NC COASTAL RESOURCES COMMISSION
September 18-19, 2019
New Hanover County Government Center
Wilmington, NC

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

Wednesday, September 18th

10:00 COASTAL RESOURCES ADVISORY COUNCIL MEETING (HR Training Room)

1:00 COMMISSION CALL TO ORDER* — Renee Cahoon, Chair

- Roll Call
- Chair's Comments
- Approval of July 17, 2019 Meeting Minutes
- Executive Secretary's Report — Braxton Davis
- CRAC Report — Greg "rudi" Rudolph

1:30 VARIANCES

- Pollard - *(CRC-VR-19-05)*, Jacksonville, Coastal Shoreline AEC Impervious Cover — Brad Connell, Christine Goebel, Esq., Glenn Dunn, Esq.

2:15 ACTION ITEMS

- Consideration of Fiscal Analysis 15A NCAC 7H .0312 – Technical Standards For Beach Fill Projects *(CRC-19-23)* — Ken Richardson
- Consideration of Fiscal Analysis 15A NCAC 7H .0304; .0306; .0309 and .0310 – Inlet Hazard Areas *(CRC-19-24)* — Ken Richardson
- Consideration of Fiscal Analysis 15A NCAC 7J .0403 & .0404 Development Period/Commencement/Continuation & Development Period Extension *(CRC-19-25)* — Courtney Spears

2:45 STAFF RULEMAKING RECOMMENDATIONS

- Permeable Surfaces in the Buffer *(CRC-19-26)* — Mike Lopazanski
- Oceanfront Decks and Repairs *(CRC-19-27)* — Tancred Miller

3:45 CRC SCIENCE PANEL

- 2020 Sea Level Rise Report Update - Charge to Science Panel *(CRC-19-29)* — Tancred Miller

4:15 LEGAL UPDATES — Mary Lucasse

- Update on Litigation of Interest to the Commission *(CRC-19-30)*

4:30 RECESS

Thursday, September 19th

8:30 COMMISSION CALL TO ORDER* — Renee Cahoon, Chair

- Roll Call
- Chair's Comments

8:45 OCEANFRONT RULES AND IMPLEMENTATION

- Setbacks, Static Lines, Static Line Exceptions and Development Lines *(CRC-19-31)* — Ken Richardson
- Development Line Implementation
- Grandfathering Provisions

10:00 CRC RULE DEVELOPMENT

- Shellfish Leases and Permitting *(CRC-19-28)* — Jonathan Howell

11:15 HURRICANE FLORENCE UPDATE

- Abandoned Vessels and Marine Debris — Paula Gillikin, Todd Miller, Director NC Coastal Federation

12:00 PUBLIC INPUT AND COMMENT — Renee Cahoon, Chair

12:15 OLD/NEW BUSINESS — Renee Cahoon, Chair

- Update on DEQ MOU with State Ports — Christy Goebel
- Report from Subcommittee on Elevated Structural Components in Setback — Robin Smith
- Update on Inland Waters Boundary and CRC Jurisdictional Areas – Possible Changes — Mike Lopazanski

12:30 LUNCH

1:15 PUBLIC HEARING — Renee Cahoon, Chair

- 15A NCAC 7H .0304; 7H .0309 & 7H .0313 - State Ports Inlet Management AEC
- 15A NCAC 7H .1900 – General Permit to Allow Temporary Structures Within Coastal Shorelines and Ocean Hazard AECs

1:30 ADJOURN

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

**** Times indicated are only for guidance and will change. The Commission will proceed through the agenda until completed; some items may be moved from their indicated times.***

N.C. Division of Coastal Management
www.nccoastalmanagement.net
Next Meeting: November 19-20, 2019
Islander Hotel, Emerald Isle

NC COASTAL RESOURCES COMMISSION (CRC)
July 17, 2019
NOAA/NCNERR Auditorium
Beaufort, NC

Present CRC Members
Renee Cahoon, Chair
Larry Baldwin, Vice-Chair
Robin Smith, Second Vice-Chair
Rick Catlin
Bob Emory
Robert High
Doug Medlin
Phil Norris
Lauren Salter

Present from the Office of the Attorney General
Mary L. Lucasse

Present from the Department of Environmental Quality, Office of the General Counsel
Christine A. Goebel

CALL TO ORDER/ROLL CALL
Renee Cahoon called the meeting to order at 9:00 a.m. on July 17, 2019, reminding the Commissioners of the need to report any conflicts in accordance with Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called. Commissioners Craig Bromby, Trace Cooper, Russell Rhodes, and Jamin Simmons were absent. Commissioners Emory and High stated they were familiar with the Petitioners in the variance request but did not have a conflict of interest. Based upon the roll call, Chair Cahoon declared a quorum.

CHAIR'S COMMENTS
Chair Cahoon thanked the current and former members of the Commission for their service to the State. The Chair also recognized DEQ Assistant Secretary Sheila Holman and thanked her for attending Commission meetings.

MINUTES
Larry Baldwin made a motion to approve the minutes of the April 17-18, 2019 Coastal Resources Commission meeting. Phil Norris seconded the motion. The motion passed unanimously (Cahoon, Baldwin, Catlin, Emory, High, Medlin, Norris, Salter, Smith).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report:

OCS Update

At the last meeting I reported that on March 12, 2019, DCM received a fifth company's federal consistency certification (WesternGeco) related to proposed seismic surveys off the NC coast. This company already has an Incidental Harassment Authorization (IHA) from NOAA; however, its request for a BOEM permit is pending the outcome of ongoing litigation and federal consistency review. On June 11, DCM formally objected to the proposed seismic survey as inconsistent with our state's enforceable coastal policies. DCM's review of WesternGeco's consistency certification included substantial input from outside subject matter experts, North Carolina state agencies and the general public. Based on this review, DCM determined that the proposed seismic surveys would have significant adverse impacts on fish and marine food webs, sensitive fish habitats, commercial and recreational fisheries, and the coastal economy. On July 11, 2019, WesternGeco filed an appeal of the state's objection to US Commerce Secretary Wilbur Ross pursuant to the federal Coastal Zone Management Act. The Secretary can either override or sustain the state's objection. The 2019-2024 National OCS Oil and Gas Leasing Proposed Program and Draft PEIS may be released soon with a 90-day comment period. It is not yet known if NC will continue to be included in the Proposed Program. If it is, proposed lease areas could be identified this fall with possible lease sales to follow.

Regulatory

On the regulatory side, we have several program changes to report. Given ongoing hurricane recovery efforts, increased development activity, contractor backlogs, vacancies and staff turnover among our regulatory positions, as well as local opt-outs of CAMA minor permitting program, the Division has implemented a series of programmatic changes intended to improve efficiencies and redistribute workloads so that they are more sustainable and better reflect current conditions. These changes were made following a comprehensive review of relevant data such as permit workloads by district and changing population dynamics within the coastal zone. Effective July 1, 2019, the Elizabeth City District Office will continue to cover Currituck, Dare (Mainland and from Kill Devil Hills north), Camden, Pasquotank, Perquimans, Chowan, and Gates Counties, and will now also cover Hertford and Bertie Counties. The Washington District Office will continue to cover Tyrrell, Washington, Beaufort, and Hyde Counties, and will now also cover a portion of Dare County (from Nags Head south to Hatteras) as well as Pamlico County. The Morehead City District Office will continue to cover Carteret and Craven Counties, and will now also cover all of Onslow County, and the Wilmington District Office will continue to cover Brunswick, New Hanover, and Pender Counties (including all of Surf City).

During the first six months of 2019, there was a decrease in major permit actions relative to the first six months of 2018 (14 fewer, total of 61). This decrease was likely due to impacts associated with Hurricane Florence recovery, as well as staff turnover in several of the Division's regional offices. The average processing time for major permits (92 days) was longer than the average processing time for the first six months of 2018 (82 days).This increase is also likely due to hurricane recovery and staff turnover, as well as delays in federal permit processing during the Federal Government shutdown at the end of 2018. Within the last six months we have issued 1,410 General Permits (960 regular GP's and 450 emergency GPs), which represent a

significant increase relative to the 857 General Permits that were issued in the first six months of 2018. This increase is likely due to the reconstruction efforts following Hurricane Florence and the enactment of the Emergency General Permit.

CAMA allows for the development of local implementation and enforcement programs for the expeditious processing of permit applications. Projects, such as single-family homes, that do not require Major or General Permits are reviewed under the Minor Permit Program. Local governments review, issue and administer minor permits in accordance with standards adopted by the Commission and under contract with DCM. A county or municipal representative, known as the CAMA local permit officer or LPO, issues the permits. LPOs are trained by DCM to administer Minor Permits for their locality. As the North Carolina economy has improved in recent years, the number of minor permits has also increased. In 2017, approximately 700 minor permits and 650 exemptions were issued by a combination of local governments and the Division (in localities not participating in the program). Due to the ongoing recovery and increased development along the coast, the Minor Permitting and exemption workload has significantly increased. While there are currently 38 local governments participating in the delegated Minor Permitting Program, over the past few years, nine local governments have opted out of the program due to reductions in staff brought on by the difficult economy. This has resulted in direct issuance of minor permits by DCM field reps. Permit applicants in these areas must now contact the DCM District Office and the DCM field representative, instead of the local municipality, to schedule a site visit for a CAMA minor permit. The extra time involved can be frustrating to permit applicants. The following local govts have opted out of the Minor Permit Program: Topsail Beach, Surf City, North Topsail Beach, Belhaven, Pender, Hertford, Bertie, Beaufort, and Hyde Counties. The Division is looking for ways to bring local governments back into the Minor Permit Program through incentives and increased contact and outreach. LPOs currently receive annual training from the Division. We are exploring the idea of a dedicated LPO Coordinator position which will allow the Division to increase and improve its contact with local governments through additional training and workshop opportunities.

Policy & Planning

Over the past two months, DCM, in partnership the NC Coastal Federation, regional councils of government, The Nature Conservancy, NC Sea Grant and others hosted three very successful coastal resilience events. The first two were workshops primarily for local governments, held in Elizabeth City and Wilmington that focused on local impacts of natural hazards and climate change, and explored solutions and got feedback on the types of technical and financial support needed to support local resilience efforts. These workshops are now being used as a model to plan and conduct similar regional workshops in the Piedmont and Mountain areas of the state. A more recent and larger NC Coastal Resilience Summit was held in Havelock on June 11-12, 2019 for nearly 300 attendees representing local, state and federal government officials, leaders of the private sector and non-profit organizations, as well as local advocacy groups and academia. Discussions included an update on climate hazard risks affecting the coast, managing impacts to the coastal economy, natural and working lands, understanding social vulnerability and environmental justice issues. Information from the event will be summarized for inclusion in the State's Climate Risk Assessment and Resiliency Plan, being developed under Governor Cooper's Executive Order 80 ("EO 80"). Building off our new Coastal Adaptation and Resilience website, DCM has been working with partners to develop a Coastal Communities Resilience Guide. This online, interactive guide uses an ArcGIS Story Map format to outline a

framework and process for communities to better understand risks, engage the public on resiliency issues, identify solutions, and create a strategy for integrating resilience into existing planning and management efforts. A draft of the online Guide has been reviewed by a local government advisory group of planners and external subject matter experts and is now under review by DCM staff. Release of the guide is expected in early August. Finally, the Commission has stated in the past that the State needs more gauges to measure sea level rise, so I am happy to report that DCM signed a Memorandum of Agreement with NC Emergency Management at the end of June to upgrade the state's sea level monitoring network. The MOA means a lot for the State's ability to detect and measure long-term water level changes along our coast, particularly within the estuarine environment. Thanks to $50,000 in NOAA funds that we were able to provide to Emergency Management, we will go from four federally certified tide stations on the coast, to as many as ten. This will help our agencies and coastal communities better understand changes occurring in areas that have not been measured in the past.

Land Use Plans

Since your last meeting, the Division received one land use plan certification request and four land use plan amendment requests under the recent delegation of authority from the Commission. The Town of Swansboro (May 1, 2019) submitted its LUP for certification and the Towns of Beaufort (April 15, 2019), Indian Beach (May 1, 2019), Carolina Beach (May 14, 2019), and Currituck County (July 2, 2019) submitted land use plan amendments for certification. The Division found in all cases that: the plans met the substantive requirements outlined within your 7B Land Use Planning Requirements; there are no conflicts evident with either state or federal law or the State's Coastal Management Program; and the elected bodies of the local governments provided opportunity for the public to provide written comment as required by N.C.G.S. § 113A-110 and 15A NCAC 7B .0802 and .0803. Accordingly, DCM granted the requests.

Coastal Reserve

Governor Roy Cooper declared June 19, 2019 as North Carolina Coastal Reserve day in honor of the N.C. Coastal Reserve and National Estuarine Research Reserve's 30th anniversary. Secretary Regan presented the proclamation at a celebration with partners, reserve volunteers, and local advisory committee members at the NC Maritime Museum in Beaufort overlooking the Rachel Carson Reserve. Speakers included Mayor Newton of Beaufort, and NOAA Office for Coastal Management Deputy Director Keelin Kuipers. Coastal Reserve summer programming is also underway, including free public field trips and the Summer Science School programs - details are available on the Reserve's website. NOAA's Office for Coastal Management has published a funding opportunity for the new Margaret A. Davidson Graduate Fellowship. This program will offer graduate students in a Master's or Ph.D. program the opportunity to conduct research within a National Estuarine Research Reserve System. The NC Coastal Reserve & National Estuarine Research Reserve will host one fellow doing within one of our four National sites, which include Currituck Banks, Rachel Carson, Masonboro Island, and Zeke's Island Reserves. Information about the new fellowship program and a link to the funding opportunity is posted on the Reserve's and NOAA's website.

Staff News

We are very pleased to announce that Ron Renaldi has accepted the position of District Manager in our Elizabeth City District. Ron has worked with DCM for over 11 years as a Field Representative, and previously spent four years with the NC Division of Marine Fisheries. We

are excited to have Ron serving in this new role. In May, Brendan Brock began working as the DCM's newest Field Rep in the Wilmington office. He comes to us from the NC Forest Service where he was an Assistant County Ranger for 2 ½ years. He has a Bachelor's degree in wildlife Ecology and been employed with the City of Wilmington's Storm Water Section and the USDA Forest Service in Colorado and New Hampshire. Tanya Pietila, who had recently been working for the Division as an administrative assistant, has moved into the Wilmington Regional Office Permit Support Specialist position vacated by the recent retirement of Shaun Simpson. Tanya has over 18 years of administrative support experience. Jason Brown recently joined Reserve staff as the Northern Sites Manager. He has completed the Master of Geospatial Information Science and Technology program with North Carolina State University and studied natural resource recreation as an undergraduate at Virginia Tech. Jason has prior experience as a state park ranger, most recently at Jockey's Ridge State Park.

Christian Kamrath, who has been our Coastal Resilience Specialist since last September, is leaving us at the end of this month to return to his home state of Florida. Christian has accepted a position as a Resilience Coordinator with Miami-Dade County, where he will be working alongside Monica Gregory, DCM's 2016-2018 Coastal Management Fellow. Christian has done outstanding work for us, including leading our coastal resilience workshops this spring and building our coastal resilience web portal for local governments. While this is a big loss for the Division, we are happy for Christian since he has been employed under "temporary" status, with no guarantee of long-term employment with DCM. We wish him all the best and are currently evaluating whether we will be able to refill the position. Steve Trowell, who was a DCM field representative in the Washington Regional Office, recently left the Division to accept a position with the NC Department of Transportation. Steve had been with the Division since 1998 and has a wealth of knowledge and experience in CAMA permitting and marine fisheries. We wish Steve all the best in his new position. Lynn Mathis, who is a field representative in the Elizabeth City office, is retiring on September 1. Lynn has been with the Division since 1996 and has been an integral part of the Elizabeth City Office. During this time period, she has held several different positions, including the NCDOT field representative and District compliance and enforcement representative. In addition to her time with DCM, Lynn worked approximately seven years with Currituck County where she administered the CAMA LPO program. Lynn has been a great asset to the Division, and we wish her the very best in her retirement. After 24 years with the Division of Coastal Management and over thirty years of state service, Doug Huggett will be retiring on September 1 and joining the private sector at a firm in Morehead City. As many of you already know, Doug has been an invaluable part of our senior management team over the course of his career. He cares deeply about his staff and our program, and he has done an outstanding job with the major permitting program. We all rely on him daily and he will be sorely missed.

VARIANCES

Stallings (CRC-VR-19-06), Pamlico County, Dredging in PNA
Brad Connell, Christine Goebel, Esq., Amy Wang, Esq.

Brad Connell provided an overview of the site. Christy Goebel represented staff. Attorney Amy Wang represented Petitioner. Ms. Goebel stated Petitioner Robert Stallings owns property located at 52 Silverwood Drive in Merritt, Pamlico County. The property is adjacent to Pittman Creek whose waters are designated as a Primary Nursery Area and are classified as SA-High Quality Waters and Nutrient Sensitive Waters which subject the property to the DWR Neuse River Buffer Rules. Petitioner is requesting a variance to develop an upland basin stabilized by a

vinyl bulkhead on his property, dredged to a depth of -3.3' normal water level. The proposed development includes a gravel driveway, a boat ramp, a side-to dock, and an access channel. This design followed a 2017/2018 application which was denied based on objections and concerns from DWR, DMF, and WRC. DMF and WRC had similar objections to the revised design. On March 25th, DCM denied Petitioner's CAMA Major Permit application. Petitioner seeks a variance to allow the new dredging and development proposed in the application. Ms. Goebel reviewed the stipulated facts and stated, Staff and Petitioner do not agree on any of the four statutory criteria, which must be met for the Commission to grant a variance. Following Ms. Goebel's argument, Attorney Amy Wang from Ward & Smith, P.A. discussed the stipulated facts Petitioner contends support the request to grant a variance.

Robin Smith made a motion that Petitioner has not shown that an unnecessary hardship results from strict application of the Commission's rules, standards or orders. Renee Cahoon seconded the motion. The motion passed with eight votes in favor (High, Medlin, Carlin, Emory, Smith, Cahoon, Salter, Norris) and one opposed (Baldwin).

Bob Emory made a motion that Petitioner has not shown that hardships result from conditions peculiar to the property. Lauren Salter seconded the motion. The motion passed with eight votes in favor (High, Medlin, Carlin, Emory, Smith, Cahoon, Salter, Norris) and one opposed (Baldwin).

Robert High made a motion to support Staff's position that hardships result from actions taken by the Petitioner. Doug Medlin seconded the motion. The motion passed with six votes in favor (High, Medlin, Catlin, Smith, Baldwin, Cahoon) and three opposed (Emory, Salter, Norris).

Doug Medlin made a motion to support Staff's position that the granting of this variance request will not be consistent with the spirit, purpose, and intent of the Commission's rules, standards, or orders; will not secure the public safety and welfare; and will not preserve substantial justice.

This variance request was denied.

NCDOT (CRC-VR-19-07), Ocracoke, Sandbags
Jonathan Howell, Christine Goebel, Esq., Mollie Cozart, Esq.
Jonathan Howell provided an overview of the site. Christy Goebel represented staff. Attorney Mollie Cozart represented Petitioner.

Ms. Goebel stated the NCDOT manages the Hatteras Southdock Ferry Terminal facility on the north end of Ocracoke Island in Hyde County. In June 2019, NCDOT submitted a request to DCM for an emergency shoreline stabilization project as a temporary measure until a long-term erosion control response could be implemented. DCM issued an Emergency Major Modification to CAMA Major Permit #224-87 authorizing the installation of an approximately 1,000 linear foot sheet pile bulkhead on the Estuarine Shoreline AEC. Conditioned out of the Permit was NCDOT's proposal to use sandbags larger than permitted by the Commission's rules and to construct a sandbag structure adjacent to the bulkhead but within the Inlet Hazard AEC that was at a partially perpendicular alignment and exceeded the Commission's rules on size limits for sandbag structures. NCDOT now seeks a variance to allow construction of the proposed sandbag

structure. Ms. Goebel reviewed the stipulated facts in the variance request and advised the Commission that Staff and Petitioners agree on all four statutory criteria that must be met in order to grant the variance. Ms. Cozart also spoke to the Commission regarding the four criteria.

Phil Norris made a motion that unnecessary hardships result from strict application of the Commission's rules, standards, or orders. Larry Baldwin seconded the motion. The motion passed unanimously (High, Medlin, Catlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris).

Larry Baldwin made a motion that hardships result from conditions that are peculiar to the property. Doug Medlin seconded the motion. The motion passed unanimously (High, Medlin, Catlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris).

Bob Emory made a motion that hardships do not result from actions taken by the Petitioner. Rick Catlin seconded the motion. The motion passed unanimously (High, Medlin, Catlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris).

Larry Baldwin made a motion that the requested variance will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and will preserve substantial justice.

This variance request was granted.

Legal Updates
Mary Lucasse, CRC Counsel, updated the Commission on active and pending litigation.

Larry Baldwin made a motion that the Commission go into closed session pursuant to NCGS 143-318.11(a)(3) to consider and give instructions to its attorneys concerning litigation filed in the United States District Court for the Eastern District of North Carolina titled Zito v. Coastal Resources Commission, number 2:19-CV-11-D.

PUBLIC INPUT AND COMMENT
Steve Smith, Topsail Island, commented on the availability of products other than wood for development; the Inlet Hazard Area, concerns with grandfathering rules, and the Town's lack of manpower to issue Minor Permits.

Ana Zivanovic-Nenadovic, NC Coastal Federation, commented in support of the Commission's decision to deny the Zito's variance request and in support of the Commission's defense of this decision in federal court. (Written comments submitted)

PUBLIC HEARING
15A NCAC 07H .0304, 7H .0309, & 7H .0313 – State Ports Inlet Management AEC
Heather Coats reviewed the proposed amendments. No comments were received.

15A NCAC 07H .0309 – Use Standards for Ocean Hazard Areas – Ocean Outfalls
No comments were received.

ACTION ITEMS

Consideration of Fiscal Analysis 15A NCAC 7H .1900 – Temporary Structures General Permit (CRC 19-15)

Kevin Hart

DCM has been in discussions with the scientific research community regarding proposed research projects and the need for CAMA permits. Since there is no General Permit available for the types of development activities typically associated with scientific research, DCM has historically requested the research project applications be processed through the CAMA Major Development Permit process. At its February 2019 meeting, the CRC approved draft language to modify 7H .1900 to provide regulatory flexibility to accommodate scientific research needs. The fiscal benefits of the proposed amendments are benefits to universities and state/federal resource agencies in terms of time and fees. The fiscal analysis has been approved by DEQ and OSBM. Staff requests approval of the fiscal analysis.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 07H .1900 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (High, Medlin, Emory, Smith, Baldwin, Cahoon, Salter, Norris) (Catlin absent for vote).

CRC Science Panel

Science Panel Member Appointments

Mike Lopazanski stated, the Science Panel is made up of engineers, geologists, and a marine biologist. Vacancies have been filled based on recommendations from DCM Staff, the CRC, and CRAC members. The Commission Chair makes appointments to the Science Panel and ad hoc members can be added as the need arises. Members serve four-year terms and the current members terms have expired. The CRC Executive Committee reviewed and discussed five nominations received and the current members who indicated an interest in continuing to serve. Chair Cahoon appointed five new members: Kevin Conner; Laura Moore; Allan Murray; Jesse McNinch; and Martin Posey. The Chair also re-appointed Bill Birkemeier, Bill Cleary, Tom Jarrett, Spencer Rogers, and Greg Rudolph. Bill Birkemeier will chair the Science Panel.

2020 Sea Level Rise Report Update – Science Panel Charge (CRC 19-19)

Tancred Miller

Tancred Miller stated the CRC's Science Panel completed its most recent sea level rise assessment report update in 2015. The legislature has requested updates every five-years. The next update is due in 2020. For the last report, the CRC established a process that included extensive public review and technical peer review by Drs. James Houston and Robert Dean. DCM envisions a similar process and timeline for the 2020 update. The Charge to the CRC Science Panel needs to be updated. The Department suggested that the CRC and the Science Panel revisit the Charge to discuss whether the update should be limited to a 30-year projection. Commissioner Emory stated that the report should not be limited to 30-years. The sea level rise report should be a source document and provide a longer timeframe projection for resilience and infrastructure planning. DCM will draft some language for the Commission to consider at its next meeting.

CRC RULE DEVELOPMENT

Shellfish Leases and Permitting (CRC 19-20)

Jonathan Howell

Through conversations with Division of Marine Fisheries (DMF), it was agreed that DCM could enhance the shellfish leasing process by providing comments on the proximity to marsh, requiring more formalized drawings, and considering the 1/3 width calculation on every proposed lease. As a commenting agency, the Division typically requests conditions stating that no attempt shall be made by the lessee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized lease. DCM also provides comments specific to navigation. CAMA permits may be required for development (pilings etc.) within lease boundaries. Floating upweller systems (FLUPSY) not located within a lease boundary, within a marina, at private docking facility, and all land-based upwellers within the Coastal Shoreline AEC will require a CAMA permit. Another topic discussed was pilings and whether they should be exempt on a lease. Howell stated that the proposed exemption language for shellfish leases will exempt shellfish leases from CAMA permitting if the following criteria are met: all posts including anchoring and marking posts must be less than four inches in diameter; floating platforms are limited to floating upweller systems with no greater than four-foot walkways; no wave baffles or other structures for the purpose of wave attenuation are proposed; no docking facilities or fixed platforms are proposed; all markers associated with shellfish aquaculture leases are located a minimum of 20 feet waterward of any coastal wetland vegetation that borders the waterbody; no enclosed or roofed structures; and no shore-based electric, water or other utilities are used to service an open water lease. This proposed exemption language is meant to provide some clarity and define exactly when a permit will be required. There is no language within the exemption related to navigation as this issue will be addressed through the coordination between the agencies and existing DMF statues. After discussion of the specifics of the proposed exemption and CRC authorities related to coastal development, the Commission requested staff develop language for a draft General Permit for shellfish leases to be discussed at the next meeting. The Commission also requested that input be sought from resource agencies and stakeholders on the draft GP language.

With no further business, the CRC adjourned.

Respectfully submitted,

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary

Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: September 4, 2019 (for the September 18-19, 2019 CRC Meeting)

RE: **Variance Request by Thomas Pollard (CRC-VR-19-05)**

Petitioner Thomas Pollard ("Petitioner") owns property located at 320 Willbarry Road in Jacksonville, Onslow County, North Carolina. The property is adjacent to the New River, which at this location is in inland fishing waters and the first 30' landward of normal water level is Public Trust Shoreline AEC. Petitioner proposed to develop four Bed & Breakfast units on top of the existing house, which is essentially built below the upper grade on the lot, into the bank of the property. The waterward proposed B&B units would be "development" within the Commission's 30-foot buffer area, and include some development outside the existing footprint, including the four pilings. It would also increase an existing non-conformity with the Commission's 30% impervious limits within the 30-foot-wide AEC. On July 25, 2019, the Onslow County CAMA Local Permit Officer denied Petitioner's CAMA Minor Permit application based on its incompatibility with the Commission's Public Trust Shoreline AEC rules. Petitioner now seeks a variance to allow the addition as proposed in his CAMA permit application.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Glenn Dunn, Petitioner's counsel, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Sammie Rogers, Onslow Co. CAMA LPO, electronically

RELEVANT STATUTES OR RULES **APPENDIX A**

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. **Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.**

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid, mitigate or reduce adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

(1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion including peat marshland, resistant clay shorelines, and cypress gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. **Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.**

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.

(B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion control devices or structures.

(C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.

(4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include 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.

(5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.

(6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" means a project that is paid for in any part by public funds.

(7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Cultural Resources.

(8) Established common law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.

(10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:

(A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
(B) Pile-supported signs (in accordance with local regulations);
(C) Post- or pile-supported fences;
(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
(H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;

(I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

(i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

(ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and

(J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:

(i) The lot on which the proposed residential structure is to be located, is located between:

(I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or

(II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;

(ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;

(iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

(iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and

(v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

STIPULATED FACTS **ATTACHMENT B**

1. The Petitioner is Tommy Pollard ("Petitioner"). Petitioner and his wife own a tract of land at 320 Willbarry Road, Jacksonville, Onslow County (the "Site"), known as Tract II, as shown on a plat recorded at Map Book 15, Page 40 of the Onslow County Registry, a copy of which is attached. Petitioner has owned this lot since February 22, 1979, as shown on a deed recorded at Book 546, Page 496, of the Onslow County Registry, a copy of which is attached. Petitioner added his wife Rebecca to title on August 4, 2016, as shown on a deed recorded at Book 4492, Page 408 of the Onslow County Registry, a copy of which is attached.

2. The Site is shown on ground level photographs taken by Jason Dail on June 12, 2019, as well as Onslow County GIS images and parcel boundaries overlain on aerial photographs, attached.

3. The Site is adjacent to the New River, which at this location is classified as SC waters by the Environmental Management Commission, and are closed to the harvest of shellfish.

4. The Site is located "inland of the dividing line between coastal fishing waters and inland fishing waters" and so pursuant to 15A NCAC 7H .0209(a)(2), the Site is within the Public Trust Shoreline sub-category of the Coastal Shorelines AEC. The Public Trust Shoreline AEC is comprised of the first 30' landward of the normal high water level on the Site, which here is generally located at the bulkhead. Pursuant to N.C.G.S. § 113A-118, any development in the AEC requires CAMA permit authorization.

5. The following prior CAMA permits have been issued for the Site:

- On August 14, 2001, CAMA General Permit #27306D was issued authorizing the construction of a docking facility.
- On July 15, 2016, CAMA General Permit #67107D was issued authorizing the installation of a boatlift in an existing slip.
- On August 23, 2019, the Onslow County CAMA LPO issued CAMA Minor Permit #LCP2019-11 to Thomas & Rebecca Pollard authorizing the repair of an existing bulkhead. A copy of this permit is attached.

6. On or about February 7, 2019, Petitioner, through his Authorized Agent Weston Lyall, PE, PLS, PLLC, applied for a CAMA Minor Permit with the CAMA Local Permit Officer for Onslow County. Petitioner proposed to re-configure and add an addition to the existing house in order to create a bed & breakfast establishment. A copy of the original site plan is attached.

7. On March 14, 2019, the CAMA LPO for the Onslow County denied Petitioner's CAMA minor permit application through the attached letter. The LPO noted that the new development was within the 30' buffer but did not meet one of the listed exceptions at 7H .0209(d)(10)(A-H).

8. On May 24, 2019, Petitioner applied for a variance from the Commission's standards in 15A NCAC 7H .0209(d)(10) (the CAMA 30' buffer) Petitioner's variance materials are attached.

9. During the process for agreeing on stipulated facts for the March 2019 variance, Staff became aware that the Petitioner wished to make some design changes from what had been applied for, denied, and part of the initial variance. Petitioner decided to redesign the project, submit a new CAMA minor permit application and a revised variance petition.

10. On July 3, 2019, Petitioner, through his Authorized Agent Mr. Lyall, applied for a CAMA Minor Permit with the CAMA LPO for Onslow County with the revised design, which was still proposing to re-configure and add an addition to the existing house. A copy of the revised site plan is attached.

11. According to a revised site plan dated as revised on July 3, 2019 and prepared by Weston Lyall, PE, PLS, PLLC, attached, the Site is 154,572 square feet (3.5 acres). The existing development on the Site includes an asphalt driveway, a pond, two storage buildings, a 4,802 sq. foot home set into the riverbank, an indoor pool, a concrete 4-car parking pad, a concrete walk and stairs, a bulkhead/house foundation, a deck (a portion of which extends waterward of normal high water), and an existing dock with boatslip. A copy of the tax card is attached. The proposed additions include two 28' by 20' and two 24' by 24' (total of four) piling-supported B&B units to be constructed on top of the existing residence on 12" by 12" pilings, as well as a proposed 2-story building added to the landward side of the existing residence and largely outside the 30' wide Public Trust Shoreline AEC. The floors of the B&B units would be 18' above the existing grade of the ground. On the site plan, the dashed lines indicate the footprint of the existing house and the shaded areas indicate the footprint of the proposed structures to be added on top of the existing house.

12. As part of the CAMA minor permit process, notice of the proposed project was sent to the adjacent riparian neighbors. In this case, Gerald & Amelia Hurst at 1 Amelia Lane, and Onslow County which owns the adjacent riparian parcel at 244 Riverbend Road, were sent notice letters about the proposed project by certified mail, return receipt requested, copies of which are attached. The LPO did not receive any objections from either adjacent riparian owner or anyone else during permit review.

13. The Commission's rules for the Coastal Shorelines AEC are found at 15A NCAC 7H .0209 and require several things, including

- that any "new development shall be located a distance of 30 feet landward of the normal water level or normal high water level" per 7H .0209(d)(10), and
- that "Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible" per 7H .0209(d)(2).

14. While most of the proposed bed & breakfast units will be over the existing house (existing impervious area), the outer four support pilings on the two waterward B&B units, which are proposed to be 1' x 1' each, are not within the existing house footprint, making them new development within the 30' buffer area. They can be seen on the revised site plan, attached.

15. Additionally, the area of the two waterward B&B units (28' x 20' = 560 sq. ft. x 2 units = 1,120 square feet) is new "development" within the 30' buffer, though much of this development is located on top of the existing impervious surface of the existing house. On the revised site plan, the Petitioner' Agent calculated the total impervious within the 30' AEC will be 1,905 square feet once the additional 4 square feet of proposed pilings are added. This results in an impervious surface area of 37.7% within the 30' AEC, which was exceeding and will continue to exceed the

30% limit of 7H .0209(d)(2). In accordance with DEMLR's approach to measuring impervious limits for stormwater, DCM does not count the areas of the B&B units which are elevated at 18' above grade above or where they are above existing impervious surfaces, when calculating impervious surfaces within the AEC per 7H .0209(d)(2). Only the new impervious pilings outside the drip line and on currently pervious ground are counted as increases in impervious surface on this Site.

16. In anticipation of filing this variance, the Petitioner's counsel contacted DCM through counsel to see if, due to the small square footage of development within the 30' buffer, and the similarity of the pilings to other listed exceptions to the 30' buffer in the Commission's rule, the development could be considered as an exception and be granted. DCM responded through counsel on March 28, 2019, that DCM agreed with the LPO's denial, in that the proposed new development within the buffer did not fall within the exceptions and so could not be granted, but that the Petitioner could consider redesigning or seek a variance. A copy of this email is attached.

17. Also in anticipation of filing this variance, the Petitioner's counsel contacted the Onslow County Land Use Administrator, Angela Manning AICP, to find out about local variances. Ms. Manning indicated that a Special Use Permit would be needed for the use as a Bed & Breakfast, and that the proposed expansion of an existing non-conforming building that doesn't meet the county's 15' rear setback requirement, would require that he seek and get a CAMA variance first, before a Special Use Permit request. Ms. Manning also expressed concern with compliance with the Onslow County Flood Damage Prevention Ordinance. A copy of this letter is attached.

18. On July 25, 2019, the Onslow County LPO denied Petitioner's permit application as the four pilings and two 28' by 20' B&B units were "development" within the CAMA Public Trust Shoreline 30' buffer. A copy of the denial letter is attached. The parties stipulate that the revised application also does not comply with the 30% impervious surface limit within the 30' AEC area, where the 4 square feet of new pilings within the 30' AEC area slightly increase the existing exceedance with the 30% impervious limit.

19. On July 19, 2019, Petitioner revised his variance request with the new application and denial and revised petition materials, seeking a variance from the Commission's standards in 15A NCAC 7H .0209(d)(10) (the CAMA 30' buffer) and the 30% impervious surface limits within the 30' Coastal Shorelines AEC in 15A NCAC 7H .0209(d)(2). Petitioner's variance materials are attached. Petitioner stipulates that the proposed development is contrary to the rules for which he seeks a variance.

Stipulated Exhibits:

1. Map Book 15, Page 40
2. Deed 546, Page 496
3. Deed 4492, Page 408
4. Original Site Plan
5. Tax Card for Site
6. Prior Issued permits- bulkhead repair and one GP
7. Original CAMA Minor Permit Application
8. Original CAMA permit denial letter dated March 14, 2019
9. Revised CAMA Minor Permit Application with revised site plan
10. Notice to Adjacent Neighbors
11. July 25, 2019 Denial Letter
12. March 28, 2019 attorney email communication
13. May 14, 2019 letter from Onslow County to Petitioner's Counsel
14. Powerpoint with ground-level and aerial photographs of the Site

PETITIONERS' and STAFF'S POSITIONS **ATTACHMENT C**

Initial Procedural Variance Request

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

Petitioners' Position: Yes.

Strict application of the rules in question would prevent the Petitioner from adding the fourth B&B units on top of the existing building. Such strict application of the rules is unnecessary in view of the minimal amount of impervious surface that would be added and the negligible potential impacts of the proposed development.

The 30-Foot Setback Rule

First, it should be understood that the Local Permit Officer ("LPO") denied the Petitioner's permit application only for being inconsistent with 15A NCAC 07H .0209(d)(10) which requires that new development shall be located a distance of 30 feet landward of the normal water level or normal high-water level, with certain specified exceptions. The permit was not denied for non-compliance with the 30% limit on impervious surface in the 30-foot Public Trust Shoreline AEC. Importantly, one of the exceptions to the 30-foot setback is for "(D)evelopment over existing impervious surfaces, provided that the existing impervious surface is not increased, and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible." The two 28' x 20' B&B units that the Petitioner proposed to add to the existing resident within the 30-foot setback are on top of the existing residence, which is an impervious surface. The only additional proposed impervious surface is the four 1' x 1' footings for support pilings. If it were not for these four feet of additional impervious surface added for the pilings, the proposed new development in the 30-foot buffer would qualify for this exception, so that this variance would not be necessary. Nevertheless, Petitioner acknowledges that the addition of the four 1' x 1' footing technically requires a variance, and since the pilings are required to support the second floor B&B units, prohibiting them by strictly applying the prohibition of new development in the 30-foot buffer would be a hardship because the pilings are necessary to support the B&B units, and the hardship is unnecessary because of the negligible impact of adding four square feet of impervious surface within the 30-foot buffer.

The 30% Impervious Surface Rule

The impervious surface of the existing structure and walkways cover 37.7% of the area in the 30' Public Trust Shoreline AEC. This exceeds the 30% limit established by 15A NCAC 7H .0209(d)(2). The 7.7% by which the existing structure exceeds the 30% limit is not the issue in this variance, only the impervious surface that the proposed development would add. The only impervious surface that the proposed development will add is the four square feet for four support pilings. As stated regarding the 30-foot buffer, not allowing a variance will create unnecessary hardship because the pilings are necessary to support the B&B units, and the impact of four square feet of impervious surface would be negligible.

Furthermore, it is important to note that the support piling footing have no appreciably greater impact than several of the other exceptions to the 30-foot setback would likely have, including pile-supported signs, post or pile supported fences, elevated boardwalks, and decks/observation decks.

Staff's Position: Yes.

Staff agrees that strict application of the Public Trust Shoreline 30' Buffer rule will cause Petitioner unnecessary hardships. Development of the house on the Site was undertaken before the Commission's 1999 passage of the 30' Buffer rule and the accompanying 30% impervious surface limits. Petitioner's proposed design, while technically adding new development within the buffer, largely does so over existing development, and largely falls within the Commission's exception allowing redevelopment of existing impervious surfaces. However, the four 1' x 1' support pilings, the northwest corner of the western waterfront B&B unit, and the eastern portion of the eastern waterfront B&B unit are new and are outside of the current footprint as shown on the revised site plan. This development in the buffer does not meet any of the Commission's specific exceptions allowed within the buffer, so a CAMA Permit could not be issued. Additionally, while the pre-30' Buffer structure was already slightly over the 30% impervious limit in the Commission's rule, the additional 4 square feet of impervious surface increase the current non-conformity only minimally. Due to the *de minimis* nature of the four 1' x 1' support pilings and the elevated portions of the waterfront B&B units which extend past the current footprint, in terms of new development in the buffer, Staff agrees that strict application of the Commission's 30' buffer rule and the 30% impervious surface limitation cause an unnecessary hardship in this case.

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 hardship in this case results from the fact that the residence already exists partially within the 30-foot buffer, and is peculiar in that the proposed pilings are necessary for support of the additions on top of the existing residence. Consequently, this hardship arises from the fact that rather than seeking to add rooms at ground-level, and greatly increasing new development and impervious surface, Petitioner seeks to add the rooms on top of the existing structure so that the only new impervious development, the support pilings, will add minimal additional impervious surface.

Staff's Position: Yes.

This structure was first built in 1982, as shown on the tax card, before the Commission's 30' Buffer rule and 30% impervious surface limits were enacted in 1999, and already occupies much of the buffer area on the Site. The existing configuration of the residence, being essentially below grade as measured from the top of the steep bank, and built into the steep bank, apparently prohibits or complicates the B&B additions without the addition of the four 1' x 1' support pilings and elevated portions of the waterfront B&B units beyond the existing impervious surface footprint. For these reasons, Staff does not disagree that Petitioner's hardships result from conditions peculiar to Petitioner's property.

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

Petitioner's Position: No.

Although the Petitioner has created the need for the variance because he wants to add the second floor B&Bs, this is the case for any request for a variance for an addition to an existing structure in the 30-foot Public Trust Shoreline AEC. As explained in B. above, the Petitioner is minimizing additional impervious surface being proposed and therefore minimizing the impacts created, while still adding the areas needed for a successful bed-and-breakfast. Although the Petitioner did build the residence in its location approximately thirty-eight years ago, he should not be considered to have caused his own hardship for the purpose of this variance request, but rather he has designed the addition so that it will have no significant impacts related to the intent and purposes of the rule, as explained further in D. below.

Staff's Position: No.

Petitioners took title to this property in 1979, and the house was built in 1982, seventeen years before the Commission's 30' Buffer and 30% impervious surface limit rules were promulgated. Petitioner now wishes to expand the structure and has designed additions to be largely within the existing impervious areas on the Site as allowed, except for the four 1' x 1' pilings and the proposed elevated waterfront B&B units which slightly extend beyond the existing footprint. Due to the *de minimis* nature of the additional development within the buffer not over existing impervious surfaces, and the apparent difficulty of supporting the B&B units due to the construction and design of the existing residence, Staff agrees that hardships are not the result of actions taken by the Petitioner.

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

Petitioner's Position: Yes.

The requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

The overriding reason that this variance request is consistent with the purposes of the applicable rule and standards is simply because the proposed new development adds only four square feet of impervious surface for the pilings in the 30-foot buffer in the Public Trust Shoreline AEC, and the second floor B&B addition which, although technically considered development, does not add any impervious surface. Therefore, together they would maintain the spirit, purpose and intent of the 30-foot setback rules.

The management objective of the rule is to ensure that new development is compatible with the dynamic nature of the shoreline by conserving its natural features. In summary, the stated purposes of the use standards are to limit uses to those types of development activities that will not be detrimental to public trust rights and the biological and physical functions of the estuarine system, and to avoid significant adverse impacts that would 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. Limiting impervious coverage in the 30-foot buffer serves these objectives by allowing natural drainage, avoiding stormwater runoff and sedimentation into the adjacent public trust waters, and otherwise not weakening natural barriers to erosion. The existing structure is already in place within the 30-foot buffer, and the only development requiring the variance, the 1' x 1' footings for the four pilings and the two B&B units on top of the existing residence, will not significantly affect the potential for runoff or sedimentation, increase potential erosion, weaken natural barriers, or in any other way be detrimental to public trust rights or the biological or physical features of the estuarine system or have any of the negative impacts that the standards for the 30-foot buffer and the 30% impervious surface limit are meant to protect against. Furthermore, the proposed new development does not further expose the structure or inhabitants to the dynamic nature of the shoreline. The existing structure sits on the high, stable bluff of the New River and its foundation is 25.7 feet above the floodway elevation. There is no significant risk due to flooding or erosion. There clearly will be no effect on public safety or welfare and substantial justice will be preserved.

Staff's Position: Yes.

Staff agrees that the variance requested from the Commission's 30-foot Buffer and the 30% impervious surface limit rules are consistent with the spirit, purpose and intent of these rules. Petitioner wishes to add on to the uniquely designed structure on the steep-banked Site, and most of the proposed development, while partially within the 30-foot Buffer, is over existing impervious surface, which is an exception in the Commission's rule. Staff agree that the small addition of impervious development in the buffer outside the existing footprint, some of which will be elevated, will not make a significant impact to the 30' Buffer's benefits on a Site that was already impacted and built before the enactment of the Commission's Buffer Rule. Staff also agree that this *de minimis* amount of additional development will not impact public health, safety or welfare by adding development and impervious surface to this largely impacted area within the 30' buffer on the Site, and granting a variance would preserve substantial justice.

Staff note that a variance could be conditioned to be more consistent with protecting public safety and welfare regarding water quality, if the language of 7H. 0209(d)(2) were followed, which requires impervious surfaces at 30% or less "unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation." An engineered stormwater design could address the impacts for those impervious surfaces proposed beyond the 30% limitation.

ATTACHMENT D:

PETITIONERS' VARIANCE REQUEST MATERIALS

(minus documents which are now stipulated exhibits in Attachment E)

CAMA VARIANCE REQUEST FORM **DCM FORM 11**
DCM FILE No.:_____

PETITIONER'S NAME BENNY THOMAS POLLARD
COUNTY WHERE THE DEVELOPMENT IS PROPOSED ONSLOW

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

(c) Do the hardships result from actions taken by the petitioner? Explain.

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

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. *The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.*

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

1. The name and location of the development as identified on the permit application;

2. A copy of the permit decision for the development in question;

3. A copy of the deed to the property on which the proposed development would be located;

4. A complete description of the proposed development including a site plan;

5. A stipulation that the proposed development is inconsistent with the rule at issue;

6. Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);

7. Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;

8. Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;

9. A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.

10. This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

**Please contact DCM or the local permit officer for a full list of comments received on your permit application. Please note, for CAMA Major Permits, the complete permit file is kept in the DCM Morehead City Office.*

[SEE ATTACHED]

1. The name and location of the development as identified on the permit application.

Case Name – Denial of CAMA Minor Development Permit
Application Number – LCP – 2019- 09
Location – 320 Willbarry Road, Jacksonville, North Carolina

2. A copy of the permit decision for the development in question

See Exhibit A

3. A copy of the deed to the property on which the proposed development would be located

See Exhibit B

4. A complete description of the proposed development including a site plan

The proposed development is an addition of two 28' x 20' bed-and-breakfast (B&B) units on top of the existing residence in the 30-foot Public Trust Shoreline AEC. See Exhibit C. This new second story to the existing residence would add within the 30-foot buffer established by the AEC four square feet of impervious surface for the footings for four 1' x 1' pilings to support the second floor B&B units.

Although the two 28' x 20' B&B units within the 30-foot Public Trust Shoreline AEC are entirely on top of the existing residence, the DCM staff considers them new development. Consequently the new development that will be added within the 30' buffer totals 1,120 square feet, however only the four 1' x 1' footings for their support pilings constitute impervious surface.

The proposed addition of the new development in the 30-foot buffer is the reason for the permit denial and this variance request. However, the impervious surface of the existing residence covers approximately 37.7% of the 30' AEC, which exceeds the 30% limit for the Public Trust Shoreline AEC. The proposed development would add only four square feet of impervious surface for four 1' x 1' support pilings for the two second floor B&B units. Although the permit denial was not based on this exceedance of the Public

Trust Shoreline's 30% impervious surface limit, the Petitioner acknowledges the exceedance and requests that a variance be granted along with the variance for the new development in the 30-foot buffer for the reasons set out below in the Petitioners' reasons that the four variance criteria are met.

5. A stipulation that the proposed development is inconsistent with the rule at issue

The applicant hereby stipulates that the proposed development is inconsistent with the rule at issue, 15A NCAC 07H .0209(d)(10), which requires that "(W)ithin the Coastal Shorelines Category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level - - ." However, as explained in this Petition, the inconsistency is extremely minor.

6. Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7)

See Exhibit C for copies of the notice, persons to whom it was sent and the certified mail receipts for each.

7. Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable

For reasons explained in 8. Below, the Onslow County Land Use Administrator directed Mr. Pollard to obtain a variance from the Coastal Resources Commission before any local zoning decision could be made, consequently a local variance was neither required nor available.

8. Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above

Before addressing why the proposed development meets the four criteria for a variance, the Petitioner hereby requests a procedural variance from the requirement of 15A N.C.A.C. 07J .0701(c)(7) that a variance be sought from the local government, if applicable. As explained in the letter from Angela Manning, Onslow County Land Use Administrator,

dated May 14, 2019 (See Exhibit D), the Petitioner submitted the required special use permit application to the County. The County determined that the existing building and expansion do not meet the County's rear setback requirement. The Ordinance requires a 15-foot setback from the New River except where the CAMA setback or another State or federal setback applies, in which case the proposed development must comply with the other setback. The Onslow County ordinance in this case requires compliance with the CAMA setback and the ordinance's 15-foot setback is not applicable. Therefore, Onslow County directed the Petitioner to obtain a variance from the Coastal Resources Commission before the required special use permit could be processed. Consequently the Petitioner cannot complete the permitting process under the Onslow County ordinance until this variance is obtained.

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

Yes. Strict application of the rules in question would prevent the Petitioner from adding the four B&B units on top of the existing building. Such strict application of the rules is unnecessary in view of the minimal amount of impervious surface that would be added and the negligible potential impacts of the proposed development.

<u>The 30-Foot Setback Rule</u>

First, it should be understood that the Local Permit Officer ("LPO") denied the Petitioner's permit application only for being inconsistent with 15A NCAC 07H .0209(d)(10) which requires that new development shall be located a distance of 30 feet landward of the normal water level or normal high-water level, with certain specified exceptions. The permit was not denied for non-compliance with the 30% limit on impervious surface in the 30-foot Public Trust Shoreline AEC. Importantly, one of the exceptions to the 30-foot setback is for "(D)evelopment over existing impervious surfaces,

provided that the existing impervious surface is not increased, and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible." The two 28' x 20' B&B units that the Petitioner proposed to add to the existing residence within the 30-foot setback are on top of the existing residence, which is an impervious surface. The only additional proposed impervious surface is the four 1' x 1' footings for support pilings. If it were not for these four feet of additional impervious surface added for the pilings, the proposed new development in the 30-foot buffer would qualify for this exception, so that this variance would not be necessary. Nevertheless, Petitioner acknowledges that the addition of the four 1' x 1' footing technically requires a variance, and since the pilings are required to support the second floor B&B units, prohibiting them by strictly applying the prohibition of new development in the 30-foot buffer would be a hardship because the pilings are necessary to support the B&B units, and the hardship is unnecessary because of the negligible impact of adding four square feet of impervious surface within the 30-foot buffer.

The 30% Impervious Surface Rule

The impervious surface of the existing structure and walkways cover 37.7% of the area in the 30' Public Trust Shoreline AEC. This exceeds the 30% limit established by 15A NCAC 7H .0209(d)(2). The 7.7% by which the existing structure exceeds the 30% limit is not the issue in this variance, only the impervious surface that the proposed development would add. The only impervious surface that the proposed development will add is the four square feet for four support pilings. As stated regarding the 30-foot buffer, not allowing a variance will create unnecessary hardship because the pilings are necessary to support the B&B units, and the impact of four square feet of impervious surface would be negligible.

Furthermore, it is important to note that the support piling footings have no appreciably greater impact than several of the other exceptions to the 30-foot setback would likely have, including pile-supported signs, post or pile supported fences, elevated boardwalks and decks/observation decks.

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

Yes. The hardship in this case results from the fact that the residence already exists partially within the 30-foot buffer, and is peculiar in that the proposed pilings are necessary for support of the additions on top of the existing residence. Consequently, this hardship arises from the fact that rather than seeking to add rooms at ground-level, and greatly increasing new development and impervious surface, Petitioner seeks to add the rooms on top of the existing structure so that the only new impervious development, the support pilings, will add minimal additional impervious surface.

C. Do the hardships result from actions taken by the petitioner?

No. Although the Petitioner has created the need for the variance because he wants to add the second floor B&Bs, this is the case for any request for a variance for an addition to an existing structure in the 30-foot Public Trust Shoreline AEC. As explained in B. above, the Petitioner is minimizing additional impervious surface being proposed and therefore minimizing the impacts created, while still adding the areas needed for a successful bed-and-breakfast. Although the Petitioner did build the residence in its location approximately thirty-eight years ago, he should not be considered to have caused his own hardship for the purpose of this variance request, but rather he has designed the addition

so that it will have no significant impacts related to the intent and purposes of the rule, as explained further in D. below.

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

Yes. The requested variance is consistent with the spirit, purpose and intent of the Commission rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

The overriding reason that this variance request is consistent with the purposes of the applicable rule and standards is simply because the proposed new development adds only four square feet of impervious surface for the pilings in the 30-foot buffer in the Public Trust Shoreline AEC, and the second floor B&B addition which, although technically considered development, does not add any impervious surface. Therefore, together they would maintain the spirit, purpose and intent of the 30-foot setback rule.

The management objective of the rule is to ensure that new development is compatible with the dynamic nature of the shoreline by conserving its natural features. In summary, the stated purposes of the use standards are to limit uses to those types of development activities that will not be detrimental to public trust rights and the biological and physical functions of the estuarine system, and to avoid significant adverse impacts that would impair water quality standards, increase shoreline erosion, alter coastal wetlands, or submerged aquatic vegetation (SAV), deposit spoils waterward or normal water level or normal high water, or cause degradation of shellfish beds. Limiting impervious coverage in the 30-foot buffer serves these objectives by allowing natural drainage, avoiding stormwater runoff and sedimentation into the adjacent public trust waters, and otherwise not weakening natural barriers to erosion. The existing structure is already in place within

the 30-foot buffer, and the only development requiring the variance, the 1' x 1' footings for the four pilings and the two B&B units on top of the existing residence, will not significantly affect the potential for runoff or sedimentation, increase potential erosion, weaken natural barriers, or in any other way be detrimental to public trust rights or the biological or physical features of the estuarine system or have any of the negative impacts that the standards for the 30-foot buffer and the 30% impervious surface limit are meant to protect against. Furthermore, the proposed new development does not further expose the structure or inhabitants to the dynamic nature of the shoreline. The existing structure sits on the high, stable bluff of the New River and its foundation is 25.7 feet above the floodway elevation. There is no significant risk due to flooding or erosion. There clearly will be no effect on public safety or welfare and substantial justice will be preserved.

9. Proposed Stipulated Facts and Stipulated Exhibits. See Exhibit F.

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

Glenn Dunn Signature of Petitioner or Attorney	7/19/19 Date
Glenn Dunn, Esq. Printed Name of Petitioner or Attorney	gdunn@poynerspruill.com Email address of Petitioner or Attorney
P.O. Box 1801 Mailing Address	(919) 783-2842 Telephone Number of Petitioner or Attorney
Raleigh, NC 27602-1801 City State Zip	(919) 783-1075 Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

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

By Fax:
(252) 247-3330

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

Contact Information for Attorney General's Office:

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

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

By Fax:
(919) 716-6767

Revised: July 2014

June 4, 2019

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUIRED

Gerald and Amelia Hurst
1 Amelia Lane
Jacksonville, NC 28540

Dear Adjacent Property Owner:

This letter is to inform you that we, Thomas & Rebecca Pollard, have requested a variance from the Coastal Resources Commission for an addition on the property at 320 Willbarry Rd., Jacksonville, NC 28540, in Onslow County. As required by CAMA regulations, we have enclosed a copy of the variance request as notification of our proposed variance. No action is required from you. However, if you wish to file written comments or objections, you may submit them to:

Braxton Davis, Director
NC Division of Coastal Management
Morehead City, NC 28405
(252) 808-2808

Sincerely,

Glenn Dunn
attorney for
Thomas & Rebecca Pollard
320 Willbarry Rd.
Jacksonville, NC 28540

EXHIBIT D

June 4, 2019

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUIRED

Onslow County
234 NW Corridor Blvd.
Jacksonville, NC 28540

Dear Adjacent Property Owner:

This letter is to inform you that we, Thomas & Rebecca Pollard, have requested a variance from the Coastal Resources Commission for an addition on the property at 320 Willbarry Rd., Jacksonville, NC 28540, in Onslow County. As required by CAMA regulations, we have enclosed a copy of the variance request as notification of our proposed variance. No action is required from you. However, if you wish to file written comments or objections, you may submit them to:

Braxton Davis, Director
NC Division of Coastal Management
Morehead City, NC 28405
(252) 808-2808

Sincerely,

Allen Dunn

attorney for
Thomas & Rebecca Pollard
320 Willbarry Rd.
Jacksonville, NC 28540

Name and Address of Sender	Check type of mail or service	027
H. GLENN DUNN POYNER SPRUILL PO BOX 1801 RALEIGH, NC 27602-1801	☐ Adult Signature required ☐ Adult Signature Restricted Delivery ☑ Certified Mail ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery (COD) ☐ Insured Mail ☐ Priority Mail ☐ Priority Mail Express ☐ Registered Mail ☐ Return Receipt for Merchandise ☐ Signature Confirmation ☐ Signature Confirmation Restricted Delivery	**Affix Stamp Here** *(If issued as an international certificate of mailing or for additional copies of this receipt)* ***Postmark with Date of Receipt***

USPS Tracking/Article Number	Addressee (Name, Street, City, State & Zip Code™)	Postage	(Extra Service) Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Sender if COD	ASR Fee	ASRD Fee	RD Fee	RR Fee	SC Fee	SCRD Fee	SH Fee
1. 9214890106615400013887210O	ONSLOW COUNTY 234 NW CORRIDOR BLVD JACKSONVILLE, NC 28540-5309 304463-00002000	1.45	3.50								1.60			
2. 9214890106615400013887192 9	GERALD & AMELIA HURST 1 AMELIA LN JACKSONVILLE, NC 28540-2932	1.45	3.50								1.60			

Total Number of Peices Listed by Sender	Total Number of Peices Received at Post Office	Postmaster, Per (Name of receiving employee)
2	2	

Facsimile PS Form 3877, April 2015 (Page 1 of 1) **Complete in Ink** **Privacy Notice: For more information on USPS privacy policies, visit usps.com/privacypolicy.**

$13.10

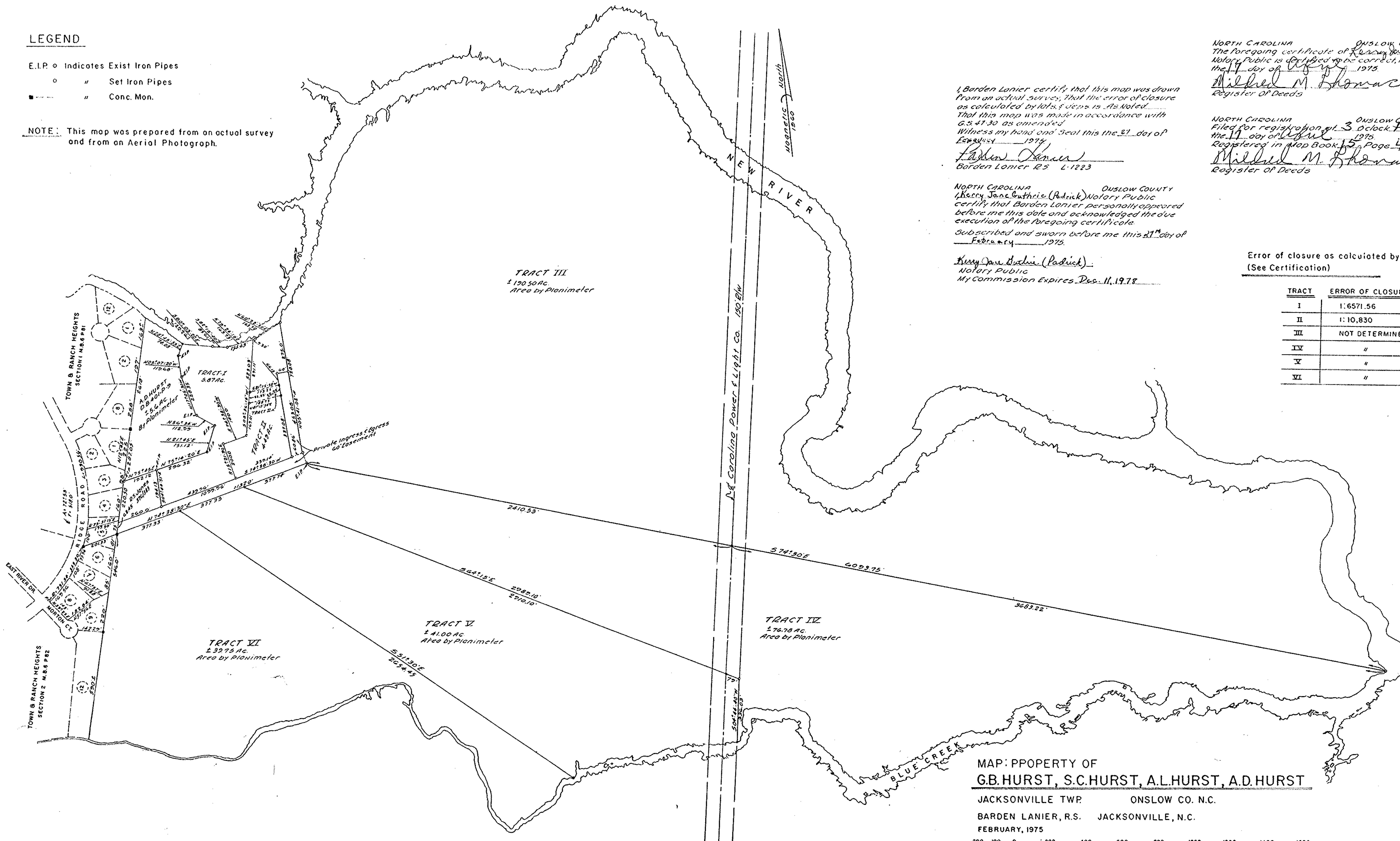
CENTURY STATION
JUN 04 2019
RALEIGH - 27602

ATTACHMENT E:

STIPULATED EXHIBITS INCLUDING POWERPOINT

1. Map Book 15, Page 40
2. Deed 546, Page 496
3. Deed 4492, Page 408
4. Original Site Plan
5. Tax Card for Site
6. Prior Issued permits- bulkhead repair and one GP
7. Original CAMA Minor Permit Application
8. Original CAMA permit denial letter dated March 14, 2019
9. Revised CAMA Minor Permit Application with revised site plan
10. Notice to Adjacent Neighbors
11. July 25, 2019 Denial Letter
12. March 28, 2019 attorney email communication
13. May 14, 2019 letter from Onslow County to Petitioner's Counsel
14. Powerpoint with ground-level and aerial photographs of the Site

029



I, Barden Lanier certify that this map was drawn from an actual survey; That the error of closure as calculated by lats. & deps. is As Noted. That this map was made in accordance with G.S. 47-30 as amended.
Witness my hand and Seal this the 27 day of February 1975.

Barden Lanier
Barden Lanier R.S. L-1223

NORTH CAROLINA ONSLOW COUNTY
I, Kerry Jane Guthrie (Padrick) Notary Public certify that Barden Lanier personally appeared before me this date and acknowledged the due execution of the foregoing certificate.
Subscribed and sworn before me this 27th day of February 1975.

Kerry Jane Guthrie (Padrick)
Notary Public
My Commission Expires Dec. 11, 1978

NORTH CAROLINA ONSLOW COUNTY
The foregoing certificate of Kerry Jane Guthrie (Padrick) Notary Public is certified to be correct. This the 17 day of April 1975.
Mildred M. Thomas
Register Of Deeds

NORTH CAROLINA ONSLOW COUNTY
Filed for registration at 3 o'clock P.M. the 17 day of April 1975.
Registered in Map Book 15 Page 40
Mildred M. Thomas
Register Of Deeds

Error of closure as calculated by lats. & deps. (See Certification)

TRACT	ERROR OF CLOSURE
I	1:6571.56
II	1:10,830
III	NOT DETERMINED
IV	"
V	"
VI	"

MAP: PPOPERTY OF
G.B. HURST, S.C. HURST, A.L. HURST, A.D. HURST
JACKSONVILLE TWP. ONSLOW CO. N.C.
BARDEN LANIER, R.S. JACKSONVILLE, N.C.
FEBRUARY, 1975

SCALE IN FEET — SCALE: 1" = 200'

030

Book 546 Page 496

BOOK 546 PAGE 496

THIS PRESENTED
TO TAX OFFICE
DATE Feb 22 1979
CRAWFORD COLLINS

NORTH CAROLINA

ONSLOW COUNTY

WARRANTY DEED

THIS DEED, made this the 21st day of February, 1979, by ALBERT L. HURST and wife, LINDA M. HURST of Onslow County, North Carolina, the parties of the first part, to BENNY TOMMY POLLARD, of Onslow County, North Carolina, the party of the second part;

WITNESSETH:

That the said parties of the first part, in consideration of Ten Dollars ($10.00) to them in hand paid, have bargained and sold, and by these presents do bargain, sell, and convey unto the said party of the second part, his heirs and assigns, a tract or parcel of land lying and being in Jacksonville Township, Onslow County, North Carolina, and described as follows:

> Being all of Tract No. II, containing 4.49 acres, more or less, as shown on that plat entitled "Map Property of G.B. HURST, S.C. HURST, A.L. HURST, A.A. HURST" and recorded in Map Book 15 at Page 40 of the Onslow County Registry, to which reference can be made for a more particular description.
>
> Subject to the same restrictive covenants as shown in that certain "Declaration of Covenants" by GERALD B. HURST and wife, AMELIA Z. HURST, dated March 10, 1977, and recorded in Book 532 at Page 300 of the Onslow County Registry, reference to which is hereby made for a complete listing and detailed explanation of the covenants. (SEE ATTACHED RESTRICTIONS)

To have and to hold the aforesaid tract or parcel of land and all privileges and appurtenances thereinto belonging to the said party of the second part and his heirs and assigns forever. And the said parties of the first part do covenant that they are seized of said premises in fee and have the right to convey the same in fee simple; that the same are free from encumbrances; and that they will warrant and defend the said title to the same against the claims of all persons whatsoever.

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Albert L. Hurst (Seal)
Albert L. Hurst

Linda M. Hurst (Seal)
Linda M. Hurst

STATE OF NORTH CAROLINA
REAL ESTATE EXCISE TAX
$10.00

STAMPS $10.00

Book 546 Page 497

546 PAGE 497

NORTH CAROLINA

ONSLOW COUNTY

I, ELIZABETH H. JAMES, a Notary Public in and for said County and State do hereby certify that ALBERT L. HURST and wife, LINDA M. HURST personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 21st day of February, 1979.

Elizabeth H. James
Notary Public

My commission expires: May 11, 1983

NORTH CAROLINA, ONSLOW COUNTY
The foregoing certificate(s) of Elizabeth H. James
XXXXX
Notary(ies) Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 546 Page 496 This 22 day of February, 1979 A. D., at 3:57 o'clock P. M.

Mildred M. Thomas
Register of Deeds Onslow County

Register of Deeds

RESTRICTIONS ON PROPERTY OF BENNY TOMMY POLLARD

I

All lots shall be known and described as residential lots, and no buildings, other than residences and accessory outbuildings and garages, shall be built on any lot or used for any purpose other than residential. No business, trade or commerce shall be operated on any part of any lot, nor shall any signs announcing or advertising any goods or services be displayed on any lot. This restriction shall not apply to a sales and information office to be erected by Declarants or their agent on any lot in the subdivision so long as any of the lots remain unsold. Declarants also reserve the right to move the sales and information office from lot to lot as the subdivision progresses and agree to remove this office when all of the lots in the subdivision have been sold.

II

No structure shall be erected on any lot other than a detatched single family dwelling not to exceed two and one-half (2-1/2) stories in height and a one (1) or more car garage and outbuildings. The following square footage requirement shall apply: Any one (1) story house with attached garage or carport shall have a minimum of 1400 square feet of living space; any one (1) story house without attached garage or carport shall have a minimum of 1700 square feet of living space; any one and one-half (1-1/2) story house shall have a minimum of 900 square feet on the ground floor, exclusive of garages or carports, and a minimum of 700 square feet on the second floor; any two (2) story house shall have a minimum of 800 square feet on the ground floor, exclusive of garages or carports, and a minimum of 800 square feet on the second floor; and any split-level house shall have a minimum of 1100 square feet on the ground floor, exclusive of garages or carports, and a total minimum square footage of 1600 square feet. A split foyer shall be considered a two (2) story house.

III

No stables of any kind shall be maintained on any lot and no animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial

purpose. No dogs or cats or other household pets may be kept for any purpose unless they are confined to the premises of the owner by means of a fence, or pen or unless they are tied by chain, rope, or other securing device which does not extend beyond the premises of the owner.

IV

Minimum building setback lines shall be as shown on the recorded plat of the subdivision. No lot shall be subdivided, nor shall its boundary lines be changed, except with the consent of the Declarants or their successors.

V

No trailer, basement, tent, shack, barn, or other outbuilding erected on any lot shall be used at any time as a residence, either temporarily or permanently, nor shall any residence of a temporary character be permitted. No modular houses or structures shall be permitted.

VI

No trailer, tent, shack, or other temporary structure shall be permitted at any time on any lot.

VII

No residence or outbuilding or garage shall be erected on any lot with any type of exterior wall finish other than brick, wood, siding, underwriter's approved composition siding, wood shingles, or natural stone. No exposed foundation or basement facing sahll be of any material other than brick or natural stone.

VIII

All driveways will be culverted and paved by the owner to join existing street pavement. All driveway culverts shall have brick headwalls constructed at either end of the culvert and culverts will be constructed in accordance with North Carolina Department of Transportation approved specifications.

IX

The exterior of all residences and other permanent structures shall be completed within one (1) year after the commencement of construction except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, national emergency or natural

034
Book 546 Page 500

546 PAGE 500

calamities. No structure shall be used at any time either temporarily or permanently as a residence until the exterior of such structure is completed.

X

Every dwelling which may be erected on any lot shall have its heating supply furnished from a central heating system located in the dwelling or on the premises, if coal, oil, or gas is used as fuel.

XI

In order to safeguard natural beauty of the area, after construction of a single residence, no debris, including trees, underbrush, etc., shall be burned on any of said lots, but shall be hauled away for burning or destruction elsewhere.

XII

All plans for the construction of residences, garages, or other buildings, or for any addition to the aforesaid residences, garage, or other buildings, must be approved by Declarants or their successor prior to construction.

XIII

All plumbing in any dwelling house shall be connected with an adequate approved sanitary septic tank properly constructed and maintained until such time as sanitary sewers shall have been installed by Declarants or by a political subdivision is a part. Water systems shall be individual well as approved by the local Health authorities until such time as a governmentally approved central supply system shall have been installed by Declarants or the political subdivision of which this subdivision is a part.

XIV

Declarants reserve the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation of underground electrical cables and/or the installation of street lighting either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the owner of each lot.

XV

No fences higher than 4 feet in height shall be erected on any lot,

BOOK 546 PAGE 501

except that this restriction shall not apply to any fence built to enclose a patio immediately adjacent to any dwelling and to any fence build 50 feet or more from a front property line. Corner lots are considered to have two front property lines. No metal or chain link type fencing shall be permitted within 50 feet to a front property line. No fencing will exceed 6 feet in height. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over or under the front 10 feet of each lot shown on plat and over 10 feet along each side of each lot shown on the plat. No structure of any nature shall be built upon said easement areas except fences which may be removed. This reservation shall not be considered an obligation of Declarants to provide or maintain any utilities or drainage.

XVI

In the event of violation or breach of any of the covenants set forth in this Declaration, Declarants, the owners of lots in the immediate neighborhood or elsewhere in the subdivision, or any or them severally or jointly, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof and to prevent the violation or breach of these covenants. In addition to the foregoing, Declarants shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of the terms of this Declaration, to enter upon the property where such violation exists and summarily remove such structure at the expense of the owner thereof, if after 30 days written notice of such violation it shall not have been corrected by such owner. Such entry and abatement or removal shall not be deemed a trespass. The failure of the Declarants or of any other party so entitled to enforce any covenant contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction contained in this Declaration shall in no way affect any of the other restrictions, which shall remain in full force and effect.

XVII

These covenants and restrictions are to run with the land and shall

be binding on all parties owning lots in the subdivision, and all persons claiming under them until January 1, 2007, at which time, said covenants shall be automatically renewed for successive periods of ten (10) years, unless the majority of the then lot owners at that time or at the end of any subsequent ten (10) year period, agree to change the covenants in whole or in part.

XVIII

LAND USE AND BUILDING TYPE: no lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height and a private garage for not more than two cars.

XIX

DWELLING COST, QUALITY AND SIZE: No dwelling shall be permitted on any lot at a cost of less than Nine Thousand and No/100 ($9,000.00) Dollars based upon cost levels prevailing on the date these Covenants are recorded, it being the intention and purpose of this covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these Covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than eight hundred (800) square feet for a one-story dwelling, nor less than five hundred (500) square feet for a dwelling of more than one story.

XX

BUILDING LOCATION: No building shall be located on any corner lot nearer than twenty (20) feet to the front lot line, or nearer than twenty (20) feet to any side street line and no building shall be located on any other lot nearer than twenty-five (25) feet to the front lot line; it being the intention of the parties hereto that the minimum building line shown on the plat hereinabove referred to shall control all construction on the lots subject to these Covenants. No building shall be located nearer than eight (8) feet to an interior lot line. There shall be allowed a ten (10%) percent tolerance in the set back line on both the front and side of each lot set

forth above and any dwelling constructed so as not to extend beyond said set back line more than ten (10%) percent of the set back distance encroached shall not be in violation of these covenants. No side yard shall be required for a garage or other permitted accessory building located fifty (50) feet or more from the minimum set-back line. For the purpose of this Covenant, eaves, steps, open carports and open porches shall not be considered a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. No fence shall be built on any lot which extends nearer the front lot line than the front portion of the house located on said lot.

XXI

LOT AREA AND WIDTH: No dwelling shall be erected or placed on any lot having a width of less than seventy (70) feet at the minimum building set-back line, nor shall any dwelling be erected or placed on any lot haveing an area of less than seven thousand (7,000) square feet.

XXII

EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet of each lot. It shall be the sole responsibility and duty of the owner of each lot or parcel of land described in Article I herein to maintain the drainage easement on said lot free from any obstruction and in a manner satisfactory to the Veterans Administration and Federal Housing Authority.

XXIII

NUISANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

XXIV

TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently; or allow trucks, school buses or other vehicles to be parked on said property, except those used for personal use.

XXV

LIVESTOCK AND POULTRY: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or

other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No dogs or cats or other household pets may be kept for any purpose unless they are confined to the premises of the owner by means of a fence, or pen, or unless they are tied by a chain, rope, or other securing device which does not extend beyond the premises of the owner.

XXVI

GARBARE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and waste shall not be kept except in sanitary containers, and no garbage incinerators shall be used on any residential lot.

XXVII

WATER AND SEWERAGE: There shall be no septic tanks constructed on any of the lots described in Article I hereof and no wells shall be dug or installed on any of saidlots for the purpose of supplying water for household uses. Said prohibited uses shall include, but shall not be limited to, drinking, cooking, washing or bathing. Provided, however, that the restrictions contained in this article shall be effective only so long as water and sewerage services are available from a public utility company approved by the appropriate State or Federal agencies.

XXVIII

TERN: The Convenants are to run with the land, and shall be binding on all parties and all persons claiming under them, for a period of twenty (20) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

XXIX

ENFORCEMENT: Enforcement shall be by proceeding at law, or in equity, against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages.

XXX

SEVERABILITY: Invalidation of any one of these Covenants by Judgment or Court Order shall in no wise affect any of the other provisions which shall remain in full force and effect.

039 Book 546 Page 505

546 PAGE 505

XXXI

It is understood and agreed and the grantees and all subsequent grantees expressly agree by the acceptance of the land within the above restrictive area that any or all of the above restrictive covenants that are set forth as Articles XX, XXI and XXII may be released, changed, modified, or amended by a majority vote of the property owners having frontage on the street involved on the area shown on the aforesaid plat; owners shall have one vote for each lineal foot owner.

Doc ID: 012947890004 Type: CRP
Recorded: 08/04/2016 at 08:21:12 AM
Fee Amt: $26.00 Page 1 of 4
Revenue Tax: $0.00
Onslow County, NC
Rebecca L. Pollard Reg. of Deeds
BK 4492 PG 408-411

Recording Time, Book and Page

Excise Tax 0

NO SEARCH REQUESTED

Tax Lot No. _____ Parcel Identifier No. 021441

Verified by _____ County on the ___ day of _____,

Mail after recording to: Benny Thomas Pollard

This instrument was prepared by: Benny Thomas Pollard

Brief Description for the index: Tract 2 4.49 ac Map Bk 15 Pg 40

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made _____, _____, by and between

GRANTOR	GRANTEE
Benny Thomas Pollard, who acquired title as Benny Tommy Pollard and wife, Rebecca L. Pollard	Benny Thomas Pollard and wife, Rebecca L. Pollard
320 Willbarry Road, Jacksonville NC 28540	320 Willbarry Road Jacksonville NC 28540

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g., corporation or partnership.

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

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Onslow County, North Carolina and more particularly described as follows:

BEING ALL OF THAT CERTAIN PROPERTY AS DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN AN THOUGH FULLY SET OUT

Subject to any restrictions and easements appearing of record.

All or a portion of the property herein conveyed includes the primary residence of Grantor.

EXHIBIT B

The properties hereinabove described was acquired by Grantor by instruments recorded in Book 546 Page 496 Onslow County Registry.

A map showing the above described property is recorded in Map Book 15 Page 40 Onslow County Registry.

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

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

The purpose of this deed is to create tenancy by the entireties pursuant to N.C.G.S.39.13.3 for the above-referenced real property.

Benny Tommy Pollard (SEAL)
Benny Tommy Pollard AKA
Benny Thomas Pollard

Rebecca L. Pollard (SEAL)
Rebecca L. Pollard

STATE OF North Carolina

COUNTY OF

I certify that the following people personally appeared before me this day, acknowledging to me that they signed the foregoing document in the capacity indicated thereon: Benny Tommy Pollard and Rebecca L. Pollard

Date: 8-3-16

Notary Public Tonya Meadows

TONYA MEADOWS NOTARY PUBLIC ONSLOW COUNTY, NC

My Commission Expires
1-29-21

EXHIBIT A

Lying and being in Jacksonville Township, Onslow County, North Carolina and being more particularly described as follows:

Being all of Tract No. II, containing 4.49 acres, more or less, as shown on that plat entitled, "Map Property of G.B. Hurst, S.C. Hurst, A.L. Hurst, A.A. Hurst" and recorded in Map Book 15, at Page 40 of the Onslow County Registry, to which reference can be made for a more particular description.

Subject to the same restrictive covenants as shown in that certain "Declaration of Covenants" by Gerald B. Hurst and Amelia Z. Hurst, dated March 10, 1977, and recorded in Book 532 at Page 300 of the Onslow County Registry, reference to which is hereby made for a complete listing and detailed explanation of the covenants. Also subject to the restrictions recorded in Book 546 Page 496, Onslow County Registry.

DEPARTMENT OF TAX ADMINISTRATION

Tax Certification Form

(Check One Box)

☑ This certifies that there are no delinquent ad valorem taxes, or other taxes which the Onslow County Tax Collector is charged with collecting, that are a lien on:

Parcel Identification Number:

021441

This is not a certification that this Onslow County Parcel Identification Number matches the deed description.

☐ No certification required, as attorney statement that any delinquent taxes will be paid from closing proceeds is included on first page of deed.

☐ Balance due on account. It must be paid to Onslow County Tax Collector within 5 days of closing.

Pam McAteer Digitally signed by Pam McAteer DN: cn=Pam McAteer, o, ou, email=pam_mcateer@onslowcountync.gov, c=US Date: 2016.08.03 15:39:43 -04'00'

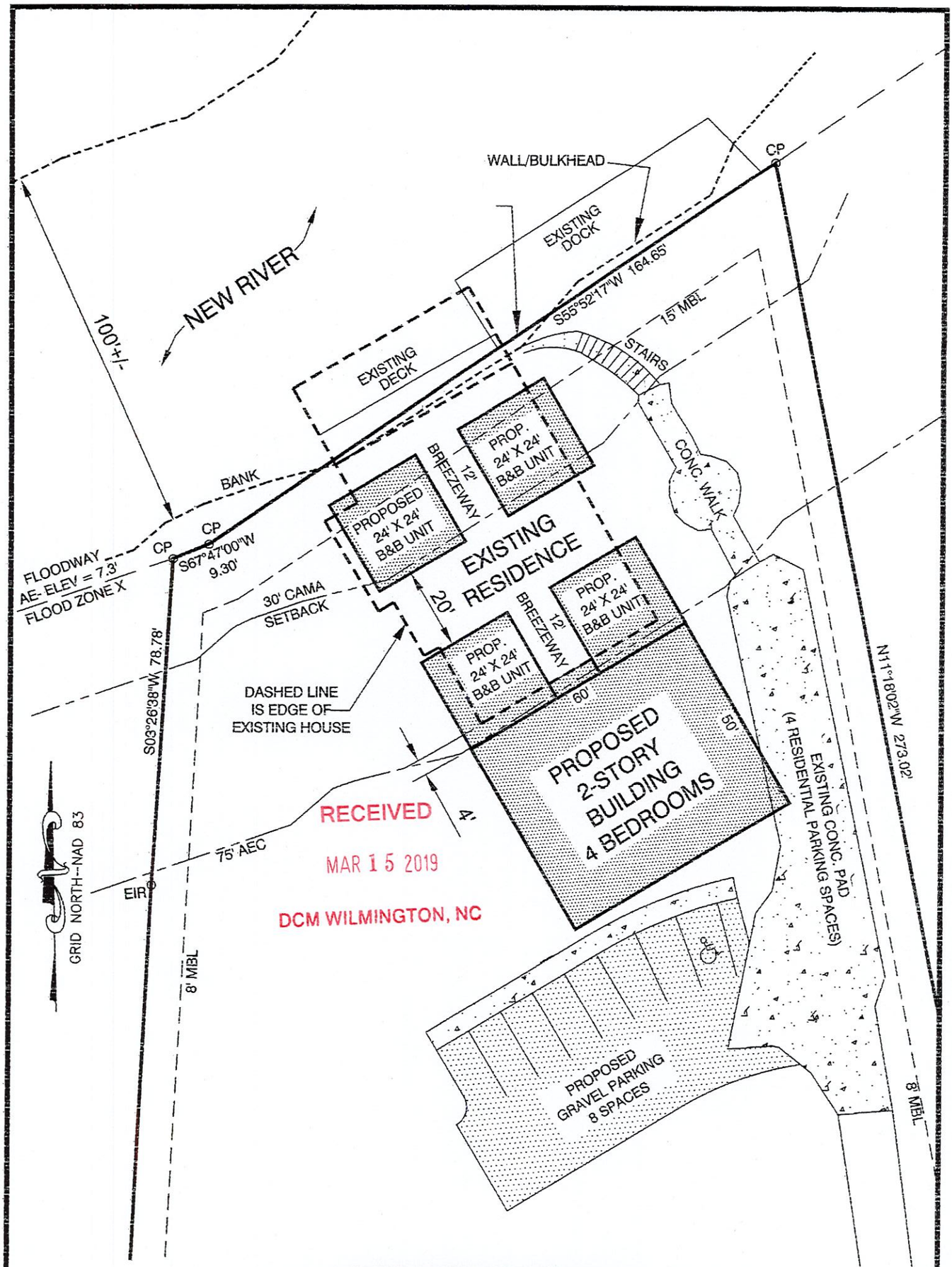
Tax Collections Staff Signature

08/03/2016

Date

☐ This parcel may have deferred taxes which become due upon transfer of the property. Call the Tax Office, Land Records Division at 910-989-2204 for more information.

234 NW Corridor Blvd • Jacksonville, North Carolina • 28540 • Phone: (910) 989-2200 • Fax: (910) 989-5818 • OnslowCountyNC.gov/tax



RECEIVED
MAR 15 2019
DCM WILMINGTON, NC

ATTACHMENT

GRAPHIC SCALE IN FEET

30 15 0 30 60

NORTH CAROLINA
ONSLOW COUNTY

I, WESTON LYALL, PROFESSIONAL LAND SURVEYOR NUMBER L-4438, CERTIFY THAT THIS PLOT PLAN WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION (MAP BOOK 15 PAGE 40) AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY: CLASS OF SURVEY: B; POSITIONAL ACCURACY: 500 RMS; TYPE OF GPS FIELD PROCEDURE: VRSRTKGPS; DATUM: NAD83 (2007) NAVD88; GEOID MODEL: GEOID 03; COMBINED GRID FACTOR: 0.9999697; UNITS: US SURVEY FEET.

1/31/18

WESTON LYALL
REGISTRATION NUMBER L-4438

NORTH CAROLINA PROFESSIONAL SEAL L-4438 LAND SURVEYOR WESTON LYALL

PRELIMINARY SITE PLAN ATTACHMENT FOR

POLLARD BED & BREAKFAST

320 WILLBARRY RD, TRACT 2 HURST DIVISION
ONSLOW COUNTY, NC
JACKSONVILLE TOWNSHIP

SCALE: 1" = 30' **JANUARY 31, 2018**

WESTON LYALL, PE, PLS, PLLC
214 HIGHWAY 17N SUITE 1
HOLLY RIDGE, NC 28445
PHONE: 910-329-9961 FIRM LICENSE #P-0937
STRUCTURAL & CIVIL ENGINEERING & LAND SURVEYING

Profile

Parcel:	021441	Land Use Code:	08
Map # :	331-32.1	LUC Description:	Waterfront River/Creek
PIN:		Municipality:	021441
Address:	320 WILLBARRY RD	NBHD:	OAKHURST RIVER
Tax Year:	2020	Tax District:	
Owner Details:	POLLARD BENNY THOMAS & REBECCA L	Zoning:	R-15
		Land Acres:	3.54
Mailing Address:	320 WILLBARRY RD	Topography:	
		Utilities	08 - Electric
	JACKSONVILLE NC 28540		02 - Public Water
Description:	PT TR2 HURST DIV		05 - Well
	UNDRGRND DWELL W/INDOOR POOL		

Value Summary

Appraised Land:	110600	Prior Land		Assessed Land	110600
Appraised Building:	279180	Prior Building		Assessed Building	279180
Appraised Total:	389780	Prior Total		Assessed Total	389780

Primary Residential Card

Card:	1	Basement:	None	Fireplace Pref.:	1
Stories:	2	Square Feet:	4802	Fireplace OP/ST:	
Use:		HT/AC:	Central Heat / AC	Basement Gar.:	1
Type:	Single Family	Fuel:	Solar	Grade:	C
Year Built:	1982	System:	Forced Hot Air	Cond (CDU):	Average
Year Remod.		Attic:	1	Percent Complete:	
Total Rooms:	3	Finished Basement:	0	Family Room:	
Bedrooms:	2	Recreation Room:	0	Ext. Material:	Concrete Block
Full Bath:	3	Half Bath:	0		

Commercial Card

Year Built	Stories	Units
Eff. Yr. Built	Gross Flr. Area	Grade

Land

Classification		Eff. Front	Eff. Depth	Type	Acres
29-LAKE/POND	G		/ .44	100	
08-WATERFRONT RIVER/CREEK	G		/ 1	100,000	
23-RESIDUAL	A		/ 2.1	10,500	

Agriculture

Line	Acres

Other Items

Code	Description		Yr Blt	Grade
02 - WOOD DECK		C	75.3.25	450
91 - Bricking		B	759.3.253	4,000
12 - BLACK TOP		D	3570.10.357	3,350
67 - DOCK		C	400.20.20	5,200

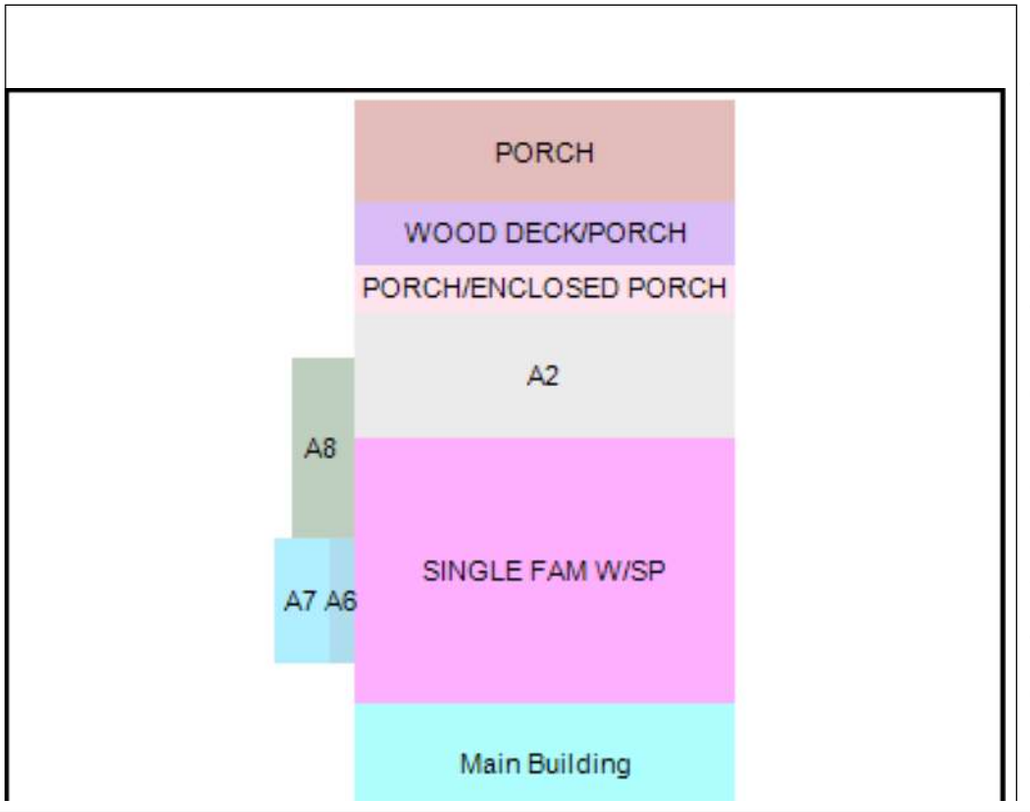
14 - SHOP	C	360.18.20	4,210
05 - POOL	C	896.32.28	16,130
02 - WOOD DECK	C	150.6.25	900
91 - Bricking	C	300.6.50	1,010

Sales History

Date	Book-Page	Grantor	Sale	Desc	Parcels	Amount
22-FEB-1979	546--496		00	Valid Sale		10,000
04-AUG-2016	4492--408	POLLARD BENNY T	25	Unqualified Sales		0

PHOTO

SKETCH



Sketch

0 Main Building 784 Sq. Ft.
1 SINGLE FAM W/SP - 05:SINGLE FAM W/SPEC 1666 Sq. Ft.
2 SINGLE FAMILY/SINGLE FAMILY - 01/01:SINGLE FAMILY/SINGLE FAMILY 784 Sq. Ft.
3 PORCH/ENCLOSED PORCH - 80/81:PORCH/ENCLOSED PORCH 294 Sq. Ft.
4 WOOD DECK/PORCH - 88/80:WOOD DECK/PORCH 392 Sq. Ft.
5 PORCH - 80:PORCH 637 Sq. Ft.
6 PATIO - 84:PATIO 48 Sq. Ft.
7 UTILITY ROOM - 86:UTILITY ROOM 112 Sq. Ft.
8 UTILITY ROOM - 86:UTILITY ROOM 184 Sq. Ft.
1 - 05:POOL 896 Sq. Ft.
2 2s FR - 12:2s FR 3570 Sq. Ft.
3 - 67:DOCK 400 Sq. Ft.
4 - 02:WOOD DECK 150 Sq. Ft.
5 - 02:WOOD DECK 75 Sq. Ft.
6 - 91:Bricking 300 Sq. Ft.
7 - 91:Bricking 759 Sq. Ft.
8 1s FR - 14:1s FR 360 Sq. Ft.

River File
20808141A

RECEIVED
SEP 19 2001
COASTAL MANAGEMENT
MOREHEAD

27306-D

CAMA and DREDGE AND FILL GENERAL PERMIT

as authorized by the State of North Carolina
Department of Environment and Natural Resources and the Coastal Resources Commission
in an area of environmental concern pursuant to 15 NCAC 7H .2000.

Applicant Name TOMMY POLLARD Phone Number (910) 455-4019

Address 1 POLLARD LN.

City JACKSONVILLE State NC Zip 28546

Project Location (County, State Road, Water Body, etc.) CAMA, ADJACENT NEW RIVER, ONSLOW CO.

Type of Project Activity RECONFIGURATION OF EXISTING DOCK

PROJECT DESCRIPTION

Pier (dock) Length 3'X63'

Groin Length

number

Bulkhead Length

max. distance offshore

Basin, channel dimensions

cubic yards

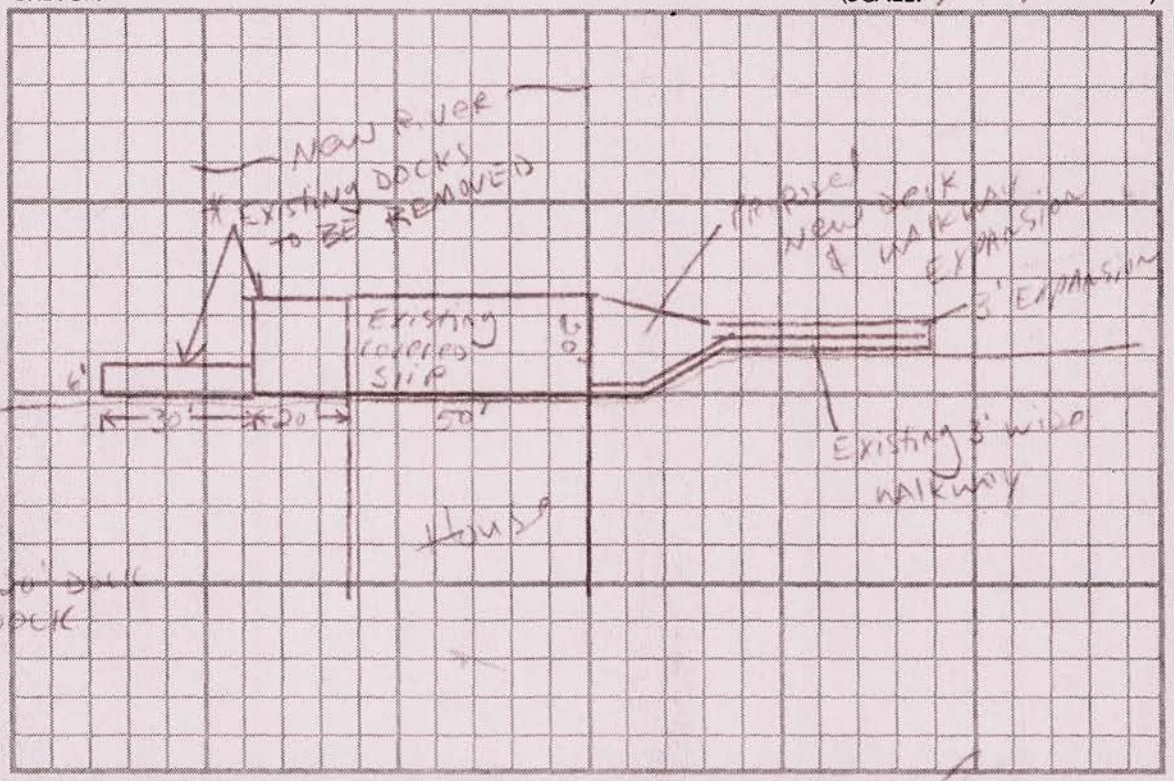
Boat ramp dimensions

Other DOCK 17'X23'

+ REMOVE 20'X30' DOCK

+ REMOVE 6'X30' DOCK

SKETCH (SCALE: 1" = 40')



This permit is subject to compliance with this application, site drawing and attached general and specific conditions. Any violation of these terms may subject the permittee to a fine, imprisonment or civil action; and may cause the permit to become null and void.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. The applicant certifies by signing this permit that 1) this project is consistent with the local land use plan and all local ordinances, and 2) a written statement has been obtained from adjacent riparian landowners certifying that they have no objections to the proposed work.

In issuing this permit the State of North Carolina certifies that this project is consistent with the North Carolina Coastal Management Program.

Thomas F. Pollard
applicant's signature

D. H. Cooper
permit officer's signature

09-14-01 issuing date

11-14-01 expiration date

7H.2000
attachments

$100.00 CK # 1306
application fee

ONSLOW COUNTY
Local Government

LCP2019-11
Permit Number

CAMA
MINOR DEVELOPMENT
PERMIT

as authorized by the State of North Carolina, Department of Environment Quality 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 Thomas & Rebecca Pollard authorizing development in the Estuarine Shoreline at 320 Willbarry Rd., in Jacksonville, NC, as requested in the permittee's application, dated August 8, 2019. This permit, issued on August 23, 2019, 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: Repair bulkhead & banks to erosion.

(1) All proposed development and associated construction must be done in accordance with the permitted work plat drawings(s) dated received on August 12, 2019.

(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 910-989-3065 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. 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, 2022

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.

Dammie Rey

ONSLOW COUNTY
CAMA LOCAL PERMIT OFFICIAL
234 Northwest Corridor Blvd
JACKSONVILLE, NC, 28540

PERMITTEE
(Signature required if conditions above apply to permit)

Name: Thomas & Rebecca Pollard
Minor Permit # LCP2019-11
Date: August 23, 2019
Page 2

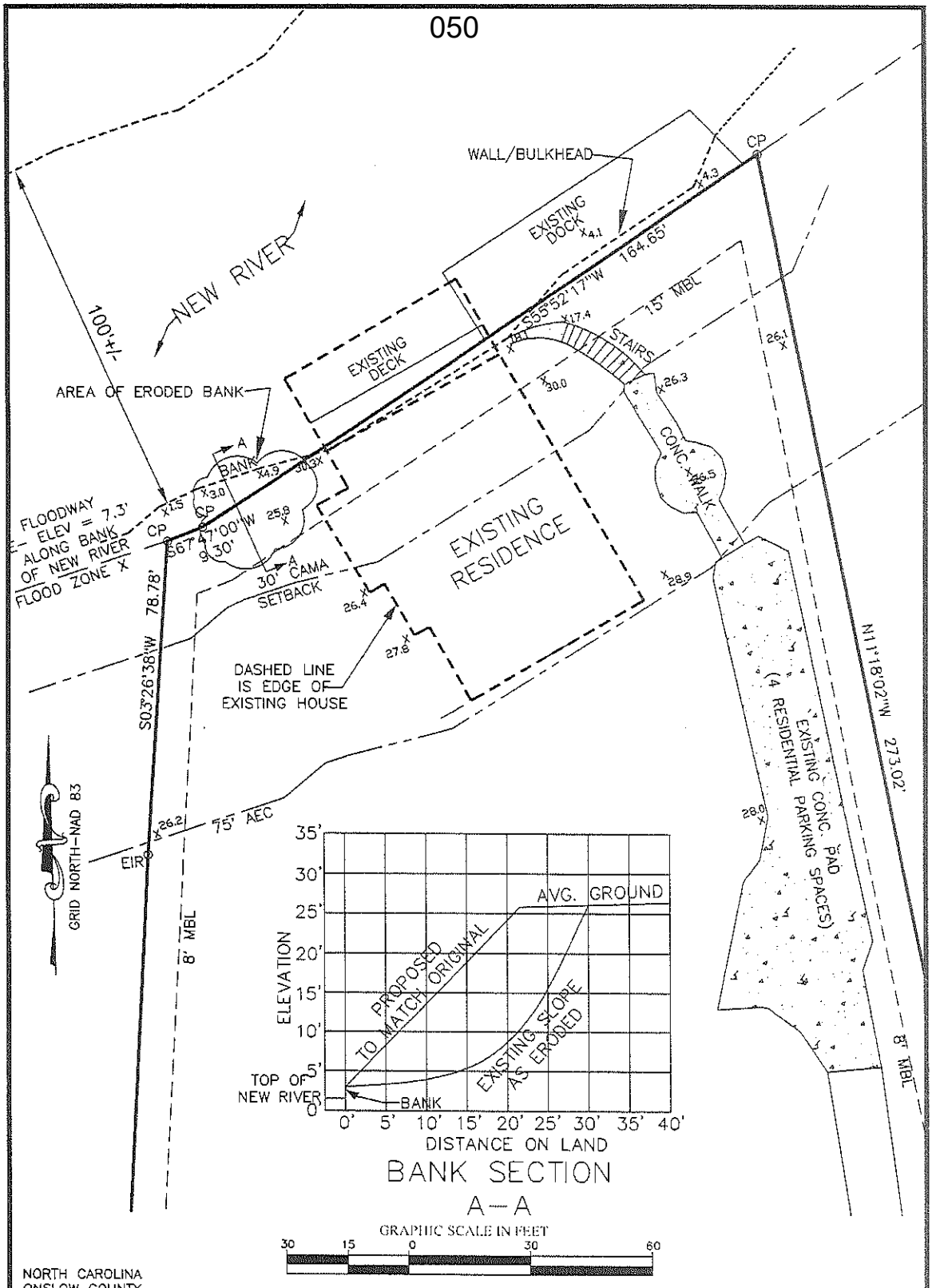
(5) Unless specifically allowed in 15A NCAC 07H. 0209(d)(10), and shown on the permitted plan drawing, all development/construction shall be located a distance of 30 feet landward of Normal High Water. No portion of the roof overhang shall encroach into the 30 ft. buffer.

(6) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures. Prior to any land-disturbing activities, a barrier line of filter cloth must be installed between the land disturbing activity and the adjacent marsh or water areas, until such time as the area has been properly stabilized with a vegetative cover.

(7) Any proposed for grading within the 30' buffer from the Normal High Water must be contoured to prevent additional stormwater runoff to the adjacent marsh. This area shall be immediately vegetatively stabilized, and must remain in a vegetated state.

(8) All other disturbed areas shall be vegetatively stabilized (planted and mulched) within 14 days of construction completion.

SIGNATURE:_____ DATE:_____
PERMITTEE



NORTH CAROLINA
ONSLOW COUNTY

I, WESTON LYALL, PROFESSIONAL LAND SURVEYOR NUMBER L-4438, CERTIFY THAT THIS PLOT PLAN WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION (MAP BOOK 15 PAGE 40) AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY: CLASS OF SURVEY: B; POSITIONAL ACCURACY: 500 RMS; TYPE OF GPS FIELD PROCEDURE: VRSRTKGPS; DATUM: NAD83 2007; NAVD88; GEOID MODEL: GEOID 03; COMBINED GRID FACTOR: 0.9999697; UNITS: US SURVEY FEET.

8/6/19

WESTON LYALL
REGISTRATION NUMBER L-4438

NORTH CAROLINA PROFESSIONAL SEAL L-4438 LAND SURVEYOR WESTON LYALL

SITE PLAN FOR
TOMMY POLLARD
320 WILLBARRY RD, TRACT 2 HURST DIVISION
ONSLOW COUNTY, NC
JACKSONVILLE TOWNSHIP

SCALE: 1" = 30'

AUGUST 6, 2019

WESTON LYALL, PE, PLS, PLLC
214 HIGHWAY 17N SUITE 1
HOLLY RIDGE, NC 28445
PHONE: 910-329-9961 FIRM LICENSE #P-0937
STRUCTURAL & CIVIL ENGINEERING & LAND SURVEYING

Locality ONSLOW Permit Number LCP-2019-03

Ocean Hazard _____ Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other _____

(For official use only)

GENERAL INFORMATION

LAND OWNER - MAILING ADDRESS

Name Thomas & Rebecca Pollard

Address 320 Willbarry Road

City Jacksonville State NC Zip 28540 Phone 910.455.5552

Email btommy.pollard@gmail.com

AUTHORIZED AGENT

Name Weston Lyall, PE, PLS, PLLC

Address 214 Highway 17 N. Suite 1

City Holly Ridge State NC Zip 28445 Phone 910.329.9961

Email westonlyall@westonlyall.com

LOCATION OF PROJECT: (Address, street name and/or directions to site; name of the adjacent waterbody.)

320 Willbarry Rd. Jacksonville, NC 28540. Property is located on New River (R-15)

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Proposed pool & breakfast addition

SIZE OF LOT/PARCEL: 154,572 square feet 3.5 acres

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

COMPLETE EITHER (1) OR (2) BELOW (***Contact your Local Permit Officer if you are not sure which AEC applies to your property***)**:**

(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE: _____ square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 4,332 square feet (includes the area of the foundation of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.) (proposed)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Energy, Mineral and Land Resources (DEMLR)?

YES _____ NO ✓

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

OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit, including, but not limited to: Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others. Check with your Local Permit Officer for more information.

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

✓ an owner or record title, Title is vested in name of Thomas & Rebecca Pollard, see Deed Book 4492 page 408 in the Onslow County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT RIPARIAN 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)	Gerard & Amelia Hurst	1 Amelia Ln. Jacksonville, NC 28540
(2)	Onslow County	234 NW Corridor Blvd. Jacksonville, NC 28540
(3)		
(4)		

ACKNOWLEDGEMENTS:
I, the undersigned, 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.

I furthermore certify that I am authorized to grant, and do in fact grant, permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This the 7th day of Feb., 20 19

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

This application includes: *general information (this form), a site drawing as described on the back of this application, the ownership statement, the Ocean Hazard AEC 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.*

AGENT AUTHORIZATION FOR CAMA PERMIT APPLICATION

Name of Property Owner Requesting Permit: Thomas & Rebecca Pollard

Mailing Address: 320 Williamy Rd.
Jacksonville, NC 28540

Phone Number: 910.455.5552

Email Address: btammy.pollard@gmail.com

I certify that I have authorized Weston Lyall, PE, PLS, PLLC,
Agent / Contractor

to act on my behalf, for the purpose of applying for and obtaining all CAMA permits necessary for the following proposed development: Proposed bed & breakfast addition

at my property located at 320 Williamy Rd Jacksonville, NC,

in Onslow County.

I furthermore certify that I am authorized to grant, and do in fact grant permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

Property Owner Information:

BJ Pollard
Signature

Tommy Pollard
Print or Type Name

owner
Title

2 / 7 / 19
Date

This certification is valid through 3 / 31 / 19

Receipts for
Certified Mail
(Staple Here)

2-7-19
Date

Gerald + Amelia Horst
Adjacent Property Owner

1 Amelia Ln.
Mailing Address

Jacksonville, NC 28540
City, State, Zip Code

Dear Adjacent Property:

This letter is to inform you that I, Thomas + Rebecca Pollard have applied for a CAMA Minor
Property Owner

Permit on my property at 320 Willbarry Rd. Jacksonville, NC 28540, in Pender/Onslow
Property Address

County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910.455.5552, or by mail at the address listed below. If you wish to
Applicant's Telephone

file written comments or objections with the Surf City CAMA Minor Permit Program, you may submit them to:

Jason Dail, Field Representative
NC Division of Coastal Management
Town of Surf City Local Permit Program
127 Cardinal Drive Extension
Wilmington, NC 28405

Sincerely,

Thomas + Rebecca Pollard
Property Owner

320 Willbarry Rd.
Mailing Address

Jacksonville, NC 28540
City, State, Zip Code

055

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Thomas + Rebecca Pollard 's
(Name of Property Owner)

property located at 320 Williams Rd - E
(Address, Lot, Block, Road, etc.)

on New River (Waterbody), in Jacksonville - Onslow Co. (Town and/or County) N.C.

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal.

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Signature

Print or Type Name

Telephone Number

Date

Receipts for Certified Mail
(Staple Here)

2-7-19
Date
Onslow County
Adjacent Property Owner
234 NW Corridor Blvd.
Mailing Address
Jacksonville, NC 28540
City, State, Zip Code

Dear Adjacent Property:

This letter is to inform you that I, Thomas & Rebecca Pollard (Property Owner) have applied for a CAMA Minor Permit on my property at 320 Willbarry Rd Jacksonville, NC 28540 (Property Address), in Pender/Onslow County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910.455.5552 (Applicant's Telephone), or by mail at the address listed below. If you wish to file written comments or objections with the Surf City CAMA Minor Permit Program, you may submit them to:

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Property Owner
320 Willbarry Rd.
Mailing Address
Jacksonville, NC 28540
City, State, Zip Code

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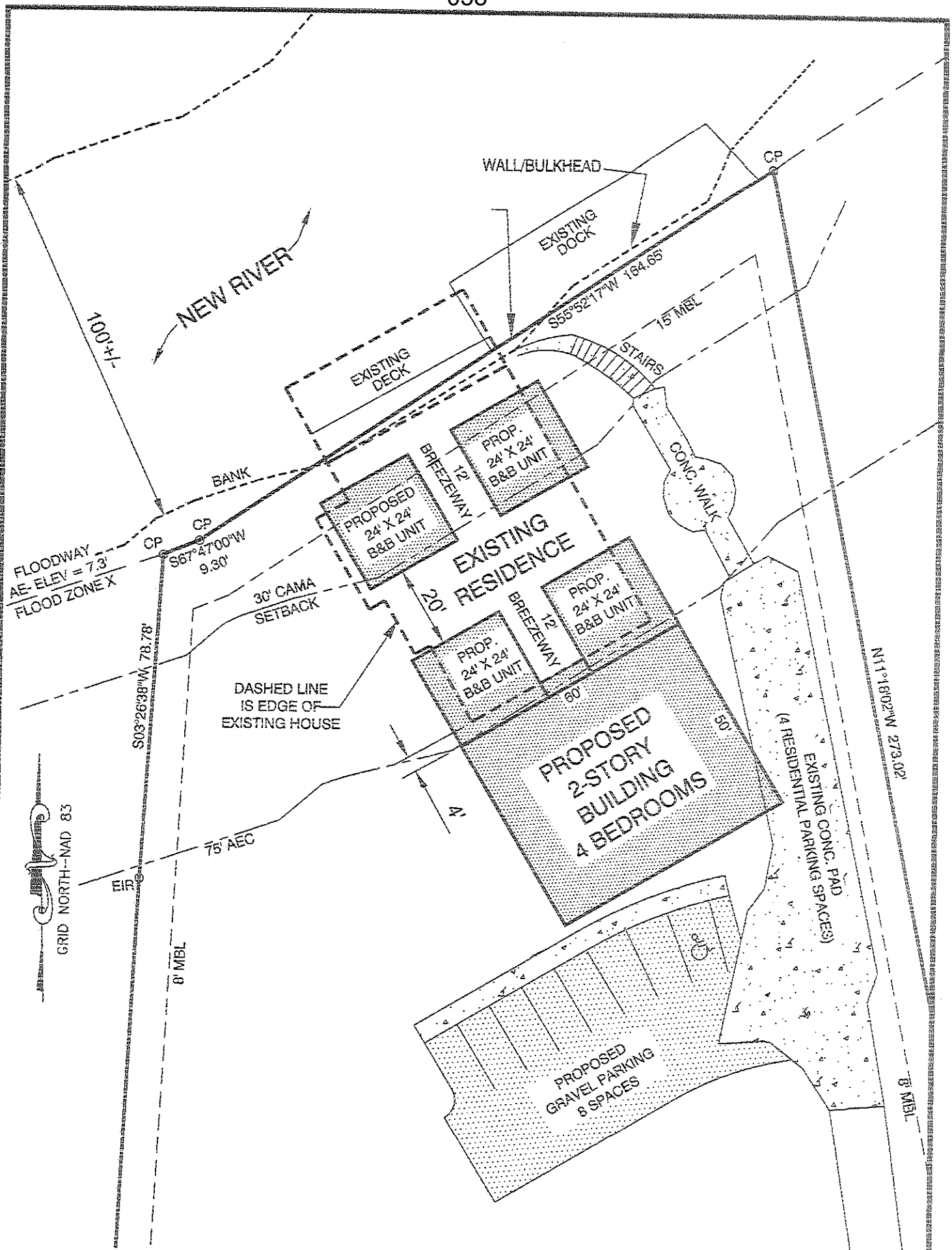


ATTACHMENT

GRAPHIC SCALE IN FEET

30 15 0 30 60

PLANNING & DEVELOPMENT DEPARTMENT

March 14, 2019

CERTIFIED MAIL – 91 7199 9991 7039 7024 3629
RETURN RECEIPT REQUESTED

Thomas & Rebecca Pollard
320 Willbarry Road
Jacksonville, NC 28540

RE: DENIAL OF CAMA MINOR DEVELOPMENT
PERMIT APPLICATION NUMBER- LCP-2019-03
PROJECT ADDRESS- 320 Willbarry Rd, Jacksonville, NC

Dear Mr. & Mrs. Pollard:

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

This decision is based on my findings that your request violates NCGS 113A-118(d)(2) which requires that all applications be denied which are inconsistent with CAMA guidelines. Specifically, the development for which you applied consist of creating two "bed and breakfast" structures (each measuring approximately 24-foot x 24-foot) within the 30-foot Coastal Shoreline buffer.

Your proposal is **Inconsistent** with **15A NCAC 7H .0209(d) (10)**, which state the following:

15A NCAC 07H .0209(d) (10) – Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level with exception of the following:

(A) Water-dependent uses as described in Rule 07H.0208(a)(1) of this section;
(B) Pile-supported signs (in accordance with local regulations);
(C) Post- or pile-supported fences;
(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and sic feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use of need;
(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall no singularly or collectively exceed 200 square feet;
(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

(H) *Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;*

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from the Commission, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered. The Division of Coastal Management 400 Commerce Ave., Morehead City, NC 28557.

Respectfully yours,

Sammie Rogers

Sammie Rogers
Local Permit Officer

Locality ONSLOW Permit Number LCP-2019-09

Ocean Hazard ____ Estuarine Shoreline ✓ CRW Shoreline ____ Public Trust Shoreline ____ Other ____

(For official use only)

GENERAL INFORMATION

LAND OWNER - MAILING ADDRESS

Name Thomas & Rebecca Pollard

Address 320 Willbarry Road

City Jacksonville State NC Zip 28540 Phone 910.455.5552

Email tommy.pollard@gmail.com

AUTHORIZED AGENT

Name Weston Lyall, PE, PLS, PLLC

Address 214 Highway 17 N. Suite 1

City Holly Ridge State NC Zip 28445 Phone 910.329.9961

Email westonlyall@westonlyall.com

LOCATION OF PROJECT: (Address, street name and/or directions to site; name of the adjacent waterbody.)

320 Willbarry Rd. Jacksonville, NC 28540. Property is located on New River

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Proposed pool & breakfast addition

SIZE OF LOT/PARCEL: 154,572 square feet 3.5 acres

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

COMPLETE EITHER (1) OR (2) BELOW (*Contact your Local Permit Officer if you are not sure which AEC applies to your property*):

(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE: ____ square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 6 square feet (includes the area of the foundation of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

(proposed piving)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Energy, Mineral and Land Resources (DEMLR)?

YES ____ NO ✓

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

EXHIBIT C

OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit, including, but not limited to: Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others. Check with your Local Permit Officer for more information.

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

____an owner or record title. Title is vested in name of Thomas & Rebecca Pollard, see Deed Book 4492 page 408 in the Onslow County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT RIPARIAN 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)	Germin & Amelia Hurst	1 Amelia Ln. Jacksonville, NC 28540
(2)	Onslow County	234 NW Corridor Blvd. Jacksonville, NC 28540
(3)		
(4)		

ACKNOWLEDGEMENTS:
I, the undersigned, 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.

I furthermore certify that I am authorized to grant, and do in fact grant, permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This the 3 day of July, 2019

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

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the Ocean Hazard AEC 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.

AGENT AUTHORIZATION FOR CAMA PERMIT APPLICATION

Name of Property Owner Requesting Permit: Thomas + Rebecca Pollard

Mailing Address: 320 Williams Rd
Jacksonville, NC 28540

Phone Number: 910.455.5552

Email Address: btommy.pollard@gmail.com

I certify that I have authorized Weston Lyall, PE, PLS, PLLC
(Agent / Contractor)

to act on my behalf, for the purpose of applying for and obtaining all CAMA permits necessary for the following proposed development: Proposed bed & breakfast addition

at my property located at 320 Williams Rd Jacksonville, NC,

in Onslow County.

I furthermore certify that I am authorized to grant, and do in fact grant permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

Property Owner Information:

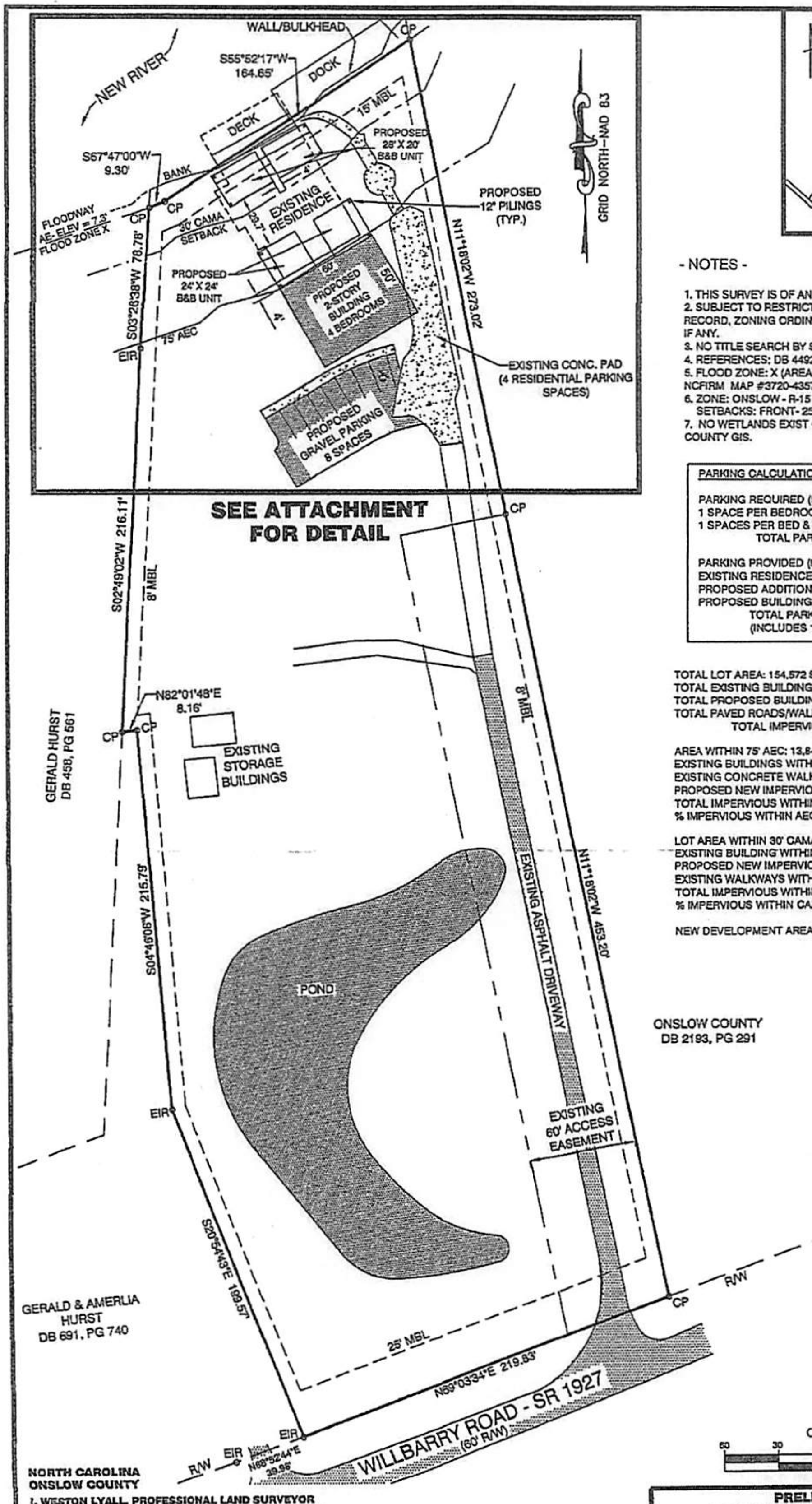
BT Pollard
Signature

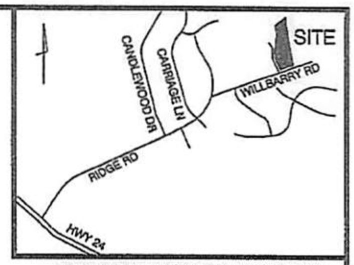
Tommy Pollard
Print or Type Name

owner
Title

7 / 3 / 19
Date

This certification is valid through 8 / 31 / 19





VICINITY MAP (NTS)

- NOTES -

1. THIS SURVEY IS OF AN EXISTING PARCEL OF LAND.
2. SUBJECT TO RESTRICTIVE COVENANTS, EASEMENTS OF RECORD, ZONING ORDINANCE, & UNDERGROUND UTILITIES, IF ANY.
3. NO TITLE SEARCH BY SURVEYOR.
4. REFERENCES: DB 4492, PG 408; MB 15, PG 40
5. FLOOD ZONE: X (AREA OF MINIMAL FLOODING)
NCFIRM MAP #3720-435700-J, EFFECTIVE DATE 11/3/2005
6. ZONE: ONSLOW - R-15
SETBACKS: FRONT- 25', SIDE- 8', REAR - 15'
7. NO WETLANDS EXIST ON THIS SITE PER ONSLOW COUNTY GIS.

PARKING CALCULATIONS:

PARKING REQUIRED (9' X 18' SPACES):
1 SPACE PER BEDROOM FOR RESIDENCE - 4 SPACES
1 SPACES PER BED & BREAKFAST UNIT - 8 SPACES
TOTAL PARKING REQUIRED - 12 SPACES

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PROPOSED BUILDING (4 B& B UNITS) - SPACES
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(INCLUDES 1 VAN-ACCESSIBLE)

TOTAL LOT AREA: 154,572 SF
TOTAL EXISTING BUILDINGS: 3,942 SF
TOTAL PROPOSED BUILDINGS: 4,332 SF
TOTAL PAVED ROADS/WALKWAYS: 8,026 SF
TOTAL IMPERVIOUS AREA: 16,300 (10.5%)

AREA WITHIN 75' AEC: 13,841 SF
EXISTING BUILDINGS WITHIN AEC: 3,848 SF
EXISTING CONCRETE WALKWAYS WITHIN AEC: 619 SF
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% IMPERVIOUS WITHIN AEC: 35.9%

LOT AREA WITHIN 30' CAMA SETBACK : 5,050 SF
EXISTING BUILDING WITHIN CAMA SETBACK: 1,745 SF
PROPOSED NEW IMPERVIOUS/PILINGS WITHIN CAMA SETBACK: 4 SF
EXISTING WALKWAYS WITHIN CAMA SETBACK: 156 SF
TOTAL IMPERVIOUS WITHIN CAMA SETBACK: 1,905 SF
% IMPERVIOUS WITHIN CAMA SETBACK: 37.7%

NEW DEVELOPMENT AREA = 1,120 SF

- LEGEND -

SIR - 1/2" Set Iron Rod
EIP - Existing Iron Pipe
EIR- Existing Iron Rod
ECM - Existing Concrete Monument
CP - Calculated Point
R/W - Right-of-Way
DB - Deed Book
MB - Map Book
PG - Page

———— - Property Line Surveyed
- - - - - - - - - Property Line Not Surveyed

PROPERTY DESCRIPTION:

OWNER: THOMAS & REBECCA POLLARD
ADDRESS: 320 WILLBARRY RD
JACKSONVILLE, NC 28530

TOTAL AREA: 3.54 AC.

MAP BOOK 15, PAGE 40
DEED BOOK 4492, PAGE 408
PIN: 435716938120

GRAPHIC SCALE IN FEET
60 30 0 60 120

NORTH CAROLINA
ONSLOW COUNTY

I, WESTON LYALL, PROFESSIONAL LAND SURVEYOR NUMBER L-4438, CERTIFY THAT THIS PLOT PLAN WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL GPS SURVEY MADE UNDER MY SUPERVISION (MAP BOOK 15 PAGE 40) AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY: CLASS OF SURVEY: B; POSITIONAL ACCURACY: 500 RMS; TYPE OF GPS FIELD PROCEDURE: VRSRTKGPS; DATUM: NAD83 "2007" NAVD88; GEIOD MODEL: GEOID 03; COMBINED GRID FACTOR: 0.9999697; UNITS: US SURVEY FEET

Weston Lyall 7/3/19

WESTON LYALL
REGISTRATION NUMBER L-4438

NORTH CAROLINA PROFESSIONAL SEAL L-4438 LAND SURVEYOR WESTON LYALL

PRELIMINARY SITE PLAN FOR

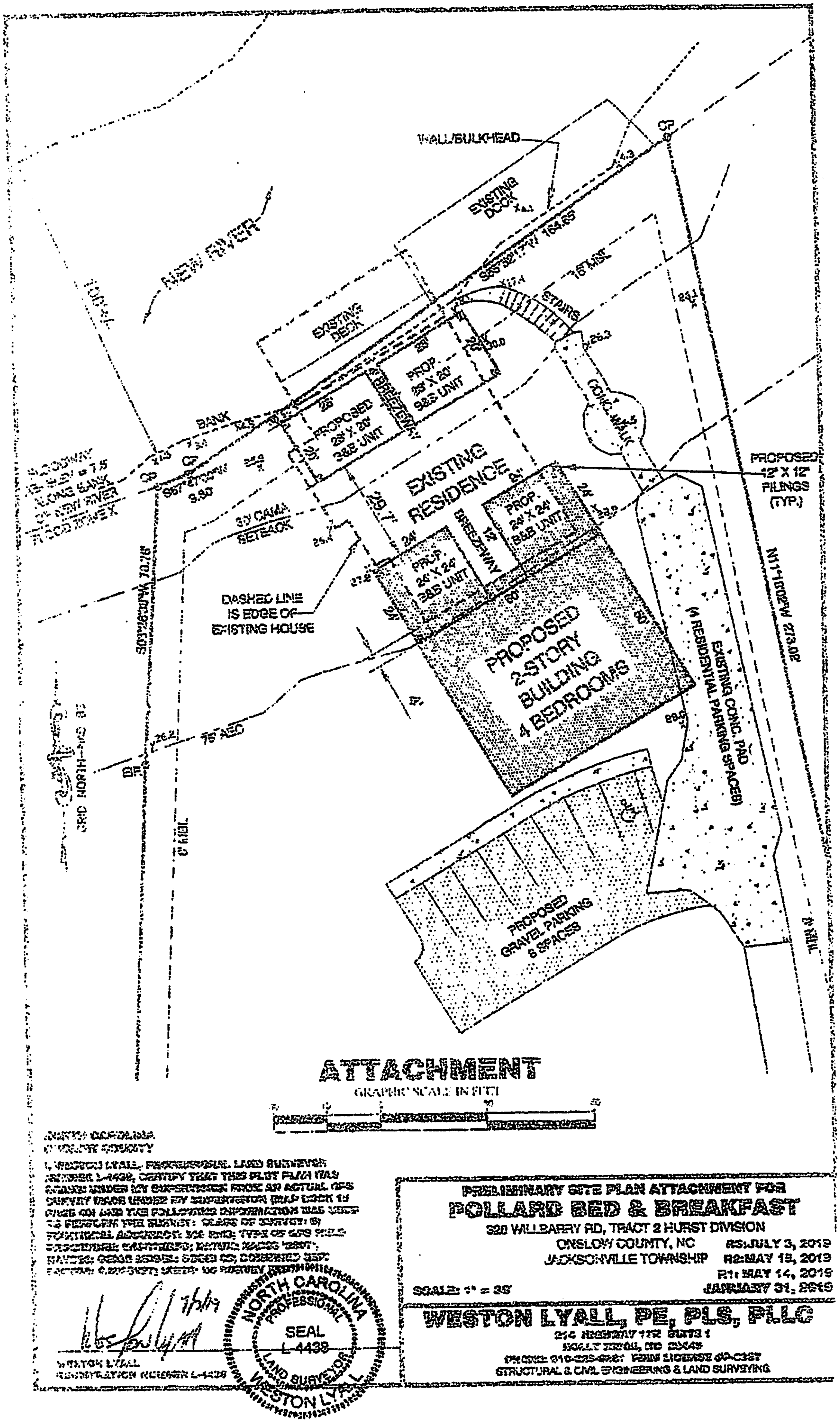
POLLARD BED & BREAKFAST

320 WILLBARRY RD, TRACT 2 HURST DIVISION
ONSLOW COUNTY, NC
JACKSONVILLE TOWNSHIP

SCALE: 1" = 60'

R3: JULY 3, 2019
R2 JAN 31,2019
R1 JAN 4, 2018
DECEMBER 12, 2018

WESTON LYALL, PE, PLS, PLLC
214 HIGHWAY 17N SUITE 1
HOLLY RIDGE, NC 28445
PHONE: 910-329-9961 FIRM LICENSE #P-0937
STRUCTURAL & CIVIL ENGINEERING & LAND SURVEYING



WALL/BULKHEAD
EXISTING DOCK
NEW RIVER
EXISTING DECK
STAIRS
CONC. WALK
PROPOSED 28' X 28' B&B UNIT
PROP. 28' X 28' B&B UNIT
BREEZEWAY
BANK
EXISTING RESIDENCE
PROP. 24' X 24' B&B UNIT
PROP. 24' X 24' B&B UNIT
PROPOSED 12" X 12" PILINGS (TYP.)
30' CAMA SETBACK
DASHED LINE IS EDGE OF EXISTING HOUSE
PROPOSED 2-STORY BUILDING 4 BEDROOMS
EXISTING CONC. PAD (4 RESIDENTIAL PARKING SPACES)
PROPOSED GRAVEL PARKING 8 SPACES
75' AEC
S67°27'00"W 9.80'
N11°18'02"W 273.02'
ATTACHMENT
GRAPHIC SCALE IN FEET
PRELIMINARY SITE PLAN ATTACHMENT FOR
POLLARD BED & BREAKFAST
320 WILLBARRY RD, TRACT 2 HURST DIVISION
ONSLOW COUNTY, NC
JACKSONVILLE TOWNSHIP
R3: JULY 3, 2019
R2: MAY 15, 2019
R1: MAY 14, 2019
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SCALE: 1" = 30'
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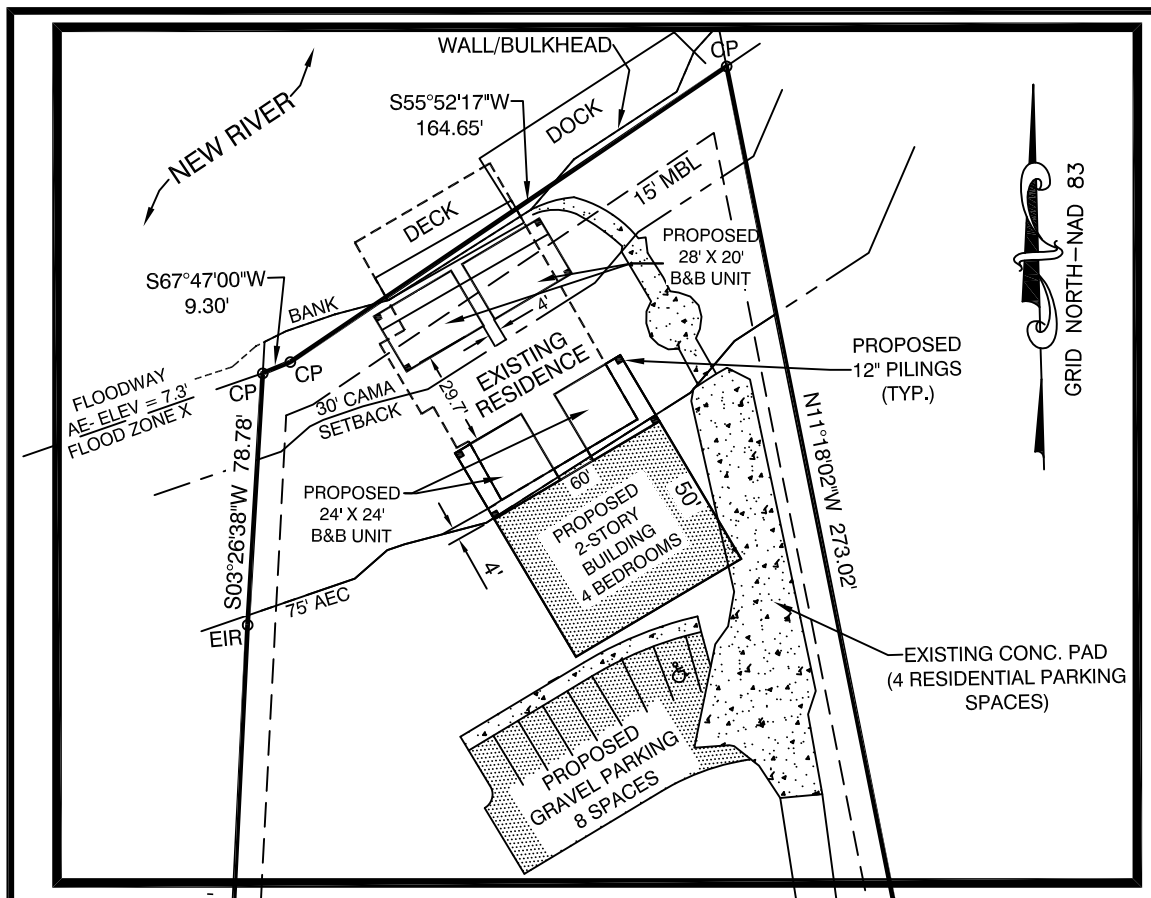
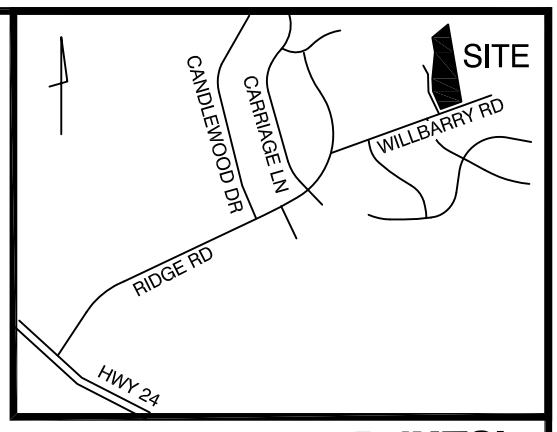
STRUCTURAL & CIVIL ENGINEERING & LAND SURVEYING
NORTH CAROLINA
PROFESSIONAL
SEAL
L-4438
LAND SURVEYOR
WESTON LYALL





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ONSLOW COUNTY
DB 2193, PG 291

- LEGEND -

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TOTAL AREA: 3.54 AC.

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DEED BOOK 4492, PAGE 408
PIN: 435716938120

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NORTH CAROLINA
ONSLOW COUNTY

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PRELIMINARY PLAT
NOT FOR RECORDATION
CONVEYANCES OR SALES

WESTON LYALL
REGISTRATION NUMBER L-4438

PRELIMINARY SITE PLAN FOR

POLLARD BED & BREAKFAST

320 WILLBARRY RD, TRACT 2 HURST DIVISION
ONSLOW COUNTY, NC
JACKSONVILLE TOWNSHIP

R5:JUNE 17, 2019
R4:MAY 15, 2019
R3: MAY 14, 2019
R2 JAN 31,2019
R1 JAN 4, 2018
DECEMBER 12, 2018

SCALE: 1" = 60'

WESTON LYALL, PE, PLS, PLLC
214 HIGHWAY 17N SUITE 1
HOLLY RIDGE, NC 28445
PHONE: 910-329-9961 FIRM LICENSE #P-0937
STRUCTURAL & CIVIL ENGINEERING & LAND SURVEYING

Receipts for Certified Mail
(Staple Here)

7-3-19
Date

Gerald + Amelia Hurst
Adjacent Property Owner

1 Amelia Ln.
Mailing Address

Jacksonville, NC 28540
City, State, Zip Code

Dear Adjacent Property:

This letter is to inform you that I, Thomas + Rebecca Pollard (Property Owner) have applied for a CAMA Minor Permit on my property at 320 Wilbarry Rd. Jacksonville, NC 28540 (Property Address), in Pender/Onslow County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910.455 5552 (Applicant's Telephone), or by mail at the address listed below. If you wish to file written comments or objections with the Surf City CAMA Minor Permit Program, you may submit them to:

Jason Dail, Field Representative
NC Division of Coastal Management
Town of Surf City Local Permit Program
127 Cardinal Drive Extension
Wilmington, NC 28405

Sincerely,

Thomas + Rebecca
Property Owner

320 Wilbarry Rd
Mailing Address

Jacksonville, NC
City, State, Zip Code

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gerald + Amelia Hurst
1 Amelia Ln.
Jacksonville, NC 28540

9590 9402 4781 8344 4945 03

2. Article Number (Transfer from service label)
1130 0000 8464 6922

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☑ Addressee

B. Received by (Printed Name)
GERALD HURST

C. Date of Delivery
7-6-19

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Thomas + Helena Pollard's
(Name of Property Owner)

property located at 320 Williams Rd
Address, Lot, Block, Road, etc.)

on New River (Waterbody), in Jacksonville - Onslow Co. (Town and/or County) N.C.

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal.

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Signature

Print or Type Name

Telephone Number

Date

Receipts for Certified Mail
(Staple Here)

7-3-19
Date

Onslow County
Adjacent Property Owner

234 NW Corridor Blvd.
Mailing Address

Jacksonville, NC 28540
City, State, Zip Code

Dear Adjacent Property:

This letter is to inform you that I, Thomas + Rebecca Pollard, have applied for a CAMA Minor
Property Owner
Permit on my property at 320 Wilbarry Rd. Jacksonville, NC 28540, in Pender/Onslow
Property Address
County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910.455.5552, or by mail at the address listed below. If you wish to
Applicant's Telephone
file written comments or objections with the Surf City CAMA Minor Permit Program, you may submit them to:

Jason Dail, Field Representative
NC Division of Coastal Management
Town of Surf City Local Permit Program
127 Cardinal Drive Extension
Wilmington, NC 28405

Sincerely,

Thomas + Rebecca
Property Owner

320 Wilbarry Rd
Mailing Address

Jacksonville, NC
City, State, Zip Code

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Onslow Co. Attn: Sammie Rogers
234 NW Corridor Blvd.
Jacksonville, NC 28540

9590 9402 4781 8344 4936 29

2. Article Number (Transfer from service label)

7018 1130 0000 8464 7042

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x C. Humphrey ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Humphrey | C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
Restricted Delivery

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Thomas + Rebecca Pollard's
(Name of Property Owner)

property located at 320 Williams Rd,
Address, Lot, Block, Road, etc.)

on New River, in Jacksonville - Onslow Co., N.C.
(Waterbody) (Town and/or County)

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal.

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Signature

Print or Type Name

Telephone Number

Date

PLANNING & DEVELOPMENT DEPARTMENT

July 25, 2019

CERTIFIED MAIL – 91 7199 9991 7039 6988 0965
RETURN RECEIPT REQUESTED

Thomas & Rebecca Pollard
320 Willbarry Road
Jacksonville, NC 28540

RE: DENIAL OF CAMA MINOR DEVELOPMENT
PERMIT APPLICATION NUMBER- LCP-2019-09
PROJECT ADDRESS- 320 Willbarry Rd, Jacksonville, NC

Dear Mr. & Mrs. Pollard:

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

This decision is based on my findings that your request violates NCGS 113A-118(d)(2) which requires that all applications be denied which are inconsistent with CAMA guidelines. Specifically, the development for which you applied consist of creating two "bed and breakfast" structures (each measuring approximately 20-foot x 28-foot) within the 30-foot Coastal Shoreline buffer.

Your proposal is **Inconsistent** with **15A NCAC 7H .0209(d) (10)**, which state the following:

15A NCAC 07H .0209(d) (10) – Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal highwater level with exception of the following:

(A) Water-dependent uses as described in Rule 07H.0208(a)(1) of this section;
(B) Pile-supported signs (in accordance with local regulations);
(C) Post- or pile-supported fences;
(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and sic feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use of need;
(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall no singularly or collectively exceed 200 square feet;
(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

EXHIBIT A

(H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from the Commission, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered. The Division of Coastal Management 400 Commerce Ave., Morehead City, NC 28557.

Respectfully yours,

Sammie Rogers
Local Permit Officer

CC: Weston Lyall
214 Highway 17 N. Suite 1
Holly Ridge NC 28445

Goebel, Christine A

From: Dunn, Glenn <hgdunn@poynerspruill.com>
Sent: Thursday, March 28, 2019 7:44 PM
To: Goebel, Christine A
Subject: [External] Re: Pollard- 320 Willbarry Road, Jacksonville, NC

Thanks

Sent from my iPhone

> On Mar 28, 2019, at 4:26 PM, Goebel, Christine A <Christine.Goebel@NCDENR.GOV> wrote:
>
> Hi Glenn-
>
> I checked in with DCM staff and had them review your clients' situation. DCM believes the LPO's call was correct.
>
>
> 1. The proposed footprint is outside the existing impervious footprint within the 30' buffer (as measured from NWL). This is addressed in the LPO's denial letter and as we discussed, if there is new impervious in the buffer that doesn't fall within the exceptions listed in the buffer rule, the LPO has to deny the permit and can't grant a variance.
>
> 2. Also, it appears that the existing impervious within the 75' AEC already exceeds the 30% threshold allowed (it looks like the existing residence is at 32%, not including the concrete walk in the 75' AEC). The proposed footprint would add to this and further intensify the non-compliance of the proposal with the buffer rules.
>
> As we discussed, if they wish to pursue a variance, the filing deadline for the July 17-18, 2019 CRC meeting (likely in the Morehead City area) is June 5, 2019. Of course, they could also re-design to keep the changes within the same impervious footprint and re-apply for a permit, likely eliminating the need for a variance.
>
> In case you haven't seen it, I've included the permit materials and denial letter.
> Thanks-
> Christy
>
> [CG Sig block]
>
>
> <image001.jpg>
> <Pollard LCP19-03.pdf>
> <Pollard drawing.pdf>

****

PLANNING & DEVELOPMENT DEPARTMENT

May 14, 2019

Mr. Glenn Dunn
Attorney at Law
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601

RE: 320 Willbarry Road
Tax Parcel ID#: 331-32.1

Dear Mr. Dunn:

Per our conversation earlier today, Mr. Tommy Pollard met with our staff and submitted an application for a Special Use Permit to establish a Bed & Breakfast at the above-referenced address. After reviewing the site plan, we determined that the existing building which he plans to expand is non-conforming as it does not meet the rear setback requirements; therefore, we advised him that he would need to obtain a variance from the Coastal Resources Commission prior to processing his Special Use request. Additionally, we expressed concerns regarding the location of the existing structure in relation to the floodway and compliance with the Onslow County Flood Damage Prevention Ordinance.

The Onslow County Zoning Ordinance establishes a 15-foot rear setback requirement except where lot lines are "established by reference to a mean high water mark" and in those instances, the setback line shall comply with "all appropriate state (CAMA) and Federal setback limitations."

With the exception of the rear setback and needing clarification on the floodway line, the site plan presented appears to comply with all other standards set forth in the Zoning Ordinance.

Please contact me at (910) 989-3062 if you have any questions.

Cordially yours,

Angela S. Manning, AICP
Land Use Administrator

Thomas Pollard variance request (*CRC-VR-19-05*)

Brad Connell
Environmental Specialist II
Morehead City District
Division of Coastal Management

NC Coastal Resources Commission
Meeting on September 18, 2019

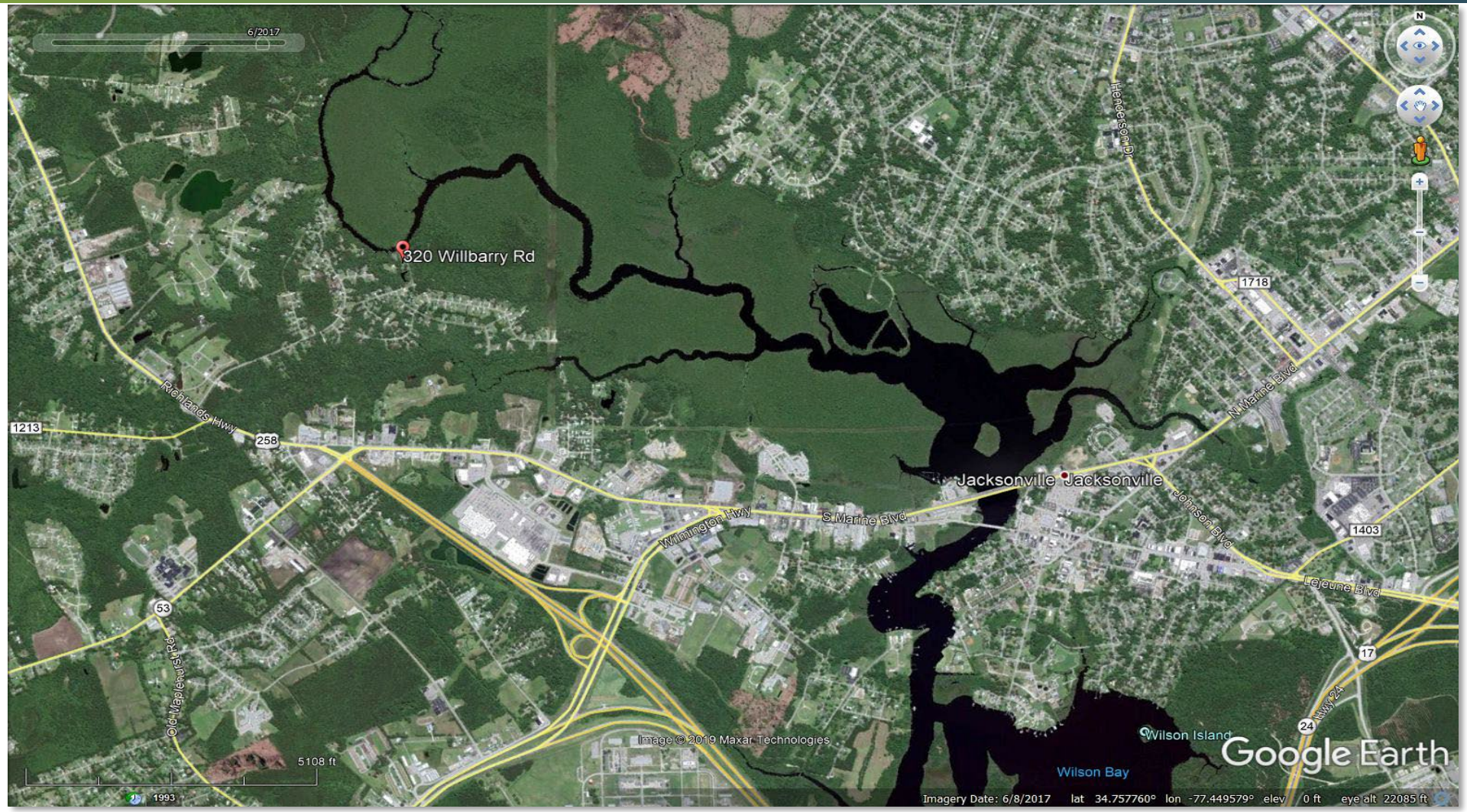
Department of Environmental Quality

Vicinity map of 320 Willbary Road, Onslow County

Source: Google Earth ca. 2018

NORTH CAROLINA
Department of Environmental Quality

Vicinity map of 320 Willbary Road, Onslow County

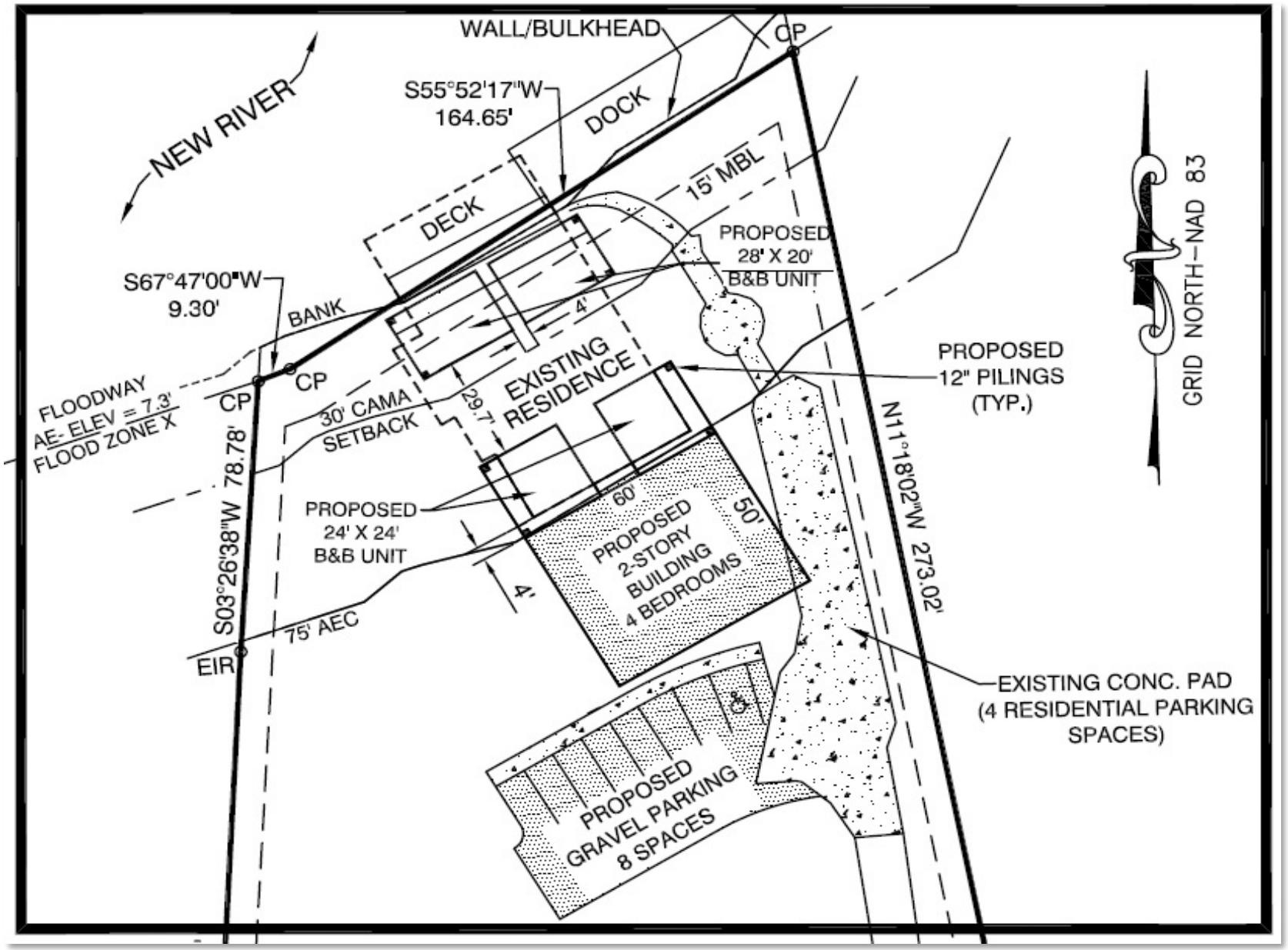


NORTH CAROLINA
Department of Environmental Quality

Google Earth satellite imagery ca. March 2019

Aerial photograph of Pollard property, ca. 2019

Pollard revised site plan (inset)



Local area flood zone relative to Pollard property

Onslow County GIS 2019

NORTH CAROLINA
Department of Environmental Quality

Facing east on Pollard property shoreline taken by DCM staff on August 28, 2019

NORTH CAROLINA
Department of Environmental Quality

Facing west on Pollard property shoreline taken by DCM staff on August 28, 2019

NORTH CAROLINA
Department of Environmental Quality

Facing NW on Pollard property shoreline taken by DCM staff on June 12, 2019

NORTH CAROLINA
Department of Environmental Quality

Facing SE on Pollard property shoreline taken by DCM staff on June 12, 2019

NORTH CAROLINA
Department of Environmental Quality

Aerial photograph of Pollard property

15A NCAC 07J .0703 Procedures for Deciding Variance Petitions

(f) To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).

(1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;

(2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;

(3) that such hardships did not result from actions taken by the petitioner; and

(4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

September 4, 2019

MEMORANDUM **CRC-19-23**

TO: Coastal Resources Commission

FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Approval of Fiscal Analysis for Amendments to 7H .0312 Technical Standards for Beach Fill Projects

Background

The Coastal Resources Commission (CRC) adopted 15A NCAC 07H.0312 Technical Standards for Beach Fill Projects with an original effective date of February 1, 2007. The CRC adopted the rule to ensure that sand used for beach nourishment closely matches the sand on the existing beach. The rule requires that the sediment intended for beach placement as well as the sand on the existing beach be analyzed for grain size and composition and be within defined ranges of similarity before the project begins.

The intent of a beach fill project is primarily to replace beach sand where it has been lost to erosion. Wider beaches provide more wildlife habitat, better protection from storms, and more room for recreation. The Technical Standards for Beach Fill Projects Rule sets forth the protocols for characterizing the native beach sediments prior to a fill project, for sampling and characterizing potential borrow area sediments, and for ensuring that the two are compatible. "Native beach" sediment characterization is the process of defining the type of sand found on the beach prior to the construction of a beach fill project. Compatibility is important mostly to ensure that material placed on beaches is not too fine (mud or clay), or too coarse (rocks and large shells), in order to construct a new beach that is generally made up of sediment similar to pre-project beach sediment. The rule also establishes general criteria for excavation and placement of sediment.

Since 2007, the rule has been amended to change the requirements for seafloor surveys and geophysical imaging of the seafloor in areas with water depths of less than 10 feet due to the technical challenges and physical limitations of sampling at these shallow depths. The rule has also been previously revised to reduce the sampling intensity and costs in areas like Ocean Dredged

Material Disposal Sites (ODMDSs), and in maintained navigation channels and associated sediment basins that have historically held and been re-filled with beach-quality sand.

The current sampling protocol associated with the sediment criteria rules is highly precise with regards to sample design, spacing, numbers of cores, etc. This precision can limit flexibility in sample design and can also limit the ability of communities to pursue small projects or respond to nourishment opportunities in a short period of time. The sampling protocol can also severely limit applicants' ability to use existing data from past projects. Additionally, the sampling protocol may eliminate the ability of communities to take advantage of beneficial use projects (e.g. inlet dredging) that present themselves late in the planning process (i.e. too late to be able to hire a firm and/or mobilize to take the extra samples required).

The proposed rule amendments were approved by the CRC in February 2018 and serve two purposes: 1) meet Session Law 2017-10 (S131) Section 3.15 mandate to exempt sediment characterization of beaches receiving the material from a cape shoal, and borrow areas within the cape shoal system – such as Frying Pan shoals at Cape Fear, Cape Lookout, and Diamond Shoals), and; 2) to eliminate the rigid data sampling protocol in favor of a simpler process where the project's consultant or engineer is allowed flexibility to design a sampling protocol that assures sediment compatibility between the beach and borrow area. The rules will retain existing standards for the various grain sizes (e.g. the percentage of "fines" shall not exceed more than 5% over the recipient beach), and strengthen recipient beach sampling protocols, but substitute language similar to that in the terminal groin legislation (Section 1. G.S. 113A-115.1(e)(4), which requires the applicant's consultant/engineer attest to sediment compatibility from borrow sites ("*Compatibility with these sediment standards shall be documented by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes."*)

Summary of Cost/Benefits

In terms of cost, the CRC acknowledges that by decreasing the transect spacing to one-half mile, the sediment characterization of the recipient beach would result in finer resolution data but would double the cost associated with characterizing sediment on the recipient beach. However, the proposed amendments allow the use of qualified historic data and to only require a one-time sediment characterization analysis for the same project area that would serve as a baseline for all future projects. Given the fact that eighty percent of local governments on the oceanfront have completed large-scale beach nourishment projects and would not need to re-characterize those same portions of beach, and nearly all of the remaining twenty percent (43 miles) do not have an immediate need or plan to nourish, the overall cost impact will be minimal. As for amendments associated with characterizing sediment in the borrow site(s), these amendments will not require additional sampling criteria or restrictions, but rather allow the project's consultant or engineer to design a site-specific sampling design to ensure that sediment dredged from the borrow site has similar characteristics to that of the recipient beach.

Reducing the transect spacing and requiring additional data to be collected in order to better establish a baseline sediment characterization of the recipient beach, and giving the contractor or engineer the flexibility to design the borrow site sampling protocol will help to ensure that compatible sediment is placed on the beach, resulting in potential cost savings by not having to bear any added cost required for mitigation in the event that incompatible material is placed on the beach.

Staff Recommendation

The fiscal analysis was approved by the NC Department of Environmental Quality and is pending the approval of Office of State Budget and Management. It is anticipated that this fiscal will be approved before the September CRC meeting. DCM staff are recommending that the Commission's approve the fiscal analysis conditioned on no substantial changes being requested by OSBM.

ATTACHMENT A: Fiscal Analysis

Fiscal Analysis

Technical Standards for Beach Fill Projects

15A NCAC 07H .0312

Prepared by
Ken Richardson
NC Division of Coastal Management
252-808-2808

August 30, 2019

Summary

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rules	Technical Standards for Beach Fill Projects Citation 15A NCAC 07H .0312
Description of the Proposed Rule	This rule ensures that sand used for beach nourishment closely matches the sand on the existing beach. The rule requires that the sediment intended for beach placement, as well as the sand on the existing beach be analyzed for grain size and composition, and that they be within defined ranges of similarity before the project can begin.
Agency Contact	Ken Richardson Shoreline Management Specialist Ken.Richardson@ncdenr.gov (252) 808-2808
Authority	G.S. 113-229(cl); G.S. 113A-107; 113A-113; 113A-115; 113A118; 113A-124
Necessity	The Coastal Resources Commission proposes to amend this rule to allow the project's consultant/engineer to design a sampling protocol that assures sediment compatibility between the beach and borrow area, while strengthening recipient beach sampling protocols.
Impact Summary	State government: No Local government: Unknown Substantial impact: No Federal government: No Private citizens: No

Introduction and Purpose

The Coastal Resources Commission (CRC) adopted 15A NCAC 07H.0312 Technical Standards for Beach Fill Projects with an original effective date of February 1, 2007. The CRC adopted the rule to ensure that sand used for beach nourishment closely matches the sand on the existing beach. The rule requires that the sediment intended for beach placement as well as the sand on the existing beach be analyzed for grain size and composition and be within defined ranges of similarity before the project begins.

The intent of a beach fill project is primarily to replace beach sand where it has been lost to erosion. Wider beaches provide more wildlife habitat, better protection from storms, and more room for recreation. The CRC's Technical Standards for Beach Fill Projects Rule, 15A NCAC 07H.0312, first took effect in February 2007, and sets forth the protocols for characterizing the native beach sediments prior to a fill project, for sampling and characterizing potential borrow area sediments, and for ensuring that the two are compatible. "Native beach" sediment characterization is the process of defining the type of sand found on the beach prior to the construction of a beach fill project. Compatibility is important mostly to ensure that material placed on beaches is not too fine (mud or clay), or too coarse (rocks and large shells), in order to construct a new beach that is generally made up of sediment similar to pre-project beach sediment. The rule also establishes general criteria for excavation and placement of sediment.

Since 2007, the rule has been amended to change the requirements for seafloor surveys and geophysical imaging of the seafloor in areas with water depths of less than 10 feet due to the technical challenges and physical limitations of sampling at these shallow depths. The rule has also been previously revised to reduce the sampling intensity and costs in areas like Ocean Dredged Material Disposal Sites (ODMDSs) and maintained navigation channels and associated sediment basins that have historically held and been re-filled with beach-quality sand (effective August 1, 2014).

The current sampling protocol associated with the sediment criteria rules is highly precise with regards to sample design, spacing, numbers of cores, etc. This precision can limit flexibility in sample design and can also limit the ability of communities to pursue small projects or respond to nourishment opportunities in a short period of time. The sampling protocol can also severely limit applicants' ability to use existing data from past projects. Additionally, the sampling protocol may eliminate the ability of communities to take advantage of beneficial use projects (e.g. inlet dredging) that present themselves late in the planning process (i.e. too late to be able to hire a firm and/or mobilize to take the extra samples required).

The proposed rule amendments serve two purposes: 1) meet the Session Law 2017-10 (S131) Section 3.15 mandate to exempt sediment characterization of beaches receiving the material from a cape shoal, and borrow areas within the cape shoal system – such as Frying Pan shoals at Cape Fear, Cape Lookout, and Diamond Shoals), and; 2) to eliminate the rigid data sampling protocol in favor of a simpler process where the project's consultant or engineer is allowed flexibility to design a sampling protocol that assures sediment compatibility between the beach and borrow area. The CRC will retain existing standards for the various grain sizes (e.g. the percentage of "fines" shall not exceed more than 5% over the recipient beach), and strengthen recipient beach

sampling protocols but substitute language similar to that in the terminal groin legislation (Section 1. G.S. 113A-115.1(e)(4), which requires the applicant's consultant/engineer attest to sediment compatibility from borrow sites (e.g. "*Compatibility with these sediment standards shall be documented by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes."*)

Description of the Proposed Rules

The CRC's Technical Standards for Beach Fill Projects Rule, 15A NCAC 07H.0312 contains four specific sections: (1) defines the method to characterize native beach sediment in order to establish a baseline for the beach that will receive the sediment; (2) defines the methods to characterize the sediment at borrow sites from which material will be removed and eventually placed on the beach; (3) defines the method and standards to be used to determine sediment compatibility of borrow site and sediment on the beach, and; (4) defines sediment excavation limit in terms of depth and time. The below rule amendments are intended to provide additional clarity to existing rules, strengthen the methodology required for characterizing sediment beach, and eliminate the rigid data sampling protocol in favor of a simpler process where the project's consultant or engineer is allowed to design a sampling protocol that assures sediment compatibility between the beach and borrow area.

15A NCAC 07H. 0312(1)(a): The CRC is amending Sub Item (1)(a) to meet the Session Law 2017-10 (S131) Section 3.15 mandate to exempt sediment characterization of beaches that is receiving the sediment from a borrow site that is completely contained within the cape shoal system (Frying Pan shoals at Cape Fear, Cape Lookout, and Diamond Shoals at Cape Hatteras).

15A NCAC 07H. 0312(1)(c): After consultation with stakeholders, the Commission decided that the existing requirement in Sub Item (1)(c) which establishes the maximum allowed transect spacing (5,000 feet), almost 1 mile, is insufficient for the purpose of surveying and characterizing native beach. The CRC is amending this rule to reduce transect spacing to one-half mile (2,640 feet), which could potentially double the amount topographic and bathymetric surveying needed to characterize native beach sediment.

15A NCAC 07H. 0312(1)(d): This rule currently requires that sediment samples be taken from each of the morphodynamic zones starting from the frontal dune and oceanward and at six feet depth increments out to twenty feet, or a distance of 2,400 feet seaward of mean low water (MLW), whichever is more landward. This rule also requires a minimum of thirteen sediment samples be taken along each transect, and that the number of samples taken landward of MLW to equal the total number of samples taken seaward of MLW. The CRC is amending this rule to remove the minimum sample requirement and required number of samples above and below MLW as they are deemed not necessary given that the rule already has sampling requirements, and not all locations will have each of the morphodynamic zones listed within the rule.

15A NCAC 07H. 0312(1)(g): Requires the percentage by weight calcium carbonate be calculated from a composite of all sediment samples along each transect defined in Sub Item (1)(d) of this rule. The CRC is amending this rule for simplicity and requiring the percentage by weight calcium

carbonate to simply be calculated from a composite of all sediment samples, and removes the reference to Sub Item (1)(d).

15A NCAC 07H. 0312(1)(h): Establishes the method for determining the number of sediments and shell material greater than three inches in diameter on the native beach. Currently, this rule requires a visual observation for an area of 50,000 square feet within the project area as defined in 07H. 0312(1)(h). Because this method does not adequately characterize the sediment for the entire project area, the CRC is amending this method to require a visual observation of a three square meter (approximately 10 square feet) at each sample point along each transect between mean low water (MLW) and the front dune.

15A NCAC 07H. 0312(2): Defines the methods to characterize the sediment at borrow sites from which material will be removed and eventually placed on the beach. The CRC is amending Item (2) to meet the Session Law 2017-10 (S131) Section 3.15 mandate to exempt sediment characterization of borrow areas that are completely contained within the cape shoal system (Frying Pan shoals at Cape Fear, Cape Lookout, and Diamond Shoals at Cape Hatteras).

15A NCAC 07H. 0312(2)(b): The intent of this rule is to allow the use of historic data for the purposes of characterizing sediment. Use of historic data can potentially save or reduce time and costs associated with sampling of borrow areas. The CRC is amending this rule because it does not sufficiently provide the framework needed to qualify historic data. The amended language references Sub Items within this rule that specifically defines the methods for sampling, thus allowing the use of data that was sampled in a manner consistent with required methods.

15A NCAC 07H. 0312(2)(c-f): These rules collectively define methodologies for surveying and sampling sediment borrow sites. The CRC has determined that these rules are overly prescriptive, and do not allow certified licensed professional engineers and/or geologist the opportunity to design a site specific sampling protocol that is best suited for the purpose of determining if the sediment contained within the borrow site is compatible with that of the native beach. Therefore, the CRC is amending the following: Sub Item (2)(d) is being amended to remove the maximum grid spacing requirement for geophysical imaging of the seafloor; Sub Item (2)(e) is being amended to remove maximum grid spacing requirement for core sampling, and; the CRC is eliminating the existing Sub Item (2)(f) that defines the sampling grid spacing for offshore dredged material disposal sites (ODMDS). The CRC determined that this Sub Item is not necessary since they are allowing the use of historic data and allowing the project engineer or geologist to design the most suitable sampling method for borrow sites.

15A NCAC 07H. 0312(3): This rule defines the criteria for determining sediment compatibility between the native beach and borrow site(s). The CRC is amending this rule to require compliance with these standards to be certified by a licensed individual pursuant to Chapter 89C or 89E of the N.C. General Statutes.

15A NCAC 07H. 0312(4): This rule requires excavation and placement of sediment to conform to the criteria defined within this rule.

15A NCAC 07H. 0312(4)(a): This Sub Item requires the depth of sediment excavation from the seafloor not exceed the maximum depth of recovered core at each coring location for the purpose of ensuring that the sediment being excavated has been sampled, analyzed, and confirmed to be compatible with the native beach sediment. The CRC has determined that by allowing the project's licensed individual to design the borrow site sampling protocol for each site, and also certify conformity to these rules, that the existing Sub Item (a) is no longer needed.

15A NCAC 07H. 0312(4)(b): This rule requires that no excavation or placement of sediment shall occur within the project area during any moratoriums designated by the Division of Coastal Management in consultation with other state or Federal agencies. The CRC is amending this rule for clarification purposes only. No existing restrictions are being removed from existing rule language, and no new restrictions are included.

15A NCAC 07H. 0312(4)(c): The intent of this rule is to ensure that large material, sediment with a diameter greater than three inches, does not exceed twice the background value as measured on the beach prior to the start of the beach fill project. The CRC is amending this rule for clarity, and to also require that in the event that more than twice the background value of incompatible sediment is placed on the beach, it will be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management.

COSTS OR NEUTRAL IMPACTS

Since technical standards for beach fill projects first went into effect in 2007, costs associated with fulfilling these rule requirements occur within three phases of the project: 1) sampling and characterizing native beach; 2) sampling and characterizing the borrow site, and 3) if needed, any mitigation required in the event that non-compatible sediment is placed on the recipient beach. In terms of cost associated with these amendments, the CRC anticipates that there could be added cost when sampling and characterizing the recipient beach due to the proposed increase in the number of sampling transects needed. However, because these amendments will allow for the use of historic data, and only require the recipient beach to be analyzed once, the added cost associated with the initial characterization will be offset by eliminating the need to re-sample for future projects on the same section of beach.

Sampling and Characterizing the Recipient Beach:

Currently, rules (15A NCAC 07H .0312(1)(c) -(h)) require sampling transects to be spaced no greater than 5,000 feet apart and no fewer than 13 samples per transect, or one sample from each morphodynamic zones with an equal number of samples below and above mean low water – making the total number of samples required to be approximately 13 per transect. In addition, the total number of sediments and shell material greater than or equal to three inches in diameter, observable on the surface of the beach between mean low water and the frontal dune toe, shall be calculated for an area of 50,000 square feet within the beach fill boundaries. After consultation with engineers/geologist conducting beach nourishment projects in North Carolina, the CRC has

determined that these requirements may not always result in the recipient beach being adequately characterized.

The CRC is proposing to decrease the transect spacing from 5,000 feet to 2,640 feet (one-half mile) in order to require additional samples to produce finer resolution data to more accurately characterize the recipient beach before the beach nourishment project occurs. Currently, the transect spacing results in approximately one set of samples per mile of beach within the project area. The amendments will reduce the requirement to approximately one set of samples per one-half mile of beach, thus potentially doubling the cost.

For example, an approximate one-mile section of beach currently requires one set of samples for a minimum of 13 samples. Each sieve and carbonate analysis for each sample costs approximately $100; making the minimum cost to sample and analyze sediment at each transect approximately $1,300. By reducing the transect spacing to one-half mile, the cost per transect would increase to approximately $2,600. This does not include cost associated with sample collection, vessel mobilization/demobilization, and engineering analysis and reporting; primarily due to costs varying based on project specifics such as vessel and ATV requirements/usage, or other project-specific mobilization and collection requirements. However, for the purposes of illustrating these potential costs, the Bogue Banks sediment characterization consisted of 25 transects (approximately 25 miles), and cost approximately $10,000 for data collection and vessel mobilization/demobilization, and the engineering analysis and reporting cost an additional $5,000 (total of $15,000) [1]. In this Bogue Banks example, the added cost for each individual sieve and calcium carbonate analysis ($100) would be in addition to the $15,000. Using these costs as an estimation, and assuming that only the minimum number of samples were collected (13 per transect) along each transect as required in existing rules (15A NCAC 07H .0312), the total estimated cost would be approximately $47,500 {($1,300 x 25) + $15,000 = $47,500}. Because $15,000 is not a ratio of cost per transect, we can assume that if the number of transects required for the same project were approximately doubled (from 25 to 50 transects), as required by these rule amendments, that this cost would increase in a range between $15,000 and $30,000, and that the total cost for sieve and carbon analyses would increase from $32,500 to approximately $65,000; thus resulting in a total cost range between $80,000 to $95,000.

Although these rule amendments would theoretically increase this costs of characterizing sediment on the recipient beach, the CRC believes that the impact would be minimal for two reasons: 1) these amendments would allow for the use of historic data and only require the recipient beach to be characterized one time, and as most developed beaches already have fulfilled this requirement through past projects, applicants would not have to incur this cost, and; 2) the cost increase could potentially be offset by cost-savings resulting from the additional rule amendments that will allow qualified/certified contractors an ability to design a sampling protocol for the borrow site.

Sampling and Characterizing the Borrow Site:

Rules in 15A NCAC 07. 0312(2) define the methods used to characterize the sediment within a borrow site. Currently, these rules specify the grid spacing that is to be used to space vibracore

[1] *Moffat & Nicol, Johnny Martin, PE, July 2018*

sampling and geophysical imaging of the seafloor subsurface. The cost range for vibracores ranges between $4,500 and $10,000[2], and includes sieve and carbonate analysis, vessel mobilization/demobilization, collection, and engineering analysis and reporting. This amendment maintains the current minimum core spacing (one per 23 acres), but will allow the use of historic data, and allow the professional engineer/geologist to establish a vibracore spacing that is sufficient for characterizing the borrow site. By removing the specific grid spacing requirements, there is potential for a savings or neutral cost if the professional engineer or geologist can design a sampling regiment that requires fewer vibracores.

Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 15A NCAC 7H.0312 will not significantly affect environmental permitting for the NC Department of Transportation (NCDOT). NCDOT does not perform beach fill projects, and currently does not intend to begin doing so. Dredging, spoil disposal, transportation-related fill, a dune fortification are exempt activities under this rule.

Local Government

Beach nourishment projects can be a cost share between local governments, state, and federal agencies, or they can be fully funded by local government. Local governments typically obtain their funds from an authorized portion of its occupancy tax (S.L. 2013-223), or from established oceanfront and non-oceanfront special property tax districts. These funds accumulate and are held in savings until they are needed for a project.

As previously mentioned, these amendments will nearly double the cost needed to characterize the sediment on the recipient beach with this increase ranging from $15,000 to $30,000 per project. However, these amendments will also allow the use of qualified historic data and only require a recipient beach to be analyzed once prior to the first beach nourishment project. Currently, over eighty percent (80%) of the State's oceanfront communities have completed a large-scale beach nourishment projects and would therefore not be required to re-characterize sediment in the same area for subsequent projects. Approximately 20% of the oceanfront communities (43 miles of oceanfront shoreline), to include Sunset Beach, Surf City, Hatteras Village, Avon, Salvo, Waves and Corolla to VA have not constructed beach nourishment projects because there are either no pressing needs, or current plans to pursue a project. Assuming no historical data exists for any portion of these 43 miles, and that the cost for characterizing the recipient beach is comparable to the estimation calculated for the Bogue Banks project within the context of these amendments, it is anticipated that a one-time cost to characterize all 43 miles would range from approximately $160,000 to $190,000. Therefore, the CRC does not anticipate that these amendments will increase the cost of sampling enough to exceed the $1M threshold given that

[2] *Moffat & Nicol, Johnny Martin, PE, July 2018; and APTIM, Ken Wilson, PG, July 2018*

Private Property Owners

Private property owners do not obtain permits for the purpose of beach nourishment, nor do all contribute to the cost of installing specific projects. However, some private property owners in certain communities (i.e., Emerald Isle, Indian Beach, Pine Knoll Shores) do contribute based on a special tax districts in relation to the oceanfront toward these projects. This tax is paid each year regardless of whether or not a beach nourishment project is planned. Because the sediment on these beaches have already been characterized, there will be no need to re-sample, thus no additional expenditures are required.

Division of Coastal Management

The Division of Coastal Management does not anticipate any change in permitting receipts as a result of these amendments. However, it is possible that because these amendments allow the permittee's contractor or engineer to calculate and determine sediment compatibility, it is possible, but not certain that the permit review process could be completed more efficiently.

BENEFITS

Local Governments

The primary benefit associated with these rule amendments for local government is that the use of qualified historic data will be allowed for both characterization of the recipient beach and borrow site(s) where available; and once the sediment on a recipient beach has been characterized, there will be no requirement for subsequent data collection and analyses. Since the majority (>80%) of the oceanfront communities have already installed large-scale beach nourishment projects, these amendments will allow future projects in these areas to move forward without the expense of collecting and re-characterizing sediment on the recipient beach. The cost needed characterize beach sediment in those communities that have not installed beach nourishment projects (<20%), would be a one-time cost and could potentially be offset by: 1) use of borrow site historic data; 2) potentially less required sampling for borrow sites should the contractor determine that compatibility can be determined with fewer samples and surveys.

Private Property Owners

Beach fill or nourishment projects are not undertaken by private property owners. Therefore, there should be no cost to private property owners as a result of the rule amendments. Property owners in these comminutes will also benefit from cost savings associated with the use of historical data associated with past beach fill projects and local governments will not need to raise tax rates associated with beach fill project to cover the increased cost of sampling the recipient beach.

NC Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 15A NCAC 7H.0312 will not significantly affect environmental permitting for the NC Department of Transportation (NCDOT).

Division of Coastal Management

Although not certain, there is potential for the Division of Coastal Management's permit review process to be made more efficient as a result of these amendments.

State Government

Typically, local governments initiate beach nourishment projects and serve as the permittee. For qualified projects, the State has a dedicated fund (Shallow Draft Navigation Channel Dredging & Aquatic Weed Fund) that is used for cost sharing with local governments. For Tier 1 counties the State contributes 75% and local contributes 25%; and for Tier 2 & 3 counties, the State will contribute 66.6% and local government 33.3%. Currently, the local governments that have utilized these also have had a sediment characterization analysis completed for previous projects and will not need to characterize the recipient beach. As these amendments will allow those previous analyses to be used for future projects, there will be no added cost.

COST/BENEFIT SUMMARY

As previously mentioned, the CRC's rule amendments will serve two purposes: 1) meet the Session Law 2017-10 (S131) Section 3.15 mandate to exempt sediment characterization of beaches receiving material from a cape shoal, and borrow areas within the cape shoal system –Frying Pan shoals at Cape Fear, Cape Lookout, and Diamond Shoals), and 2) to eliminate the rigid data sampling protocol in favor of a simpler process where the project's consultant or engineer is allowed to design a sampling protocol that assures sediment compatibility between the beach and borrow area. In this manner, compatibility between the borrow areas and recipient beach is ensured, with the responsibility for establishing the sampling protocol placed on project applicants. These amendments will also allow Division of Coastal Management staff more time to devote to the environmental review components of the project and possibly decreasing the time to permit issuance.

In terms of cost, the CRC acknowledges that by decreasing the transect spacing to one-half mile, that the sediment characterization of the recipient beach would result in finer resolution data but would theoretically double the cost associated with characterizing sediment on the recipient beach. However, the CRC has also amended their rules to allow the use of qualified historic data and to only require a one-time sediment characterization analysis for the same project area that would serve as a baseline for all future projects. Given the fact that eighty percent of local governments

on the oceanfront have completed large-scale beach nourishment projects and would not need to re-characterize those same portions of beach, and nearly all of the remaining twenty percent (43 miles) does not have an immediate need or plan to nourish, the CRC believes this to be an overall minimal cost impact. As for amendments associated with characterizing sediment in the borrow site(s), these amendments will not require additional sampling criteria or restrictions, but rather allow the project's consultant or engineer to design a site-specific sampling design to insure that sediment placed on dredged from the borrow site has similar characteristics to that of the recipient beach.

By requiring more data to be collected to establish a baseline sediment characterization of the recipient beach, and giving the contractor or engineer the flexibility to design sampling protocol that will ensure that compatible sediment is placed on the beach, resulting in potential cost savings by not having to bear any added cost required for mitigation in the event that incompatible material is placed on the beach.

References

"*Ocean Isle Beach 2018 Annual Beach Monitoring Report*", Oct., 2018, Aptim Coastal Planning & Engineering of North Carolina, Inc.

"*2016 Annual Beach Monitoring Report: Holden Beach, NC*", Sept. 2016, Applied Technology & Management

"*Bald Head Island, NC Beach Monitoring Program: Monitoring Report No. 16 (May 2017 to May 2018),*" July 2018, Olsen Associates, Inc.

"*Coastal Storm Risk Management Carolina Beach & Kure Beach New Hanover County, NC*," October 2018, USACE Wilmington District.

Oak Island Post-Matthew FEMA Emergency Dune Restoration Project, April 2017, Moffatt & Nichol

USACE Public Notice: Pea Island and Rodanthe, Action ID Number: SAW-2013-01129, July 2013, USACE Wilmington District

Town of Kill Devil Hills Shore Protection Project: Beach Maintenance Plan, August 2017, Coastal Planning & Engineering of NC, Inc.

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes shall conform to the standards contained in 15A NCAC 07H .0308(b). ~~or~~ Sediment used to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

(1) The applicant shall characterize the recipient beach according to the following methodology. Initial characterization of the recipient beach shall serve as the baseline for subsequent beach fill projects:

(a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a cape shoal system, or maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system. ~~system;~~ For purposes of this rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;

(b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;

(c) Shore-perpendicular transects shall be established for topographic and bathymetric surveying of the recipient beach. ~~beach shall be conducted to determine the beach profile.~~ Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed one half mile ~~5,000 feet (1,524 meters)~~ in the shore-parallel direction; ~~direction. Elevation data for all transects shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);~~

(d) ~~No fewer than 13 sediment samples shall be taken along each beach profile transect.~~ Along each transect, at ~~At~~ least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. ~~The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;~~

(e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;

(f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;

(g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples. ~~samples along each transect defined in Sub-Item (1)(d) of this Rule.~~ The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;

(h) The ~~total~~ number of sediments and shell material greater than or equal to three inches (76 millimeters) in diameter shall be calculated through visual observation at each transect

within the beach fill project boundaries for an observable 3 square meter surface area of the beach for each sample point between mean low (MLW) and the front dune toe as defined in Sub-Item (1)(d) of this rule. ~~diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area.~~ A grand mean shall be calculated for all transects and referred to as the "background" value;

(i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and

(j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.

(2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For purposes of this rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:

(a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;

(b) The characterization of borrow sites shall include historical sediment characterization data collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule; (~~sediment characterization data provided by the Division of Coastal Management where available. These data can be found in individual project reports and studies, and shall be provided by the Division of Coastal Management upon request and where available;~~

(c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent, ~~percent~~ or the maximum extent practicable, of each submarine borrow site and use survey-grade swath sonar (*e.g.* multibeam or similar technologies). ~~technologies) in accordance with current US Army Corps of Engineers standards for navigation and dredging~~. Seafloor imaging without an elevation component (*e.g.* sidescan sonar or similar technologies) shall also cover 100 percent, ~~percent~~ or the maximum extent practicable, of each borrow site. ~~site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging.~~ Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and referenced to NAVD 88 and NAD 83. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. ~~All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth by the US Army Corps of Engineers (USACE).~~ The current surveying standards for navigation and dredging can be obtained from the Wilmington District of the US Army Corps of Engineers (USACE). ~~USACE.~~ For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system;

(d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site. ~~site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line.~~ Because shallow submarine areas can pose technical challenges and physical limitations for

geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to NAD 83;

(e) Sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than one core every 23 acres. ~~five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater.~~ Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system, or offshore dredged material disposal site (ODMDS) ~~system~~ may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required. ~~required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule; Because shallow submarine areas completely confined to maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis;~~

~~(f) For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;~~

~~(g)~~(f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;

~~(h)~~(g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

~~(i)~~(h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.

(3) Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment ~~The Division of Coastal Management shall determine sediment~~ compatibility is determined according to the following criteria:

(a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;

(b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;

(c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;

(d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;

(e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and

(f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.

(4) Excavation and placement of sediment shall conform to the following criteria:

~~(a) Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;~~

(a)~~(b)~~ In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during any moratoriums ~~times~~ designated by the Division of Coastal Management in consultation with other State and Federal agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. ~~agencies.~~ The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and

(b)~~(c)~~ A post-placement grand mean for sediment ~~Sediment~~ and shell material with a diameter greater than or equal to three inches (76 millimeters) shall be re-calculated according to the methodology described in Sub-Item (1)(h) of the Rule, and is considered incompatible if it ~~has been placed on the beach during the beach fill project, is observed between MLW and the frontal dune toe, and~~ is in excess of twice the grand mean background value of material within the boundaries of the beach fill project as observed, measured and calculated prior to the beach fill project. ~~of the same size along any 50,000 square foot (4,645 square meter) section of beach.~~ In the event that more than twice the background value of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management and other State and Federal resource agencies.

History Note: *Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124;*
Eff. February 1, 2007;
Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

September 4, 2019

MEMORANDUM **CRC-19-24**

TO: Coastal Resources Commission

FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Consideration of Fiscal Analysis for the Inlet Hazard Area Boundary Update and Rule Amendments to 15A 7H .0304, 07H .0306, 07H. 0309 and 07H .0310

Background

The establishment of Areas of Environmental Concern (AEC) is authorized under the NC Coastal Area Management Act (CAMA) of 1974 (NCGS 113A-100 et seq.) and forms the foundation of the North Carolina Coastal Resources Commission's (CRC) permitting program for regulating coastal development. Rules defining three specific ocean hazard AECs appear in 15A NCAC 07H.0300: 1) Ocean Erodible, 2) Inlet Hazard, and 3) Unvegetated Beach AECs. The inlet hazard area (IHA) AEC is defined in 15A NCAC 07H.0301(3) as locations that "are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets."

Unlike other CRC jurisdictional areas, IHA boundaries are defined in a report referenced in the CRC's rules at 7H.0304(2). The current IHA boundaries correspond to maps originally developed by Priddy and Carraway (1978) for all of the State's then-active inlets. The report designating the IHA boundaries was adopted by the CRC in 1979, with minor amendments since that time.

IHA boundaries in use today are based on statistical analysis (and to a lesser extent previous inlet location) of historical shoreline movement identified on multiple aerial photosets. In most cases, the statistical methods used in the 1978 study identified the landward-most shoreline position (99% confidence interval) projected to occur between 1978 and 1988. Originally, the Commission anticipated that these boundaries were to be updated at the end of the 1980s. However, due to a combination of factors, that update did not occur.

In addition to the proposed rule amendments, the CRC is proposing to update the Inlet Hazard Area boundaries at the State's developed inlets: Tubbs, Shallotte, Lockwoods Folly, Carolina Beach, Masonboro, Mason, Rich, New Topsail, New River and Bogue Inlets. Because the CRC's

rules are intended primarily to manage development, the CRC is proposing to remove IHA status for public lands that are managed by state or federal government, as these public areas are protected and unlikely to be developed for the purpose of establishing habitable structures. These inlet areas include: 1) Little River Inlet at Bird Island (State of NC); 2) New River Inlet at Onslow Beach (US Marine Corps); 3) Brown's Inlet at Onslow Beach and Brown Island (US Marine Corps; 4) Bear Inlet and Brown (US Marine Corps) and Bear Islands (State of NC); 5) Barden Inlet at Shackelford Banks and Core Banks (US Dept. of Interior); 6) Ocracoke Inlet at Ocracoke Island (US Dept. of Interior), and 7) Hatteras Inlet at Ocracoke and Hatteras (US Dept. of Interior).

At the Coastal Resources Commission's February 2019 meeting in Manteo, the Commission approved updated IHA boundaries defined in the CRC's Science Panel's report, "*Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission,*" IHA erosion rate setback factors report, "*2019 Inlet Setback Factors*," and associated rule amendments to 15A 7H .0304, 07H .0306, 07H. 0309 and 07H .0310. On August 30, 2019, the NC State of Office of Budget and Management (OSBM) approved the fiscal analysis.

Summary of Fiscal Analysis

One of the CRC's management objectives is to ensure that development is compatible with natural characteristics of coastal areas while also minimizing the likelihood of significant loss of private property and public resources. Given the rapid changes that can occur in areas adjacent to inlets, there is future potential for loss of property or development limitations as a direct result of beach erosion and the application of both current and amended rules. On the other hand, natural beach growth (accretion), or the installation of terminal groins (erosion control structure) coupled with regular beach nourishment and maintenance, can potentially slow or temporarily mitigate the negative effects caused by erosion. In either scenario, the application of both amended and current rules can influence development limitations (construction setback, structure size and/or density); when property is lost or significantly threatened by erosion.

Overall, the proposed amendments will result in a net of 307 structures that will be removed from Inlet Hazard Area boundaries which could allow for greater level of property development or redevelopment than under existing rules. For the first time there will be some land area removed from the Inlet Hazard Area while other locations will now be included within this AEC. Additionally, there will be 57 structures with reduced construction setback requirements. Collectively, this has an un-quantified, but positive, option value for those property owners.

With regards to flood insurance, amending Rules 15A NCAC 7H .0304 and 15A NCAC 7H .0310 and updating Inlet Hazard Areas do not have an immediate negative or positive impact to community NFIP CRS points and Class ranking. However, the CRC will continue to update setback factors for both the oceanfront and inlets areas once every five years in an effort to

contribute to an annual cost savings for property owners living in oceanfront communities by the avoidance of a five percent (5%) increase in flood insurance rates should the Coastal Resources Commission not update its construction setback factors.

There will be approximately 219 structures that are currently not within an Ocean Hazard Area that will now be included within the updated IHA. Additionally, there will be approximately 137 structures that will experience an increased construction setback factor when compared to existing requirements. Per the current rule, all new construction will be limited to 5,000 heated square feet, with a density limit of no more than one unit per 15,000 square feet of land area. In contrast to current practice, commercial and residential structures will be treated equally for setback calculations in the proposed amendments.

In a situation where a structure was destroyed or damaged beyond 50% and could not meet the construction setback, they still could potentially rebuild a structure on its original footprint and size if the structure was built before August 11, 2009 and meets certain grandfathering conditions in existing rules (15A NCAC 07H .0306(a)(5)(L)). Grandfathering applies single-family of all sizes, and commercial and multi-family 10,000 square feet or less. These proposed rule IHA amendments will not affect the application of these existing rules.

Within the context of these rule amendments it is not anticipated that the $1M impact threshold would be exceeded, primarily because these amendments do not prevent development from occurring within the IHA. These rules only apply to new construction or redevelopment of an existing structure in the event that it is damaged beyond 50% of its appraised value. Existing structures can be rebuilt if they meet required setbacks, or if they do not meet setback requirements but can meet specified grandfathering conditions outlined in Rule 15A NCAC 07H. 0306(a)(5)(L). Although there will be 21 additional structures that cannot meet these IHA setback requirements, there will be 26 structures that will be able to meet setback compared to existing requirements; thus resulting in an overall benefit. If an existing structure cannot meet setback requirements, and also does not qualify for grandfathering, it is theoretically possible that future setback requirements could be met if vegetation grows seaward, or if erosion rates are reduced in a subsequent IHA update.

With regards to the existing vacant lots within the proposed IHA (approximately 111 lots), these rule amendments do not restrict development on them, but they do limit structure size to 5,000 heated square feet, and development density to no more than one unit per 15,000 square feet of land area; the average size of structures adjacent to those 111 vacant lots is approximately 3,000 square feet. In a scenario where an existing vacant lot could not meet the setback requirements defined in this amendment, property owners could still potentially develop their property utilizing an existing rule (15A NCAC 07H. 0104) which allows for a structure up to 2,000 square feet to be constructed with minimal conditions.

There are unknowns and uncertainties associated with forecasting property owners' intentions, storm magnitude and frequency, or barrier island responses to inlet and ocean forces. For this reason, it is impossible to estimate a monetary cost or benefit that can be directly attributed to these rule amendments, especially when they do not restrict development. It is certain that barrier islands can and do change, and when structures are more appropriately sited, they are better protected from the forces of the ocean[1] and can potentially save property owners and government agencies the costs associated with rebuilding, storm damage clean up, and erosion mitigation.

Staff Recommendation

The fiscal analysis was approved by the NC Department of Environmental Quality and Office of State Budget and Management on August 30, 2019. Should the Commission require no additional changes at this time, DCM staff are recommending that the Commission's approve the fiscal analysis, and rule amendments. If approved, DCM Staff will proceed with public hearings.

ATTACHMENT A: Fiscal Analysis

[1] *Carteret County Shore Protection Office, Hurricane Florence, November 2018:* *http://www.carteretcountync.gov/ArchiveCenter/ViewFile/Item/1297*

ATTACHMENT A: Fiscal Analysis

Fiscal Analysis

2019 Update of Inlet Hazard Area Boundaries, Setback Factors, & Rule Amendments

15A NCAC 07H .0304, 15A NCAC 07H .0306, 15A NCAC 07H .0309, 15A NCAC 07H .0310

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August 26, 2019

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Title	AREAS OF ENVIRONMENTAL CONCERN (AECS) WITHIN OCEAN HAZARD AREAS, GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS, & USE STANDARDS FOR INLET HAZARD AREAS
Citation	15A NCAC 7H .0304(2), 15A NCAC 07H .0306(A)(4), 15A NCAC 7H .0309(C) AND 15A NCAC 07H .0310(A)
Description of the Proposed Rule	7H.0304 defines and establishes Areas of Environmental Concern (AECs) within the Ocean Hazard Areas along the State's Atlantic Ocean shoreline. Ocean Hazard Area AECs include the Ocean Erodible Area, Inlet Hazard Area and the Unvegetated Beach Area; 7H. 0306 defines use standards with AECs; 7H.0309 defines use standards for OHA and exceptions, and; 07H.0310 defines use standards within Inlet Hazard Areas (IHAs).
Agency Contact	Ken Richardson Shoreline Management Specialist ken.richardson@ncdenr.gov (252) 808-2808 ext. 225
Authority	G.S. 113A-107; 113A-113; 113A-124
Necessity	The Coastal Resources Commission proposed amendments to 15A NCAC 7H .0304(2), 15A NCAC 7H .0306(a)(4), 15A NCAC 7H .0309(c) and 15A NCAC 7H .0310(a) to reference proposed update of Inlet Hazard Area boundaries and associated development setback factors. The proposed rule change is in the public interest as it is intended to minimize the loss of property and human life by establishing development setbacks between structures and the Atlantic shoreline.
Impact Summary	State government: No Local government: Uncertain Private Property Owners: Yes Substantial impact: No Federal government: No

Summary

The establishment of Areas of Environmental Concern (AEC) is authorized under the NC Coastal Area Management Act (CAMA) of 1974 (NCGS 113A-100 et seq.) and forms the foundation of the North Carolina Coastal Resources Commission's (CRC) permitting program for regulating coastal development. Rules defining three specific ocean hazard AECs appear in 15A NCAC 07H.0300: 1) Ocean Erodible, 2) Inlet Hazard, and 3) Unvegetated Beach AECs. The inlet hazard area (IHA) AEC is defined in 15A NCAC 07H.0301(3) as locations that "are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets."

Unlike other CRC jurisdictional areas, IHA boundaries are defined in a report referenced in the CRC's rules at 7H.0304(2). The current IHA boundaries correspond to maps originally developed by Priddy and Carraway (1978) for all of the State's then-active inlets. The report designating the IHA boundaries was adopted by the CRC in 1979, with minor amendments since that time.

IHA boundaries in use today are based on statistical analysis (and to a lesser extent previous inlet location) of historical shoreline movement identified on multiple aerial photosets. In most cases, the statistical methods used in the 1978 study identified the landward-most shoreline position (99% confidence interval) projected to occur between 1978 and 1988. Originally, the Commission anticipated that these boundaries were to be updated at the end of the 1980s. However, due to a combination of factors, that update did not occur.

The Coastal Resources Commission (CRC) seeks to amend Inlet Hazard Area (IHA) boundaries and its administrative rules governing structure size, development density, and siting of new construction within these areas more prone to erosion caused by inlet related processes.

Introduction and Purpose

Developed in 1978 and estimated to be applicable for approximately ten years, the State's existing Inlet Hazard Area boundaries were intended to be updated before 1990. However, completing an update did not occur due to limited staff resources, insufficient data and mapping tools, and the lack of a defined method that could incorporate modern data and knowledge related to inlet geology and geomorphology.

Geographically, the ends of barrier islands adjacent to inlets are constantly being reshaped by both natural (wind, currents, tides, waves) and manmade (dredging, beach nourishment, and erosion control structures) forces. In the event of a severe storm, these changes can occur very rapidly, and in time, many structures have been destroyed, with more than 347 platted parcels submerged

(Brunswick, Pender and Onslow Counties), and erosion control structures (sandbags, terminal groins) installed in order to slow erosion or protect structures. Currently, several existing IHA boundaries are spatially inaccurate as the inlet has migrated outside of the mapped boundary, and no longer accurately reflect the potential erosion hazards for actual developed portions of barrier islands that are adjacent to those inlets. In an effort to update IHA boundaries, the Coastal Resources Commission's Science Panel and DCM Staff have collaborated on identifying appropriate data and best methods for calculating inlet shoreline erosion rates and defining new defined IHA boundaries.

In addition to updating IHA boundaries, the CRC is proposing amendments to their rules. One of the CRC's management objectives is to ensure that development is compatible with natural characteristics of coastal areas while also minimizing the likelihood of significant loss of private property and public resources (NCAC 07H.0203). At most inlets, the proposed IHA boundaries expand farther from the inlet along the oceanfront-inlet shoreline, and farther landward compared to existing IHA boundaries. Under the current rules, construction setback factors, which are based on erosion rates and used for siting new development, are calculated for the oceanfront (but not inside IHAs) approximately every five years. Instead, setback factors that are applied within the IHA are those of adjacent Ocean Erodible Areas (OEA) and do not reflect the actual erosion rates with the IHAs. This practice was necessary due to technological and methodological limitations in calculating erosion rates along inlet shorelines. By Applying this same practice to expanded IHA would misrepresent the erosion hazards associated with inlet areas. Now that the technology exists to calculate erosion rates along inlet shorelines, the CRC is proposing to amend their rules and allow the use of setback factors based on inlet erosion rates instead of using adjacent OEA oceanfront setback factors.

Description of Rule Update

15A NCAC 7H .0304

15A NCAC 7H .0304 describes Areas of Environmental Concern (AEC) within Ocean Hazard Areas (OEA). In section 15A NCAC 7H .0304(2) the proposed amendment references the updated Inlet Hazard Area boundary report and maps titled "Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission."[2] The methods used to calculate the inlet shoreline erosion rate setback factors[3] and for mapping the IHA boundaries can be found in the reports. Similar to how the Ocean Erodible Area is calculated on the oceanfront, landward IHA boundaries are heavily based on erosion rates multiplied by 90; however, expert (CRC's Science Panel) consideration was also given to inlet-specific

[2] *Accessible at: https://files.nc.gov/ncdeq/Coastal%20Management/GIS/2019_Inlet_Hazard_Area_Boundary_Update_20190212.pdf*
[3] *https://files.nc.gov/ncdeq/Coastal%20Management/GIS/2019_Inlet_Hazard_Area_Setback_Factors_20190212.pdf*

geomorphology and underlying geology. It is important to note that factors of 30 have been used and accepted since 1980's for the purpose of calculating construction setback and landward boundary of the Ocean Erodible Areas, and was initially based on the length of a typical mortgage (30 years).

In section 15A NCAC 7H .0304(2)(a) of this Rule, the Inlet Hazard Area width cannot be less than the adjacent Ocean Erodible Area. However, these two AECs are mapped differently, and given that the IHA has remained static since 1979, while the OEA is updated approximately every five years, the resulting OEA boundary does not always conform to this requirement. In addition, there may be an erosion control structure (sandbag, terminal groin, navigational jetty) or unique geologic or geomorphologic barrier island feature that prevents the ability to meet this existing requirement. Therefore, the CRC is proposing that this requirement be removed.

As mentioned above, the adjacent OEA setback factor is currently applied throughout the IHA. The CRC is proposing to utilize inlet setback factors that are based on actual inlet erosion rates instead of adjacent oceanfront rates. The report, "2019 Inlet Setback Factors" [4] is referenced in 15A NCAC 7H .0304(2)(a) that includes the methodology and maps. As in Rule 15A NCAC 7H .0304(1) where the minimum setback factor of two is established, this section establishes the minimum setback factor of two within the IHA.

15A NCAC 07H .0309

Existing Rule 15A NCAC 07H .0309 describes the use standards and exemptions within Ocean Hazard Areas. Section 15A NCAC 07H .0309(c) of this rule prescribes conditions on the potential development of reconfigured lots that were platted prior to June 1, 1979. The intent of this rule was to not create a scenario where adjacent lots are combined and reconfigured in order to increase the number of buildable lots while also taking advantage of the grandfathering provisions in section 15A NCAC 07H .0309(b) of this rule. The CRC is proposing to remove section 15A NCAC 07H .0309(c) of this rule as it is not needed given that construction setbacks based on structure size is still required and does not change due to reconfiguring adjacent lots or lot size.

15A NCAC 07H .0310

Rule 15A NCAC 07H .0310 describes use standards for Inlet Hazard Areas. The intent of this existing rule is to limit the structure size and development density within the Ocean Hazard Areas that are more strongly influenced by inlet-related erosion than oceanfront processes.

The existing rule in Section 15A NCAC 07H .0310(a)(1) requires the use of the adjacent Ocean Erodible Area (oceanfront) setback factor to be applied within the Inlet Hazard Area. Because the

[4] https://files.nc.gov/ncdeq/Coastal%20Management/GIS/2019_Inlet_Hazard_Area_Setback_Factors_20190212.pdf

CRC is proposing the use of newly calculated inlet setback factors based on inlet erosion rates (referenced in proposed amendments to 15A NCAC 07H .0304), and not the adjacent oceanfront shoreline, the Commission is amending the rule to remove reference the adjacent ocean hazard area. The CRC is also proposing that inlet erosion rates and setback factors are to be updated once every five years, and to coincide with oceanfront erosion updates.

The proposed addition of the new section 15A NCAC 07H .0310(a)(2) is included to reference existing rules pertaining to construction setback requirements in 15A NCAC 07H .0306(5). Additionally, this section references grandfathering provision for structures built prior to August 11, 2009 and no greater than 10,000 square feet in size.

The intent of the existing section 15A NCAC 07H .0310(a)(2) is to limit development density of commercial and residential structures to one unit on lots less than 15,000 square feet of land area. The proposed amendment would change this to section 15A NCAC 07H .0310(a)(3) and remove the reference to "commercial or residential" since this rule applies to all structures regardless of use.

Existing section 15A NCAC 07H .0310(a)(3) limits development density inside an IHA to four units or less for residential and commercial to less than 5,000 square feet. The proposed amendment would change this section to 15A NCAC 07H .0310(a)(4), and remove the distinction between residential and commercial, treating all structures equally, and limiting them to 5,000 square feet.

The remaining amendments to 15A NCAC 07H .0310 are minor edits to existing rule language and do not change how the rule is currently applied.

The draft amendment is located in Appendix A.

Description of Boundary and Construction Setback Factor Update

In addition to the proposed rule amendments, the CRC is proposing to update the Inlet Hazard Area boundaries at the State's developed inlets: Tubbs, Shallotte, Lockwoods Folly, Carolina Beach, Masonboro, Mason, Rich, New Topsail, New River and Bogue Inlets. Because the CRC's rules are intended to primarily manage development, the CRC is proposing to remove IHA status for public lands that are managed by state or federal government, as these public areas are protected and unlikely to be developed for the purpose of establishing habitable structures. These inlet areas include: 1) Little River Inlet at Bird Island (State of NC); 2) New River Inlet at Onslow Beach (US Marine Corps); 3) Brown's Inlet at Onslow Beach and Brown Island (US Marine Corps; 4) Bear Inlet and Brown (US Marine Corps) and Bear Islands (State of NC); 5) Barden Inlet at Shackelford Banks and Core Banks (US Dept. of Interior); 6) Ocracoke Inlet at Ocracoke Island (US Dept. of Interior), and 7) Hatteras Inlet at Ocracoke and Hatteras (US Dept. of Interior).

While the size of the proposed IHA boundaries are reduced at some locations, overall they do encompass more land area compared to existing IHAs (Table 1). Collectively, IHAs are reduced by approximately 470 acres at Tubbs, Mason and New Topsail Inlets; and increased by approximately 1,800 acres for all others combined. Although the land area (~4,728 acres) inside the proposed IHAs does increase to some degree at most inlets, only 3% (~152 acres) of the total area is not already within the existing Ocean Hazard Area (IHAs, OEAs and Unvegetated Beach AECs). In other words, approximately 97% of the land area inside the proposed IHAs is already part of one of three existing AECs that make up the current Ocean Hazard Area, and already within the CRC's jurisdiction.

Table 1. Comparison of land area, not area over marsh or water, inside the existing and proposed IHAs. Positive land area difference values represent increases, and negative values represent decrease in size of the IHA. Approximately 152 acres is currently not within an Ocean Hazard AEC.

Inlet - Location	Land Area Inside Existing IHA (acres)	Land Area Inside Proposed IHA (acres)	Land Area Difference (acres)	Land Area Currently Not inside an AEC (acres)
Tubbs Inlet - Sunset Beach	182	96.8	-85.2	0
Tubbs Inlet - Ocean Isle	123.5	84.3	-39.2	0
Shallotte Inlet - Ocean Isle	64.6	216.6	152	3.4
Shallotte Inlet - Holden Beach	290.5	569.3	278.8	76.4
Lockwood Folly Inlet - Holden Beach	64.1	189.5	125.4	2.3
Lockwood Folly Inlet - Oak Island	126.7	229.7	103	6.2
Carolina Beach Inlet - Carolina Beach	177.5	346	168.5	5.7
Masonboro Island - CB & Masonboro Inlets	75.6	535.5	459.9	0
Masonboro Inlet - Wrightsville Beach	0	90.8	90.8	9.4
Mason Inlet - Wrightsville Beach	267.6	125.5	-142.1	0.2
Mason Inlet - Figure Eight	267.6	165.6	-102	2.2
Rich Inlet - Figure Eight	156.2	253.6	97.4	21.3
Rich Inlet - Lea-Hutaff Island	117.7	409	291.3	0
New Topsail Inlet - Lea-Hutaff Island	517.1	414.4	-102.7	0
New Topsail Inlet - Topsail Beach	256.9	427.4	170.5	2.3
New River Inlet - N. Topsail Beach	85.2	144.8	59.6	5.3
Bogue Inlet - Emerald Isle	136.1	429.5	293.4	17.3
TOTAL:	**2908.9**	**4728.3**	**1819.4**	**152**

At many locations, the proposed IHA boundaries include areas that have historically been part of one of the Ocean Hazard AECs. Approximately 648 acres at developed inlets would be removed

from an IHA. At undeveloped inlets where land is publically owned and IHA boundaries are proposed to be removed, the total area that will not be included as an IHA is approximately 3,300 acres.

For purposes of this analysis, "structures" are counted as one structure when they are physically connected; this includes multi-family and commercial. There are approximately 750 existing structures inside current IHAs, and a total of 945 within the proposed IHAs. Of the 750 structures inside the current IHAs, approximately 40% (307 structures) of those would not be included in the updated IHAs, nor would they be included within the OEA. This means that those 307 structures will no longer be in within an Ocean Hazard Area. Of the total 945 structures within the proposed IHAs, 443 (59%) of them are already located within an existing IHA, and 726 (77%) are currently located within one of three Ocean Hazard AECs. Because the proposed IHAs do expand and include approximately 152 acres of land, there will be approximately 217 structures that are not currently located within an Ocean Hazard AEC that will be included within the updated IHAs.

Table 2. Comparison of the number of structures inside the existing and proposed IHAs; summary of the number of structures (219) that will be included in the updated IHA that are not currently within an Ocean Hazard Area (OHA), and; number of structures (307) that will be removed from the OHA as a result of the IHA update.

Inlet - Location	Structures inside IHA-Existing	Structures inside IHA-Update	Structures inside IHA-Update not Currently Inside OHA	Structures Removed from OHA
Tubbs Inlet - Sunset Beach	203	16	0	187
Tubbs Inlet - Ocean Isle	56	31	0	20
Shallotte Inlet - Ocean Isle	0	110	8	0
Shallotte Inlet - Holden Beach	51	208	107	0
Lockwood Folly Inlet - Holden Beach	4	38	0	0
Lockwood Folly Inlet - Oak Island	31	69	13	0
Carolina Beach Inlet - Carolina Beach	0	19	4	0
Masonboro Island	0	0	0	0
Masonboro Inlet - Wrightsville Beach	N/A	2	0	0
Mason Inlet - Wrightsville Beach	1	1	0	0
Mason Inlet - Figure Eight	36	20	0	31
Rich Inlet - Figure Eight	34	66	25	9
Rich Inlet - Lea-Hutaff Island	0	0	0	0
New Topsail Inlet - Lea-Hutaff Island	0	0	0	0
New Topsail Inlet - Topsail Beach	164	178	12	0
New River Inlet - N. Topsail Beach	68	95	10	5
Bogue Inlet - Emerald Isle	102	78	40	55
TOTAL:	**750**	**931**	**219**	**307**

Since 1980, the Division of Coastal Management has updated its oceanfront shoreline change rates approximately once every five years for calculating both oceanfront development setbacks and the landward boundary of the Ocean Erodible Area of Environmental Concern. The Commission is now proposing to utilized calculated erosion rates within IHAs to determine development setbacks.

Due to technological and methodological limitations, the CRC has calculated development setbacks within existing IHA boundaries utilizing the erosion rate setback factors of the adjacent Ocean Erodible Area (NCAC 07H. 0310); which may not always be representative of the actual erosion associated with inlet-related processes.

By applying the adjacent oceanfront shoreline setback factor inside the IHAs, and not using factors based on actual erosion rates at the inlet, the potential risk associated with inlet-induced erosion may not always reflected in the setback factors applied in determining construction setback.

Table 3, Column (A) shows the range of calculated setback factors without applying the adjacent OEA factor as required by current rules; and Column (B) shows the range for the same area when the adjacent OEA factor is applied inside the existing IHA. The same comparison was made using proposed inlet setback factors with proposed rule amendments (Table 3, Column (C)), and; application of current rules with proposed inlet setback factors and boundary (Table 3, Column (D)). At specific inlets (Tubbs and Mason) the use of the adjacent OEA's setback factor results in no change; while at others (Lockwoods Folly, New River, and Bogue Inlets), the use of the adjacent OEA's setback factor applied within the IHA does significantly change the setback factor applied throughout the entire IHA.

Table 3. The geographical extent of setback factor (SBF) ranges in this table is the same area of land within the proposed IHAs. **(A)** represents the range of existing setback factors within the area of the proposed IHA boundary before applying the adjacent OEA setback factors within the current IHAs as required by existing Rules (15A NCAC 07H .0310); **(B)** illustrates the range of existing setback factors after applying the adjacent OEA setback factors within existing IHAs, and represents current requirements; **(C)** represents the proposed IHA setback factors and application of proposed rule amendments – and once adopted, would become the setback factors within the updated boundaries; **(D)** represents range of setback factors when existing rules are applied to the updated IHA and inlet setback factors. Both (A) and (D) illustrate how existing rules (15A NCAC 07H .0310) can influence setback factors.

Inlet - Location	*(A)*	**(B)** (current IHAs & SBFs)	**(C)** (proposed IHAs & SBFs)	*(D)*
Tubbs Inlet - Sunset Beach	2	2	2	2
Tubbs Inlet - Ocean Isle	2	2	2	2
Shallotte Inlet - Ocean Isle	2 to 6.5	2 to 6.5	2 to 18	**2**
Shallotte Inlet - Holden Beach	2	2	2 to 5	**2**
Lockwood Folly Inlet - Holden Beach	2 to 8.5	3.5 to **7**	2 to 5	**3.5**
Lockwood Folly Inlet - Oak Island	2	2	2	2
Carolina Beach Inlet - Carolina Beach	2 to 11.5	3 to **6.5**	2	3
Masonboro Island (CB & Masonboro Inlets)	2 to 28	2 to 12.5	2 to 18	2 to 18
Masonboro Inlet - Wrightsville Beach	2	2	2	2
Mason Inlet - Wrightsville Beach	2	2	2	2
Mason Inlet - Figure Eight	2	2	2	2
Rich Inlet - Figure Eight	2	2	2	2
Lea-Hutaff Island (Rich and New Topsail Inlets)	2 to 10	2 to 10	2 to 37	2 to 37
New Topsail Inlet - Topsail Beach	2	2	2	2
New River Inlet - N. Topsail Beach	2 to 14	**2**	2 to 8	**2**
Bogue Inlet - Emerald Isle	2 to 12.5	**2**	2 to 4.5	**2**

Cost or Neutral Impacts

Private Property Owners:

The IHA rules only apply when property owners are seeking a Coastal Area Management Act (CAMA) permit for construction of new a structure, or replacement of an existing structure (requiring more than fifty percent (50%) repair) within the Inlet Hazard Area. The proposed rule amendments will remove existing distinctions between commercial and residential and require all structures: 1) to be limited to 5,000 square feet, and; 2) utilize IHA calculated setback factors, and not its adjacent oceanfront shoreline factor. It is important to note that current rules limiting development to no more than one unit per 15,000 square feet of land area, and grandfathering of structures that meet conditions in existing rules (15A NCAC 07H .0306(a)(5)(L) will still apply within the updated IHAs.

New construction:

The two most notable influences that the updated IHA boundaries and rule amendments will have on new construction are: 1) the required use of erosion rate setback factors calculated for inlet areas and not that of the adjacent OEA, and; 2) both residential and commercial structures would be treated equally and limited to 5,000 square feet, and no more than one unit per 15,000 square feet of land area. Although both current and amended IHA rules have potential to limit size and density of new development, they do not specifically restrict a property owner's ability to develop when higher rates of beach erosion are not measured or experienced.

Currently there are approximately 425 platted lots adjacent to inlets that are completely submerged in the ocean or inlet or on the wet-sand beach. This alone demonstrates that geomorphology around inlets is very dynamic and have potential to change rapidly. For this reason, the CRC has traditionally taken the position that large-scale and dense development should be limited in areas adjacent to inlets. The 5,000 square feet size regulation has always applied to commercial development within IHAs because they have typically been thought of as being the largest structures when compared to single-family residential; especially during the early development of NC's coast. Today, NC's coast is experiencing the construction of large 24-bedroom "single-family" homes, which is an example of why the CRC treats all structures the same, regardless of its use.

With regards to redevelopment of existing structures, it is not feasible to speculate on level of damages that might be caused by future storms, or speculate on the collective plans of property owners who might want to redevelop existing structures. Therefore, this section will focus only on how these rule amendments might affect existing vacant lots as a whole, regardless of ownership, or current use (public vs. private). Based on a random sampling of existing structures that are adjacent to vacant lots and within the updated IHAs, the average size of single-family residential structures is approximately 3,000 square feet (Table 4). The CRC is confident that the 5,000 square feet limit is sufficient for the development of vacant lots if they can meet the construction setback requirement.

For the purpose of this analysis, a "vacant lot" simply means that there are no existing residential or commercial structures on the existing platted lot. Within existing IHAs, there are an estimated 113 vacant lots. Approximately 46% (52) of these lots currently do not have enough land area to allow for a structure to meet the minimum setback requirement based on current rules and erosion rate setback factors. Within the proposed updated IHA boundaries, the number of vacant lots increases by 60, making the total number of vacant lots estimated to be 173. Of 173 vacant lots, approximately 62 (36%) cannot meet the minimum construction setback; therefore, 111 (64%) of the vacant lots have potential to be developed to some degree should the owner chose to do so. Although this analysis does not examine why these lots are vacant, it should be noted that a portion of the 111 lots are owned by local government for the preservation of open space and public beach access, parking, and neighborhood common areas; while several have simply remained undeveloped.

Table 4. Average square footage of residential structures basef on a random sampling of structures adjacent to vacat lots and within the updated IHA. Although individual units within mult-family structures ranged from 640 to 1380 heated square feet, these averages do not consider multi-family structures as a whole. (*) indicates average based on structure physical footprint as determined using county tax data.

Inlet Location	Heated Square Feet (Average)
Tubbs Inlet	3,600
Shallotte Inlet	3,700
Lockwood Folly Inlet	2,700
Carolina Beach Inlet	2,000*
Masonboro Inlet	NA
Mason Inlet	3,400
Rich Inlet	3,500
New Topsail Inlet	2,000
New River Inlet	3,300
Bogue Inlet	3,200
AVERAGE	**3,000**

Repair of existing structures:

Since 1979, the DCM oceanfront erosion rates have been used to calculate setback factors, and where there is accretion or rates are less than two feet per year, the default setback factor is two. Based on the 2019 inlet study and compared to existing setback requirements, 737 (79.2%) existing structures within the proposed Inlet Hazard Areas will experience no change in their development setback factor, 137 (14.7%) structures will experience an increase in construction setback factors, while 57 (6.1%) will have decreased setback factors (Table 5). It is important to note that where proposed inlet erosion rates will increase setback factors, all parcels and structures (100% of the 137) are in areas with known historically high erosion rates; however, because existing rules require the adjacent oceanfront shoreline setback factor to be applied inside the IHA, the setbacks for these locations have historically been lower than the proposed.

Currently, 188 (20.2%) structures within the proposed IHA cannot meet the current minimum setback (60 feet, or SBF x 30). Using the proposed inlet setback factors, an additional 21 structures would not meet the minimum setback.

Table 5. Structure count summaries include all structures within the proposed IHAs, and they are counted as one structure when they are physically connected: (A) number of structures inside the proposed IHAs; (B) number of structures with no change in setback factors as a result of using inlet factors; (C) number of structures with increased setback factors; (D) number of structures with decreased setback factors; (E) number of structures that cannot meet the current minimum setback requirement, and (D) number of additional structures that could not meet the minimum setback using inlet calculated setback factors.

Inlet - Location	(A)	(B)	(C)	(D)	(E)	(D)
Tubbs Inlet - Sunset Beach	16	16	0	0	0	0
Tubbs Inlet - Ocean Isle	31	31	0	0	4	0
Shallotte Inlet - Ocean Isle	110	72	38	0	79	7
Shallotte Inlet - Holden Beach	208	208	0	0	0	0
Lockwood Folly Inlet - Holden Beach	38	0	0	38	35	*-26*
Lockwood Folly Inlet - Oak Island	69	69	0	0	0	0
Carolina Beach Inlet - Carolina Beach	19	0	0	19	1	0
Masonboro Island (CB & Masonboro Inlets)	0	0	0	0	0	0
Masonboro Inlet - Wrightsville Beach	2	2	0	0	0	0
Mason Inlet - Wrightsville Beach	1	1	0	0	0	0
Mason Inlet - Figure Eight	20	20	0	0	12	0
Rich Inlet - Figure Eight	66	66	0	0	13	0
Lea-Hutaff Island (Rich and New Topsail Inlets)	0	0	0	0	0	0
New Topsail Inlet - Topsail Beach	178	178	0	0	0	0
New River Inlet - N. Topsail Beach	95	21	74	0	36	9
Bogue Inlet - Emerald Isle	78	53	25	0	8	5
Total:	**931**	**737**	**137**	**57**	**188**	**21**
Percentage:		**79.2%**	**14.7%**	**6.1%**	**20.2%**	**2.3%**

Not meeting construction setback requirements based on existing or proposed setback factors and rules does not necessarily mean those same structures can never be rebuilt in the event they are destroyed or damaged beyond fifty percent. The reference feature from which development setbacks are measured, the first line of stable and natural vegetation (FLSNV), is determined in the field since it is dynamic and can change with the frequency and severity of storms and other factors common with inlet shorelines. The location of the first line of stable and natural vegetation can also be influenced by a community's decision to construct a beach nourishment project. In time, the vegetation may respond and grow seaward with the beach, thus changing the point of reference from which the construction setback is measured. As previously mentioned, in a situation where a structure was destroyed and could not meet the construction setback, they still could potentially rebuild a structure on its original footprint and size if the structure was built before August 2009 and meets certain grandfathering conditions in existing rules (15A NCAC 07H .0306(a)(5)(L)). This grandfathering rule does not permit structures to be rebuilt in the original footprint and size if it was constructed after August 2009, and it cannot meet the required minimum setback.

Isolating or predicting the impact of state setback requirements on inlet and oceanfront property is difficult, if not impossible, since there are many statistically independent criteria that affect structure values. To examine these types of changes, economists use hedonic price models to decompose the total structure value into measurements for individual aspects of the structure such as size, age, number of bathrooms, location, and nearby amenities. Existing research indicates that erosion risks may decrease the value of oceanfront property but that this effect is overshadowed by the much larger positive value homebuyers place on being located directly next to the ocean.[5] Our ability to analyze this change is also complicated by different local construction ordinances which typically have additional structure setback distances that are measured from points of reference not presented in this document, but can potentially limit size or placement of a proposed structure on a lot. It is true that as the erosion rate increases, construction setback increases; however, depending on size of lot and structure, local government construction requirements (lot-side and street setback) in instances of home damage exceeding 50 percent of the structure value, the property owner may still be able to repair the structure to its original size.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, DCM DOT permitting staff reported that the proposed amendment to 7H.0304 will not affect environmental permitting for the NC Department of Transportation. Development such as roads, parking lots, and other public infrastructure such as utilities continue to have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline setback factor (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event NC DOT needs to build or replace a road located within an Inlet Hazard AEC, DOT actions regarding the roadbed would likely be considered maintenance and repair and not affected by changes in the oceanfront setback factors.

Local Government:

Public infrastructure (roads, parking lots, & utilities) have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H.0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Inlet Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity.

With regards to local property and tax values, the CRC is confident that trying to quantify these values would be difficult if not impossible since there are statistically independent criteria that affect structure values along the coast. Existing research indicates that erosion risk may decrease the value of oceanfront property but that this affect is overshadowed by the much larger value homebuyers place on being located next to the ocean.[3 and 6]

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[5]Bin, O. and Kruse J.B. "Real Estate Market Response to Coastal Flood Hazards" Natural Hazards Review, 7:4. 2006.; Hindsley, P. "Applying Hedonic Property Models in the Planning and Evaluation of Shoreline Management" Presented at the Coastal Society's 22nd International Conference in Wilmington North Carolina June 13, 2010.

[6] Below, S., Beracha, E. and Skiba H. "Land Erosion and Coastal Home Values" Journal of Real Estate Research, Vol. 37, No. 4-2015

Division of Coastal Management:

There will be a net increase of 181 structures within the IHAs (Table 2). However, because these changes will only apply to new development or replacement of an existing structure requiring more than fifty percent (50%) repair or re-construction, the Division of Coastal Management's permit review process will not be changed by these amendments, and DCM does not anticipate changes in permitting receipts due to the proposed action.

In terms of staff time required to do future updates of the IHA boundaries and erosion rate setback factors every five years, this process will be included as part of the existing practice of analyzing the oceanfront erosion rates and Ocean Erodible Areas. The same automated Geographical Information System (GIS) analysis already includes the option to analyze both the oceanfront and inlet erosion rates at the same time.

Benefits

Private Property Owners:

One of the CRC's management objectives is to ensure that development is compatible with natural characteristics of coastal areas while also minimizing the likelihood of significant loss of private property and public resources. IHA rules are intended to allow development to occur within areas adjacent to inlets while considering rates of erosion when siting the placement of new structures. Since these areas are very dynamic and can change rapidly, the CRC's objective is to require the siting of new development to be in a more landward position when erosion rates are higher than average (approximately 2 feet/year.)

Although there are two hundred and nineteen (219) structures that are currently not within an Ocean Hazard Area that will now be within the updated Inlet Hazard Areas, there will be three hundred and nine (307) structures that will be removed from the updated IHAs. With regards to proposed inlet setback requirements, approximately 794 (85.3%) of existing structures within the proposed IHAs will see no change, or either a setback factor reduction.

Although purely speculative, properties within the existing or proposed IHAs could potentially be permitted and allowed re-development or expansion of the existing structure if new setback requirements can be met, and the total conditioned square footage does not exceed 5,000 square feet. It is not possible to estimate the exact value of this benefit without knowing how many property owners would choose to undertake expansion or redevelopment, or knowing specifics related to construction plans; however, where structures are removed from the IHA, or setback factors are reduced, it is estimated that this is potentially a positive net influence for those property owners if compared to existing more restrictive setback requirements.

Although the erosion rates are often higher near inlets, it is important to note that National Flood Insurance Program (NFIP) does not consider the actual erosion rate when flood insurance rates are evaluated. NFIP only considers that fact that the State of North Carolina did, or did not, update its

erosion rates utilizing current data. NFIP requires this update to occur approximately once every five years. If the state does not, NFIP can then discredit fifty Community Rating System (CRS) points from all NC oceanfront communities with property inside a Special Flood Hazard area. Along the Atlantic shoreline (oceanfront and inlets), these areas are defined by the Velocity Zone, or V-Zone, and vary in size based on coastal region. In some areas this zone may extend across an entire barrier island, while in others it may only contain first or second row property.

The NFIP does not consider the methodology for calculating setback factors, or the differences between the OEA and IHA; just that the fact that the State updates is setback factors once every five years. Updating inlet setback factors will coincide with the update of oceanfront setback factors. Regardless of the calculation methodology, the State will continue to update erosion rates in part to assure that communities do not lose CRS points. The loss of fifty CRS points would not have an immediate negative impact on those communities listed below in Table 6. However, several communities are scheduled to be reevaluated by NFIP in 2019 and 2020, and at that time could potentially benefit by having fifty points awarded and saving five percent in premiums as a direct result of NC updating erosion rates. Although this update alone does not guarantee a community will save five percent in premiums, the 50-points awarded could mean the difference between higher and lower NFIP Classes.

Table 6. List of oceanfront communities participating in the Community Rating System (CRS). This table illustrates their current CRS Class, Special Flood Hazard Area (SFHA) Premium discount percentages, CRS points, and point score scenario subtracting 50 points. Based on current points, none of the listed communities would be impacted by the loss of fifty points. It should be noted that those communities identified with an asterisk (*) have an assigned CRS Class that does not correspond to their CRS Points because they did not meet FEMA's prerequisites during their last evaluation; therefore, could not be placed in the Class tier based on scored points.

	Community	Current CRS Class	% Discount for SFHA(1)	% Discount for Non-SFHA	CRS Points	CRS Points (-50)	*CRS Class Change if Points Lost*
1	Carolina Beach	6	20	10	2058	*2008*	*No*
2	Emerald Isle	7	15	5	1906	*1856*	*No*
3	Holden Beach	8	10	5	1181	*1131*	*No*
4	North Topsail Beach*	*5**	25	10	*3600*	*3550*	*No**
5	Oak Island*	*7**	15	5	*2258*	*2208*	*No**
6	Ocean Isle Beach*	*8**	10	5	*2088*	*2038*	*No**
7	Sunset Beach*	*7**	15	5	*2109*	*2059*	*No**
8	Topsail Beach	5	25	10	2597	*2547*	*No*
9	Wrightsville Beach	7	15	5	1768	*1718*	*No*

Cost/Benefit Summary

One of the CRC's management objectives is to ensure that development is compatible with natural characteristics of coastal areas while also minimizing the likelihood of significant loss of private property and public resources. Given the rapid changes that can occur in areas adjacent to inlets, there is future potential for loss of property or development limitations as a direct result of beach erosion and the application of both current and amended rules. On the other hand, natural beach growth (accretion), or the installation of terminal groins (erosion control structure) coupled with regular beach nourishment and maintenance, can potentially slow or temporarily mitigate the negative effects caused by erosion. In either scenario, the application of both amended and current rules can influence development limitations (construction setback, structure size and/or density); when property is lost or significantly threatened by erosion.

Overall, the proposed amendments will result in a net of 307 structures that will be removed from Inlet Hazard Area boundaries which could allow for greater level of property development or redevelopment than under existing rules. For the first time there will be some land area removed from the Inlet Hazard Area while other locations will now be included within this AEC. Additionally, there will be 57 structures with reduced construction setback requirements. Collectively, this has an un-quantified, but positive, option value for those property owners.

With regards to flood insurance, amending Rules 15A NCAC 7H .0304 and 15A NCAC 7H .0310 and updating Inlet Hazard Areas do not have an immediate negative or positive impact to community NFIP CRS points and Class ranking. However, the CRC will continue to update setback factors for both the oceanfront and inlets areas once every five years in an effort to contribute to an annual cost savings for property owners living in oceanfront communities by the avoidance of a five percent (5%) increase in flood insurance rates should the Coastal Resources Commission not update its construction setback factors.

There will be approximately 219 structures that are currently not within an Ocean Hazard Area that will now be included within the updated IHA. Additionally, there will be approximately 137 structures that will experience an increased construction setback factor when compared to existing requirements. In contrast to current practice, both commercial and residential structures will be treated equally in the proposed amendments, and all new construction will be limited to 5,000 heated square feet, and with a density limit of no more than one unit per 15,000 square feet of land area.

In a situation where a structure was destroyed or damaged beyond 50% and could not meet the construction setback, they still could potentially rebuild a structure on its original footprint and size if the structure was built before August 11, 2009 and meets certain grandfathering conditions in existing rules (15A NCAC 07H .0306(a)(5)(L)). Grandfathering applies single-family of all sizes and multi-family 10,000 square feet or less. These proposed rule amendments will not affect the application of these existing rules.

Within the context of these rule amendments it is not anticipated that the $1M impact threshold would be exceeded primarily because these amendments do not prevent development from occurring within the IHA. These rules only apply to new construction or redevelopment of an existing structure in the event that it is damaged beyond 50% of its appraised value. Existing

structures can be rebuilt if they meet required setbacks, or if they do not meet setback requirements but can meet specified grandfathering conditions outlined in Rule 15A NCAC 07H. 0306(a)(5)(L). Although there will be 21 additional structures that cannot meet these IHA setback requirements, there will be 26 structures that can now meet setback compared to existing requirements (Table 5, Column D); thus resulting in an overall benefit. Furthermore, by not meeting setback requirements this doesn't necessarily mean the structure would be damaged fifty-percent or more during a storm, or need a CAMA permit to do repairs. If an existing structure cannot meet setback requirements, and also does not qualify for grandfathering, it is theoretically possible that future setback requirements could be met if erosion rates are reduced as a result of natural accretion, beach nourishment, or construction of a terminal groin.

With regards to the existing vacant lots within the proposed IHA (approximately 111 lots), these rule amendments do not restrict development on them, but they do limit structure size to 5,000 heated square feet and development density to no more than one unit per 15,000 square feet of land area. As illustrated in Table 4, the average size of structures adjacent to those 111 vacant lots is approximately 3,000 square feet, and the CRC feels that the size limit is sufficient in meeting their management objectives. In a scenario were an existing vacant lot could not meet the setback requirements defined in this amendment, property owners could still potentially develop their property utilizing an existing rule (15A NCAC 07H. 0104) which allows for a structure up to 2,000 square feet to be constructed with minimal conditions.

There are unknowns and uncertainties associated with forecasting property owner's intentions, storm magnitude and frequency, or barrier island responses to inlet and ocean forces. For this reason, it is impossible to estimate a monetary cost or benefit that can be directly attributed to these rule amendments, especially when they do not restrict development. It is certain that barrier islands can and do change, and when structures are more appropriately sited, they are better protected from the forces of the ocean[7] and can potentially save property owners and government agencies the cost associated with rebuilding, storm damage clean up, and erosion mitigation.

References

Below, S., Beracha, E., Skiba, H. (2015). *Land Erosion and Coastal Home Values*. Journal of Real Estate Research, 37(4), 499-536.

Federal Emergency Management Agency (FEMA), 2019, *Calculation of Flood Insurance*, https://www.fema.gov/faq-details/Calculation-of-Flood-Insurance

[7] *Carteret County Shore Protection Office, Hurricane Florence, November 2018: http://www.carteretcountync.gov/ArchiveCenter/ViewFile/Item/1297*

Appendix A: Proposed Rule Amendments

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

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net.

(2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled ~~INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway~~ "Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission" are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

(a) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers

~~In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area.~~ This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

For the purposes of this Rule, Inlet Hazard Area setback factors are based on the long-term average annual shoreline change rates calculated using methods detailed in the report entitled "Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission". Inlet Hazard Area setback factors are depicted on maps entitled "2019 Inlet Setback Factors" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, Inlet Hazard Area construction setback factors shall be no less than two where accretion rates are measured, or erosion rates are less than two feet per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management or at the website referenced in Item (1) of this Rule.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

History Note: *Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

15A NCAC 07H .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 the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

(1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.

(2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.

(3) In no case shall a development line be created or established on state owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.

(4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule ~~.0304 of this Section~~ 15A NCAC 07H .0304. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

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

(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;

(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;

(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;

(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;

(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;

(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;

(I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and

(L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:

(i) the structure was originally constructed prior to August 11, 2009;

(ii) the structure as replaced does not exceed the original footprint or square footage;

(iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and

(v) the structure is rebuilt as far landward on the lot as feasible.

(6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement

line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.

(7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.

(8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.

(9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

(10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

(11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.

(12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries

of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;

(B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;

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

(D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and

(E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.

(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

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

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

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

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

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

(1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(2) restore the affected environment; or

(3) compensate for the adverse impacts by replacing or providing substitute resources.

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

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

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

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013.

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, 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;

(2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;

(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, and the total floor area of the structure shall be no more than 2,000 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;

(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;

(D) 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 60 feet.

(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 and development 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.~~

~~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)~~(c) 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; and

(2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

~~(e)~~(d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;

(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;

(3) The pier house shall be limited to a maximum of two stories;

(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;

(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;

(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

~~(f)~~(e) 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 oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and 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.

~~(g)~~(f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and

(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

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. June 1, 2010; 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.

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

(a) ~~Inlet areas~~ Inlet Hazard Areas as defined ~~by~~ in Rule ~~.0304 of this Section~~ 15A NCAC 07H .0304 are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to this extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

(1) ~~All development in the inlet hazard area shall be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area~~ The Inlet Hazard Area setback for development shall be measured in a landward direction from the first line of stable and natural vegetation, the static vegetation line, or the measurement line, whichever is applicable;

(2) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located in accordance with 15A NCAC 07H .0306 (5);

~~(2)~~(3) Permanent structures shall be permitted at a density of no more than one ~~commercial or residential~~ unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;

~~(3)~~(4) Only ~~residential~~ structures ~~of four units or less or non-residential structures of~~ less than 5,000 square feet total floor area shall be allowed within the ~~inlet hazard area~~ Inlet Hazard Area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;

~~(4)~~(5) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;

~~(5)~~(6) All other rules in this Subchapter pertaining to development in the ~~ocean hazard areas~~ Ocean Hazard Areas shall be applied to development within the Inlet Hazard Areas.

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

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and ~~small scale~~ small-scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the 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 7H .1100, .1200 and 7K .0203.

History Note: *Filed as a Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;*
Filed as an Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on

January 8, 1982;

Authority G.S. 113A-107; 113A-113(b); 113A-124;

Eff. December 1, 1981;

Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991;

March 1, 1988.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

CRC-19-25

September 3, 2019

MEMORANDUM

TO: Coastal Resources Commission

FROM: Courtney Spears

SUBJECT: Fiscal Analysis for 15A NCAC 07J .0403; .0403 Development Period/Commencement Within Coastal Shorelines and Ocean Hazard AECs

At the February 2019 CRC meeting, the Commission approved amendments to 15A NCAC 7J .0403 and 7J .0403 to lengthen the initial expiration date for most new Major Permits to five years from the date of permit issuance; eliminate the ability to obtain a single two-year renewal when permitted development has not begun; lengthen the initial expiration date for publicly-sponsored, multi-phased beach nourishment projects to 10 years from the date of permit issuance, and allow for 10-year renewals and; eliminate the provisions of 15A NCAC 07J .0404(b), which allow for the circulation of renewal requests to commenting State agencies when the requests do not meet the criteria for permit renewal.

As currently written, 15A NCAC 07J .0403 requires that all issued Major permits expire on December 31st of the third year following permit issuance. For example, all Major permits issued in 2019 carry an expiration date of December 31, 2022. The number of active CAMA Major permits is increasing each year, as new permits are issued and permits for existing long-term development projects (i.e. subdivisions, large-scale-commercial development, multi-phased beach nourishment projects, maintenance dredging projects) continue to be renewed. The increasing number of active projects is leading to an additional workload for Division staff, as there is a corresponding increase in the number of permit renewals that must be processed each year.

The proposed amended rules for the development period commencement and extension would apply to local, state, and private entities. The Division of Coastal Management has reviewed an average of approximately 68 CAMA Major permit renewal requests per year in the past three years. Changes to the initial active period and renewal request process is anticipated to result in a

more equitable and predictable process.

The economic impacts of these proposed rule changes are potential financial benefits to local, state and private entities in terms of time and permit fees. Presently, applicants must pay a $100 renewal request fee and develop a renewal request for what is essentially an “automatic” two year renewal. Applicants include local and state government agencies, and private entities. The adoption of this rule language would allow the applicant to have an initial active period of five or ten years, based on project type, resulting in a $100 savings per applicant. On average, private property owners as a group would save $2,100 per year and local governments as a group would save approximately $100 per year. Consequently, the Division of Coastal Management would incur a cost of $2,200 per year, on average (Table 1). Project applicants will also realize a time savings as the proposed amendments will eliminate the need to develop the initial renewal request. In addition, local, state, and federal agencies will realize a time savings by not having to review projects under the recirculation clause. The impact is not expected to be substantial.

The fiscal analysis has been approved by both the Department and OSBM. Staff recommends approval for public hearing.

Fiscal Analysis

15A NCAC 7J .0403 Development Period/Commencement/Continuation &
15A NCAC 7J .0404 Development Period Extension

Prepared by

Courtney Spears
NC Division of Coastal Management
(910) 796-7426

August 30, 2019

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Citations and Titles	15A NCAC 7J .0403 – Development Period/ Commencement/Enforcement 15A NCAC 7J .0404 – Development Period Extension
Description of the Proposed Rules	Section 7J .0403 defines the conditions under which development authorized by Coastal Area Management Act (CAMA) permits shall commence and continue. The proposed rule change would allow for the extension of the active period of most major permits from three to five years and for large-scale, publicly funded beach nourishment projects from three years to ten years. Section 07J .0404 defines the conditions under which a permit can be extended beyond the initial expiration date. The proposed rule change would eliminate the ability to obtain a single two-year renewal when permitted development has not begun, and eliminate the re-circulation of expired projects. Changes to these two sections would also clarify and consolidate the definition of "substantial development."
Agency Contact	Courtney Spears Assistant Major Permits Coordinator, Wilmington Regional Office Courtney.Spears@ncdenr.gov (910) 796-7426
Authority	113A-118; 113A-119; 113A-119.1; 113A-124(c)(8)
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules to lengthen the initial expiration date of most Major Permits and other minor changes to the permit renewal process.
Impact Summary	State government: Yes Local government: Yes Private entities: Yes Substantial impact: No

Summary

In 1978, the Coastal Resources Commission (CRC) adopted 15A NCAC 07J .0403 and 15A NCAC 7J .0404 to define the commencement, continuation, and extension of development authorized by Coastal Area Management Act (CAMA) permits.

Over recent years, the Division of Coastal Management (DCM) has processed an increasing number of permit renewal requests, commensurate with the increase in coastal population and development. Currently, the Commission's rules for permit issuance and renewal allow for an inconsistent active time period. Major Permits are active until December 31st of the third year from the date of permit issuance and are allowed an automatic two year renewal. The proposed amendments would lengthen the initial active period to five years from the date of permit issuance, extending the permit active period and thereby incorporate the existing automatic renewal period. Additionally, DCM has seen an increase in the number of large, publicly sponsored, multi-phased beach nourishment projects. The proposed change would acknowledge the longer implementation period of these projects and allow for an initial active period of ten years, with an additional ten year renewal. This rule change would also eliminate a permit review recirculation clause and clarify the definition of "substantial development".

The fiscal impacts of this proposed rule change are benefits to state government in terms of efficiency in processing and staff time. While DCM would see an average of $2,200 less in permit renewal fees, it is estimated that the loss of revenue would be offset by the savings in staff time involved in processing an "automatic" request. Other state agencies would also potentially experience a benefit by reducing the number of projects that would be reviewed through the recirculation provision.

The adoption of this rule language would allow the applicants, which include private entities, local governments, and other state agencies including North Carolina Department of Transportation (NC DOT), to save $100 on the initial "automatic" permit renewal request fee. They would also experience a time savings from not having to develop and submit requests for an "automatic" permit action. Local governments and state agencies, including NC DOT, play a role in permit review, and by elimination of the recirculation clause would experience a savings in time to process those requests.

Description of Rule Amendment

Currently, 15A NCAC 07J .0403 requires that all Major permits expire on December 31st of the third year following the date of permit issuance. For example, all Major permits issued in 2019 carry an expiration date of December 31, 2022. 15A NCAC 07J .0404 allows for one automatic two-year permit renewal, with additional renewals available for projects where substantial development, either within or outside the Area of Environmental Concern, has begun and is continuing on a permitted project.

The number of active CAMA Major permits is increasing each year, as new permits are issued and permits for existing long-term development projects (i.e. subdivisions, large-scale-commercial development, multi-phased beach nourishment projects, maintenance dredging projects) continue to be renewed. The increasing number of active projects is leading to an additional workload for Division staff, as there is a corresponding increase in the number of

permit renewals that must be processed each year. To address the increased development and subsequent workload, the proposed rule change would lengthen the initial active period of most major permits and incorporate the "automatic" renewal. The amendments would also lengthen the initial active period of large, publicly funded beach nourishment projects, eliminate a permit review recirculation clause, and clarify the definition of substantial development.

The proposed amendments would change the initial expiration date for most new Major Permits to five years from the date of permit issuance, as opposed to the current expiration date of December 31st of the third year following permit issuance. This rule change would benefit permittees by giving them more time to initiate or complete their projects. This lengthened expiration date would also reduce workloads of Division staff, by reducing the number of renewal requests processed each year. Finally, by changing the expiration date calculation to five years from the date of permit issuance, all permits would be valid for the same amount of time, as opposed to the current system whereby the amount of time a permit is active is dependent on when during a given year the permit is issued. For example, a new permit issued in early January of 2019 will be valid until December 31, 2022 or almost 4 full years, whereas a new permit issued in late December of 2019 will also be valid until December 31, 2022, or slightly more than three years.

This change would also eliminate the ability to obtain a single two-year renewal when permitted development has not begun. Under existing rules, 15A NCAC 07J .0404(b), a single two-year renewal may be issued to a permit holder in cases where development has not been initiated prior to the original expiration date of the permit, essentially allowing a permit holder five years from the date of permit issuance to initiate the permitted development. The proposed rule change extending the expiration date of a permit to five years from the date of issuance effectively incorporates this two-year renewal, and eliminates the necessity that a permit holder apply for this first renewal.

The initial expiration date for publicly-sponsored, multi-phased beach nourishment projects would be lengthened to ten years from the date of permit issuance, and allow for 10-year renewals. This rule change would acknowledge the multi-phased nature of these types of projects, some of which are designed to be implemented for periods up to 50 years, by extending the original expiration date for these projects to ten years. Subsequent renewals would then be issued for a period of ten years.

The proposed changes would also eliminate the provisions of 15A NCAC 07J .0404(b), which allow for the circulation of renewal requests to commenting State agencies when the requests do not meet the criteria for permit renewal. Staff believe this provision is unworkable given the length of time some of these permits may have been active, possible alterations of site characteristics over the active life of the permit, and the lack of any defined criteria upon which to make a determination on whether or not to issue the renewal following agency re-circulation. In addition, the work involved in reviewing and compiling documentation that needs to be circulated to other state and federal agencies is, in many cases, similar to that required for the circulation of a new permit application.

Lastly, the changes would consolidate and clarify language relating to when "substantial development" on a project has begun for the purposes of authorizing renewals.

Private Entities:

The fiscal impact of the proposed rule changes are financial benefits to private entities in terms of both time and fees. Permit renewal applications for the "automatic" renewal are typically approved. There are no known significant consequences of no longer receiving and reviewing the information presented in a permit renewal request as it is unlikely that environmental conditions have changed to such a significant degree that there would be any environmental or public use impact issues. Projects authorized through the major permit process are routinely monitored through aerial surveillance and site visits conducted by field representatives, so any issues of these type are likely to be addressed through compliance and monitoring. The adoption of this rule language would allow the applicant to avoid paying the $100 renewal fee and save time by not developing a request for an "automatic" renewal. Private entities applied for 170 renewals in the last three years.

NC Department of Transportation (NC DOT):

The fiscal impact of the proposed rule changes are financial benefits to NC DOT in terms of both time and fees. The adoption of this rule language would allow NC DOT to avoid paying the $100 renewal fee and save time by not developing a request for an "automatic" renewal. As a reviewing agency, NC DOT would also save time and resources by reducing the number of projects reviewed by elimination of the recirculation clause. NCDOT applied for 2 renewals in the last three years.

Local Government:

The fiscal impact of the proposed rule changes are financial benefits to local governments in terms of both time and fees. The adoption of this rule language would allow local governments to avoid paying the $100 renewal fee and save time by not developing a request for an "automatic" renewal. As a reviewing agency, local governments would also save time and resources by reducing the number of projects reviewed by elimination of the recirculation clause. Local governments applied for 28 renewals in the last three years.

State Government:

The fiscal impact of the proposed rule changes are potential financial benefits to State agencies in terms of both time and fees. The adoption of this rule language would allow state agencies to avoid paying the $100 renewal fee and save time by not developing a request for an "automatic" renewal. As a reviewing agency, state agencies would also save time and resources by reducing the number of projects reviewed by elimination of the recirculation clause. State agencies, excluding NCDOT, applied for 4 renewals in the last three years.

Division of Coastal Management (DCM):

DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to process requests for an "automatic" renewal. Based on a review of renewal requests over the last three years from June 2016 through June 2019, DCM processed a total of 205 renewal requests. Each renewal request includes a $100 permit fee, so the total fees collected in

the three year period were approximately $20,500. If the proposed changes were implemented, 66 of those renewals would not have been processed resulting in the loss of approximately $6,600 in permit fees over of the three year period, or $2,200 per year on average for 22 requests (Table 1). Given that the average processing time for a renewal request is roughly four hours, the reduction in permit fees would be mostly offset by the savings in staff time in processing those requests. There would be additional savings in staff time through the elimination of the recirculation clause as there is no permit fee associated with that request.

Cost/Benefits Summary

The proposed amended rules for the development period commencement and extension would apply to local, state, and private entities. The Division of Coastal Management has reviewed an average of approximately 68 CAMA Major permit renewal requests per year in the past three years. Changes to the initial active period and renewal request process is anticipated to result in a more equitable and predictable process.

The economic impacts of these proposed rule changes are potential financial benefits to local, state and private entities in terms of time and permit fees. Presently, applicants must pay a $100 renewal request fee and develop a renewal request for what is essentially an "automatic" two year renewal. Applicants include local and state government agencies, and private entities. The adoption of this rule language would allow the applicant to have an initial active period of five or ten years, based on project type, resulting in a $100 savings per applicant. On average, private property owners as a group would save $2,100 per year and local governments as a group would save approximately $100 per year. Consequently, the Division of Coastal Management would incur a cost of $2,200 per year, on average (Table 1). Project applicants will also realize a time savings as the proposed amendments will eliminate the need to develop the initial renewal request. In addition, local, state, and federal agencies will realize a time savings by not having to review projects under the recirculation clause. The impact is not expected to be substantial.

Table 1. Fiscal Impact Summary

Affected Party	Cost/Year	Savings/Year	Total/Year
Property Owners	$0	$2,100 plus time savings	$2,100 plus time savings
NC DOT	$0	$0	$0
Local Governments	$0	$100 plus time savings	$100 plus time savings
Division of Coastal Mgmt	$2,200	Staff time savings- up to $2,200	$0

APPENDIX A

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION

(a) New dredge and fill permits and CAMA ~~permits, excepting~~ Major permits shall expire five years from the date of permit issuance, with the exception of publicly-sponsored, multi-phased beach nourishment projects, which shall expire ten years from the date of permit issuance. Minor permits, except those authorizing ~~–~~beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.

(b) ~~Pursuant to Subparagraph (a) of this Rule, a minor permit~~ CAMA minor permits authorizing beach bulldozing shall expire 30 days from the date of permit ~~issuance when issued to a property owner(s)~~ issuance. Following permit expiration, the ~~applicant~~ permit holder is entitled to request an extension in accordance with Rule .0404(a) of this Section.

(c) Development After Permit Expiration Illegal. Any development ~~done~~ undertaken after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development ~~to be done~~ to be undertaken after permit expiration shall require either a new permit, or renewal of the original permit according to ~~15A NCAC 7J .0404 with the exception of Paragraph (e) of this Rule.~~ 15A NCAC 7J .0404

(d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin ~~construction, he~~ development, they shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback. This setback determination shall replace the one done at the time the permit was processed and approved and construction must begin within a period of 60 days from the date of that meeting. In the case of a ~~major~~ shoreline change within that ~~period~~ period, a new setback determination will be required before construction begins. Upon completion of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.

~~(e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in the opinion of the permitting authority, substantial progress has been made and is continuing according to customary and usual building standards and schedules. In most cases, substantial progress begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection~~.

~~(f)~~(e) Any permit that has been suspended ~~pursuant to G.S. 113A-121.1 as a result of a contested case petition or~~ by order of superior court for a period longer than six months shall be extended at the ~~applicant's~~ permit holder's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under ~~Paragraph~~ Paragraph (a) or (b) of this Rule.

~~(g)~~(f) ~~An applicant~~ A permit holder may voluntarily suspend development under an active permit that is the subject of judicial review by filing a written notice with the Department once the review has started. ~~An applicant~~ A permit holder shall obtain an extension of said permit if the permitting authority finds:

(1) That the ~~applicant~~ permit holder notified the permitting authority in writing of the voluntary suspension;
(2) The period during which the permit had been subject to judicial review is greater than six months;
(3) The ~~applicant~~ permit holder filed a written request for an extension of the development period once the judicial review had been completed; and
(4) The ~~applicant~~ permit holder undertook no development after filing the notice of suspension. The period of permit extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the development period authorized under Paragraph (a) of this Rule.

History Note: Authority G.S. 113A-118;
Eff. March 15, 1978;
Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984.

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION

(a) For CAMA minor permits authorizing beach bulldozing, the ~~applicant~~ permit holder is entitled to request a one-time ~~30-day~~ 30-day permit extension. No additional extensions shall be granted after the 30-day extension has expired. Notwithstanding this Paragraph, the ~~applicant~~ permit holder is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the ~~30 days~~ 30-day permit extension.

~~(b) Where no development has been initiated during the development period, the permitting authority shall extend the authorized development period for no more than two years upon receipt of a signed and dated request from the applicant containing the following:~~

~~(1) a statement of the intention of the applicant to complete the work within a reasonable time;~~
~~(2) a statement of the reasons why the project will not be completed before the expiration of the current permit;~~
~~(3) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or, previously approved permit modifications;~~
~~(4) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and~~
~~(5) a statement that the project is in compliance with all conditions of the current permit.~~

~~Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project, the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be granted for periods not to exceed 10 years~~.

~~(c) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate the request to the commenting state agencies along with a copy of the original permit application. Commenting agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the commenting period the Department will notify the applicant promptly of its actions on the extension request.~~

~~(d) Notwithstanding Paragraphs (b) and (c) of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied to the maximum extent practical by the permitting authority in making a decision on an extension request.~~

~~(e) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars ($100.00).~~

~~(f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.~~

(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has begun and is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete the initial development, with the exception that projects involving publicly-sponsored, multi-phased beach nourishment projects, shall be granted ten-year extensions to allow for continuing project implementation. Renewals for maintenance of previously approved dredging projects may be granted for periods not to exceed 10 years. For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. In Ocean Hazard Areas, substantial development begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection. For residential subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development.

(c) To request extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed and dated request containing the following:

(1) a statement of the completed and remaining work;
(2) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or, previously approved permit modifications;
(3) notice of any change in ownership of the property to be developed and a request for transfer of the permit if appropriate; and
(4) a statement that the project is in compliance with all conditions of the current permit

(d) The applicant for a major development extension request must submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars ($100).

History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);
Eff. March 15, 1978;
Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985; November 1, 1984.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

CRC-19-26

August 30, 2019

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Permeable Surfaces in the Buffer

A recent variance petition prompted a discussion of the Commission's exceptions to non-water dependent uses within the 30-foot buffer area of the rules for the Coastal Shorelines AEC, found at 15A NCAC 7H .0209(d)(10)(G). The variance requested expansion of non-water dependent uses within the 30-foot buffer area by allowing the use of impermeable materials (pavers) for a patio.

The Coastal Shorelines Area of Environmental Concern (AEC) includes the Estuarine Shorelines and Public Trust Shorelines subcategories. Estuarine shorelines are defined as "…those non-ocean shorelines extending from the normal high water level (HWL) or normal water level (NWL) along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources". The Estuarine Shoreline AEC extends from NHWL or NWL landward for a distance of 75 feet except in areas adjacent to waters classified as Outstanding Resource Waters by the Environmental Management Commission (EMC), where it extends 575 feet. Public Trust Shorelines are located inland of the dividing line between coastal fishing waters and inland fishing waters and extend 30 feet landward of NHWL or NWL. Pursuant to 15A NCAC 7H .0209(e), the Commission's buffer shall not apply in areas (Neuse and Tar-Pamlico) where the EMC has adopted buffers.

Your rules currently restrict development within the 30-foot buffer to water-dependent uses which are typically docks, piers, boat ramps, bulkheads and accessways. There are also exceptions for limited non-water dependent uses which include pile supported signs; elevated, slatted wooden boardwalks; crab shedders; decks/observation decks; grading, excavation, and landscaping with no wetland fill except when required by a permitted shoreline stabilization project.

The origin of the CRC's Buffer rules began with the Commission's consideration of upland development impacts to adjacent estuarine water quality in 1985 with a report on urban stormwater runoff and management strategies to mitigate those impacts. Other reports followed

including a 1996 NC Sea Grant analysis of current AEC standards concluding that the standards were not specific enough to protect critical estuarine habitats, specifically seagrass beds, shallow sand, oyster reefs, salt marshes, fish nursery areas and anadromous fish spawning areas.

Fish kills, algal blooms, shellfish closures and increased coastal development during the late 1990's once again brought the issue of estuarine water quality to the Commission's attention. In September of 1997, Staff reviewed the Commission's existing regulatory program and concluded that "additional protection is needed to implement the intent of the Coastal Area Management Act and the Commission's management goals for the Estuarine System Area(s) of Environmental Concern (AEC)" identifying five areas for review, including regulatory jurisdiction, different development zones, vegetated buffers, density and estuarine shoreline stabilization.

With nonpoint source pollution becoming an increasing concern, the CRC in 1998 began a rulemaking effort to expand the Estuarine Shoreline AEC beyond the limit of the inland waters boundary through the Public Trust Areas AEC and reviewed methods to mitigate, protect and restore the quality of North Carolina's estuarine system through the use of vegetated buffers, shoreline stabilization methods, and impervious surface area density. Staff recommended rule changes to require buffers along all shoreline types within the Commission's jurisdiction.

The Commission spent most of 1998 reviewing the shoreline jurisdiction rules, and recommendations on how to proceed with adding both a Public Trust Shoreline AEC upstream of the inland/coastal fishing waters line, and to update the rules for the Estuarine Shoreline AEC to include vegetated buffers.

In 1999 the CRC's draft proposals included a 75-foot vegetated buffer for all Coastal Shorelines AECs (both Estuarine Shoreline and Public Trust Shoreline AECs). Within the 75-foot buffer, water dependent structures were allowed within the first 50 feet and within the last 25 feet, up to 200 square feet of accessory structures could be built. This recommendation was later reduced to a 30-foot buffer and was subsequently adopted in November of 1999 after adding exceptions and took effect in August of 2000. The exceptions were the result of a Staff survey regarding the most common existing development within a 30-foot buffer area, with recommendations of what non-dependent uses should be allowed within the 30-foot buffer based on their having little or no impact to water quality.

The Commission has had a clear intent since the initial adoption of its 30-foot buffer rule, and since its adoption in 2000, has been consistent in not allowing non-water-dependent amenities within the buffer that could undermine the purposes and effectiveness of the buffer. The buffer area has been identified as crucial in protecting water quality by filtering contaminants from runoff, allowing infiltration, stabilizing soil, slowing floodwaters and preserving the natural character of the shoreline. When the Commission has granted variances, it has usually involved a habitable structure, and these variances have typically been conditioned on the use of an engineered stormwater system.

However, there have been advances in technology that are intended to address stormwater runoff associated with traditional impervious surfaces. The use of “pervious” pavement, pavers and associated installation requirements have been promoted by various institutions and the Division

of Energy, Minerals and Land Resources' (DEMLR) Stormwater Design Manual includes specifications for construction of "hard" surfaces that capture stormwater through voids in the materials surfaces.

The Commission's buffer rule exceptions allow for decks/observation decks that are limited to slatted, wooden, elevated and unroofed decks that do not singularly or collectively exceed 200 square feet. As the provision for decks to be slatted and elevated is related to retaining the infiltration capacity of the buffer, development standards could be incorporated that allow similarly functioning structures that also maintain the infiltration capacity of the buffer. If the Commission is interested in allowing this type of amenity within the buffer area, the limitations on non-water dependent structures could be amended to incorporate DEMLR's Best Management Practices standards (15A NCAC 02H .1055 MDC FOR PERMEABLE PAVEMENT) for pervious pavement by reference in the rule and limiting such development to 200 square feet, in a manner similar to the limitation on slated, elevated decks.

Staff looks forward to discussing the Buffer Rule and guidance for the development of amendments at our upcoming meeting in Wilmington.

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines.

(1) Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters (ORW) by the Environmental Management Commission (EMC), the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties.

(2) Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. All shoreline development shall be compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid or minimize adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. Development shall comply with the following standards:

(1) All development projects, proposals, and designs shall preserve natural barriers to erosion, including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to service the primary purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible.

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water that is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.

(B) No development project proposal or design shall propose an angle for graded slopes or fill that is greater than an angle that can be retained by vegetative cover or other erosion-control devices or structures.

(C) All development projects, proposals, and designs that involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; unless the project involves clearing land for the purpose of forming a reservoir later to be inundated.

(4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality 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.

(5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.

(6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use.

(7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.

(8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the use of the accessways.

(9) Within the AECs for shorelines contiguous to waters classified as ORW by the EMC, no CAMA permit shall be approved for any project that would be inconsistent with rules adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.

(10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:

(A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;

(B) Pile-supported signs (in accordance with local regulations);

(C) Post- or pile-supported fences;

(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;

(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

(H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased;

(I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development shall be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

(i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities, such as water and sewer; and

(ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0201 and .0211; and

(J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development shall be permitted within the buffer if all the following criteria are met:

(i) The lot on which the proposed residential structure is to be located, is located between:

(I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or

(II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;

(ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;

(iii) Placement of the residential structure and pervious decking shall be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

(iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces shall be allowed within the buffer; and

(v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Marine Fisheries of the Department of Environmental Quality.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the EMC has adopted rules that contain buffer standards.

(f) Specific Use Standards for ORW Coastal Shorelines.

(1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:

(A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line; and

(B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.

(2) Single-family residential lots that would not be buildable under the low-density standards defined in Subparagraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

(g) Urban Waterfronts.

(1) Description. Urban Waterfronts are waterfront areas, not adjacent to ORW, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met:

(A) the area lies wholly within the corporate limits of a municipality; and

(B) the area has a central business district or similar commercial zoning classification where there are mixed land uses, and urban level services, such as water, sewer, streets, solid

waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.

(2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.

(3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.

(4) Use Standards:

(A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule shall not apply to development within Urban Waterfronts that meets the following standards:

(i) The development shall be consistent with the locally adopted land use plan;

(ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and

(iii) The development shall meet all state stormwater management requirements as required by the EMC;

(B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands shall be allowed only within Urban Waterfronts as set out below.

(i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.

(ii) For the purposes of this Rule, existing enclosed structures may be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure, and is consistent with local requirements or limitations.

(iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:

(I) shall provide for enhanced public access to the shoreline;

(II) may be roofed, but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;

(III) shall require no filling of coastal wetlands, estuarine waters or public trust areas;

(IV) shall not extend more than 20 feet waterward of the normal high water level or normal water level;

(V) shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;

(VI) shall have no more than six feet of any dimension extending over coastal wetlands;

(VII) shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division

of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;

(VIII) shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;

(IX) shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there shall be no alternative that would avoid wetlands. Significant adverse impacts include the development that would 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;

(X) shall not degrade waters classified as SA or High Quality Waters or ORW as defined by the EMC;

(XI) shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and

(XII) shall not pose a threat to navigation.

History Note: *Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*
Eff. September 1, 1977;
Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989;
Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142);
Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494);
Amended Eff. April 1, 2019; March 1, 2010; April 1, 2008; August 1, 2002.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

CRC-19-27

September 3, 2019

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Oceanfront Decks and Repairs

There have been a number of oceanfront deck collapses in North Carolina and nearby states in recent years. While there may be many reasons for such collapses, staff is requesting consideration of amendments to the CRC's rule 15A NCAC 07H .0309 to address a possible regulatory disincentive to proper deck maintenance.

Currently, 7H .0309 allows for new construction of elevated decks up to a 500 square foot footprint, seaward of the oceanfront setback required under 7H .0306. Among other conditions, these decks must be located landward of the vegetation line or static line, as applicable. While an exact number is yet to be determined, staff is aware of some oceanfront decks within the setback that exceed the 500 square foot footprint. Existing freestanding decks over the 500 square foot footprint in the setback are nonconforming, and replacement is not currently permissible without being brought into compliance; i.e., a reduction in size to a 500 square foot footprint. Staff is concerned that this requirement may be a disincentive for individuals seeking to maintain nonconforming decks to proper safety standards.

Since the impetus for this recommendation is public safety, staff is recommending consideration of a provision that would allow replacement of all oceanfront decks to be permissible, subject to certain limitations (e.g. landward of the static line or vegetation line, no dune disturbance, and decks exceeding a 500 square foot footprint cannot be expanded). Staff will discuss the attached draft rule language with the Advisory Council and report to the Commission at your September meeting.

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;~~ feet, and replacement of existing decks exceeding a footprint of 500 square feet with no enlargement beyond their original dimensions;
(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, 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;
(2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;
(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, and the total floor area of the structure shall be no more than 2,000 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;
    (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;
    (D) 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 60 feet.
(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 and development 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.

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; and
(2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
(3) The pier house shall be limited to a maximum of two stories;
(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is 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 oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and 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.

(g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

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. June 1, 2010; 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.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

CRC-19-29

September 3, 2019

MEMORANDUM

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: 2020 Sea Level Rise Report Update - Charge to Science Panel

Following the Commission's guidance at your July meeting, staff has prepared the following draft Charge to the Science Panel for the 2020 Sea Level Rise Assessment Report Update. The draft was shared with Science Panel Chairman Birkemeier, who had no suggested changes.

Once the Charge is finalized, staff will deliver it to the Science Panel, which is ready to begin work.

CHARGE TO THE SCIENCE PANEL
September 18, 2019 (draft)

The issue of sea level rise is of great importance to the State, its policy makers and the citizens of NC. Periodic updates using current data are vital to help inform planning and decision making.

The CRC therefore charges the Science Panel to conduct a comprehensive review of scientific literature and available North Carolina data that addresses the full range of North Carolina-specific sea level change. The CRC further charges the Science Panel to report regional rates of potential sea level rise as was done in the 2015 Report. The time period assessed in the report should extend a minimum of 30 years.

The Panel should have a draft ready for technical peer review by February 1, 2020, and a peer-reviewed draft ready for public review by May 1, 2020. The CRC requests a final report by August 31, 2020.

JOSH STEIN
ATTORNEY GENERAL

REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

Memorandum

To: North Carolina Coastal Resource Commission

Fr: Mary L. Lucasse, Esq.

Re: Legal Update to the Coastal Resources Commission (*CRC 19-30)*

Date: September 10, 2019

I. MULTISTATE LITIGATION

U.S. District Court, District of South Carolina Charleston Division: The National Marine Fisheries Service (NMFS) granted incidental harassment authorizations (IHA) pursuant to the Marine Mammal Protection Act allowing five companies to conduct seismic testing for potential oil and gas resources in the Atlantic. NC and other states intervened in the litigation filed by various environmental organizations challenging the IHAs. This case was consolidated with a complaint brought by local governments in South Carolina in which the State of South Carolina had intervened. Plaintiffs filed motions for a preliminary injunction requesting the companies be prohibited from conducting seismic testing. NC and other states joined in the motion. On Aug. 26, 2019, the court denied the motions for preliminary injunction without prejudice finding harm is not imminent as over 5 months have passed and no permits have been issued.

II. FEDERAL CASES

U.S. District Court, Eastern District of North Carolina, Northern Div., *Zito v. CRC, 2:19-cv-11-D.*
Plaintiffs filed a complaint claiming the CRC's decision denying their variance request resulted in a taking of private property without just compensation in violation of the United States Constitution and the North Carolina Constitution. Mary Lucasse and Marc Bernstein represent the CRC and filed a motion to dismiss arguing the federal court does not have jurisdiction as Plaintiffs failed to exhaust judicial remedies under North Carolina law to request compensation for the alleged takings. In response, Plaintiffs dismissed their state law claim. The court denied the CRC's first motion to dismiss when the United States Supreme Court issued its opinion in *Knick v. Township of Scott, Pennsylvania, et al.*, No. 17-647 on June 21, 2019 overturning the state litigation requirement. On Aug. 20, 2019, we filed a second motion to dismiss arguing the 11th Amendment bars Plaintiffs' remaining claim. Plaintiffs opposed the motion. Our reply is due Sept 20, 2019. The NC Coastal Federation filed a motion to intervene. The CRC took no position. Plaintiffs opposed the motion. Discovery is deferred until the court rules on the motions.

Consistency Appeal to US Dep't of Commerce, NOAA.
On July 11, 2109, WesternGeco submitted a Notice of Appeal (NOA) to the U.S. Secretary of Commerce pursuant to the Coastal Zone Management Act of 1972 (CZMA) from an objection by DCM to WesternGeco's a consistency certificate for its proposed project to conduct a geological and geophysical seismic survey in the Atlantic Ocean. The Secretary determined this is an energy project under CZMA. Appellant requested and received an extension to Sept. 20, 2019 to coordinate with BOEM, the permitting agency to submit the record and a revised NOA. Mary Lucasse and Marc Bernstein represent DCM on the appeal.

III. SUPERIOR COURT - Carteret County

Beverly Pham v. Blair Pointe, LLC et al. 18 CVS 1289. The Attorney General, on behalf of the people of North Carolina, intervened in litigation filed by Plaintiff seeking a declaratory judgment that a conservation restriction placed on approximately 12 acres (including wetlands) under the Tax Credit Program (repealed by the General Assembly in 2013) was extinguished as a result of a tax foreclosure sale. DCM had done the initial assessment that the land had conservation value. Mary Lucasse and Shawn Maier are representing North Carolina in the litigation. The parties plan to reschedule the current Dec trial date to conduct additional discovery.

IV. PETITION FOR JUDICIAL REVIEW - Carteret County Superior Court

Batson, Baldwin, and Batson/Baldwin Owners' Association v. CRC. On May 31, 2019, the Chair denied requests for contested case hearings to challenge the CAMA permit issued to NC DOT for a replacement bridge to Harkers Island. Petitioners appealed. Mary Lucasse represents the Commission and filed the Record of Proceedings in Superior Court. The court granted the parties' joint motion to quash summons issued to the Commission and NC DOT and consolidate the petitions. The parties are discussing a schedule for briefing and a hearing in the case.

V. OFFICE OF ADMINISTRATIVE HEARINGS (OAH):

Sunset Beach Taxpayers Association and NC Coastal Federation v. DCM (*16 EHR 7974**) and ***Sun's Set LLC v. DCM* (16 EHR 8032).** The cases appeal DCM's issuance of Major CAMA Permit No 70-16 for infrastructure development for a residential project at the western end of Sunset Beach in Brunswick County. Shawn Maier represents DCM in OAH. In 2017, the General Assembly allocated $2.5 million to purchase the property. The OAH cases were stayed to give the parties time to explore settlement. On Sept 10, 2019, the NC Council of State approved terms for the State's acquisition of the property. Accordingly, the OAH cases will be dismissed.

Gwendolyn Smuts and Marvin Tignor v. DEQ (18 EHR 07490 and 18 HER 07391). Two residents of the Town of Southern Shores challenged issuance of CAMA Minor Permits for construction of two 12-bedroom homes arguing the permits are not consistent with the Town's current land use plan. Mary Lucasse and Sarah Zambon represented DEQ. ALJ Ward granted our motion for summary judgment finding that the projects are consistent with objective requirements of the Town's land use plan and zoning ordinances, including requirements for height, density, and lot coverage. Petitioners have until September 11, 2019 to appeal.

VI. VARIANCES:

Stallings CRC-VR-19-06. At its July meeting, the CRC denied a variance request to construct an upload boat basin. Petitioner did not file a petition for judicial review and we closed the file.

VII. REQUESTS BY THIRD PARTIES TO FILE CONTESTED CASE IN OAH:

Since your last meeting, the Chair has denied requests by **Third Parties McBride (CMT 19-07), Caldwell (CMT 19-08), and Sands V HOA (CMT 19-09),** for hearings in OAH to challenge a permit issued by the Town of Carolina Beach's Local Permit Officer (LPO). The Chair found that the LPO failed to ensure that adjacent riparian property owners had notice of the request for a CAMA minor permit. For that reason, although the requests were untimely, the Chair considered the merits of each request. The Chair determined that Petitioners had failed to allege facts or make legal arguments sufficient to show that the permit was inconsistent with CAMA or the CRC's rules. In addition, the Chair determined that the permit authorizing a three-unit townhome development on the oceanfront was consistent with the Town's development line. Petitioners have until Sept 12, 2019 to appeal.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

September 3, 2019

MEMORANDUM **CRC-19-31**

TO: Coastal Resources Commission

FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Review of Ocean Hazard Area Management Boundaries, Lines & Grandfathering

Ocean Hazard Areas (OHA):

Ocean Hazard Areas the grouping Areas of Environmental Concern (AECs), that are comprised of: 1) Ocean Erodible Areas (OEA); 2) Inlet Hazard Areas (IHA), and 3) Unvegetated Beach Areas (UBA). According to the Management Objectives for the Ocean Hazard Area (15A NCAC 7H .0303), these AECs collectively are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. Ocean Hazard Areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage. The location and form of hazard area landforms (beaches, inlets, dunes) are in a permanent state of flux, responding to changes in the wave climate, sand supplies, and sea levels.

The Commission's rules for these AECs further the goals set out in G.S. 113A-102(b), and serve to minimize losses of 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 system, and reducing the public cost of inappropriately sited development.

1) Ocean Erodible Areas of Environmental Concern:

The Ocean Erodible Area of Environmental Concern (AEC), also referred to as the OEA, is the area along the oceanfront where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation as a result of ocean related processes. Although day-to-day change is predominately influenced by natural forces, engineering practices such as beach nourishment can and do influence shoreline fluctuation. The oceanward boundary of this AEC starts at the mean low water line, while the landward boundary is measured landward from the first line of stable natural vegetation at a distance established by multiplying the long-term erosion rate setback factor by 90 (minimum distance of 180 feet). Because the erosion rate setback factor is not the same for all areas, and given that it is measured from the location of the vegetation line, this AEC boundary is not the same for all oceanfront locations, nor is it mapped regularly due to its potential to change significantly over a short period of time. Within this AEC there are multiple management lines used in the siting of development and identification of areas with known and/or measured high rates of erosion. For the purpose of this discussion, staff will describe each of the following lines used for siting construction: 1a) development setback; 2a) first line of stable and natural vegetation (FLSNV); 3a) Static Vegetation Line (SVL) & the SVL Exception; 4a) Development Line (DVL), and 5a) Measurement Line.

Construction Setback Lines:

Oceanfront development setbacks were established by the Coastal Resources Commission (CRC) under the Coastal Area Management Act (CAMA) in 1979 for the primary purpose of minimizing losses of life and property resulting from storms and long-term erosion, while also 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. In an effort to accomplish these management objectives, erosion rate setback factors were initially calculated and subsequently updated approximately every five years for two key reasons: 1) to properly site oceanfront development, and; 2) to determine the landward-most extent of the Ocean Erodible Area of Environmental Concern (OEA). The CRC's oceanfront setback rules are perhaps the most important with regards to the protection of life and property. In addition, the Federal Emergency Management Administration (FEMA) currently uses North Carolina's erosion rate updates to award Community Rating System (CRS) points to qualified coastal communities. The State's setback requirements help preserve spaces that can serve as undeveloped buffer areas for storm protection.

The OEA setbacks for siting oceanfront development are measured in a landward direction from the first line of stable and natural vegetation (vegetation line), the static vegetation line, or the measurement line. Setback distance is calculated by multiplying the erosion rate setback factor (a.k.a. "erosion rate") times a graduated variable that corresponds to the size of the proposed structure (*see Table 1*). The setback factor represents the statistically smoothed and blocked,

average, annual, long-term shoreline change rates, which are updated approximately every 5 years. For purposes of establishing a minimum development setback, "2" is the default minimum Setback Factor, which includes those areas with erosion rates less than 2 feet/year and areas where accretion is measured.

Table 1. Setback Factors & graduated setback.

Structure Size	Setback Factor (feet)	example "setback factor = 2"
< 5,000 sqft.	Minimum 60 feet or **30** x setback factor	2 x **30** = 60 feet
≥ 5,000 sqft.	Minimum 120 feet or **60** x setback factor	2 x **60** = 120 feet
≥10,000 sqft.	Minimum 130 feet or **65** x setback factor	2 x **65** = 130 feet
≥20,000 sqft.	Minimum 140 feet or **70** x setback factor	2 x **70** = 140 feet
≥40,000 sqft.	Minimum 150 feet or **75** x setback factor	2 x **75** = 150 feet
≥60,000 sqft.	Minimum 160 feet or **80** x setback factor	2 x **80** = 160 feet
≥80,000 sqft.	Minimum 170 feet or **85** x setback factor	2 x **85** = 170 feet
≥100,000 sqft.	Minimum 180 feet or **90** x setback factor	2 x **90** = 180 feet

First Line of Stable Natural Vegetation (FLSNV):

The First Line of Stable & Natural Vegetation (FLSNV), also referred to as the "vegetation line" is the primary reference feature for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, and the more stable uplands. If the vegetation has been planted, it may be considered "stable" when most of the plant stems are from continuous rhizomes rather than planted individual root sets. Planted vegetation may be considered "natural" when most of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring.

While the vegetation line has been used as an oceanfront setback measurement line since 1979, the CRC has determined that when vegetation moves oceanward after a beach nourishment project, this creates an artificial situation that should not be considered "stable and natural" and therefore should not be used for measuring oceanfront setbacks. In 1995, the CRC codified a method of measuring setbacks on nourished beaches that utilizes the surveyed pre-project existing vegetation line, which became known as the "Static Vegetation Line."

Static Vegetation Line (SVL):

The static vegetation line is established in areas within the boundaries of a large-scale beach fill project (>300,000 cubic yards) and represents the vegetation line that existed within one year prior to the onset of project construction. A static line is established in coordination with the Division

of Coastal Management. Once a static line is established, setbacks are measured from either the static line or the vegetation line, whichever is more landward. In addition, once a static line is established it does not expire.

The CRC's static line rule was based on three primary issues: 1) evidence that nourished beaches can have higher erosion rates than natural beaches, 2) no assurance that funding for future nourishment projects would be available for maintenance work as the original project erodes away, and 3) structures could be more vulnerable to erosion damage since their siting was tied to an artificially-forced system. The intent of the static line provisions has been to recognize that beach nourishment is an erosion response necessary to protect existing development but should not be a stimulus for new development on sites that are not otherwise suitable for building.

Static Vegetation Line Exception:

Since the establishment of the Static Line rule and the increasing prevalence of beach fill projects, the Commission has found that some communities had demonstrated a long-term commitment to beach nourishment and maintenance of their nourished beaches. Due to this long-term commitment, beach vegetation had become stable and migrated oceanward of the static line. In many cases, proposed development on lots within these communities could meet the required setback from the new vegetation line but could not be permitted since they did not meet the setback from the static vegetation line.

To recognize local government efforts to address erosion through a documented long-term commitment to beach nourishment, and to offer relief from the static line requirements, the CRC adopted Static Vegetation Line Exception procedures in 2009. The Static Vegetation Line Exception allows a community to measure setbacks from the existing vegetation line rather than the static line, but includes certain limitations and conditions.

To be eligible for this exception, a community must petition the CRC by providing a beach management plan that describes the project area and design; identify sediment sources; identify funding sources to maintain the initial large-scale project; and, provide an update on project effectiveness and how it will continue to be maintained. The plan must be updated and presented to the CRC every five years for reauthorization. Under the exception, development must meet the required setback from the vegetation line, no portion of a building or structure can be oceanward of the landward-most adjacent neighbor or an average line of construction is determined by DCM, and no swimming pools may be permitted seaward of static line.

Development Line:

In 2016, the Commission provided a second alternative to the Static Line by promulgating "Development Line" procedures. The Development Line allows use of the existing vegetation line for setback determinations, with local governments setting the oceanward limit of structures, subject to CRC approval. Unlike with the Static Line Exception, there is no requirement for a demonstrated long-term commitment to beach nourishment or beach management plan and structures are allowed to be constructed, replaced, or expanded to be in line with their seaward-most adjacent neighbor (as opposed to landward-most adjacent neighbor under the Static Line Exception). Establishment of a Development Line requires the following:

1. It is mapped by the community using an average line of construction and must be referenced in local ordinance(s).
2. It is to represent the seaward-most allowable limit of oceanfront development.
3. Must be approved by the CRC. Once approved, only the community can request a change.
4. Development must meet the applicable setback from the vegetation line.
5. No swimming pools may be permitted seaward of the static line.

Measurement Line:

A Measurement Line represents the post-storm location of a vegetation line if a storm causes overwash or a loss of vegetation so that not enough vegetation exists to determine oceanfront setbacks. This line is located by using the most recent pre-storm aerial photography to map the pre-storm vegetation line, and then moving it landward a distance equal to the average width of the beach recession caused by the storm. Measurement lines are generally temporary until the vegetation is re-established to the point where it can once again be used for determining oceanfront setbacks but may also be permanently designated by the CRC.

In summary, there are currently twenty-one North Carolina communities with a static vegetation line. Eight of those communities have CRC-authorized Static Vegetation Line Exceptions, four have CRC-approved Development Lines, and two will have a section of their oceanfront with a temporary Measurement Line designation from the CRC (see Table 2).

Table 2. List of Communities with Static Vegetation Lines, SVL Exceptions, Development Lines, and Measurement Lines.

Community	SVL	SVL Exception	DVL	Measurement Line
Ocean Isle	**Yes**	**Yes**	*No*	*No*
Oak Island	**Yes**	*No*	**Yes**	*No*
Caswell Beach	**Yes**	*No*	*No*	*No*
Bald Head Island	**Yes**	*No*	*No*	*No*
Kure Beach	**Yes**	*No*	**Yes**	*No*
Carolina Beach	**Yes**	**Yes**	**Yes**	*No*
Wrightsville Beach	**Yes**	**Yes**	*No*	*No*
Figure Eight Island	*No*	*No*	**Yes**	*No*
Topsail Beach	**Yes**	*No*	*No*	*No*
Surf City	*No*	*No*	*No*	**Yes**
North Topsail Beach	**Yes**	*No*	*No*	**Yes**
Emerald Isle	**Yes**	**Yes**	*No*	*No*
Indian Beach	**Yes**	**Yes**	*No*	*No*
Salter Path	**Yes**	**Yes**	*No*	*No*
Pine Knoll Shores	**Yes**	**Yes**	*No*	*No*
Atlantic Beach	**Yes**	**Yes**	*No*	*No*
Buxton	**Yes**	*No*	*No*	*No*
Rodanthe	**Yes**	*No*	*No*	*No*
Nags Head	**Yes**	*No*	*No*	*No*
Kill Devil Hills	**Yes**	*No*	*No*	*No*
Kitty Hawk	**Yes**	*No*	*No*	*No*
Southern Shores	**Yes**	*No*	*No*	*No*

2. Lessons learned through Implementation

There are some notable differences between the Static Vegetation Line Exception and Development Line Rules. Implementation of these rules is complex and present some management challenges, specifically, when it comes to what structures, or parts of the primary structure, can or cannot be located seaward of one or more of the management lines (vegetation line, static line, or development line).

Development Line Rules (15A NCAC 07J .1300) allow construction setbacks to be measured from the existing FLSNV. What makes the DVL different from the SVL Exception are the procedures within the rules, and the process of defining the limits of development, including how to consider decks and other accessory structures outlined in 07H.0309, such as dune walkovers, gazebos, and parking areas. It is Staff's understanding that decks and accessory structures should not be used to delineate DVLs. However, because DVLs have been delineated differently from one community

to the next, these structures may or may not be seaward of the DVL in some locations. Because the current Rule (15A NCAC 07H .0306(a)(2)) states that "in no case shall new development be sited seaward of the development line," this creates questions, and potentially difficulties when reviewing permits, when decks and other structures listed under .0309 Exceptions are being proposed seaward of a DVL.

3. Grandfathering Rules:

Current "grandfathering" rules (15A NCAC 07H .0306(a)(5)(L)) apply to replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, provided that the structure was built prior to August 11, 2009, does not exceed its original footprint or square footage, it is not possible for the structure to be rebuilt in a location that meets the required ocean hazard setback, and the structure can meet the minimum setback (60 feet from the FLSNV).

It is important to note that existing grandfathering provisions will also apply to structures within the proposed amendments to the Inlet Hazard Areas (15A NCAC 07H .0310). Staff will review several grandfathering rule provisions and looks forward to a discussion of how these various jurisdictional lines, setbacks, and exceptions apply in different scenarios.

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
BRAXTON C. DAVIS
Director

NORTH CAROLINA
Environmental Quality

CRC-19-28

September 9, 2019

MEMORANDUM

TO: Coastal Resources Commission

FROM: Jonathan Howell

SUBJECT: Draft General Permit for Structures located within a Shellfish Lease

Considering the Coastal Resources Commission's authority for regulating development in Public Trust and Estuarine Waters, the Divisions of Marine Fisheries and Coastal Management agreed in 2016 that DCM should have a consulting role in the review of proposed shellfish leases. DCM has been reviewing shellfish leases and providing comments for two complete shellfish leasing cycles and this process has proven to be useful in the review of applications.

Through these informal comments, DCM has been recommending that DMF establish buffers adjacent to coastal wetlands, avoid impacts to navigation, and limit boundary markers to less than four inches in diameter. To build on lessons learned over the past two years, DCM staff presented draft exemption language at your February 2019 CRC meeting that was intended to provide clarity to DMF and the public applying for a shellfish lease as to when a CAMA permit would be required. The Commission directed DCM staff to gather further data associated with the types of activities that occur on leases, as well as provide additional information on the interests of other resource agencies and shellfish growers. DCM staff and two Commissioner, Bob Emory and Laura Salter attended a meeting with shellfish growers hosted by the NC Coastal Federation on March 21 to discuss the proposed rule language, and also hosted a mock scoping meeting with other resource agencies for a hypothetical lease to gather information and feedback on the draft lease exemption language. Staff provided information on regulatory concerns of other resource agencies at your July meeting. At that time, the Commission directed staff to draft a General Permit for structures located within the bounds of a shellfish lease.

Attached is a draft General Permit that introduces a riparian property and local government notification process, piling size limitations, limitations on floating upweller systems, and other guidance associated with rules of the CAMA as well as incorporating concerns of other resource agencies. To date, DCM has only received initial feedback from staff at the Division of Marine Fisheries. While the draft permit language below requires further improvements, we will be presenting this as a conceptual model for further discussion and guidance during the September meeting, and request that further rulemaking be delayed until further stakeholder engagement, agency feedback, and modifications are addressed. I look forward to our discussion in Wilmington.

North Carolina Department of Environmental Quality | Division of Coastal Management
Washington Office | 943 Washington Square Mall | Washington, North Carolina 27889
252.946.6481

Proposed 15A NCAC 7H .2800 GENERAL PERMIT FOR STRUCTURES OR PILINGS WITHIN THE BOUNDARIES ASSOCIATED WITH A SHELLFISH AQUACULTURE LEASE ISSUED BY THE SECRETARY PURSUANT TO G.S. 113-202, 113-202.1, and 113-202.2 - September 19, 2019

SECTION .2800 - GENERAL PERMIT FOR STRUCTURES OR PILINGS WITHIN THE BOUNDARIES ASSOCIATED WITH A SHELLFISH AQUACULTURE LEASE ISSUED BY THE SECRETARY PURSUANT TO G.S. 113-202, 113-202.1, and 113-202.2

15A NCAC 07H .2801 PURPOSE

A general permit pursuant to this Section shall allow the placement of structures or pilings in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines 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 adjacent Ocean Erodible Area.

History Note: *Authority G.S. 113A-107; 113A-118.1;*

15A NCAC 07H .2802 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development pursuant to Paragraph (b).

(b) The applicant shall provide:

(1) information on site location, dimensions of the project area, and his/her name and address;

(2) a dated plat(s) showing existing and proposed development; and

(3) evidence that:

(A) the riparian property owners of the riparian area in which the lease is located have been notified by certified mail of the proposed work. The notice shall instruct riparian property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 calendar days of receipt of the notice, and, indicate that no response shall be interpreted as no objection.

(B) the local government in which the lease is located has been notified of the proposed work.

(c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within 120 days of permit issuance or the general authorization expires, and a new permit shall be required to begin or continue construction.

History Note: *Authority G.S. 113A-107; 113A-118.1;*

07H .2803 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1;*

15A NCAC 07H .2804 GENERAL CONDITIONS

(a) Structures and Pilings authorized by this permit shall be for the exclusive use of the shellfish lease holder(s) in whose name the permit is issued. A "piling" is any pole larger than 4" in diameter. A "structure" is any material or object not specifically excluded from the definition of development as listed in GS *113A-103(5)(a)* or other gear used for the growing of shellfish as defined by the Division of Coastal Management.
(b)There shall be no interference with navigation or use of the waters by the public by the existence of pilings or structures authorized by this permit.
(c)This general permit shall not be applicable to proposed construction where the Department 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 and historic sites, wildlife, fisheries resources, or public trust rights. (d) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines in 7H .0200 et. seq. and local land use plans current at the time of authorization.
(d) This permit does not eliminate the need to obtain any other required state, local or federal authorization.
(e) Individuals shall allow authorized representatives of the Department of Environmental Quality to make periodic inspections at any time deemed necessary in order to be sure that the activity being-performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.
(f) This permit is not applicable in areas designated as a state nature preserve under G.S. 143-260.

History Note: Authority G.S. 113A-107; 113A-118.1;

15A NCAC 07H .2805 SPECIFIC CONDITIONS

(a) Pilings associated with this lease shall not exceed 12" in diameter and shall be marked with permanent reflectors to make them more visible during hours of darkness or inclement weather.
(b) Wave baffles or other structures used for the purpose of wave attenuation are prohibited.
(c) Platforms whether floating or stationary, with the exception of operational floating upweller systems located within the lease area, are prohibited.
(d) Floating upweller systems shall have no greater than four-foot walkways between and around the silos with no portion to be used for storage or staging areas.
(e) Power shall be provided to the floating upweller systems through solar power only. No shore-based electric, water or other utilities shall be used to service an open water lease.
(e) Water depths at the location of the proposed floating upweller system shall be equal to or greater than two feet at normal low water level or normal water level.
(f) No single floating upweller system shall exceed 400 square feet with no more than (2) floating upweller systems per open water lease.
(g) Floating upweller systems shall not have walls.
(h) If the floating upweller system is powered by solar panels, the solar panels shall not extend more than 8' above the water level.
(i) Docking facilities, slips, moorings, fixed platforms and lighting are prohibited.
(j) Enclosed or roofed structures are prohibited.
(k) Any modification to the location of pilings or structures including the enlargement of authorized activities associated with this permit shall require additional authorization by the Division.
(l) Floating upweller systems shall not be secured by pilings.

History Note: Authority G.S. 113A-107; 113A-118.1;