine waters feeding on the bottom for crabs, shrimp, menhaden, mullet and spot – all of which are found in abundance around Tubbs Inlet and its tidal creeks. Spawning takes place in the waters around the coastal inlets and in some areas of Pamlico Sound during the fall. Red Drum, like 90 percent of North Carolina's economically important species, are estuarine dependent. The larval red drum seek quiet, shallow water with grassy or muddy bottoms. For the first three to four years of their lives, red drum live in the sounds and estuaries or in the surf zones along inlets. As they mature, they are more frequently found in the ocean but still use the estuaries and inlets to feed and spawn. The study, **Characterization of critical spawning habitats of weakfish, spotted seatrout and red drum in Pamlico sound using hydrophone surveys, Submitted by Joseph J. Luezkovich, Hal J. Daniel, III, and Mark W. Sprague, (Attachment 11)** found that red drum, weakfish and spotted seatrout spawn on the flood tide deltas of Ocracoke and Hatteras inlets.

There is no sample data to indicate the Tubbs Inlet, Old Sound Creek/Eastern Channel system is a spawning site for Red Drum because Marine Fisheries lacks the necessary equipment to make this determination. However, this area provides the ideal climate for the species and Red Drum is frequently caught at the Sunset Beach Bridge (at the confluence of Jinks Creek), at the Sunset Beach Pier and in the tidal creeks at Tubbs Inlet. This would suggest that Red Drum spawns in the ideal habitat provided by the sandy shoals at Tubbs Inlet, Old Sound Creek/Eastern Channel.

Recent reports from local fishermen who fish from the Sunset Beach Pier, the Tubbs Inlet area, and at the Sunset Beach Bridge indicate they are finding an abundance of Red Drum. It seems highly likely that given all the above information that Red Drum are running ripe at Tubbs Inlet.

- **PRIMARY NURSERY AREA -- The proposed project area needs to be surveyed by the responsible agency to determine factually whether or not the area is a PNA.**

The EA states (2.1 Land Use) "Old Sound Creek is a natural tidal channel." (2.2.1 Nekton) "There is no PNA located within the project area." (2.3 Wetlands) "The southern shoreline has a continuous erosion control structure consisting of small armor stone....." and "the northern shoreline is a marsh feature comprised predominantly of *Spartina Alterniflora*. The marsh stand is actively volunteering upon recent sand deposits." (5.3.1 Proposed Changes) "Within the northwest fork between Old Sound Creek and Eastern Channel, the existing channel varies in width from 70 to 100 ft and is bounded on both sides by *Spartina* marsh." (5.18.3 Oyster Reefs) "Scattered oysters are attached to rip rap material along intertidal areas on the south side of Old Sound Creek."

The EA also states (2.18.1 Old sound Creek and the Eastern Channel Estuary) "NC Marine Fisheries (NCMF) does not have any mapped shellfish areas within the project area." And ""Based on a recent shellfish survey (conducted in August 2000), there is not a significant resource in the area." Our research has found that NCMF has never mapped Brunswick County for shellfish. The August 2000 "survey" was conducted by the consultant, who appears to be submitting 'facts' tailored to fit their client's needs.

- **BIRD SANCTUARY**—If this dredging project is permitted and erosion begins on Sunset Beach the first area likely to be impacted will be the bird nesting and foraging area on the eastern tip of Sunset Beach. For the last several years this area has been staked for shore bird nesting by the North Carolina Wildlife Resources Commission. This year (2002) there were least terns and Wilson's plovers nesting in the staked area on Sunset Beach near Tubbs Inlet. *2014 - Oyster Catcher nesting on SSB, east end*
- In past recent years (2000,2001) there have also been black skimmers and American oystercatchers nesting at this site. While black skimmers are not listed, they are a species of special concern. North Carolina's nesting population of this species has declined by 69% over the past 25 years.
- The site is also used by the federally threatened piping plover. Piping plovers have been observed on the east end of Sunset Beach during spring and fall migration and during the winter. This species historically nested at the site and the EA (2.19.5 **Piping Plover**) reports that "David Allen of the North Carolina Wildlife Resources Commission (WRC) states that 1-2 pairs were observed nesting at the west end (Tubbs Inlet) in 1994 and one pair of plovers was observed nesting at the east end in 1998. (*Attachment 12*)
- **TURTLE NESTING SITE**---**This year there were 16 turtle nests on Sunset Beach and Bird Island. Of those 16 nests, 12 were in the Inlet Hazard Area at Tubbs, and 3 of the 12 were in the staked bird nesting area.** (*Attachment 12*)

4. There is no justification for the proposed project.

The tract of land when sub-divided by the DeCarol Williammson/Williamson Irrevocable Trust into 10 lots was done so on land that "created land where there was not land before." It was developed in violation of NC Regulations: (*Attachment 13*) T15A:07b.0308 (b) (5) – Building dunes in inlet hazard areas is contrary to CAMA regulations. T15A:7H.0310(a)(4), T15A:7H.0306(a)(5), and T15A:07H.0306(c) (4): -- An existing access road/turnaround was eliminated with this project. The development as it exists today allows no public access to the ocean, Tubbs Inlet or Old Sound Creek. 15A NCAC 7H.0306(c)(4) prohibits the construction or placement of growth-inducing public facilities to be supported by public funds in Ocean Hazard Areas..... The project hooked onto OIB water and sewer lines.

The developer and all the property owners signed AEC Hazard Notices (*Attachment 14*). The property owners were put on notice they were building in a very risky and hazardous area. The Hazard notice alerts them that their property could erode as much as 300 feet in a major storm. The signed AEC Hazard Notice also notes: ".....the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development."

5. The project calls for renourishment along the shoulder of the inlet which can lead to serious and unintended consequences.

The USACE in the State of North Carolina (because of the N.C. No Hardening Rule) does not nourish a certain amount of feet at inlet areas. An example is this past spring's nourishment project at OIB performed by the Corp. Approximately 3500 linear feet at the east end of OIB at Shallotte Inlet did not receive nourishment sand. Tom Jarrett, USACE, ret., has spoken publicly that the reason for this is that the sand will not stay on an inlet shoulder area. It is not economically sound to place sand at an inlet just to have it wash away.

Caroline Bellis of DCM in her presentation at the 4/26/01 USACE Stakeholders Shore Protection in N.C. meeting in Wilmington spoke to the process of reviewing federal activities for consistency with state programs. She specifically cited as an example: The USACE recommends terminal groins for nourishment projects at inlets to hold the sand in place which is inconsistent with N.C. State law.

The EA states (4.3.3 Project Scheduling and Duration): "The proposed project involves dredging 205,000 cubic yards of beach quality sand from 4,000 linear feet of channel and **nourishing** 3,000 ft of beachfront and **inlet shoreline.**"

North Carolina has a No Hardening Rule which also applies at inlets. There is the great potential that the sand placed on the inlet shoulder and oceanfront near the inlet will, without hardening, wash away -- possibly washing into the inlet and closing it.

PRECEDENT SETTING PERMIT

The granting of this permit will set a very dangerous precedent for the coast of North Carolina. This permit if approved gives permission to a private entity to take public resources (sand) and place on its own private property simply to enlarge the property as well as sell the public resource to other interested parties. We don't believe this is an activity the citizens of North Carolina desire to see occurring with their coastal resources.

**WE SUGGEST THE COASTAL RESOURCES COMMISSION
IMPOSE A MORATORIUM ON MINING OF SAND FROM INLETS
AND NOURISHING THE SHOULDERS OF INLETS UNTIL
PROTECTIVE GUIDELINES AND REGULATIONS CAN BE
ESTABLISHED.**

This permit should be denied outright. The entire EA and everything in it is based on erroneous assumptions. We have read all the environmental agencies comments and they have based their comments on a belief that this was an inlet and tidal system either man created or maintained. It is evident from our research and exhibits that this is not true.

At a minimum, the EA must be corrected and resubmitted to all the commenting agencies with factual information. Everything about the EA is virtually wrong. A decision of any kind, whether it be to require an EIS, approval or a denial, cannot be made based on this EA submitted by the Tubbs Inlet Preservation and Management Group, Inc.